

1 This arbitration arises pursuant to Section 809,
2 Employer-Employee Relations, Mediation Arbitration of the
3 Charter of the City of Vallejo, between the CITY OF VALLEJO,
4 hereinafter the City, and the VALLEJO POLICE OFFICERS
5 ASSOCIATION, hereinafter the ASSOCIATION, under which BONNIE
6 G. BOGUE was selected as Mediator-Arbitrator pursuant to
7 procedures of the California State Mediation and
8 Conciliation Service. Mediation was scheduled and held on
9 April 8 and 9, 1988, in Vallejo. Agreement on all issues
10 not being reached in mediation or negotiations, an
11 evidentiary arbitration hearing was scheduled and held on
12 April 27, 28, and 29, and May 5 and 6, 1988, in Vallejo on
13 the issues still in dispute. Pursuant to Sec. 809(g) of the
14 Charter, each party submitted in writing its last best offer
15 on each issue in dispute on June 2, 1988. Following receipt
16 of the court reporters' verbatim transcript of the
17 arbitration hearing, the parties filed post-hearing briefs
18 on June 20, 1988.

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20 In consideration of the length of the proceedings, and
21 the need to await a transcript and to fully brief the
22 issues, and the time required for the undersigned Arbitrator
23 to deliberate on and decide the issues, the City Council
24 adopted a resolution on May 10, 1988, stating that it agreed
25 "to accept and implement any arbitration award[] rendered
26 under the City Charter in the 1988 collective negotiations
27 between the City...and VPOA..., and will not interpose
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1 objection to said awards on the basis that they were not
2 rendered by June 5, 1988," the date by which the Charter
3 contemplates the present procedures would be completed.

4 (Resolution No. 88-269)

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6 Under the terms of the Charter, the Arbitrator is
7 mandated to choose one of the parties' last best offers for
8 each issue in dispute and has no power to modify or
9 compromise the last best offers of either party. The
10 following award is issued accordingly, after full
11 consideration of the evidence in the record and the parties'
12 arguments regarding all factors relevant to the issues from
13 the standpoint of both parties, including the interest and
14 welfare of the public. The City on the record (May 6 Tr.,
15 pp. 111-114) declined to raise the issue of ability to pay
16 or to submit the financial ability of the City as an matter
17 to be considered in deciding any issue in dispute. The
18 following Award is final and binding on the parties, to the
19 extent permitted by law.

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21 A separate Award is rendered on each of the 22 issues
22 in dispute, in the order submitted by the parties, defined
23 by issue number as well as by reference to the existing MOU
24 section and/or by descriptive language. Each Award
25 indicates which of the parties' last offers is awarded, and
26 is intended to incorporate by reference the language
27 appearing in the last best offer of the prevailing party as
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1 submitted in this proceeding, rather than reiterating that
 2 language here. The Decision briefly describes the final
 3 offer and position of each party, but does does not attempt
 4 to completely explain the parties' positions, which were
 5 ably and thoroughly set out in the closing briefs. The
 6 discussion also includes a brief opinion in support of each
 7 Award.

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ISSUE 1

Sec. 1 - Recognition

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Award: Implement the City's last offer (no change in current language).

Discussion: The Association's proposal is to add language incorporating "retirees" as well as "employees" as those which the Association represents. The City objects, and proposes in no change in the existing provision, contending there is no basis in law for the Association to be recognized as the representative of retirees, who are no longer employees of the City. Since the purpose of the Association's proposal was to facilitate its negotiation of health care benefits for retirees (Issue 10, below), the resolution of that issue makes it unnecessary to modify the recognition clause of the agreement.

ISSUE 2

Sec. 7 - Seniority

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4 Award: Implement Association's final offer.

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6 Discussion: The Association's proposal would amend
7 subsections D.1 and D.3 to permit lieutenants to select team
8 assignments and days off by seniority. The Association
9 contends that the current provision discriminates against
10 lieutenants by denying them the right accorded to sergeants
11 and officers. The City contends lieutenants are essentially
12 management employees, and it should retain discretion to
13 assign them as needed. Thus, it proposes no change in the
14 current language.

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16 Although the Department has full discretion to assign
17 lieutenants, the evidence discloses that the actual current
18 practice is to permit lieutenants to select assignments by
19 personal preference, so the Association's proposal would not
20 have a present effect on assignment practice and would
21 restore the previously enjoyed right of lieutenants, as
22 members of the bargaining unit, to exercise the same
23 seniority right enjoyed by other classifications.
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ISSUE 3

Sec. 8 - Salaries

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Award: Implement Association's last offer.

Discussion: The City proposes to continue the existing salary formula which sets salaries at 5% above the average of the salaries paid for police officer in the 14-city survey, which it has utilized in the past, in each of year of a three-year agreement. In addition, it proposes to set the salaries for sergeants at 20% above, and lieutenants at 34% above the range for police officers in the first year, and lieutenants at 37% and 40% above police officers in the second and third years of the new MOU. It contends its proposal will result in an approximate 5.19% increase for police officers, 9.09% for sergeants, and 7.89% for lieutenants in 1988-89, whereas the Association's last offer would result in increases of 7.69%, 10.96%, and 16.4%, respectively, which it contends are too high. The City states that its formula continues the policy achieved in the prior agreement of returning Vallejo police officers to 5% above the survey data, the position they had enjoyed in 1980, and also corrects the slippage which sergeants and lieutenants had experienced in recent years. It counters the Association arguments for "parity" between police and firefighters by noting that there is no inherent relationship between the two occupations, that the salary

1 provisions have been independently negotiated, and that the
2 Association's proposal is not designed to achieve "parity"
3 between actual salaries paid (the differential is currently
4 only 2%) but rather seeks to establish a higher percentage
5 above the survey data because the firefighters' formula
6 calls for 15% above the average. As to the Association's
7 arguments about increased danger, such considerations are
8 dealt with in areas other than salary and the conditions
9 described are not exclusive to Vallejo, argues the City.
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11 The Association proposes in its last offer to utilize a
12 benchmark for each of the three classifications, derived
13 from the 14-city survey, rather than assigning a percentage
14 differential between officers and the higher
15 classifications, as the City proposes. It asks that
16 salaries for each of the three classifications be set a 7.5%
17 above the average for each classification in the 14 survey
18 cities for first year and 10% above the average in the
19 second year of a two-year agreement. The Association faults
20 the City's methodology for establishing the appropriate
21 differential between officers/sergeants/lieutenants. It
22 also objects to the City's disregard of prevailing
23 relationships between police and firefighters. It contends
24 that prior to 1980, police and fire salaries in Vallejo were
25 either comparable, or police salaries were ahead of fire
26 salaries, which resulted in Vallejo firefighters being
27 considerably ahead of the average paid in the survey cities
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1 (about 14%) where police officers were paid more than
2 firefighters, whereas Vallejo police officers were falling
3 behind, being only 4.8% ahead of the survey average.
4 Currently, each of the 14 survey cities pays police officers
5 more than firefighters, ranging from 23.47% to .7%
6 differential. In Vallejo, police officers are paid
7 approximately 2% less than firefighters, but the
8 firefighters' salary formula guarantees that firefighters
9 will continue to receive pay at 15% above the survey
10 average, causing the disparity between pay for police and
11 firefighters in Vallejo to increase. To achieve the same
12 relationship between police and firefighters reflected in
13 the survey cities, the Association would have to request an
14 increase putting officers 21.15% ahead of the data (15% for
15 firefighter parity, plus 6.15% to meet the average
16 police/firefighter differential), but instead it only
17 requests 7.5% and 10% above the average. In addition to the
18 survey data, the Association points to the extensive
19 evidence that supports two classical criteria for salary
20 increases -- increased work load and exposure to danger
21 owing to population growth and increased crime rate.

22
23 Both proposals seek to correct inequities in the
24 relationship between officer/sergeant/lieutenant salaries.
25 Both proposals seek to tie salaries to the prevailing rates
26 reflected in the 14-city survey. The Association's proposal
27 as to the sergeants and lieutenants pay ranges is preferable
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1 because it establishes comparability between Vallejo's
2 classifications and the average paid to each classification
3 in the other jurisdictions. Since the City's philosophy,
4 reflected in the 1984-88 agreement, is to link Vallejo
5 salaries with those in the survey cities, it makes more
6 sense to establish such links for each classification rather
7 than to fix an internal differential between Vallejo's
8 officers, sergeants and lieutenants, as the City proposes.
9 Although the City's proposal in fact seeks to match
10 sergeants and lieutenants salaries with those prevailing
11 now, its proposal would not necessarily maintain the
12 relationships, whereas the Association's will.

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14 The Association's proposal -- to fix the relationship
15 between Vallejo's salaries and those paid in the survey
16 cities at 7.5% and 10% above the average, over a two-year
17 contract -- is preferable to the City's proposal to set the
18 relationship at 5% above, for the following reasons.

19
20 Any figure tends to be arbitrary, but both parties
21 offer a rationale for the percentage proposed. The City's
22 justification is merely to maintain the current ratio
23 achieved under the 1984-88 agreement, which in turn was an
24 attempt to correct "slippage" and return the officers to the
25 relationship to the survey cities which Vallejo experienced
26 in 1980. The Association's figures are intended to correct
27 what it perceives as an inequity between Vallejo police
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1 officers' salaries and those paid to Vallejo firefighters,
2 as well as to compensate for increased workload and
3 heightened danger. Two points in particular support the
4 Association's position: (1) Vallejo police officers are
5 paid less than its firefighters (approximately 2% less),
6 whereas historically they have been at parity, or slightly
7 above; and (2) the survey data, on which the City relies
8 heavily in many of its bargaining proposals, demonstrates
9 that police officers are paid more than firefighters in all
10 14 cities (see Assn. Ex. 31). Only in Vallejo are police
11 officers paid less, despite the fact that the workload and
12 crime rate in Vallejo have not been shown to be less than in
13 the survey cities. Nor has any other justification been
14 offered for the relative position of police salaries in
15 comparison to fire, other than that the current circumstance
16 is the result of independent negotiations. The Association
17 seeks now to negotiate a different result.

18
19 The Association's proposal would yield a pay increase
20 in the first year of approximately 2.5% more than that
21 offered by the City for police officers, according to the
22 City's calculations. While this differential is significant
23 (and even greater for lieutenants), it is justified by the
24 purpose of bringing Vallejo's practice regarding comparative
25 compensation of police and firefighters more in line with
26 the prevailing practice, while at the same time maintaining
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a relationship between police salaries in Vallejo and the average paid in the 14 survey cities.

Since both major aspects of the Association's proposal -- sergeant/lieutenant differentials and the basic pay rate -- have features which recommend them over the City's last offer, the Association's offer is selected.

ISSUE 4

Sec. 9 - Other Salary Provisions

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4 Award: Implement Association's last offer.

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6 Discussion: The Association's proposal would add a new
7 section, B.1, to provide a \$200 monthly stipend for canine
8 officers to compensate them for the care and feeding of the
9 dogs which live with the officers. Previously, the City
10 unilaterally implemented a 5 percent of salary stipend for
11 the canine officer, but soon discontinued it. The City
12 contends that the canine program is of marginal value and is
13 strictly voluntary on the part of the one officer currently
14 in that position. The officer was the one who proposed to
15 implement a canine program. It further notes that grooming
16 and food costs are already covered. Thus, it opposes any
17 change in current language providing compensation for the
18 canine officer.

19
20 The 14-city survey reveals that 8 cities have a canine
21 program, and 4 compensate the officers beyond the out-of-
22 pocket food and care expenses. Whether or not the program
23 is of marginal value to the City, the Department has
24 approved the program and accepts the benefits of the
25 officer's services in housing and caring for the animal. It
26 is appropriate, and not out of line with prevailing practice
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1 in the City's selected survey cities, to compensate the
2 officer for this additional responsibility.
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ISSUE 5

Sec. 11 - Hours of Work

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4 Award: Implement the City's last offer (no change in
5 current language).
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7 Discussion: The Association's proposal would add a new
8 subsection and require that 50% of the patrol teams have
9 Saturday and Sunday off. The proposal would codify an
10 existing practice. The City opposes any change in the
11 current language, contending the proposal would impede the
12 Department's ability to deploy forces and restrict necessary
13 flexibility in its ability to change the present system in
14 order to increase patrol coverage at different times if
15 crime patterns change. The Association notes flexibility
16 could be retained by going off the team system and returning
17 to a "staggered days off" system.
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19 The proposal would hamper the Department's ability to
20 deploy officers effectively by making it contractually
21 impossible to vary the current practice without eliminating
22 the team system. Although the officers have a personal
23 interest in maintaining the advantages of the current
24 practice, that interest does not outweigh the Department's
25 need to be able to change the "overlap" day if workload
26 shifts warrant a different deployment.
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ISSUE 6

Sec. 14 - Hazard Duty Pay

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4 A threshold issue has been raised as to whether the
5 Association's proposal should be treated as one or two
6 issues. The City addresses the question of compensation for
7 motorcycle duty and for tactical response team duty as two
8 separate issues. Although the Association combines them in
9 one "issue," it addresses them sequentially. Since there is
10 no interrelation of subject matter, other than as extra
11 compensation for hazardous duty, and the justification and
12 evidence regarding compensation for each are independent of
13 one another, motorcycle duty pay and tac team compensation
14 are treated herein as two separate issues -- 6A for
15 motorcycle pay and 6B for tac team compensation.
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17 Award - Issue 6A: Implement Association's last offer.
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19 Discussion: The Association's proposal would replace the
20 existing language and increase the hazard duty pay for
21 officers assigned to motorcycle duty from \$50 to \$125 a
22 month. It contends there is inherent hazard and likelihood
23 of injury in motorcycle duty, as well as higher costs of
24 maintaining uniforms and equipment, and that the pay has not
25 been increased in nearly 15 years. The City opposes any
26 change in current language, contending that the hazards are
27 known when officers volunteer for the duty, and that the
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1 mean average of the 13 survey cities who have motorcycle
2 officers is \$58 a month, so no increase is warranted. The
3 Association counters that, of the 6 survey cities who do
4 grant extra pay for motorcycle duty, the average is \$125 a
5 month.

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7 In light of the data showing that the premium for those
8 surveyed cities that do pay for motorcycle duty averages
9 \$125, the Association's proposal is reasonable. The mean
10 average figure of \$58 distorts the rate for premium duty by
11 factoring in the 7 cities that pay no cash stipend. Since
12 the City has long since joined those that do pay a premium
13 for this duty, it is appropriate that it pay the prevailing
14 rate. The increase is also appropriate because the premium
15 pay has not been increased for many years so that the
16 present \$50 no longer bears the same relationship to salary
17 or equipment maintenance costs as it originally would have.

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19 Award - 6B: Implement the City's last offer (no change in
20 current language).

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22 Discussion: The Association's proposal would add new
23 subsection calling for employees assigned to the tactical
24 response team to received 10 hours of annual leave each
25 quarter for passing the physical qualifications. It
26 contends some form of compensation for the hazardous duty is
27 warranted, but that cash compensation for being activated is
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1 impractical because of the sporadic nature of active duty on
2 the team. The time-off scheme, it contends, compensates
3 officers for the estimated 5 hours a week needed to maintain
4 physical fitness to pass the tests, and the current physical
5 fitness program is not yet operational and would not be
6 adequate anyway. The City opposes any change in current
7 language, noting that membership on the team is voluntary.
8 It contends that prevailing practice in the survey cities
9 does not support the proposal, since nine cities pay no
10 extra compensation, and the three that do only pay a 5%
11 premium when the team is activated. It notes that when the
12 physical fitness program is fully operational, tac team
13 members will be eligible for annual leave under that plan.
14

15 The Association is correct in noting that the survey
16 data is inapposite because it does not indicate whether the
17 cities compensate for physical training. However, it
18 provided no data to show that any cities have adopted
19 anything similar to what it proposes. Since evidence in the
20 record does not show any practice, prevailing or emerging,
21 of providing extra compensation for tac team members'
22 maintaining physical qualifications, and the evidence
23 indicates that it is not the dominant practice among the
24 survey cities to provide any compensation for tac team duty,
25 the Association has not provided sufficient basis for
26 implementing its proposal, particularly since the record is
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foggy as to whether the proposal may duplicate benefits that will be available anyway under the physical fitness program.

ISSUE 7

Sec. 16(A) and (B) - Uniform Allowance

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4 Award: Implement the City's last offer.

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6 Discussion: The Association's proposal would increase the
7 annual uniform allowance to \$525, then continue the
8 escalator formula in the existing agreement for increases in
9 subsequent years. It contends the increase is necessary to
10 close the gap between the allowance and the actual cost of
11 purchasing and maintaining uniforms. The City's proposal is
12 to utilize the existing escalator formula to increase the
13 allowance to \$432 for 1988-89, and to continue the formula
14 thereafter. It notes that the mean average allowance in the
15 survey cities is \$403, and that none pays as much as \$525.
16 It also argues that the practice never has been to fully
17 compensate officers for all purchase and cleaning costs.
18

19 Although the evidence presented by the Association
20 discloses that costs of uniform purchase and maintenance can
21 exceed the allowance, it did not establish that the dollar
22 figure of the allowance has been intended in the past to
23 equate to actual expenses incurred. The present formula and
24 its current yield are in keeping with prevailing uniform
25 allowances in the 14 survey cities (the average being \$405,
26 ranging from \$280 to \$520), whereas the Association's
27 proposal would increase the base amount to a figure above
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1 that paid by any city in the survey group. Although 8 of
 2 the cities pay more than the \$432 which the City is
 3 offering, the Association also has the advantage of the
 4 automatic escalator clause which will increase that figure
 5 over the life of the agreement, an advantage not enjoyed in
 6 11 of the survey cities. (City Ex. 11). Accordingly, the
 7 City's offer is more in line with prevailing practice than
 8 is the Association's, and the City's proposal will
 9 adequately offset the major portion of the cost of
 10 purchasing and maintaining uniforms.

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ISSUE 8

Sec. 16(F) - Uniform Allowance

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4 Award: Implement the City's last offer (no change in
5 current language.)
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7 Discussion: The Association's proposal is to add a new
8 subsection calling for a one-time supplemental uniform
9 allowance of \$100 to cover a change in uniform, explained to
10 be the cost of purchasing new shirts to accommodate
11 mandatory safety vests. The City opposes any supplement.
12 Although the City's offer to make such vests mandatory is
13 granted (see Issue 20, below), which will require some
14 officers to purchase larger shirts, this proposal is denied.
15 The problem is that the proposal gives \$100 to all officers,
16 whether they need a new shirt or not, and hence it is overly
17 broad for its purpose. Had the proposal merely called for a
18 supplement for those required to purchase a new shirt, it
19 would have been acceptable. As it is, it provides a
20 windfall for employees who will not be out of pocket any
21 additional expense because they already wear vests and have
22 shirts to accommodate them.
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ISSUE 9

Sec. 18 - Educational Incentive Pay Program

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4 The threshold issue of whether the City's proposal
5 regarding educational incentive is one or several issues has
6 been resolved by the City's decision, expressed in its
7 brief, to address it as one consolidated issue.
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9 Award: Implement Association's last offer.
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11 Discussion: Both parties propose modification of the
12 existing incentive program. The City would create two
13 "tiers" for employees hired between 1971 and 1988: Those
14 already qualifying for either the first or second awards
15 would continue to receive the current \$85/\$125 pay
16 supplement (no increase). Those who have not yet qualified
17 and now apply must meet higher educational standards in
18 order to qualify for enhanced stipends of \$115/\$165. New
19 hires are in a third tier: they would receive no incentive
20 pay but would be reimbursed for half the cost of tuition and
21 books, up to \$100. The Association's proposal is to
22 increase the stipend for all current employees who are
23 qualified or become qualified for the awards to \$115/\$165.
24 Its "second tier" is for new hires, who would have to meet a
25 higher standard (a B.A. as well as POST) to qualify for the
26 second award.
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1 Both proposals speak to the City's concern that
2 mandatory training through POST has made the awards
3 virtually automatic, rather than an incentive to seek
4 education, by adding a B.A. degree as a requirement for the
5 second award. The primary difference is that the City would
6 increase the educational standard for current employees who
7 have not yet qualified for the second award, whereas the
8 Association would make the increased educational requirement
9 applicable only to new hires. A second, and significant,
10 difference is that the City would eliminate the idea of a
11 pay supplement entirely for all new hires, going over to a
12 cost-reimbursement scheme.

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14 The City's proposal creates a differential among
15 current employees and a potential unfairness between those
16 who qualify for the second award. As I read proposed
17 subsection C, D and G, current employees would be paid a
18 different stipend even though they may have exactly the same
19 credentials, since under C, those already receiving the
20 awards get the old rate, and under D and G, those who now
21 apply and qualify under the new standards receive the higher
22 rate. Anyone already receiving the second award could not
23 qualify for the higher pay, no matter whether s/he already
24 has a B.A. or later acquires the degree. Thus, some pre-1988
25 employees who have or obtain the degree would receive the
26 old rate, whereas others who now obtain the degree would
27 receive the higher rate. I am without authority in this
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1 procedure to alter the language of the proposal to correct
2 this deficiency.

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4 Since the Association's proposal does enhance the
5 educational incentive aspect of the program, at least for
6 future hires, it is overall a more effective proposal since
7 it responds to the City's basic concern without creating the
8 unequal treatment I perceive in the City's scheme.
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ISSUE 10

Sec. 22 - Health and Life Insurance

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4 Award: Implement Association's last offer.

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6 Discussion: The threshold issue of whether the City's
7 proposal regarding health benefits was one or several issues
8 has been resolved by virtue of the City's decision to treat
9 the matter as a single issue, as explained in its closing
10 brief.

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12 The parties, to their credit, have negotiated to a near
13 resolution the complex issue of adopting a new health
14 insurance benefit, in light of the cancellation of the Blue
15 Cross plan which was previously available. The single
16 remaining issue in dispute is the treatment of retirees when
17 the City enters into a contract with PERS for participation
18 in its health benefits program effective July 1, 1988.

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20 The City proposes a contract provision governing those
21 who retire after July 1, 1988 (i.e., current employees who
22 retire) to receive \$1 contribution toward the selected PERS
23 health care benefit (the minimum called for by the PERS
24 program), escalated annually by 5% (also as required by the
25 PERS program). In addition, the City proposes to provide a
26 direct reimbursement of \$75 a month to retirees to help
27 offset their out-of-pocket expense of buying into the PERS
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1 plan. (Unlike in its offer presented at the arbitration
2 hearing, the City is no longer offering to de-escalate the
3 \$75 to offset the 5% escalator in the contribution rate.)
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5 The Association's last offer differs in that its
6 proposed language does not specify "those who retire as of
7 July 1, 1988", and it provides that the City will contribute
8 \$86.81 a month for "retiree/annuitants," to be escalated 5%
9 a year as required by PERS law. The offer specifies that
10 "eligible retired employees" must be members of the PERS
11 health benefits program at the time of retirement.
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13 The parties arguments focus on whether or not the City
14 has an obligation, or the Association has a right, to
15 negotiate a benefit for existing retirees. However, the
16 parties' offers do not require an answer to that legal
17 issue. The Association's offer, despite its arguments,
18 is to provide a benefit for current employees who retire,
19 not for existing retirees. Whereas the City's last offer
20 specifies a benefit only for future retirees, by stating
21 "employees of record on or after July 1, 1988, upon
22 retirement..." the Association's language uses the general
23 term "retiree-annuitants" with the only definition being
24 subsec. A.4.: "The eligible retiree-annuitants must be
25 members of PERS Health Benefits Program at the time of
26 retirement." But since no retirees will be members of the
27 PERS program "at the time of retirement" except those who
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1 retire after the City comes under the program on July 1,
2 1988, the Association's definition appears to be in effect
3 the same as the City's. That is, the language of the
4 proposals contain a distinction but no difference. The
5 retirees in both proposals are those who retire after July
6 1, 1988.

7
8 However, the fact that the Association's offer calls
9 for a contribution for retirees, rather than the
10 reimbursement approach proposed by the City, would require
11 as a matter of PERS law that the City pay existing retirees
12 the same benefit that is negotiated for future retirees.
13 Thus, the Association need not negotiate for existing
14 retirees to achieve a benefit for them. Its proposal would
15 achieve that result because it calls for a contribution, and
16 the City is required to provide the same contributions for
17 all retirees from the Police Unit.

18
19 Since both offers on their face call for a benefit for
20 future retirees, the only real distinction in the offers is
21 the amount to be provided. The difference in cost between
22 the Association's \$86 a month contribution and the City's \$1
23 contribution plus \$75 reimbursement, according to the
24 Association, is minimal -- about \$11 a month per retiree.
25 The City contends the Association's proposal would actually
26 cost \$57,000 the first year because it must meet the
27 contribution for the 55 existing retirees alone, since under
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1 the Association's proposal PERS would require it to pay \$86
2 a month for each existing retiree if it pays that for future
3 retirees. However, the difference in price tag is a
4 function of law, not of the parties' proposals. And should
5 the City elect to grant the \$75 reimbursement to existing
6 retirees as well, the difference between the two proposals
7 is only \$8,000 the first year.
8

9 The rationale for the City's \$75 a month reimbursement
10 proposal is apparently to match a \$75 reimbursement
11 arrangement that it has previously negotiated for other
12 units of employees; however, it does not argue that it is
13 seeking parity between the Police Unit and other bargaining
14 units as a justification for that figure. It objects to the
15 Association's higher cost proposal as not warranted in light
16 of the fact that the City must provide for the first time
17 health care coverage for retirees in the Police Unit, a
18 significant and potentially costly benefit.
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20 The Association's rationale for its proposal is to
21 avoid any discrimination between current and future retirees
22 implied in the City's proposal (assuming that the City would
23 elect not to provide current retirees the \$75 reimbursement
24 it proposes for future retirees). It also argues for
25 equality between retirees and current employees in that both
26 classes should receive a contribution cover the actual cost
27 of a basic health plan, rather than requiring retirees to
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1 pay the difference between \$75 and the cost of the PORAC
2 plan.

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4 Since the City is not seeking parity between units on
5 its proposal, the only argument in favor of its proposal is
6 to minimize the cost of this new benefit. However, since
7 the difference in cost between the two proposals is
8 relatively minor (\$11 a month per retiree) the Association's
9 rationale to provide retirees, like employees, with enough
10 contribution to provide a fully paid, basic plan is the more
11 persuasive. The fact that PERS law will require the City to
12 equate the contribution for existing and future retirees,
13 while adding to the cost of the Association's proposal,
14 makes the Association's proposal more persuasive than the
15 City's in that it eliminates the artificial distinction
16 between those who retire before or after July 1 which might
17 arise under the City's proposal if it chose not to grant
18 past retirees the \$75 reimbursement it proposes for future
19 retirees. For all these reasons, the Association's last
20 offer is preferable.

ISSUE 11

Sec. 31 - Grievance Procedure

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4 Award: Implement City's last offer (no change in current
5 language).

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7 Discussion: The Association's proposal would require the
8 party that "loses" an arbitration award to pay the costs of
9 the arbitration. It contends the proposal would be a
10 disincentive for the City to go to arbitration on "losing
11 cases" at the expense of the Association. It contends that
12 the City has "lost" 6 out of 7 arbitration cases. The City
13 contends that most grievances are settled prior to
14 arbitration (7 cases in 15 years), and that the proposal
15 would not dissuade it from pursuing arbitration since it
16 only uses the process when it believes it has a valid case.
17

18 Although this Arbitrator is aware, through personal
19 experience and general knowledge of arbitration practice, of
20 contracts containing a loser-pays provision, by far the
21 common practice is for the parties to share equally in the
22 costs of the arbitrator and court reporter. (See Elkouri and
23 Elkouri, How Arbitration Works, 4th ed., p. 20.) The
24 evidence of the number of grievances going to arbitration
25 between the City and the Association (approximately 7 in 15
26 years) does not indicate overuse of the arbitration process
27 that would warrant imposing a disincentive on either party.
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The Association presented no evidence of the nature of the arbitration cases, and thus the evidence does not disclose that the City's position in any case has been unreasonable or frivolous or an abuse of the process. Accordingly, the Association has not established a sufficient reason to adopt the proposal and abandon the traditional provision for sharing costs.

ISSUE 12

Sec. 34 - Existing Benefits

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4 Award: Implement Association's last offer (no change in
5 current language.)
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7 Discussion: The City's proposal is to change this provision
8 from one guaranteeing continuation of existing benefits,
9 i.e., past practices, to an "Entire Agreement" clause that
10 specifically "supersedes and cancels all prior practices and
11 agreements" that are not expressly stated in the current
12 contract. It would then incorporate two specific past
13 practices, premium pay for field training officers and
14 shooting bonus. In support, it contends the present
15 language can lead to difficulties in identifying what is a
16 "past practice," and that it would improve employment
17 relations to codify existing practices and eliminate the
18 general protection for unidentified "existing benefits."
19 The Association opposes any change, arguing that the City
20 identified no practice that has caused difficulty, and the
21 City has placed on the Association the burden of identifying
22 past practices or risk losing them.
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24 The City's proposal constitutes a significant change in
25 the "zipper" clause and would have the effect of eliminating
26 contractual protection for what might be a myriad of
27 beneficial practices not specified in the agreement. Such a
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dramatic change should be preceded by extensive discussion between the parties to identify existing practices, and by bargaining on which of such practices should be included in the agreement. The record in the present proceeding does not indicate that bargaining of that character took place on this proposal, but rather indicates that the parties clearly have not explored in any depth what practices might warrant specific protection. Accordingly, the Arbitrator cannot determine from the record the effect granting such a change might have on unit employees' working conditions. Because the City has provided no evidence of actual difficulties in administering the existing provision, it has not demonstrated a need to eliminate this protection for existing working conditions.

ISSUE 13

Sec. 36 - Out of Classification Assignment

Award: Implement City's last offer.

Discussion: The City proposes to eliminate the staffing requirements in the agreement that now calls for a minimum of one lieutenant and one sergeant in the patrol division, and to leave to the discretion of the Chief the appointment of "acting" lieutenants or sergeants when vacancies or absences occur. The Association proposes to maintain the minimum requirement for patrol division and extend it to require appointment of a regular or acting lieutenant and sergeant in the investigation and traffic divisions as well. Thus, the choice is between eliminating all minimum staffing requirements or extending the requirement. The City argues that artificial staffing requirements locked into the agreement unnecessarily restricts management's ability to deploy staff, and that no safety or workload problems have actually arisen. The Association raises various workload and potential safety arguments as reasons for requiring the appointments. However, its primary concern appears to be the need to assure officers who are required to do the work of absent lieutenants or sergeants be assigned as "acting" and entitled to out-of-class pay under Sec. A.

1 The record does not disclose any actual abuse of the
2 existing provision such that officers are regularly required
3 to do the work of the higher classification but not assigned
4 and thus not entitled to pay. Although the Association
5 raised cogent arguments about workload distribution and the
6 problems inherent in having officers attempting to cover all
7 bases, it's evidence was primarily addressed to potential
8 problems, rather than evidence of consistent or ongoing
9 problems due to understaffing because of unfilled or
10 temporarily vacant sergeant or lieutenant posts. The City's
11 need for flexibility in deploying staff to effectively meet
12 operational needs outweighs the Association's interest in
13 mandating that the positions are always filled on an acting
14 basis.

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ISSUE 14

New Section - Paternity Leave

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4 Award: Implement City's last offer (no addition to current
5 agreement).

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7 Discussion: The Association's proposal would require the
8 City to provide up to two weeks of paternity leave,
9 utilizing an employee's accumulated sick, annual, or
10 compensatory leave. It contends the proposal would be a "no
11 cost" item since it does not create a new class of leave,
12 just a guarantee that employees can use accumulated leave.
13 It contends that the clause would prevent the City from
14 arbitrarily denying an employee the right to use such leave.
15 On the other hand, the City, in opposing addition of a
16 paternity leave clause, contends that current leave policies
17 allow employees who wish to take leave for this purpose full
18 opportunity to do so, that the only evidence of a problem
19 shows that the Chief promptly granted the leave when advised
20 of the emergency situation, that 13 of the surveyed cities
21 do not have a paternity clause in their agreements but do
22 allow use of leave as does Vallejo, and that no need exists
23 for the contract language.
24

25 The Association has presented no need for new contract
26 language because current City policy and department practice
27 already permit employees to use accumulated leave to be with
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1 or help care for the mother and child. No evidence shows
2 that any employee has been denied use of leave for that
3 purpose, so no need for a contractual enforcement mechanism
4 has been demonstrated. Although there is nothing amiss in
5 pioneering a new benefit reflecting changing attitudes,
6 nonetheless, prevailing practice in the survey cities is
7 reflective of the City's current approach to this issue.

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ISSUE 15

New Section - Staffing

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4 Award: Implement City's last offer (no addition to current
5 agreement.)
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7 Discussion: The Association proposes that the contract
8 specify the City's "goal" to be a minimum of 135 sworn
9 officers by June 30, 1990. It notes that this goal is only
10 six more than the staffing already authorized in the City's
11 currently authorized staffing increase for 1988-89, that it
12 would place the City in 6th place within 21 neighboring
13 jurisdictions (a good comparison to its 5th ranking in class
14 1 crimes). The Association asserts that its concern with
15 staffing is for safety of officers, a need demonstrated by
16 extensive testimonial evidence concerning the crime rate in
17 the city and the problems with providing back-up protection
18 for officers. The Association bases its proposal on the
19 "recognized standard" of 1.5 officers per 1000 population,
20 although that ratio would yield a figure of 143 officers.
21 The City objects to any reference to staffing being
22 incorporated into the agreement, and contends the proposal
23 is not related to safety but rather impacts on the standard
24 of police service which the City is to provide. Also, it
25 contends there is no basis for the arbitrary figure of 135
26 officers, that even the 1.5:1000 ratio is not recommended by
27 anyone, but rather is merely an average reflected in
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1 surveys. It notes that the City has adopted a goal of 107
2 patrol officers over the next 3 1/2 years, based on workload
3 studies within the City.
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5 The record reflects that both parties are concerned
6 with adequacy of staffing in light of significant need in
7 Vallejo to respond to the incidence of crime and
8 particularly drug traffic. The City is currently
9 undertaking a systematic program for increasing staffing.

10 The Association's purpose in proposing this language appears
11 to be to impose some sort of obligation on the City to
12 continue, and not fall back on, its current intent to
13 increase the force. However, there appears to be no
14 particular significance to the 135 figure chosen by the
15 Association, other than to carry on the increments of 6
16 officers every 6 months included in the City's present
17 augmentation program. Nor does the figure equate in a
18 specific fashion to the Association's primary concern for
19 increasing the availability of back up for officers in
20 dangerous situations. Any increase would appear to abate
21 that safety concern, but a figure of 135 sworn officers has
22 no particular significance in this regard, and no evidence
23 was presented to show that particular level of staffing
24 would permit back-up officers to be dispatched on call at
25 all times. No evidence was presented to show that the
26 staffing increases which the City has already planned will
27 not satisfy these safety concerns.
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2 The proposal for a "goal" encroaches less on the City's
3 staffing prerogatives than would a mandate for a specific
4 staffing level; however, the proposed goal of 135 does not
5 reflect any goal adopted by the City in its current efforts
6 to augment staffing. Because the language does not seek to
7 enforce the City's adopted goal, but rather places a higher,
8 arbitrary figure in the agreement which is not reflective of
9 workload studies or any recommended staffing ratios, and
10 which is not tied to evidence that the specific level
11 proposed would result in back-up guarantees or otherwise
12 provide a particular effect on safety concerns, the
13 Association has not justified adding the language to the
14 agreement.
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ISSUE 16

New Section - Maintenance of Department Personnel Files

Award: Implement the City's last offer (no addition to current agreement).

The Association proposes to add to the agreement a uniform policy for maintaining personnel files in the department. It contends that neither the department's general order, nor POST guidelines covers everything. It contends that the general order does not govern which documents go into the file or how they are removed. The City opposes adding a personnel files clause, contending that the employees are adequately protected by the POST guidelines and the departmental general order.

It may be a good idea to have a single, comprehensive rule governing all personnel file matters, and to have that rule enforceable under the agreement. However, the need for the particular provision that is proposed has not been established. For instance, the record (or the parties arguments) does not make clear whether POST guidelines do or do not govern the question of how materials "make their way into and out of personnel files," one of the Association's primary concerns. The issue of citizens' complaints was raised in testimony, but neither the record nor arguments makes clear how such complaints are now governed and how the

1 proposed rules would resolve any problems or what the
2 problems are. What is lacking is a comprehensive review of
3 existing department policy and POST guidelines and any
4 mutual examination in bargaining of what is lacking and how
5 the rules would comport with existing law, fit (or alter)
6 current departmental practices, or remedy identified
7 deficiencies. What we do have is a proposed regulation,
8 adopted wholesale from a seminar, without discussion between
9 the parties as to its effect. Without that kind of mutual
10 examination by the parties, or even an adequate unilateral
11 explanation, the record simply does not provide an adequate
12 basis for the Arbitrator to adopt the proposed provision.
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ISSUE 17

New Section - Drug and Alcohol Testing

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4 Award: Implement City's last offer (no addition to current
5 agreement).

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7 Discussion: The Association proposes a provision governing
8 the conditions under which employees may be subject to drug
9 or alcohol testing and establishes the procedures for such
10 tests. Its purpose is to protect employees against
11 unreasonable intrusions. It contends that civil service
12 appeal procedures for disciplinary action does not address
13 the issue of drug testing in that no appropriate criteria
14 for discipline or reasonable cause standard for imposing the
15 tests in the first place now exist. The City counters that
16 the proposal is premature in light of the fact the law is in
17 a state of flux, and also contends employees are adequately
18 protected by disciplinary appeal rights contained in the
19 city's civil service system as well as under the Public
20 Safety Officers' Procedural Bill of Rights Act.

21 Furthermore, it questions some of the terms in the proposal
22 as not comporting with the latest case law defining
23 employees' rights.

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25 There is considerable value in the parties establishing
26 standards for conducting drug and alcohol testing, which
27 would protect employees against unreasonable intrusions at
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the same time clarifying the right of the City to conduct such tests when circumstances warrant it. However, because the constitutional case law on drug and alcohol tests is currently in considerable flux and because of the lack of adequate bargaining to explore the details or ramifications of the Association's final proposal, it is inappropriate to impose such a significant new contract provision through arbitration at this time. The topic would lend itself well to interim study by the parties, as the law develops. A mutually developed provision may well be ripe for inclusion when the contract reopens.

ISSUE 18

New Section - Internal Affairs Interviews

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4 Award: Implement Association's last offer.

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6 Discussion: The Association's proposal would add a new
7 provision setting forth guidelines for the conduct of
8 internal affairs interviews. It contends the A.B. 301
9 (POPBRA) is insufficient to protect against abuse of the
10 interview process, primarily because that act may be avoided
11 by interviewing individuals as witness rather than suspects.
12 It further contends that the general order gives too much
13 discretion to the investigator to determine at the outset
14 whether an interview is disciplinary or not. It contends its
15 proposal is a disincentive to misuse of the interview
16 process because, in subsection B.4. it prevents the City
17 from using the information against the witness/officer. The
18 City contends the subject is adequately covered by the
19 general order, which implements A.B. 301, and that the
20 proposal adds "nothing of substance" to existing rights.

21
22 Although there may be some problem in having a third
23 locale for guidelines governing internal affairs
24 investigations, the Association has established a sufficient
25 rationale for adding a protection in the form of a "fruit of
26 the poisonous tree" type of disincentive that does not exist
27 in either the general order or A.B. 301. The proposal
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1 appears to comport with the principles of the existing
2 protections, merely strengthening the procedure for
3 realizing those protections.
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ISSUE 19

New Section - Communications Operators

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4 Award: Implement Association's last offer.

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6 Discussion: The Association's last-best offer is a
7 modification of its initial offer which would have required
8 a minimum of one communications operator to dispatch police
9 officers, who would not have the additional duty of
10 answering telephones in the communications center. The
11 Association's last offer instead clarifies that it is the
12 police dispatcher's primary function to dispatch officers,
13 and that s/he will be required to answer other phones only
14 when all other operators are busy, but guarantees that
15 emergency calls will be answered. The Association contends
16 its final proposal is to intended to correct problems with
17 the operators attempting to handle phone calls and dispatch
18 radios at the same time, as described in extensive
19 testimony, problems that caused safety threats to officers
20 in the field. The City counters that staffing levels should
21 not be mandated by the agreement, thereby limiting
22 flexibility, and that the current proposal reflects
23 consensus on a procedure reached in discussions outside of
24 bargaining which need not be incorporated into the
25 agreement.
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The Association's final proposal reflects the mutually accepted resolution of the communications operator problem contained in the April 1988 memorandum from the communications center supervisor (City Ex. 31). The City's sole objection to incorporating that policy into the agreement appears to be its desire to maintain staffing flexibility. Since the Association's offer is the product of joint problem solving between the parties, in response to the Association's initial bargaining proposal on this issue, and is the current policy put in effect by the City, incorporation of that joint solution into the agreement is appropriate.

ISSUE 20

New Section - Safety Vests

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Award: Implement City's last offer.

Discussion: The City proposes that wearing of bullet resistant vests, as specified, be mandatory for all officers when in the field, and that such vests be paid for by the City. The Association proposes that wearing of safety vests be voluntary, but otherwise its proposal is essentially the same as that of the City. The Association contends that there is no reason the City should not pay for the vests for officers who elect to wear them. The City contends that officers should wear vests for their own personal safety, and that comfort should not be placed ahead of safety. The Association contends that not all positions entail the kind of safety risks that warrant vests, that the officers are individually in a position to assess the risk, but that the City proposal would require all officers regardless of assignment to wear one. It notes that prior reluctance of some officers to wear vests may have been due to the fact the City would not pay for the vests.

Evidence in the record, most introduced by the Association to show the dangerous nature of police work in Vallejo, demonstrates a need for bullet resistant gear that is quite persuasive. The City's interest in maximizing

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officer safety while in the field outweighs individual
officers' preference regarding the wearing of safety vests.

ISSUE 21

New Section - Smoking

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3 Award: Implement Association's last offer (no addition to
4 current agreement).

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6 Discussion: The City's proposal would require new hires
7 after July 1, 1988, be required to sign, as a condition of
8 employment, a contract to refrain from the use of "tobacco
9 or related products while on or off duty." It supports its
10 proposal with an article regarding the hazardous effects of
11 smoking and tobacco use, and noted a presumption built into
12 workers compensation laws for police officers regarding
13 cardiovascular illness and the recognized connection between
14 use of such products and cardiovascular problems. The City
15 acknowledges its goal is for all officers to forego use of
16 tobacco on or off duty, and that this proposal is a "first
17 step." The Association contends the proposal is
18 unconstitutionally vague as to the products banned, is
19 discriminatory in potential disciplinary liability, and
20 impossible to enforce, specifically as to off-duty conduct.
21 It emphasizes its disagreement with the two-tiered system
22 under which only new personnel are subject to discipline for
23 this type of off-duty conduct and recommends counselling or
24 other means of achieving the City's goal.
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1 The City's goal in establishing a non-smoking police
2 force in order to reduce the incidence of cardiovascular
3 illness is laudatory. However, the reach of its proposed
4 rule into off-duty conduct raises serious enforcement
5 problems, persuasively portrayed by the Association. One
6 such problem is the likely unequal application of such
7 enforcement, as well as the perceived unfairness between
8 existing officers and new hires for the same conduct. Such
9 problems outweigh the beneficial effects that the proposed
10 rule would have on the health of the force.

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ISSUE 22

New Section - Term of the Agreement

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Award: Implement the Association's last offer.

Discussion: The City's last offer is for a three-year agreement, consistent with its salary proposal (Issue 3). The Association proposes a two-year agreement, and notes there is no reason for the City's salary proposal to be a three-year proposal in light of changing conditions.

Because the Association's salary proposal, which is couched in terms of two years, has been adopted, its proposal for a two-year agreement is likewise adopted. Therefore, the agreement which results from the present proceeding will be in effect for fiscal years 1988-89 and 1989-90.

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The above rulings on each of the 22 issues in dispute constitute the final award in this proceeding.

Date:

7-18-88

Bonnie G. Bogue
BONNIE G. BOGUE
Arbitrator