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PUBLIC EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF THE INTEREST ARBITRATION
BETWEEN

CITY OF SEATTLE, Employer, vs. SEATTLE POLICE OFFICER'S GUILD, Union. PERC Case No. 15596-1-01-355)	INTEREST ARBITRATION AWARD
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On January 29, 2001, an interest arbitration was initiated pursuant to RCW 41.56.450 to resolve certain bargaining issues that had remained at impasse despite collective bargaining and mediation by the Public Employment Relations Commission (PERC). The issues certified by the PERC Executive Director for arbitration were:

1. The process for resolving disputes regarding the Office of Professional Accountability Review Board implementation agreement, and
2. The scope of the issues to which the resolution process would apply.

By mutual consent, Janet L. Gaunt was selected to serve as the neutral Arbitrator.

After some earlier postponements, the interest arbitration was scheduled to commence on November 6, 2001. Prior to that date, the parties advised the Arbitrator that they had reached agreement upon terms and provisions that completely and equitably resolved the issues submitted for arbitration. At the request of the parties, I have been asked

to adopt those provisions as my award and hereby do so. Pursuant to the parties' joint stipulation and in accordance with the statutory criteria of RCW 41.56.465, the following language should be renumbered and inserted as an Appendix to the current Collective Bargaining Agreement.

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OPA REVIEW BOARD

- I. **NOTHING IN THE AGREEMENT BETWEEN THE CITY AND THE GUILD SHALL BE CONSTRUED AS A WAIVER AND/OR LIMITATION ON THE CITY'S RIGHT TO ADOPT LEGISLATION ENACTING THE OPARB SO LONG AS NOTHING IN SUCH LEGISLATION IMPLICATES A MANDATORY SUBJECT OF BARGAINING AND/OR IS INCONSISTENT WITH THE AGREEMENT BETWEEN THE CITY AND THE GUILD. THE CONTRACT GRIEVANCE PROCESS SHALL NOT APPLY TO THE TERMS OF THIS APPENDIX. THE EXCLUSIVE PROCESS FOR RESOLVING DISPUTES RELATING TO THE TERMS OF THIS APPENDIX IS SET FORTH AT 6 BELOW.**

1. **COMPOSITION OF THE OPA REVIEW BOARD**

The City of Seattle's Office of Accountability Review Board ("OPARB") shall consist of three (3) members. A quorum shall be two members.

- A. The City Council shall appoint all of the members of the OPARB.
- B. The City Council shall solicit input from the Guild concerning potential appointments to the OPARB.
- C. The City Council shall establish the term of office for the members of the OPARB with none serving a term of more than two (2) years, although members may be appointed to successive terms.

2. **ELIGIBILITY CRITERIA FOR BOARD MEMBERS**

The OPA Review Board members should possess the following qualifications and characteristics:

- A. A citizen of the United States or be lawfully authorized to work in the United States.
- B. Possess a high school diploma or a GED at time of appointment.
- C. Be at least 21 years of age for appointment.
- D. A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to protect basic constitutional rights of all affected parties.
- E. A reputation for integrity and professionalism, as well as the ability to maintain a high standard of integrity in the office.
- F. The absence of any plea to or conviction for a felony, crime of violence, or an offense involving moral turpitude.
- G. Because members of the OPA Review Board may serve in a quasi-judicial capacity in making decisions about whether or not investigations of police misconduct are complete, as a requirement for appointment, candidates must be able to comply with the requirements of the appearance of fairness doctrine with respect to their duties as a member of the OPA Review Board. For the purposes of this Appendix, the appearance of fairness doctrine shall be applied as an eligibility criteria for appointment to the OPA Review Board, as opposed to being applied on a case-by-case basis.

In an effort to limit disputes regarding the type of information which must be provided to the Guild regarding a candidate, the parties hereby set forth the information to which the Guild is entitled. Criminal history record information which includes records of arrest, charges, allegations of criminal conduct and nonconviction data relating to a candidate for appointment, and Department records of any complaints of police misconduct filed by the candidate shall be made available to the Guild. Access to such records by the Guild shall be for the sole purpose of assessing whether or not the candidate meets the above eligibility criteria. Access shall be limited to the executive officers and members of the Board of Directors of the Guild and the Guild's attorneys. Such records shall not be used by anyone in connection with any other civil, criminal or other matter, or for any other purpose. After the Guild has conducted its assessment of the candidate, the records shall be promptly returned to the Department unless the Guild challenges the appointment as set forth in Section 6, below. If the Guild challenges the appointment, the records shall be used solely for the purpose of the arbitration, will be presented to the arbitrator under seal, and will be returned to the City at the conclusion of the arbitration. Except as otherwise necessary for the purposes of this Appendix or the resolution of a dispute under Section 6 below, such records shall be maintained by the Guild as confidential and shall not be copied, disclosed or disseminated.

Section 3: In addition to the qualifications and characteristics set forth in Section 2 above, at least one (1) member of the OPARB shall be a graduate of an accredited law school and a member in good standing of the Washington State Bar Association.

Section 4: In addition to the qualifications and characteristics set forth in Section 2 above, at least one (1) member of the OPARB shall have at least five (5) years of experience in the field of law enforcement.

Section 5: In addition to the qualifications and characteristics set forth in Section 2 above, at least one (1) other member of the OPARB shall have significant experience and history in community involvement, and community organizing and outreach.

Section 6: The City Council may establish such additional qualifications and characteristics, as it deems appropriate, consistent with this Appendix.

II. 3. CONFIDENTIALITY

An intentional breach of the confidentiality provisions of the ordinance shall constitute grounds for removal.

In addition, Board members shall sign a confidentiality agreement that states, as follows:

As a member of the City of Seattle's Office of Accountability Review Board ("OPARB"), I understand that I will have access to confidential and/or investigative information and/or records that I am prohibited from disclosing. I agree not to disclose any such confidential and/or investigative information and/or records. I understand that proven, intentional, release or disclosure of such confidential and/or investigative information and/or records shall constitute grounds for my removal as a member of the OPARB.

I further agree to indemnify, defend, and hold the City of Seattle harmless for and from any legal action(s) arising from proven, intentional, release or disclosure of such confidential and/or investigative information by me.

Finally, I understand that in the event I do not intentionally release or disclose any confidential and/or investigative information and/or records, the City has agreed to indemnify, defend, and hold me harmless for and from any legal action(s) arising from my conduct as a member of the OPARB in accordance with SMC 4.64.100 and SMC 4.64.110.

III. 4. THE BASIS FOR REQUESTING FURTHER INVESTIGATION

Prior to submission of an issue to the OPARB the Auditor and OPA Director will delineate their dispute in writing and the Auditor will specify what if any further investigation is being requested. Such referrals will not consider disputes over classification decisions, and will be limited to disputes over (1) whether relevant witnesses were contacted and relevant evidence collected; and (2) whether interviews were conducted on a thorough basis. The OPARB after reviewing the file will issue a final and binding decision resolving the dispute between the OPA Director and Auditor.

If the OPARB sends a case back for further investigation, it must specify what investigative task(s) need to be performed as previously outlined by the Auditor.

A case only may be sent back for further investigation if a reasonable amount of time is available to accomplish the articulated investigative task(s) leaving time for the administrative processing of the investigation before expiration of the contractual 180 day time period. The administrative processing of the investigation includes the time required for line review, but does not include any time subsequent to the mailing or other delivery of the Loudermill notice.

The OPA Director will notify the OPA Auditor when the articulated investigative tasks have been completed and/or will provide an explanation to the OPA Auditor of the reasons the requested tasks could not be completed. The OPA Auditor may perform an audit of the file to ensure compliance with the OPARB's request for further investigation. If the OPA Auditor does not agree that the Department has complied with the request for further investigation, the OPA Auditor will meet with the OPA Director to try and resolve the matter and gain compliance. If the OPA Auditor and OPA Director can not agree regarding compliance, the matter of compliance will be submitted to the OPARB. The decision of the OPARB regarding compliance shall be final and binding. All other conditions set forth above regarding time constraints shall be applicable.

IV. 5. OPA REVIEW BOARD REPORTS

The Board shall generate reports and those reports shall be quarterly. The Board reports shall include the following:

- 1) A review and report on the implementation of the Office of Professional Accountability.
- 2) A general overview of the files and records reviewed by the Board, including the number of closed, completed cases reviewed.
- 3) IIS shall be responsible for gathering statistical data relating to complaints and shall

provide the same statistical data to the Board as is provided to the Auditor. That data shall include the:

- a) number of complaints received;
- b) category and nature of the allegations;
- c) percentage of cases sustained;
- d) disciplinary action taken in sustained cases;
- e) data on patterns of complaints, including types of complaints;
- f) geographic area of the complaint, and census tract rather than street addresses may be used to identify the geographic area of a complaint;
- g) number of officers, if any, who receive three or more sustained complaints in one year. The names of the officers shall not be disclosed.

4) The Board's report shall include the number of cases in which the Board requests further investigation.

5) The Board's report shall include: a summary of issues, problems and trends noted by the Board as a result of their review; any recommendations that the City consider additional officer training, including recommendations that the City consider specialized training for investigators; and any recommendations that the Department consider policy or procedural changes.

6) The Board shall be advised and the Auditor shall report on the OPA Director's involvement in community outreach to inform citizens of the complaint process and the OPA's role.

7) After the committee on racial profiling has made its final report and recommendations, the City may determine that it is appropriate to gather, maintain and report data on the race, ethnicity and gender of complainants, and on the race, ethnicity, gender, assignment, and seniority of officers who are the subject of complaints. The City will provide thirty (30) days notice to the Guild of its intent to begin gathering, maintaining and reporting such data on complainants and officers who are the subject of complaints, and within the thirty (30) day notice period, the Guild may request to reopen negotiations on that subject. Such bargaining shall follow the requirements of paragraph 10D of the Memorandum of Understanding executed on September 7, 2000. During the bargaining process, the preexisting status quo will be maintained.

6. Dispute Resolution Process

A. Disputes between the City and the Guild over alleged violations of the terms of this Appendix shall be resolved solely through recourse directly to arbitration.

B. With respect to disputes over a Board candidate meeting the eligibility criteria for appointment or whether or not the City has met its obligation to provide records

regarding a candidate, the Guild shall provide written notice to the President of the City Council, with a copy to the Mayor, the Chair of the Public Safety Committee and the Chief of Police, of the Guild's objections, including a summary of the evidence that the Guild has at the time in support of its objections. Such written notice shall be provided not more than ten (10) work days following the date that the City Council solicits input from Guild on the appointment, as required by Section 1.B above. If the City intends to proceed with the appointment despite the Guild's objections and/or refuses to provide the required information, the Guild may submit the matter directly to an arbitrator by providing written notice to the Director of Labor Relations of the intent to do so, within ten (10) work days following the date that the Guild is notified by the City of the intent to proceed with the appointment and/or is notified that the required information will not be provided. If the Guild fails to raise a timely objection to the appointment there shall be no arbitration. In the event the City is ordered to provide additional records, the Guild may rely on such records in raising an objection to an appointment, by providing written notice in the manner prescribed above not more than ten (10) work days following receipt of the records, including a summary of the evidence that the Guild has at the time in support of its objections. If the City does not act on the Guild's objections, the Guild may submit the matter directly to an arbitrator by providing written notice to the Director of Labor Relations of the intent to do so, within ten (10) work days following the date that the Guild is notified by the City of the intent not to take action on the Guild's objections.

- C. With respect to disputes over a Board member violating confidentiality requirements, the Guild shall provide written notice to the President of the City Council, with a copy to the Mayor, the Chair of the Public Safety Committee and the Chief of Police, of the Guild's allegations that confidentiality requirements have been breached by a Board member, including a summary of the evidence that the Guild has at the time in support of its allegations. Such notice shall be provided not more than ten (10) work days following the date of the alleged breach of confidentiality or of the date that the Guild knew or should have known of the alleged breach. If the Board member remains on the Board more than ten (10) work days following notice to the City from the Guild, the Guild may submit the matter directly to an arbitrator by providing written notice to the Director of Labor Relations of the intent to do so within ten (10) work days following the ten (10) work day notice period.
- D. With respect to other disputes over alleged violations of the terms of the Appendix other than those denominated above, the Guild shall provide written notice to the President of the City Council, with a copy to the Mayor, the Chair of the Public Safety Committee and the Chief of Police, of the Guild's allegations that a provision of this Appendix has been breached, including a summary of the evidence that the Guild has at the time in support of its allegations and the remedy sought. Such notice shall be provided not more than ten (10) work days following

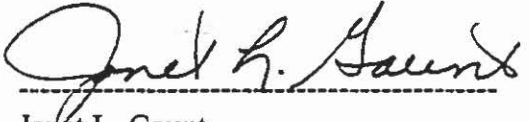
the date of the alleged breach or the date that the Guild knew or should have known of the alleged breach. If the city does not provide notice of its intent to implement the remedy sought within ten (10) work days following notice to the City from the Guild, the Guild may submit the matter directly to an arbitrator by providing written notice to the Director of Labor Relations of the intent to do so within ten (10) work days following the ten (10) work day notice period.

- E. The contractual 180 day time period for completion of an investigation shall be tolled and no discipline shall be imposed from the date a dispute alleging a violation of Section 4 of this Appendix is submitted to arbitration until the date of the arbitration award or the date of the settlement or dismissal of the arbitration.
- F. The parties shall meet and select an arbitrator no later than ten (10) work days from the date of the written notice of arbitration from the Guild to the Director of Labor Relations.
1. The parties agree that the following arbitrators shall constitute the pool from which arbitrators shall be selected:
 - a) Michael Beck
 - b) Janet Gaunt
 - c) Kenneth McCaffree
 - d) Shelly Shapiro
 - e) Don Wollett
 2. The same arbitrator shall not be eligible to serve as the arbitrator in consecutive arbitrations, except by mutual agreement.
 3. The first eligible arbitrator from the above list available to conduct the hearing within sixty (60) days shall be selected. If none are available to conduct a hearing within sixty (60) days, the eligible arbitrator with the earliest available hearing date shall be selected unless the parties otherwise agree, and the hearing shall commence on the earliest available hearing date for the arbitrator selected unless the parties otherwise agree in writing.
 4. The parties may mutually agree to make additions or deletions to the list at any time, but the number of arbitrators on the list shall not be less than five. If an arbitrator is no longer available so there are less than five on the list and the parties are unable to mutually agree on a replacement, an arbitrator shall be added to the list using the selection process specified by the grievance provision in the collective bargaining agreement.
- G. Briefs, if any are offered, shall be filed and served no later than the beginning of the arbitration hearing. The parties shall present their evidence to the arbitrator at the hearing. The arbitrator shall issue his/her decision immediately at the close

of the hearing and following oral argument by the parties. The cost of the arbitrator shall be borne by the party that does not prevail, and each party shall bear the costs and attorney fees of presenting its own case, except as provided by subsection J below. The decision of the arbitrator shall be final and binding on the parties, and there shall be no appeal from the arbitrator's decision.

- H. Disputes submitted to arbitration by the Guild and defenses raised by the City shall be well grounded in fact and not interposed for any improper purpose, such as to harass or delay. Violations of this subsection shall support the award of reasonable attorney fees at prevailing commercial rates by an arbitrator.

Dated this 26th day of November, 2001 by



Janet L. Gaunt