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STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

CITY OF DETROIT (Employer) (City)

-and-

DETROIT FIRE FIGHTERS ASSOCIATION,  
LOCAL 344, I.A.F.F. (Union)

ARISING PURSUANT TO ACT 312,  
PUBLIC ACTS OF 1969, AS AMENDED

CASE #D80 B1157

STATE OF MICHIGAN  
BUREAU OF EMPLOYMENT RELATIONS  
DETROIT  
APR 15 PM 4:30

APPEARANCES:

ARBITRATION PANEL:

Mario Chiesa, Impartial Chairman  
Nansi Rowe, Employer Designee  
Ronald Helveston, Union Designee

FOR THE EMPLOYER:

Butzel, Long, Gust, Klein &  
Van Zile  
By: Robert J. Battista  
1881 First National Bldg.  
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FOR THE UNION:

Sachs, Nunn, Kates, Kadushin,  
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By: Theodore Sachs  
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SUMMARY OF PROCEEDINGS

The Chairman received a letter from MERC dated April 6, 1981 indicating, inter alia, that he had been appointed to serve as the Chairman of the arbitration panel in this dispute. In a letter dated April 10, 1981 the Chairman outlined his pre-hearing procedures which included a

pre-hearing conference or conferences. Dates were offered and ultimately it was agreed that September 22, 1981 would be an appropriate date to conduct a pre-hearing conference.

Via a letter dated August 25, 1981 the Chairman was notified that the parties had entered into a Memorandum of Settlement which resolved all of their contract differences, with the exception of the promotion issue, for the July 1, 1980 thru June 30, 1983 Collective Bargaining Agreement. The letter indicated that a committee of the parties was established to explore the promotional issue. It was deferred until July of 1982. Hence, the September 22, 1981 pre-hearing conference was cancelled.

In June of 1982 the Chairman received a request to proceed with the arbitration. As a result a pre-arbitration conference was scheduled and held on October 14, 1982. A final pre-arbitration conference was scheduled and took place on December 8, 1982.

Hearings were conducted on February 15, 16, 17, 23, 24, March 9, 10, 17, June 10, 13, 30, July 19 and 25, 1983.

The panel scheduled an executive session for July 28, 1983 in order to deal with questions regarding the characterization of the issue and the appropriateness of receiving certain exhibits into the evidence. As a result of the unavailability of one of the panel members, the executive session was re-scheduled for August 19, 1983. It was held on that date and a summary of the results was forwarded to the parties by a letter from the Chairman dated August 27, 1983.

The last transcript was received by the parties on September 2, 1983. A briefing schedule had been established which allowed the parties to file a brief and then a reply brief. Also, if they chose, once the briefs were submitted, they could also submit oral arguments.

Along with a letter dated January 30, 1984, the Chairman exchanged between the parties and members of the panel certain documents which were forwarded by the Union, along with copies of the parties' initial briefs. Along with a letter dated May 24, 1984, the Chairman exchanged copies of the parties' reply briefs.

As indicated, the parties were given the opportunity to make oral arguments if they so chose and in fact they agreed to present their final arguments on August 2, 1984. Thus, the oral arguments were presented on that day. The transcript was received shortly thereafter.

Both parties waived the statutory time limits for rendering a decision. This was done both orally on the record and in writing.

A final record was comprised of slightly more than 1,800 pages of transcript, which included the testimony of 22 different witnesses, as well as more than 90 exhibits. In addition, there was over 170 pages of briefing.

The first executive session took place on November 14, 1984. This was followed by a session on January 11, 1985. These findings and opinion and award follow as soon thereafter as possible.

## ISSUE

The question in this case is whether the status quo regarding promotions in the Fire Fighting Division shall be altered by the adoption of the City's proposal.

While all the contract language which the Union suggests relates to the status quo and more, as well as a complete copy of City Exhibit 3 are attached hereto as Exhibits 1 and 2, select portions shall be displayed.

### ARTICLE 9. SENIORITY, E. Promotions and Transfers -- Fire Fighting Division, 1 and 2

"1. General: Promotions in the Fire Department shall be based on length of service therein. The officers or employee thereof having served the longest period in any position shall be advanced to fill any vacancy in the next higher position, if he shall have the qualifications therefor.

a. Promotions shall be based solely upon seniority provided the senior employee shall satisfy qualifications for the position for which he is to be promoted.

b. Such qualifications shall be determined by the Fire Commissioner subject to his bargaining obligations under the Public Employment Relations Act.

c. Such promotional qualifications shall be reasonable, relevant, objective, non-arbitrary and non-competitive.

d. No senior employee eligible for promotion, shall be by-passed unless he shall be affirmatively disqualified for cause by the Fire Commissioner, with reasons therefor stated in writing. The foregoing shall be inapplicable with respect to terminations under Title IX, Chapter 7, Article 6, Part a., Section I of the former City Charter, as amended.

e. Seniority credit for promotions to any position in the Fire Fighting Division shall be frozen and cease to accumulate for any member upon acceptance of a transfer and permanent promotion to any other division of the Department. In the event such person is returned to the Fire Fighting Division, he shall be reinstated with his frozen seniority.

f. Promotion to any rank shall require successful passage of a physical examination by the department physician.

g. No written qualifying examinations, competitive or non-competitive, shall be required as a condition of promotion.

"2. The sequence of ranks for promotions shall be as follows:

- a. Fire Fighter to Fire Sergeant
- b. Fire Sergeant to Fire Lieutenant
- c. Fire Lieutenant to Fire Captain
- d. Fire Captain to Battalion Fire Chief
- e. And so on, in accordance with Article 7, Chapter 8 of the City Charter."

That portion of the City's proposal which deals with promotions and transfers to the "Supervisory Rank of Sergeant and Above" in the Fire Fighting Division states:

"1) Examinations for the supervisory ranks of sergeant and above shall be announced at such time or times as the City deems necessary, provided, however, that an examination for each such rank listed in paragraph two (2) below shall be administered at least biennially. A closing date for the receipt of applications shall be set forth in the announcement for each examination. Applications received after the closing date will not be considered.

"2) The sequence of ranks for promotion, and the basic eligibility requirements, for the supervisory ranks of sergeant and above shall be as follows:

a) Fire Sergeant - Applicants must have, as of the date of the announcement of the examination, a minimum of five (5) years of active service in the Fire Department, with at least three (3) years of active service in the Firefighting Division.

b) Fire Lieutenant - Applicants must have, as of the date of the announcement of the examination, a total of at least seven (7) years of active service in the Fire Department, with a minimum of either:

i) two (2) years of active service in the rank of sergeant in the Firefighting Division; or

ii) two (2) years of active service in a rank equivalent to lieutenant in another non-civilian division.

c) Captain - Applicants must have, as of the date of the announcement of the examination, a total of at least ten (10) years of active service in the Fire Department, with a minimum of either:

i) three (3) years of active service in the rank of lieutenant in the Firefighting Division; or

ii) three (3) years of active service in a rank equivalent to lieutenant or higher in another non-civilian division.

d) Battalion Chief - Applicants must have, as of the date of the announcement of the examination, a total of at least fifteen (15) years of active service in the Fire Department, with a minimum of either:

i) three (3) years of active service as a captain in the Firefighting Division; or

ii) hold a rank equivalent to captain in another non-civilian division and possess a minimum of at least three (3) years experience at a supervisory rank in the Firefighting Division.

"For purposes of this Article, the term 'active service' shall mean time when the employee is on the active payroll of the Fire Department but shall not include periods of layoff, leave of absence, periods of suspension, or duty disability pension time. Equivalency of rank shall be in accordance with the parity relationships established in Schedule I paragraph B which is appended to this agreement.

"3) Applicants for transfer or promotion to the ranks listed in paragraph 2 above shall be required to successfully complete such written and/or oral examinations and interviews as required by the City. Upon completion of such examinations and interviews the applicants shall be deemed to be:

- a) highly qualified;
- b) qualified;
- c) unqualified,

and shall be placed on appropriate lists. Such lists shall be in effect for a period of one (1) year, but may be extended for an additional year at the option of the Civil Service Commission upon the recommendation of the Fire Commissioner. During the period the lists are in effect, promotions and/or transfers to the ranks listed in paragraph 2 above shall be made by the Fire Commissioner first from the highly qualified list until such list is exhausted, and then from the qualified list, provided, however, where a person is transferring to an equivalent rank in the Firefighting Division, said person, if deemed qualified, shall be given preference over applicants of lower rank, subject to Commissioner's approval."

The parties could not agree on whether the issue should be characterized as economic or non-economic. Pursuant to Section 8 of the Act the duty of determining whether the issue is economic or non-economic fell upon the panel. The Chairman and the Employer's delegate concluded that the issue was non-economic. The Union's delegate dissented from the ruling.

Thus, the issue is characterized as non-economic. In this regard it should be understood that the Chairman felt that the issue should be characterized as non-economic because it did not have a direct effect on the cost or economic benefits received by members of the unit. To further elaborate, essentially, regardless of which position was ultimately adopted, the cost to the Employer would be the same. If the system were changed, it seems inevitable that while certain specific individuals in the Department would not have received promotions as they would have under a continuation of the status quo, the dollars received by the unit as a whole, by way of increased salaries as a result of promotions, would remain essentially the same. Thus, the non-economic designation.

Furthermore, it must be clearly understood that from the outset the parties furthered the proposition that this case is strictly a labor case and cannot be construed as a civil rights case. In other words, the parties agreed that the case should not be analyzed as a civil rights case in the sense that there should be no analysis or conclusions regarding the appropriateness of either proposal based upon considerations related to past discrimination, if any. Certainly given the purpose of the Act and the availability of the civil rights law and constitutional provisions, it is understandable why the parties would reach such a conclusion.

Furthermore, regardless of what the parties understood, it is the panel's intention to deal with this issue as a labor case and not as a civil rights case. It is pretty clear that everyone understood the panel's intentions.



## FINDINGS OF FACT, OPINION AND ORDER

### FIRE DEPARTMENT

The Detroit Fire Department is comprised of a number of divisions, the non-civilian of which include the Training Academy, Fire Fighting Division, Community Relations Division, Fire Marshall Division, Research and Development and the Water Supply Division. By and far the largest division is the Fire Fighting Division which, according to City Exhibit 2, had approximately 1,347 budgeted positions as of February 1982. Testimony indicated, however, that there were 1,317 individuals on duty.

At the time of the hearing there were 10 battalions, with a battalion chief per shift. In the past there have been as many as 12 battalions. Nevertheless, there are approximately 7 to 9 companies per battalion with each company being comprised of about 16 to 18 individuals. There are usually 8 on each unit, with 4 working each day.

In an engine company the complement per shift is usually an officer, a fire engine operator (FEO) and two fire fighters. In a truck company the complement is usually an officer, a fire fighter driver (FFD) and two fire fighters.

Generally the company officers are comprised of a captain, a senior lieutenant, a junior lieutenant, and one or two sergeants. Usually an officer is on duty at all times. If the sergeant is on duty and a superior officer is also on duty, the sergeant will act as a fire fighter. In other words, on days when a sergeant is not the officer in charge, the sergeant will act as any another fire fighter.

If a captain or lieutenant are not on duty, the sergeant is responsible for the shift and if no sergeant is available, then the senior fire fighter is responsible for the shift.

However, the Department's General Rules establish that the fire captain develops the standing orders and regular routine and that a lieutenant, sergeant or senior fire fighter has no authority to change them.

When an alarm comes in, and we will assume it is a box alarm for a structural fire, the response is usually comprised of about 17 employees. Usually there are two or three engine companies and a truck company responding, a tactical mobile squad and the battalion chief. Once the battalion chief arrives, he is in charge of the fire scene, but up to that time the senior officer or theoretically the senior fire fighter is in charge. If there is a two-alarm fire it will double the manpower and a three-alarm will triple manpower.

Upon receiving the alarm many of the things that fire fighters do are routine in the sense that they have been done many times in the past. According to the testimony, everyone on a truck or an engine knows what to do and they don't sit around waiting for orders before acting. The record also establishes that upon arrival the officer apprises the situation and notifies and gives Central a preliminary report. The officer must make a decision if additional manpower is needed. Decisions are made regarding how the fire is to be fought and extinguished, whether line has to be stretched and if so, the hookup. The officer enters the building with the fire fighters and fights the fire. Judgments

are made regarding the stability of floors, ceilings, presents of hazardous materials, etc. Possibility of arson must be recognized and efforts should be made to preserve any available proof.

If the truck company arrives first, the same type of initial reports must be made. Usually, however, an engine company is the first on the scene. The truck company officer determines how rescues, if any, shall be effectuated, which ladder shall be used and where, or what other techniques will be utilized for removing occupants from buildings. If rescues are not necessary or if they are completed, truck companies are responsible for ventilating the building. Truck companies are also responsible for turning off gas valves and taking efforts to prevent damage to adjacent buildings.

Usually truck company officers are responsible for attempting to secure the consent necessary to search the building if arson is suspected. The truck company officers also fill out the incident reports.

The tactical mobile squad is a unit utilized to provide additional manpower. Generally it runs with the same manpower as a company and has the same officers, except that it does not have any sergeants. There are two attack pumpers in the Department, each being manned by eight personnel, four on each unit. Usually there are two or three fire fighters on the pumper with a sergeant on each unit. The attack pumper is utilized to extinguish smaller fires, such as car fires, grass fires, etc.

Upon returning to the station, the company has the responsibility of getting itself and its equipment back in shape and prepared for the next run. Oxygen bottles have to be replaced, hose has to be dried and cleaned and various reports must be filled out.

A fire fighter must serve five years before receiving full pay. Under the present promotional system it takes approximately 17 years for a fire fighter to become a sergeant, approximately 21 years to become a lieutenant, approximately 29 years to become a captain and approximately 33 years to become a battalion chief. According to the testimony, there are 134 sergeants, 152 lieutenants, 76 captains, 33 battalion chiefs, two deputy chiefs and a chief of Fire Operations. Additionally, there are 136 FEOs, 117 fire fighter drivers and 623 fire fighters.

According to the contract, if for a moment we ignore the FEO and FFD classifications, the promotional scheme is from fire fighter to fire sergeant, fire sergeant to fire lieutenant, fire lieutenant to fire captain, fire captain to battalion fire chief, and then from that point on, in accordance with the City Charter. In order to be promoted to fire engine operator, an individual must follow a sequence of fire fighter to fire fighter driver and then fire fighter driver to fire engine operator.

The promotion to fire fighter driver is based on seniority, assuming other requirements are met. At the time that a FFD becomes eligible for promotion to FEO, the individual must make a choice of either accepting a promotion, which means that his seniority towards promotion to the rank of fire sergeant will be frozen, or of declining the promotion, which means he shall retain all seniority towards promotion to the rank of fire sergeant, but will be automatically demoted to the position of fire fighter and removed from the FFD list. A FEO may return to the progression of promotion to fire sergeant by asking

for a demotion to fire fighter which leads to a loss of FEO seniority and reinstatement as a fire fighter.

A fire fighter driver receives a salary of five percent more than a fire fighter, while a FEO receives the same salary as a sergeant.

The FEO's responsibilities are related to driving, maintaining and operating an engine. The FEO has the responsibility of maintaining the equipment, driving it to the fire scene and when necessary, hooking to a hydrant and pumping water. As a result the FEO does not enter the structure.

Some of the duties of sergeants, lieutenants, captains and perhaps senior fire fighters have already been mentioned, but in addition the record suggests that upon the beginning of the shift the individual in charge would have the responsibility of checking the men to make sure they are ready for duty, check the safety equipment, check prior 24-hour reports, discuss conditions with the officer who worked the prior shift, assign work details, and assign fire fighters to other companies if necessary, etc.

Captains set policy for their individual station houses and initially arrange needed repairs, order housing supplies, etc.

Battalion chiefs are in charge of seven to nine companies and their duties involve the compilation of numerous reports and command responsibility at fire scenes. Usually they are present at all structural fires and as indicated, have overall command. They have the responsibility for asking for more fire fighters if necessary, releasing units as appropriate and making out all injury reports. Additionally, battalion chiefs do some public relations work in the sense that they may attend block meetings and council meetings.

Additionally, there is a procedure which allows fire fighters or other members of the Fire Fighting Division to opt out and be appointed to other divisions. When this is done, their seniority in the Fire Fighting Division is frozen and the individual will commence to accumulate seniority in the other division.

The testimony established that usually a fire fighter need serve a number of years in the Fire Fighting Division before opting out to the other divisions. For instance, it takes five years before one can opt out to Arson. It appears it takes eight years before one can opt out to the Training Academy, etc.

A key feature of opting out is that once an individual does so and passes the probationary period, their salary rate increases substantially. For instance, once an individual opts out of the Fire Fighting Division and becomes a fire investigator (lieutenant) in the Fire Marshall Division and passes the probationary period, which apparently is six months salary goes up to that of a lieutenant. A senior fire prevention inspector has the same salary as a fire captain, while the assistant fire marshall receives the salary of a battalion chief. In the other divisions it appears that generally the salaries are related to a fire lieutenant and thus opting out usually means a substantial increase in salary. It must also be understood that a number of the classified positions in the non-Fire Fighting Divisions are not supervisory in nature, even though they may be compensated at the higher rate of lieutenant, captain, etc.

Obviously more aspects of the Department's operation will be discussed as it becomes necessary.

## CURRENT PROMOTIONAL SYSTEM

In its essentials the current system has existed since at least the Charter of 1886.

It appears that the first formal Collective Bargaining Agreement between the parties had an effective date of February 22, 1972. The language contained therein, regarding this issue, is essentially the same as contained in the most recent Collective Bargaining Agreement. There are some changes regarding promotion subsequent to battalion chief, but those changes will be analyzed.

While the testimony refers to a 1974 contract, it appears that the next Collective Bargaining Agreement existing between the parties was effective February 7, 1975. It had a stated expiration date of June 30, 1977. Between 1972 and 1975 the citizens of the City of Detroit adopted a new Charter. Section 7.802 of that Charter provided that the chief of the Fire Department shall be appointed by the fire commissioner from the board of fire chiefs. Two deputy chiefs would be appointed from the ranks of assistant chief, but as that worked out, it appears that the appointments were made from the board of fire fighting chiefs. The section also provided that a fire marshall shall be appointed by the fire commissioner.

The Union supported the changes and the necessary alterations were made to the Collective Bargaining Agreement. Thus, the 1975 contract provided that promotions beyond battalion chiefs were made in accordance with the City Charter.

During negotiations for the 1977 Collective Bargaining Agreement the City introduced a proposal which contained substantial changes regarding the promotional system. That proposal became one of many issues presented to an Act 312 panel chaired by Robert C. Howlett, Esq. The arbitration panel rejected the City's proposal and the status quo was continued.

Keying in on the Fire Fighting Division the mechanics of the promotional process are pretty simple and straightforward. Twice a year the Department calculates how many people in the Fire Fighting Division are going to reach the mandatory retirement age in the next six months. That age is 60. Attempts are also made to determine how many other people will be leaving the service. This is usually by resignation or early retirement, transfer to another division or department. The calculations are done per rank, i.e., battalion chiefs, captains, lieutenants and sergeants. Thus, in each rank there is a total number of individuals who would be expected to leave within the next six months.

At that point the Department would refer to the seniority book which contains a listing of all employees in every title and the order in which they obtained their current position. To fill the vacancies in each rank the employer then goes to the then lower rank and identifies the most senior employees in that rank to the extent there will be vacancies in the higher rank. Next, the potential promotees are scheduled for a physical examination. The list of candidates for promotion is distributed to the battalion chiefs.\* They would utilize what is known as an expression

\*Deputy chiefs are also involved.



sheet and indicate whether they have worked for the individuals on the list within the last five years and provide additional information. The specifics will be more carefully examined at a subsequent point.

The completed expression sheets are forwarded to the chief of Fire Operations. He and his two deputy chiefs review each form and determine whether or not the individual candidates are going to be recommended for promotion by the chief. The sheets are then forwarded to the fire commissioner's office where they are carefully examined for unfavorable comments.

In November of 1980 Proposal "N", regarding a change in the promotional system in the Fire Department, was placed on the ballot and passed by the voters. That proposal stated:

"Section 7-806. Promotions.

"1. The Fire Commissioner shall make all promotions to non-supervisory positions within the classified service of the department. The employee having served the longest period in any position shall be advanced to fill any vacancy in the next highest position, if that person has, in the judgment of the Fire Commissioner, the qualifications for the higher position. Qualifications shall be reasonable and non-competitive.

"2. Promotions within the classified service of the department to the supervisory positions of Sergeant and above shall be determined by qualifications based on length of service in the next lower position and reasonable and objective evaluation of such factors as ability, skill, experience, knowledge and training."

## CITY'S PROPOSAL

The City's proposal, at least the language it seeks to place in the Collective Bargaining Agreement, has been attached hereto. It would be redundant to restate it at this point. Obviously since there has been no experience under the proposal, there can be no analysis of its historical application.

Arthur Young and Company, and specifically Dr. Mark L. Lifter, was retained by the City to do a job analysis of the sergeant, lieutenant, captain and battalion chief positions and, further, to make recommendations on a new promotional system or model. Essentially Dr. Lifter interviewed the incumbent members of the ranks indicated above, exploring areas of duties and responsibilities in determining the knowledge, skills, abilities and personal characteristics which are required to do each job well. A job analysis questionnaire was then created and after review, tests meetings, etc., was finalized and distributed to the available sergeants, lieutenants, captains and battalion chiefs.

Utilizing the results, Dr. Lifter compiled the key KSAs (knowledge, skill, ability and personal characteristics) and designed a promotional system from the data.

It must be noted that there doesn't appear to be any expert testimony in the record which establishes, or even suggests that Dr. Lifter's efforts did not meet professional standards. Indeed, the testimony, including that given by one of the Union's expert witnesses, indicates that Dr. Lifter's work was very competent.

Now, there was extensive discussion regarding the methodology and the minute specifics utilized in arriving at the promotional model and much of this was reiterated in the City's briefs. However, given the above, it is not really necessary to specifically analyze Dr. Lifter's work at this point. It indeed was professional and it would be best to leave any further discussion regarding the specifics to a point where it becomes necessary.

However, attached hereto and labelled Exhibit 3 and Exhibit 4, are a couple of documents which appear in City Exhibit 7 and which give a general understanding of how the promotional model works.

Throughout the proceeding the City has taken the position that it will implement its proposal by relying upon the promotional model developed by Dr. Lifter.

There are certain aspects of the promotional model which deserve further comment. As pointed out by the City, seniority would be used as a minimum qualifying requirement. While perhaps it would be a consideration utilized by the Commissioner to make his selection, there is nothing in the model which gives an expressed weight to seniority as a factor in making a promotion. According to the model, there would be no written examination for a lieutenant because of the overlapping responsibilities between the lieutenant and sergeant position and because of the fact that any sergeant with two years in rank would be allowed to apply for the promotion of lieutenant. There would be a written examination for applicants from other non-civilian divisions. There will be no situational exam, except for applicants from another non-civilian

division for promotions to lieutenant and captain. There is no situational exam for promotion to battalion chief.

Depending upon which rank is being promoted to, the factors involved, either a combination of tests and interview scores, or just interview scores, will be utilized to define three groups of individuals, i.e., highly qualified, qualified and unqualified.

The weight to be given to each aspect of the process, such as the written test, oral interview and situation test, would be subsequently derived. If the model is utilized as written, the top 25 percent of those who pass the various tests and interviews will be designated as the highly qualified group.

The Commissioner would then fill the vacancies from the highly qualified group and then from the qualified group. According to the model, the Commissioner can consider such factors as performance appraisals, continuing education, health, work record, and "other things being equal within the highly qualified group. Seniority would be a further consideration." A candidate would also be required to pass a physical exam.

The lists created and containing the highly qualified or qualified candidates would be in existence for one year and could be extended for one additional year at the City's option.

It should also be noted that both the proposal submitted by the City relating to the language it seeks to place in the contract and the promotional model created by Dr. Lifter, provide that a person who is transferring to an equivalent rank in the Fire Fighting Division, if deemed qualified, shall be given preference over applicants of lower rank, subject to the Commissioner's approval.

## OPINION AND FURTHER FINDINGS

### STATUTORY STANDARDS

Anyone who has been involved in this type of proceeding, and surely the current parties, are aware of the statutory factors contained in Section 9 of the Act. Nevertheless, it would be appropriate to display them at this point because ultimately the factors are the basis for the findings, opinion and order which are contained herein.

Section 9 states:

"423.239 Findings and orders; factors considered.

"Section 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

#### ARGUMENTS

Given the high quality of the presentation, the extensive record and the voluminous arguments presented, even though the evidence and arguments were meticulously reviewed, outlined and reviewed again, it would be appropriate to list just the general themes presented by the parties.

#### The City states:

1. It is abundantly clear that the present promotional system is seriously flawed in several respects and thus there is a critical need for a change in the system of promoting officers in the Fire Fighting Division.

2. Seniority is no predictor of success. It doesn't equate with experience, knowledge or even active service.

3. In using seniority as the basis for promotions, officers will never be better than average.

4. A valid promotional procedure related to ability, skills and knowledge will raise the level of performance of the group selected.

5. Essentially the expression sheets are useless.

6. Under the current system lesser qualified individuals are promoted over better qualified individuals. This has a "demotivating" effect.

7. The length of time spent in acquiring a promotion, i.e., 17 years for sergeant, 21 years for lieutenant, 29 years for captain, and 33 years for battalion chief, is out of proportion to the time it takes to master the job and this in and of itself is a demotivating factor.

8. As a result of the length of time it takes to become a battalion chief, together with the Department's mandatory retirement policy, there is an unacceptably high level of turnover in one of the most crucial positions in the Department -- battalion chief.

9. The present system will promote individuals even when little is known about them and they were not even actively employed for a substantial period of time prior to the promotion.

10. The present system arbitrarily excludes large numbers of fire fighters from being considered for the position of battalion chief merely because of their age when they enter the Department, i.e., 70 percent

of the class entering between March of 1977 or February of 1978 will never be eligible for battalion chief.

11. The will of the people, as expressed by Proposal "N", demands adoption of the City's position.

12. Application of Section 9 factors require adoption of City's proposal.

The Union states:

1. As a result of the Howlett Award, presumption of continuity and other factors, the City has an enormous burden of proof.

2. Because of PERA the unilaterally adopted Charter Amendment is a nullity and is not binding upon the Union and therefore may not be relied upon by the City, nor by extension, the arbitrator.

3. The City has failed to prove the inadequacy of the existing system.

4. There is no showing that the system is defective or that it doesn't work, but that indeed the fault is not with the system, but with the administration's failure to manage it.

5. The situations involving individuals who have been recalled from disability retirement or job positions which did not require actual fire fighting are vastly exaggerated because the City has never made any proposals relative to the so-called problem, there are so few cases as to be insignificant, the point is moot because the parties have arrived at an understanding and because the Charter provision handles the matter:

6. The arguments regarding the demotivation of some firemen and the allegations regarding opportunities being cut off are entirely overblown and unrealistic.



7. The statistics regarding the turnover in the battalion chief's rank contradict the City's assertion that there is excessive turnover.

8. The existing system is sound and there are countless compelling reasons why it should be continued, i.e., it is a pure system protecting against arbitrariness, politics, nepotism, and other discrimination, it is perceived as fair which contributes to sound morale and in turn to productivity.

9. There can be no doubt that even though the senior employee is not necessarily the best qualified, after spending 16 or 17 years performing the job, the individual is likely to be well qualified.

10. The language in the Collective Bargaining Agreement specifically provides that only senior "qualified" employees are entitled to promotion.

11. The system encourages superior performance because a fireman knows upon entering the force that if he performs his job competently he will in due course be promoted under a system based on objectivity, fairness, and impartiality, and one which thwarts favoritism, arbitrariness, capriciousness and discrimination.

12. The current promotional system protects the vested equities and expectations of a work force, each of whose members knew exactly the ground rules when they became employed.

13. The City has failed to justify its known proposal which is a license for abuse.

14. The City's proposal is defective because it discards the known, which has worked well for a century, is manifestly unfair, not merit-based, and open to abuse, defies any test of comparability, and defeats the legitimate expectations of employees who have given long and faithful service, while creating windfalls for others who have not begun to serve their time, and even though a fire fighter would not be receiving top pay as such, he would be eligible for promotion with only three years of service in the Fire Fighting Division with seniority being accorded no additional weight in the selection process.

15. The City's proposal does not comport with the Charter Amendment and is based on a faulty premise; namely, that the ranks involved are supervisory or command positions.

16. An application of the Section 9 factors require the continuation of the status quo.

## BURDEN OF PROOF

It would be appropriate to first address the arguments and allegations regarding the burden of proof.

As stated above, the Union has taken the general position that the City has an "enormous" burden of proof. In a nutshell it relies upon the alleged precedential effect of the Howlett Award and alleges that there has been no material change since the Howlett Award; there is a presumption of continuity favoring the consensual status quo; and there is extraordinary collective bargaining and other history prior to 1976 which compels the conclusion that the City's burden is heavy and that it has not been met.

Conversely, the City's position is that there is no enormous burden of proof. It alleges that the Howlett panel never reached a determination on the merits of the City's prior proposal and that the current proposal differs substantially from the proposal presented to the prior panel. It argues there is no expectation of stability once an agreement has expired. It also suggests that there is substantial and material change in conditions since the Howlett Award was rendered; namely, the passage of Proposal "N". It suggests the only burden it carries is contained in Section 10 of the Act.

The last portion of Section 8 of the Act states:

" . . . As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable

factors prescribed in section 9. This section as amended shall be applicable only to arbitration proceedings initiated under section 3 on or after January 1, 1973."

The first portion of Section 10 of the Act states:

"Sec. 10. A majority decision of the arbitration panel, if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside . . ."

The above statutory language, inter alia, speaks of the responsibility of an arbitration panel and clearly supports the City's contention that the Act requires that the panel examine the entire record as a whole. The principle doesn't seem to be in question and certainly this panel has carefully considered the entire record.

There is no assertion, and frankly as suggested by the Union there couldn't be, that the Howlett Award is res judicata. If for a moment the common understandings of res judicata are set aside, the fact of the matter is that the burden imposed upon an arbitration panel is outlined in the statute and as stated in Section 8, findings, opinions, and order as to "all other issues" shall be based upon the applicable factors prescribed in Section 9. If indeed the contents of a prior award can properly be considered as falling within any of the factors contained in Section 9, then there exists a statutory duty to consider it. But that appears to be distinctly different than the concept of res judicata.

Neither party has ignored the prior arbitration award. The Union relies upon it to establish a basis for a number of its arguments, including this one regarding the burden of proof, and if memory serves correctly, the City relied upon it to support its position regarding the characterization of this issue, i.e., economic or non-economic.

However, that doesn't necessarily mean that the Howlett Award should be given any precedential effect beyond its relationship to the factors contained in Section 9 of the Act. This of course means the panel may review what other panels have done, for it appears such considerations clearly fall within paragraph (h) of Section 9.

There was a substantial amount of argument and evidence directed at establishing the differences, even though the Union claimed there were none, between the circumstances involving the Howlett arbitration and the current arbitration. Given the fact that there is no finding of res judicata and that whatever weight the Howlett Award is given must be related to its inclusion within the Section 9 factors, it is not really necessary to engage in a discussion regarding the differences as they may relate to some type of precedential value. The fact of the matter is that this panel has carefully considered all of the evidence and has made its decisions pursuant to the statutory requirements.

Independent of any consideration regarding a technical analysis of the burden of proof as it may exist in other proceedings, there are factors which in this case suggest that the City at least has the burden of presenting its evidence first, which it did. It seeks to alter the status quo.

Now, whether the following considerations are labelled as being a burden of proof, or as being part of the factors contained within 9(h), which is very appropriate, a case of this nature requires that there be an ample amount of evidence clearly establishing that the status quo should be modified. There are a number of considerations which fall within Section 9 of the Act which lead to such a conclusion. For instance, the current promotional system, in its essentials, has existed for approximately one hundred years and only has been recently challenged. Further, the current issue is not in the nature of, for instance, a wage issue which suggests parties may very well propose a change every time a contract is negotiated. While it is realized that nothing contained within the category of mandatory subjects of bargaining is immune from change, factors contained in Section 9 demand that certain items which fall within the category of wages, hours and other conditions of employment must have a resiliency and a continuity from year to year, for they establish basic relationships between the parties and are of such a nature that they should not be altered unless there is a clear showing, through the application of the Section 9 factors, that such alteration is necessary. For instance, how would the relationship of the parties be affected if the entire pension system, or perhaps residency requirement, were changed every time a contract was negotiated?

Whether one wishes to call it burden of proof really doesn't matter. The point is the concept which has been discussed is clearly a factor which is contained within Section 9 of the Act, specifically paragraph (h) and must be utilized by the panel in the formulation of its findings, opinions and order.

## PROPOSAL "N"

The Charter Amendment, Proposal "N", has previously been displayed and a careful reading of same clearly establishes that it represents a drastic change in the Charter provision regarding promotions in the classified service of the Fire Department.

Both parties presented considerable arguments regarding the Charter Amendment. Essentially, however, the Union takes the position that the Charter Amendment is a nullity which cannot be relied upon by the panel. It argues that the Charter Amendment has nothing to do with the lawful authority of the Employer and that it cannot be utilized to prevail over the Union's right to collectively bargain. According to the Union, the Amendment is irrelevant.

After stating the principle that the ultimate power resides with the people, the City points out that the people have spoken and that their wishes should not be lightly regarded but given "great weight." It argues that the City has no "lawful authority" to adopt a seniority promotion system as that concept was expressly rejected by the electorate. It suggests the arbitration is not being conducted under PERA but rather under Act 312 and the Charter Amendment must be considered both in light of Section 9 (a) and 9 (h) of the Act. According to the City, the Charter Amendment should be a factor considered under 9 (h) of the Act ". . . unless this panel subscribes to the belief that the word 'democratic' should be struck and the word 'bureaucratic' should be used in its place in describing our form of government."

This is one of the many interesting issues presented in this dispute. First, it is quite clear that as stated by MERC in C81 A-32, the City cannot, by amending its Charter, unilaterally alter the status quo with respect to any mandatory term or condition of employment. (Detroit Police Officers Association v City of Detroit, 391 Mich 44 (1974); Pontiac Police Officers Association v City of Pontiac, 397 Mich 674 (1976))

Secondly, it is quite clear that even if a mandatory subject of bargaining is dealt with in the City Charter, the City still has the duty to bargain over such mandatory subjects of bargaining and in fact the Charter provision cannot prevent the adoption of terms which are contrary to the provision. (Mt. Clemens Fire Fighters Union v City of Mt. Clemens, 58 Mich App 635 (1975)) Furthermore, an Act 312 panel may issue an award requiring the City to adopt a provision regarding a mandatory subject of bargaining even if a contrary provision exists in the City Charter. (City of Roseville v Local 1614, International Association of Fire Fighters, 53 Mich App 547 (1975))

The City has suggested that the arbitration is not taking place under PERA. Nevertheless, it must be understood that Section 14 of Act 312 states the Act is considered to be "supplementary" to 1947 PA 336.

It is difficult to agree with the contention that the City has no lawful authority to adopt a seniority promotion system because the concept was rejected by the electorate. That doesn't appear to be the law in Michigan. As a public employer the City has the legal obligation to bargain over wages, hours and other mandatory terms and conditions of employment and that obligation is superior to the specific provisions of a city charter or ordinance. Indeed, it seems the City's current position is in conflict



with the position that it took during the Howlett arbitration. In the Howlett arbitration the City's proposal was contrary to the then existing Charter provision. Apparently at that time it recognized no "lawful authority" which prevented it from not only agreeing to but seeking, via compulsory binding arbitration, a promotional system which was contrary to that mandated by the Charter.

It is interesting that quite contrary to its conduct in the Howlett arbitration where it sought a promotional procedure which was contrary to the then existing Charter provision, the City is now arguing that the panel give "great weight" to the amended Charter provision.

In reality it appears that the City's prior conduct recognized that it has the duty to bargain over matters which are contained in the Charter, as long as they are mandatory subjects of bargaining, and that duty extends to the point where the City has the ability to make proposals which may contradict its own Charter. It cannot refuse to bargain on the basis that the Charter prevents it from adopting a mandatory term or condition of employment contrary to that contained in the Charter and certainly as previously indicated, a change in the Charter cannot be utilized to unilaterally alter the status quo of a mandatory subject of bargaining.

Given all of the foregoing, it is questionable that the panel can give "great weight" to a charter provision which the law has stated the City and the Union can ignore during collective bargaining, which cannot be utilized to unilaterally change conditions of employment, and which essentially is inferior to collective bargaining of mandatory terms and

conditions of employment. Another aspect of the question is how probative the Charter Amendment is to the issue of whether the promotional system should be changed. Certainly it reflects the expression of the voters in response to the proposal placed before them. It wasn't explained how this voter reaction relates to the mechanics of either the status quo or the City's proposal and makes one more acceptable in terms of operation than the other.

Proposal "N" should be and was considered, but in light of the foregoing, it cannot be ascribed the extensive weight suggested by the City.

## SUPERVISORS?

The Union has suggested that the ranks or positions in question are not really supervisory and thus the City's proposal is built on a faulty premise, i.e., that the ranks in question are supervisory or command positions. The Union suggests that since this is true the City's rejection of the practice of crediting seniority for promotion decision is especially unjustifiable. The City argues that the promotional system contains the levels of sergeant, lieutenant, captain and battalion chief, and that these positions have historically been regarded as command positions. According to the City, the fact that they may not be classified as supervisors for the purpose of defining a bargaining unit pursuant to PERA, is irrelevant.

As suggested by the Union, the law in the State of Michigan does not deem any person subordinate to a fire commissioner, etc. to be a supervisor. The thrust of the law and its application is to allow a single bargaining unit for members of the Fire Department who are subordinate to a fire commissioner, etc.

As suggested by the City, on the face of it it doesn't appear that the fact that Michigan law allows a single bargaining unit for all of the ranks involved in this dispute is really relevant. At least this seems to be a reasonable conclusion if the analysis is confined to that level.

However, what would be more helpful in evaluating the dispute is an analysis of the responsibilities, authority and duties relating to

the ranks in question. Certainly it would be relevant in evaluating the proposals to establish and recognize the differences, if any, between the duties, responsibilities and authority of the various ranks. Much of this has already been done in a prior section of this opinion, but certainly it wouldn't hurt to refine the analysis a little further.

The record establishes that none of the ranks in question have the authority to promote, hire, fire, demote, lay off or recall. In fact, while officers under the rank of battalion chief may file reports regarding disciplinary matters, the battalion chief is the only one who makes recommendations for discipline.

According to the Department's rules and regulations, specifically General Rule 16.7, the fire sergeant shall command the unit "only in the absence of the Fire Lieutenant or Fire Captain." The fire sergeant has no authority to change any of the regular routine without the knowledge and consent of the company commander. When he is on duty but not in charge of the company, the fire sergeant acts as a fire fighter.

According to General Rule 16.6, the fire lieutenant commands the unit opposite the fire captain. As was the case with the fire sergeant, the fire lieutenant cannot change the regular routine without the knowledge and consent of the company commander. When the fire captain is absent, the fire lieutenant assumes the captain's responsibilities.

Responsibilities and duties change somewhat when we consider the fire captain position. According to General Rule 16.5, the fire captain apportions house duties among the men and equalizes assignments. Captains

have full control over their company apparatus, building and all department property therein. They submit monthly requisitions for supplies and are held strictly accountable for all the property in a company. They are in charge of their companies and have direct command of one unit. On a yearly basis captains in command of company quarters file reports regarding the condition of their respective buildings, premises, apparatus, etc. They must also maintain an inventory record and update the inventory annually or more often as required. When there is more than one company to accompany quarters, the senior fire captain will be in charge of all routine duties, buildings and all property therein.

The General Rule regarding battalion chief is more expansive than that regarding captains and other subordinate ranks. It is clear from the record that battalion chiefs have many more administrative responsibilities than subordinate ranks. They have the duty to instruct all officers in all phases of responsibilities and they enforce the rules and regulations of the Department. They are to notify the fire marshall's office if schools are not evacuated at the time of an alarm, or if there is a lack of cooperation by the Board of Education staff personnel. They must maintain order and discipline in their battalions. According to the Rule, when prompt disciplinary action is needed, battalion chiefs may place the member on LWOPCA and then forward charges and specifications to the chief of Fire Fighting Operations. Battalion chiefs must keep their companies equalized by special details, have the responsibility of assuring that the companies are always properly manned. They must visit each company in their

battalion on a daily basis and at least once each month make a thorough inspection of premises, apparatus, personnel, etc. They must see that the uniforms worn about quarters are clean and in good condition and must inspect the districts in order to familiarize themselves with factories, buildings, apartments, etc. They file injury reports and submit to the chief of Fire Fighting Operations a battalion daily time report and all other reports received and reviewed. They must submit fire reports and reports on vehicle accidents.

As it relates to the fire scene, the Battalion chief has the duty to respond to an alarm and upon arrival, assume command and direct the operation, unless of course relieved by a superior officer. A battalion chief, or officer acting in such capacity, which apparently means the first officer other than a Battalion chief on the fire scene, must send a preliminary report to Central Office which includes indications of whether it is a doubtful and/or working fire, the nature of the fire and the extent of the fire. When a second alarm is called, the report must include the size and construction of the building, occupancy, the floors involved and the number of companies operating and the number of lines laid and in use. When leaving a fire the officer in command must designate the senior officer to take command of those remaining at the fire.

Although theoretically it would be possible for a senior fire fighter to be the most senior person at a fire scene, typically four companies and a battalion chief respond, so generally a battalion chief will be in charge or if he is delayed, some other officer superior to a senior fire fighter.

It is significant to note that an officer, or perhaps a senior fire fighter, in charge of a unit will at most be in charge of three men. There will be either a FEO or a fire fighter driver and a sergeant and a fire fighter, or perhaps two fire fighters and no sergeant.

What is significant is that with the exception of certain duties relating to the captain and above ranks, all of the duties, responsibilities and authority which exist between the ranks of sergeant, lieutenant and captain can be and have been performed by any members of those ranks, including senior fire fighters. Such provisions are specifically stated in the General Rules. Thus, as a matter of standard operating procedure sergeants can fill in for lieutenants and captains and when not doing so, act as fire fighters, but not only that, senior fire fighters fill in for officers when officers are not available. Except for the distinction stated and those contained in the record, much of what captains, lieutenants and sergeants and perhaps senior fire fighters do, or may be called upon to do, is the same.

At least to a degree this reality was recognized at least for the ranks of sergeant and lieutenants when the City's testimony established that there was a high degree of overlap in the responsibilities and requirements of the sergeant and lieutenant ranks and thus, inter alia, a written examination would be "redundant and unnecessary for lieutenant." Of course there is a written exam for transfer applications from other non-civilian divisions.

Certainly in a general sense the above would suggest that experience gained as a fire fighter, senior fire fighter sergeant, etc., is very much applicable and relevant to the responsibilities, duties and authority of the higher ranks.

Although it certainly must be realized that the overview contained in Exhibit 3 is very general in nature and does not speak of variations in the specific elements mentioned therein, it is interesting to note that there is much in common in the general areas dealt with by a written exam, situational exam and oral interview utilized for promotion to the various ranks.

Thus, while it doesn't really seem pertinent to conclude that the ranks are considered supervisory or not, the characteristics of the ranks as displayed above are very helpful in assessing the proposals. There will be more on this point at a later time.



## ANALYSIS OF THE STATUS QUO AND THE CITY'S PROPOSAL

Certainly in order to make the appropriate decision regarding this dispute and to properly apply the factors contained in Section 9 of the Act, it is necessary to analyze the status quo and determine whether indeed it is sound and an appropriate promotional system to continue.

The fact that the seniority promotion procedure has existed for about one hundred years has more than a historical significance. The record establishes that the City of Detroit has a fine fire department and for about the last one hundred years promotions to the ranks concerned with herein have been provided for and controlled by essentially the same promotional system that exists in the prior Collective Bargaining Agreement. That's amplified by the fact that only recently, 1974 as it relates to ranks above battalion chief, and the disputes resulting in the Howlett Award and of course this dispute, has there been any attempt to change the system.\* One would think that if the system was inherently defective and unacceptable, severe symptoms would have manifested themselves over the years and there would have been prior attempts to rectify any shortcomings. It is difficult to perceive that if the promotional system is as defective and inefficient as alleged by the City, the City could have enjoyed such a fine department.

Except for some isolated examples which will be subsequently analyzed, the record doesn't contain any evidence establishing that there have been a substantial number of demotions or counselling or other contact with officers for the reason that they were not performing in accordance with their rank.

\*It appears there were some attempts to make changes in 1967.

While the contract language has been previously displayed, one shouldn't lose sight of the provisions as the status quo is analyzed. Promotions are based on seniority. However, the senior employee must satisfy qualifications for the position for which he is to be promoted. Now, the language goes on to indicate that the qualifications are determined by the fire commissioner, subject to bargaining obligations, and qualifications shall be reasonable, relevant, objective, non-arbitrary and non-competitive, and there shall be no written qualifying exams, competitive or non-competitive, "as a condition of promotion." Of course individuals must pass a physical exam.

The language also establishes that the senior employee eligible for promotion should not be bypassed unless "affirmatively disqualified for cause by the Fire Commissioner, with reasons therefor stated in writing." According to statements of counsel made in this record, it appears that historically the language has been interpreted to mean that promotions are based exclusively on seniority and that "if qualified" means if not disqualified for lack of qualifications.

The City suggested that seniority doesn't equate with active service, knowledge or experience. If seniority is merely the time that has elapsed since an individual's date of hire, then by definition it doesn't necessarily mean experience, active service, or knowledge. Nevertheless, having said that, it must be understood there is much more to it and the situation is not quite that simple.

There was evidence and argument regarding individuals who were on duty disability and then subsequently returned to active service and promoted. There was also evidence regarding a particular fire fighter who was placed in a non-fire fighting position in the Fire Division who was also promoted. However, if for moment we set aside those exceptions, and they will be more carefully analyzed at a subsequent point, it is clear that experience, active service and knowledge are not strangers to the status quo.

For instance, the record indicates that it takes about 17 years for a fire fighter to receive his first promotion. That would be to sergeant, but the record also establishes that for 17 years a fire fighter would be making runs in various assignments, including truck companies and engine companies, fighting fires, entering buildings, making rescues, following house routine, readying equipment, and engaging in the innumerable tasks which are performed by fire fighters. For that period of time the fire fighter would be doing exactly the same thing that he would be accountable for as a sergeant when not in charge of a unit. Furthermore, having reached senior fire fighter status, there would be the potential, and in fact the record establishes the reality of being in charge of a shift when officers were not available, and in fact being responsible for performing many of the duties which captains, sergeants and lieutenants must perform when they are in charge.

Certainly being exposed to the above would give a fire fighter experience.

The record does indicate that there is a potential, and in fact in certain situations, a reality of fire fighters remaining in one battalion for a number of years. In one case the period was over 20 years. Even so, fire fighters have been detailed out of their company which arguably would increase their experience, and the transfer policy has been stepped up in recent years which would certainly tend to broaden the scope of experience to the extent that changes in location would do so. As suggested by the City and as established by the record, a fire fighter would not fight all types of fires. Frankly, that appears to be an impossibility. It is also noted that since the last arbitration the City hasn't instituted training in the types of fires mentioned, i.e., tanker, aircraft, large industrial, etc. In fact, those fires are few and far between.

However, it is apparent that fire fighters not only gain their experience and knowledge from fighting fires, but also from the procedures and activities which exist in the Department. For instance, one of the most important aspects of the job is the critique session which takes place subsequent to a fire action. There is discussion, analysis and criticism of conduct and judgment. Additionally, even though the Training Academy has been closed, there are training sessions which are designed and utilized to expand one's knowledge of the job. There are probably more, but these two items, along with the hands-on experience are part of the process of educating a fire fighter. The fire fighter has been exposed not only to the duties and responsibilities of the rank he may hold at that time, but also because of the function of the Department and the intimacy and overlap of duties and responsibilities between the various ranks, has also been exposed to many of the responsibilities and duties of those ranks.

As indicated above, it is granted that the term "seniority" doesn't equate with active service. Yet, the considerations regarding the allegation are the same as stated above.

As stated at the outset of the discussion, there are exceptions to the relationship of experience, active service, knowledge, etc., to the promotional system.

City Exhibit 4 contains the names of seven individuals who after being hired by the Fire Department and working for a number of years were placed on duty disability retirement and then subsequently returned to active service and as a result of the promotional procedures, promoted to sergeant, lieutenant or whatever the case may be. There was also evidence regarding an individual who was assigned to the Operations Office of Fire Headquarters and for the last perhaps dozen years was in charge of largely administrative matters, such as interdepartment mail, vacations schedules, etc. During that period of time he was promoted from fire fighter to fire sergeant to lieutenant, and also during that period of time was not involved in fire fighting activities.

Nevertheless, what transpired above is not even close to the norm. According to testimony offered by the City, in the last nine years it was estimated that there has been more than a thousand promotions in the Fire Fighting Division. The existence of the eight unique cases stated above is hardly significant in the face of the tremendous number of promotions which have taken place. Even if it were 16 or 20, the fact of the matter is that those deviations from what normally happens in the Department are so infrequent that they are insignificant. Nonetheless, a six-month probationary period was instituted in order to evaluate returning employees and hopefully it may have helped alleviate the concerns.

In discussing the concept of seniority and parallel considerations, it is interesting to note that in its proposal the City utilizes seniority as a minimum qualifier. It does not utilize seniority or give it any weight as a basis for promotion. Nevertheless, the evidence does establish that even the City gives it some weight. However, given the assertion that seniority is not to be equated with experience, active service, knowledge or predictor of success, it is noteworthy to indicate that an examination of City Exhibit 5 shows that many of the communities relied upon by the City in its study give seniority weight in making promotional determinations. This is in addition to any minimum qualifying requirement.

So, obviously one must conclude that the term "seniority" while meaning only the elapsed time since an individual's date of hire, doesn't exist in a vacuum and specifically in this Department is accompanied by a number of other factors, as explained above, which are very significant.

As suggested by the City, the record does establish that industrial psychologists can identify the knowledge, skills and abilities that an individual needs to possess to perform a particular job. From that point the City goes on to suggest that under the present promotional system it is impossible to determine whether any candidate has those characteristics. Of course one of the elements of this allegation is the expression sheet, or efficiency report, whichever characterization is desired. Essentially the Union's position is that it is not the system but the City's administration of the system which may cause problems.

As stated, the contract language indicates that the fire commissioner determines qualifications subject to his bargaining obligations and that

the qualifications must be reasonable, relevant, objective, non-arbitrary and non-competitive. Another restriction is that there shall be no written qualifying examinations, competitive or non-competitive as a condition of promotion.

While the promotional system in general has been previously discussed, a more detailed analysis of the use of efficiency reports or expression sheets is warranted.

Essentially the expression sheet is the document utilized by the Employer to affirmatively disqualify an individual if he does not have the qualifications required. The record establishes that there have been very few disqualifications in the last nine years and perhaps only one. According to the City's testimony, it suggests that the system is not very effective.

The evidence clearly establishes that the efficiency reports are not held in very high esteem by any of the experts who testified and there is no doubt that their effectiveness is suspect. In filling out an efficiency report the chiefs are asked to indicate the station at which they knew the individual, the duties performed by the individual other than regular duties, the months known, whether the individual was an officer, sergeant or fire fighter, instructive training or company administration. The author is also to refer to points of weakness as well as strength under the category labelled "Remarks." There is a section which asks the author to indicate the basis for the entries made on the sheet. The four bases listed are intimate daily contact; frequent observation; infrequent observation; or official reports. Another section asks the author

to indicate his attitude by identifying one of five phrases. The phrases are: "particularly desired him; be pleased to have him; be satisfied to have him; prefer not to have him; and definitely not want him." In addition, there is a list of ten considerations which the author is asked to gauge using the categories of unsatisfactory, fair, good, very good, or unknown. Those ten items are "physical activity and endurance; stability under pressure; attention to duty; cooperation; initiative; intelligence; forced; judgment and common sense; leadership and ability to get results both in training and in operations." It is not surprising that the witnesses are somewhat less than impressed with the efficiency reports.

The panel is aware of the concepts of past practice, maintenance of conditions, etc., but the record establishes that the Employer has never approached the Union in an attempt to rectify problems regarding the expression sheets, or to institute other procedures which may be utilized to gauge qualifications. Even after the results of the prior arbitration award, this wasn't done. There is no contention that the expression sheet system, as currently utilized, is the only way the City can determine qualifications within the parameters of the contract language. It has been stated that the Union has offered no specific plan other than contending that the reviews be more frequent, and by unspecified persons other than battalion chiefs. Yet, given the problems surrounding the expression sheets, the fact of the matter remains that the Employer has never made any suggestion to deal with the expression sheets or to otherwise



refine its ability to measure qualifications other than eliminating the entire promotional system and substituting its own proposal. It hardly seems proper to discard a promotional system that has existed for the length of time the status quo has, utilizing as a basis for such a decision the fact that an aspect of the procedure may be less than desirable, or for that matter, deficient, when there was no attempt by the Employer to remedy that which it contends is an undesirable aspect. There has been no showing that the Employer has approached the Union and tried to discuss this matter and come to the conclusion that the Union's response makes it impossible to remedy the deficiencies of the expression sheets and thus the only thing to do would be to discard the status quo.

Tied to the fact that it takes 17 years to become a sergeant, 21 years for lieutenant, 29 years for captain and 33 years for battalion chief, is the City's allegation that the time is totally out of proportion to what it takes to master the job, and that these facts establish that an individual who may have superior qualifications and strong desires for promotion will have their motivation stifled and thus become less efficient. The Union suggests that the fact an individual knows that if he performs his job competently and perfects his qualifications, in due course he will be promoted under a system which exhibits objectivity, fairness and impartiality and which thwarts favoritism, arbitrariness, capriciousness and discrimination. The Union suggests that morale will remain relatively high and employees will perform and learn their jobs effectively. It further suggests that because junior men know when officers come up through

the system there is trust and confidence which benefits the entire community.

The evidence establishes, even if it needed to be established by evidence, that individuals learn at a different rate and are subject to different limitations. There is testimony offered by the Employer's witnesses which suggests that none of the KSAs mentioned in the job study would take 17 years of experience to master, if they are going to be mastered. This testimony was not based on the study of the Fire Department, but was based on the general knowledge held by the expert. Certainly that being the case, it could safely be concluded that a fire fighter should acquire the qualifications necessary for the first promotion within the 17 years it takes to achieve it.

There was also testimony which supported the City's contention that the fact that it takes so long to receive the first promotion may have the effect of lessening the motivation of individuals who are well qualified and desirous of promotion. Some individuals may very well be affected in that manner.

There is other testimony which suggests that if everyone knows what the system is and how it works, when they are initially hired, the fact that they will be promoted if they do their job well and maintain qualifications, is a very motivating factor and increases the efficiency of the individual.

If the quality of the Department is any indication of the morale of the personnel, then apparently the morale is pretty good.

The record also established that the current promotional system is not plagued with problems regarding favoritism, arbitrariness, capriciousness or discrimination. Furthermore, the system has survived challenges based on allegations that it violated civil rights. In fact, the City's involvement in that litigation is marked by its statements in support of the status quo. Of course, it is realized that the issue in that particular case did not involve a comparison of the status quo to the City's proposal, but nonetheless, it did involve an allegation which if established would have proven that the status quo could not stand in the face of statutory and constitutional civil rights considerations.

It is also true, as suggested by the City, that under the status quo there is a potential for a less qualified individual being promoted over a more qualified individual. That shouldn't be any surprise, for the seniority promotional system is geared to promoting the most senior qualified employee and not necessarily the most qualified employee.

Related to the above is the City's contention that the status quo will never produce officers who are better than average. Apparently it based its contention upon statements made by its experts. In trying to understand the statements it appears that it is correct if one works under the premise that the performance of the group ranges from the member performing at the lowest level to the member performing at the highest level, and if they are around long enough, they will be promoted and in the long run, the best that can be expected from the group is average performance. If the City's position is correctly understood, it appears to have logical validity but the weight of its impact on the analysis of

whether to change the status quo is a little more vague. The record establishes that none of the experts engaged in any study regarding the effectiveness of the Detroit Fire Department or the effectiveness of the promotional system.

One of the complaints the City has is that the operation of the current promotional system causes excessive turnover of battalion chiefs. According to the chief of Fire Operations, in the 15 months that he has been chief of Fire Fighting, 20 of the 33 Battalion chiefs have been replaced. Conflicting evidence is supplied by Union Exhibit 33, which indicates that 13 battalion chiefs have been promoted since the current chief of Fire Operations occupied his position.

It appears that even 13 turnovers in 15 months out of a rank which only has approximately 33 positions is quite a few. Union Exhibit 17 also indicates how many promotions there were in the battalion chief rank since 1974 and it appears the average is about 10 per year.

According to the chief of Fire Operations high turnover in the rank of battalion chief breaks up any continuity that may have been established.

There is also the contention that given the manner in which the current promotional system operates, about 70 percent of the 231 members of the 77-78 class will never be eligible for promotion to battalion chief. According to the Union, this is a very minor issue since only 2.5 percent of the entire Department population is represented by battalion chiefs and that the opportunity to be promoted to the rank of battalion chief is negligible.

Certainly it cannot be considered a positive aspect as recognized by the Union's expert, but the fact of the matter is that the system requires employees to put in their time before they receive promotions. Such a situation may also adversely affect the morale of the individuals involved but that would also depend upon whether they had other rewards or expectations. The testimony also established a lower potential for adverse effects on morale if the individuals in the class were aware of the circumstances when they entered the Department.

In summary, the bottom line of the analysis is that even though the status quo is not perfect, it has existed, and more importantly, it has worked for approximately one hundred years. There is no evidence of excessive turnover department-wide, loss of efficiency or anything else which would indicate that it affects morale in an adverse manner. As stated by one of the expert's testifying on behalf of the City, industrial psychologists "most of this century" have been conducting valid tests. Yet, until the recent events, there have been no efforts to change the system. The overlap of responsibilities, duties and authority between the ranks has been explored and it appears that it <sup>is</sup> one of the characteristics of the service which leads to the success of the current promotional system. Problems regarding the use of the expression sheets have been identified, but as previously suggested, apart from the Fire Fighting Chief's independent endeavors, there have been no efforts by the Employer to refine or otherwise increase the efficiency of its ability to gauge qualifications within the parameters of the Collective Bargaining Agreement.

The City of Detroit has a fine fire department and it seems doubtful that such a level of efficiency could be achieved if the status quo was as fundamentally defective as suggested by the City. There is no "critical need" for a change in the promotional system. It hasn't been established that the system is basically defective and "fundamentally irreparable."

Nevertheless, even after making the foregoing findings regarding the status quo, it is still necessary for the panel to carefully examine the City's proposal and of course on the entire record resolve the dispute on the basis of the factors contained in Section 9 of the Act.

The City's proposal has been attached hereto and represents the language which it seeks to incorporate within the Collective Bargaining Agreement. Much of the following discussion will deal with items that are not specifically mentioned within the City's proposal. Just from the examination of Exhibits 3 and 4 attached hereto, it is quite apparent that a number of facets and elements of the promotional system the City seeks are not contained within the proposal.

The Union has argued that the promotional model and the City's proposal are two different things. The City has argued and clearly stated on the record that the promotional model is the fashion in which the City would implement its proposal.

As briefly alluded to in the prior discussions, Arthur Young & Co., specifically Dr. Mark L. Lifter, was instrumental in developing the promotional model discussed herein. Job analysis of the positions in question,

as well as a survey of fire department promotional practices, were also encompassed within the work performed by Dr. Lifter.

The results of the work performed by Dr. Lifter and Arthur Young & Company is contained in documents submitted in the record, as well as extensive testimony. There will not be a detailed examination of the methodology and procedures utilized because the fact of the matter is that all the experts agree that Dr. Lifter and Arthur Young & Company performed in a very competent manner. Of course, there will be discussions and analysis of specific aspects of the job analysis, promotion practice survey, and the promotional model.

There was extensive evidence and argument dealing with the City's proposal and the status quo in relation to the procedures which existed in other cities, other departments in the City of Detroit, and certain areas of the private sector. As was the case in the discussion regarding the status quo, there will be an attempt to consolidate the comparison analysis at a subsequent point. However, it is obvious that references may drift in and out of the discussion.

As can be seen from an examination of the proposal and the promotional model, there are several aspects of the City's proposed procedure which have not yet been established. For instance, while it is clear industrial psychologists and related disciplines can develop appropriate valid testing instruments, establish a structure for oral interviews which maximizes objectivity and can arrive at appropriate situational examinations, there is nothing in the record which establishes the actual weighting that will be applied to the various elements of the procedure.

In fact, the promotional model states that the actual weighting "should be determined during the course of final development of the promotional tools and would consider senior command personnel judgments made upon further review of job analysis results and examination content." So, in essence, it is impossible to determine the relative or specific impact of the written examination, situational examination, oral interview, etc.

According to the documents, the promotional model is largely compensatory in nature in that individuals may make up for lower scores in the written and situational portion of the process by doing well in the interview. However, individuals must meet minimum qualifications in the written portion before the process can begin. The minimum qualifying score has not been established, but according to the model, "will be established with the input and expert judgment of senior command personnel in the Fire Department based on review of actual test items and interview procedures."

According to the model, the combined promotional score distribution will be divided into the three segments mentioned in the proposal, i.e., highly qualified, qualified, and unqualified. The model indicates that the highly qualified group will be the top 25 percent of the qualified work "based on the combined promotional score distribution." According to the model, the purpose of the highly qualified group is "administrative efficiency" in the management of the promotional process.

The foregoing is mentioned because the elements referred to are important, at least important enough for the promotional practices survey to deal with some of them in relation to other communities and an analysis



across all surveyed cities. Weights and characteristics of the factors previously stated contribute to the ultimate outcome of the application of the City's promotional procedure.

The Union has alleged that the City's proposal is a scam and, further, is a system calculated to "politicize and racialize the department." It suggests the system is subject to abuse, unbridled discretion and an utter absence of controls. The City argues that the Union's claim is totally without substance, either factually or legally. According to the City, it is built wholly on unwarranted conjectures, suspicion and innuendo. Furthermore, the City argues that the Union must prove that the Commissioner was acting in bad faith and with malicious intent.

First of all, there is a presumption that the Commissioner and the City is acting in good faith when it created and presented its proposal. Secondly, the Union has not proved the City acted maliciously or in bad faith.

Testimony offered by experts establishes that one of the considerations involving a promotional system is whether it is perceived by the participants to be fair, objective, etc. Anyone experienced with the process of collective bargaining knows that language is proposed or changes are proposed in the Collective Bargaining Agreement in order to deal with a variety of concerns, many of which are anticipatory in nature and many of which concern current actions. The point is that one of the aspects parties look to in determining the needs they wish to address at collective bargaining is history. Perhaps more accurately, it is their perception of history.

The changes made in the Charter in 1974 and in the Collective Bargaining Agreement regarding promotions above the rank of battalion chief have previously been displayed. Subsequently, sometime in 1976 a number of promotions were made by the City which the Union alleged were based on wholesale racial preference. They were challenged as being in violation of the United States Constitution, State and Federal Civil Rights Acts, and the Collective Bargaining Agreement, along with Charter provisions, PERA, etc. Those promotions were set aside. The City's argument for the basis of those promotions was that it was relying on the affirmative action requirements of the Charter.

Later the City made the then Community Relations Head the Department Chief. Relying upon the Charter, the rules of the Department, the Collective Bargaining Agreement and PERA, the Union challenged the City's actions and its challenge was sustained. The City then promoted another individual and the Union again challenged the appointment. The challenge was upheld by MERC.

This analysis has nothing to do with a judgment of the City's actions. It is assumed the City has acted in good faith. Certainly affirmative action has been found to be an indispensable part of dealing with the tremendous inequities and hardships caused by racial discrimination.

The point is, however, that the Union looks at those prior activities and concludes, either correctly or incorrectly, that it needs to maintain the status quo in order to prevent the institution of a promotional system which it perceives as increasing the probability of abuse and resulting in detrimental effects to members of the Department.

The Union argues that the provision in the proposal which allows the Commissioner to appoint an individual who is transferring into a vacant position in the Fire Fighting Division over persons of a lower rank, even if the individual was qualified while others were highly qualified, establishes that the City's proposal will defeat the legitimate expectations of employees who have given long service to the Department and would work as a windfall for individuals who have opted out of the Department and have earned salaries at the higher rank for a number of years. The City suggests that the provision applies only to lateral moves and merely facilitates lateral movement from "presumably" one equal rank to another. It also argues that the experience gained by the individuals in their non-Fire Fighting Division position would be helpful when they are transferred to the Fire Fighting Division.

Certainly there was some evidence in the record which supported the contention that experience gained in non-Fire Fighting Divisions may help an officer perform better in the Fire Fighting Division. There was also testimony to the opposite. In fact, it would be fair to characterize that the chief of the Fire Fighting Operations was rather skeptical of the proposal.

The question is, however, if the evaluation and testing procedures contained in the City's proposal are valid and effective, why may a "qualified" individual be given preference over a "highly qualified" individual on the basis of experience in another non-civilian division?

Additionally, this question of the lateral move revolves around the premise that the move is between equal ranks, i.e., lieutenant/lieutenant, captain/captain, etc. However, the evidence is quite clear in establishing that the only thing which makes the ranks equal is the salary level. There is no indication that the responsibilities, duties and authority are comparable.

As will subsequently be discovered, the comparable data supports crossing divisions in order to seek promotions and some type of system-wide seniority. However, that is clearly much different than what the City is proposing.

Furthermore, as has previously been alluded to, once the individual has opted out of the Fire Fighting Division and passes the probationary period, the salary rate is increased to lieutenant, captain, or whatever the case may be. Thus, during this time the individuals were earning at a higher rate than the individuals included within the group they left. The City's proposal, in addition to the above, would give preference to the individual who was earning at a higher rate over the years at the expense of the individual who had remained in the Fire Fighting Division at the lower rate and subsequently worked up through the ranks.

The record clearly establishes that this portion of the City's proposal is inappropriate.

There was also the question of the Memorandum of Understanding attached to the City's proposal. The Memorandum of Understanding states:

"MEMORANDUM OF UNDERSTANDING

"It is agreed by the parties that the requirement of 'at least three (3) years' experience at a supervisory rank in the Fire Fighting Division' set forth in Article X, Section 2 (d)(ii) is waived for all individuals who, at the execution date of this Agreement, hold a rank equivalent to battalion chief in a non-civilian division other than Firefighting."

As understood, the Memorandum would waive the three-year experience at a supervisory rank in the Fire Fighting Division for individuals who are currently in a rank equivalent to battalion chief in a non-civilian division, other than Fire Fighting. According to the City, this will only apply to six individuals and the purpose is to "ease the transition from one promotional system to the other."

As previously pointed out by the City, battalion chief is one of the most important positions in the Fire Department. Battalion chiefs are in command at fire scenes, have numerous duties, etc. Nevertheless, as the proposal is understood, an individual who is currently in a rank equivalent to battalion chief, which means paid the same, but doesn't have three years of experience at a supervisory rank in the Fire Fighting Division, could still transfer to a battalion chief position even if he scored "qualified" instead of "highly qualified" and could be given preference to the battalion chief position in the Fire Fighting Division.

This portion of the City's proposal, for many of the reasons stated above, can be no more acceptable than was the provision regarding transfer into the Fire Fighting Division.

The Union has argued that the City's proposal is not in keeping with Proposal "N" and thus doesn't even live up to the Charter Amendment the City seeks to utilize as a basis for the acceptance of its proposal.

In light of the prior analysis of Proposal "N" and the City's duties under PERA, it really doesn't matter whether the City's promotional proposal complies with the Charter Amendment. There is no requirement that it must.

The Union has also argued that if the City was sincerely interested in the merit-based proposal, it would have provided that the Commissioner's authority would be limited to appointment in rank order from a single eligibility list. The Union argues that the establishment of the highly qualified, qualified, and unqualified pools is not consistent with the merit principle. The City suggests that some discretion in filling of supervisory positions is not unusual and, further, an acceptance of its proposal would not create huge pools of well-qualified candidates which would then permit the Commissioner to choose anyone he wanted.

According to the testimony of one of the Union's witnesses, the terms "highly qualified, qualified and unqualified" are too imprecise to allow a prediction of the number or percentage of applicants falling in each category. However, as previously indicated, Dr. Lifter's promotional model establishes that the top 25 percent of the total group will be considered highly qualified. Part of the reason seems to be that the test and promotional selection procedures are only accurate up to a few points and thus it would be appropriate to allow some discretion.

Theoretically, however, the highly qualified group could range from individuals who score 100 percent, to individuals who score 75 percent. That's a lot more than a few points. And, of course, there is always the question that if the testing and interview process is valid and the most qualified individual was sought, or at least the system was based on merit, why would not the highest scoring individual be chosen? It is also interesting to note that in a promotion to lieutenant the only criteria utilized to establish highly qualified, qualified and unqualified groups, excluding transfers, would be an oral interview.

If you apply the percentages and assumptions relied upon by the City in its brief, then it would be appropriate to conclude that for at least ranks other than sergeant, the number of individuals in the highly qualified pool would be approximately the same number as the anticipated openings. However, that assumption is based upon the data supplied by the Union which indicates openings in the various levels which took place as the natural consequence of the seniority promotional system. In other words, it seems the Union exhibits relied upon establish the circumstance only for the period in which those assumptions would be valid. Additionally, while not pure speculation, there is some educated guessing involved in arriving at the numbers displayed. Further, even under the assumption stated in the City's arguments, there would be approximately 36 sergeant openings to be filled by a choice applied to 134 fire fighters in the "highly qualified" group. Obviously this area of the proposal presents some problem, but this will be more specifically analyzed when the comparable data is considered. There is no history to discuss in reference to the City's proposal.

## APPLICATION OF SECTION 9 STANDARDS

When all is said and done, it is the duty of the panel to base its findings, opinions and order upon the standards contained in Section 9 of the Act. Those standards have previously been displayed. At this point it would be proper to attempt to summarize an application of the factors to the aspects of this case.

Actually the discussion would be more meaningful if the provision regarding comparable communities was the first one analyzed.

### 9(d)(i)(ii)

This is one of the factors contained in Section 9 which the parties generally spend a substantial amount of time in developing. This case was no exception. The panel is aware of the statements contained in the City's brief regarding the weight which other arbitrators have placed on the data regarding comparisons. The fact of the matter is that the statute does not establish the weight to be applied to each factor. Many times it has been found that the application of other factors in Section 9 support the continuation or the adoption of a provision which is unique in any comparison.

Oftentimes parties spend more time litigating the question of which communities shall be considered comparable to the community involved in the arbitration than they do any other aspect of the dispute. Thankfully, that was not the situation in this case. In developing the Promotional Practices Survey, Dr. Lifter relied upon the data involving 18 communities outside of Michigan, i.e., Baltimore, Boston, Chicago, Cleveland, Dallas, Honolulu, Houston, Los Angeles, Memphis, Milwaukee, New York, Philadelphia,



Phoenix, San Antonio, San Diego, San Francisco, San Jose and Washington, D.C. Additionally, he relied upon five Michigan out-state cities, i.e., Flint, Grand Rapids, Kalamazoo, Lansing and Saginaw. The survey utilized cities within the Detroit metropolitan area, i.e., Allen Park, Berkley, Birmingham, Dearborn, Dearborn Heights, Ecorse, Ferndale, Hamtramck, Highland Park, Inkster, Lincoln Park, Madison Heights, Plymouth, Pontiac, River Rouge, Royal Oak, Southfield, Southgate, Sterling Heights, Taylor, Warren, and Westland.

The Union utilized the same cities; thus, there is no need to enter into a lengthy discussion regarding which communities should be comparable to Detroit for the purposes of this hearing. All the data was considered.

There are a number of areas which can be utilized to make comparisons. For instance, if a general comparison is made between the City's proposal and the Union's proposal and the comparable data, with the purpose of determining which is more comparable in relation to the overall type of system used, it is clear that only five communities, all in Michigan, promote by seniority. All the others use some other type of system. So, certainly on that general level, the City's proposal is more comparable than the Union's. However, that doesn't end the examination.

There were also studies of the characteristics of promotional systems involved in promotions to the first, second, third and fourth rank. Numerous items were involved. For instance, the majority of the communities involved utilized seniority as a qualifying element for promotion. Most of

the requirements are five years or less and that is for each of the four ranks studied.

However, quite unlike the City's proposal, which gives no weight to seniority as a basis for promotion, seniority is utilized as a basis for promotion in a number of the cities considered, i.e., albeit to varying degrees.

The evidence also establishes that it is quite usual for seniority to be utilized on a department-wide basis rather than just a divisional basis.

The evidence also establishes that structured oral boards are used quite frequently as are written examinations. There is evidence which establishes that previous performance is utilized, as is assessment centers, and individual interviews. Again, there are varying degrees.

While there was evidence establishing the mean weight of various factors utilized to make promotions, i.e., written exam, seniority, oral board, previous performance and individual interview, since the exact weights to be applied to the City's proposal are unknown, there can't be any meaningful comparison.

The evidence also establishes that for promotion to the second supervisory rank, written examinations are often utilized. As indicated by the evidence, there is no written examination provided for in the City's proposal for the promotion to rank of lieutenant, except in situations of transfer.

Of all the cities considered, five promote by seniority, nineteen promote the top name on the list, one utilizes the top two, thirteen utilize

the top three, three utilize the top five, one utilizes the top ten and one is discretionary. The entry indicating discretionary is for Memphis and the evidence establishes that the parties are in the process of revising the promotional system. The point is, however, when you look all of the communities which promote other than by seniority, not one of them come close to supporting the highly qualified, qualified and unqualified pool concept which is part of the City's proposal. Furthermore, there is no indication that along with the departmental use of seniority there are transfer provisions, such as those which are contained in the City's proposal, which give preference to individuals transferring into the Fire Fighting Division.

There was also the evidence regarding the Detroit Police Department and the EMS Division. Frankly, it is very difficult to give much weight to the evidence regarding the promotional system in the Detroit Police Department. The operation of the Department and the duties and responsibilities of police supervisors are different than fire fighters and additionally and importantly, the Detroit Police Department is operating under an affirmative action program which essentially mandates a 50/50 promotional mix. The evidence regarding the EMS Division is not very helpful because the operation of the Division is much different and the officers have different types of duties than do the individuals involved in the ranks in question.

There was some evidence regarding a survey taken of private sector employers in the City of Detroit. It is difficult evidence to

analyze because there wasn't really much information given and it is difficult to equate or even gauge the duties, responsibilities and authority of the individuals involved in the survey with the duties, responsibilities and authority of the fire fighters occupying the ranks in question. Having said that, it is clear that the evidence establishes that seniority is not used as the sole promotional tool in promoting supervisors, but indeed is given weight as a basis of promotion in the majority of cases.

In summary, it appears the evidence establishes that in the general fashion the City's proposal is indeed supported by the evidence relating to this factor. However, as the information is more specifically analyzed, it is quite clear that the City's proposal, in two or three specific areas, is completely unique. There are more communities which promote solely on a seniority basis than there are that allow the type of discretion to choose candidates as is provided by the City's proposal.

9(a)

There has already been some analysis of the lawful authority of the Employer when the impact and probative value of the Charter Amendment was discussed. There can be no conclusion that the lawful authority of the Employer strongly supports the City's proposal. It doesn't. The Employer has a duty to collectively bargain and the law specifically provides that it must do so and in fact can enter into an agreement which conflicts with its Charter. Thus, the Employer's statement that there is no statutory authority permitting the City to adopt a pure seniority promotional system cannot be accepted. Additionally, the fact that the City's proposal may deviate somewhat from the Charter Amendment means nothing.

9(b)

There were numerous stipulations of the parties, but they related to evidentiary and other matters and except for the fact that they facilitated the hearing, are not really applicable in making the determinations required by the Act.

9(c)

The financial ability of the unit of government to meet the costs is not an applicable consideration in this case. There is no evidence that there would be any increase in cost regardless of which proposal were adopted. However, there was much evidence regarding the interest and welfare of the public. Clearly an analysis of that evidence supports the continuation of the status quo.

After carefully examining the entire record, it cannot confidently be concluded that the City's proposal would provide for the promotion of the most qualified candidate. In fact, in many respects it does not so provide. Nevertheless, it cannot be concluded that adoption of the City's proposal would guarantee an increase in the quality of officer, or more importantly, the performance of the Fire Department. The evidence establishes that the City of Detroit has a fine Fire Department and that status has been reached during the tenure of the present promotional system.

The evidence establishes that a continuation of the status quo would maintain the morale which if measured by employee turnover and performance of duty, must be more than acceptable. The adoption of the

City's proposal, an untested and substantial change from the status quo, would have a propensity to lower morale and ultimately could lead to a loss of motivation and efficiency. This of course would have an adverse effect on the interest and welfare of the public. The evidence does not establish that adoption of the City's proposal would enhance the interest and welfare of the public and to the contrary, suggests that its adoption may very well have the opposite effect.

9(f)

Consideration of the lack of turnover and stability in employment supports the status quo.

9(h)

As the Act recognizes, not all of the factors contained in Section 9 would be "applicable." Those mentioned above and 9(h) are the applicable factors.

Section 9(h) of the Act encompasses all those factors which are normally or traditionally taken into consideration in determining conditions of employment and voluntary collective bargaining, mediation, fact finding or otherwise. There has been reference to 9(h) throughout this Opinion and as with the other areas discussed in this section, it must be realized that all discussions have been considered in light of the factors even though the summaries stated herein appear.

In this regard it is quite clear that one of the factors traditionally taken into consideration is the nature of the condition of employment involved. In this case we are involved with a promotional system. The

promotional system should not be changed unless there has been a demonstrated need to do so. Given the evidence that the City of Detroit has an effective and efficient Fire Department and that the seniority promotional system has been in place for approximately one century without an attempt at alteration until just the last several years, it must be concluded that 9(h) factors clearly support continuation of the status quo.

#### SUMMARY

It must be concluded that a very thorough analysis of the whole record compels the panel to find that by utilizing the factors in Section 9 of the Act as the basis for its findings, opinions and order, competent, material and substantial evidence supports the decision to reject the Employer's proposal and continue the status quo.

Obviously during the executive sessions there were discussions regarding the appropriateness of the parties' positions and modifications which could be made thereto. Nevertheless, it is apparent that the evidence establishes that the status quo should continue rather than being replaced by the City's proposal or any modification thereof which the panel could have fashioned.

Q R D E R

The panel orders the continuation of the status quo, i.e., the Union's proposal and thus denies the City's proposal.

Mano Oleso  
IMPARTIAL CHAIRMAN

IMPARTIAL CHAIRMAN

Ronald R. Hewston AFFIRM  
UNION DELEGATE

UNION DELEGATE

CITY DELEGATE

Dated: April 26, 1985



O R D E R

The panel orders the continuation of the status quo, i.e., the Union's proposal and thus denies the City's proposal.

\_\_\_\_\_  
IMPARTIAL CHAIRMAN

\_\_\_\_\_  
UNION. DELEGATE

*Nancy Jane Rowe*  
CITY DELEGATE in dissent with a  
formal written dissent to follow  
and be made a part of the record  
hereof.

Dated: May 15, 1985

Pay for lost time for any City employees other than the aggrieved shall not apply to their participation in arbitration cases; provided that the City shall release employees from work to participate in arbitration cases, also provided, that the release of employees without pay does not adversely affect the operations of the Fire Department.

J. The Arbitrator shall not consider any issue submitted by either party which was not raised in the grievance procedure.

K. In a case involving discipline or discharge, if the arbitrator decides that the punishment imposed was unduly harsh or severe under the circumstances, he may vacate or modify the findings and punishment accordingly, and his decision shall be final and binding upon the parties and the affected employee.

L. Except as provided herein, the parties understand and agree that in making this Agreement they have resolved for its term all bargaining issues which were or which could have been made the subject of discussion. The arbitral forum here established is intended to resolve disputes between the parties only over the interpretation or application of the matters which are specifically covered in this Agreement or fairly inferable therefrom, and which are not excluded from arbitration.

#### 8. NO STRIKE CLAUSE

A. No employee covered by this Agreement shall engage in, induce or encourage any strike, work stoppage, slow-down, or withholding of services. The Union agrees that neither it nor any of its officers or agents will call, institute, authorize, participate in, sanction or ratify any such strike, work stoppage, slow-down, or withholding of services.

B. Should any employee or group of employees covered by this Agreement engage in

any strike, work stoppage, slow-down, or withholding of services, the Union shall forthwith disavow any such strike, work stoppage, slow-down, or withholding of services and shall refuse to recognize any picket line established in connection therewith. Furthermore, at the request of the City, the Union shall take all reasonable means to induce such employee or group of employees to terminate the strike, work stoppage, slowdown, or withholding of services and to return to work forthwith.

C. In consideration of the performance by the Union of its obligations under Paragraphs A and B of this Section, there shall be no liability on the part of the Union nor of its officers or agents for any damages resulting from the unauthorized breach of the agreements contained in this Section by individual members of the Union.

#### 9. SENIORITY

A. Seniority shall be defined for departmental purposes, as the length of continuous service within the Fire Department in classes covered in Schedule II. This definition shall not be applicable in cases of layoff and recall (refer to Section 9-K).

B. An up-to-date seniority list showing the names, classification and date of last promotion shall be furnished the Association on or before January 1st and July 1st of every year. A copy of the list shall be maintained in all company quarters and divisional offices for inspection by employees.

C. An employee shall forfeit his seniority only for the following reasons:

1. he resigns or quits;
2. he is discharged or permanently removed from the payroll and such separation is not reversed through

the grievance procedure or other legal action;

3. he does not return to work within five (5) calendar days after recall;
4. he does not return to work within three (3) calendar days after the expiration of a leave of absence; except a military leave of absence;
5. he retires on regular service retirement.

D. For purposes of this section, the divisions of the Fire Department shall be deemed to be, (a) fire fighting; (b) fire marshal; (c) apparatus; (d) training academy; (e) communications; (f) water supply; (g) research and development; and (h) community relations.

#### E. Promotions and Transfers — Fire Fighting Division

1. General: Promotions in the Fire Department shall be based on length of service therein. The officers or employee thereof having served the longest period in any position shall be advanced to fill any vacancy in the next higher position, if he shall have the qualifications therefor.

- a. Promotions shall be based solely upon seniority provided the senior employee shall satisfy qualifications for the position for which he is to be promoted.
- b. Such qualifications shall be determined by the Fire Commissioner subject to his bargaining obligations under the Public Employment Relations Act.
- c. Such promotional qualifications shall be reasonable, relevant, objective, non-arbitrary and non-competitive

d. No senior employee eligible for promotion, shall be by-passed unless he shall be affirmatively disqualified for cause by the Fire Commissioner, with reasons therefor stated in writing. The foregoing shall be inapplicable with respect to terminations under Title IX, Chapter 7, Article 6, Part a., Section I of the former City Charter, as amended.

e. Seniority credit for promotions to any position in the Fire Fighting Division shall be frozen and cease to accumulate for any member upon acceptance of a transfer and permanent promotion to any other division of the Department. In the event such person is returned to the Fire Fighting Division, he shall be reinstated with his frozen seniority.

f. Promotion to any rank shall require successful passage of a physical examination by the department physician.

g. No written qualifying examinations, competitive or non-competitive, shall be required as a condition of promotion.

2. The sequence of ranks for promotions shall be as follows:

- a. Fire Fighter to Fire Sergeant
- b. Fire Sergeant to Fire Lieutenant
- c. Fire Lieutenant to Fire Captain
- d. Fire Captain to Battalion Fire Chief
- e. And so on, in accordance with Article 7, Chapter 8 of the City Charter.

3. Promotions to Fire Engine Operator shall be made as follows:

- a. The sequence of promotion shall be:

- (1) Fire Fighter to Fire Fighter Driver
- (2) Fire Fighter Driver to Fire Engine Operator

b. Qualifications for promotion to Fire Fighter Driver shall be as follows:

- (1) Shall be most senior on the official Department Fire Fighter Driver applicant list.

**NOTE:** Placement on the Fire Fighter Driver applicants list shall occur as follows: At the discretion of the Fire Commissioner, a period of time shall be declared open for members with at least two (2) years of seniority in the Department to submit an application to the Fire Commissioner to be placed on the Fire Fighter Driver applicants list. At the close of such period of time, all applications shall be placed in the order of the member's seniority in the Fire Fighting Division and the names of the applicants shall be placed on the Fire Fighter Driver applicants list in such order, at which time the list shall be closed until the list of names drops below a level determined to be necessary by the Fire Commissioner.

- (2) Shall be certified by the Training Academy as qualified "2 star" driver.

- (3) Shall successfully pass physical examination by department physician.

c. Qualifications for promotion to Fire Engine Operator:

- (1) Shall be most senior Fire Fighter Driver on official Department Fire Fighter Driver list.
- (2) Shall successfully pass physical

examination by department physician.

d. Relationship to Fire Fighting Division Seniority: Generally, promotion to Fire Fighter Driver allows members so promoted to accrue seniority towards promotion to Fire Engine Operator or to Fire Sergeant. When, due to seniority on the Fire Fighter Drivers list, member is eligible for promotion to the rank of Fire Engine Operator, member shall have the option of taking the promotion to Fire Engine Operator at which time seniority towards promotion to the rank of Fire Sergeant ceases; on declining promotion to the rank of Fire Engine Operator, he shall retain all seniority toward promotion to the rank of Fire Sergeant, but shall automatically be demoted to the position of Fire Fighter and removed from the (FID) list. Such election of options must be made in writing to the Fire Commissioner within thirty (30) calendar days notice of the impending vacancy. The following shall be deemed applicable and of force and effect: Fire Commission Bulletin No. 965, date, 5-9-52; Chief of Department Bulletin No. 56, date, 9-8-52; Departmental Rules and Regulations, Article 18, Section 7.

Seniority toward promotion to the ranks of Fire Sergeant, Fire Lieutenant and Fire Captain and other higher ranks in the Fire Fighting Division shall cease upon promotion to the rank of Fire Engine Operator. If a member so promoted to Fire Engine Operator subsequently decides to seek promotion to Fire Sergeant, he must request demotion to the rank of Fire Fighter in writing to the Fire Commissioner, at which time he shall be returned to the Fire Fighters seniority list, minus all time spent in the

rank of Fire Engine Operator (In accordance with the former Departmental Rules and Regulations, Article 18, Section 6, 7, and 8).

#### 4. Transfer of Location:

Employees in the Fire Fighting Division seeking location transfers will be offered a transfer to the location of their preference where a vacancy exists, in accordance with seniority, where practicable, and in such a manner as will not adversely affect the operation of the department.

The transfer list will be used, on a quarterly basis, to fill those vacancies created by promotional assignments or retirements.

Members will be allowed ten (10) calendar days after notification of the closing of that transfer period to apply for transfer.

When a member's request for transfer is honored his original company will be considered a vacancy during the next transfer period.

Application for transfer shall remain on file only until the transfer list is effectuated. Employees will be entitled to only one transfer during each fiscal year July 1 through June 30.

A copy of each transfer request shall be sent to the Commanding Officer of the location requested and kept on file at that location until the date that the transfer list is effectuated.

Mutual trades between members shall not be permitted.

Where a vacancy exists because an individual is promoted, such vacancy in location shall be filled by an eligible transferee under the procedures herein, rather than by the successor promotee.

Battalion Directors will not be transferred from the Battalion they have been elected to serve during their term of office.

#### F. Transfer from Fire Fighting Division and promotion or reclassification in other divisions of the Department.

1. Members may apply for transfer to the Fire Marshal Division under procedures as outlined in Executive Chief of Fire Department Bulletin No. 14, dated Feb. 20, 1969, as a Fire Prevention Inspector or as a Fire Investigator Lieutenant as outlined in Executive Chief of Fire Department Bulletin No. 40, dated May 21, 1970. All applications, within the time periods set forth on the bulletins as currently issued from time to time, must be in writing.

2. At such time as the member successfully passes the qualifying examination procedure, he shall be placed on an eligibility list for either Fire Prevention Inspector or Fire Investigator Lieutenant (whichever position he applied for) according to his Department seniority.

3. As openings occur in either the Arson Section or the Fire Prevention Section of the Fire Marshal Division, the member who is senior on the list for either position requested shall be transferred to the Fire Marshal Division at which time he then commences to serve a six (6)

Fire Department or the City's deficit funding bond sale, will be withdrawn.

O. The parties agree that, within thirty (30) days of the execution of this agreement, they shall hold a special conference with a representative from the Personnel Department in attendance regarding the application of the City's Attendance Control Program.

P. Effective July 1, 1981 all Arson Division employees shall be provided at no charge with their department-issued service revolver upon retirement. The department may refuse to give employees their revolvers for good cause shown.

Q. A joint management/labor Act 312 Study Committee shall be established consisting of three (3) management representatives and three (3) union representatives. This committee shall study the historical use of Public Act 312 in Detroit. The committee shall review all available studies/including, but not limited to the State of Michigan's Department of Management and Budget/Department of Labor Study and the Secret Committee Report. The goal of this committee is to explore possible mutual recommendations regarding Public Act 312, which would benefit Detroit employees and provide for the maintenance of the fiscal integrity of the City of Detroit.

R. The parties agree to appoint a six (6) member committee, with three (3) members appointed by the Detroit Fire Fighters Association and three (3) members appointed by the City, to make recommendations to the parties as to their

differences concerning promotional criteria. Such recommendations shall be made by July 1, 1982. Should the parties be unable to agree upon the recommendations of the committee, or if no recommendations are made by the committee by July 1, 1982, the matter shall be considered an unresolved negotiation issue, and it shall be submitted immediately to the Act 312 arbitration panel, chaired by Mr. Mario Chiesa, currently appointed to hear outstanding issues between the parties.

#### S. ~~Crediting Pre-Employment Military Service~~

The terms of Ordinances 356H and 357H, which are attached to this agreement as Exhibits II and III, shall apply to all members of the bargaining unit.

### 13. CONVENTIONS

A. Subject to the operating needs of the Fire Department as determined by the Fire Commissioner, time off without loss of pay shall be granted to all delegates duly elected to attend annual state or national conventions of Veterans' organizations with National Congressional Charters with dates and locations as approved by City Council. Such time off shall be charged to vacation or compensatory time banks in accordance with City Council Resolutions.

B. The Union may from time to time request City Council to approve attendance at state or national conventions of labor organizations by City employees without loss of time or pay.

### 14. MAINTENANCE OF WAGES AND HOURS

Wages, hours and conditions of employment legally in effect on the effective date of

this agreement, shall, except as improved herein, be maintained during the term of this agreement.

It is not the intent of this article to restrict, interfere with; prevent or hinder the City from carrying out its duties and responsibilities to the public well being, by way of illustration, but not limitation, these rights, duties and responsibilities enumerated in Article 2 and the Purpose and Intent clause hereof, subject to the City's obligations under PERA and other laws.

#### 15. HOURS AND LEAVE DAYS

The leave of absence of uniformed members of the Fire Fighting Division of the Fire Department shall be, for each member, one day of twenty-four (24) hours off duty in every forty-eight (48) hours, and an additional twenty-four (24) consecutive hours off duty in each six-day period (such additional twenty-four consecutive hours to be joined with proximate regular leave days so as to afford a leave period of seventy-two (72) consecutive hours), and an average of an additional twenty-four (24) consecutive hours off duty in every thirty (30) day period, thereby requiring such persons to work an average of 50.4 hours per week; and a furlough of twenty (20) days in each year.

#### 16. ADOPTION BY REFERENCE OF RELEVANT CHAPTER PROVISIONS, ORDINANCES AND RESOLUTIONS

The parties further agree that subject to this Agreement, all existing provisions of the City Charter, the Ordinances and Resolutions of the City Council, as previously amended from time to time, relating to the working conditions and compensation of department per-

sonnel are incorporated herein by reference and made a part hereof to the same extent as if they were specifically set forth.

#### 17. TEMPORARY ASSIGNMENTS

A. When an employee is assigned on a temporary basis to perform the duties of a higher classification for a period of twelve (12) hours or more, he shall be compensated at the rate of the higher classification from the first hour in accordance with the situations listed below:

Regular Classification	Classification of Temporary Assignment
Fire Fighter	Fire Fighter Driver
Fire Fighter	Fire Firefighter
Fire Fighter Driver	Fire Engine Operator
Fire Fighter Driver	Fire Sargeant
Fire Captain	Battalion Fire Chief

B. When an employee is assigned on a temporary basis to perform the duties of a higher classification for a period of eight (8) hours or more, he shall be compensated at the rate of the higher classification from the first hour in accordance with the situations listed below:

Regular Classification	Classification of Temporary Assignment
Battalion Fire Chief	Deputy Fire Chief
Fire Prevention Inspector	Senior Fire Prevention Inspector

#### 18. WORK RELIEFS

All previous rules and procedures relating to the trading of work time between employees covered by this Agreement are abolished and replaced with the following:

- A. Employees are responsible for working their assigned and scheduled hours.
- B. "Buddy Reliefs" in the morning will

(10) Only honorable military service during the following periods:

World War II — December 8, 1941 to July 1, 1946.

Korean Conflict — June 27, 1950 to December 31, 1953.

Vietnam Conflict — August 5, 1964 to May 7, 1975, are applicable to this section.

(11) The military service credit pursuant to this section shall not apply toward meeting the minimum service and age requirements for vesting for a non-duty disability pension or for a service pension. Such service credit may be used in meeting the minimum time needed for an automatic Option Two Pension in case of death of a member.

(12) In no case shall benefits be based on the military service credit provided by this section unless the member shall have been credited a minimum of eight years of service credit, not including military service credit.

(13) Special service, contractual, part time, seasonal and summer camp employees are not eligible for the military service credit.

(14) In cases of doubt, the Board of Trustees will determine whether a member is entitled to the benefits of this section consistent with the requirements and limitations herein.

(ICC P. 317-18, January 31, 1979)

Passed: November 21, 1979  
Approved: November 30, 1979  
Published: December 7, 1979  
Effective: December 30, 1979

JAMES H. BRADLEY  
City Clerk

## MEMORANDUM OF UNDERSTANDING

Between The  
CITY OF DETROIT  
And The

### DETROIT FIRE FIGHTERS' ASSOCIATION

Specifically, with respect to Articles 9 and 15 hereof the parties hereby reserve all rights and defenses which they have by reason of court and Michigan Employment Relations Commission decisions, including by way of illustration but not limitation, the following: *Brady v. City of Detroit*, 353 Mich. 243 (1958); *Detroit Fire Fighters' Association v. Board of Fire Commissioners of City of Detroit*, 366 Mich. 45 (1962);

*Detroit Fire Fighters' Association v. Board of Fire Commissioners and Civil Service Commission*, Wayne Circuit Court No. 11517 (Hon. John Wise);

*Detroit Fire Fighters' Association v. City of Detroit*, Wayne Circuit Court No. 92761 (Hon. Charles Kaufman);

*Detroit Fire Fighters' Association v. Board of Fire Commissioners of City of Detroit*, Wayne Circuit Court No. 560-033 (Hon. Geo. E. Bowles);

Michigan Employment Relations Commission No. C678 F-56, *City of Detroit Board of Fire Commissioners v. Detroit Fire Fighters' Association*, enforced, 22 Mich. App. 137;

Michigan Employment Relations Commission Case No. C63 D-37, *City of Detroit Board of Fire Commissioners and Local 344, Detroit Fire Fighters' Association*.

Dated this 31st day of March, 1982.

DETROIT FIRE FIGHTERS' CITY OF DETROIT

ASSOCIATION, LOCAL 344 By: /s/ MARK R. ULICNY,

By: /s/ EARL J. BERRY,

President,

Detroit Fire Fighters Assoc.

Director,

Labor Relations

Division



City 3

## NEW ARTICLE X

Promotions and TransfersPromotion and Transfers to the Supervisory Rank of  
Sergeant and Above -- Firefighting Division.

- 1) Examinations for the supervisory ranks of sergeant and above shall be announced at such time or times as the City deems necessary, provided, however, that an examination for each such rank listed in paragraph two (2) below shall be administered at least biennially. A closing date for the receipt of applications shall be set forth in the announcement for each examination. Applications received after the closing date will not be considered.
- 2) The sequence of ranks for promotion, and the basic eligibility requirements, for the supervisory ranks of sergeant and above shall be as follows:
  - a) Fire Sergeant - Applicants must have, as of the date of the announcement of the examination, a minimum of five (5) years of active service in the Fire Department, with at least three (3) years of active service in the Firefighting Division.
  - b) Fire Lieutenant - Applicants must have, as of the date of the announcement of the examination, a total of at least seven (7) years of active service in the Fire Department, with a minimum of either:
    - i) two (2) years of active service in the rank of sergeant in the Firefighting Division;
    - or

- ii) two (2) years of active service in a rank equivalent to lieutenant in another non-civilian division.
- c) Captain - Applicants must have, as of the date of the announcement of the examination, a total of at least ten (10) years of active service in the Fire Department, with a minimum of either:
  - i) three (3) years of active service in the rank of lieutenant in the Firefighting Division; or
  - ii) three (3) years of active service in a rank equivalent to lieutenant or higher in another non-civilian division.
- d) Battalion Chief - Applicants must have, as of the date of the announcement of the examination, a total of at least fifteen (15) years of active service in the Fire Department, with a minimum of either:
  - i) three (3) years of active service as a captain in the Firefighting Division; or
  - ii) hold a rank equivalent to captain in another non-civilian division and possess a minimum of at least three (3) years experience at a supervisory rank in the Firefighting Division.

For purposes of this Article, the term "active service" shall mean time when the employee is on the active payroll of the

Fire Department but shall not include periods of layoff, leave of absence, periods of suspension, or duty disability pension time. Equivalency of rank shall be in accordance with the parity relationships established in Schedule I paragraph B which is appended to this agreement.

- 3) Applicants for transfer or promotion to the ranks listed in paragraph 2 above shall be required to successfully complete such written and/or oral examinations and interviews as required by the City. Upon completion of such examinations and interviews the applicants shall be deemed to be:

- a) highly qualified;
- b) qualified;
- c) unqualified,

and shall be placed on appropriate lists. Such lists shall be in effect for a period of one (1) year, but may be extended for an additional year at the option of the Civil Service Commission upon the recommendation of the Fire Commissioner. During the period the lists are in effect, promotions and/or transfers to the ranks listed in paragraph 2 above shall be made by the Fire Commissioner first from the highly qualified list until such list is exhausted, and then from the qualified list, provided, however, where a person is transferring to an equivalent rank in the Firefighting Division, said person, if deemed qualified, shall be given preference over applicants of lower rank, *subject to commissioner's approval.* -OK

B- Promotions and Transfers to Supervisory Ranks in  
Other Non-Civilian Divisions.

- 1) Non-civilian divisions other than the Firefighting Division are:

- a) Fire Marshalls Division
  - b) Water Supply Division
  - c) Training Academy Division
  - d) Community Relations Division
  - e) Research and Development Division
- 2) Promotions or transfers to supervisory ranks in non-civilian divisions other than the Firefighting Division shall be in accordance with a selection process determined by the City that is comparable to the selection process set out in Paragraph "A".

C- Promotions to Non-supervisory Positions -- Firefighting Division

- 1) Promotions to the rank of Fire Fighter Driver shall be made on the basis of length of service from qualified Fire Fighters on the official department Fire Fighter Driver applicant list established in accordance with current practices. Qualifications shall include a minimum of two (2) years of service, and successfully completing a required course of training.
- 2) Promotions to the rank of Fire Engine Operator shall be made on the basis of length of service from persons on the official department Fire Fighter Driver list. Candidates must demonstrate possession of the skills and abilities required to perform the duties of a Fire Engine Operator.

D- Transfer From Firefighting to Nonsupervisory Positions in Other Divisions

- 1) Employees may apply for transfer promotions to the following positions in accordance with the procedures set forth in the following bulletins:

Position

Bulletin

Fire Prevention Inspector	#14 dated February 20, 1969
Fire Investigator Lieutenant	#40 dated May 21, 1970
Fire Training School Instructor-Lieutenant	#14 dated February 20, 1969
Fire Department Water Supply Investigator	#11 dated February 11, 1970
Fire Community Relations Officer-Lieutenant	#111 dated September 13, 1972
Fire Research and Development Assistant-Lieutenant	#111 dated September 13, 1972

- 2) At such time as the employee successfully passes the qualifying examination procedure he shall be placed on an eligibility list, for the position sought, in the order of his Department Seniority. Vacancies in the position shall be filled from this eligibility list starting with the most senior member so qualifying.

E- Promotions and Transfers to Civilian Positions

- 1) Requests for transfer to the entry-level position of Assistant Fire Dispatcher in the Communications Division shall be submitted in writing to the Fire Commissioner. Such requests shall be acted upon by the Fire Commissioner based upon an evaluation of the person's suitability for the classification and shall include a qualifying examination administered by the City's Personnel Department.
- 2) Promotions to senior or supervisory positions in the Communications and Apparatus Divisions shall be initiated by the Fire Commissioner in accordance with the Rules of the Personnel Department.

F- Promotion and Transfers from Civilian Divisions

Employees in the Apparatus and Communications Division may not be promoted or transferred to a non-civilian division of the Fire Department.

G- Probation Periods

All promotions, transfers between divisions and other status changes to another classification shall be subject to a six (6) month probation period. If during the probation period, the employee's work performance is found to be unsatisfactory, he/she will be returned to the previously held classification unless cause for discharge is appropriate.

H- Physical Examination

Promotion or transfer to any rank shall require the successful passage of a physical examination by the department physician.

I- Transfer of Location - Firefighting Division

Employees in the Firefighting Division seeking location transfers will be offered a transfer to the location of their preference where a vacancy exists, in accordance with seniority, where practicable, and in such a manner as will not adversely affect the operation of the department.

The transfer list will be used, on a quarterly basis, to fill those vacancies created by promotional assignments or retirements.

Members will be allowed ten (10) calendar days after notification of the closing of that transfer period to apply for transfer.

When a member's request for transfer is honored his original company will be considered a vacancy during the next transfer period.

Application for transfer shall remain on file only until the transfer list is effectuated. Employees will be entitled to only one transfer during each fiscal year July 1 through June 30.

A copy of each transfer request shall be sent to the Commanding Officer of the location requested and kept on file at that location until the date that the transfer list is effectuated.

Mutual trades between members shall not be permitted.

Where a vacancy exists because an individual is promoted, such vacancy in location shall be filled by an eligible transferee under the procedures herein, rather than by the successor promotee.

Battalion Directors will not be transferred from the Battalion they have been elected to serve during their term of office.

Positions above the rank of Battalion Chief or its equivalent shall be filled in accordance with Sections 7-802 and 7-204 of the City Charter.

page 1 of 3  
City

MEMORANDUM OF UNDERSTANDING

It is agreed by the parties that the requirement of "at least three (3) years' experience at a supervisory rank in the Fire Fighting Division" set forth in Article X, Section 2 (d) (ii) is waived for all individuals who, at the execution date of this Agreement, hold a rank equivalent to <sup>Battalion Chief</sup> Captain in a non-civilian division other than Firefighting.

DETROIT FIRE  
FIGHTERS ASSOCIATION

CITY OF DETROIT

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



# CITY OF DETROIT

## FIREFIGHTING DIVISION

### PROMOTION AND TRANSFER SYSTEM MODEL

#### To Sergeant

##### I. Minimum Seniority

5 years in Fire Department, with at least three years in Firefighting Division.

#### To Lieutenant

7 years in Fire Department, with a minimum of 2 years either as Sergeant in Firefighting Division, or in a rank equivalent to Lieutenant or higher in another non-civilian Division.

#### To Captain

10 years in Fire Department, with a minimum of 3 years either as Lieutenant in Firefighting Division, or in a rank equivalent to lieutenant or higher in another non-civilian Division.

#### To Battalion Chief

15 years in Fire Department, with a minimum of 3 years either as Captain in Firefighting Division, or a rank equivalent to Captain in another non-civilian Division (including a minimum of at least three years in Firefighting Division in a supervisory rank\*).

#### II(a). Written Examination

##### Content Areas

- Written Communications
- Knowledge of Equipment
- Knowledge of Emergency Medical Procedures
- Knowledge of Fire Techniques
- Knowledge of Rules/Regulations

#### II(b). Situational Examination

##### Content Areas

- Judgment, Decision-Making, Problem Solving
- Knowledge of Equipment
- Knowledge of Fire Techniques

#### III. Oral Interview

##### Content Areas

- Oral Communications
- Interpersonal Skills
- Judgment, Decision-Making, Problem Solving
- Knowledge of Fire Techniques
- Supervisory Ability
- Personal Characteristics

#### IV. Performance Appraisal

Conducted by one or more superior officers.

#### V. Physical Examination

By Department Physician

##### Content Areas

- Oral Communications
- Interpersonal Skills
- Judgment, Decision-Making, Problem Solving
- Knowledge of Fire Techniques
- Knowledge of Rules/Regulations
- Supervisory Ability
- Personal Characteristics

Conducted by one or more superior officers.

By Department Physician

##### Content Areas

- Oral Communications
- Interpersonal Skills
- Judgment, Decision-Making, Problem Solving
- Knowledge of Fire Techniques
- Supervisory Ability
- Personal Characteristics

Conducted by one or more superior officers.

By Department Physician

##### Content Areas

- Oral Communications
- Interpersonal Skills
- Judgment, Decision-Making, Problem Solving
- Knowledge of Fire Techniques
- Supervisory Ability
- Personal Characteristics

Conducted by one or more superior officers.

By Department Physician

NOTE: Persons transferring to equivalent rank in Firefighting Division have preference for first available position, after qualification, subject to Commissioner's approval.

\* Parenthetical requirement will not apply to persons currently holding rank equivalent to Battalion Chief in non-civilian Division.

CITY OF DETROIT  
FIREFIGHTING DIVISION

EXHIBIT 4

OVERVIEW OF PROMOTION AND TRANSFER SYSTEM OPERATIONS

<u>To Sergeant</u>	<u>To Lieutenant</u>	<u>To Captain</u>	<u>To Battalion Chief</u>
1. Announce promotional examination and accept applications.	Announce promotional examination and accept applications.	Announce promotional examination and accept applications.	Announce promotional examination and accept applications.
2. Confirm applicant eligibility based on service requirements.	Confirm applicant eligibility based on service requirements.	Confirm applicant eligibility based on service requirements.	Confirm applicant eligibility based on service requirements.
3. Administer written and situational examinations.	In cases of transfer from another non-civilian Division, administer written and situational examinations.	Administer written examinations (for applicants from another non-civilian Division, also situational examination).	Administer written examination.
4. Reject those below minimum qualifying score.	Conduct oral interview; 3-person panel-Captain or Battalion Chief selected by Chief of Fire Operations, Commissioner or designee, Personnel Director or designee.	Reject those below minimum qualifying score.	Reject those below minimum qualifying score.
5. Conduct oral interview; 3-person panel-Captain or Battalion Chief selected by Chief of Fire Operations, Commissioner or designee, Personnel Director or designee.	Consolidate interview ratings and reject those below minimum qualifying score.	Conduct oral interview; 3-person panel-Battalion Chief selected by Chief of Fire Operations, Commissioner or designee, Personnel Director or designee.	Conduct oral interview; 3-person panel-Commissioner or designee, Chief of Fire Operations, Personnel Director or designee.
6. Consolidate interview ratings, and reject those below minimum qualifying score.	In cases of transfer from another non-civilian Division, combine test and interview scores and designate qualified or unqualified (see note below).	Consolidate interview ratings, and reject those below minimum qualifying score.	Consolidate interview ratings, and reject those below minimum qualifying score.
7. Combine test and interview scores.	Identify "highly qualified," "qualified," and "unqualified" groups based on combined scores.	Combine test and interview scores.	Combine test and interview scores.
8. Identify "highly qualified," "qualified," and "unqualified" groups based on combined scores.	Highly qualified undergo physical examination (qualified as needed).	Identify "highly qualified," "qualified," and "unqualified" groups based on combined scores.	Identify "highly qualified," "qualified," and "unqualified" groups.
9. Highly qualified undergo physical examination (qualified as needed).	Obtain performance appraisals from one or more superior officers.	Highly qualified undergo physical examination (qualified as needed).	Highly qualified undergo physical examination (qualified as needed).
10. Obtain performance appraisals from one or more superior officers.	Commissioner makes selections from highly qualified group initially; once exhausted, then from qualified group.	Obtain performance appraisals from one or more superior officers.	Obtain performance appraisals from one or more superior officers.
11. Commissioner makes selections from highly qualified group initially; once exhausted, then from qualified group.		Commissioner makes selections from highly qualified group initially; once exhausted, then from qualified group.	Commissioner makes selections from highly qualified group initially; once exhausted, then from qualified group.

NOTE: Highly qualified and qualified listings in effect for one year, and can be extended for one additional year at City's option.