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AMERICAN ARBITRATION ASSOCIATION

In the matter of Arbitration between

CITY OF DEARBORN

-and-

DEARBORN FIRE FIGHTERS ASSOCIATION, LOCAL 412, I.A.F.F., AFL-CIO

OPINION and AWARD

The undersigned, Barry C. Brown, was appointed by the American Arbitration Association to render an opinion and award in its case No. 54 39 0915 75. Hearing was held at the City Hall in Dearborn, Michigan on October 16, 1975.

Appearing for the City:

Eugene Forbes, City Attorney
Dudley Sherman, Personnel Director
Gerald Harder, Fire Dept. Batt. Chief
Emily Grell, Admin. Asst.

Appearing for the Union:

Ronald Helveston, Attorney
Joseph Kovach, President, Local 412
Edward Mosho, Vice President
Louis Terrish, Secretary
John Abel, Firefighter

The parties' briefs were received on November 10, 1975 and thereafter the record was closed.

ISSUE:

Does the arbitrator have the authority and jurisdiction to interpret and enforce a contract clause adopted by a statutory arbitration panel, which clause the employer asserts is void, illegal and unenforceable?

BACKGROUND:

The facts in this case are not in dispute. On May 25, 1975 the City issued a directive to all Battalion Chiefs stating in part, "...Effective immediately the Reserves will have the primary responsibility of responding to and handling grass, field and leaf fires in a [described] district..."

The employer stipulated that the above shown directive does violate the Bargaining Unit Erosion Section XXIII contained in an interest arbitration award dated February 10, 1975. This award had been the result of proceedings under Act 312 of Public Acts of 1969, as amended, which statutorily imposes binding arbitration to settle collective bargaining impasses in police and firefighter units.

There are no threshold issues as to timeliness and procedure. However, the employer contends that the arbitrator's authority is limited to interpreting and enforcing the provisions of the contract between the parties existing prior to the disputed Act 312 arbitration award. Further, the City asserts that the sole enforcement remedy for the union under these circumstances is an appeal to a Circuit Court. Neither the employer nor the union had carried an appeal of

the Act 312 arbitration award to the courts in the more than ten months since it was handed down. Apparently, all provisions of that Act 312 award have been adopted and are being followed by the employer, except the portion here in dispute concerning Bargaining Unit Erosion.

It is clear that if the arbitrator has authority and jurisdiction over this matter the employer is in violation of that section of the Act 312 award.

PERTINENT CONTRACT PROVISION

ARTICLE VI.

Section B

Step 3. "...The arbitrator shall have the authority and jurisdiction to determine the propriety of the interpretation and/or application of the collective bargaining agreement respecting the grievance in question, but he shall not have the power to alter, modify or add to the terms of this Agreement. The decision of the arbitrator shall be final and binding on the parties and affected employees."

PERTINENT STATUTORY PROVISIONS

Act 312, of Public Acts of 1969, as amended, M.S.A.17.455(31) Section 1.

It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law

prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed. Section 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 commencement of a new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in ratesof compensation awarded by the arbitration panel under section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this act, the foregoing limitation shall be inapplicable, and such awarded increases may be retroactive to the commencement of such fiscal year any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

Section 12.

Orders of the arbitration panel shall be reviewable by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its jurisdiction; the order is unsupported by competent, material and substantial evidence on the whole record; or the order was procured by fraud, collusion or other similar and unlawful means. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel.

PERTINENT ACT 312 PANEL AWARDS

ISSUE NO. 1 -- DURATION

The arbitration panel by a majority vote ruled on the economic issue of duration by adopting the Union's last offer of settlement calling for a two-year collective bargaining agreement, effective July 1, 1974, remaining in full force and effect to and through June 30, 1976.

In summary, the evidence is that both Union Exhibit No. 28 and the City of Dearborn's Exhibit 16 show that over eighty-two percent of the Union's comparable cities (28 out of 34) and over seventy-three of the Employer's comparable cities have (or most recently had) a contract of two-year's duration.

At the hearing a majority of the panel at the recommendation of the Chairman granted a two-year contract.

Mr. Helveston concurs, Mr. Sherman dissents.

ISSUE NO. XXIII -- BARGAINING UNIT EROSION

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Employees of the Fire Department of the City of Dearborn shall continue to perform, and no person other than an employee of the Fire Department of the City of Dearborn shall perform, work normally and customarily performed by employees of the Fire Department of the City of Dearborn prior to January 1, 1974.

This restriction on the performance of bargaining unit work by persons other than those employed within this collective bargaining unit shall commence 30 days after the issuance of the arbitration award herein and shall remain in effect for the duration of this collective bargaining agreement. It is understood that this restriction on the performance of bargaining unit work by persons other than those employed within this collective bargaining unit shall not serve to foreclose the City of Dearborn from entering into mutual aid pacts with cities and/or other municipalities with whom no mutual aid pact was in existence on or prior to January 1, 1974.

DISCUSSION

An Act 312 arbitration panel's decision creates a collective bargaining contract as binding and enforceable as an agreement reached in the usual negotiation process. The disputed issues resolved by the panel are incorporated with other matters settled in nego-

tiations and with extensions of portions of the prior agreement which were not disputed by the parties. The labor contracts for firefighter and police units which result from this process have been regularly interpreted and enforced by arbitrators. The 312 award clauses are simply incorporated into the total document and the grievance and arbitration provisions are equally applicable to the 312 provisions as they are to all the remainder of the contract. In fact, portions of the employer's pre-1975 agreement with the firefighters were the product of previous Act 312 panel awards. From the foregoing it seems clear that if the parties incorporate 312 awards into their collective bargaining agreements, such provisions are subject to the arbitrator's jurisdiction.

The City contends here, however, that it never did accept the Act 312 panel's award of February 10, 1975 concerning erosion of the bargaining unit. No new agreement had been signed by the parties incorporating the terms of the 312 award. However, as a practical matter, the City has accepted the other provisions of the award. That is, the pay rates, fringe benefits, etc. awarded therein are now being paid. See Appendix A attached. The contract in existence prior to the Act 312 award are also being followed by the Employer regarding the union's security and activities, the grievance procedure, dues deductions, salaries, hours, and condtitions of work. Thus, the City maintains it may adopt a portion of this statutory interest arbitration award while rejecting another portion and not be forced to a court to preserve its position that the award was in some way improper.

Section 12 of Act 312 of Public Acts of 1969 provides that: "Orders of the arbitration panel shall be reviewable by the circuit court..." This section provides the specific language to implement the general language of Section 10. It does not follow, however, that if neither party seeks such review, the collective bargaining agreement created is not binding or enforceable within the terms of its own dispute settling mechanics. To the contrary, as with any arbitration award, if a party is not satisfied with such award they must promptly gain the court's opinion that it was unlawful for one of the narrow reasons stated in Section 12. Otherwise the award is final and binding. Surely a party cannot refrain from seeking to overturn the award and then pick and choose those portions of the award they feel meritorious. Even if the City had sought court review the language of Section 12 provides: "...The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel." The implication of this provision is that the Act 312 award is binding until a court rules otherwise. No court has ruled that the Act 312 award involved here is in any way defective.

In a prior 312 panel award the City did pursue an unsuccessful court review to the State Supreme Court. In the Act 312 panel award involved in this matter, the City did initiate an appeal to the Wayne County Circuit Court, but it later stipulated to a dismissal without prejudice. By its failure to pursue its remedies under the law and by its adoption of portions of the award it is now bound to follow the Act 312 panel award and to treat that award as a

part of its current agreement with the firefighters.

AWARD

The arbitrator has jurisdiction to review the city's actions concerning alleged violations of Section XXIII Bargaining Unit Erosion, which is a part of its current agreement with the Fire Fighters. The City's actions violated that section. The City should rescind its order to Battalion Chiefs dated May 25, 1975. Henceforth the City should comply with the bargaining unit erosion clause in the collective bargaining agreement between the parties.

Barry C. Brown

BARRY C. BROWN, Arbitrator

November 28, 1975

APPENDIX "A"

SUMMARY OF AWARDS

Issue No. I -- The Collective Bargaining Agreement is effective July 1, 1974, remaining in full force and effect to and through June 30, 1976, unless noted in the award otherwise.

Issue No. II -- Wages shall be increased as requested by the Union for an increase of 11% the first year, and the City's request of an increase of 7% on July 1, 1975, is granted.

Issue No. III -- No cost-of-living formula is granted in this contract.

Issue No. IV -- The two-year service increment schedule as requested by the Union is retained.

Issue No. V -- The Union's request to continue the status quo of a no service increment for any classification other than Fire Fighter I is to be continued.

Issue No. VI -- The City's request for the longevity payments shall be continued.

Issue No. VII -- The average number of hours worked per week of fifty-six (56) shall be continued to and through June 30, 1976.

Issue No. VIII -- The City's request as to Sick Leave Accumulation is granted.

Issue No. IX -- The parties have agreed to continue the language as written in the recently expired contract on this issue.

Issue No. X -- The City's offer of an increase from $10,000 to $11,000 fully paid by the City is granted.

Issue No. XI -- The Union's request to eliminate the waiting period and provide immediate life insurance coverage from the first day of employment is granted.

Issue No. XII -- As to Accidental Death and Dismemberment, the City's request as to current coverage is granted.

Issue No. XIII -- The City's offer of a dental plan is granted.

Issue No. XIV -- The Union's request for an optical Care plan is denied.

Issue No. XV -- The City's offer to continue the present vacation schedule for firemen working 24-hour shift is granted.

Issue No. XVI -- The City's request to continue the present vacation schedule for firemen on the 40-hour shift is continued.

Issue No. XVII -- The City's offer to continue the present service annuity benefit at the same level of 1/50th of each service year to a maximum of 50% is granted.

Issue No. XVIII -- The Union's request to alter the definition of average final compensation for employees retiring on or after July 1, 1975, to in effect means the highest average of three years of service in the past ten years of employment, rather than as at present the average of the last five years of service, is granted.

Issue No. XIX -- The City's request that firefighters as other City employees will continue the current 5% employee contribution is granted.

Issue No. XX -- The City's offer to continue the present pay for acting rank is granted.

Issue No. XXI -- The Union's request for the continuance of the minimum basic manpower language in the last Agreement will be continued and is granted in this arbitration.

Issue No. XXII -- In the matter of promotions the parties have stipulated to continue the language in Section 9b from the most recent contract into this collective bargaining agreement.

Issue No. XXIII -- In regard to the erosion of the bargaining unit issue the Union's last best offer and the language thereto is accepted.

Issue No. XXIV -- On the utilization of vacation leave the City's offer of "Bargaining unit employees must anticipate their retirement date by scheduling off all accumulated vacation prior to such retirement date" is granted.

Issue No. XXV -- The City's offer to continue paying two Union delegates while they attend national and state conventions shall be continued. The Union's request is denied.

Issue No. XXVI -- The wages involved for these employees are covered in the Wages' section of this arbitration.

E.J. FORSYTHE, Impartial Chairman

DUDLEY SHERMAN, City Member
Concurs as Indicated in the Opinion

RONALD R. HELVESTON, Union Member
Concurs as Indicated in the Opinion

DATED:
February 10, 1975