STATE OF MICHIGAN

Department of Labor

Employment Relations Commission

Arbitration Under Act 312

(Public Act of 1969 as amended)

In the Matter of

Detroit Fire Fighters Association

and

City of Detroit

MERC Case No. D83-595

Award of Panel on Economic and Non-Economic Issues

Panel Members: John B. Kiefer, Chairman
Mark Ulicny, City Delegate
Eileen Nowikowski, Union Delegate

July 8, 1985

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STATEMENT OF PROCEEDINGS

On June 28, 1983, the Detroit Fire Fighters Association (Union) filed a Petition for Arbitration pursuant to Act 312, Public Acts of 1969, as amended, with the Michigan Employment Relations Commission, requesting the initiation of binding arbitration proceedings regarding terms and conditions of employment to be included in a collective bargaining agreement. In October 1983, John B. Kiefer was appointed to serve as Chairman of a panel of arbitrators. The other members of the arbitration panel selected by the respective parties were Mark Ulicny, the Designant for the City, and Eileen Nowikowski, the Designant for the Union.

Between April 9, 1984 and March 11, 1985, the Arbitrator presided over 28 hearings referable to the matter. Thereafter, the parties submitted their last offers of settlement on each economic issue to the arbitration panel. Subsequent thereto, the parties also submitted briefs in support of their respective positions on the issues.

Section 8 of Act 312 provides:

> "At or before the conclusion of the hearing held pursuant to section 6,[1] the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it, and shall mail or otherwise deliver a true

copy thereof to the parties and their representatives and to the employment relations commission. 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.[2] 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[3] on or after January 1, 1973." (footnotes omitted)

Section 9 of Act 312 provides:

"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."

Consistent with the Supreme Court's directive in Detroit v DPOA, 408 Mich 410 (1980), this panel has, with respect to economic issues, adopted the last offer of settlement which more nearly complies with the applicable Section 9 factors and with respect to non-economic issues, based its findings upon the applicable Section 9 factors.

There are 22 issues in all; some of which are economic and some of which are not. The issues will be approached in the following order:

1. Parity (Economic)
2. Reduction in Hours
3. Residency
4. Additional Furlough Days (Economic)
5. Safety
   (a) Gloves
   (b) Bunker Pants
   (c) Face Pieces
   (d) Commercial Dryers
6. Grievance Arbitrator Referable to Medical Issues
7. Uniforms
8. Mandatory Mess

9. Trial Board Composition

10. Suspension Without Pay

11. Basis of Representation

12. Holiday Premium

13. SL-CT Liquidation (Economic)

14. Lost Articles (Economic)

15. Arson Schedule

16. Parking and Mileage

17. Management Rights

18. Pension Board

19. Temporary Assignments (Economic)

20. Work Relief

21. Furlough Selection

22. Outside Employment

Unless otherwise indicated, all awards of this panel are to be effective July 1, 1983.

1. PARITY

The City proposes to amend Section I, Article 23 to add a new Section D, as follows:

> "D. If there is established for 1983-86 by Arbitration, Negotiation or otherwise different levels of benefits for officers of the Detroit Police Department than are here awarded to members of the Detroit Fire Fighters Association in the areas enumerated below, then this award shall be adjusted to conform thereto as to maintain the traditional relationship for all corresponding ranks of Police-Fire parity. The following shall constitute a full and complete list of all areas where Police-Fire parity applies.

1. Wages, COLA
2. Overtime Provisions
3. Holiday Premium
4. Number of Holidays
5. Medical Insurance
6. Longevity
7. Sick Leave
8. Unused Sick Leave Payout
9. Shift Premium
10. SL-CT (bonus vacation)
11. Layoff Benefits
12. Pension
13. Death Benefits
14. Life Insurance
15. Tuition Refund"

The Union proposes:

"Contingent Parity

If there is established for 1983-86 by arbitration, negotiations or otherwise different compensation or cash benefits for non-civilian employees or officers of the Detroit Police Department than are here awarded, this award shall be adjusted to conform thereto so as to maintain the traditional relationship for all corresponding ranks, of fire-police parity."

Schedule I of the expired working agreement sets forth the traditional police-fire parity principle that has been in existence since 1907. The Union proposal seeks its continuance throughout the 1983-86 period. The City concedes that the principle does and should control but proposes that it be further defined with the addition of a list of benefit areas in order that future problems referable to the parties' interpretations of the principle be better avoided.

Section 9. FACTORS

(a) Not applicable

(b) Both parties agree that the traditional police-fire economic parity principle should and does control.

(c) It is undisputed among the parties that the continuance of the traditional parity principle is in the public's best interest. The City does not oppose the Union's proposal on economic grounds.

(d) Not applicable

(e) Not applicable

(f) Not applicable

(g) None

(h) The principle of parity has been in existence in Detroit since 1907.

While the principle was at issue in the Platt (Union Exhibit 1), Killingsworth (Union Exhibit 2), and Herman (Union Exhibit 3) Act 12 arbitration proceedings, in all three instances, the arbitrators decided in favor of maintaining the status quo.

OPINION AND AWARD

This panel concludes that it is precisely because of the principle of police-fire parity, as defined, that the parties have been able to apply the concept in a manner in which both parties have been willing to comply since 1907. Since the parties have heretofore been capable of applying the principle without the necessity of a list of benefit areas, this panel concludes that the Union's proposal more nearly complies with the applicable Section 9 factors. It is this panel's opinion that the City has failed to meet its burden of showing the need for a detailed list of benefit area.

This panel hereby finds that the Union proposal of contingent parity be adopted.

2. REDUCTION IN HOURS

The Union seeks to amend Article 15 of the expired agreement in order to effect a reduction in hours from 50.4 hours per week to 48 hours per week for its members. The Union's proposal provides:

> "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."

The City seeks to maintain the status quo of 50.4 hours per average work week.

In 1972, the Killingsworth arbitration panel shortened the fire fighters' work week from 56 hours per average work week to 50.4 hours per average work week. Five years later, during the Howlett arbitration, the fire fighters sought a reduction from 50.4 hours per average work week to 46 hours per average work week. The Howlett arbitration panel, after considering much of the same evidence presented this panel and after taking the applicable Section 9 factors into consideration, rejected the fire fighters' proposal.

Taking the applicable Section 9 factors into consideration, an obvious drawback to the Union's proposal is the cost the City would incur were the proposed reduction in hours to be implemented; especially in light of the fact that the Union has presented little or no evidence which would show that the interest and welfare of the public would be enhanced if the work week were to be reduced.

As noted in the Howlett arbitration award, "there is nothing in the record to disclose that the Detroit Fire Fighters are under paid or that the fire department would become more efficient by a reduction in the hours of the work week."

Both sides have presented evidence referable to the comparability factor; some of it conflicting and some of it in agreement. As was the situation when the Howlett panel rendered its decision, a comparison with other Michigan cities revealed that nearly all of them maintained average work weeks equal to or greater than the Detroit Fire Fighters (Union Exhibit 91). Furthermore, the Union's argument that fire fighters work more hours than other city employees is somewhat askew because it was learned during the course of hearings on this matter that fire fighters' duty time necessarily includes stand-by time, whereas the work days of other City employees do not.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) The City would incur substantial costs were the proposed reduction in hours implemented.

(d) In addition to that which was discussed above, Union Exhibit 84, referable to fire fighters hours in other major American cities, reveals that Detroit's hours are higher than either the average or median of the listed surveyed cities.

(e) Not applicable

(f) Not applicable

(g) None

(h) Union President Berry testified that Union members are concerned for the safety and well-being of their family members because of the fire fighters' long work week. (Transcript Volume XV, P. 209) He testified that the present work week contributes to family stress, in part because fire fighters are away from the familial home for long periods of time. (Transcript Volume XV, P. 217) However, as was the situation before the Howlett panel, the Union has not considered changing the scheduling system from the twenty-four (24) hour duty, so as to perhaps alleviate some of the family problems which result because the fire fighters' times with their families are unusual.

OPINION AND AWARD

This panel concludes that the Union has not met the burden necessary to effectuate a change in the status quo. The Union's contention that the long work week may create morale and family problems is not supported by the evidence. There has been no showing of change since the Howlett arbitration panel rendered its decision. For the same reasons. we adopt their finding in favor of maintaining the status quo. This Award renders moot the City's proposal on work hours and it, therefore, denied.

3. RESIDENCY

Article 10 of the expired working agreement states:

> "All members of the bargaining unit shall be residents of the City of Detroit. Residence shall be construed to be the actual domicile of the member. A member can have only one (1) domicile."

The Union seeks to eliminate the residence requirement and the City seeks to maintain the status quo. Both parties, as well as this arbitration panel, view this as perhaps the most important non-economic issue facing the arbitration panel.

This is not the first time the fire fighters have sought to eliminate the City's residency requirement which has been in effect, in one form or another, since 1913. The fire fighters first challenged the validity of the residency requirement in 1973. The Herman arbitration panel declined to rule on the subject upon determining that it was not an arbitrable issue. In Detroit Police Officer's Association v City of Detroit, 385 Mich 519 (1971), the Michigan Supreme Court upheld the constitutionality of residency requirements. In McCarthy v Philadelphia Civil Service Commission, 424 US 645 (1976), the United States Supreme Court did the same. In 1978, the Detroit City Council passed Ordinance 245-H, which incorporated the definition of residency presently found in Article 10 of the expired agreement.

In 1979, the fire fighters again sought the elimination of the residency requirement before the Howlett arbitration panel. The Howlett arbitration panel considered much of the same or similar evidence as that presented before this panel. After evaluating the applicable Section 9 factors, the Howlett panel concluded that the fire fighters had not met their burden of proof. The Howlett panel rendered an opinion retaining the existing residency requirement. In making its determination, the Howlett opinion relied upon the decision rendered in the Warren Fire Fighters and City of Warren Arbitration, chaired by Professor Harry Edwards in 1971 (Union Exhibit 56) which is quoted at page 95 of the Howlett opinion as follows:

> " T he essence of the City's position (opposing the Union request to eliminate residency) here would seem to be that unless an existing 'condition of employment' is

> shown to be patently discriminatory, grossly inequitable and/or unreasonable, it should remain in effect. In other words, the burden should be on the Union, as the party moving for a change in the 'condition of employment,' to demonstrate a compelling need or reason to justify an alteration of the residency rule. While this may be an overstatement of principle, since 'technical rules of evidence shall not apply' in an Act No. 312 compulsory aribtration (Section 6 of Act No. 312), nevertheless the Panel is bound to render a judgment which is grounded on 'competent, material and substantial evidence on the whole record.' (Section 12 of Act No. 312) To the extent that such evidence is required, it seems only just that it should be forthcoming in no small measure from the moving party on any given issue.
>
> . . . ."

The Union has set forth a number of reasons as to why the residency requirement should be abolished: 1) the requirement is not job related; 2) the City's crime rate has risen; and 3) the City's housing values have decreased. The City claims, however, that the residency requirement reflects the will of the people. According to the City, the repeal of the residency requirement would be financially and socially detrimental to the City of Detroit.

Section 9. FACTORS

(a) Both the Supreme Court of the United States and the Supreme Court of the State of Michigan have upheld the constitutionality of residency requirements.

(b) None

(c) As noted in the Howlett arbitration award, the City has made a persuasive case that the interests of the Detroit public are served by the residence of fire fighters within the City. "Fire fighters who live in the City participate in community activities,

pay taxes, make purchases within the City and add to the number of Detroit residents who are employed in the City." The report of Michael H. Thomson, Assistant Professor of Economics at Wayne State University, City Exhibit 123, supports that conclusion. According to Professor Thomson, the elimination of the residency requirement would result in a large percentage of fire fighters migrating from the City of Detroit. Since not all families that migrate would be replaced by individuals of equal or similar economic capacity, the City would suffer losses in various tax revenues, including the City tax and utility tax. Furthermore, with increased migration, the City neighborhoods would experience further decline and decay.

(d) The Union introduced several arbitration decisions, all but two of which were introduced to and discussed by the Howlett arbitration panel. The Howlett panel found unique and distinguishable situations in each case. Hence, with reference to the arbitration awards rendered in Redford Township, Inkster, Hamtramck, Bay City and Hazel Park this panel adopts the rational of the Howlett panel. The panel finds that the Detroit School Teacher Arbitration of 1981 is distinguishable in that in that case, the Detroit Federation of Teachers presented evidence which showed that the residency requirement would result in an unnecessary restriction upon future job applications. There has been no such showing in this proceeding. In the Highland Park case, it was also found that the residency requirement frustrated "the equal opportunity of employment." Again, there has been no such showing in the instant case.

The Union has also presented evidence pertaining to the residency requirements of other Michigan cities and other major U.S. cities. Exhibit 57, which details the residency requirements of

some major U.S. cities was initially submitted to the Howlett panel. At page 91 of its opinion, the Howlett panel commented that of the fourteen cities discussed, excluding Detroit, five required residence within the City; four allowed fire fighters to live within a restricted area outside the City and five cities had no limitations whatsoever. Exhibit 59, a comparison study of the requirements of other Michigan cities, contrasting 1978 with 1984 reveals that of the twenty-seven municipalities listed for 1978, sixteen have some sort of residency restriction. Similarly, in 1984, there were sixteen municipalities with some type of residency restriction. Exhibit 60, which is a comparison of major cities in the United States, contrasting 1978 with 1984 demonstrates that the status quo has nearly been maintained.

(e) The Union claims that declaining property values have resulted in financial losses to its members.

(f) Not applicable

(g) None

(h) The Union claims that crime has markedly increased in the City of Detroit. Hence, it argues that the residency requirement must be abolished so that its members will be able to provide their families with safe environments in which to live.

OPINION AND AWARD

This panel concludes that the Union has failed to meet its burden of proving that the residency requirement is patently discriminatory, grossly inequitable and/or unreasonably. The Union presented no persuasive evidence to support its general contention that crime has markedly increased in the City of Detroit, especially, since the date of the Howlett panel arbitration opinion. No fire fighter testified that either he or his family was a victim of crime because of status as a fire fighter. With respect to the Union's

claim that the residency requirement is not job related, we agree. Nevertheless, neither this panel nor the Howlett panel has found that argument to be a persuasive reason for abolishing the residency requirement. Furthermore, this panel does not consider the fact that a fire fighter's return on his housing investment might be diminished as a result of lowered property values to be a valid reason to eliminate the residency requirement. As noted at page 96 of the Howlett opinion, fire fighters knew when they sought to become fire fighters and accepted employment within the City of Detroit that City Ordinances required that they live within the City. The same holds true today. It is the opinion of this panel that it is not unfair for the citizens of Detroit to expect their fire fighters to live among the people whom they are paid to protect.

The panel hereby finds that the change in residency requirement proposed by the Union not be adopted.

4. ADDITIONAL FURLOUGH DAYS (ECONOMIC)

Article 19, Section B of the expired agreement provides:

"B. Regular Furlough Days Per Year

All confirmed members of the uniformed force of the Fire Fighting Division and other employees required to be on twenty-four (24) hour shifts shall be entitled to eight (8) tours of duty off for furlough, which in conjunction with regularly scheduled leave days and extra leave days shall yield twenty (20) calendar days of vacation annually."

The Howlett panel granted the Union's request for additional service increments as provided in Article 19, Section C of the expired agreement:

"C. Additional Furlough Days

Commencing October 1, 1979, and each succeeding October 1st members having completed seven (7) years of service with the Department, but less than fourteen (14) years of service, shall be entitled to one (1) additional tour of duty per year, off for furlough.

Commencing October 1, 1979, and each succeeding October 1st members having completed fourteen (14) years service with the Department shall be entitled to two (2) additional tours of duty per year, off for furlough."

Presently, the Union proposes two more service increment steps, at the 21st and 25th service years:

"Commencing October 1, 1985, and each succeeding October 1, members having completed twenty-one (21) years of service with the Department shall be entitled to one (1) additional tour of duty per year, off for furlough.

Commencing October 1, 1985, and each succeeding October 1, members having completed twenty-five (25) years of service with the Department shall be entitled to one (1) additional tour of duty per year, off for furlough."

The City proposes that the status quo be maintained.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) The City's major objection to the proposal is its cost. City Exhibit 79 reveals that the Union's proposal would cost the City $302,940.00 per year. The Union does not dispute the City's figure, but argues that the cost is not sufficient to outweigh other statutory factors.

(d) The implementation of the Union's proposal would result in fire fighters' vacation hours becoming more comparable with other fire fighters in the Metropolitan Detroit area and other fire fighters in major U.S. cities. Of course, it would only effect those employees with more than twenty-one (21) years of service.

Union Exhibit 105 sets forth data referable to furlough benefits in the Detroit Metropolitan area by indicating the number of furlough tours to which a fire fighter is entitled after serving one (1), seven (7), fourteen (14), twenty-one (21) and twenty-five

(25) years of service. According to that evidence, a Detroit Fire Fighter with twenty-one (21) years of service receives ten (10) furlough days which is three (3) days less than the average. Similarly, a Detroit Fire Fighter with twenty-five (25) years of service receives ten (10) furlough days as well, which is again three (3) days fewer than the average. Under the Union proposal, a fire fighter with twenty-one (21) years of service would be allowed eleven (11) furlough days, which is two (2) days fewer than the average in the Metropolitan Detroit area and a fire fighter with twenty-five (25) years of experience would be allowed twelve (12) furlough days which is one (1) day fewer than the average in the Metropolitan area.

Union Exhibits 106 through 109 relate to furlough allowances in fourteen (14) other major United States cities. Presently, the average number of furlough days among these cities for fire fighters with twenty-one (21) years of service is 13.99. With respect to fire fighters with twenty-five (25) years of service, the average number of furlough days in the listed major United State cities is 14.4. Hence, implementation of the Union proposal would result in the number of furlough days of senior fire fighters becoming more comparable to their counter parts in the Detroit Metropolitan area and in other major cities in the country.

(e) Not applicable

(f) Fire fighters are entitled to additional days off by virtue of SL-CT fringe benefits.

(g) Not applicable

(h) In Howlett, the panel considered the increase in working conditions which occurred over a period of time to be a 9(h) factor.

In Killingsworth, the panel rejected a proposal that furloughs be increased for the reason that it reduced fire fighters' weekly hours from 56 to 50.4. In Howlett, however, the panel declined a reduction of hours but granted an increase in furloughs for fire fighters with over seven (7) and fourteen (14) years of service.

OPINION AND AWARD

By adopting the Union's proposal, this panel is merely continuing that which was begun by the Howlett arbitration panel. The present Union proposal would only affect those fire fighters with twenty-one (21) years or more of service. It would allow those fire fighters one (1) additional day off and would allow those fire fighters with more than twenty-five (25) years of service two (2) additional days off. This panel has chosen not to reduce the fire fighters' work week. This panel concludes that the Union has met its burden by showing that it is not unfair for fire fighters who have dedicated more than twenty-one (21) years of their lives to the fire department to be entitled to one (1) or two (2) days, exclusive of sick leave, more vacation a year. This panel finds the City's objections on the grounds of costs insufficient when weighing the other statutory factors, most particularly 9(d).

The panel hereby finds that the Union proposal should be adopted.

5. SAFETY

Article 23, Section B-7 of the expired working agreement provides:

> "The City shall furnish waterproof flashlights and high-quality gloves if the Safety Committee of the Detroit Fire Department agrees they are necessary, and in accordance with the specifications of the Safety Committee."

The Union proposes to amend Article 23, Section B-7 to read:

> "The City shall furnish to each employee in the Fire Fighting Division (including fire engine operators) a waterproof flashlight, two pairs of Tempo Max work gloves, night pants and/or bunker pants and individual face pieces. The City shall provide sufficient air tanks, hoses and harnesses to insure that each employee has complete self-contained breathing apparatus for use at all alarms. The City shall also furnish a commercial clothes dryer for each location."

The City proposes to maintain the status quo, "except that the City shall supply each Fire Fighter with work gloves that meet the applicable state and federal standards and shall have a wristlet, composed of fire resistant material, of at least 6 inches."

There are a number of issues which must be addressed:

1. Whether fire fighters should be provided with one pair of Tempo Max gloves and/or two pairs of Tempo Max gloves.

2. Whether fire fighters should be provided with bunker pants.

3. Whether fire fighters should be provided with individual face pieces.

4. Whether commercial clothes dryers should be installed at each fire station.

The Union proposes that fire fighters be provided with all of the above-listed safety equipment and the City objects, primarily on the basis of cost.

Presently, the department supplies its fire fighters with one pair of Nitty-Gritty work gloves with which to fight fires. The Union claims the present gloves constitute a serious safety problem and adds that the City's proposal to correct it is inadequate. According to the Union, the existing gloves do not meet applicable MIOSHA standards and are not heat resistant. The Union argues that

the heat and flame resistant Tempo Max gloves would afford the City's fire fighters better protection. Because gloves become wet and unusable, the Union argues that fire fighters should be provided with two pairs of Tempo Max gloves.

The Union also proposes that each fire fighter be provided with a pair of bunker pants to supplement their fire coat and mid-thigh boots so as to afford greater protection to the fire fighters' upper thighs and genital areas. The Union also proposes that all fire fighters, including fire engine operators be provided with individual face pieces.

The Union also proposes that a commercial clothes dryer be installed at each location in order that fire fighters be allowed the opportunity to dry their gear between fire calls.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) The City presented evidence that Tempo Max gloves cost $23.00 a pair. Providing fire fighters with two (2) pairs of Tempo Max gloves would cost the City $59,800.00 for its initial purchase. The Union presented evidence that the Tempo Max glove outlasts the $6.40 per pair Nitty-Gritty glove by a ratio of 4 or 5 to 1. Assuming a 4 to 1 ratio, the Union points out that the City would save $1.60 per pair of gloves purchased. Bunker pants cost between $110.00 and $115.00 per pair. Imposing this requirement would incur an initial expense of something between $143,000.00 and $149,500.00.

Individual face pieces were initially provided all fire fighters. Thereafter it was determined that fire engine operator's did not require individual face pieces by the department. As a result, the department saved betwen $5,000.00 and $6,000.00. The Union asserts

that the added safety and the reduction of early disability retirement and lost man hours that would result from provided individual face pieces to fire engine operators would more than make up for the $5,000.00 to $6,000.00 saved by the City.

(d) Several of the City's own designated departments use Tempo gloves (Union Exhibit 103). Bunker pants are issued to fire fighters in other departments in Michigan and in other cities in the country.

(e) Not applicable

(f) Not applicable

(g) None

(h) Safety has historically been a factor considered during the course of collective bargaining.

OPINION AND AWARD

Based on the evidence presented and consideration of the applicable Section 9 factors, particularly, safety, it is the opinion of this panel that fire fighters be provided with one pair of Tempo Max gloves; but not two. Further, that fire fighters not be provided with bunker pants but that all fire fighters be provided with individual face pieces. In addition, the Union proposal referable to clothes dryers in each station should be adopted. All of the foregoing shall be subject to the departmental rules on maintenance. Hence, that which was heretofore Article 23, Section B-7 should read:

> "The City shall furnish to each employee in the fire fighting division (including fire engine operators) a waterproof flashlight, one paid of Tempo Max gloves and individual face pieces. The City shall provide sufficient air tanks, hoses and harnesses to insure that each employee has complete self-contained breathing apparatus for use at all times. The City shall also furnish a commercial clothes dryer for each location."

6. GRIEVANCE ARBITRATION OF MEDICAL ISSUES

Article 7B(2) provides:

> "B. The Arbitrator shall limit his decision to the interpretation, application, or enforcement of this Agreement or to matters fairly inferable therefrom, and

he shall be without power or authority to make any decision:

* * * *

2. Involving the exercise of discretion by the City under the provisions of this Agreement, its Charter, or applicable law."

The Union seeks its amendment as follows:

"B. The Arbitrator shall limit his decision to the interpretation, application, or enforcement of this Agreement or to matters fairly inferable therefrom, and he shall be without power or authority to make any decision:

* * * *

2. Involving the exercise of discretion by the City under the provisions of this Agreement, its Charter, or applicable law. Decisions or actions of the Department Medical Division or Department Physician, and of officers of the Department and/or of the Fire Commissioner in reliance thereon, shall be subject to challenge and review on the merits under the grievance and arbitration articles of this Agreement. The parties may, in lieu of such procedures, jointly select a disinterested physician to make a final and binding award on the matters in dispute."

The City proposes that the status quo be maintained.

According to the Union, this proposal was precipitated by an arbitration award rendered by Arbitrator Mario Chiesa in 1980 wherein it was held that an arbitrator is without power to disturb a medical determination made by the City absent a finding of bad faith or abuse of discretion (Union Exhibit 28). The Union contends that since a determination as to whether an injury is duty-related or not has a significant impact on the benefits and rights of the fire fighter, that the issue is one which should be subject to arbitration.

On the other hand, the City contends that the present in-house grievance procedure set forth in Article 6 of the expired agreement

has been successful for a number of years. In addition, the City maintains that the present system is imminently fair.

Section 9. FACTORS

(a) Not applicable

(b) The City conceives that all members in the fire department with decision making capacities are held to a standard of good faith and non-arbitrary action, and that Union members should be allowed to arbitrate disputes if it is felt that said standard has been violated (Transcript Volume VII, Pages 42 - 43).

(c) Adoption of the Union proposal would result in the extra expense to the department of payment to a disinterested physician and possible overtime for the medical division staff for attendance at arbitration hearings. There has been no evidence presented that adoption of the proposal would have any impact on the interest and welfare of the public.

(d) Not Applicable

(e) Not Applicable

(f) Not Applicable

(g) None

(h) The Union contends that the proposal should be adopted in order to further the interest of fairness.

OPINION AND AWARD

This panel finds in favor of the City's position of maintaining the status quo. The Union has not sufficiently demonstrated that a change in the present system is necessary or required. There has been no adequate showing that the present grievance procedure is at all unfair.

The panel hereby orders adoption of the City's proposal in favor of maintaining the status quo.

7. UNIFORMS (ECONOMIC)

Article 23, Section B-8 of the expires agreement provides:

> "a. The City shall furnish all-weather jackets to Fire Fighters, Fire Fighter Drivers, Fire Sergeants, Fire Engine Operators and Fire Apparatus Mechanics in accordance with recommendations to be made by the Uniform Committee of the Detroit Fire Department. Replacement items, including shirts and hats, shall be in accordance with the recommendations of the Uniform Committee, provided replacements are approximately the same cost as the current type."

The Union proposes to supplement the provision with three additional paragraphs:

> "b. Members of the Fire Fighting Division above the rank of Sergeant shall be issued the All-Weather Jacket as issued to other members of the Division.
>
> c. Members shall be issued badges insignias, shoulder patches and nameplates.
>
> d. Members of the Fire Prevention Division shall be issued raincoats and all-weather jackets in lieu of the overcoat now issued."

The City proposes that the status quo be maintained. This is an economic issue.

The Union proposes that fire fighters with ranks from Lieutenant and up be provided with the same all-weather jackets with which fire fighters of the lower ranks are presently provided. The Union maintains, and the City agrees, that the all-weather jackets are needed for warmth when a fire fighter is involved in hydrant detail, weed cutting, snow shoveling or any other outdoor physical activity. The City maintains that since fire fighters above the rank of Sergeant are not required to perform those tasks, they should not be provided

with all-weather jackets. The Union responds that high ranking officers routinely perform the tasks described on a voluntary basis because of cutbacks in the department and also in order to enhance the concept of teamwork within the fire department.

The Union also proposes that fire fighters be issued patches designating the fact that they are employees of the Detroit Fire Department; insignia reflecting rank and nameplates in order to enable citizens to identify the fire fighters and that badges be supplied as well. The City maintains that fire fighters are properly identified by virtue of a badge worn on the cap.

In addition to the above, the Union proposes that fire inspectors be provided with raincoats and all-weather jackets instead of the current issue full-length wool overcoat. The City objects on the basis of cost..

Section 9. FACTORS

(a) Not applicable

(b) None

(c) The price of each all-weather jacket is $68.00. Under the Union proposal, the all-weather jackets would only be supplied to those among the 255 personnel above the rank of Sergeant who do not already have all-weather jackets which were acquired before promotion. The Union proposes that the all-weather jackets would only be replaced on an as needed basis. While the interest in welfare of the public would not be greatly effected by the issuance of all-weather coats to high ranking officers, it would be in the best interest of the public to be able to identify the City's fire fighters as being employed by the City of Detroit and also by name and rank. This is

especially true in light of the minimal cost involved in providing the proposed insignias. Similarly, cost savings to the City would ultimately result were fire inspectors to be provided with all-weather jackets and raincoats. Union Exhibit 115 reveals that the present issue wool overcoats cost $192.50 a piece while the combined cost of the all-weather jacket ($68.85) and the raincoat ($45.00) is $113.85; hence, a savings of $78.65. The panel acknowledges that since the City has already purchased the overcoats, adoption of the Union's proposal would result in an additional initial expense to the City.

(d) In major U.S. cities, the median annual uniform allowance is $350.00. Excluding New York and Chicago, cities which do not supply turn out gear in addition to the uniform allowance, the median is $290.00 (Union Exhibits 112 and 113). The median annual uniform allowance for fire fighters in the Metropolitan Detroit area is $400.00. It's $450.00 for fire inspectors.

(e) Not applicable

(f) Not applicable

(g) None

(h) According to the Union, it would be safer for fire fighters above the rank of Sergeant, when performing outdoor physical activity, to be protected from the elements with all-weather jackets. Similarly, the Union argues that it would be safer for fire inspectors performing factory inspections to be wearing a short all-weather jacket rather than a long overcoat which could become caught in machinery.

OPINION AND AWARD

The panel is persuaded by the Union's arguments; especially in light of the minimal expenses which the City would incur were they adopted.

The panel hereby adopts the Union proposal.

8. MANDATORY MESS

In order to permit fire fighters to deduct from their income, as ordinary and necessary business expense under Section 162(A) of the Internal Revenue Code, the money spent for the purchase of food for consumption at fire stations during 24-hour tours of duty, the Union proposes to incorporate and strenghten the existing practice concerning contribution to a meal fund and proposes the following clause be added to the collective bargaining agreement:

> "Employees are required by the City as a condition of employment to contribute financially to congregate meals in the fire house at a charge equal to the value of the meals, irrespective of whether the employee chooses to eat the meal."

The City proposes the status quo be maintained.

Presently, the City requires participation of all fire fighters in a "paper fund" used to purchase various cooking and earing utensils for use in the preparation and consumption of meals at the fire station. Close to one hundred percent (100%) of the fire fighters currently participate in and contribute to a separate collective meal fund at the station to which they are assigned (Transcript Volume XV, Pages 143-144). The City requires fire fighters to eat meals on station premises during their tours of duty. The City, through its designation of an officer-in-charge at each station, supervises the selection and in some instances makes the assignment of an individual to serve as a cook in each station. The City also provides facilities and equipment for cooking and eating the meals at the station. It is the position of the Union that the addition of the proposed clause to the bargaining agreement will facilitate uniform enforcement of the practice concerning participation in the meal fund. The City objects on three grounds:

1. It does not have the legal authority to require an employee to eat;

2. The adoption of the Union proposal would amount to a voluntary admission by the City that injuries sustained during the course of eating would be construed as duty-related, and;

3. That the Internal Revenue Service might require the City to keep records referable to the fire fighters' contributions to meal funds.

Section 9. FACTORS

(a) The City is concerned that it does not have the lawful authority to require a fire fighter to eat. The Union contends that adoption of the proposal would not result in the City mandating that a fire fighter eat. In addition, the City responds that in the case of Sibla v Commissioner of Internal Revenue, 611 Fd 2nd 1260 (CA9, 1980), the fire department involved required contributions to a meal fund and said clause was upheld by the Court.

(b) None

(c) The adoption of this proposal would benefit Union members and would result in no additional cost to the City of Detroit.

(d) The majority of fire fighters in the Metropolitan Detroit area receive food allowances. Detroit fire fighters do not (Union Exhibit 81 and Transcript Volume XV, Page 137).

(e) Not applicable

(f) Not applicable

(g) None

(h) The Union's proposal would require no expense of the City and would result in an advantageous tax consequence to the fire fighters involved.

OPINION AND AWARD

The panel is persuaded by the Union's argument in favor of adopting this proposal. However the panel also recognizes the validity of the City's concerns. Therefore, this panel will order the adoption of the Union's proposal with the proviso that the contract or a separate letter of understanding provide that the City shall be held harmless from any circumstances that may flow from the promulgation of this provision and the City is not required to maintain any records whatsoever referable thereto.

9. TRIAL BOARD COMPOSITION

General Rule 6.5 of the department's General Rules (Union Exhibit 5) pertaining the composition of the executive fire commissioners trial board provides:

> "A. COMPOSITION: All hearings of charges shall be before a Trial Board consisting of a chairman and two (2) members. The Executive Fire Commissioner, or his designee, shall act as Chairman. The remaining two (2) members of the Trial Board shall be appointed as follows: One member to be selected from the roster of Division Heads or roster of Battalion Fire Chiefs, either on a rotating or random basis; one member to be selected by defendant (charged member), from the Department."

Alleging the present composition of the Trial Board to be unfair, the Union proposes that Rule 6.5 be modified to provide as follows:

> "A. COMPOSITION: All hearings of charges shall be before a Trial Board consisting of a chairman and three (3) members. The Executive Fire Commissioner, or his designee, shall serve as one member. The Defendant (charged member) shall designate a second member. The third member shall be selected by lottery from the ranks of Battalion Fire Chief and Fire Captain in the Fire Fighting Division, and equivalent ranks in other divisions."

In support of its position, the Union claims that the composition of the Trial Board is unfair because the Commissioner "controls" two of the three Trial Board members by virtue of his being empowered to select them. The Union opines that morale would improve and the interests of fairness would be furthered were its proposal adopted. The Union also points out that adoption of the proposal would result in no cost whatsoever to the City.

The City strongly opposes adoption of the proposal. It asserts that the Union has failed to make any showing of unfairness and proposes that the status quo be maintained.

At present, discipline in the department is administered pursuant to General Rule 6 of the department's General Rules. The most common discipline penalty is the oral reprimand. However, where an offense is more serious, the rules call for a written reprimand, prepared by a Battalion Chief or division head and then forwarded to the Commissioner for his consideration. Where an offense is even more serious, the rules provide for a suspension by virtue of the issuance of a charge sheet. After charges are filed, a hearing is held within ten (10) days, except under certain specified circumstances. The hearing is held before either the Battalion Chief or division head or the Executive Fire Commissioner or the Trial Board.

The Trial Board is an appellate tribunal wherein a fire fighter who has been disciplined by virtue of either a Battalion Chief, division head or commissioners' hearing may appeal its determination. At the present time, the Trial Board is composed of three individuals:

1. A Chairman designated by the Commissioner;

2. A member selected by the charged party; and

3. A member to be selected from the roster of division heads or Battalion Chiefs, on either a rotating or random basis.

The rules further provide that the charged party may preempt any member of the Trial Board or challenge any member for cause. In addition, a charged party may be represented by private legal counsel and may call witnesses in his own defense. Testimony is taken under oath.

After a Trial Board renders its decision, the charged party has two additional steps he may take. He may request that the decision

be reconsidered by the Executive Fire Commissioner and may also file a grievance and proceed to final and binding arbitration under the terms of the contract. (Union Exhibit 5) As noted above, the Union contends that the above-described system is unfair because it alleges that by virtue of the selection process, two of the three members of the Trial Board are biased in favor of the City.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) Adoption of the proposal would result in no cost to the City other than possible overtime to Captains serving as Trial Board members.

(d) Not applicable

(e) Not applicable

(f) Not significant

(g) None

(h) The Union argues that its proposal should be adopted on the basis of fairness. The City responds that the Trial Board is merely an intermediate appellate level decision maker within the disciplinary process. It argues that if a party is dissatisfied with a decision of the Trial Board, the aggrieved party has the option of petitioning for an impartial and binding arbitration hearing.

OPINION AND AWARD

Based upon the evidence presented and the panels consideration of the applicable Section 9 factors, the panel concludes that there has been no showing of patent unfairness or discrimination under the current system. While the Union has argued that the make up of the Trial Board could lead to a bias in favor of the City, it has

presented no substantial evidence whatsoever which would tend to show that the Trial Board's present make up is in fact biased. In addition, problems would result referable to scheduling hearings and manning Trial Boards were the proposal adopted since there is no rank equivalent to Captain outside the fire fighting division. Since the Union has failed to meets its burden of demonstrating that the existing system is grossly unfair, the panel hereby adopts the City's proposal in favor of maintaining the status quo.

10. SUSPENSION WITHOUT PAY PENDING CHARGES

The Union proposes the following underscored language be added to Article 2, Section D and Article 23, Section F of the expired agreement:

> "D. The department reserves the right to discipline and discharge for just cause. No employee shall be suspended without pay for any reason except the pendency of felony charges. The City reserves the right to lay off personnel for lack of work or funds; or for the occurrence of conditions beyond the control of the department; or when such continuation of work would be wasteful and unproductive. The City shall have the right to determine reasonable schedules of work and to establish the methods and processes by which such work is performed, and to schedule furloughs consistent with Charter provisions in the best interest of public safety, except as provided by law, and by Article 19 of this Agreement."
>
> * * *
>
> "F. No employee shall be disciplined or discharged except for just cause. No employee shall be suspended without pay for any reason, except the pendency of felony charges."

The City proposes that the status quo be maintained.

The Union President Earl Berry testified that the purpose of this proposal is to protect employees from loss of pay during the period when charges are pending against an association member but no final determination of guilt has been made, except where a felony charge is pending in the criminal court (Transcript Volume IV, Pages 75 - 76, 82). The City objects to the proposed change for a number of reasons. First, the City claims that the felony/misdemeanor distinction is out of place when determining whether departmental suspensions should be with or without pay. Second, the City asks why it should continue to pay someone for not working. Third, the City points out that the Union proposal fails to provide a means by which the City could recover its funds if the charged party were to be found guilty. Fourth, the City claims that the proposal fails to provide guidelines as to when the City should stop paying a charged individual his or her salary and fifth, the City argues that the Union has failed to set forth any demonstrable need for the proposed change.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) If the Union proposal were adopted, the City would be required to pay individuals when not working if charged with any offense less than a felony. If the charged individual were ultimately found guilty, it's conceivable that the City might encounter great difficulties in recouping money already paid. The Union's proposal sets forth no method by which said monies could be recovered;

nor does it state with adequate specificity at what point in the disciplinary procedure the City could stop paying the salary of a charged employee.

(d) The Union presented evidence that adoption of the proposal would be consistent with the City's contract with the Detroit Police Officers Association as well as the Teachers' Tenure Act, MCLA 38.103; MSA 15.2003.

(e) Not applicable

(f) Not significant

(g) None

(h) The City argued that the Union has failed to establish a reason or compelling need to change the status quo.

OPINION AND AWARD

This panel agrees that the Union has failed to establish a reason or compelling need to change the status quo. We are particularly impressed with the City's argument that the proposal sets forth no means by which the City could recoup monies already spent should the charged party be found guilty.

The panel hereby adopts the City proposal in favor of maintaining the status quo.

11. BASIS OF REPRESENTATION

The Union proposes to amend Article 4 of the expired agreement by adding language which would allow the four principal union officers full time off work to devote to union business without loss of pay or most benefits. It proposes to amend Section 4 by adding the following sub-section E:

"E. The principal officers of the Union, i.e., President, Vice President, Secretary and Treasurer, shall be permitted time off on a full time basis with compensation to which their rank otherwise entitles them, including without limitation salary, pension credits and contributions, seniority, etc."

According to the Union, the proposal's purpose is to give Detroit Fire Fighters Association officers the same benefit presently being enjoyed by other officers of bargaining units within the City, including the Detroit Police Officers Association. The City objects on the basis of cost; the fact that the proposal would allow Union officers the opportunity of attaining promotions without actually fighting fires and, the fact that given fire fighters' unique twenty-four (24) hour shift and the fact that Detroit Fire Fighter Association officers already take time off during the day to attend to Union business, their officers do not need the additional time off work.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) The City claims it would cost between $200,000.00 and $260,000.00 per year to replace the man hours lost were the Union's proposal adopted. (Transcript Volume VII, Page 88)

(d) The Union seeks a benefit which the City has afforded to other officers of other bargaining units. DPOA officers are permitted to conduct Union business on a full time basis without any loss of pay or benefits pursuant to the contract in existence

between the City and the Detroit Police Officers Association (Union Exhibit 25G). In addition, at least seventeen Presidents of Michigan Council 25 AFSCME locals representing other City employees are permitted to work full time on Union business while receiving their salary and other benefits (Union Exhibit 27, Pages 90 - 91). In addition, the four (4) officers of the DPLSA collectively receive seventeen (17) days per week to devote to Union business. Hence, the officers are required to work only three (3) hours per week at the station (Union Exhibit 26 and Transcript Volume VII, Page 56).

(e) Not applicable

(f) Not significant

(g) None

(h) Not significant

OPINION AND AWARD

Primarily on the basis of the comparability factor (9d), the panel is persuaded that the Union's proposal should be adopted. While the panel has taken into consideration that fire fighters work twenty-four (24) hour tours of duty and thus have more time off during the week than other employees, the panel also believes that fire fighters should not be required to dedicate their days off to Union business. The panel also recognizes the City's concern that a fire fighter might be promoted without actually fighting fires so as to cause a theoretical danger to the public, but concludes that such a condition would be extremely unlikely. In any event, police officers who are Union officials are accorded the same benefit although the promotion systems in the two departments are not similar.

This panel hereby adopts the Union proposal.

12. HOLIDAY PREMIUMS

The Union proposes to amend Article 23, Section B-10 of the expired agreement (Page 63) to provide that Captains in the fire fighting divisions not lose their holiday premiums when acting as Battalion Chiefs on contract - designated holidays. In effect, the Union proposes that Article 17, Section A not be applicable to Fire Captains temporarily assigned to perform the duties of a Battalion Fire Chief on a contract designated holiday.

The purpose of the proposal according to the Union, is to correct the perhaps unintentional inequity which results from the application of two conflicting contractual provisions. Under Article 17, Section A, a fire fighter assigned on a temporary basis to perform the duties of a higher class is required to be paid at the rate of the higher classification. However, Article 23, Section B-10 provides that employees under the rank of Battalion Chief receive triple time for work on contract designated holidays. Therefore, when a Captain temporarily serves as a Battalion Chief on a contract designated holiday, he earns less than he would had he served at his regular rank (Union Exhibit 104). The City opposes the proposal; claiming the issue to be a parity item and not arbitrable.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) Adoption of the proposal would presumably result in a minimal expense to the City.

(d) Not applicable

(e) Not applicable

(f) The City claims that adoption of the proposal would be in contravention of the parity principle.

(g) None

(h) The Union claims that it is unfair for Captains, when taking on the extra responsibility of Battilion Chief on contract designated holidays, to be penalized financially.

OPINION AND AWARD

The Union has met the burden necessary to effectuate a change in the status quo by showing that it is patently unfair for a Captain to earn less than he would had he served at his usual rank, when assuming the additional responsibilities of a Battalion Chief on a contract designated holiday.

On the basis of fariness (9h), this panel hereby adopts the Union proposal that Article 17, Section A is amended to provide that this Section shall not be applicable to Fire Captains temporarily assigned to perform the duties of a Battalion Fire Chief on a contract designated holiday.

13. SL - CT LIQUIDATION (ECONOMIC)

The Union's last best offer on the issue of SL - CT Liquidation proposes the adoption of the following:

> "The charge to an employee's SL - CT Bank while on "S" time (non-duty-injury time) shall be six (6) hours per (twenty-four hour) tour of duty."

The current formula charges 12 hours rather than 6 hours from an employee's SL - CT Bank for each 24-hour tour of duty lost due to illness. The City proposes that the status quo be maintained.

The Sick Leave Compensatory Time program is commonly referred to as the "bonus vacation" program, which rewards fire fighters with more than 6 years of service for not using their sick leave. Under Article 23, B-11b of the expired agreement, an employee can earn up to 60 hours of SL - CT for perfect attendance during a fiscal year. If the employee utilizes 5 days of sick leave during

a fiscal year, he receives no SL - CT bonus. Under the Union proposal, a fire fighter could use 10 sick leave days before becoming ineligible for an SL - CT bonus.

The City strongly objects to the Union's proposal and seeks maintanence of the status quo. First, the City is of the opinion that the issue is subject to parity and therefore is not arbitrable. Second, the City argues that the Union has not established a need for a change in the status quo.

Section 9. FACTORS

(a) Not applicable

(b) If adopted, the provision would become effective July 1, 1985.

(c) Although the Union submits otherwise, it appears that the adoption of the proposal would not be in the best interest and welfare of the public because it would encourage the use of sick leave. Implementation of the Union proposal would cost the City at least $101,550.00 over the term of the agreement assuming it were to become effective July 1, 1985 rather than July 1, 1983.

(d) City Exhibit 58 compares various SL - CT type benefits received by members of other fire departments. It reveals that the Detroit Fire Department member receives more bonus time than most. City Exhibit 56 reveals that Detroit Fire Fighter Association benefits in this respect are more generous than comparable benefits received by other employees.

(e) Not applicable

(f) Please refer to discussion under 9c.

(g) None

(h) The City maintains that the issue is subject to parity and is therefore not arbitrable.

OPINION AND AWARD

SL - CT bonuses constitute economic benefits to Union members and result in a direct cost to the City. Hence, this panel has determined the issue to be an economic issue. Furthermore, it is an economic benefit enjoyed by both fire fighters and police officers within the City of Detroit. Hence, it is subject to police/fire parity and ought not be considered as an arbitrable issue. Furthermore, even if this panel were to conclude otherwise, the panel agrees with the City that the Union has failed to meet the burden necessary to effect a change in the status quo.

This panel hereby adopts the City proposal in favor of maintaining the status quo.

14.STOLEN ARTICLES (ECONOMIC)

Article 12, Section E-4 of the expired agreement provides:

> "The City of Detroit agrees:
>
> * * * *
>
> 4. To provide reasonable theft protection for the property of fire fighters that is properly on the premises."

The Union proposes that Article 12, Section E-4 be amended to read:

> "4. To provide reasonable theft protection for the property of fire fighters that is properly on the premises, by the payment of actual replacement value less reasonable depreciation (not exceeding 15% per year)."

The Union also proposes an amendment of the lost allowance schedule of Policy Directive No. X changing certain maximums and covering additional items including jewelry, food, microwaves, VCRs, air conditioners, lawn mowers and snow blowers.

The City proposes that the schedule for reimbursement be revised to reflect a 20% increase in the present maximum allowances. Currently, the cost of lost, damaged or stolen eye glasses are reimbursed with proper receipt of payment or repair. The Union seeks maintenance of the status quo referable to eye glasses, while the City proposes a maximum of $75.00. The following sets forth the current Loss Schedule and compares it with the two proposals referred to above:

ITEMS COVERED	CURRENT	CITY PROPOSED MAXIMUM	UNION PROPOSED MAXIMUM
Television Set (Color)	$100	$120	$300
Television Set (Black & White)	Not covered	Not covered	$100
Radio	$ 30	$ 36	$ 30
Toaster	$ 20	$ 24	$ 30
Mixer	$ 20	$ 24	$ 50
Dishes	$ 15	$ 18	$100
Pots and Pans	$ 15	$ 18	$100
Cutlery	$ 10	$ 12	$ 50
Electric Razor	$ 20	$ 24	$ 35
Clothing (sweaters, gloves, winter gear, etc)	$ 20	$ 24	$ 50
Shoes	$ 20	$ 24	$ 60

Loss Schedule continued. . .

ITEMS COVERED	CURRENT	CITY PROPOSED MAXIMUM	UNION PROPOSED MAXIMUM
Cash	Not covered	Not covered	Not covered
Misc. Jewelry	Not covered	Not covered	Not covered
Thefts from cars	Not covered	Not covered	Not covered
Food	Not covered	Not covered	$6 per man on duty
Microwaves	Not covered	Not covered	$250
VCR's	Not covered	Not covered	$275
Air Conditioner	Not covered	Not covered	$150
Lawn Mower (power)	Not covered	Not covered	$150
Lawn Mower (manual)	Not covered	Not covered	$ 50
Snow Blower	Not covered	Not covered	$300
Eye glasses	*	$ 75	status quo*

*"Eye glasses, lost, damaged or stolen will be covered with proper receipt of payment or repair. Eye exam not included," as currently specified in the body of Policy Directive X (C Ex 59).

Since this is an economic issue in which both sides have presented proposals, the question becomes: Which proposal is more reasonable? In order to make that determination this panel must select the proposal that most nearly complies with the applicable factors prescribed in Section 9. Detroit v DPOA, supra, 482.

Section 9. FACTORS

(a) The policy of reimbursement to fire fighters by the City for lost or stolen articles was instituted in 1972 and continues to be a part of the expired agreement.

(b) None

(c) The City claims that should the Union amendment to Policy Directive No. X be adopted, the related cost to the City will increase.

(d) Not significant

(e) The policy was instituted in 1972, when the Consumers Price Index in Detroit was 126.2. In August 1984, the Consumers Price Index for urban consumers in Detroit was 308 and was 298.9 for urban wage earners and clerical workers in Detroit (Union Exhibit 79).

(f) Not applicable

(g) None

(h) The parties have always considered the uniqueness of the fire fighters profession when engaged in collective bargaining. Apart from the general crime statistics introduced into evidence, there was credible testimony that fire stations are easy targets for vandalism and burglary because they are vacant during alarms, with their contents unprotected (Transcript Volume XV, Page 100 - 105). Furthermore, because of the twenty-four (24) hour duty tours, fire fighters eat sleep and relax at the fire stations when not actively involved in fire fighting activities. Due to the "home away from home" nature of the fire station, it is not unrealistic to expect that microwaves, VCR's, air conditioners, lawn mowers and snow blowers might be properly on the premises.

OPINION AND AWARD

The panel has been persuaded that the Union's proposal referable to this issue is most reasonable. The Consumer Price Indexes reveal that the cost of living for individuals within the City of Detroit has increased far more than the twenty (20%) percent reflected in the City's proposal. Furthermore, the particular nature of the

fire fighters' schedule and his relationship to his place of employment convinced the panel that the items included in the Union's proposed amended Schedule X are reasonable.

The panel hereby adopts the Union proposal, modifying the language of Article XII, Section E-4 and the Loss Schedule contained in Policy Directive X as follows:

Article XII, Section E-4 is amended to read as follows: To provide reasonable theft protection for property of fire fighters that properly is on the premises, by payment of actual replacement value less reasonable depreciation (not exceeding 15% per year).

Policy Directive X shall be modified only with respect to the Loss Schedule contained in the Directive, as follows:

ITEMS COVERED	MAXIMUM PAYMENT
Television Set (Color)	$300
Television Set (Black & White)	$100
Radio	$ 30
Toaster	$ 30
Mixer	$ 50
Dishes	$100
Pots and Pans	$100
Cutlery	$ 50
Electric Razor	$ 35
Clothing (sweaters, gloves, winter gear, etc.)	$ 50
Shoes	$ 60
Food	$ 6 per man on duty
Microwaves	$250
VCR's	$275

ITEMS COVERED	MAXIMUM PAYMENT
Air Conditioner	$150
Lawn Mower (power)	$150
Lawn Mower (manual)	$ 50
Snow Blower	$300
Eye Glasses	status quo*

*"Eye glasses, lost, damages or stolen will be covered with proper receipt of payment or repair. Eye exam not included."

15. ARSON SECTION SCHEDULE

The Union proposes to amend Article 15 of the expired contract governing the schedule and work week of fire fighting division personnel, by adding the following paragraph, which would be applicable to Arson Investigation Section personnel only:

"(b) The basic work week for members of the Arson Division shall be four (4), ten (10) hour tours of duty per week."

The City has proposed that the parties agree to a Memorandum of Understanding which states as follows:

"Within ninety (90) days of the execution of this Agreement, the Fire Department shall develop a work schedule for non-supervisory uniformed members of the Arson Investigation Section of the Fire Marshall's Division which shall consist of four (4) day, ten (10) hour tours of duty per week. This schedule, if concurred in by the Union, shall be implemented on a six (6) month trial basis unless sooner terminated at the request of the Union. At the end of the six (6) month trial period, employees will automatically be restrored to their current work schedule unless the Department and the Union mutually agree to extend the trial period or institute the new schedule on a permanent basis.

Any implementation of a four (4) day, ten (10) hour shift work week schedule is contingent upon a determination that it is in compliance with all applicable laws and provided there are no additional costs to the City. Benefits such as sick leave, furlough, etc. will be revised to reflect any change in work schedule."

The Union objects to the City's proposal for a number of reasons:

1. It claims that adoption of the City proposal would allow the City to develop a schedule unilaterally in contravention of the

fact that scheduling is a mandatory subject for collective bargaining;

2. Fire Investigator Captains as "supervisory personnel," would be exempt under the City's proposal; and

3. It claims that the ten (10) hour, four (4) day week could be unilaterally terminated by the City at the end of the proposed sixth (6) month trial period.

Section 9. FACTORS

(a) Not applicable

(b) None

(c) Fire Investigator Captain, Monroe, testified as to the merits of the proposed "4-10 Schedule" for Arson Investigation personnel. According to Captain Monroe, the schedule would provide a better balance of man power within the arson division as it would team a senior investigator with a junior investigator at all times. In addition, it would reduce the number of investigators assigned to the night shift from 6:00 to 2:00 o'clock, reducing the shift premium expense and lessening overtime costs by virtue of allowing more arson division personnel to be available during the day for Court appearances. In addition, the proposed schedule would eliminate the difficult situation which arises whenever an arson investigator takes a vacation or is not available for work. It would also provide coverage on holidays with 4 people rather than 6, which would effectively reduce holiday pay. Captain Monroe calculated that had the proposed "4-10 Schedule" been in effect in 1983, the City would have saved $31,166.00 (Transcript Volume XVI, Pages 144 - 151 and Union Exhibit 98).

(d) Not applicable

(e) Not applicable

(f) Not significant

(g) None

(h) While the Union claims adoption of the City proposal would allow the City to develop a schedule unilaterally, the City fears that adoption of the Union proposal would eliminate the employer's right to play an active role in the management of the affairs of the arson division consistent with Article 2 of the agreement.

OPINION AND AWARD

The very existence of the City's counter proposal gives credence to the Union's claim that the City is well-aware of the merits of the Union's proposal. Based upon the evidence presented, this panel is of the opinion that the Union has met its burden of proof. Adoption of the Union proposal will not cost the City any money and will benefit the public as well as members of the arson division.

This panel hereby adopts the Union proposal.

16. PARKING AND MILEAGE (ECONOMIC)

The City proposes that Exhibit I, the "Mileage Reimbursement Plan", be amended as follows:

> "Section 1. Pay 26 cents per mile for all reimbursable mileage."

The City also proposes that Section 3, pertaining to the private rental car allowance be deleted.

The Union proposes that the status quo be maintained, with the exception of the adoption of Section 2, sub-part G, which would provide:

"G. Members ordered to the Department Physician and assigned medical appointments when injured on duty shall be included in the mileage reimbursement plan and compensated for parking fees."

It should be noted that although the City's last best offer does not provide for retention of the $2.19 per day allowance for the usage of personal cars while on City's business, the City's brief at Page 71, indicates:

"The City's proposal is fair, as the mileage rate of 26 cents per mile is still higher than that allowed by other metropolitan area employers. Moreover, the allowance of $2.19 per day for usage of a car remains intact." (Emphasis added)

The City contends its proposal should be adopted in the interest of fairness. It has presented evidence that the 26 cent per mile allowance is greater than that allowed by other Metropolitan Detroit area employers. It also has presented evidence which shows that the 26 cents per mile rate was negotiated with all of the City's civilian unions for the years 1983 through 1986 (City Exhibits 81, 82 and 83). The Union is of the position, however, that the present 31 cents per mile should be retained for the reason that the cost of operating and owning a car in the City of Detroit was 43 cents per mile in 1983 (Union Exhibit 118). With respect to its proposal pertaining to the adoption of sub-paragraph 2(G), the Union argues that under Rule 408.46, other City employees receive the requested type of reimbursement. The City is of the position that the Union has not demonstrated hardship or unequal treatment sufficient to show the need for the adoption of sub-section 2(G).

Section 9. FACTORS

(a) Not applicable

(b) None

(c) It would be financially advantageous for the City if its proposal were to be adopted.

(d) A reimbursement rate of 26 cents per mile was negotiated with all of the City's civilian unions for the years 1983 through 1986. In addition, the 26 cents per mile reimbursement rate is higher than that allowed by most other Metropolitan Detroit area private employers.

(e) The cost of operating and owning a car in Detroit was .434 cents per mile in 1983.

(f) The City contends that the difference between that which a fire fighter receives when he is off duty for a duty-related injury (full pay) and that which other City employees receive when off due to injuries, more than make up for cost incurred by a fire fighter referable to parking cost and mileage incurred when attending an assigned medical appointment.

(g) None

(h) Pursuant to the terms of the Michigan Workers' Compensation Act, a fire fighter attending an assigned medical appointment, may be entitled to reimbursement thereunder.

OPINION AND AWARD

This panel is of the opinion that the Union has not met its burden referable to the adoption of its proposal of Section 2, sub-paragraph G. Primarily on the basis of the comparability factor, this panel concludes that the City's proposal more nearly complies with the Section 9 factors.

This panel hereby adopts the City's proposal, provided that the status quo of $2.19 per day for usage (rental) be maintained.

17. MANAGEMENT RIGHTS (ECONOMIC)

The City proposes to add the following to Article 2, Section D of the expired agreement:

> "The City has the exclusive right to determine the number of employees in each classification that will be employed at any time."

The Union proposes that the status quo be maintained.

According to the City, the purpose of its proposal is to reclaim its right to determine the number of positions necessary to staff supervisory ranks for the purpose of accomplishing efficient administration. As a result of the Roumell and Casselman arbitrations (City Exhibits 14 and 15), the City is required to fill, through promotion, any command or officer position that becomes vacant. According to the City, those decisions have resulted in the imposition of the burden of maintaining specific complements of officers who are not needed. Since 1975, the number of fire fighters in the Detroit Fire Department has declined from 988 to 642. Since no Sergeant position has been effected as a result, the ratio of Sergeants to fire fighters has increased by thirty-five (35%) percent (City Exhibits 11 and 12). Deputy Commissioner Gorak testified that as a result, the department is currently over staffed by forty-five (45) among the command ranks. The City argues that as a result, the department has become inefficient.

It is clear that the effect of the proposal would to be withdraw manning from collective bargaining. The Union asserts that the City is under a clear obligation under PERA and Act 312 to bargain minimum manning as an aspect of safety and work load. Alpena v Alpena Fire Fighters Association, 56 Mich App 568 (1974). The Union also recognizes that the City's real complaint is the constant number of one

hundred thirty-four (134) Sergeants maintained despite the reduction of fire fighters. In response, the Union states that Sergeants are not officers or supervisors and that in any event, paying Sergeants has nothing to do with efficiency. On cross-examination, Deputy Chief Gorak testified:

> "Q. All right. So that in the final analysis what we are talking about is whether 45 people who are currently paid at a given salary are going to continue to receive that salary or whether they will suffer a pay cut; isn't that correct?
>
> A. That is one of the possible occurrences."

(Transcript Volume V, Page 131.)

Chief Berry testified similarly:

> "Q. Chief Berry if the -- if 45 sergeants were reduced to fire fighters, what would they be doing that they are not already doing?
>
> A. That would be doing the same duties they are presently doing. There wouldn't be any change. They would be the next person up to act as officers or as sergeants."

(Transcript Volume VI, Page 100.)

Section 9. FACTORS

(a) The employer has a legal duty to bargain the manning issue. Alpena v Alpena Fire Fighters Association, supra.

(b) None

(c) The City claimed the department would become more efficient were the Supervisory ranks thinned out to lessor levels. However, the Union claims that the adoption of the proposal would cause the Department to become less efficient.

(d) City Exhibit 18 reveals that other major industrial cities have smaller ratios of command officers than fire fighters.

(e) Not applicable

(f) If 45 command officers were demoted, their compensation would be reduced.

(g) None

(h) See sub-paragraph (a).

OPINION AND AWARD

Based upon the testimony and evidence presented, this panel is of the opinion that the City has failed to sufficiently establish that a change in the status quo should be effectuated. The Union's proposal of maintaining the status quo more nearly complies with the applicable Section 9 factors.

This panel adopts the Union's proposal in favor of maintaining the status quo.

18. FIRE AND POLICE PENSION BOARD

The present Police and Fire Pension Board is comprised of eleven (11) board members. Three (3) are designated by the Police Unions, three (3) are designated by the Fire Fighters Union and five (5) are representatives of the City's Administration. The City proposes a revision of the Police and Fire Pension Board as follows:

> "The parties agree that the Board of Trustees of the Police and Fire Retirement System shall contain a number of City representatives equal to the number of representatives selected by active employees in accordance with the following:
>
> The Board of Trustees shall consist of twelve trustees, as follows:
>
> 1. The Mayor of the City or his/her designated representative.
>
> 2. The President of the City Council or another member of the City Council elected by the City Council.
>
> 3. The Finance Director or a designated representative appointed to service in his/her absence. This representative shall be a person in the Finance Department and shall serve at the pleasure of the Director.

4. The City Treasurer or a designated representative appointed to serve in his/her absence. This representative shall be a person in the Treasurer's office and shall serve at the pleasure of the Treasurer.

5. The Chief of Police or a designated representative appointed to serve in his/her absence. This representative shall be a person in the Police Department and shall serve at the pleasure of the Chief.

6. The Fire Commissioner or a designated representative appointed to serve in his/her absence. This representative shall be a person in the Fire Department and shall serve at the pleasure of the Commander.

7. Three members of the Fire Department who are members of the system to be elected by the Fire Department members under such rules and regulations as may be established by the Fire Commissioner to govern such elections. Such trustees shall consist of:

   a. Two to be elected by and from the members holding the rank of Lieutenant (or its equivalent) and lower ranks.

   b. One to be elected by and from the members holding rank above the rank of Lieutenant (or its equivalent).

8. Three members of the Police Department who are members of the system to be elected by the Police Department members under such rules and regulations as may be established by the Board of Police Commissioners to govern such elections. Such trustees shall consist of:

   a. Two to be elected by and from the members holding the rank of Lieutenant (or its equivalent) and lower ranks.

   b. One to be elected by and from the members holding ranks above the rank of Lieutenant (or its equivalent).

Annual elections shall be held in the Police and Fire Departments during the month of May to elect a trustee to fill the vacancy created by the expiration of a term.

In each such election the members entitled to vote shall be those of classes provided above. The terms of office for all elected trustees shall be three years. Elected trustees holding office on the effective date of this provision shall serve the remainder of their term."

Adoption of the City's proposal would change the number of Board members to twelve; adding the City's Director of Finance as a Board member. It would also allow the appointment of alternative representatives for the proposed six City representative Board members.

The Union opposes the City's proposal in favor of maintaining the status quo.

The City has set forth a number of reasons in support of adoption of its proposal. It claims it would effectuate the will of the people of the City of Detroit; it would achieve a balance of power on the fire and police pension board; and the designation of alternates would result in more fuller participation by City officials upon the Board. The City claims to need an additional representative on the Police and Fire Pension Board because of the magnitude of the Board's responsibility. It states that the Board oversees an excess of One Billion Dollars in funds and that Union Board representatives are often too liberal in determining the eligibility requirements for benefits.

The Union urges retention of the status quo for the reason that it sees the proposal as a threat to the Board's faithful administration of the pension system, which is a trust. It points out that the assets of the fund are not municipal funds but trust monies which belong to employees of the City.

In furtherence of its argument in favor of maintaining the status quo, the Union argues that they are under the General City's Employees' Plan, the purported "imbalance" is even greater: Six (6) employee representatives to four (4) administration trustees. (See Detroit City Charter, Section 11-102 which eliminated the Mayor's power to appoint the retirement member of the General Plan in favor of election by retired City employees).

Furthermore, the Union asserts that the 6/5 composition of the Police and Fire Board is nominal since one department representative, elected by and from members holding a rank above Lieutenant, Police Commander Raymas, holds his position at the pleasure of Mayor Coleman Young. Furthermore, the Union refers to testimony which shows that most Board votes are noncontroversial and unanimous. Captain Harry Manuel testified that only in relatively few situations are there differences of opinion. (Transcript Volume XXV, Pages 73 - 75).

The Union also objects to the City's proposal referable to alternates because it claims that adoption of the proposal would create a greater imbalance in favor of the City. It argues that rather than having a pool of seven (7) individuals, there would be a pool of twelve (12) individuals from which City representatives could be selected to serve on the Pension Board at a given time while employee representative numbers on the Board would remain constant at six (6). The Union is also concerned that alternates not serving regularly would bring ignorance to their service.

Section 9. FACTORS

(a) Section 11.102 of the City Charter (City Exhibit 27) provides for maintenance of the status quo. However, Section 11.103 provides that if the composition of the Board is changed, the change must provide for equal representation of elected and City members. 1982 Public Act 55, MCLA 38.1133(3) sets forth the general responsibilities of an investment fiduciary:

> "An investment fiduciary shall discharge his or her duty solely in the interest of the participants and beneficiaries . . ."

(b) Not applicable

(c) Not applicable

(d) Under the General City's Employees' Plan, there are six (6) employee representatives compared to four (4) administration trustees.

(e) Not applicable

(f) Not applicable

(g) None

(h) The City alleges that by allowing alternates to attend Board meetings, the chances increase that City representatives will participate more fully in the process. There was testimony presented that the Board meets an average of once a week for an average of three to four hours (Transcript Volume XV, Pages 75 and 86). Testimony indicated that administration representatives, due to the demands of their other responsibilities, are frequently unable to attend these meetings because of various conflicts in their schedules (Transcript Volume XXV, Page 87 and 89; and Transcript Volume VIII, Pages 51 - 52).

OPINION AND AWARD

The City has failed to demonstrate a compelling need or reason to justify alteration of the status quo by the addition of a sixth administration representative on the Pension Board. There has been no substantial evidence set forth that the ratio of Union representatives to City representatives has been grossly inequitable and/or unreasonable. However, the City has demonstrated the need for alternates, due to the evidence presented that current members of the Board are often too busy to attend its frequent meetings due to scheduling conflicts. Since the panel is not increasing the number of City representatives on the Board from five (5) to six (6), it does not believe that the Union will be biased by the allowance of

alternates for City representatives. Under the circumstances, it is only fair that the City be fully represented at the Board meetings by its designees or their alternates.

The panel hereby rejects the City's proposal for the addition of a sixth City representative to serve on the Police and Fire Pension Board. It hereby adopts the City's proposal referable to the allowance of alternates for the existing City representatives. Therefore, proposed subparagraph 3, referable to the Finance Director, should be eliminated.

It is the opinion of the panel that to become operative, the contents of this Award must also be included in the Awards of the Act 312 Panels which are currently considering Petitions for Arbitration involving the Detroit Police Officers Association and the Lieutenants and Sargents Association which represent other board members.

19. TEMPORARY ASSIGNMENTS (ECONOMIC)

Article 17 of the expired agreement provides as follows:

"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 Sergeant
Fire Fighter Driver	Fire Engine Operator
Fire Fighter Driver	Fire Sergeant
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"

(Emphasis added.)

The City's last best offer on this issue is to change Article 17 in three respects:

1) Change 12 or more hours in Article 17(A) to 24 or more hours.

2) Change 8 or more hours in Article 17(B) to 5 consecutive days or more.

3) Add the following language:

"All such temporary assignments shall be made within battalions."

The Union's last best offer on the issue is to retain the status quo.

The City states that the purpose of its proposal is to contain costs by bringing fire fighter's "out of rank pay" more in line with that of other City employees (Transcript Volume XXIV, Page 6). City Exhibit 87 lists the out of rank pay provisions in the collective bargaining agreements of some of the other bargaining units in the City. The City also states that should its proposal referable to temporary assignments being made within a battalion adopted, it would result in less disruption in the operation of a fire house when temporary assignments are made.

The Union responds that the City has presented no evidence warranting the adoption of the proposed change and argues that the last best offer of the City should be rejected. First, the Union claims that there can be no proper comparisons of fire fighting division employees with those City employees listed in City Exhibit 87. In addition, the Union points out that other Metropolitan area fire fighters, excluding fire fighters who receive no out of rank pay, have pay thresholds equal to or less than the Detroit Fire Department. Furthermore, the cities of Dearborn Heights, Ferndale, Inkster, Madison Heights and Southgate have no threshold requirements (Union Exhibit 128). In addition, the Union asserts that the

adoption of the proposal would not result in any significant cost savings to the City since out of rank pay under Article 17 of the expired agreement is rare in any event.

With respect to the City's proposed change to the effect that all temporary assignments shall be made within a Battalion, the Union argues that the City has presented no substantial evidence that adoption of said proposal would result in more efficiency within the station houses. Furthermore, adoption of that part of the proposal would be in contravention of the City wide seniority system which insures that the most experienced person of next inferior rank would be chosen for the temporary assignment involved.

Section 9. FACTORS

(a) Not applicable

(b) Not applicable

(c) While this has been designated an economic issue, the City has produced no substantial evidence to show that adoption of its proposal would result in any significant cost savings to the City. The City asserts that its proposal relative to making all temporary assignments within a Battalion would insure that the interest of the public would be better protected because the temporarily assigned employee would already be familiar with the equipment of the station house. The Union responds by arguing that the present City wide seniority system insures that the most experienced person of next inferior rank is chosen for the temporary out of class assignment under the present system.

(d) According to the City, the purpose of its proposal is to contain costs by bringing fire fighters out-of-classification pay more in line with the out-of-classification pay of other City employees

(City Exhibit 87). Union Exhibit 120 shows that of other fire departments in the metropolitan Detroit area which provide out of rank pay, ten (10) of thirteen (13) have a pay threshold equal to or less than the Detroit Fire Department's present threshold requirements.

(e) Not applicable

(f) Not significant

(g) None

(h) The City's proposal relative to the Battalion wide selection would undermine seniority rights.

OPINION AND AWARD

The City has failed to meet its burden of demonstrating the need for effecting a change in the status quo. The City has presented no substantial evidence that adoption of its proposal would result in any significant cost saving to the City. In addition, based on the testimony presented, this panel does not find the present threshold requirements for out of rank pay to be at all unreasonable. With respect to the City's proposal that temporary assignments be made within Batallions, we are persuaded by the Unions's argument that the existing system insures that the most experienced person of next inferior rank is chosen for the temporary assignment involved.

This panel hereby adopts the Union's proposal to maintain the status quo.

20. WORK RELIEF

The City proposes to amend Article 18 of the expired agreement by adding language to Paragraph C, eliminating Paragraph H and adding a new Paragraph J. The proposed addition to Paragraph C provides:

"Each employee may send substitutes for not more than two (2) of his scheduled tours of duty in each three-month period (January - March, April - June, etc.)"

Paragraph H, which the City wants eliminated, provides:

"H. Effective January 1, 1982, a member shall not participate in more than ninety-six (96) hours of CT transfers per quarter. Direct work relief exchanges are not affected. The request for CT transfer must be made no later than the end of the quarter succeeding that in which the work relief occurred."

Proposed Paragraph J provides:

"J. Should any claims arise as a result of the operation of the provisions of this article, the Union agrees to save and hold harmless the City from any damages or other financial loss which the City may be required to pay or suffer as a consequence of its compliance with these provisions."

The City's proposal referable to Article 18, Paragraph C would limit each employee to two work reliefs for each three-month period. Its proposal referable to Article 18, Paragraph H would eliminate the transfer of compensatory time (CT) for work relief exchanges. Proposed Paragraph J would protect the City from liability for damages resulting from the operation of the work relief system.

The Union is opposed to all three proposals and is in favor of maintaining the status quo.

The present work relief system works as follows; a fire fighter may send a substitute to work in his or her place on a regularly assigned tour of duty, provided the substitute is deemed fit for duty of the commanding officer involved (Transcript Volume XVII, Pages 68 - 69). The fire fighters involved in the work relief exchange make arrangements for "repayment" for the time worked in one of three alternative means:

1) They may trade scheduled work days;

2) A cash payment may be made; and

3) CT time may be transferred.

Presently, the City claims that a fire fighter need take no more than eight (8) work reliefs in a given year in order to give him ample time to meet his requirements. It claims that the present system which provides for unlimited work reliefs is open for abuse. It sites its Exhibits 68 and 69 in support of its contention. Furthermore, it alleges that the transfer of compensatory time as outlined in Article 18, Paragraph H results in an admistrative nightmare because of the extensive record keeping required (Transcript Volume XVII, Pages 71 - 72). The City proposes that Paragraph J be adopted in order for the City to avoid liability for paying someone who is not working.

The Union argues that since the early 1970's, fire fighters have been permitted to use work reliefs by trading scheduled work days, paying cash, or transferring CT time. It is the position of the Union that the City has failed to establish convincing justification for the proposed drastic reduction in work reliefs and points out that its records indicate that only a small number of fire fighters make use of work reliefs anyways. It proposes that rather than eliminating the use of transferring compensatory time for work relief, the City's record keeping procedure should be streamlined. The Union reminds the panel that the same proposal was rejected by the Howlett Arbitration panel and states that there has been no significant changes since that time.

Section 9. FACTORS

(a) The City seeks to add Paragraph J because it fears that it does not have legal authority to pay individuals who are not working.

(b) None

(c) Not significant

(d) Not significant

(e) Not significant

(f) The City asserts that when unlimited work relief first became available, fire fighters were not provided with the extensive benefits and days off with which they are presently provided. Hence, the City argues that there is no present need for unlimited work relief.

(g) The Union has suggested, consistent with the Chairman's suggestion at Transcript Volume XVII, Page 162, that the status quo be maintained with the condition that all fire fighters be required to actually work a minimum of sixty-five (65) duty tours per year.

(h) The system as presently developed sets the stage for abuse. Theoretically, work relief can be utilized to the extent that a fire fighter is paid yet never or rarely works.

OPINION AND AWARD

The City's major concern referable to the work relief system is the opportunity for abuse that it creates. If the status quo were maintained but fire fighters were required to actually work a minimum of sixty-five (65) - twenty-four (24) hour duty tours per year exclusive of disability or illness, the opportunities for abuse would dramatically lesson.

This panel hereby denies the City's proposals in favor of maintenance of the status quo with the provision that Article 18 be amended to provide: All fire fighters are required to actually work a minimum of sixty-five (65) duty tours per year (exclusive of disability or illness).

21. FURLOUGH SELECTION

The City proposes to change various provisions of Article 19 referable to Furlough Selection. Paragraph F currently provides:

> "F. Furlough Draw
>
> All Company personnel shall draw furloughs with their assigned company unit. Battalion Fire Chiefs shall draw separately by units, at a time set by the Chief of Fire Fighting Operations."

The City proposes to modify Paragraph F as follows:

> "Beginning with the Winter Series of Furloughs in 1983, furlough drawing shall be conducted separately for each classification within each battalion."

Paragraph V currently provides:

> "V. Furlough and CT Liquidation Limits
>
> The number of 24-hour fire fighting personnel eligible for furlough or CT liquidation shall be granted up to, but shall not exceed 8.4% of the total personnel on either unit.
>
> For example: if a unit has 691 persons, no more than 58 are eligible for furlough or CT liquidation."
> (Emphasis added).

The City proposes the following change:

> ". . . but shall not exceed 8.4% of the total personnel on either unit in each classification within each battalion."

Paragraph T currently provides:

> "T. Retirement Affecting Furloughs
>
> Retirements: 25-year's service (Old and New Plan), Duty Disability, Non-Duty Disability and Age-60, shall entitle a member to full furlough benefits for the calendar year in which the retirement becomes effective."
> (Emphasis added).

The City proposes the following change:

> ". . . shall entitle a member to only those furlough benefits he was eligible for at the time his retirement became effective."

The Union is in favor of maintaining the status quo.

Currently, furloughs are selected separately by each company unit. Under the terms of Article 19, Sections E and J, drawings are held in February and April and each employee selects two five day furloughs (Transcript Volume XVIII, Page 185). Although the contract provides for the above-described procedure, Union President Earl Berry testified that first furlough selection drawings are seldom necessary and that second furlough drawings only occur approximately twenty-five (25%) percent of the time because employees in each company unit are usually able to work out mutually satisfactory arrangements regarding the selection of furlough time (Transcript Volume XVIII, Pages 42 and 64). Hence, employees are able to suit their individual needs and are able to arrange "paired" or two consecutive five day furloughs, resulting in vacation period greater than five days (Transcript Volume XVIII, Pages 43 - 44).

If the City's proposal were adopted, employees would still be entitled to draw for furloughs, but the composition of the group participating in the draw would change. The selection groups would no longer be the smaller company units, but rather four classifications within each of the Departments' nine battalions: one consisting of Battalion Chiefs; one consisting of Captains, Lieutenants and Sergeants; one consisting of Fire Fighter Drivers and Fire Engine Operators; and one comprised of Fire Fighters (Transcript Volume XVII, Page 177 and Transcript Volume XVIII, Pages 8 - 9). According to Union President Berry, these larger groups, from different fire stations, would make

it more difficult for employees to work out mutually agreeable furlough schedules including paired furloughs of two consecutive five day periods.

During the course of the Howlett arbitration, the City proposed that employee furloughs be limited to five consecutive days. The panel rejected the City's proposal stating at Page 62:

> "No overriding reason was disclosed by the evidence why Fire Fighters, like other City employees, should not have an opportunity for vacations longer than single, five-day periods.
>
> Throughout both the public and private sectors, employees are, after specified years of service, entitled to vacations of more than one week. Under the City proposal, Fire Fighters could secure vacations of longer than one week only if they happened, through the lottery, to draw a period at the end and beginning of two vacation periods. Footnote omitted. "

The Union claims the City's proposal is but a veiled attempt to achieve what the Howlett panel rejected. The City argues that its purpose is to increase the efficiency of the furlough draw system since there is no way for the department to know in advance how many members of each rank will be on furlough during a given time period (Transcript Volume XVII, Page 187).

Section 9. FACTORS

(a) Not applicable

(b) None

(c) The City claims the department would become more efficient were its proposal adopted.

(d) As noted in the Howlett arbitration award, other City employees are not so tightly restricted in the manner in which they take their vacation hours.

(e) Not applicable

(f) Apart from furlough time, association members receive additional time off from their job duties.

(g) None

(h) Under the status quo, employees usually work out mutually convenient furlough schedules amongst themselves within their company units and between the various ranks. Adoption of the City proposal would make it more difficult for those arrangements to be made because the draw group would consist of employees outside the company unit and would be limited to certain rank classifications.

OPINION AND AWARD

The panel is of the opinion that the City has failed to adequately demonstrate any substantial need for a change from the status quo. While the City alleges that the adoption of its proposal would result in greater efficiency within the department, it has produced no evidence tending to show that the present furlough draw system is inefficient. The current system provides the employees with adequate access by which they may arrange mutually convenient furlough days including paired furloughs of two consecutive five day periods. Adoption of the City's proposal would only serve to make it more difficult for employees to do so.

This panel hereby rejects the City's proposal referable to furlough selection.

22. OUTSIDE EMPLOYMENT

The City proposes to add language to Article 12 of the expired agreement which would require fire fighters to both advise the City of outside employment and seek the City's approval to engage in that outside employment. The following constitutes the proposed language as well as related Personnel Department Directive #77-3:

"An employee engaged in outside employment or who expects to do so in the future shall provide information on such outside employment to the Fire Commissioner in accordance with the procedure provided in Personnel Department Directive #77-3 Outside Employment Policy. Permission to engage in outside employment shall be denied in those instances where such outside employment constitutes a conflict of interest or seriously interferes with the employee's duties and responsibilities as an employee of the Fire Department." (Personnel Department Directive #77-3 is reproduced within the agreement.)

Personnel Department Directive #77-3 provides as follows:

"July 25, 1983

MEMO TO: ALL DEPARTMENT HEADS AND PERSONNEL OFFICERS

FROM: Joyce F. Garrett, Personnel Director

SUBJECT: Update on Outside Employment Policy

Due to recent questions which have arisen regarding the City's outside Employment Policy, Personnel Directive #77-3 is being republished.

Reaffirming the Outside Employment Policy as stated in the Manual of Standard Personnel Practices (Sec. 533 et seq.) and the provide for uniform administration and update of permission granted to employees for outside employment, departments are requested to require that any employee who is either presently engaged in outside employment or who expects to do so in the future shall obtain prior approval for such work.

The attached Request for Approval for outside Employment form should be filled out and acted upon in every case so that departmental records can be updated.

In determining whether or not to approve the request, the department head should insure that the request complies with the following terms:

1. That the outside employment will not adversely affect the reputation and good name of the City service;

2. That there is no conflict of interest between City employment and outside employment as required by the attached provisions of Sec. 2-106 of the Charter of the City of Detroit whether such conflict of interest shall be financial or public interest as defined by law;

3. That such outside work is not performed during the employee's scheduled hours of service in City employment and that travel to such outside employment does not create a similar time conflict;

4. That specific inquiry be made to determine that the outside work is not so burdensome as to impair the efficiency of the employee in his City poistion, or likely to cause absence or tardiness;

5. That the type or conditions of the requested outside employment shall not be contrary to departmental rules, ordinances, or Charter, State or Federal law;

6. That any approval shall be made subject to annual renewal or earlier if approved for a lesser time, and, in any case shall be required each time the employee makes a request for other outside employment.

PERSONNEL DIRECTOR"

The Union is opposed to the proposed change.

Section 2.106(1) of the 1974 City Charter provides:

> "An elective officer, appointee, or employee who has a conflict between a personal interest and the public interest as defined by law, this charter or ordinance shall fully disclose to the corporation council the nature of the conflict. Except as provided by law or ordinance, no elective officer, appointee, or employee of the City may participate in or act upon or vote upon any manner if a conflict exists."

According to the City, the object of its proposal is to put into place procedures to identify potential conflicts of interest or other problems related to outside employment so that said problems may be eliminated as soon as possible (Transcript Volume XV, Pages 130 - 140 and City Brief, Page 156). In support of that position, Mr. Watkins, Administrative Assistant to the Fire Commissioner,

testified that he is the person in charge of investigating allegations of conflict of interest. Mr. Watkins testified that the implementation of the above-quoted Charter provision could be more easily accomplished if the fire department had advance notice of the outside employment of the fire fighters (Transcript Volume XI, Pages 139 - 142).

The Union counters, however, that the City has not produced any evidence to show that there is or has been any conflict of interest problem with members of the Detroit Fire Fighters Association. In support of its opposition to the City's proposal, the Union points out that the proposal would rescind rights negotiated in 1963 referable to the rights of its members to use off duty time as they see fit. In Detroit Fire Fighters Association and the City of Detroit, Case No. 54-391353-80 (1981, Brown) (Union Exhibit 68), arbitrator Berry C. Brown upheld the fire fighters' rights to outside employment. In City of Detroit and Detroit Fire Fighters Association, Case No. 54-391970-81 (1982, Roumell)(Union Exhibit 69), Chairman Roumell upheld the Brown arbitration award. In addition to the forementioned arbitration awards, the Union argues that the City's proposal, which incorporates Personnel Department Directive #77-3, goes far beyond that which is required by Section 2.106 of the City Charter in that it requires, among other criteria, "that the outside employment will not adversely affect the reputation and good name of the City's service"; that "specific inquiry be made to determine that the outside work is not so burdensome as to impair the efficiency of the employee in the City position or likely to cause absence or tardiness"; and that "the type or conditions of the requested outside employment shall not be contrary to department rules or ordinances

or Charter or State law of Federal law." The Union argues that rather than this being a mere "notice" proposal, its adoption would constitute a restriction and many rights and privileges. It supports its position by introduction of Exhibit 70 which shows that in many fire departments in the State of Michigan, no restrictions exist on outside employment.

Section 9. FACTORS

(a) 1974 Charter, Section 2-106 provides that no employee of the City may act upon any matter if a conflict between a personal interest and the public interest exists.

(b) None

(c) Not applicable

(d) The Union introduced Exhibit 70 to show that in certain other fire departments, no restrictions exist on outside employment even including any requirement of notice.

(e) Not applicable

(f) Not applicable

(g) Not applicable

(h) The Brown and Roumell arbitration panels affirmed the status quo.

OPINION AND AWARD

Since Section 2-106 of the City Charter precludes any conflicts of interest by City employees, it would be in the best interest of all involved were fire fighters required to merely advise the Fire Commissioner of any outside employment. However, the City has not made a sufficiently persuasive showing relative to any need for a fire fighter to obtain the City's permission to engage in outside employment as required by the City's proposal which incorporates Personnel Department Directive #77-3. The requirements set forth

therein go beyond the scope of that which is required by the 1974 City Charter. Thus, this panel will eny that portion of the proposal.

This panel hereby finds that the following be adopted in lieu of the City's proposal regarding outside employment:

> "An employee engaged in outside employment shall annually notify the Fire Commissioner of the type of such employment and the name and address of such employer(s). Employees engaged in casual i.e. sporadic outside em-employment need only provide such information once per year unless the nature or type of outside employment substantially changes."

SUMMARY

Both parties are to be commended for their excellent presentatation of proofs and arguments in this matter and for their lucid and comprehensive briefs which were of inestimable value to the panel. They assisted the panel in its effort to balance the equities of the City's ability to pay, the Union members' right to fair and equitable treatment and the right of the Citizens of Detroit to the best fire fighting services possible. The panel believes that the Awards announced above are consistent with that balancing process.

John B. Kiefer

JOHN B. KIEFER, Chairman

MARK ULICNY, City Delegate

EILEEN NOWIKOWSKI, Union Delegate

DISSENTING OPINIONS

MARK R. ULICNY
City of Detroit Delegate
Concurring on Issue Nos. 2, 3, 6, 9, 10, 13, 16, 18 (City Alternates), and 22 (Notice to Commissioner).

Dissenting on Issue Nos. 1, 4, 5, 7, 8, 11, 12, 14, 15, 17, 18 (Denial of New Board Member), 19, 20, 21, and 22 (No City approval).

EILEEN NOWIKOWSKI
DFFA Delegate
Concurring on Issue Nos. 1, 4, 5 (provision of safety equipment/clothing), 7, 8, 11, 12, 14, 15, 17, 18 (denial of additional City delegate), 19, 20, 21, 22 (denial of prior approval for outside employment).

Dissenting on Issue Nos. 2, 3, 5 (denial of second pair of gloves and bunker pants), 6, 9, 10, 13, 16, 18 (alternates for City delegates), 22 (notice to City of outside employment).

DISSENTING OPINION OF EILEEN NOWIKOWSKI

I concur in certain of the awards of the Chairman and dissent as to others, as noted in the Chairman's award. I write separately to emphasize my dissent as to three items.*

I. RESIDENCY.

The Panel denies the proposal of the Association that its members be relieved of the Detroit residency requirement. As the Association contended, there is perhaps no condition of employment affecting Detroit firemen which is more onerous, unfair and intrusive than this requirement, that fire fighters must maintain their residence within the corporate limits of Detroit. Although the residency clause is concededly constitutional, it is nevertheless an unfair interference with employees' personal choices affecting their family life, safety, housing and countless other matters.

The Panel concedes that insofar as the residency requirement is applied to this bargaining unit it is not functionally related to firemen's work.

On what basis, then, is it justified?

We are told that crime is not "rampant" in Detroit and that firemen are not its exclusive victims. But official statistics, both federal and local, introduced in evidence by the Association, demonstrated a severe worsening of the crime problem in Detroit since

*- I, of course, do not thereby imply concurrence in other awards from which I have dissented, but choose only to highlight these three.

the time of the Howlett award. In the last few days additional, updated official statistics have given Detroit the dubious distinction of being first nationally in numerous categories of serious crime. And ironically, while this very hearing was going on, the Mayor assured Detroit citizens that he was taking unprecedented steps to contain an unprecedented crime problem.

Moreover, although firemen and their families may not uniquely be the victims of crime in Detroit, this record amply demonstrates --as the Howlett record did not, although the Panel implies the contrary--the extraordinary violations of life, limb and property which have affected firemen and their families. It is no consolation to the Fire Department victims of family disorganization and death--demonstrated in this record--as well as of assault, robbery and other violent crime--that others too are suffering from similar depredations.

We are told that matters have not materially changed in other respects since the time of the Howlett award, but the record demonstrates otherwise. For one thing, for example, state police who now regularly patrol Detroit's freeways are virtually free to live where they will, while Detroit firemen who traverse those same highways have no such freedom. There are other examples.

The Panel concludes that it is not too much to expect Detroit's employees to live in the city for which they work, an obligation which they purportedly recognized when they began their employment. But the record shows that that nominal requirement has not really been

enforced until recent years and still is subject to numerous exceptions --for example, for Detroit House of Correction employees, Department of Transportation equipment operators, Zoo employees, and Water Treatment Plant employees--which exceptions cannot be defended on any consistent or rational basis whatever their initial intent.

What seems primarily to motivate the Panel is the unspoken fear that were the residency requirement to be relaxed for Detroit firemen, policemen and perhaps other City employees would seek like treatment, with the result that purportedly a large percentage of fire fighters would leave the City, with dire economic consequences to the City including "further decline and decay." Economic studies--disputed by economic authorities cited by the Association--are cited by the City as purportedly supporting that conclusion.

But if true, that argument is ultimately little more than an acknowledgment that living conditions in Detroit are so undesirable that its employees must be restrained to live here. I submit that in the year 1985, that is less an argument to justify a residency requirement than one to invite its repeal.

Indeed, given what appears to be in the final analysis this purported economic justification for retention of the residency requirement, the award is especially unfair since firemen are concurrently losing (through the parity effect of the DPOA Act 312's panel economic award) their cost of living allowance, which initially was the Administration-tendered quid pro quo for the residency clause, according to the Association's uncontroverted proofs. It is unjust that the City should have it both ways.

II. WORK WEEK.

The Panel denies the requested improvement in the firemen's work week, to reduce it from the present 50.4 hours per week to the proposed 48 hours per week. Although the present schedule represents approximately 26 percent more work hours than that of other City employees--or five more work years in the course of a fireman's career!; although firemen's work load has increased dramatically in recent years as a function both of a severely reduced work force and a significantly increased number of alarms; although the present work week has not been reduced in 13 years (since the Killingsworth award); although a survey of the 10 largestcities in the United States reveals that the average work week by department is 49.57 hours and the median is 48.70 hours; although by reason of federal wage hour law and judicial developments firemen in other Michigan cities who are nominally on a 56 hour work week must now effectively be treated as if on a 53-54 hour work week; and although other compelling circumstances militate a proposed modest reduction in the work week, the Panel has denied the Association's request.

The Panel tersely cites the (unidentified) cost of the proposal. But in view of the inadequate pay increase otherwise being received by unit members (as a consequence of the DPOA panel award), a $1.6 billion municipal budget and an anticipated beginning City surplus of $35.6 million, the anticipated annual cost (according to the City) of $3 million per year (or only $1.5 million in fiscal 1985-86) for this proposal is modest. In fact, the City acknowledges its will and capacity if necessary to spend $3,000,000 per month to pay off the unbudgeted $37 million Joe Louis Arena debt.

Finally, the Panel unfortunately comments as part of its analysis that firemen sleep and eat during their 24 hour tours of duty--as indeed they do, when not interrupted by life-threatening runs at any hour of the day or night.

We had thought that the late Harry Platt, who served as the parties' first arbitrator for the 1970-1 contract period, had put that argument to rest. He wrote at that time:

> "A fireman, it is said, spends a large percentage of his duty time in alert time or stand-by service. That is undoubtedly true although the significance of this escapes us. Alert or stand-by time is a characteristic of many jobs in industry and in public service. It is, of necessity, a phase of any job which requires the employee to be available for instantaneous response to emergencies. Nor does the fact that a firemen is on alert time mean that his time is idly spent. His stand-by service includes station house-keeping and maintenance, reconditioning equipment after alarm use, training, study and drills. . . . As a consequence however, he has time off in greater blocks of time. Whether this makes his job more desirable than a policeman's is debatable. No doubt many people would consider working separate eight hour shifts, sleeping in their own beds at home, and eating home prepared meals with their families every day a more desirable arrangement." (U Ex 7, p. 33).

Like soldiers who guard their country night and day and who put their lives on the line at all hours, Detroit firemen who serve so valiantly should not be denied a lessening of their onerous work schedule merely because, as an inevitable aspect of their 24-hour duty in the interest of the employer and Detroit citizens, they must partake of the human functions of eating and sleeping.

It is time to finally acknowledge the merit of this proposal.

III. GRIEVANCE ARBITRATION OF MEDICAL ISSUES.

The Panel's denial of the Union's proposal for grievance arbitration of medical questions is disappointing. The Union sought to correct an unfair result, totally unanticipated by both parties, of a recent grievance arbitration award which had held that certain discretionary medical decisions by Department physicians were limited to challenge for arbitrary and capricious actions or for actions taken in bad faith. The Association here merely sought the opportunity, as in the case of other disputes arising under the contract, to have a disinterested determination on the merits; and the Union was indifferent as to whether the usual contract grievance and arbitration procedures were to be followed or whether a streamlined medical arbitration panel would be used instead. What is at stake are important rights, not otherwise in dispute, that in the event of their service-connected disability firemen's wages and benefits will be maintained and their medical and hospital expenses will be fully covered.

The Panel denies the Union's proposal with the simple statement that there has been no "adequate showing that the present grievance procedure is at all unfair." On the contrary, the record establishes that in the relatively short time since the grievance arbitration award which precipitated the present problem, there have been numerous instances of erroneous medical determinations. These have been virtually incestuous in that they really depended upon the lay input of administrative aides to the Fire Commissioner, and thereby become self-fulfilling prophecies.

The Department physician himself disclaimed infallibility. That should be proof enough of the proposition, as in other contractual disputes between the parties, that one (otherwise) irremediable contract violation is one too many; and should justify, under classic labor relations principles, the desirability of final resolution of the contracting parties' disputes by a qualified, impartial arbitrator (or his equivalent).

It is of course true that there remains a whole host of medically-related issues which are subject to the parties' grievance and arbitration procedure; and that abuse of discretion, other arbitrary or capricious conduct, and determinations in violation of law or the clear provisions of the parties' contract, remain reviewable and reversible under the contract grievance and arbitration procedures. Unfortunately, the present decision will require the Union to pursue to arbitration too many meritorious claims which the Department, emboldened by this disappointing decision, will erroneously deny. The stakes--of making disabled employees monetarily whole, as nearly as possible--are too high to permit the Association to do less.

CONCLUSION

For the foregoing reasons, I respectfully dissent from the Panel's decision on the above issues, as well as the other issues identified by the Chairman.

Eileen Nowikowski

EILEEN NOWIKOWSKI

DATED: August 2, 1985

IN THE MATTER OF
DETROIT FIRE FIGHTERS ASSOCIATION
AND CITY OF DETROIT ARBITRATION
UNDER ACT 312 MERC CASE NO. D83-595

DISSENT OF CITY PANEL MEMBER, MARK R. ULICNY

As the City's delegate I find it necessary to enter my formal dissent on various issues as awarded by the panel majority. This dissent will be in order of the awards as listed in the opinion and award written by the panel chairman, Mr. John Kiefer.

1. PARITY

Over the last 10 to 12 years the City has from time to time proposed an elimination of the traditional police-fire parity. The basis for this position evolved subsequent to the right granted public employees in 1965 to collectively organize and bargain and the passage of compulsory arbitration under Act 312 in 1969. With the organization of separate unions under the law, it became quickly apparent that the wages, hours, and working conditions which were previously established through means other than collective bargaining would no longer be under the final control of the City's administrators. Very costly changes began to occur as a result of arbitrated labor contracts and various grievance activity which arose under those contracts.

In an effort to control some of those increases in costs, the City began attempting other means to limit public safety expenditures and yet retain service levels at an acceptable degree of efficiency. A close look was taken at both the police and fire service to determine how best to introduce new methods of providing that service. City management began to realize that the relative skill effort and responsibility of those involved

in the fire service were quite distinct and separate from employees providing police services. In addition, the number of applicants for fire fighting jobs showed that thousands of citizens were interested and qualified for the few positions available. A comparison of the extensive training, testing, and work schedules required of police employees to that required of fire fighters resulted in a determination to try and unhook the two groups so that a more rational system of wage and benefit administration could apply. However, the City met with defeat in every instance where a change in the parity relationship was proposed through the arbitration process. With its financial resources becoming even more limited, the City was still faced with the need to maintain a work force at a wage and benefit level significantly above that which would otherwise be required by normal labor market conditions due to the parity requirements.

Being unable to change this relationship which has continually grown more expensive under the labor laws a decision was made to seek a more limited change in the parity system. The change as detailed in the City's last best offer would merely list those wage and benefit areas which would continue to be subject to the parity arrangement. The objective sought in this change was to avoid the ripple effect of open ended parity whereby various benefit adjustments that may be made based on facts or service requirements unique to each group are automatically applied to the others.

The combination of independent unionization with continuatio of the parity system has resulted in separate labor contracts

but with very little bargaining latitude. This tandem axis has taken many forms but the end result is always more cost to the City. Improvements made for one group which were based on adjustments in other areas often were not directly transferable to the competing groups which resulted in other adjustments being made which then would become subject to a claim by the first group and so on and so forth. To at least avoid the consequence of this, the City listed the major wage and benefit areas which had over the years become firmly established as parity issues. By inference all other appropriate issues would be subject to bargaining or arbitration between the City and the DFFA and would be out from under the shadow of those negotiations or arbitration awards affecting the two police groups.

The panel majority has decided to maintain the current parity system without modification. The difference in immediate cost is of course nil and it is difficult to predict the changes which will occur from this point forward. However, it is certain that the parity straight jacket will limit cost effective application of such changes to the respective groups based on their unique circumstances. The union argues for example that a gun allowance awarded to police officers would serve to undercut their equal economic status if parity were limited. The fact that such an allowance might be granted by another arbitrator based on his or her perception of a genuine need is ignored as is the fact that fire fighters are not required to carry guns on or off duty. Under the union's theory therefore, the application of any increased monetary benefits of any sort necessarily have to be applied in some fashion to fire fighters even though it

can not be operationally justified.

I therefore respectfully dissent from the panel's majority award on the issue of parity.

4. ADDITIONAL FURLOUGH DAYS

Here the majority has awarded one additional furlough day for fire employees with 21 or more years of service and an additional day for those with 25 or more years of service. The cost of this increase in furlough time has been estimated by the city at approximately $300,000.00 annually, and this cost alone should have militated against an award adopting the union's proposal.

While evidence through exhibits was presented which indicated that the City's furlough allotment for fire fighters was less than that provided by other major fire departments throughout the country, this could not have been persuasive when viewed in the context of the other wage and benefit levels enjoyed by Detroit fire fighters, e.g. bonus vacation and other paid off time opportunities. A simple reliance on comparisons with other communities also fails to account for the results of collective bargaining with other city employee unions which did not result in any improvements in vacation or off time benefits.

With no demonstration of need and in view of the city's general financial health which continues at a low ebb, I do not believe the award for the union on this issue is appropriate. I therefore register my dissent.

5. SAFETY

Safety has always been an issue that is of vital common interest but ultimately is a management responsibility. While it is true that employees and their unions often propose measures

to improve the "safety" of the work place, many safety issues as proposed are more in the nature of improvements in personal comfort. Even where an undisputed need for safety equipment arises there may still be a great difference of opinion even among the experts; e.g. are air bags better than seat belts? Here we have an award of a new type of glove which is more costly than that presently used. The provision of a breathing aparatus for an employee who will rarely need the equipment in performing his normal duties and lastly an award providing for commercial clothes dryers which in theory will be used to dry wet fire fighting gear. While this additional equipment may indeed provide some additional measure of safety to employees of the department one must question the cost benefit of supplying it based on the evidence produced by the union. The Detroit Fire Department, of course, cannot afford to ignore safety needs or to cut corners in areas where special equipment is needed. However, there is a point where reasonable minds familiar with the service must agree that given the available financial resources that certain costs go beyond actual need and become only desirable options.

I believe the award on this issue has crossed that line. I therefore must dissent.

7. <u>UNIFORMS</u>

The award here grants the union request for additional jackets for those employees who do not now have them as well as various badges and insignia to be placed on uniforms. This again is an issue which results in the expenditure of funds for material unrelated to the real need of the service. Overall

The cost may be viewed as minimal, but it still deprives the department of the discretion to use these funds in other areas which may be more important. While I do not discount that there may be a certain value in providing the kind of comfort or public recognition on which this proposal was based, the fire service is not and need not be a military organization. Department management should have the authority to determine its public image as well as the cost of projecting that image. For that reason, I wish to dissent.

8. MANDATORY MESS

The basis for this union proposal is the favorable tax consequences resultant from a mandatory contribution of employee funds for the purchase of food.

My objection to this award is based on the belief that certain individual personal freedoms should be maintained where there is no relationship to the work performed. To the extent their performance remains unimpaired, employees should be permitted to provide their own meals if they so desire or to follow whatever habits of nutrition or eating schedules which they find most suitable. The imposition in this case of the will of the majority in an area which has always been a personal choice is unfair, especially in the guise of a requirement by the employer. I dissent from the majority award on this issue.

11. BASIS OF REPRESENTATION

On its face, the union proposal to have its four principal officers off on a full time basis to handle the union business appears to be reasonable since it parallels the same arrangement accorded union officers of other large city employee unions,

including the DPOA. However, I believe insufficient recognition was given to the fact that these officers currently work little more than two days a week and even then are permitted other time off during this schedule to handle routine grievance matters and etc. I also believe that the size of the DFFA bargaining unit does not warrant the number of full time union representatives that has been awarded. Additionally, these officers will continue to gain departmental seniority while on full time union status and remain eligible for promotion to higher ranks under the unique seniority promotion system which is theoretically based on the work experience gained through service time. It is conceivable, therefore, that one or more of these officers will continue to receive promotions up through the higher ranks without having the fire fighting experience or supervisory responsibility that should be the basis for such promotions.

I must dissent from the majority decision on this issue.

12. HOLIDAY PREMIUMS

The union proposal here relates to the difference in holiday premiums paid to fire captains who work out of class as battalion chiefs. Due to the application of the traditional police fire parity, a fire captain working on a holiday is paid on a triple time basis. However, when working out of class as a battalion chief, which is on a parity level with police inspector, a premium multiplier of two and a half is used which results in the fire captain receiving less money than he otherwise would had he continued working as a fire captain, even considering the higher rate of base pay.

The union's argument on this issue has a certain appeal

because an employee comes out with less in payment for the day even though working at a higher level due to a "quirk" in the system. This quirk, however, is something much more fundamental. It goes to the very basic theory supporting parity. What has been requested here is an exception to the parity rule because there is a perceived disadvantage to its strict application in this case. If it is "unfair" for a fire captain to receive two hundred and fifty percent instead of three hundred percent for holiday work, is it not equally unfair for those regular battalion chiefs working those same holidays to earn less than their subordinates? The answer is of course that parity demands it and the same application of the parity principal should be maintained in this situation.

I therefore wish to dissent.

14. STOLEN (LOST) ARTICLES

The origin of the City's reimbursement policy is found in the need to provide a form of insurance for an employee's personal equipment needed to perform the job.

This line of duty equipment of a personal nature such as shoes, eyeglasses, and etc. has been considered to be of a low risk from a standpoint of reimbursement even though some times questions of individual negligence would arise. In this proposal, the union seeks reimbursement for items which are not only of substantially greater value but are also in the nature of communal property. While microwaves, VCR's, snowblowers, etc. may be considered to be appropriate conveniences in a fire station, they are not required nor encouraged by the department. To impose upon the City the risk of loss for these appliances and equipment which have been brought into the station houses

by individuals or groups of fire fighters based on their personal choice I believe is improper.

I therefore dissent on this award.

15. ARSON SECTION SCHEDULE

In answer to the union's demand for establishment of a work schedule consisting of four ten hour work days per week, the city responded by proposing that such a schedule be set up for a six month trial period. The obvious virtue of the city proposal, of course, is that if the new schedule when applied to the arson section in fact turns out to be a complete failure, adjustments can be made within a relatively short period of time. Without a trial period, any interruptions or loss of service because of the new schedule may remain uncorrected indefinitely.

Management has always born the responsibility for the efficient use of personnel resources in delivering the needed service. With true collective bargaining it is often possible for the parties to reach agreement on various ways to use the work force for providing the service in a way which is also convenient for the majority of the employees. This is not always possible, however, and in the final analysis, it is the delivery of service that is paramount. To lock in the department with an untried schedule of hours especially where shifts and starting times are also prescribed without including some form of safety valve may mean that the department cannot do what it was organized to do, leaving the department management and the citizens in a state of permanent frustration.

The department's willingness to experiment with a

new form of scheduling should not have been interpreted as a capitulation or an abdication of this basic responsibility.

I must object to the majority award on this issue.

17. MANAGEMENT RIGHTS

The city's proposal on this issue would be the insertion of language in the management rights clause to state that the city would determine the number of employees in each classification that would be employed at any time. The basis for this proposal results from an erosion over time of what is normally considered a fundamental management prerogative. The most notable example being the fixed number of fire sergeants now in place due to previous arbitration decisions. The net result is that the work force cannot be properly balanced for the work that has to be done. The union points to other decisions not involving these parties which seems to require the negotiation of "manning" levels because of the effect on the safety and work load of other employees in the bargaining unit. In this case, however, there was no evidence presented that a reduction in the number of fire sergeants would have any effect on safety or work load. In fact, the Union's testimony and argument to the panel on this issue had to do principally with the relative efficiency and morale of the department as opposed to safety and work load. This is an indication that the issue really goes to the "core of entrepreneurial control" which is a phrase adopted by the NLRB in determining the mandatory nature of bargaining issues.

I must strongly dissent from the panel's award rejecting this proposed change.

18. FIRE AND POLICE PENSION BOARD

The City in its continuing efforts to follow the dictates

of the City Charter which became effective in 1974 has proposed the addition of another City representative to the police fire pension board and to provide for alternates for those exofficio members of the board where none is now permitted. The charter revision commissioners as well as the city electorate which approved the new charter saw the need for such a change more than ten years ago. Since the city through tax revenue is required to contribute approximately ninety-five percent of the money needed to fund this pension system, the change to grant equal representation must certainly have appeared to have been appropriate. At that time, of course, they believed that merely a change in the ordinance which established the board would be necessary. However, the submission of the required ordinances resulted in unfair labor practice charges which finally resulted in a decision by the Michigan Supreme Court that left this issue in the arena of collective bargaining. Even though the city argued at that time that diverse results from Act 312 panels could occur, the Court in its wisdom was unmoved.

The panel in this case has determined that the addition of another city representative to the board would be inappropriate, in effect overruling the will of the people of the city. In consolation it will look favorably upon the request to provide alternates for the current city representatives. While this change will serve to improve the balance, it clearly falls short of providing the equilibrium needed.

A complicating feature of this issue, of course, is the problem predicted several years ago concerning the decision

of the other Act 312 panels. Having refused consolidation of this common issue, the union now urges that the effect of any change must be made contingent on some unanimity among the Act 312 panels. Therefore, this panel without knowing what the other two panels may or may not decide, must engage in speculation as to the outcome of the other two cases or divest itself in effect from the responsibility for making an independent decision on the issue by leaving the question for other panels to decide thereby waiving its own fair judgment on the merits.

I must dissent from the panel's refusal to grant an additional city representative to the board but concur in the change granting alternates to the present city members.

19. TEMPORARY ASSIGNMENTS

The city proposal to increase the amount of time needed to qualify for out of classification pay from twelve to twenty-four hours for those on a fifty point four hour schedule and from eight hours to five consecutive days for those on a forty hour schedule would admittedly result in a fairly modest cost saving to the city. It would, however, bring this procedure in line with that recently negotiated with other city employee unions and by keeping such assignments within each battalion it would minimize the dissruption from transferring employees throughout the city. Even though a small improvement, it nevertheless would have been an improvement. To reject this change simply because it would not save a lot of money is to ignore its basic merit. If the proposal would save any money at all and would provide more consistency in the city's compensation policies

it deserved a little more consideration.

I therefore register my dissent.

20. WORK RELIEF

This long standing practice of allowing one employee to substitute for other employees with payment in kind, compensatory time, or cash has led in recent years to a number of abuses. Being freely available, the system has allowed a number of employees to remain absent from duty for extended periods of time without censure. I believe it also fosters a view that one's job in the fire service can be treated with second class status by some employees engaged in other occupations, even though this is encouraged by the twenty-four hour scheduling that on average results in little more than two tours of duty per week that a fire fighter must actually work.

A limitation on the number of work reliefs as proposed by the city could help to refocus the need for full time well trained career oriented employees. Even with the change requiring a sixty-five duty tour minimum with which I concur (as it is at least a small improvement,) the message is clear that the fire service can still be a part time job.

I dissent from the award rejecting this city proposal.

21. FURLOUGH SELECTION

The city proposal would tend to exert better control on the number of employees in the respective classifications off on furlough during any particular period of time. Selecting furloughs on a company basis often results in a greater number of employees in one particular classification being absent from duty. This may then necessitate the transfer of other employees

from other parts of the city and a greater incidence of out of class payments.

Another aspect of the city's proposal would limit the payment upon retirement of that number of furlough days accrued by the retiring member. Under the present practice, a retiring member is paid a full complement of furlough benefits for the calendar year in which the retirement becomes effective. Therefore an employee retiring early in the year is paid furlough time for that year even though he may work only a fraction of the year.

The city's proposal here was one of modest proportions but was a refinement that should havve been adopted.

I therefore must dissent.

22. OUTSIDE EMPLOYMENT

Becuase of their work schedule, the possibility of securing other outside employment is much greater and therefore the potential conflicts in interest is perhaps greater for this group of employees than for any other.

Those working in the public service must be especially sensitive to potential conflicts and it falls to department administrators to insure that such conflicts be avoided wherever possible. Most city employees must now request permission to engage in outside employment prior to accepting such employment and report annually the status of their outside work. Here the panel has rejected the concept of prior approval. The award requiring employees engaged in outside employment to at least provide such information to the fire commissioner is a change

with which I concur. I must, however, dissent from the panel's failure to provide for the preapproval of such employment.

CONCLUSION

In summary, I would also like to add that despite disagreement with a number of decisions by the panel majority as indicated above, I believe the panel chairman, Mr. John Kiefer made a sincere effort to understand the issues and problems presented. I believe his decisions on a number of the significant economic and non-economic proposals were well reasoned and appropriate.

Ultimately however, I believe the best results in labor management relations can only be achieved through good faith bargaining by the parties involved. While it is well intentioned, the Act 312 process can never duplicate the results of normal negotiations since no matter how refined the hearing process or the informational factors that may be used, the system still remains an artificial and ersatz replacement and it is inevitable that distortions in the relationship between the parties will occur.

In this case, it is fortunate for all concerned that these distortions have been held to a minimum.

MARK R. ULICNY
City Delegate

Dated: _____