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Act 312 Award

In the Matter of Arbitration

Between

Detroit Fire Fighters, Local 344, IAFF

And

City of Detroit

(MERC Case No. D98-0644)

Dr. Benjamin Wolkinson, Chairman
John King, President, Local 344,
Union Delegate
Roger Cheek, Director of Labor Relations
City of Detroit, City Delegate

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Union Counsels
John Willems, Counsel for the City

October 15, 2001

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Background

This is a statutory compulsory arbitration conducted pursuant to Act 312, Public Acts of 1969 as amended. The Union filed a petition for Act 312 arbitration with MERC on November 27, 1998. The impartial arbitrator and the Chairperson was appointed via correspondence from the employment relations commission dated April 7, 1999.

The Panel held 51 days of hearing commencing September 10, 1999 and concluding on July 19, 2001. During the proceedings, the Panel issued an interim award on October 28, 1999 limiting the scope of the issues to be decided. The parties exchanged last best offers of settlement on June 11, 2001. Briefs in support of last offers were submitted for six issues on July 20, 2001 and for another eight issues on July 31,2001. The Union submitted its brief on two last issues on September 5, 2001 and the City on October 5, 2001.The Panel held executive sessions on five separate occasions at the offices of the City of Detroit and Local 344 Firefighters in Detroit, Michigan.

Statutory Criteria

Section 9 outlines the list of factors upon which the Panel should base its findings, opinions, and award. These include:

(a) The lawful authority of the employer.

(b) Stipulation of parties.

(c)The interest and welfare of the public and the financial ability of the unit of government to meet these 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 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 medical hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

(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.

Issues

During the course of this proceeding the parties settled many issues. The agreements reached by the parties and the language in the prior contract, which have not been deleted or altered, are made part of this award. Additionally, following the receipt of the parties' final offers, the Panel met and resolved two issues: haz mat pay and airport premium pay. Appendices A and B of this award incorporates the agreements reached on these two issues. The issues remaining in dispute were: company staffing, joint safety committee, central office staffing, breaks and lunches for central office employees, EV days, sell back of furloughs, residency, temporary assignments, meal allowance, salary

relationships- senior fire engine operators, salary relationships- senior firefighters, salary relationships- fire engine operators, substance abuse, and workplace violence policies.

The two issues of substance abuse and violence in the workplace require further discussion. On October 24, 2000, the parties reached several tentative agreements, including agreements on these two issues. After that time, the hearings continued on a number of other issues that were not resolved between the parties.

On February 12 and 13, 2001, a complete tentative agreement was presented for ratification to the membership of the Union. The tentative agreement was rejected and hearings were subsequently resumed. On May 10, 2001, the Union requested that the City begin its case on the two issues of substance abuse and violence in the workplace. The City contended that the Panel had no jurisdiction over these issues, because they had been resolved by the tentative agreements reached on October 24, 2000. The Union contended that these tentative agreements on workplace violence and substance abuse were subject to ratification by the membership. As the membership had rejected the tentative agreement on all issues, there was no longer agreement on them. The Panel ordered that the parties present proof on this jurisdictional issue at the next hearing date.

On May 11, 2001, the Union began their case on the jurisdictional issue. Union Secretary Daniel McNamara testified and the Union introduced several exhibits in support of his testimony.

On May 17,2001, the parties reached agreement on the Employer's jurisdictional objections to the drug testing and violence in the workplace issues. (Vol. 49,p.3) The City agreed to withdraw its jurisdictional objections to these two issues and to allow the Panel to consider those issues on the merits. In the interest of time, the parties agreed to limit

their presentation on those issues to documentary evidence. In order to speed up the resolution of this case, the parties also agreed to present their last best offers of settlement on all issues except substance abuse and violence in the workplace on June 8, 2001, even before the hearing has closed. This agreement allowed the parties and Panel to begin work on the bulk of the issues more quickly. It was also agreed that last best offers on substance abuse and violence in the workplace would be submitted sometime after the offers on the other issues.

On June 18, 2001 the parties held their second to the last hearing date. Each side submitted documentary evidence on substance abuse and violence in the workplace. By July 31, 2001 the parties had drafted and filed their post hearing briefs on all issues in dispute with the exception of these two issues. The Union submitted its brief on these issues on September 5,2001. The City submitted its brief on these issues on October 5, 2001.

As the above discussion indicates, this hearing has continued over an extensive time period. The Union, its membership, and the City are entitled to receive an award and the Panel has a responsibility to avoid unnecessary delays in its issuance. Prior to receipt of the City's brief on the last two issues, it had decided all the other issues in dispute. Since October 5, 2001, the Panel has also decided the issue of substance abuse policy. At the same time, it has not had the time to complete deliberations on the issue of workplace violence. Since the parties merit receipt of a timely award, the Panel has decided to issue its award on all the issues with the exception of workplace violence effective October 15, 2001. The Panel is also hopeful that with further discussion the parties themselves may reach agreement on this matter. As a result, the Panel will defer

this issue back to the parties for a period of 30 days. If the parties fail to reach agreement on the issue of workplace violence by November 15,2001, the Panel will reassert jurisdiction and issue its award on this issue.

Ability to Pay

There was much discussion on this subject during the hearing. While this factor will also be evaluated when the Panel takes up various issues, some preliminary observations are in order. The City contends that the Union's economic demands are unwarranted, as they will strain its already difficult financial situation. In support of this position, the City has noted a number of negative economic trends. Its population has been decreasing steadily, and currently stands below one million. Negative population growth is expected to continue.

Additionally between 1972 and 1997 the number of commercial establishments has declined from 23,465 to 8,297. Similarly, the labor force has declined in real numbers from 513,800 in 1980 to 391,050 in 2000. The number of persons employed and living in Detroit has also declined between 1980 and 2000, from 421,975 in 1980 to 367,950 in 2000. These declines translate into decreasing amounts of income tax returns available to fund City expenditures.

The City also notes that taxable property values have not significantly increased. Between 1998 and 2000, taxable property values when adjusted for increases in the inflation rate have increased by only $700,000. Given the small increases in taxable valuations, Detroit has only a limited capacity to finance increased municipal expenditures. Furthermore, there are limits to the City's capacity to increasing its tax revenues. The City is at the maximum of 19.9620 mills with respect to property taxes.

The Headlee Amendment also ties increases in property taxes to increases in the inflation rate, unless the property is sold. Additionally, pursuant to Public Act 500, 1998, the City by 2008 must reduce its current tax rates on city residents from 2.9 to 2.0 per cent and on non-residents from 1.45 to 1 per cent. Because the City is already at its maximum capacity to tax, it is not in a position to fund new programs by levying new taxes.

Other revenue sources are fixed at a specific level or have disappeared. The State has frozen the amount of state revenue sharing funds it provides the City. Additionally, because the state- mandated elimination of the residency requirement will generate an outward flow of tax-payers, the City will lose an estimated 21 million dollars in tax revenues. Given all these factors, significantly higher municipal costs may well threaten the City's bond rating and jeopardize the recent improvements in the City's fiscal condition.

The Union has contended that the City is fiscally able to fund its proposals. It notes that the decline in population has stopped, while the number of business permits has risen dramatically in recent times. At the same time, property tax revenues grew between 1990 and 1998. Furthermore, the significant improvements in Detroit's bond ratings from BBB+ to A- by Standard and Poor demonstrate the City's long term financial health.

The Union also cites a study commissioned by the City Council, the American Economics Group (AEG) Report, that indicated that casino revenues and taxes collected from other sources will outpace any declines in tax revenues from other sources. It contends that the declines in the City's personal income tax rates on both residents and non-residents will generate employment and population growth within the City.

The Union also maintains that the City has considerable flexibility to move money from other departments into the Fire Department if necessary. This is reflected in the City's willingness to fund new programs not even requested by the Union. For example, at one point the City proposed the implementation of a first responder program that would have required the expenditure of $3.5 million per year. Additionally, the Mayor testified that while income tax collections might be 13 million dollars less than anticipated, the City would still not run a deficit as it would defer purchases and thereby balance the budget. These considerations point to the City's continuing capacity to fund the Union's proposals.

Discussion

There is no doubt that during the past decade the City has experienced significant economic improvements. The population decline has been arrested, and the City actually experienced an increase in the number of persons employed in Detroit, from 341,000 to 367,950. (City Ex. A6) Additionally, the City is enjoying the benefits of casino revenues and its attendant spillover effects for other business establishments such as hotels and restaurants. The City has also reported a total of $ 6 billion dollars invested in city development since 1994 and a 20 per cent increase in state equalized valuation since 1996. (Union Ex. 278) In contrast to other periods when the City operated with large deficits, for the last five fiscal years it has experienced budget surpluses. (City Ex. B23) The upgrading of the City's bond rating testifies to these positive developments.

At the same time, there is reason as well for the City to be cautious and prudent in the operation of its fiscal resources. Budget surpluses can easily turn to deficits with its accompanying negative effects. No reasonable person would like to see a return to

periods when because of inadequate resources the City had to lay off workers and impose a wage freeze or reductions on employees. While moving forward economically these past eight years under Mayor Archer, there is still some concern for the City's economic health. The City's budget surplus for 1998-1999 was only $1,655,874, or only .13 per cent of the City's total budget for that year. Its rainy day or reserve fund of approximately $32 million would be sufficient to fund City operations for only nine days. State revenue sharing has been frozen. The City's income tax rate has been reduced. Most of the taxes the City is authorized to levy are already set at their maximum legal limit. Based on prior demographic studies, it is also reasonable to conclude that the City will experience an outward migration of some police and fire personnel as a result of the elimination of the residency requirement.

Whether the previously enumerated positive factors will outweigh the negative ones is difficult to forecast, as the City's future fiscal strength depends on developments that are themselves difficult to discern. For example, will casino revenues increase by more than the 2.6 percent anticipated by the City? Will the reduction in City income taxes and the elimination of the corporate tax be more than offset by casino revenues and the anticipated influx of persons and commercial establishments into the City? These questions remain to be answered. Significantly, based on the City's own projections (City Ex. C 37-14) and the Mayor's testimony (Vol. 50, p.18), the City is not anticipating any deficits for the period covered by this award. Yet given the level of uncertainty surrounding the City's fiscal situation, it is appropriate to treat cautiously union economic demands that will set in place cost increases that will impose upon the City cost increases of a continuing nature.

Additionally, the Panel notes that under Act 312, ability to pay is never to be applied in isolation. The statute requires that it be considered along with "the interests and welfare of the public." As a result, there may well be situations where costs considerations must be subordinated to the need to protect public safety. Furthermore, ability to pay is just one of nine different statutory criteria. As a result, the Panel in reviewing this standard must do so within a framework that gives appropriate consideration to other statutory criteria.

Comparables

At the outset of the hearing the parties proposed two sets of comparables for consideration by this panel: in-state and out-of-state or national communities. The parties were in agreement on six of these communities, all of which were out-of-state: Baltimore, Boston, Chicago, Cleveland, Philadelphia, and Pittsburgh. The Union also proposed the additional communities of New York City, Milwaukee, and Washington D.C. as national comparables. The City named St. Louis as a national comparable.

The parties did not agree on any of the in state or Michigan comparables. The Union proposed that the following Michigan communities be considered comparable: Allen Park, Ann Arbor, Birmingham, Dearborn, Dearborn Heights, Ferndale, Flint, Hamtramck, Lincoln Park, Livonia, Madison Heights, Plymouth, Redford, Royal Oak, Southfield, Southgate, Sterling Heights, Taylor, Warren, Westland, and Wyandotte. The City has proposed the cities of Flint, Pontiac, and Saginaw as the only in-state comparables.

In its brief, the City has taken the position that Detroit is not easily compared to other major United States cities. Additionally it is not at all comparable to other

Michigan municipalities. It further contends that the Union has failed to support with any evidence the cities it has selected as comparable. As result the City contends that comparables should be afforded little weight when the Panel considers the merits of the parties' proposals on the various disputed issues.

In support of this position, the City also cites two recent Act 312 awards involving the City of Detroit and its police bargaining units. In his DPOA award dated July 21, 2000 Arbitrator Donald Sugarman opined:

> The comparable communities category has flummoxed the parties and panels over the years, both in selection and application. If there really is such a thing as comparability among communities it is hard to come by. Thus, a certain amount of thimble-rigging is built into the process. One can expect parties to nominate communities that, for the most part, support their substantial positions and then find imaginative and creative reasons for such selections.

On the national scene, the Association believes New York, Los Angeles, Chicago, Washington, D.C., San Francisco, Philadelphia, Boston, Dallas, and Houston are comparable to Detroit. The City's approach was to classify nominees as "most comparable" (Cleveland, Pittsburgh, St. Louis), "more comparable" (Baltimore, Chicago, Philadelphia) and "less comparable" (Boston, Milwaukee) to Detroit. While all of these cities have some attributes that mirror Detroit, I am satisfied that only a few have enough important similarities that would permit their selection as being truly comparable.

If it were not hard enough to compare cities on a national scale, it is even more difficult to attempt to use other Michigan cities for this purpose. It is, after all, one thing to try a compare a small community against other small communities, it is another to compare the largest City in the state with smaller ones. In this exercise, if its local comparable communities are to be used, the City nominates Flint, Pontiac and Saginaw as "kind of mini- Detroit". The Union proposes 16 communities: Ann Arbor, Dearborn, Dearborn Heights, Farmington Hills, Livonia, Pontiac, Roseville, Royal Oak, Saginaw, St. Clair Shores, Southfield, Sterling Heights, Taylor, Troy, Warren and Westland. Some of these were ostensibly chosen because they border Detroit; others because they are in the same labor market.

Clearly most of these local communities do not parallel Detroit, they are not such that meaningful comparisons can be made. For all of these reasons I have chosen to give limited weight to the comparable communities factor and to instead focus on the other criteria. While recognizing that they are smaller, the City's local communities bear more of a resemblance to Detroit than those of the Association. Of the national nominees,

Cleveland, Pittsburgh, St. Louis, Baltimore and Philadelphia have a number of attributes of Detroit.

On the basis of these considerations, the City notes that Arbitrator Sugarman did not rely on comparable communities from either party in his award. Additionally the City notes Arbitrator Mark Glazer in the DPLSA case indicated that "external comparability will not be of particular significance in the formulation of this award because of the unique factors presented in this case by the City of Detroit." (City Ex. 93A. p)

The Union maintains that nationally large northeastern urban centers are most comparable to Detroit. In large part this is due to the nature of fire fighting in these communities: a number of fires, types of deployment etc. On this basis there is no reason to exclude the cities of New York and Washington D.C. as comparables. Additionally, it maintains that the Panel should give weight to Michigan communities that share the same metropolitan statistical area as Detroit. It maintains that Detroit and these other communities share the same labor market and as result the City must provide economic benefits that are competitive with those received by firefighters in these other Michigan communities.

The statute does not define the meaning of the term "comparable" and this Panel, like others before it, is required to give meaning to this evidentiary standard. This issue is admittedly more complex when the parties themselves have failed to take a consistent approach over the years with respect to the identity of cities that should be treated as comparable. The task of defining comparability is rendered even more problematical when panels issue awards, which utilize comparability data without providing any clear guidance or rationale for doing so. At the same time, this Panel believes that the parties' interests are not served by emasculating this evidentiary standard because of the

difficulties involved in determining comparability. Furthermore, despite these inherent difficulties, this Panel believes that there are evidentiary factors that require affording this statutory standard proper consideration.

To begin with, the Panel notes the parties proposed prior to the hearing on July 2, 1999 that certain communities were comparable to Detroit. Additionally, as noted earlier, both parties were in apparent agreement with respect to six of the out of state cities: Baltimore, Boston, Chicago, Cleveland, Philadelphia, and Pittsburgh. Due process considerations mandate that the Panel honor the agreements reached by the parties prior to the hearing. Thus the parties prepare their evidence and occupy positions on issues based in part on the positions they assumed on comparability prior to the hearing. Were the panel to summarily ignore their pre-hearing agreement on comparable communities, the parties would have been denied necessary notice of the documentary and testimonial evidence they should present at the hearing to support their respective positions. As a result, on this basis of this consideration, the Panel finds comparable the following out of state cities: Baltimore, Boston, Chicago, Cleveland, Philadelphia, and Pittsburgh.

Comparing Detroit to the largest cities in other states is also reasonable, because it represents an effort to compare fire fighters who confront the same working conditions and duties and who therefore merit the receipt of comparable benefits. For example, in the larger communities firefighters confront the added difficulties and dangers of suppressing fires in large-sky scrapers, mitigating toxic spills on major highways, and responding to disasters in airports that less frequently, or not at all, would be encountered in smaller communities. These cities may also face similar challenges in terms of fire fighting such as older housing, high number of runs per fighter, and large geographical

areas to monitor. (See Union Exhibits 176-182) The City itself has previously recognized that this consideration justified the use of national comparables, noting that major U. S. cities "are the only comparable cities because of problems, the population, the financial burdens, the job content...,". (Platt Award, 1971. City Ex. 4, p.14) These factors as well have probably shaped the willingness of other panels charged with adjudicating Act 312 proceedings involving the Detroit Fire Department to rely on out of state comparability data from many of the same cities designated by this Panel as comparable. (Killingsworth, 1971, City Ex. 5; Kiefer, 1985, City Ex.7, Kavanaugh, 1987, Joint Ex. 11)

In relying on national comparables, the Panel is also giving voice and meaning to the parties' own collective bargaining practices, an objective consistent with section 9 (h) of the statue. Both parties relied on national comparables in the Platt proceeding. They did so again during the Killingsworth (1971), Howlett (1979) [Joint Ex. 10,p.14], Kiefer(1985)[City Ex. 7,p.49] proceedings and in preparation for the current hearing as well. The existence of this bargaining history suggests that the parties themselves recognize that the negotiation of benefits and other working conditions occurs within the framework of prevailing national norms.

The City's current contention that comparabilty data should not be considered is also contradicted by the testimony of its own expert witness. Ms. Patricia Becker a demographer testified that Detroit shares many common economic characteristics with Cleveland, Pittsburgh, Baltimore, Chicago and Philadelphia, cities both parties had previously designated as comparable. Additionally, in utilizing national comparables, the Panel is not suggesting that there are not features to the department's fire- fighting

operations that may be unique to Detroit. Promotion on the basis of strict seniority may be one such element. At the same time, the City has not demonstrated that in the aggregate the department's methods of operations and the challenges and constraints it confronts render it incomparable to other departments in all other large cities. Finally, a failure to apply the evidentiary standard of comparability because Detroit in certain respects may be different than other communities finds no support in Act 312, which requires consideration of employment conditions elsewhere when communities are comparable and not identical.

The Union has also contended that the cities of Washington, D. C., New York, and Milwaukee are comparable while the City maintained that St. Louis should be afforded such designation. The Panel finds both St. Louis and Milwaukee are comparable. Like Detroit, both represent the largest cities in their respective states. Like Detroit they have experienced declining populations and high unemployment rates. The departments in these cities also expend on a per capita basis comparable amounts on fire protection and employ similar numbers of fire fighters per 100,000 residents.

The Panel has reservations over the comparability of Washington, D. C. Since its funding base is Congress, it is not dependent on local tax revenue as other cities. This may well explain its capacity to expend 77% more per capita on fire protection than Detroit. Reflecting the dominant role of the federal government as an employer, its median household income is substantially higher and its unemployment rate significantly lower than that in Detroit. (City Exhibit, 80 D). Finally, The Panel notes as well key differences between Detroit and New York. Its population is seven times that of Detroit. The massive concentration of skyscrapers may well make fire fighting there uniquely

hazardous. Additionally, unlike Detroit, its population has increased, while its median income is 50 per cent larger. These considerations render New York City less comparable than the other out of state cities.

Turning to the matter of in state comparables, the Union has proposed that the following Michigan communities be considered comparable: Allen Park, Ann Arbor, Birmingham, Dearborn, Dearborn Heights, Ferndale, Flint, Hamtramck, Lincoln Park, Livonia, Madison Heights, Plymouth, Redford, Royal Oak, Southfield, Southgate Sterling Heights, Taylor, Warren, Westland, and Wyandotte.

Employers operate within a particular labor market. The exact contours of a labor market are not always easy to delineate and may indeed vary with the nature of positions that needs to be filled. Yet it is nonetheless reasonable to conclude that communities that are geographically contiguous or within a 30 miles of each other are part of one labor market. Thus workers are reasonably able to commute to places of employment within a 30 mile radius of their homes. Moreover, firefighters living in communities in close geographical proximity to each other are aware of the presence of other fire departments and will likely compare their lot with other employees doing similar work in the area. As a result, it is only natural that Unions would compare the wages its members receive with wages obtained elsewhere in adjacent and nearby communities. Conversely, management has to be sensitive to benefits negotiated within the same labor market, for its failure to provide competitive benefits may result in its loss of valuable and skilled employees. The importance of Detroit providing competitive benefits is heightened by its apparent difficulty in recruiting firefighters and in staffing such technical positions necessary to operate its computerized communications operations. Significantly, nearly

every prior Panel has given some weight to comparability data based on communities located within the Detriot metropolitan area.(Platt, 1971, Killingsworth, 1971, Howlett, 1979, and Kiefer, 1985) Consequently the parties certainly have had notice of a panel's reliance on prevailing labor market rates as an evidentiary standard.

The following communities either border Detroit or are within a 30 mile distance of it : Allen Park, Birmingham, Dearborn, Dearborn Heights, Ferndale, Hamtramck, Lincoln Park, Livonia, Madison Heights, Redford, Royal Oak, Southfield, Southgate, Sterling Heights, Taylor, Warren, Westland, and Wyandotte. As a result, the Panel finds that these communities are comparable, as they operate within the same labor market as Detroit.

The Union has also contended that Ann Arbor is comparable, while the City would afford such designation to Saginaw, Flint, and Detroit. These cities are sufficiently distant from Detroit that they are subject to different labor market constraints. Also given the small size of these communities, it is doubtful that their firefighters face the same challenges and conditions confronting Detroit firefighters. These factors make these communities less comparable than the other in state cities. However, since the parties themselves have included all Michigan cities in their analysis, the Panel will also consider them when reviewing comparability data. Additionally, given the inclusion of these four communities in a much larger group of Michigan cities previously designated as comparable, there is no reason to believe that their consideration would materially affect the conclusions drawn regarding prevailing norms existing within comparable Michigan cities.

Out of Grade Pay (Temporary Assignments)

Union Last Best Offer

The Union proposes to amend Article 17 (A) and (B) temporary assignments as follows:

A. Effective June 30, 2001,when an employee is assigned on a temporary basis to perform the duties of a higher classification for a period of four 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 Classifications	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
Battalion Fire Chief	Senior Chief

B. Effective June 30, 2001, in all situations when an employee in the classifications listed below is assigned on a temporary basis to perform the duties of any higher classification for a period of two hours or more, he shall be compensated at the rate of a higher classification from the first hour.

Regular Classifications

Deputy Fire Chief
Assistant Fire Marshall
Fire Investigator-Captain
Senior Fire Prevention Inspector-Captain
Fire Investigator-Lieutenant
Fire Prevention Inspector- Captain
Assistant Community Relations Coordinator-Captain

C. The Union waives, on its own behalf and on behalf of its members, any claim for legal or equitable relief, to which the Union or its members would otherwise be entitled as result of changes to Article 17 A and 17 B awarded by the Act 312 Arbitration Panel in MERC Case No. D 98-D 0644. The waiver will only be effective for the period commencing June 30, 2001, and ending on the date of the issuance of the Act 312 Award in MERC Case No. D 98-D 0644. Thereafter, this waiver will expire, and the Union reserves the right to enforce Article 17 A and 17 B as then written in any forum or proceeding authorized by law or contract.

City's Last Best Offer

The City proposes as its last offer of settlement that Article 17 be amended as follows:

A. When an employee is assigned on a temporary basis to perform the duties of a higher classification for a period of 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
Fire Fighter	Fire Fighter Driver
Fire Fighter	Fire Sergeant
Fire Firefighter Driver	Fire Engine Operator
Fire Fighter Driver	Fire Sergeant
Fire Captain	Battalion Fire Chief

B. Effective July 1, 1987, in all situations when an employee in the classifications listed below is assigned on a temporary basis to perform the duties of any higher classification for 8 hours or more, he shall be compensated at the rate of the higher classification

Regular Classification

Deputy Fire Chief
Senior Chief
Assistant Fire Marshall
Fire Investigator-Captain
Senior Fire Prevention Inspector
Fire Investigator-Lieutenant
Fire Prevention Inspector

*Battalion chief when assigned on a temporary basis to perform the duties of a Senior Chief shall not be compensated at the Senior Chief rate.

Union Position

The Union maintains that Detroit firefighters are required to work more hours to earn their temporary assignment pay than firefighters in almost any other comparable community in Michigan. For example, with regard to firefighters working a 24-hour shift, if all of the Michigan comparables were ranked in terms of the number of hours which fire fighters had to work in temporary assignments to earn premium pay, Detroit would currently be tied for 17 out of 21 cities. If the Panel were to adopt the Union's

proposal, Detroit would be tied for 12th, still below the median but closer to it than if the City's proposal were adopted.

With regard to firefighters working a 40 hour week, if the Panel adopted the Union's proposal, Detroit time limits for 40 hour employees would rank 12th out of the Michigan comparables, still below the median. If the City's proposal were adopted, Detroit would rank fifteenth.

Additionally, the Union contends that an examination of the 10 out of state comparables also supports its proposal. Five other large cities provide premium pay to firefighters who worked temporary assignments without imposing any time limits. Only two cities impose a time limit longer than that existing within Detroit. Furthermore not a single large city comparable has different time limits for the two groups. Consequently the Union's proposal for 40 hour employees as well is strongly supported by national comparability data.

The Union maintains that two interrelated principles of workplace fairness support its proposal. Employees should be paid for the jobs that they do and not just for the titles that they hold. Moreover, when an Employer imposes the burdens of a particular job on an employee, it is only fair for management to bestow the benefits of that job on the same individual. The current contractual provision violates this standard. Firefighters are required to perform the duties of a higher classification for substantial time periods for no additional compensation. Moreover, some firefighters, Battalion Chiefs and Assistant Community Relations Coordinators, are obliged to work in a higher classification with no right whatsoever to be paid for the job they are doing.

City Position

The City maintains that the Union has failed to provide any evidence other than anecdotal conjecture that firefighters routinely occupy the place of higher ranking positions for short periods of time without adequate reward. Instead to the degree that firefighters routinely work out of class, they generally do so for 8 to12 hours. As a result, they will be paid the higher rate under the City's proposal.

The Union also failed to show any basis for amending the current contract provision regarding 40 hour employees. It has not demonstrated that its proposal will serve the public welfare, affect fire safety or positively impact the operation of the department. In a period of four hours or less, individual serving a higher classification will not be performing all the duties of a higher classification as required by contract.

The City also contends that the Union's proposal lacks merit, as firefighters working out of class often do not fully assume the duties of a higher rank. This is especially the case when a lower ranking officer replaces a Captain or Battalion Chief. The latter have distinct duties and responsibilities, many of which are never performed by lower-level officers who temporarily occupy these positions.

The City also maintains its requirement that firefighters work a certain number of hours is consistent with requirements found in other large City communities. Moreover, even among Michigan cities there are communities that impose upon firefighters the requirement to work a certain a minimum time in order to be paid at higher rate. Moreover, a number of Michigan communities like Detroit pay out of grade for only certain positions.

Discussion

Under the parties' current agreement, as provided in Article 17A, employees receive no temporary assignment pay for performing the duties of a higher classification unless they work a certain minimum number of hours in the higher classification. That minimum is currently 12 hours for employees who work a 24-hour shift, and 8 hours for employees who work a 40 hour work week. (Joint Exhibit 1, Article 17 A and B, p. 27.) Additionally, only some classification are entitled to temporary assignment pay. The contract explicitly provides for example that a Battalion Chief does not receive the pay of a Senior Fire Chief if he works out of classification in the latter position. Similarly, the contract does not permit an Assistant Community Relations Coordinator to receive the pay of a Community Relations Coordinator if he works in that higher classification.

The Union's proposal changes Article 17 in three ways. First, it reduces the time limits described from 12 hours to four hours for 24 hour employees and from 8 hours to two hours for employees who work a 40 hour workweek. The Union's proposal also would permit both the Battalion Chief and the Assistant Community Relations Coordinator to receive temporary assignment pay for work performed outside of their regular classification. Additionally, the Union's proposal has been crafted so it will not impose upon the Employer any liability for back pay for any period of time arising before the issuance of the award in this proceeding.

The City's proposal would reduce the time limit for out of grade pay for 24 hour employees from 12 to 8 hours. It has proposed that the rest of Article 17 remain unchanged. This issue is economic and therefore the Panel must adopt the Union or the City's proposal in its entirety.

At the outset this Panel recognizes that considerations of fairness support the proposition that employees should be paid for the jobs that they do. Significantly, both parties support this proposition, as both parties' proposals would reduce the amount of time a firefighter would have to work in a higher classification in order to receive out of grade pay. The difference between the proposals lies in the amount of time worked in the higher classification that would trigger the out of grade pay. The City would require firefighters to work 8 hours in a higher classification to be eligible for out of class pay while the Union's proposal would reduce the time limits to eight hours for 24 hour employees and to four hours for 40 hour employees. The City's offer leaves at eight hours the amount of time 40 hour employees would be required to work in a higher classifications to earn the rate of the higher classification.

Both parties have supported their proposals, by referencing data from comparable communities. While there are communities that have reduced time limits consistent with the Union's proposal, an equal number of comparables within Michigan provide support for the City's position. Data was presented on 23 Michigan cities. In eight, employees must work at least eight hours or more in a higher classification to receive the rate of that position. For example, in Allen Park employees have to work eight hours, in Dearborn 12, in Livonia, 12hours for 56 hour employees, in Pontiac five days, in Saginaw 8 hours, in Warren 12, in Wayandotte 24 hours, and in Southfield 12[1]. In Ann Arbor firefighters are paid at a higher rate only when working in assignments in half-day increments. As employees in fire suppression in Ann Arbor work 24 hour shifts (Union Ex. 328, p.19) Ann Arbor firefighters would have to work 12 hours in the higher classification to receive

[1] This limitation applies to firefighters working out of class as lieutenants or in stations with only one officer.

higher pay. Additionally, in Birmingham firefighters receive no additional compensation. Moreover, in contrast to Detroit where most employees are entitled to higher pay when working in a higher level classification, Ferndale, Lincoln Park, Dearborn Heights, and Dearborn severely limit receipt of this benefit to firefighters working out of class in a narrowly restricted range of jobs. For example, in Ferndale, out of grade pay is contractually provided only to firefighters working as acting sergeants. (Union Ex. 332, p. 40.) In summary, the City's proposal provides income opportunities for employees working in higher classification that are competitive with benefits available in 13 of the 23 Michigan comparables.

Evidence has been presented with regard to fire departments in large cities. Here too the evidence shows that the City's proposal for eight hours is consistent with or better than the minimum hour requirements found in a significant number of comparables. For example, in Boston firefighters have to work a full tour of duty (10 or 14 hours); in Pittsburgh they must at least work half a shift (5or 7 or seven hours); in Washington, D.C., they must at least work 60 days. In Milwaukee, they must work 24 hours. In addition while New York City and Chicago seemingly require fewer hours for firefighters to earn out of grade pay, these two communities are not comparable to Detroit with regard to this benefit, as in both communities out of rank work is normally not a condition of employment. For example in New York City out of classification work is only permitted in emergency situations while in Chicago no firefighter may act as an officer. It would appear that in those communities like Detroit in which firefighters routinely work out of classification, the City's proposal that firefighters work a minimum

of eight hours in the higher classification before receiving higher pay is consistent with the requirement found in four of the eight large cities for which the parties presented data.

The City's proposal of requiring firefighters to work at least eight hours in the higher classification is also compatible with the time firefighters actually spend in the higher classifications. In this regard, the record indicates that, within the fire fighting division, a majority of the out of class assignments are 12 hours or more in duration. Additionally, officers frequently need to be replaced when they are assigned to the training academy or work a shift at the arson division. These assignments are normally for eight or 10 hours. As a result, in most cases the City's proposal would compensate firefighters for time spent working in the higher classification.

Additionally, the Panel notes that the Union has presented little if any evidence in support of its proposal reducing to four hours the amount of time 40 hour employees must work to earn higher out of grade pay. There is no evidence in the record that this is a common circumstance. Moreover, the Panel has been presented with no evidence that a 40 hour employees who replaces a higher level employee for four hours is materially performing the duties of the higher classification. The Union has also failed to present any documentation identifying the frequency with which, the amount of time expended, and circumstance when the assistant community relations coordinator occupies the higher classification of community relations coordinator. Consequently there is no foundation for supporting the Union's proposal which would incorporate the Assistant Community Relations Coordinator position in the out of grade pay provision of article 17B.

At the same time, the Panel finds one serious limitation with the City's proposal. Under the current collective bargaining agreement, a battalion chief assigned on a temporary basis to perform the duties of a senior chief cannot be compensated at the senior chief rate. The City justifies this exclusion on the basis that a battalion chief performing as a senior chief would not be performing the latter's overall administrative responsibilities. These can only be performed over a longer period of time. While this may be true, the City's proposal fails to consider appropriately the significantly added responsibilities that a battalion chief may have to perform when placed temporarily in the senior chief position. As Sergeant Dan McNamara testified, a senior chief is responsible for deploying manpower to equalize fire company staffing throughout the City. Moreover he is responsible for assuming incident command over major fires. As these tasks may be done on a daily basis, a battalion chief called in to replace a senior chief would be performing these essential job functions. As a result, considerations of workplace fairness support battalion chiefs receiving higher pay when performing as a senior chief.

In summary, the Panel finds that considerations of comparability support the City's proposal. Additionally, that out of class assignments generally occur for periods of eight hours or more will result in firefighters receiving increased pay when working out of class. Finally, the exclusion of the senior chief position, as a classification which when performed on a temporary basis qualifies an employee for out of grade pay, can be addressed in future negotiations. Given these considerations, the Panel adopts the City's position on this issue.

Extending Additional Furlough Days to Entire Bargaining Unit.

Union's Last Best Offer

The Union proposes to amend Article 19 C, Furlough Days as follows:

Commencing June 30, 2001 all members of the bargaining unit who are required to work eight-hour or 10 hours tour of duty will be entitled to extra furlough time under the conditions and in the amounts described below. This extra furlough time will be credited to each eligible employee's furlough bank on January 1 of each year.

All members of the bargaining unit who are required to work eight-hour or 10 hour tours of duty, upon completion of seven but less than 14 years of service with the Department shall be entitled to 24 additional hours off for furlough per year.

All members of the bargaining unit who are required to work eight-hour or 10 hour tours of duty, upon completion of 14 but less than 21 years of service with the Department, shall be entitled to 24 additional hours off for furlough per year, for a total of 48 additional furlough hours.

All members of the bargaining unit who are required to work eight-hour or 10 hour tours of duty, upon completion of 21 but less than 25 years of service with the Department, shall be entitled to 24 additional hours off for furlough per year, for a total of 72 additional hours.

All members of the bargaining unit who are required to work eight hour or10 hour tours of duty, upon completion of 25 years of service with the Department, shall be entitled to 24 additional hours off for furlough per year, for a total of 96 additional furlough hours.

City's Last Best Offer

The City rejects the Union's last position on furlough and proposes that the status quo be maintained.

Union Position

Under article 19 C of the collective bargaining agreement, employees who work 24 hour shifts may also accumulate what are called extra vacation (EV) or furlough days. After seven years of service, 24 hour employees are entitled to one EV day, two EV days after 14 years, three after 21 years and four after twenty five years. The Union seeks to extend the same benefits to 40 hour employees.

The Union maintains that its proposal is supported by the fact that within the fire service and in employment generally the high senior employees are rewarded for their service with increases in vacation time. Moreover, the current contractual provision unfairly discriminates between 24 hour and 40 hour employees. The current provision also works a hardship on high seniority members of the department who lose vacation days when they transfer to a 40 hour position. The Union also maintains its proposal is strongly supported by data from the comparable communities within Michigan and across the nation.

City Position

The City maintains that the extra vacation day should not be extended to the 40 hour employees of the fire department because their working conditions are not like those of firefighters involved in fire suppression. In this regard, firefighters involved in fire suppression work eight hours more per week that other City employees or the 40 hour employees. Additionally, 40 hour employees do not encounter the hazards of those involved in fire suppression. These added burdens justify granting 24 hour employees but not 40 hour employees extra furlough days.

The City also maintains that seniority or length of service factors do not support the Union's proposal. The collective bargaining agreement already contains a longevity pay provision that is available to all members of the bargaining unit regardless of the division that they work. The City maintains also that the non-fire fighting division members of the bargaining unit properly fall between general City employees and members of the fire fighting division with respect to the application of vacation time. They are better off than general City employees, because they do not have to be

employed 15 years to accrue 20 days of vacation time. They receive that amount from the first year of their employment. On the other hand, they do not have or merit the benefit of the additional vacation days beyond 20 received by members of the fire fighting division. In opposing the Union's proposal, the City has also noted the increased costs of approximately $64,000 that it would incur by extending EV days to 40 hour employees.

Discussion

The Union's proposal would extend to 40 hour employees the same extra furlough days granted employees working a 24 schedule. Specifically employees with at least seven but less than 14 years of service would be entitled to one additional furlough day. Employees with 14 but less than 21 years would be entitled to two additional furlough days. Employees with 21 but less than 25 years of service would be entitled to 3 additional furlough days, while employees with 25 years of service would be granted an additional four furlough days.

The City's principal argument is that these extra vacation days should not be extended to members of the other divisions, because their working conditions are not like those of firefighters involved in fire suppression. The Panel does not find this consideration to be a reasonable basis for denying 40 hour employees more furlough time. It is important to consider that the additional furlough days granted 24 hour employees were originally the result of Union proposals adopted by the Howlett (Joint Ex. 10, p.17) and Kiefer (City Ex.7, p.16) panels. Neither award expressly cites the distinction between the work of members of fire fighting division and members of the other divisions. At the same time, in granting 24 hour employees additional furlough time

both awards cited such considerations as comparability as well as the principle that vacation entitlement should normally increase with length of service. Both these factors support the Union's proposal.

Within Michigan, 24 communities were identified by the parties. In two of these , Birmingham and Hamtramck, the amount of vacation time granted 40 hour employees is not readily apparent. Of the 22 remaining cities, 21 granted 40 hour employees vacation time that increased with one's seniority or length of service. Moreover, 22 Michigan cities, most of which are located in the Detroit metropolitan area, granted 40 hour employees more vacation time than does the City. Only one Michigan comparable, Plymouth provides 40 hour employees with less vacation time then does the City of Detroit.

Contracts from seven national comparables identify the vacation schedules of 40 hour employees. All seven provide 40 hour employees with vacation time that increases with seniority. All seven communities offer their 40 hour employees significantly greater vacation time then does the City of Detroit.

As reflected in the following chart the differences are quite significant.

	7 years	14 years	21 years	25 years
National Average	17	22	24	26
Michigan average	21	25	28	29
Detroit (Currently)	20	20	20	20
Union Proposal	21	22	23	24

The City's proposal would continue to lock in 40 hour employees to 20 days of vacation regardless of their increased length of service with the department. The Panel finds this outcome incompatible with the general proposition sanctioned as early as 1971 in the Killingsworth award that firefighters with increased length of service merit additional vacation time. That 40 hour employees are not involved in fire suppression is not a sufficient basis for negating this principal, as it ignores the inherently valuable services employees in the other divisions perform. Moreover the City's proposal which locks in all 40 hour employees at 20 days unfairly penalizes high seniority members of the department who would lose vacation days if they transferred to a 40 hour position. Thus for example, a captain in fire suppression with 24 years of service would lose four vacation days upon promotion to the position of Fire Marshal.

Nor is the Panel persuaded by the City's contention that the longevity provision in the parties' collective bargaining agreement supports the distinction in vacation benefits that currently exists between fire suppression and 40 hour employees. The longevity provision does not address the vacation needs of employees, as it provides monetary benefits to employees on the basis of years of service. Yet it is worth noting that this provision treats all employees alike. Thus all bargaining unit personnel are rewarded equally in recognition of their years of service. Similarly, years of service should result in the extension of the same vacation benefits to all employees of the department. Thus there is no reasonable basis for contending that a year of service provided by a 40 hour firefighter is less valuable or necessary than that provided by employees on a 24 hour schedule. The arguments in favor of the status quo are also strongly rebutted by the comparability data. Accepting the Union's proposal would only

afford Detroit personnel benefits that are typically extended to employees in nearly every comparable Michigan community and every large City comparable. Given these considerations, the Panel adopts the Union's last offer on this issue.

Meal Allowance

Union's Last Offer

The Union seeks to amend Article 12 P, Meal as follows:

> Effective September 1, 2,000 all members of the bargaining unit who are placed on a 24-hour duty roster shall be entitled to receive a Meal Allowance of $ 750 annually. Payment shall be made no later than the first pay in October of the subsequent year. The sum shall be prorated for personnel who worked 24 hour tours of duty during the calendar year and who have retired, resigned, separated from service or deceased, in which case the benefit is to be paid the retiree or beneficiary. The sum shall be prorated for Trial Firefighters after successful completion of the training academy and upon assignment to a fire company where they are required to work the 24-hour tour of duty.

City's Last Offer

The City rejects the Union's last position on meal allowance and contends that this issue should be precluded by considerations of parity. In the event the arbitrator should find that the issue is not precluded by parity, then the City proposes that the status quo be maintained.

City's Position on Jurisdictional Issue of Parity

The City relies on a prior Act 312 award issued by Charles Killingsworth on December 1,1971. In that award involving the City and the Firefighters, Dr. Killingsworth made the following comments:

> In the event that Detroit police officers were ordered a gun allowance for 1971-72, the parity principle will provide a compelling case for a food allowance to yield an equal amount on an annual basis. This is a contingent parity item. (Employer Exhibit 5, p. 49.)

According to the City, this award found that meal allowance is a benefit that is subject to the contingent parity provision of the collective bargaining agreement.

Additionally, it notes that Union Secretary Dan McNamara has conceded that the Union uses arbitration awards as a standard by which to determine whether a parity relationship exists and when it does not. Mr. McNamara also conceded that if police officers receive a meal allowance, the Union would consider that benefit to be a parity item. The City has also noted McNamara's admission that if the police officers were awarded a gun allowance, the Union would consider it a parity item for the arson investigators.

The City maintains that under the Killingsworth award a meal allowance for a firefighter is a parity item corresponding to a gun allowance for a police officer. Alternatively, a meal allowance is a parity item that if awarded to the police should be awarded to firefighters. In either case the Union's proposal fails. Thus police officers have neither a meal nor a gun allowance. As a result, the parity principle precludes the award of a meal allowance.

Union Position on Jurisdictional Issue of Parity

The Union maintains that its proposal on meal allowance is not precluded by parity, because there is no meal allowance provision in either police patrol or command contract. As a result, there is no relevant term or condition in either police contract, which could by operation of parity be carried over into the firefighters' contract. Since the police contracts are silent on meal allowance, those contracts can not govern this matter in the firefighters' contract.

Additionally, the Union maintains that it is not barred from obtaining a meal allowance just because the police do not have one. Police and fire departments are dissimilar in many respects and as a result police and fire collective bargaining agreements will contain provisions, even benefit provisions that others do not. In this

regard, it cites the provision on the hazardous material unit by which only firefighters will obtain premium pay for the mitigation of hazardous material sites.

The Union also contends that Firefighters must be able to advance proposals on issues that relate to unique aspects of a fire department where the police contracts are quite understandably silent on those issues. Issues unique to the firefighting profession including issues that relate to meals are outside the common law parity relationship that the parties have crafted for themselves. For this reason, the Union should be entitled to bargain and submit separate proposals on meal allowance.

Finally, the Union maintains that the Killingsworth award does not establish the binding precedent that meal and gun allowances must be decided together on a permanent basis. Furthermore, a review of the Keifer Act 312 award demonstrates that the City itself has acknowledged that meal allowance and gun allowance are not to be considered as parity items.

Discussion

An understanding of this issue must commence with an examination of those items that the parties have treated on a parity basis under their collective bargaining agreement. Under schedule I of the parties' contract (p.62), full-time police officers and full-time firefighters whose base salaries are the same will experience identical salary rate changes with identical effective dates throughout the fiscal year, so that the total base pay of a police officer is equal to that of a firefighter in any fiscal year covered by the agreement. The contract also establishes the following parity relationships with respect to salary: fire sergeant and the fire engine operator with the police investigator, fire lieutenant with the police sergeant, the fire captain with the police lieutenant, battalion

fire chief with the police inspector, and the chief of the fire department with the deputy chief- west operations.

Under the parties' collective bargaining agreement, the parity concept affects other economic aspects of the collective bargaining agreement. For example, under the parties' contract both police and firefighters will receive the same benefits in the following areas: uniform cleaning allowance (p.41), group life insurance (p.40), health insurance for retiree spouses, death benefits (p.39), comp time (p.43), sick leave payout (p. 45-46) and excused time off (p.42). Additionally, under Schedule I, Section D the parties have agreed that the "traditional police- fire pay parity as heretofore defined and applied shall continue". By way of illustration the parties referenced various compensation adjustments resulting from the Roumell Act 312 award and Memorandum of Understandings between the City and the DFFA pertaining to changes and improvements in the area of retirement benefits, health care insurance, duty disability, dental, medical and optical care.

It is apparent from the above discussion that parity between police and fire with respect to economic benefits is a concept long accepted by the parties. The essence of the City's argument is that given this history of parity, the Union's prior acknowledgement that meal allowance is a subject to be controlled by parity, as well as the Killingsworth award that meal allowance is a parity item, the Union has no jurisdiction or standing to raise this issue in the current proceeding. This is especially the case, since the Union in its last negotiations with the City adopted the notion of parity between the police and firefighters. Moreover as this Panel had previously awarded the Union parity with

respect to economic items, the Union should be precluded from raising the issue of meal allowance.

In addressing this issue, the Panel will assume arguendo that the City is correct in contending that the Union in prior negotiations had considered meal allowance as a parity item and that the Killingsworth award had also concluded that meal allowance is governed by parity. Nonetheless, this Panel finds that the issue of meal allowance can be placed before this Panel for adjudication. Foremost, as the parties' collective bargaining history has demonstrated, the range of issues to be governed by parity is typically a matter that the parties themselves will decide through the collective bargaining process. For the most part, where a parity relationship exists, it is because the parties themselves have agreed to this relationship. Thus parity between police and fire on salary, uniform cleaning allowance, group life insurance, death benefits, comp time, excused time off, sick leave payout has been codified by specific provisions incorporated in the parties' contract. Moreover, where parity relationships have been extended as a result of an Act 312 award, the parties have been willing to incorporate in successor agreements the application of the parity principle to new benefit subjects. For example, in Schedule I D of the1992-1998 contract, the parties have explicitly referenced their continued acceptance of police-fire parity resulting from the Act 312 award of George Roumell and the memorandum of understandings between the City and Firefighters. Among other items, these provided that parity would apply to dental and optical benefits.

Yet just as parties may agree that certain subjects may be governed by parity, the parties are free in future contract negotiations to unlink items. Thus the linchpin of our labor relations system both under the NLRA and PERA is that parties exercise the right

to negotiate new terms and conditions of employment and attempt to modify or even terminate prior agreements on various issues. To suggest that a party is barred from raising a subject because it was previously the subject of parity would in practice seriously limit if not at times eliminate the freedom and latitude the parties must legally be afforded to initially shape through negotiations their own conditions of employment. As a result, during negotiations, a party is free to bargain in an effort to add to, reduce, or eliminate all matters previously controlled by parity. For this reason, regardless of the parties' prior bargaining history and arbitration awards, the Union has standing to remove meal allowance from the traditional parity relationship that may have existed.

Significantly, the City itself has previously exercised its right to negotiate for the abandonment of the parity principle despite prior Act 312 awards endorsing parity and its previous commitments to this concept. The Killingsworth award issued in 1971 indicated that meal allowance is a contingent parity item. In 1984 and 1985 the parties went to Act 312 hearing to resolve a collective bargaining impasse. In this proceeding the City sought to identify those subject matters that were controlled by the parity principle. While identifying 15 issues that were controlled by parity, the City did not indicate that food allowance was one of them. Even more telling has been the City's most recent effort to totally eliminate parity. Thus when negotiating following expiration of the 1998 contract, the City rejected any effort at parity. While the Panel ultimately ruled that parity must govern, it was not because of the impropriety of the City's effort to modify parity. Rather its decision was compelled by the City's failure to offer any proposals that would identify the City's position on various economic issues previously controlled by parity. In short, the City has exercised its legitimate authority under PERA to seek to modify those

conditions of employment that would be controlled by parity. The Union here equally possesses this right, as long as it gave proper notice to management in negotiations that meal allowance was not a condition of employment that would be subject to parity. Here the record indicates that the Union afforded the City such notice. Thus Union Secretary Dan McNamara indicated that during negotiations for a new agreement, the Union advanced to management its position that food allowance was not a counterpart to gun allowance.

Finally, the Panel wishes to emphasize that its discussion and ruling on parity heretofore is limited to the jurisdictional issue. Consequently, the Panel is not suggesting that parity considerations have no relevance in adjudicating the issue of meal allowance on the merits. Thus parity like historical wage patterns and practices is a factor that must be given consideration in reviewing the merits of a proposal, as this principle is rooted in considerations of equity and collective bargaining stability. Consequently, the Panel will consider parity when examining the merits of the Union's effort to obtain a meal allowance and other benefits.

Union Position on the Merits of its Meal Allowance Proposal

In support of its proposal for a meal allowance, the Union has noted that fire fighters are required to man fire stations during the course of their 24 hour shifts, except for the time they spend responding to fire calls. Effective fire fighting requires the fastest possible response to a fire emergency, and firefighters respond most quickly when they are assembled in one place. Consequently, because of the nature of the fire fighting profession, firefighters must prepare and eat their meals at the fire station. They are not free to go home to eat; nor are they free to take their meals at restaurants.

As a result, firefighters have maintained "chow funds" to purchase staples and food for their meals which are supported by contributions made by the firefighters from their own pay. The amount is currently ten dollars. Firefighters also make other contributions out of their pay to buy utensils, pots, pans and other equipment for food preparation purposes. The Union maintains that in requesting this benefit, fire fighters are only seeking a benefit that is common to employees who must take their meals at times and under circumstances dictated by the needs of their Employers.

The Union notes that comparability data for the Michigan communities supports its request. Of the 23 Michigan cities that the parties referenced as comparables, 21 provide for a meal allowance. Additionally the amount requested is consistent with that provided to firefighters in other communities. The Union maintains that its proposal is also modest when considering that its request would not compensate firefighters for the many items that it has to purchase in order that they have a home away from home.

City Position

The current arrangement whereby fire fighters pay for their own meals has been in existence for as long as the department has been in operation. The Union has provided no evidence that there is any change in circumstances that warrants disturbing the current arrangement. Moreover no other City employee including those in the police department enjoy a similar benefit. Yet other City employees are also confined to work areas for their shift and must pay for their own meals. The Union has also provided no evidence that awarding this benefit will served the public interest. Requiring the City to pay for firefighters' meals will not enhance the capacity of fire fighters to fight fires and protect the public. Indeed it acts as a detriment as the significant amount of funds needed to fund

this benefit could otherwise be invested elsewhere in the department to support a more compelling use. Finally the national comparables offered by the parties do not support this proposal.

Discussion

At the outset, it is appropriate to consider the factor of parity in determining the merits of the parties' positions on this issue. The Union has noted that its proposal on meal allowance is not precluded by parity, because there is no meal allowance provision in either police contract. As a result, there is no relevant term or condition in either police contract, which by operation of parity could be carried over into the fire fighter contract. Since the police contracts are silent on a meal allowance, those contracts cannot govern the subject of meal allowance in the fire fighters' contract.

Were the subject of meal allowance an item contained in both police and fire contracts over an extended period, considerations of bargaining stability and equity might weigh in favor of maintaining parity. At the same time, the mere absence of an item from a contract does not necessarily demonstrate that the parties have not treated a subject such as meal allowance as one that is governed by parity. Thus by custom and practice the parties may have agreed that certain items are subject to the police fire parity relationship. As a result, it is important to identify how the parties themselves have treated meal allowance.

Significantly, the record demonstrates that there is no established practice for applying the parity principle to the subject of food allowance. To begin with, the Union's position on this matter has not been consistent. Dan McNamara conceded that if police officers had a meal allowance, the Union would consider it a parity item. He also

acknowledged that if police were awarded a gun allowance, the Union would consider that a parity item for arson investigators. Additionally Dick Stein testified that during the course of the negotiations for the 1992- 1998 collective bargaining agreement, the Union was seeking a meal allowance as a counter to the police union's effort to obtain a gun allowance. At the same time, it is also apparent that in the current round of negotiations the Union's position was that meal allowance was not a parity item.

Furthermore, the establishment of a past practice requires evidence of mutual agreement for dealing with a component of the employment relationship. Here there is no evidence that the City ever agreed to treat meal allowance as a parity item. Indeed the evidence in the record suggests its disinclination to do so. As indicated earlier, in 1984 and in 1985 the City apparently decided that meal allowance was not an item that was the subject of the parity principle. Given the absence of any other evidence in the record regarding the City's official bargaining position on meal allowance, there is no compelling bargaining history, which argues in favor of treating meal allowance as an item to be governed by parity considerations. In summary, the competing and at times inconsistent nature by which the parties have applied the parity principle to the subject of meal allowance precludes reliance upon the parity principle as a means by which this issue should be controlled.

Article 12 P of the 1992-1998 collective bargaining agreement contains a provision which requires firefighters as a condition of employment to contribute to the chow fund in an amount that is determined by the firefighters themselves. (Joint Exhibit 1, p. 22.) Union President John King testified that there are two reasons for the required contribution. First, it permits firefighters to deduct the cost of their meals from their

taxable income as a business expense. Second, it allows firefighters to maintain a large enough fund to pay for meals. President King further testified that even before the contribution requirement was incorporated in the contract, most firefighters voluntarily supported the chow fund.

The Union has contended that because firefighters must take their meals at times and under circumstances dictated by the needs of their Employer, fire fighters should be reimbursed for those meals with an annual meal allowance. It seeks to reinforce this argument with the contention that meal allowance is a commonly provided benefit in fire departments. Furthermore, as the City itself has attached the value of $11.00 a day for meals, it is only equitable that the City provide some reimbursement to firefighters for their meal expenses.

While these considerations do have merit, there are countervailing considerations that also must be addressed. To begin with, it is apparent that reimbursement of firefighters for meals taken in fire stations is a not a commonly established norm in large City fire departments. Evidence was introduced with respect to the payment of a meal allowance in eight large metropolitan fire departments. In only one of these communities, Baltimore, were firefighters provided with a meal allowance. Fire fighters in St. Louis, Cleveland, Chicago, and Milwaukee do not, although working 24 hour shifts as in Detroit. In Baltimore, New York, Philadelphia, and Pittsburgh firefighters do not work a 24 hour shift as they do in Detroit. Nonetheless, fire fighters working in these communities 10 to 14 hour shifts per day are required to have at least some of their meals taken in their quarters. As a result such firefighters will also be incurring expenses for their meals without any apparent compensation. Additionally, while the comparability

data from the Michigan communities shows that fire fighters in Michigan receive meal allowances, such evidence does not indicate that fire fighters in these other communities receive better benefits in the aggregate than firefighters in the City of Detroit. In the absence of such evidence, while meriting some weight the data from the Michigan comparable communities is not controlling.

It is also important to consider that even if firefighters ate at home they would still incur expenses for food. Furthermore, assuming that eleven dollars a day constitutes the cost firefighters incur in obtaining three meals per shift, there is no evidence that they would incur fewer expenses by eating their meals in their homes. As a result, it is not clear from the record whether fire fighters actually experience a net increase in costs, by having to purchase food and eat their meals in the fire station.

The Panel is also concerned over the cost attached to the Union's demand. The Union's initial demand was for a thousand dollar allowance per year. It in its last offer it requested an allowance of 750 dollars per bargaining unit member who is placed on the 24 hour roster. According to the City, there are currently 1316 employees involved in fire suppression who work 24 hour shifts. Extending a 750 dollar annual allowance to these employees would cost the City an additional $987,000 a year to fund fire fighters' meals. This is a considerable amount whose expenditure is not adequately warranted absent evidence that Detroit firefighters are underpaid relative to their counterparts in other Michigan communities. Additionally, the Panel believes that such funds are better used to fund other union proposals that not only provide firefighters with increased benefits and improved working conditions, but also promote the department's capacity to promote and protect public safety.

In summary, the substantial cost associated with the Union's demand, the inconclusive nature of the comparability data, and the absence of sufficient evidence that the extension of this significant cash benefit is necessary to render fire fighter wages and benefits competitive with those prevailing in the local labor market argue in favor of supporting the status quo. As a result, the Panel adopts the City's last offer on this issue.

Parity Jurisdictional Arguments with Regard to Union Proposals on Tiller Operator, Senior Fire Engine Operator, Senior Firefighter

In its last offer, the Union requests that the firefighter tiller operator for his/her tour of duty should receive a salary that is 105 percent of the maximum salary received by a firefighter. In addition it requests that the 92 most senior fire engine operators receive a salary which is equal to the arithmetic mean of salaries received by fire sergeants and fire lieutenants. Finally, the Union seeks a salary rate for senior fire fighters that is a hundred and two percent of the maximum salary of a fire fighter.

The City maintains that these proposals violate considerations of internal parity, because they disturb the existing scheme of internal fire department relationships, which are ultimately tied to salaries received by police personnel.

Discussion

The parties' contract also establishes internal fire department salary relationships. The Howlett panel established internal parity relationships in an Act 312 award issued on October 1, 1979. Pursuant to internal parity considerations, the boiler operator and assistant fire dispatcher receive the same salary as a firefighter. The firefighter driver receives a salary, which is equal to a hundred five percent of the maximum salary of a firefighter. The fire engine operator, aerial tower operator, and the senior assistant fire

dispatcher are equal to the rank of fire sergeant. A number of other ranks in the various divisions are equal to the rank of fire lieutenant.

In addition, the senior fire dispatcher's and the assistant fire department community relations coordinator's salaries are established through internal parity as the arithmetic mean for the salaries for the classifications of fire lieutenant and fire captain. The salary of the assistant superintendent of the apparatus division is 93 percent of the salary of the captain, while a number of other positions within the various divisions are classified as equal to the salary of a fire captain and/ or battalion fire chief. Compensation for the two senior chiefs is set at 89 percent of the salary of the chief of the fire department; the salary of the deputy fire chief is established at 93 percent of the chief of the department, while the salary of the fire marshal is a set at 97.73 percent of that received by the chief.

To begin with, the Panel sees no jurisdictional limitation on the Union's capacity to negotiate for additional pay for the tiller operator, the senior fire fighter, and senior engine operator, as such efforts merely represent an effort to extend traditional bargaining patterns that the parties themselves have established. Thus a review of Schedule I indicates that the parties have agreed to afford firefighters in certain classifications premium pay above that paid a firefighter. Additionally, there is nothing in the contract that would freeze all internal salary relationships to those previously identified in Schedule I of the parties' last contract. Indeed as emphasized earlier, such an effort would be inconsistent with the parties' rights to shape their own conditions of employment. Consequently with reference to internal parity relationships, parties are free to add to, reduce, or even terminate the nature of these relationships. Furthermore, this

conclusion is supported by the testimony of both Al Lewis, the City's chief labor relations specialist and Dan McNamara, the Union's Secretary. While testifying for the parties' on the parity issue, neither gave a single example of a bargaining proposal being withdrawn or barred because it would provide different level of benefits to different firefighters.

In arguing against the Union's right to bargain for additional premium pay on the grounds of parity, the City has also contended that the Union's demands would disturb a complicated scheme that has existed for many years through a number of awards. Yet such an argument does not go to the right of the Union to initiate these demands. Rather it relates to the merits of the Union's proposal. As a result, the Panel will consider existing parity relationships when examining the merits the City and Union's final offers for premium pay for the tiller operator, senior fire engineer, and the senior firefighter.

Are Union Pay Proposals for the Tiller Operator, Senior Fire Engine Operator (FEO), and Senior Fire Fighter Mandatory or Permissive Subjects of Bargaining

Parties' Positions on Panel's Jurisdiction

The City contends that the Union's effort to achieve pay increases for the tiller operator, the senior FEO and the senior firefighter will have the effect of creating new positions within the fire department and thereby have this Panel usurp the clear managerial authority of the City. The City maintains that such an effort is illegal under PERA. It submits that the Michigan Employment Relations Commission has consistently held that the creation or elimination of job assignments and change of job duties are decisions that fall within the scope of a public employer's inherent managerial prerogative. As such, these decisions are only permissive subject matters of bargaining.

(City of Hamtramck 1985 MERC Labor Opinion 1123, Township of Redford, 5 MPER. 23015, and City of Battle Creek Fire Department, 1989 MERC Labor Opinion 726).

The City notes that there is no recognized classification of senior fire engine operator, fire tiller operator, or senior fire fighter. There is however a civil service procedure for establishing the classifications of employment within the City's workforce. The City maintains that all classifications currently existing in the bargaining agreement are the result of the classification process initiated by the Department or the Union and upheld through Civil Service. The Union's effort to create new job classifications directly infringes on the well-established right of management to control its operations. Under existing MERC precedent, it is the Employer that should determine how positions are created and maintained. In seeking to usurp the City's role, the Union is improperly bargaining over permissive subject matters of bargaining.

The Union maintains that management is not properly characterizing its efforts with regard to these proposals. It is not making an effort to bargain for the creation of new job classifications. With regard to fire engine operator, it maintains that it is simply seeking a step increase which would reward employees for their years of service. Such efforts involve the negotiation of mandatory subjects, as the Union is simply negotiating over wages.

Similarly when negotiating for increased pay for the tiller operator and senior firefighter, the Union maintains that it is also not creating new job classifications. These classifications already exist. Additionally, the Union's proposals involve mandatory subject matters of bargaining, because it is seeking for these workers premium pay for the extra training they undergo and for the additional job duties they routinely perform.

Discussion

The Public Employment Relations Act requires an Employer to bargain with a Union with respect to those matters that constitute mandatory subject matters of bargaining. (See for example City of Detroit vs. Michigan Council 25 AFSCME, 118 Mich. App.211,1982) As a result, were the Panel to find that the Union's proposals on pay for tiller operator, fire engine operator, and senior firefighter to be permissive subject matters of bargaining, the Panel would have no jurisdiction to rule on these matters. The central issue then is what defines a "mandatory subject matter of bargaining." In this regard Michigan law parallels that decided under the National Labor Relations Act. Thus under PERA, the Michigan courts have held that a mandatory subject matter of bargaining is one which has a material or significant impact upon wages, hours, or other conditions of employment.(Detroit Police Officers Association vs. City of Detroit, supra, quoting Westinghouse Electric Corp. vs. NLRB, 387 F2d 542,547,CA 4, 1967).

It is apparent that under MERC case law employers are afforded wide latitude to decide the scope and nature of an employee's work assignment. For example in the City of Battle Creek, MERC held that the assignment of additional duties is not a mandatory subject matter of bargaining, because the duties were merely an extension of normal functions the employee performed on the job. (1989 MERC Lab Op 726) Similarly in City of Westland, it was held that changes in job assignments that do not exceed the core of an employee's normal job duties are matters of managerial prerogative. (1987 MERC Lab Op 793) One might therefore infer from these decisions that the creation of job assignments is also a permissive subject matter of bargaining.

At the same time, the Panel does not find that the Union's efforts to increase the pay for the senior fire engine operator, the tiller operator, or the senior firefighter involve permissive subject matters of bargaining, because the Union has made no effort to create new job classifications. Rather the evidence indicates that these positions are already in place and that the Union is merely seeking to increase the compensation of employees working in these job classifications because of either the additional seniority these employees possess or the extra duties they perform. For example, personnel rosters for the City of Detroit identify employees occupying the classification of senior fire engine operators. (Union Exhibit 153 a 153 b, and 154) By department custom and practice they have certain transfer and detail privileges.

Similarly, the hundred and fifty most senior firefighters are also separately designated on personnel rosters. Additionally, because they frequently replace sergeants when the latter are called away from the fire station, they as a group attend the same training seminars as sergeants. (Union Exhibits 159 B, 160, and 270) Internal City Documents also indicate the department's recognition of the position of tiller operator. (Union Exhibit 152) Additionally, as the Panel Chairman's visit to various fire stations confirmed, the fire department operates so-called tiller trucks. These are long ladder trucks, which have a driver both in the front and back of the vehicle. The driver who operates the rear wheels is called a tiller operator. Consequently, the tiller operator is a well-recognized and established job classification within the fire department.

As noted earlier, the parties are required to bargain over matters that have a material impact on wages. The Union's proposals here are directly related to wages and consequently are mandatory subject matters of bargaining. While not passing on the

merits of the Union's proposals, it is nonetheless apparent that the Union is seeking additional pay for the tiller operator, because of the extra work that such employees perform in addition to their normal fire fighting responsibilities. Similarly, with regard to the position of senior firefighter, the Union is requesting additional pay because of the additional duties the senior firefighter performs mentoring junior fire fighters and when replacing officers in the fire station. Finally the Union is seeking a step increase for the fire engine operator in recognition of the improved skill and abilities that they develop and exercise with increased experience.

Furthermore the Union's proposals are consistent with the bargaining patterns the parties previously have negotiated. A review of the contract indicates that employees can receive pay increases in one of two ways: by step increases or by premium pay. For example both lieutenants and captains receive step increases upon completion of specific years in rank. Consequently, in seeking to afford fire engine operators a wage increase that is contingent upon their seniority, the Union is pursuing a pattern previously established for other officers. Additionally, other employees may receive premium pay because of the additional duties they exercise. For example firefighters in the hazardous material unit currently receive $100.00 per month by virtue of their participation in the unit. Consequently, the Union's efforts to obtain for senior fire fighters and tiller operators additional pay because of the additional duties they perform is consistent with established bargaining practices.

Additionally, the Panel finds no merit to the contention that the Union's effort here would improperly usurp the role of the City's Civil Service Commission in establishing job classifications. To begin with, the Union is seeking only to codify

classifications that the department itself has already recognized. Moreover, the fire department has recognized that civil service endorsement is not required when the parties contractually agree to new classifications. As noted earlier, under Article 22 of the agreement, employees who are assigned to the hazardous materials unit receive additional premium pay. Significantly, Niles Sexton, the General Manager for the Fire Department, has acknowledged that the involvement of fire fighters in haz mat operations and their receipt of premium pay for performing such activities was a matter that was never subject to the civil service classification process. Finally, when the parties negotiate additional pay for employees performing additional duties or if such pay increases are awarded by an Act 312 panel, civil service approval is not required. Thus that body has no standing to thwart the legitimate efforts of the parties or of an Act 312 panel to resolve wage issues.

In summary, the Union's proposals for increased pay for the tiller operator, senior fire engine operator and senior fire fighter constitute efforts to increase the wages of the employees occupying these positions. As the subject of pay or wages is a mandatory subject matter of bargaining, the Union has the right to bargain over these matters. In addition, the Panel finds that the Union's proposals do not constitute an effort to bargain over the establishment of new job classifications. For this reason, there is no illegitimate encroachment upon management rights. As a result, the Panel will examine the merits of the Union's proposals to increase pay for employees in these three job classifications.

Pay for Tiller Operator

Union's Final Offer

The Union proposes to amend section 1 B-2 as follows:

The salary of a firefighter driver shall be a hundred five percent of the maximum salary of firefighter. Effective June 30, 2001, persons serving as firefighter tiller operator shall receive a hundred five percent of the maximum salary of firefighter for a tour of duty.

This section will become effective June 30, 2001. The Union waives, on its own behalf and on behalf of its members, any claim for legal or equitable relief, to which the Union or its members would otherwise be entitled as a result of changes to schedule IB-2 awarded by the Act 312 arbitration Panel in MERC Case No. D 98-D0664. This waiver will only be effective for the period commencing June 30, 2001, and ending on the date of the issuance of an Act 312 award in MERC case numbered D98-D 0644. Thereafter, this waiver will expire, and the Union reserves the right to enforce Schedule I B-2 as then written, in any forum or proceeding provided by law or contract.

City's Final Offer

The City proposes that Schedule I B2 remain the same and that article 9 (E) 4 be amended as follows: The operator of the Tiller is subject to the above stated qualifications and shall be classified as a fire fighter driver or firefighter driver applicant.

Union Position on the Merits

The Union maintains that tiller operators deserve premium pay, because they receive special training, perform a task that is challenging and dangerous, and have the same liability as a fire fighter driver for any accidents they may occur. If they are engaged in driving and are subject to the same liability as a driver, they should be compensated like drivers - receiving the 105 percent premium for the time they are assigned as tiller operators. Moreover, the Union contends that data from the comparable communities supports its proposal. The Union notes that in the comparable communities that employ tiller trucks, the tiller operator typically receives premium pay.

City Position on the Merits

Under the City's proposal, tiller operators would also receive premium pay of one hundred and five percent of the maximum salary of a firefighter. Yet its proposal would require the tiller operator to satisfy the training requirements that are applied to the firefighter driver or firefighter driver applicant. The City also maintains that under its

proposal at least 18 additional firefighter driver positions would have to be added, thereby generating increased income opportunities for firefighters.

Discussion

The record indicates that tiller operators perform a challenging task when driving the back end of a ladder. While steering the back end of a very large vehicle, the operator has no way to control the speed. He has no break and no accelerator. He can only signal the driver by means of a horn. The operator must simply accept the speed that the driver gives them and hope he can adjust, as he tries to swing the back end of the vehicle around cars and corners. Backing in to fire stations, which typically have very narrow doorways that barely accommodate these large rigs, is especially difficult.

The City does not deny that tiller operators perform difficult tasks and is willing to afford them premium pay. The only difference between the City's and Union's proposal is that the City would require tiller operators to complete either fire fighter driver or driver applicant training. As noted earlier, driving the back-end of a rig is difficult. Moreover it is apparent that tiller operators can be held responsible for causing accidents and can be subject to discipline under department rules and regulations. At the same time to become a tiller operator currently, firefighters do not undergo the same regimen of training like that received by fire fighter drivers and driver applicants. As a result, their own safety and that of the public is best served by having them satisfy the same training requirements.

The City's proposal also has merit because it is consistent with the parties' general practice of affording firefighters extra pay once they complete specific training which enables them to perform additional tasks and responsibilities. Additionally, it

provides to firefighters a broad range of increased economic opportunities. Thus once having completed fire fighter driver training, fire fighters will have more jobs open to them that would offer premium pay of 105 percent.

Given these considerations, the Panel adopts the City's last offer on this issue.

Pay for Senior Fire Engine Operator

Union's Last Offer

The Union proposes to add the following new section (12).

12. Classifications equal to the arithmetic mean of fire sergeant and fire lieutenant:

(a) Senior Fire Engine Operator, where the Senior Fire Engine Operator shall be the 92 most Senior Fire Engine Operators.

This section will become effective June 30, 2001. The Union waives, on its own behalf and on behalf of its members, any claim for legal or equitable relief, to which the Union or its members would otherwise be entitled as a result of changes to schedule IB-2 awarded by the Act 312 arbitration Panel in MERC Case No. D 98-D0664. This waiver will only be effective for the period commencing June 30, 2001, and ending on the date of the issuance of an Act 312 award in MERC case numbered D98-D 0644. Thereafter, this waiver will expire, and the Union reserves the right to enforce Schedule I B-2 as then written, in any forum or proceeding provided by law or contract.

City's Final Offer

As its final offer of settlement, the City proposes that the status quo be maintained.

Union Position on the Merits

The Union proposes that fire engine operators be entitled to a further step increase based upon their seniority in the department. The proposal contemplates that the 92 most senior FEO's receive one additional step increase set at the arithmetic mean of a sergeant's and lieutenant's salary. This step increase, like step increases generally, would

acknowledge that fire engine officers accumulate experience and become more valuable to the Employer as they spend more time in grade.

These employees deserve an additional step increase. Like all employees, they improve their skills as they become more experienced, and thereby become more valuable to the department. The parties' current contract recognizes the value of experience by providing step increases to lieutenants and captains. There is no reason to discriminate between those ranks and the FEO's.

The Union also maintains that its position is supported by the testimony of Fire Chief Naumann. He agreed that just as lieutenants and captains get better at their jobs as they gain experience, so do fire engine operators. Given that lieutenants and captains receive step increases to compensate them for their increased abilities and their increased value to the Employer, so should senior FEO's.

City Position on the Merits

The City maintains that there is no evidence that every senior fire engine operator is equally skilled and deserving of a salary differential on the basis of seniority. The Union also failed to present any evidence that the more senior fire engine operators perform different duties from those who have less time on the job. In fact, the evidence is to the contrary. Finally considerations of parity and comparability with other communities dictate against awarding senior fire engine operators any increases in pay based only upon considerations of seniority.

Discussion

The Union is correct in noting that in other ranks officers such as lieutenants and captains receive step increases. Additionally, it is reasonable to conclude that as fire

engine operators obtain greater amounts of experience on the job, they perform their tasks with greater skill and efficiency.

At the same time, these factors alone do not sufficiently support the Union's proposal. The proposal would make a clear distinction between officers serving in the rank of fire engine operator. While there are over 600 fire engine operators employed in the department, only the 92 most senior would receive the pay increase under the Union's proposal. This division between those who do and do not receive step increase seems somewhat artificial, given the evidence that junior and senior fire engine operators perform essentially the same job duties. Furthermore, other than anecdotal information, there is no material evidence that the more senior firefighters perform their duties more competently or efficiently than those fire engine operators with less seniority.

There are other considerations militating against the Union's proposal. A review of the contract indicates that up to now fire engine operators receive the same pay as sergeants who work in fire suppression. There appears to be parity between those two positions. At the same time, sergeants in fire suppression do not receive any additional step increases based upon years of service. As no justification has been made for paying fire engine operators more then sergeants in fire suppression, the Panel is concerned that adoption of the Union's proposal would create salary inequities among employees serving in the heretofore comparable positions of sergeants and fire engine operators.

Considerations of police fire parity also argue against the Union's proposal. The history of negotiations between the parties as reflected in their last agreement demonstrates that a fire engine operator receives the same pay as a police investigator. There is no evidence that a police investigator's salary increases with seniority. Were the

Panel to adopt the Union's last offer, at least 95 fire engine operators would receive a salary greater than that paid police investigators. This outcome might have the effect of unraveling the parity relationship generally agreed upon by the parties with regard to the salaries of fire engine operators, sergeants, and police investigators.

Finally, it is important to note that there is no evidence that any comparable community in Michigan or elsewhere distinguishes between junior and senior fire engine operators. The apparent absence of any such evidence suggests the prevailing norm that firefighters merit higher pay when they perform added duties and responsibilities following the completion of specialized training. This pattern seems to be one that the parties themselves have adopted in the City of Detroit. Thus both parties have recognized the importance of providing fierfighters additional pay when assuming additional responsibilities as a member of the haz mat or airport fire rescue team and not simply on the basis of seniority.

Finally, the Panel notes that continuation of the status quo might reduce significantly the desire of firefighters to choose the fire engine operator track, as such employees would have no opportunity for promotion. Thus only those who remain in fire suppression are eligible for promotion to lieutenant, captain, and other higher ranks. The difficulty in attracting employees to the FEO track might well argue in favor of additional wage increments for that position. However, the record is rather silent on this matter, and the parties can examine this issue in future negotiations.

Given all these considerations, the Panel adopts the City's last offer on this issue.

Pay for Senior Firefighter

Union's Last Offer

The Union proposes to amend schedule 1B by adding a new section 13:

13. Effective June 30, 2001, the salary of a senior firefighter shall be 102 percent of the maximum salary of a firefighter. Senior firefighters shall be defined as the top 150 firefighters on the seniority list for promotion to sergeant.

This section will become effective June 30, 2001. The Union waives, on its own behalf and on behalf of its members, any claim for legal or equitable relief, to which the Union or its members would otherwise be entitled as a result of changes to schedule IB-2 awarded by the Act 312 arbitration Panel in MERC Case No. D 98-D0664. This waiver will only be effective for the period commencing June 30, 2001, and ending on the date of the issuance of an Act 312 award in MERC case numbered D98-D 0644. Thereafter, this waiver will expire, and the Union reserves the right to enforce Schedule I B-2 as then written, in any forum or proceeding provided by law or contract.

City's Last Best Offer

The City proposes as its last offer of settlement that the status quo be maintained.

Union Position on the Merits

The Union notes that in the Detroit Fire Department there are approximately 900 individuals at the rank of firefighter. Newly hired fire fighters receive step increases every year until the end of their fifth year. They receive no other step increases or any other similar increase until their promotion to sergeant, which currently occurs at about the fifteenth or sixteenth year of their careers.

Between the last step increase as a firefighter and promotion to sergeant, senior firefighters have significantly increased duties and responsibilities. When that firefighter becomes one of the 150 most senior individuals in the firefighter rank, he is scheduled to attend the same training classes that are given to new sergeants. The firefighter is put on a list of so-called senior fire fighters that is distributed throughout the department. The senior fire fighter is expected to serve as a mentor to young firefighters, to handle the bulk of the daily paperwork, and to serve as the acting officer all times when the officer is

detailed out of the station. According to the Union, he receives this training and shoulders these additional duties and responsibilities with no increase in pay or benefits under the expired contract.

The Union maintains that the slight two percent increase in pay that it is requesting is a modest raise to compensate the senior firefighter for their increased responsibilities. Additionally, the Union notes that the top 150 firefighters earn a base salary that is 3.31 percent below the average base wage of firefighters in nationally comparable cities and 5.87 percent below the average wage of firefighters in Michigan comparable communities. Consequently, the addition of a two percent premium will not afford these top 150 firefighters an excessive cash benefit package.

Employer Position on the Merits

The City maintains that the Union's proposal rests largely on its contention that the senior firefighter must be prepared to step in for sergeant and act in that capacity in a variety of situations. This argument fails for two reasons. First, senior firefighters are considered in training to assume the duties of sergeant since their seniority places them in line for early promotion. Secondly on those occasions when senior firefighters work out of grade as a sergeant, they will earn a sergeant's pay in those situations. Consequently, they are already awarded for working the higher classification. The City also notes that comparability data does not support the Union's position.

Discussion

Initially, the Panel does not find that the parity principle argues against the Union's proposal. Under the parties' contract there is parity in the base pay of a firefighter and a police officer. The Union's proposal does not disturb that parity

relationship in base pay. Rather the Union's request is limited to providing additional pay to senior firefighters in recognition for the increased duties and responsibilities they perform that more junior firefighters allegedly do not. In effect, the Union's request parallels the parties' traditional bargaining pattern of providing additional pay for personnel performing added or more specialized duties requiring advanced training. Such practices have been codified in contractual provisions on haz mat pay and in the agreement reached by the parties during this proceeding on airport premium.

The Union has noted that fire fighters receive no step increases following their fifth year of service until their promotion to sergeant. As they typically do not become Sergeants until the 15th or 16th year of their career, firefighters do not have an opportunity for any income increases. Therefore, according to the Union, they merit receipt of an additional step increase of two percent. At the same time, this argument ignores the fact that firefighters during the course of their service do receive additional increases. Fire fighters receive longevity increases, which have the same effect of rewarding employees for their increased years of service and experience. Additionally, fire fighters like all other bargaining unit personnel will be obtaining pay increases as a result of the negotiation of new collective bargaining agreements.

The primary consideration underlying the Union's request is that the 150 most senior individuals in the fire fighting ranks frequently receive the same training that is given to new sergeants. Moreover they not only mentor younger firefighters but also on a regular basis replace sergeants and perform supervisory duties. Yet according to the undisputed testimony of Nile Sexton,, other firefighters who have accumulated a significant number of years of service but who have less than 15 years perform mentoring

duties. Most important, when firefighters serve as sergeants they are entitled to receive out of grade pay.

In the past, fire fighters were unfairly prevented from receiving out of grade pay if they worked out of class for less than 12 hours. The record suggests that this limitation prevented fire fighters from obtaining out of class pay in 25 to 30 percent of the time when they were performing the duties of a command officer. (Volume 13, p.55) The Panel notes that, under a separate city proposal previously awarded by the Panel, firefighters need only work eight hours in order to receive out of grade pay. This reduction will likely result in firefighters receiving out of grade pay in the overwhelming percentage of occasions when they perform supervisory duties. Consequently the Union's primary concern had been addressed by the City's concession on out of grade pay.

The Union has also supported its proposal with reference to comparability data. It argues that firefighters earn a base salary that is 3.31 percent below the average base wage of firefighters in nationally comparable cities and 5.87 percent below the average wage of firefighters in Michigan comparable cities. At the same time, only considering base wages to identify whether senior fire fighters in Detroit are being underpaid does not provides a fair assessment of their economic well-being. Furthermore, as noted earlier in the discussion on the parties' proposals on out of grade pay, the City's proposal would provide equivalent or more favorable income opportunities for employees working in higher classifications than currently exist in 13 of the 23 Michigan comparables. Additionally, the City's current provision on out of grade pay is equal to or better than that available to senior firefighters in four of the eight national comparables. As a result, by increasing the opportunities for senior fire fighters in Detroit to earn out of grade pay,

their overall salaries should be competitive with those received by senior firefighters in many other communities both in Michigan and in large metropolitan urban areas.

In summary, the Panel finds inadequate support to adopt the Union's proposal on this issue. Accordingly, it adopts the City's final offer on this issue.

Company Staffing, Article 24 (B) (Non-Economic)

Union Proposal

The Union is proposing as its last best offer of settlement to revise article 24 B as follows:

B. Other Companies

All engine ladder, and dual fire/hazardous material response unit companies, except TACs, shall have not less than four members on duty per tour of duty for the entire tour of duty.

This requirement shall be temporarily excused only in the following circumstance:

(1) When the department is given less than 12 hours notice by a member scheduled for a tour of duty in an engine or ladder company that the member will not be at work.

When this exception applies, the manpower of the fire fighting division shall be reallocated between the engine and ladder companies under the customary detailing system of reassignment of the next most senior available on duty employee in that classification in the City. For example, if under exception (1) five members fail to give timely notice, those five vacancies shall be reallocated among all engine and ladder companies under the customary detailing system.

City Proposal

The City proposes to retain the status quo.

Union Position on the Merits

The Union notes that the four man ride became a provision in the parties' contract as result of the Kanner Act 312 award. That award also adopted an exception to the four person ride which has become known as the 10 per cent exception. This exception has

now swallowed the rule. In 1999, for example, the department violated the four person ride standard 98 percent of the time.

The purpose of the Union's proposal is to make the four person ride standard meaningful. The City has the ability to pay for the proposal, because the fire department's annual budget includes funds every year to provide enough fire fighters to staff the four person ride. All of the out-of-state comparables proposed by the parties have enforced the minimum of four firefighters per company. Based on studies conducted in other cities, it is evident that staffing engines and trucks with a minimum of four fighters is essential to the safety and heath of the firefighters and the public. Moreover, the four person per company standard is recognized by the nation's only independent standard setting body as crucial in protecting the safety of firefighters at a fire scene.

Employer Position

The City notes that Article 24 was placed in the parties' contract pursuant to the Act 312 award of arbitrator Richard Kanner. This award expressly excuses the department from riding each company with four persons assigned to each fire company everyday when the total number of employees on sick and injury leave exceeds 10 percent of the unit's strength.

Following the issuance of the Kanner award, the parties engaged in a nine-year dispute regarding the application of the 10 percent exception. The City took the position that the 10 percent exception applied to the number identified as "par", the number of firefighters, (296 including chiefs) necessary to staff the 72 companies each day at a four person complement per company. The Union contended that the 10 percent exception applied to the entire unit, (approximately 600 firefighters including all ranks) assigned to

a given day. Under the City's formula the exception applied more often than not. Under the Union's formula, the exception applied only occasionally.

Arbitrator Paul Glendon ultimately resolved this dispute in an award issued on May 17, 1999. He upheld the City's interpretation, although the facts indicated that the City rarely deployed all companies with four personnel as a result of the application of its interpretation of the 10 percent exception.

The City also maintains that the Union's proposal should be rejected because it constitutes an effort to unfairly reverse both the Kanner and Glendon awards. In effect, these awards should be considered res judicata on the issue of whether the City's deployment of a mixed complement of three and four person crews adequately addresses staffing safety.

The City also notes that the evidence indicates that the four person provision has been essentially ignored by both parties from 1992 forward for many years. The Union did so in exchange for the department's willingness to maintain overall staffing levels and from refraining from closing companies. The Union's willingness to allow companies to operate with less than four persons for many years is inconsistent with its contention that safety considerations underlie its proposal. The Kanner award establishes a balance between the parties by granting the Union the four person ride while retaining the department's right to close the companies. This balance considers staffing realities and the City's budgetary constraints that would be undermined were the City required to adopt the Union's proposal.

Discussion

There is strong evidence in the record that requiring companies to ride with a minimum of four persons is crucial to the capacity of fire fighters to perform their jobs safely. This conclusion is initially supported by the testimony of Richard Shinske. He worked 29 years for Detroit Fire Department retiring as a lieutenant. Subsequently, he became Chief of the fire department in Brighton, Michigan. He has for many years served as a consultant and trainer for the National Fire Academy, which is an arm of the United States Fire Administration as well as the Michigan Fire Fighters Training Council. The purpose of the many classes he teaches is to reduce the incidence of both death and injuries among fire fighters engaged in fire suppression efforts. Given his experience, training, and education, the Panel considers him an expert in the area of fire fighting safety.

He noted that there are five critical functions in fighting a fire. These are search and rescue, interior attack, water supply, ventilation, and exposure. In performing these distinct functions safely, he indicated that a company must consist of a minimum of four fire fighters. For example, he noted that one of the first duties of the arriving company is to make sure there is no one in the structure. A typical search and rescue effort involves sending a team of two people into that structure. You may need even more depending upon the size of the building. If two people enter that structure, then the officer in charge of that company must remain nearby, outside the building or even in the doorway to be in constant contact with the rescue team. The fourth person is the fire engine operator who must remain with the engine in order to insure a constant supply of water to the rescue team.

Chief Shinske vividly emphasized the importance of having a fourth fire fighter outside the building to monitor the fire scene:

> But the other [fourth person] would be staying either just outside or in the doorway, or out in the street but somewhere maybe even moving somewhat- somewhere in an area where they can now survey the entire scene that's before them and look at things like how much fire is coming out, where it's coming out. And the reason for that is the effect on those people that are getting deep inside this building as it's something that's going to surprise them and possibly burn them...He's looking at the fire from the outside. He's looking at how much smoke is coming out, where it's coming out. In fact you can tell by, sometimes, the siding on the building where the fire is that you don't send them into great danger. Because the siding, the actual siding on a building is now trickling smoke... He looks at the roof line. He can tell by the vents in the roof if there's a fire inside the attic, so he has a feeling for how soon that attic area is going to collapse onto the fire fighters. He looks at the ridge board line to see if it is starting to sag. He looks at the sides of the flat of the roof to see if there are any smoke trickles coming under the shingles and if any of it is starting to look like it is starting to sag in.
>
> All of these are indicators of whether any collapse is about to take place for the safety of firefighters below. And he can only see that if he's outside or in an area where he can actually visually look at those kinds of things. (Vol.17, pp.42-43).

Similarly, four firefighters are needed to attack the fire. It requires two fire fighters to advance the hose. However, as the firefighters move deeper into a building and as they go around more corners, the hose gets tangled around corners and obstacles. A third fire fighter is a needed to assist their efforts. Meanwhile the fire engine operator is stationed at his vehicle in order to insure a steady stream of water.

On the other hand, if the arriving company has only three firefighters, the safety of the rescue team is compromised by the non- availability of the officer to remain outside the burning facility to monitor their actions. Thus with only three firefighters, Chief Shinske noted, "there really is no officer. He can't be watching the things that need to be watched. He can't be making decisions. He can't be meeting the companies that are arriving later outside to tell them what's going on and what needs to be done next". (Vol. 17, p.39)

Another critical function is that of ventilation. Ventilation involves efforts to release the super heating gas and smoke from buildings to buy time for trapped victims and to protect fire fighters. In the absence of proper ventilation, there is the danger of the fire deteriorating beyond control. (Vol. 15 p. 54-55)

Ventilation is done through the use of variety of tools including axes, poles, pry bars, power tools, and pressure ventilation fans. It also involves the use of ladders carried by trucks. According to the Chief Shinske, these ladders typically require a minimum of four persons to raise. Because of their substantial weight, which can be hundreds of pounds, an inadequate number of men holding a ladder can create a substantial safety issue. From his own experience as a Detroit firefighter, he noted that because of the inadequate number of people on the ladder trucks, there were times when firefighters would not even be able to raise ladders needed to combat the fire. On other occasions, he noted that when too few firefighters are on the scene, they may be compelled to engage in questionable ventilation efforts, such as cutting inadequately large holes in roofs which create a false sense of security. (Vol. 15, p.143-144.)

The City has suggested that fire fighters can ride safely with three firefighters on a rig, because the later arriving companies can supply the fourth fire fighter. Yet this contention is unpersuasive. If the initial and subsequent companies arrive to the fire scene with only three firefighters, they will lack sufficient manpower to perform critical functions safely and efficiently. These include monitoring firefighters engaged in search and rescue, incident command, ventilation, and interior attack. Thus, for example, if an engine and ladder truck arrive on the scene each with just three fire fighters on a rig, one company may have to lend one of its fire firefighters to the other so that it could operate.

The second company left with just two fire fighters would be useless. Thus two fire fighters could not raise a ladder. Alternatively, if the engine company lent a fire fighter to engage in ventilation, it would lack the requisite number of personnel to engage in an interior attack. These two companies could wait till other fire companies came onto the scene. Yet with every minute of delay the danger to fire fighters, the public, and to property is intensified. Thus as Chief Shinske has noted, a fire will flash over and ignite an entire building within three to eight minutes. As a result, the first arriving companies require appropriate manning of at least four personnel per rig to insure the safety of fire fighters and the public as well as to reduce the risk that private and public property will be destroyed. This conclusion is strongly reinforced by the City's failure to call a single expert to argue against the notion that fire- fighting operations can be safely and efficiently conducted with a minimum of three fire fighters on a rig arriving to a fire scene.

This conclusion is also supported by various scientific studies conducted in other large metropolitan communities which demonstrate that the utilization of four fire fighters on a rig contributes to both firefighter safety and efficiency, while crews consisting of only three firefighters may not be able to perform adequately. One such study was that conducted by consultants for the City of Dallas, Texas in 1984. Specifically, in Dallas simulations were conducted in which crews consisting respectively of three, four, and five firefighters on engines and trucks combated apartment house, high-rise office, and private residential fires. Among its conclusions were the following:

Apartment House Fire Simulation: The appropriate level of staffing for engine companies responding to brick veneer or combustible apartment house complexes is no less than four firefighters. The appropriate level of staffing for truck companies

responding to brick veneer or combustible apartment house complexes is no less than 5 firefighters.

High-Rise Office Fire Simulation: A staffing level of five would be desirable for fire companies responding to fires of this complexity and magnitude. The simulation demonstrates that four person crews can perform all but the first engine's physical tasks with almost equal proficiency up to the point where the actual attack on the fire takes place. Crews of three suffer from too great a loss of function and capacity.

Private Residential Fire Simulation: The four person crew was capable of performing satisfactorily in controlling the fire and in effecting the rescue operation. The three person crew was able to control the fire although they were unable to complete the search of the lower-level until after the fire was extinguished. At this staffing level there was little margin for error and any appreciable delay in arrival might place the control of the fire beyond their capability.(Union Ex 115, pp. I-2 and I- 3).

The Austin Fire Department also performed a study, which measured the physiological and safety implications of combating fires with crews of three as opposed to four men. It found that a fire fighter working on a three person crew had a 16 percent higher pules rate than those on a four person crew. Conversely, firefighters on four person crews had a 53 percent greater lung capacity after finishing their tasks then did the firefighters on three person crews. (Union Ex.146, pp. 3-5) This finding is consistent with that of the Dallas study which also found increased physiological stress on firefighters when they tried to compensate for lower staffing levels. (Union Ex.115, p I-2) Significantly, the record indicates that the incidence of heart attacks among firefighters increases with a fire fighter's age. Given this consideration, operating with crews of only three firefighters should be avoided, as the greater physiological stress experienced by personnel on such crews poses a substantial danger to their health.

The Austin study also supports the conclusion that higher injury rates are associated with three-man crews. The four and five person crew injury rate was 5.3 per 100 firefighters. On the other hand, firefighters on three person companies experienced

an injury rate of 7.77 injuries per 100 firefighters, 46 percent higher than the larger crews. The different crews were also evaluated to determine the time necessary to complete fire fighting tasks such as aerial ladder evolution. Crews of four firefighters were able to complete their tasks almost twice as quickly as three-man crews.

A November 1994 study conducted by the Providence Fire department also demonstrated the gains associated with staffing crews with four as opposed to three firefighters. For several decades beginning in the early 1970s the minimum staffing on engine and ladder companies in Providence, Rhode Island was three members: one officer and two firefighters. The Union there had long argued that three person staffing was unsafe and was leading to increases in the amount of injuries. Following years of dispute over staffing, the Union and the City agreed to conduct a controlled study comparing injury rates of crews with four as opposed to three firefighters on a rig. The results of the Providence Fire Department study showed that four person companies sustained 24 percent fewer injuries then did the three person companies. Furthermore, time loss injuries decreased by 25 percent in the four person companies. (Union Ex. 147, p.20)

The City has noted that the studies were drawn from municipalities that the parties have not identified as comparable. Additionally, the City maintains that the Union has failed to demonstrate how the studies demonstrate anything about Detroit. The Panel does not find that these concerns of sufficient weight or merit to justify ignoring the conclusions drawn from these studies. That Austin, Providence, and Dallas were not used as comparables does not detract from their relevance, given the absence of any evidence or reason to believe that the dangers and hazards confronting the arriving

companies when suppressing a fire were any different in these communities than in Detroit. Indeed these studies suggest the opposite, as fire fighters in these communities were responding to the same kinds of structural fires that Detroit fire fighters would confront. For example in the Dallas study firefighters were responding to fires in apartment houses, high-rise offices, and in private residences. In the Providence study, the physiological and efficiency results were based on fire simulations involving two story and high-rise fires. Furthermore, that safely responding to a fire requires a common strategy regardless of a City's location is reflected in the adoption by the National Fire Protection Association of a uniform standard for the staffing of ladders and engines arriving to a fire scene.

Nor does the Panel find the studies' conclusions inapposite, because Detroit typically responds to fires by signaling a box alarm and dispatching three engines, a ladder, a squad, and a chief. Thus a similar complement of three engines and two trucks were used to evaluate the efficacy of three, four, and five man teams in suppressing high rise fires in Dallas. (Union Ex. 115 pp. V-7 and V-8) Consequently, the observations drawn from the Dallas study are directly relevant to Detroit.

Moreover, the results of the Providence study although based on simulations involving the use of a single ladder and engine are no less relevant. Thus the geographical dispersion of companies and the limited number of companies sharing a single fire station in Detroit in practice means that for several minutes only a single ladder or truck may be at the fire scene. This situation was highlighted in a Detroit News report of the fatal Pallister fire of April 1, 2000 showing that initially only engine 17 and ladder 7 were dispatched to that fire scene. (Union Ex. 299, November 5, 2000, p.1)

The City has also contended that there is no evidence that a four person ride is needed in order to reduce fire fighter injuries. In this regard it notes that only Dr. Blessman, the City's medical director presented evidence regarding fire fighter injuries in Detroit. He testified that based on his review of injuries in Detroit, the City does not fall outside the national norm for both the types and number of injuries suffered. (Vol. 20, pp. 4-93, City Exs.176,128,128 a).

These considerations do not weaken the probative value of the previously cited studies. To begin with, the panel has reviewed Dr. Blessman's report and finds that his conclusions are too inconclusive to permit any safe generalizations concerning injury rates in Detroit relative to other cities. Dr. Blessman estimated that communities the size of Detroit experienced 17 fire ground injuries per 100 firefighters, while he calculated 18-19 fire scene injuries per 100 firefighters in Detroit. Additionally, after factoring in the much greater number of fires occurring annually in Detroit, he calculated an adjusted expected NFPA injury rate in Detroit of 27 fire scene injuries per 100 fire fighters. At the same time, 37 per cent of the 107 cases from which he calculated his pilot estimate of the location of injuries did not identify whether an injury was at or away from a fire scene. To address this deficiency, he considered the "unclear" cases as if they were fire scene injuries in Detroit. As a result, he determined that it is possible that in Detroit for 1999 there were as many as 33 fire scene injuries per 100 fire fighters, or more injuries than occurring in cities of comparable size to Detroit. In effect, depending on how one treated the injury cases of unclear origin, Dr. Blessman was left with the inconclusive result that the rate of fire scene injuries per 100 firefighters could be above or below the rate in other communities. (Vol. 20, pp.64-65.)

Additionally, Dr. Blessman made no effort to determine the effect that riding with four as opposed to three firefighters would have on fire fighting injuries. In the absence of such data, it is reasonable for the Panel to infer such effects from studies performed in other communities. Moreover, even with regards to Detroit specifically, there is reason to believe that injury rates are higher than in other communities. The Auditor General reported that between 1996 and1998 the number of injuries increased by 16 per cent while days lost due to injuries increased by 36 per cent. Furthermore, for 1998, among nine benchmark cities, Detroit had the third highest number and rate of injuries per budgeted positions. (Union Ex. 2 p.24)

Significantly, the National Fire Protection Association has endorsed the requirement that each company ride with four firefighters. This is a nonprofit organization consisting of employers, unions, insurance companies and other interested parties. According to the undisputed testimony of Richard Duffy, director of research for the International Association of Fire Fighters, standards adopted by this Association are accepted by the federal government as consensus standards that are enforceable by the Occupational Safety and Health Administration.

NPPA 1500, which was first promulgated in 1987, incorporates standards for fire fighters responding to emergency incidents. Section 6-4.1 provided:

> The fire department shall provide an adequate number of personnel to safely conduct emergency scene operations. Operations shall be limited to those that can be safely performed with and by the personnel available at the scene. (Union Ex.132, p. 1500-19)

Section 6-4.1 did not specify a specific number of fire fighters required to be at the scene. However the appendix to NFPA 1500 provided further guidance to fire departments in section A-6-4.1. This section provided as follows:

The limitations on emergency scene operations to those that can be safely conducted by the number of personnel on the scene is intended to reduce the risk of fire fighter death or injury due to understaffing. While members can be assigned and arrive at the scene of an incident in many different ways, it is strongly recommended that interior fire-fighting operations not be conducted without an adequate number of qualified fire fighters operating companies under the supervision of company officers.

It is recommended that the minimum acceptable fire company staffing level should be four members responding on or arriving with each engine and each ladder company responding to any type of fire. The minimum acceptable staffing level for companies responding in high risk areas should be five members responding or riding with each engine company and six members responding or riding with each ladder company. (Union Ex. 132,p.1500-39)

The National Fire Protection Association noted that "these recommendations are based on experienced derived from actual fires and in depth fire simulations and are the result of critical and objective evaluation of fire company effectiveness. The studies indicate significant reductions in performance and safety where crews have fewer members then the above recommendations." (Ibid)

During the hearing there was much discussion as to whether the recommendations on staffing incorporated in the Appendix to NFPA 1500 were to be viewed as a mandatory requirement or were there simply for informational purposes. According to the statement incorporated in NFPA 1500, "materials in the appendix are not part of requirements of the NFPA document but were included only for informational purposes."(pg.1500-23). At the same time, according to Mr. Duffy materials in the Appendix constituted explanatory text for the minimum requirements to be included in the standard. Yet whether the Appendix constituted a standard enforceable by law does not detract from the NFPA finding that four members on a rig is the desired goal, as staffing levels below this amount will hinder the performance and safety of fire fighting crews.

Significantly, after further years of study and review, the National Fire Protection Association on July 11, 2001 enacted NFPA 1710, Standards for the Operation and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments. This document incorporated clear requirements for company staffing:

5.2.2.1 Fire companies whose primary functions are to pump and deliver water and perform basic fire-fighting at fires, including search and rescue, shall be known as engine companies.

5.2.21.1 These companies shall be staffed with a minimum of four on duty personnel.

5.2.2.1.2 In jurisdictions with tactical hazards, high hazard occupancies, high incident frequencies, geographical restrictions, or other pertinent factors as identified by the authority having jurisdiction, these companies shall be staffed with a minimum of five or six on duty members.

5.2.2.2 Fire companies whose primary functions are to perform the variety of services associated with truck work such as forcible entry, ventilation, search and rescue, aerial operations for water delivery and rescue, utility control, illumination, overhaul and salvage work, shall be known as ladder or truck companies.

5.2.2.1 These companies shall be staffed with a minimum of four on duty personnel.

5.2.2.2.2 In jurisdictions with tactical hazards, high hazard occupancies, high incident frequencies, geographical restrictions, or other pertinent factors as identified by the authority having jurisdiction, these companies shall be staffed with a minimum of five or six on duty personnel. (Union Ex.350, p.342)

Based on a review of these requirements, it is apparent that fire departments just sending four firefighters may not be in compliance. But certainly those below four are not. Consequently for the City of Detroit to be in compliance with national consensus standards, it must be willing to staff engine and ladder companies with a minimum of four firefighters per rig.

Further strong support for the Union's proposal is found in staffing standards implemented in comparable communities. Five of the six agreed-upon comparable communities- Philadelphia, Baltimore, Boston, Cleveland and Pittsburgh- maintain a minimum daily ride of four fire fighters on all engine and ladder companies. (Union Ex. 148). The other agreed-upon comparable, Chicago, rides each engine and ladder company with a minimum of five firefighters. The Union's additional proposed comparable, New York, staffs its engine companies with a minimum of five firefighters and ladder companies with a minimum of six. Milwaukee rides with a minimum of five firefighters on engines and ladders, and Washington D.C. staffs its engine and ladder companies with a minimum of four firefighters. The City's additional proposed comparable St. Louis similarly staffs its engine and ladder companies with a minimum of four firefighters. Unlike all these cities, only Detroit staffs its engine and ladder companies with three firefighters.

Significantly, representatives of the City of Detroit and management representatives within the Fire Department have also acknowledged the importance of staffing engine and ladder companies with a minimum of four fire fighters. On November 18,1999 Joseph Harris, the Auditor General for Detroit issued a performance audit of the fire fighting division of Detroit Fire Department. He noted the serious hazards to the community when fire fighters seek to suppress a fire with inadequate resources:

> Once flashover occurs and the fire gets out of the room of origin, the potential for spread escalates sharply. It is in the race to contain a fire to the "room of origin" that the effect of the level of staffing can be important and even critical. An additional fire fighter, especially on the first units arriving at a fire could make the difference in stopping spread, when the additional personnel speed up operations by allowing more tasks to be done simultaneously...
>
> Our observations of fire fighters during the audit were that at least four personnel were necessary. The driver or fire engine operator (FEO) is occupied with driving fast

and maintaining safety. The officer navigates and looks out for hazards and monitors the computer.. and keeps in radio contact. The two fire fighters are busy... in the back compartments getting on gear and SCBA harnesses in preparation for suppressing the fire. At the fire site two fire fighters exit the vehicle and start stretching the fire hose. The driver/FEO hooks the front suction line to the hydrant and attends the pumper (water pressure and flow) controls. The fire officer supervises the firefighters and calls instructions to the driver/FEO... If there is a person(s) in danger and a structure involved, the fire fighters first attempt a search and rescue. A four member company or larger is more important in search and rescue situations. Additional personnel arriving from other companies would become involved the search and rescue, ventilation..., and stretching additional fire hose lines in support of fire suppression. The more personnel arriving initially at the fire site, the more effective the DFD will be in saving lives, and reducing injuries and loss of property. (Union Ex. 2, p.20)

The Auditor General summarized by noting that the Detroit Fire Department is not staffing each fire company and apparatus with a minimum of four personnel per company, resulting "in reduced effectiveness of the fire fighters (sic) response to emergency incidents and increased safety risks."(Ibid, p.ii)

There are chilling statistics that reinforce the credibility of the Auditor General's report. Relative to other comparable communities, Detroit had the highest civilian fire death rate per 100,000 population between 1994 and 1998. (Union Exhibit 180) In 1998 Detroit ranked far above the national average in civilian fire deaths. For cities between 500,000 and one million in population, in 1998 there was an average of 14 deaths a year due to fire. In 1998, there were 80 civilian deaths due to fire in the City of Detroit. (Union Ex.182)

More recently the Auditor General found that corrective action had not been taken on its recommendation to properly staff companies with four fire fighters per company. He advised the Mayor that by failing to meet this objective, "the effectiveness of the firefighters' response to emergency incidents is reduced and the safety of fire fighters is at greater risk." (Employer Ex. 195, p.3)

Statements of high-level management representatives of the Fire Department during this Act 312 proceeding demonstrate their recognition that companies should be staffed with four fire fighters. General Manager Niles Sexton stated that, "We staffed-our desire was to staff with four..." and, "It's been the department's desire to maintain a four person ride and that's what we budgeted at and that's what we want to put out into the field. (Vol. 23, pp.53,61). Similarly, the current Executive Fire Commissioner Richard Stein noted, "I believe very strongly, you know, in Detroit that we should have four person staffing."(Vol. 46 p. 129)

Significantly, there does not appear to be any credible ability to pay contention that would militate against implementation of the Union's proposal. Niles Sexton has acknowledged that over the years the City has not achieved budgeted strength in the fire department. (Vol. 23, p. 91) City of Detroit budget data confirm this observation. For example, in the 1997- 1998 fiscal year the Fire Department enjoyed a surplus of $3,965,827. (Comprehensive Annual Report for the City of Detroit, December 18, 1998, p. 65, Union Exhibit 12.) Similarly, the Detroit News noted that during the 1998-1999 fiscal year, the department "returned to the City $3.7 million from their budget for salaries."(Union Ex. 299, November 7, 2000, p.4)

Yet even assuming budgetary constraints, the compelling considerations of public and fire fighter safety as well as the obligation to comply with national consensus standards mandate that the City take measures to implement a four man ride on engines and ladders. As the Auditor General noted, staffing a company with a minimum of four personnel should not be an issue. (Union Exhibit 2, p. 21)

The City has contended that the Panel should not adopt the Union's proposal, because it conflicts with the 1992 Act 312 award issued by Richard Kanner. The City contends that Kanner recognized that the department for several years failed to meet the goal of a four man ride on a daily basis as to every company. Thus Kanner issued an award permitting the City to deviate from the four man ride when the number of fire fighters absent because of injuries exceeded 10 percent of par (the number needed to staff each company daily). In so doing, Kanner recognized the department's inability to consistently staff at full budget with four fire fighters. The City also notes that in giving the City ongoing relief when it was impacted by absenteeism among those scheduled to work, Kanner relied on the collective bargaining practices then prevailing in the City of New Orleans. Thus Kanner cited provisions of the New Orleans Fire Department contract in which the requirement to have a four man ride could be suspended when the number of employees on sick leave exceeded 10 percent of assigned platoon strength. In short, the City argues that Kanner was aware that the department was regularly unable to meet the goal of riding with four persons and that imposing this requirement currently would be unduly burdensome on the City. Additionally, the City contends that the Union's proposal should be rejected, because it conflicts with Arbitrator Glendon's award upholding the City's contractual authority to staff companies with less than four firefighters when the number of absences equals or exceeds 10 percent of par.

The Panel does not find these considerations persuasive. The City is correct in noting that arbitrator Kanner was aware that the City previously failed to meet the four person standard per rig as "to every company everyday." Furthermore, he apparently patterned his award on the collective bargaining provision involving the New Orleans

Fire Department in which the four person ride could be suspended if the number of absences exceeded 10 percent of assigned platoon strength.

At the same time these considerations do not justify mechanical adherence to his award. A review of his award indicates that he shared the belief that a four man ride contributed to fire fighting safety and efficiency. Furthermore, nothing in the Kanner award suggest that he contemplated that by permitting the exception based on daily absences, the City on a regular basis would establish the practice of a three-man ride. Thus the data presented at his hearing suggested that while the City failed to meet the standard of a four person ride as to every company everyday, it is nonetheless met this objective every day for a majority of companies. (City Ex.126, Tab 3, p.19) He also specifically noted that the City for over 20 years has "a standard and practice" of four man staffing per shift.

Yet the evidence indicates that since the Kanner award, the failure to staff companies with four firefighters has been a common occurrence. The Auditor General reported that during the first eight and one half months of 2000, the department staffed an average of four personnel in only 43% the companies. (Employer Ex. 195, p.2) Similarly, the Detroit News reported that in 1999 there were 356 days that the City failed to assign a minimum of four fire fighters to each rig. (Union Ex. 299, November 6, 2000, p.4)

Furthermore even assuming that the Kanner and Glendon awards were designed to grant the City ongoing discretion to deviate from the four person ride whenever absences exceeded 10 percent of par, this Panel does not find these decisions controlling. The witnesses who testified before the current Panel were not the same as those who testified before arbitrators Kanner or Glendon. Many of documents and studies this Panel

has scrutinized were not available and therefore not presented into evidence at the earlier hearings. Fundamental considerations of due process require this Panel to issue an award based on the evidence presented before it. Significantly, the overwhelming evidence in the record that four persons on an engine and ladder truck are necessary to (1) protect the public from the destructive effects of fire (2) permit fire fighters to safely perform their functions, and (3) render the City in compliance with federal governmental standards justify implementation of the Union's proposal.

Interestingly the Panel's determination in this regard is consistent with that of the City's Auditor General. In September of 1999, he noted that arbitrator Glendon's ruling permitting the City to interpret unit strength as daily par strength allows the City to staff fire fighting companies with less than four personnel per company on a frequent basis. Nevertheless, he noted that it is not in the City's, the firefighters', or the citizens' best interest to do so. This Panel's independent review of all the evidence before it warrants the adoption of the Union's proposal which effectuates the Auditor General recommendation to eliminate the 10 percent exception to the contractual requirement of riding engines and ladders with a minimum of four persons each.

In arguing against the Union's proposal, the City has contended that its inevitable consequence would be the closure of companies on a permanent basis. It maintains that this objective would not only be undesirable, but also one that the Union would not seek. This argument too lacks merit. This City has failed to present any evidence as to its response were the Union's proposal implemented. Consequently, maintaining that closure is the inexorable outcome is speculative at best. Furthermore, as reflected in the Auditor General's report, there are a variety of ways by which the four person staffing standard

could be implemented. These include (1) a reduction in the number of companies, (2) purchase of Quints which in one rig combine the features of both engine and ladder companies, (3) increased use of unscheduled personnel to work overtime; (4) efforts to decrease the number of vacancies and injuries and (5) a combination of these options. The Act 312 process is not intended to resolve all the problems confronting the parties. Following the issuance of this award, the parties have the responsibility to discuss and review the most efficient means for implementing the Union's proposal.

Given the above considerations, the Panel adopts the Union's proposal on this issue.

Sell Back of Furloughs (Article 19 V)

Union's Final Offer

The Union proposes to amend Article 19 (V) as follows:

Effective June 30, 2001, all members of the fire fighting division bargaining unit shall be allowed to sell back to the City two (2) winter and two (2) summer furloughs at the holiday hourly rate.

City's Last Best Offer

The City proposes that the status quo be maintained.

Parties' Positions on the Merits

The Union maintains that its sell back provision is warranted because it is an economic benefit to the bargaining unit that will pay for itself. It benefits those fire fighters who freely prefer to work extra time in exchange for pay. It pays for itself, because the Employer receives additional staffing which it needs at a price below what it would cost to obtain that staffing through overtime, or by hiring more firefighters.

The City maintains that the Union's proposal would not enable the City to increase staffing and thereby avoid the need to hire employees to meet any staffing need. According to the City, in 1998 fire fighters were given the opportunity to be paid for two furlough days. Yet the City's capacity to meet its staffing needs did not improve. Consequently, paying employees for working on their furlough days has not provided any material benefits to the City. Moreover, providing this benefit imposes substantial costs upon the City. Thus the City incurred $1,124,500 in costs from paying employees their furlough days in the winter and summer of 1998. Doubling the number of furloughs to be sold would double the cost of this benefit to over $ 2,000,000 per year. As this costly proposal provides no benefit to the department, it should be rejected.

Discussion

Article 19 of the parties' contract governs furloughs or vacation leave. Firefighters work a 24-hour daily shift and shifts are scheduled in a day off, day on, day off pattern. On this schedule it is possible for a fire fighting division employee to secure a vacation of five consecutive calendar days by taking off from work for two 24 hour shifts. In Detroit fire department parlance, such a five calendar day vacation, secured by taking off two work shifts is known as a furlough. By contract, fire suppression employees are entitled to take at least four such furloughs per year, two each winter and two each summer.

Currently members of the fire fighting division can elect to sell back up to two of their furloughs per year, one in the winter and one in the summer. A member of the fire fighting division who elects to sell back a single furlough works two extra 24-hour shifts and is paid for those extra shifts.

The Union's proposal contains two changes. First the proposal extends the right to sell back furloughs to all members of the bargaining unit. Secondly, the proposal would increase the amount of furlough days to be purchased. The Union's last best offer would allow members to double the amount of furloughs they sell back from the current limit of one winter and one summer to two winter and two summer furloughs.

The Union has maintained that the City would benefit from this provision. The Panel finds that the evidence supports this contention. This City's own records indicate that during 1998-1999 fiscal year fire fighting employees in the suppression unit sold back to the City 1305 furloughs. These 1305 furloughs represent 2610 additional 24-hour shifts that members of the fire fighting division worked. In turn, these 2610 shifts equate to an average of seven additional firefighters on duty each day. Thus, but for the sell back, these members would have been on furlough and would not have worked. This common sense conclusion is reflected in the department's staffing sheets that show furlough days as one of the principal reasons for daily absences. (Union Ex.5)

Additionally, to the degree fire fighters work on furlough days, the City increases the manpower available to meet the requirement of a four person ride. In making this observation, the Panel is aware that it is not possible to predict accurately how many more days employees would sell back, if they were permitted to sell back both summer and winter furloughs. At the same time, the favorable response of employees to the existing sell back provision supports the notion that additional furlough days would be sold backed and worked if employees were granted this option.

This Panel has previously ruled that having four firefighters responding per company to a fire is important both to promote the safety of public as well as the

capacity of firefighters to fight fires safely and efficiently. The Union's proposal on the issue of furlough sell back merits adoption, because it will give the City one further mechanism by which to increase staffing to satisfy the four person per company requirement. Furthermore, the Panel is not persuaded by the City's contention that its continued staffing difficulties after granting the original sell back provision in 1995 demonstrates that increasing the number of furlough days to be sold back will not materially improve staffing. There are many reasons for the City's staffing problem. It is undisputed that the City has failed to employ firefighters at levels consistent with its budgeted resources. Additionally, employees are absent for many reasons including Kelly days, super Kelly days, illness, injuries, and suspensions. Additionally, the Auditor General reported that a cause of inadequate manpower is scheduled vacations (Union Ex. 2, p.24) Yet regardless of the cause of the staffing shortage, it is certain that absences did not increase because fire fighters worked on their furlough days. Furthermore, it is reasonable to conclude that but for employees who worked on their furlough days, the staffing situation shortage would even have been worse.

Both parties have estimated that if fire fighters use the furlough sell back privilege to the same extent as they did in the past and if fire fighters can double the amount of furloughs sold back, the City will increase its costs by approximately $ 1,100,000. This amount is significant. At the same time, the evidence supports the conclusion that permitting firefighters to sell back their furlough leave and work will enable the City to increase needed staffing at a lower cost than it would incur through hiring. The City would have had to hire 32 full-time firefighters to cover the 2610 twenty-four hour shifts which it was able to buy back through the implementation of the furlough sell back

provision in 1998-1999. Additionally, it is undisputed that had the City covered these same shifts by hiring additional firefighters, it would have incurred over approximately $2,350,000 in increased costs. (Union 70a) Consequently, as the City was able to purchase the services of these same 32 firefighters through a sell back provision that cost approximately one million dollars, the City saved approximately one million three hundred thousand hours a year through the sell back per provision. If twice as many furloughs would be sold back under the Union's proposal, the City would enjoy the services of an additional 14 firefighters on duty at a cost of approximately $2,652,000 per year below the expenditures needed to hire 14 new firefighters.

In summary, while providing an economic benefit to firefighters, the Union's proposal promotes fire fighting safety and efficiency by increasing manpower needed to satisfy a four person ride requirement. It also does so in a cost efficient manner. Given these considerations, the Panel adopts the Union's proposal on this issue.

Central Office Employees- Staffing (Non- Economic)

Union's Final Offer

The Union proposes to add to Article 12 a new section AA as follows:

AA. Staffing for Central Office

(1) Effective June 30, 2001, there shall be a minimum of five person staffing at all times in the ranks of Assistant Fire Dispatcher and Senior Assistant Fire Dispatcher at Central Office.

(2) The Union waives, on its own behalf and on behalf of its members, any claim for legal or equitable relief, to which the Union or its members would otherwise be entitled under Article 12 (AA)(1). This waiver will only be effective for the period commencing June 30, 2001, and ending 60 days after the issuance of an Act 312 award in MERC case No.D98-D0644. Thereafter, this waiver will expire, and the Unions reserves the right to enforce Article 12(AA)(1) in any forum or proceeding provided by law or contract.

City's Last Offer

The City rejects the Union's last position on Central Office employee staffing and states that this issue is precluded as a non-mandatory subject of bargaining. In the event the arbitrator should find that he has jurisdiction to consider this issue, the City proposes as its last offer of settlement that the status quo be maintained.

City Position

The City maintains that Michigan courts have consistently held that the duty to bargain does not extend to an employer's decisions regarding the staffing levels of its employees. Rather courts have adhered to the proposition that the public employer has the managerial prerogative to make decisions regarding the size and scope of the services it provides. Furthermore, it maintains management has the authority to make policy decisions regarding the overall structure and operation of a public employer. Citing the Court of Appeals decision in City of Trenton and Firefighters Local 2701 (166 Mich App 285, 1988), it argues that staffing is a permissive subjects of bargaining, unless it is demonstrated that manning levels are "inextricably intertwined" with safety issues.

The City maintains that the Union has failed to demonstrate that its proposal promotes or is required by considerations of safety. The City notes that normally the on duty complement within Central Office consists of five assistant and senior assistant dispatchers as well as a fire dispatcher. Additionally, it maintains that the Union has presented no objective evidence to support the claim that (1) staffing below five assistant and senior assistant dispatchers is a regular occurrence or (2) errors on the part of dispatchers occur regularly or have occurred and result in injuries or increased dangers to firefighters. Finally, the City does not deny that performance problems arise at times

within Central Office. A dispatcher might miss a call coming over the radio or dispatch a unit to the wrong location. Yet these incidents can occur at the Union's proposed level of staffing. Thus these errors can occur not because of staffing levels but because they are a function of the general ambience within the communications room which include a certain level of noise and distraction.

Union Position

Assistant fire dispatchers use their judgment, experience and discretion to perform a mentally demanding job under stressful conditions, and as a result, they need to be adequately rested. They need to be able to focus on their jobs and not be obliged to perform someone else's job duties. The senior assistant fire dispatcher or the radio operator has perhaps the most challenging job in Central Office because they need to know everything that the assistant fire dispatchers know about the immediate status of every fire company in the department. They are also the life-line between the incident commander and all the resources of the fire department. They are the primary means of communication between the fire companies. Finally, fire dispatchers, the supervisors in the Central Office, coordinate the activities of the assistant fire dispatchers and the radio operator. As a result, through their supervisory efforts they ensure that all communication functions are properly performed and integrated. Significantly, the Union maintains that the City regularly under-staffs the communication functions that are vital to fire fighters' safety. As a result, it maintains that that the Panel should adopt the Union's proposal which would require that Central Office be staffed at all times with five persons at the rank of assistant fire dispatchers and senior assistant fire dispatcher.

Discussion

It is apparent that Michigan courts and the Michigan Employment Relations Commission (MERC) are unwilling to permit unions to encroach upon a city's decision making authority over staffing issues, unless such decisions are inextricably intertwined with employee safety. This was the position explicitly assumed by the Appellate Court in City of Trenton vs. Trenton v. Firefighters' Local 2701(166 Michigan App 285,1988). This position has been consistently upheld by MERC. In City of Detroit Fire Department, (1992 MERC Labor Opinion 82) the Commission recognized that a reduction in the number of employees scheduled per shift is not per se a mandatory subject of bargaining. Rather the Commission stated that the evidence must show that the number of scheduled employees and their safety must be inextricably intertwined. (p.85) Additionally the satisfaction of this standard required evidence "demonstrating a genuine or significant impact on safety." (Ibid) Similarly, in the City of Wyandotte (1989 MERC Labor Opinion 1020) the Commission determined that the size of the daily shift is not a mandatory subject matter bargaining when it is not inextricably linked with safety. More recently MERC reasserted this position in the City of Ecorse (11 MPER || 29069, June 1998).

Given these decisions, the Union's proposal on minimum staffing levels within Central Office is not a mandatory subject of bargaining, unless it can be demonstrated that central office staffing has a direct effect on firefighter safety. Resolving this matter requires a close examination of the activities of those employees performing communications functions and the effect of different manning levels on their performance. The following review is based on the uncontested testimony of Fire

Dispatcher Larry Hoover who worked in Central Office for 29 years before retiring in 1999.

Usually this department is staffed with six personnel. There are two assistant fire dispatchers (AFDs) assigned to dispatch EMS personnel, two AFDs assigned to dispatch fire suppression units, a senior assistant fire dispatcher or radio operator, and the shift supervisor who occupies the rank of fire dispatcher.

Personnel in each of these positions perform substantial responsibilities that are directly related to fire safety. The AFD following a 911 call will be sending both fire equipment or emergency medical service equipment to emergency scenes. They also are responsible for evaluating how much equipment will be sent. For example, they must use the comments of the 911 operator to determine whether or not a full box alarm is necessary. If the assistant fire dispatcher would send a box alarm to a small kitchen fire, then the department's capacity to fight more dangerous fires elsewhere might be compromised. The assistant fire dispatchers must also use their judgments to determine whether multiple 911 calls might involve more than one or the same fire. For example, a number of citizens might see the same fire and call 911. These calls may not contain an exact address. If the assistant fire dispatcher mistakenly interprets each call as a separate fire incident, he or she would mistakenly send unnecessary units to fight a single fire and would thereby compromise the department's capacity to respond to emergencies in other locations.

The assistant fire dispatchers also keep track of short staffing. As previously noted, fire companies in Detroit frequently ride with fewer than four fire fighters on a rig. By keeping in mind the companies that are short staffed, they are in a position to send

extra companies to a scene as needed. They also keep track of defects in fire equipment. By doing so, they can modify their dispatches accordingly to help ensure that the trucks and engines responding to a fire emergency are properly equipped.

The senior assistant fire dispatcher or the radio operator also performs critical tasks. One of his/ her most important functions is to make sure that every fire truck is actually responding to a fire run. When fire fighters are en route to a fire, they normally communicate with Central Office via a mobile data terminal. However this system is very unreliable. As a result, the radio officer has the responsibility to contact each fire company separately by radio to insure that each company is aware of the run.

The radio operator also must maintain contact with the incident commander and respond to requests for additional or specialized fire equipment. These requests might involve the dispatch of the hazardous material unit, the light air rig, or hose rollers to get fire hose into high-rise buildings. The radio operator is also involved in providing critical tactical information to those involved in rescue and fire suppression duties. For example he might provide the incident commander with information from 911 regarding the location of trapped civilians. He/ she might inform the second or third engine to be cautious because they are not going to get the extra backup that they were expecting. The radio operator may relay strategically important information from the incident commander to newly arriving companies. For example, the incident commander might communicate to the radio officer that he wants the next arriving engine to dump its monitor. It is the radio operator's responsibility to be aware whether the next arriving engine will have sufficient water resources to carry out this instruction, and if not to dispatch another engine that can.

The fire dispatcher is the shift supervisor of the Central Office. In pay and benefits he is equivalent to a fire lieutenant. He is responsible for training the assistant fire dispatchers and the senior assistant fire dispatcher who acts as the radio operator. He listens to each dispatch that his subordinates propose and ensures that they are correct. This supervision is critical, as dispatchers receive only on the job training. Thus as Mr. Hoover indicated "there is no set up for training, other than live training". (Vol. 10,p.168) As a result, the fire dispatcher has to be certain that no major mistakes in dispatches occur as these could result in the wasteful and potentially dangerous allocation of fire department trucks and engines. Thus if too few companies are dispatched, firefighters may be denied the resources needed to combat a fire safely and efficiently. If too many companies are dispatched, then too few companies might be available elsewhere to suppress more significant fire emergencies. The fire dispatcher is also the supervisor for the two assistant fire dispatchers who dispatch for EMS. EMS dispatchers are extremely busy, having to respond to an average of 350 calls per day.

During a large fire the fire dispatcher may be in a position to monitor a second radio frequency, which is reserved for communications between firefighters at the scene of a fire. Normally, Central Office doesn't monitor this frequency because they do have the manpower. However, if they have a chance to do so, they have the capability to respond to dangerous situations. For example, if they identify that someone has been hurt, they can immediately dispatch EMS to the scene, even before a call for aid is transmitted to dispatch.

It is apparent that you need to have a minimum of six personnel to staff the Central Office during a fire emergency, and that with a complement of only five there can

arise serious threats to fire fighter safety. Mr. Hoover noted that the volume of EMS calls dictated the need for the continuous availability of two AFDs to dispatch EMS personnel. (Vol. 10,p. 55) Additionally, because a single fire might precipitate multiple calls or because multiple fires might occur simultaneously thereby triggering multiple calls, there is need to always have two dispatchers available to dispatch fire suppression units. As a result, if an AFD is absent, the dispatcher will have to fill in at the fire console. (Vol.10, p.77)

Yet doing so has a direct negative effect on safety. If the fire dispatcher is sitting at the console taking calls, he is no longer as available to perform normal supervisory duties. As noted earlier, the fire dispatcher supervises the assistant fire dispatchers and thereby ensures the dispatch of an adequate number of engines and trucks to a particular fire scene. Without adequate supervision, the remaining assistant fire dispatcher may not perform his/her duties satisfactorily. If required to work the fire console and perform the duties of assistant dispatcher, the fire dispatcher will no longer be able to monitor the second frequency by which firefighters communicate with each other at the fire scene. In such a situation the department loses an invaluable resource who could most readily respond and provide relief to dangerous situations. As noted by Hoover, "In the past, I have been there when monitoring that frequency helped save somebody's life or at least made a difference in their well-being because they were able to listen to it. As a supervisor, if I knew there was a big fire going on, I try to turn up that frequency and listen to it from my position." (Vol.10, p.107)

The need for a fire dispatcher to staff the fire console may also result in the radio operator being deprived of necessary supervisory assistance. At times the radio operator

will have a request for specialized equipment that he/she may not be familiar with. If this occurs and a supervisor is involved in dispatching duties, the fire dispatcher may not be able to provide necessary supervisory assistance to the radio operator in a timely manner. When this occurs according to Mr. Hoover, "time can be lost [and] lives are at stake."(Vol.10, pp.100-101).

Nor is the radio operator in a position to assume the duties of an absent assistant fire dispatcher. The radio operator has to be available at all times in order to insure that companies are dispatched to the scene. He/she is also required to maintain communications with companies at the fire scene. Thus companies at the fire scene will communicate to the radio operator their need for further assistance in terms of trucks, engines, or EMS personnel. The radio operator is also responsible for relaying vital information to oncoming companies such as location of the fire scene and traffic obstacles. If the radio operator has to assume the tasks of the fire dispatcher or the assistant fire dispatcher, he is less capable of performing these critical functions.

Mr. Hoover highlighted the critical impact of the radio operator's communications on fire fighter safety:

> You [radio operator] have to tell the second engine or the third engine because the firemen may be ready to rush into the building, and then their lives are going to be in danger because they are not going to get the backup that they need because the next engine is not prepared because of one fault or another. This thing happens so quickly that the concentration of the radio officer has to be right there on it, because I mean we are talking lives at stake here. If the firemen are getting ready to run into a building and the next engine can't hook up to a hydrant, and there is not going to be any water pressure... It is the radio operator's responsibility to make sure that they heard it, because they would tell us, 44 did you get that, and they will say, yes, hydrant didn't work... There is (sic) lots of different things involving the fighting of a fire that are critical to the lives of the firemen on the scene that have to be handled in just fractions of a second. The radio person can't be distracted at those points because it's all going to be over within just a matter of a few seconds. (Vol. 10,pp.104-105)

The Union has proposed that Central Office be staffed at all times with five persons at the rank of assistant fire dispatcher (AFDs) and Senior Assistant Fire Dispatcher. Together with the Fire Dispatcher, the Union's proposal would effectively require that the City have at all times six personnel performing Central Office communication duties. At the same time, proposals for requiring the City to maintain certain staffing limitations must be reviewed with great caution given judicial precedent that under normal circumstances manning limitations are not mandatory subject matters of bargaining unless less they are inherently related to firefighter safety. Here the Union contends that its proposal is directly related to safety considerations as the Central Office is regularly understaffed to perform functions that are vital to the safety of fire fighters. The Union maintains that the record reveals that there are times that Central Office is staffed with a total of only five personnel. In such circumstances, they are a man short to staff critical functions. Furthermore, the Union notes that each employee is entitled to 1/2 our lunch and two 15 minute breaks during an eight-hour shift. This break time totals one-hour for each of the six employees. Consequently for six of the eight hours in a shift, or 75 percent of time, Central Office is staffed with only five personnel. As a result, even under the best of conditions Central Office is understaffed most of the time.

Were the Union to demonstrate that the Central Office is frequently staffed with less than five personnel including the fire dispatcher during fire emergencies, the Panel might well conclude that dispatch functions are not being carried out in a manner that affords sufficient protection to fire fighting personnel. Thus there is much evidence based on Mr. Hoover's testimony that vital dispatch functions that are critical to fire fighter safety will be impeded or not performed, if less than five assistant and senior assistant

dispatchers are not responding to a fire emergency. At the same time, the Union has not provided clear and compelling evidence that such understaffing has occurred. During the day shift, the communications division is staffed not only with a fire dispatcher, the senior assistant fire dispatcher, and four assistant fire dispatchers, but also with an assistant supervising fire dispatcher who holds a rank equivalent to captain and a supervising fire dispatcher who holds a rank equivalent to a battalion fire chief. These additional officers are capable of doing dispatch work on an as needed basis during the day shift. As a result, during the day shift there is no reason to believe that the communications division would be staffed with less than five personnel besides the fire dispatcher.

Based on Mr. Hoover's testimony, the Union contended that Central Officer is frequently staffed with only five personnel. In one response, Mr. Hoover indicated that " I would think that there is probably one shift every week at least where for possibly for four hours or even longer, there just aren't enough dispatchers available. " (Vol. 10, p.162) He also attributed staffing shortages to management's inability to obtain sufficient replacements through the use of overtime. (Ibid.) Yet from other parts of his testimony, it is not sufficiently clear whether staffing shortages were common. Thus note the following exchange between the City Attorney and Mr. Hoover, which suggests that the normal complement on duty is five personnel besides himself.

Q. You are not suggesting the Central Office is staffed with only four assistants and senior assistant for half of any given year, are you?

A. Yes.

Q. Is that right?

A.I don't think, in the last year that I worked, that I had a senior assistant as a radio person more than half the time. There was a fill in. The senior most assistant dispatcher would be filling in at the radio for my shift.

Q.I guess what I am trying to get at is you had five people on the floor.

A. Besides myself, yes.

Q. This is what I'm trying to establish. The Central office is always staffed with five, is it not, besides supervisors?

A. It has been most of the time. (Vol. 10, pp.160-161)

The Union has contended that because of the need of Central Office employees to take breaks and lunch, the communications division operates with staffing levels of less than five assistant and senior assistant dispatchers on the job. When this occurs there is the serious risk that safety threatening and potentially life-threatening mistakes by Central Office employees will occur. Furthermore, the Union maintains that since for six of the eight hours of each shift employees are on break, the understaffing that occurs represents a critical threat to the ability of dispatchers to perform functions that are vital to firefighter safety.

The Panel would accept this conclusion if dispatchers took their breaks away from the Central Office. In such circumstances because employees on break could not be recalled immediately, their absence could trigger a staffing shortage that could seriously impede dispatching functions. Yet this is not the case. The record indicates that employees take their break in a room adjacent to the dispatch area. Consequently, they can immediately be recalled to perform their functions when needed to respond to EMS or fire emergencies. Under these circumstances, the Panel does not find sufficient basis

for concluding that the absence of personnel because they take two 15 minute breaks or lunch necessarily has an inherently damaging effect on the capacity of Central Office employees to perform their functions. What it does mean is that the Central Office employees might be deprived of their breaks and lunch- time. Yet whether that outcome justifies the Panel's intervention can be addressed when the Panel deliberates over the Union's proposal to require management to guarantee such breaks.

In summary, the record indicates that the City currently attempts to employ five assistant and senior assistant dispatchers to staff the communications function in Central Office. In effect, management's goal parallels the manning levels that the Union seeks to mandate. Additionally the evidence suggests that firefighter safety would be negatively affected, if less than five assistant and senior assistant dispatchers were available to respond to fire emergencies. At the same time, the Union has not presented adequate evidence that during periods of fire emergencies or for any significant periods of time manning levels fall below the standard of five assistant and senior assistant dispatchers. As a result, the Union has not demonstrated that its proposal is inextricably related to considerations of safety. For this reason the Panel must deny further consideration of the Union's proposal, as it apparently constitutes a permissive subject matter of bargaining.

Guaranteed Breaks and Lunches for Central Office Employees

Union's Final Offer of Settlement

The Union proposes to add to Article 12 a new section Z.

Z. Guaranteed Breaks and Lunches for Central Office Employees

(1) Effective June 30, 2001, Central Office employees shall be guaranteed two 15 minute breaks and one half-hour lunch. Any employee who is denied the right to take these breaks or lunches will be compensated by means of compensatory time.

(2) The Union waives on its own behalf and on behalf of its members any claim for legal or equitable relief to which the Union or its members would otherwise be entitled under Article 12(Z)(1). This waiver will be effective for the period commencing June 30, 2001 and ending 60 days after the issuance of an Act 312 award in MERC Case No. D98-D0644. Thereafter this waiver will expire, and the Union reserves the right to enforce article 12(Z)(1) in any forum or proceeding provided by law or contract.

City's Final Offer of Settlement

The City rejects the Union's last position on Central Office employees' break/lunches, and states that this issue is precluded by parity. In the event the arbitrator should find this issue is not precluded by parity, then the City proposes as its last offer of settlement that the status quo be maintained.

City's Position on Jurisdictional Issue of Parity and on the Merits

In arguing that the request for this benefit is precluded by considerations of parity, the City has relied on the Kiefer award, which rejected the City's proposal that parity be defined in accordance with a list of especially enumerated items. Rather that award adopted the Union's proposal, which provided:

If there is established for the 1983-86 by arbitration, negotiation or otherwise different compensation or cash benefits for non-civilian employee or officers of the Detroit Police Department that are here awarded, this award shall be adjusted to conform thereto as to maintain the traditional relationship for all corresponding ranks of fire-police parity. (City Ex.7,p.5)

The City notes that the term "compensation or cash benefits" remains in the contract today. If it is the Union's intent by virtue of the compensatory time proposal to eliminate the pay differential between the assistant fire dispatchers and police communication officers, then it should have done so by proposing a wage differential under parity. Additionally, that the Union is seeking compensatory time off for dispatchers denied breaks or lunches pay does not negate the application of parity as a

basis to reject the Union's proposal, as compensatory time constitutes a cash benefit under both state and federal law.

The City also contends that if the Union's argument that dispatchers are understaffed and overworked is credible, then surely a proposal to afford dispatchers even more time off and thus increase the demands on the remaining staff is unreasonable. The City also notes that that this proposal would potentially expose the City to an additional annual cost of $258,119.

Union Position on Jurisdictional Issue and Merits

The Union rejects the notion that the application of the parity principle requires rejection of its proposal on jurisdictional grounds. It notes that the parity principle applies to terms and conditions of employment that are specified in the collective bargaining agreement. However, the parity principle does not apply to breaks or lunches, as there is no provision in the parties' contract governing these benefits. Furthermore, there is no custom or practice between the parties that indicates that breaks and lunches are governed by any parity considerations. Indeed the evidence suggests that the contrary is true. Thus police communication officers are not comparable to assistant fire dispatches as employees in these two classifications received different levels of benefits. Moreover, their receipt of breaks and lunches are governed by different practices.

On the merits the Union contends that the Panel should adopt the firefighters' last best offer as Central office employees are entitled to one half-hour lunch and two 15 minute breaks during an eight-hour shift. Furthermore, denial of this benefit has subjected employees to excessively stressful working conditions, which has been a

detriment to their physical and mental health. Moreover, the Union contends that the cost of this proposal is not unreasonable and is within the City's financial ability to pay.

Discussion

As indicated earlier, any party is free during the course of negotiations to bargain in an effort to reduce the scope of, add to, or terminate a parity relationship in its entirety, as long as that party has given clear notice of its intent to do so. Significantly, the City does not contend that during the course of negotiations it did not have clear notice of the Union's demand that Central Office employees be guaranteed breaks and lunches, or alternatively be granted compensatory time if denied the opportunity to use them. For this reason, the arbitrator finds no jurisdictional barrier to the Union's right to have this issue adjudicated.

At the same time, whether a parity relationship existed previously on the issue of breaks and lunches for Central Office employees is a matter warranting review when the Panel addresses the Union's proposal on its merits. Regarding the merits of the Union's proposal, there is no evidence that breaks and lunches for Central office employees is an item to be controlled by the parity principle. In this regard the parties' collective bargaining agreement is silent on the subject of breaks and lunches for Central Office employees. Thus from the standpoint of contract language, there is no evidence of any effort to tie the receipt of this benefit by Central Office employees to the receipt of this benefit by police officers of comparable rank.

The City's contention that breaks and lunch periods for Central Office employee is an item governed by parity is inconsistent with the position that it previously has taken. Thus during the Act 312 proceeding chaired by Arbitrator Kiefer, the City sought to

identify those items which are governed by parity considerations. The City then did not identify breaks and lunches for Central Office employees as a parity item. This bargaining history is significant, because it demonstrates that there is no custom or past practice by the parties to consider lunch or breaks by Central Office employees as a parity item.

That breaks and lunches for Central office employees is not governed by parity considerations is also reflected in the parties' practice to afford different levels of benefits to fire fighters and police personnel performing communications functions. Police Communication Officers do not earn the same wage as assistant dispatchers. Additionally their breaks and lunches are governed by different practices. Police Communication Officers receive an unpaid lunch; they also receive a 20 minute break every single hour.(Vol.3,pp.26-27) On the other hand, Central office employees are entitled, and absent staffing shortages, receive two 15 minute and one half-hour break in the course of an eight-hour shift. In effect, the significant differences in terms of how the breaks and lunches of these two groups of employees are scheduled and compensated demonstrate that the parties have agreed implicitly that breaks and lunches are not a parity item.

On the merits the Panel finds that the Union's proposal is reasonable. It is undisputed that Central office employees normally receive a 30 minute lunch and two 15 minute breaks during an eight hour shift. These breaks are undoubtedly important to the physical and mental health of the dispatchers. Thus Mr. Hoover noted:

> We've got people there, a lot of them are like me, they are overweight because you can't go anywhere. You can't leave the phone. I mean, you can't get any farther away than the phone will reach. You are sitting down most of the time because you can't stand there and answer the phone. You are usually listening with one hand and writing

with the other, or you're typing on the computer, and put the phone under your ear. (Vol. 10, p.117)

As noted by Hoover, breaks are important to relieve stress:

I have been up there when, especially EMS, somebody dies and you have to call the hospital and tell them that there a code coming and they have a heart attack and the person is not breathing. You do everything and it winds up in the newspaper or something, and then we're going to get sued about it. The dispatchers just get so upset, because you never know when something like that is going –and you always wonder, did I do it fast enough? ...why did it take longer than this time period to dispatch these runs? Why? ...Because we were busy. I mean, that is the most obvious reason. Because there was two runs the same side of the City and we had to make a choice. Somebody lived and somebody died. Both of them say, person down, unconscious, and one is a seizure, and you don't know which one is going to be a seizure, but the other person is down because they are having a heart attack. That can get to you. (Vol.10, p.116-117)

The combination of stress and inactivity apparently contribute to serious physical problems. Again Mr. Hoover's testimony on this point is telling. "I'm a diabetic. I know eleven other people in my office in the past few years that have been diabetic, and that is 10 times the national average. One of the causes for that is stress. (Vol. 10, p. 117) The substantial amount of overtime worked by dispatchers reinforces their need to receive breaks during their shifts. In 1999, Central Office employees earned $391,603 in overtime. Fire Dispatcher Hoover testified that he did everything to avoid overtime, but still earned $14,000 in overtime.

Finally, guaranteeing Central Office employees their breaks is needed, for otherwise dispatchers would have no real opportunity to eat during their shifts. Mr. Hoover noted that there are standing orders not to permit the eating of food or drinking by the computers. (Vol.10, p. 163) As a result, unless afforded proper breaks away from the work area, dispatchers may be denied for periods of eight hours or more the opportunity to take any food or liquid refreshments. There is no justification for

subjecting employees, already under stress by the normal demands of their jobs, to such deprivations.

The City has noted that this proposal would cost it an additional $258,000 annually, if employees were granted compensatory time off for the breaks that were denied them. Yet the short answer is that it need cost nothing if employees were granted their breaks. Moreover, even if the City granted compensatory leave in lieu of breaks at a cost of approximately $250,000, the City has not contended that it does not have the ability to fund this proposal. Moreover, it is not likely that any such contention could be substantiated. The additional costs represent a small percentage of the fire department's annual budget of about $ 140,000,000. Moreover the City has already budgeted enough money to pay for additional staff so that employees could be afforded the opportunity to take their breaks. Mr. Sam Gazazarato is a General Manager in the Fire Department. He noted that the budgeted strength of Central office is 31 employees. Yet Central Office is currently staffed with between only 24 and 26 employees. Moreover, Mr. Al Lewis, the City's principal labor relations specialist indicated that by hiring five additional employees, a relief person would be available around the clock to permit the taking of breaks. The City might actually save money by hiring additional staff to guarantee dispatchers their breaks. Thus Mr. Lewis calculated that the cost of hiring these five new employees would be approximately $250,000 a year. At the same time, hiring these new employees would costs less than the amount expended on overtime generated by staffing shortages that cost the City close to $400,000 in 1999. These facts indicate that the City has the economic capacity to staff the Central Office in a manner that will enable central office employees to have their needed breaks.

In summary, this proposal is needed to afford dispatchers a more hospitable working environment. With proper relief, it is reasonable to conclude that dispatchers will perform their tasks more efficiently and be less likely to make mistakes that will have a potentially negative effect on the safety of fire fighters. Additionally, there is no substantive evidence that the City lacks the resources to provide this benefit. Given these considerations, the Panel adopts the Union's proposal on this issue.

Safety Committee

Union's Final Offer

The Union proposes to amend Article 23 (A) as follows:

I. There shall be a joint health and safety committee of the Detroit Fire Department composed of six persons. Three members shall be appointed by the Fire Commissioner and serve at his pleasure. Three members shall be appointed by the President of the Union and shall serve at his pleasure. The Fire Commissioner and President shall also appoint three alternates who shall attend committee meetings and shall act on behalf of regular members who are absent. Any vacancies in the positions of the committee members or alternates shall be filled immediately. Members of the Committee shall be released from duty with pay to attend committee meetings.

Unless the Committee shall otherwise decide, the Chairmanship shall alternate at each meeting beginning with the Commissioner appointee, followed by Union President appointee, continuing to alternate in that manner at subsequent meetings.

The Committee shall meet no less than once every two months to address health and safety conditions and concerns. Meetings may also be called on written demand by the Commissioner appointees or by the Union President appointees at times mutually agreed to by both parties, but in any event no later than 10 working days after the written demand, in order to discuss urgent issues. A quorum of four committee members or their alternates shall be necessary for the Committee to meet and conduct business. A written agenda of matters to be addressed shall be provided to all committee members by the chairperson for that meeting at least one week in advance of the meeting.

II. The Committee shall have the power, among other things, to:

(a) Review and analyze all reports of job-related accidents, deaths, injuries, and illnesses;

(b) Develop information on accident and injury sources and rates;

(c) Investigate Fire Department facilities and equipment to detect hazardous conditions or unsafe work methods, including but not limited to training procedures, and cause them to be corrected;

(d) Promote safety for all department members;

(e) Study hazardous material issues and equipment; and

(f) Set all specification for protective equipment, fire apparatus, apparel and/or devices prior to letting out bids for new or renewal contracts for the purpose thereof.

III. To facilitate the Committee's work, the department shall investigate and maintain records of all job-related accidents, injuries, deaths, and illnesses. Such records and investigative reports shall be available to the Committee upon request.

IV. The Committee shall have the authority, by a majority vote of its members, (ie., four or more) to set policy on:

(a) Changes to, additions to, or purchase (and specifications) of fire fighters' protective apparel, equipment, apparatus and/or devices applicable to the Detroit Fire Department;

(b) Department rules, training, and procedures concerning health and safety;

(c) Correction of unsafe or harmful working conditions, including the setting of a deadline for the abatement of such conditions; and

(d) Purchase of equipment for hazardous material, confined space, extrication, and/or any type of emergency response and handling.

All policies/amendments adopted by the Committee shall be made to the Fire Commissioner in writing.

City's Last Best Offer

The City rejects the Union's last position on the safety committee, and states that the issue is precluded as a non-mandatory subject of bargaining. In the event the arbitrator should find that he has jurisdiction over this issue, the City proposes as its last offer of settlement that the status quo be maintained.

City's Position on Jurisdictional Issue

Under Centerline and other MERC and court decisions, it is clear that the joint union/management committee in the form proposed here would have the type of

budgetary and policy setting authority rejected by the courts. The Union can not point to a single instance anywhere of the existence of a joint union/management committee that has the authority proposed here.

Moreover, the creation of such a committee violates the City Charter, which places the authority to manage the Fire Department in the executive branch by way of the Commissioner. The Proposal also usurps the authority of the Mayor and the City Council to create and approve the City's budget. The Union proposes that this Committee could dictate budget matters, a power even the Fire Department does not exercise.

Union Position on Jurisdictional Issue

The Union maintains that safety has long been held to be a mandatory subject matter of bargaining. Since the proposal is designed to afford the joint safety committee more authority to protect and enhance the safety of employees, it is a mandatory subject matter of bargaining. Additionally, the Union notes that its proposal does not wrest control of certain managerial rights away from the Employer. The Committee is made up of three Union and three City representatives. Under its proposal, it would take four votes for the Committee to take any policy setting action. Therefore, the City could block any action by the Committee by instructing its representatives to vote against a proposal. In effect, since the Committee can set policy only with the consent of a management representative, the City retains veto power.

Discussion

In 1956, the United States Supreme Court in Borg Warner held that the duty to bargain under the NLRA exists only with respect to mandatory subject matters of bargaining. Furthermore, it noted that over voluntary or permissive subject matters of

bargaining, the parties are free to bargain or not to bargain, and that an effort to bargain to impasse over a permissive subject matter of bargaining over the other side's opposition constitutes an unfair labor practice.(42 LRRM 2034,2036-2037,1958) Since that decision, federal and state administrative agencies as well as the courts in their interpretations of state and federal labor relations statutes have struggled to distinguish between mandatory and permissive subject matters of bargaining. Their decisions inform this Panel's deliberations on this matter.

To begin with, issues involving the safety of employees is normally a mandatory subject matter bargaining. As the NLRB has noted: "The health and safety of employees are terms and conditions of employment, and thus mandatory subject matters of bargaining... Few matters can be of greater legitimate concern. (New Surfside Nursing-Home and Local 144 LRRM 1266, 1996) Similarly, the Supreme Court in Fibreboard Paper Products Corp. held that "what safety practices are observed, would all seem conditions of one's employment," and hence a required subject of bargaining.(379 US 203, 222, 1964).

At the same time, it is apparent from both federal and state decisions that matters having some effect on safety are not always to be considered mandatory subject matters of bargaining. To begin with, when a matter involves core management interests, there may be no duty to bargain unless the evidence indicates that the effect on safety is immediate and substantial. For example, and as noted earlier, on the issue of staffing, MERC has stated that the evidence must show that the "number of scheduled employees and their safety must be inextricably intertwined." (City of Detroit Fire Department, 1992 MERC Lab Op.82,85) Additionally, MERC has held that this standard is satisfied when

the evidence shows that "staffing has a genuine or significant impact on safety." (Id., p. 85)

Beyond this limitation, the U. S. Supreme Court has indicated in Fibreboard that decisions concerning the "commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment." (p.223) Also to be considered as a voluntary subject matter of bargaining are "those management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security." (p. 223). From this decision it is reasonable to conclude that management should be given wide latitude in determining the quality and level of services it provides a community, as such matters involve the basic scope of enterprise.

On a state level the Michigan Supreme Court has been sensitive to such concerns. In Centerline, the union sought to negotiate a provision requiring that any decision to lay off police officers for lack of funds be made in conjunction with layoffs and cutbacks in other departments. The Court found that this proposal was not a mandatory subject matter of bargaining because it "unduly restricted the City in its ability to make decisions regarding the size and scope of municipal services." (414 Mich. 642, 660, 1981)

It is against this background that we can evaluate whether or not the Union's proposal has items in it that are outside the scope of mandatory bargaining. Section 1 of the Union's proposal is identical to language currently incorporated in Article 23 A of the parties' agreement. As the City supports the status quo, it is apparent that it has no objection to Section 1 of the Union's proposal. Sections II(a), II(b), II(c), II(d), and II(e) of the Union's proposal are also identical to language currently incorporated in the

parties' agreement. For the same reason, these provisions would be acceptable to the City. Section II(f) incorporates a critical change. In the current agreement, the safety committee has the authority to "review all specifications for protective equipment, apparel, or devices, prior to letting out bids for new or renewal contracts for the purchase thereof." The Union's proposal strikes the word "review" and substitutes the word "set." Additionally, it adds the term "fire apparatus" to the scope of items within the Committee's purview. As a result, under the Union's proposal, the Committee would be empowered to establish all specifications for protective equipment, fire apparatus, apparel and/or devices.

In section IV of the Union's proposal, the Union also seeks to vest the Committee with the power to set policy over various matters pertaining to the purchase of equipment. For example, under Section IV(a) the Committee is authorized to set policy on "changes to, additions to, or purchase (and specifications) of fire fighters' protective apparel, equipment, and apparatus and/or devices applicable to the Detroit Fire Department." Additionally, in section IV(d) the proposal would vest the Committee with the authority to set policy regarding the "purchase of equipment for hazardous material, confined space, extrication, and/or any type of emergency response and handling."

Some of the changes incorporated in the Union's proposal do address mandatory subject matters of bargaining. Thus it is well settled that a union has the right to bargain over personal protective equipment and apparel. Bargaining over such matters frequently occurs in various industrial settings and within the City of Detroit itself. Thus the parties have negotiated contractual provisions on personal protective equipment including protective trousers, blankets, pillows, personal safety alarms, protective gloves, helmets,

radios, and gear. The parties also have the right to bargain over matters designed to promote their safety and health in their fire stations, the place where they both live and reside. Thus as the Supreme Court noted in Fibreboard, the physical dimensions of one's working environment including the safety practices that are observed there are conditions of employment. (p.222) The City's recognition of the Union right to bargain over safety practices in the fire station is reflected in the parties' prior negotiation and incorporation in the agreement of the City's obligation to install exhaust systems on each rig. This commitment responded to the need to immunize fire fighters in the fire stations from the toxic exhausts generated by the engines and ladders they operate.

At the same time, the Panel is concerned that components of the Union's proposal improperly require management over its opposition to bargain over permissive subject matters of bargaining. As noted earlier, the Supreme Court in Fibreboard has found that "the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment" and are therefore to be considered permissive subject matters of bargaining. Similarly, the Michigan Supreme Court in Centerline found improper a union's effort that "unduly restricted the City in its ability to make decisions regarding the size and scope of municipal services." These limitations preclude the Union from seeking to compel the City to bargain over fire apparatuses. A single truck or engine costs between $300,000 and $500,000. Given the magnitude of such costs, the Union's effort to bargain over specifications for and the purchase of fire apparatus improperly involve efforts to encroach upon managerial decisions concerning the investment of its capital and financial resources.

In making this observation, the Panel is aware that properly functioning ladder trucks are often essential to fire suppression operations. These trucks carry aerial ladders that are taller, stronger and can be raised more quickly than ground ladders. With a properly functioning aerial, fire fighters can reach the upper floors and roof of a building on fire much more quickly than if they had to use ground ladders taken from an engine. (Vol.18 pp. 45-47) Without aerials, fire fighters might not be able to ventilate a fire from the roof. They may not be able to perform needed rescue operations.

At the same time, whether the City operates with 30 ladder trucks or none is essentially a managerial decision under PERA, as such matters directly relate to the size and scope of municipal services the City may decide to provide its residents. In this regard, there are some cities like Livonia in which the fire department does not operate any ladder trucks. Rather when needed, they rely on departments from other nearby cities to dispatch ladders. Certainly this Panel is not suggesting that the City pursue such an approach, as to do so would deprive the citizens of Detroit, tens of thousands of whom live and work in high rise structures, of adequate protection from fires. That Livonia does not employ its own ladder trucks may well explain its much lower and inferior insurance rating for fires than that received by Detroit. Yet fundamentally, the number and type of ladder trucks a City operates concerns the level and quality of services a city provides its residents. The courts at both the state and federal level have ruled that such matters are outside the scope of mandatory subject matters of bargaining. As a result, the Panel must reject for lack of jurisdiction those aspects of the Union's proposal affording the Union decision making authority over the establishment of or specifications for the purchase of fire apparatus.

Section IV (d) empowers the Committee to set policy on the purchase of equipment for hazardous material, confined space, extrication, and /or any type of emergency response and handling. This provision is too open-ended. As noted earlier, the City is authorized under PERA to determine the quality and level of services it wants to provide its residents. It is therefore for the City to determine whether fire fighters will be involved in eliminating hazardous spills or whether such tasks will be performed by outside vendors. For example, the City has relied on such outside contractors instead of its own haz mat unit to mitigate major toxic spills. For this reason, the Union's efforts to empower the Committee to mandate the purchase of equipment for hazardous material and for other kinds of emergency response and handling may improperly encroach upon the City's managerial rights. Additionally, any such intrusion is certainly unwarranted at this time, as no evidence has been presented that any specific type of equipment need be purchased to protect the lives or safety of firefighters involved in emergency response efforts.

Within the parameters discussed above, the Panel will review the merits of those aspects of the Union's proposal that involve mandatory subject matters of bargaining.

Union Position on the Merits

The Union maintains that its proposal is justified because the current joint health and safety committee has not been effective in protecting the safety of Detroit's firefighters. A long list of critical safety issues, many brought to the Committee's attention in the early 1990s, are no closer to solution now than when they were first identified. Final recommendations by the Committee are still routinely ignored. Consequently the Panel should increase the Committee's authority.

City's Position on the Merits

The City maintains that the joint safety and health committee has been able to work together cooperatively to improve safety. Additionally one of the major reasons for the items not being corrected immediately is not the result of foot dragging by management, but the time required by the Committee to research issues, meet with vendors, and develop agreement and recommendations. At times, the process is slowed down, because union members in the field fail to provide the Committee with necessary information. Given these considerations, there is no justification for expanding the Committee's authority in a manner that unduly interferes with management rights. Furthermore, affording the Committee such expanded authority to set policy would undermine its mission and effectiveness. The Commissioner, to guard his/her managerial and budgetary prerogatives would have no choice but to stack the Committee with management officials regardless of their expertise. This outcome would more likely result in producing stalemate rather than cooperation and agreement.

Discussion

It is apparent that with the appointment of Niles Sexton as co-chair of the joint safety committee between 1994 and 2000, the Committee began to work constructively to address the safety needs of the department. There was continuous dialogue and effort to evaluate and test products, and to reach joint recommendations. Additionally, as a result of joint recommendations by the Committee, needed equipment was purchased. These include the Hurst air tools (jaws of life) used in rescue operations, positive pressure fans employed in ventilation efforts, and 1.5 line that facilitated fire suppression activities. (Vol. 20, pp.163-165)

On some issues it is also obvious that there were honest disagreements as to the proper approach to be pursued. For example, one of the major divisive issues has been the question whether hazardous materials sites should be placarded. The placarding of so-called 302 sites has been on the Committee's agenda since May of 1995. In June of 1997 the Committee recommended that Detroit begin requiring business to placard buildings containing hazardous chemicals. The Committee repeated its recommendations two months later. The Union notes that to date the City has not initiated a program to placard hazardous chemical storage sites. At the same time, there may be justifiable reasons for the City's reluctance to adopt the recommendation of the Committee. Mr. Sexton indicated that while initially supporting the Committee's recommendations, he now has reservations. Thus he is concerned that placarded sites may become the targets of domestic terrorists. Given the recent tragic incidents in New York and Washington, this concern is very real and serious. Moreover, since the communications division has information on all sites containing hazardous chemicals, it has the capacity to provide dispatched companies advance notice of the precautions they must take when combating fires at these locations.

In some cases the Union would seek to empower the joint safety committee to correct problems that are not entirely within the scope of the department's decision-making authority. The Union has noted the serious problems of non-operable fire hydrants. Fire hydrants were on the agenda for the February 1993 joint health and safety committee meeting. Broken hydrants delay the firefighters' efforts in getting water onto a fire. The problem of broken hydrants still exists. The Detroit News has estimated that 2000 of the cities 30,400 hydrants are still broken. The Detroit News further identified

several serious fires in which broken hydrants may have contributed to the loss of civilian lives. (Union Ex.299, Nov.7, 2000, pp.2-3)The Union has noted the Committee's inability to compel the City to develop a program to repair broken hybrids promptly.

This Panel is sympathetic to the Union's concerns. Without working hydrants, fire fighters will not be able to suppress fires. Yet vesting the Committee with the power to force the City to act may not withstand judicial scrutiny. To begin with, correcting hydrants is not the responsibility of the Fire Department, but that of the Water Department. (Ibid, p.4) Yet this Panel has no authority to intervene in the operations of other city agencies. Moreover, in seeking authority to compel the City to act over this matter, the Union again is encroaching upon the City's right to determine on the basis of budgetary and political considerations the quality and level of services the City should provide its residents.

The Union's proposal would also authorize the Committee to set policy on training that concerns health and safety. This proposal addresses the Union's concerns that the Fire Department has not adequately responded to the training needs of firefighters. In this regard, Mr. McNamara testified that the Union in March of 1998 had written the Fire Commissioner to express its concern over the inadequate amount of training afforded firefighters. At that time, the Union also noted that the Department was not taking advantage of federal and state monies available for training.

In the past, training was not a subject within the Committee's purview. Yet nearly all kinds of training have an effect on a firefighter's capacity to perform duties safely. Additionally, the Union has individuals who have developed expertise in this

area. Consequently, the Committee should be charged with the responsibility to review training procedures.

Additionally, it is also quite apparent that the joint safety and health committee deliberations have frequently failed to meet the basic safety needs of firefighters. This is particularly true with respect to personal protective equipment that firefighters need to safely suppress fires. The parties' 1992-1998 contract contains a long list of personal protective equipment that the Union was compelled to obtain at the bargaining table. For example, the 1992-1998 contract required to City to provide firefighters with lightweight aluminum air tanks, blankets and pillows, pass alarms which alert firefighters when a firefighter is injured and unable to move, gloves, helmets, protective trousers, personal breathing tubes, and radios. (Joint Ex. 1, pp.56-58) Additionally, it is only through contract negotiations that fire department began to take appropriate measures to provide fire fighters with safe living quarters. The 1992-1998 contract compelled the City to install a Plymovent system- an exhaust system that removes toxic gases emitted from engines and trucks from the fire stations to the outside.

Most significantly, the record discloses that serious deficiencies in these areas have continued. It is undisputed that air bottles constitute a vital piece of safety equipment. Bottles need to be cleaned to protect firefighters' lungs from contaminants. MIOSHA regulations require that air bottles be cleaned and tested every three years. (Union Exhibit 299, November 5, 2000, p.2) The City has been in violation of these regulations although bottle testing appears to have been an agenda item at various joint health committee meetings since 1993. Nonetheless the City has failed to respond. In December of 2000, MIOSHA fined the City for failing to inspect SCBAs. (Union Ex.

314,p.8) Only more recently, as reported in the Auditor General's follow up audit report issued in March of 2001, has the City acted to test all SCBAs. (City Ex. 195, p.16)

Similar problems have occurred with other basic equipment used by firefighters to ensure their safety. Compressors located in the fire stations are used to fill the fire fighters' air bottles. These compressors have to be cleaned to ensure that they are not pushing contaminated air into the bottles. The maintenance of these compressors has been an issue on the agenda of the joint safety and health committee as far back as February of 1993. Yet the Committee's agenda minutes for April 13, 2000 indicate that there is currently no contract for the maintenance of this system. (Union Exhibit 253, p. 2) In December of 2000, MIOSHA fined the City for its failure to clean and test the compressors. (Union Exhibit 314, pp. 9-10) The most recent Auditor General Report indicates that the required testing of air cylinders remains to be completed and that as a result the DFD could be subject to fines from MIOSHA. (City Ex.195, p.16)

Another serious employer omission negatively affecting the safety of firefighters concerns the exhaust fumes, which fill a station house every time a fire apparatus is started up. This issue was first examined in a February 1993 committee meeting. (Union Ex. 208) Union representatives then asked for window fans to draw the fumes outside the station house. (Vol.18, p.140) After years of discussion, the Union secured in negotiations a commitment by the City to install exhaust systems in all the vehicles by June 1997. (Article 23(B) (6). Joint Exhibit 1 p. 57) When this deadline was missed, the Union filed a grievance. Subsequently, Arbitrator William Daniels found that the City had violated the contract and gave the City until April 1,1998 to install the exhaust system. (Union Ex. 79)

The City was not in compliance a month and a half after the date set by Arbitrator Daniels. The Union sought enforcement and Circuit Court Judge Isidore Torres granted the Union's motion for summary disposition and ordered the City to repair or install the plymovents by January 10, 1999. Following the issuance of the court order, the City has attempted to comply. Yet problems with compliance remain. The Detroit News reported that as of November 2000, between 15 and 20 of the 71 units were broken or in need of repair. Additionally, the News reported that the vendor installing the units has refused to service them because the City has failed to pay it for its services (Union Ex. 299, Nov.7, 2000, p.4)

In explaining the problems with the Plymovent exhaust system, the City has contended that much of the problem can be attributed to the failure of employees to report damage to the system. Yet inadequate reporting does not explain the City's two year delay in implementing its contractual commitment to install an exhaust system. Nor does it explain or justify the City's failure to pay the vendor and thereby ensure that the system be properly serviced and maintained. When as a result 15 to 20 units were not working, it is the City that bears the major onus for compromising the health and safety of firefighters.

The Union has proposed that to ensure firefighters' safety, the Committee on the basis of a majority vote be empowered to set policy in certain areas and to require the correction of unsafe working conditions. The continuing and serious deficiencies relating to the Department's failure to provide safe living quarters and essential protective equipment justifies acceptance and application of the Union's proposal to these matters. In doing so, the Panel is aware of the City's strong reservations. At the

same time, the Panel does not view the limited application of the Union's proposal as an undue intrusion into City's right to manage its affairs. Certainly, the Union has a right to bargain over these matters, and has contractually obtained concessions in these areas. What is being done here is simply creating a mechanism for more rapidly implementing changes that are essential to firefighters' health and safety.

Furthermore, as the Union has noted the Committee can only act with the agreement of four of its six members. As three members are appointed by the City, it can only act with the approval of at least some City delegates. As a result, the Committee will have to operate by consensus. Moreover, once such consensus has been obtained, it is difficult to understand the City's reluctance to respond affirmatively, especially when prior failures have resulted in adverse MIOSHA citations and fines. Finally, as the Committee can only act on the basis of consensus, the Panel does not believe that application of the Union's proposal to firefighters' living quarters and personal protective equipment would result in or require the City to withdraw its cooperation to protect its budgetary and managerial prerogatives.

Given these considerations, the Panel adopts the Union's proposal with the following modifications:

Article 23 (A) shall be amended as follows:

I. There shall be a joint health and safety committee of the Detroit Fire Department composed of six persons. Three members shall be appointed by the Fire Commissioner and serve at his pleasure. Three members shall be appointed by the President of the Union and shall serve at his pleasure. The Fire Commissioner and President shall also appoint three alternates who shall attend committee meetings and shall act on behalf of regular members who are absent. Any vacancies in the positions of the committee members or alternates shall be filled immediately. Members of the committee shall be released from duty with pay to attend committee meetings.

Unless the Committee shall otherwise decide, the Chairmanship shall alternate at each meeting beginning with the Commissioner appointee, followed by Union President appointee, continuing to alternate in that manner at subsequent meetings.

The Committee shall meet no less than once every two months to address health and safety conditions and concerns. Meetings may also be called on written demand by the Commissioner appointees or by the Union President appointees at times mutually agreed to by both parties, but in any event no later than 10 working days after the written demand, in order to discuss urgent issues. A quorum of four committee members or their alternates shall be necessary for the Committee to meet and conduct business. A written agenda of matters to be addressed shall be provided to all committee members by the chairperson for that meeting at least one week in advance of the meeting.

II. The Committee shall have the power, among other things, to:

(a) Review and analyze all reports of job-related accidents, deaths, injuries, and illnesses;

(b) Develop information on accident and injury sources and rates;

(c) Investigate Fire Department facilities and equipment to detect hazardous conditions or unsafe work methods, including but not limited to training procedures, and cause them to be corrected;

(d) Promote safety for all department members;

(e) Study hazardous material issues and equipment;

(f) Review specification for protective equipment apparatus, apparel and/or safety devices prior to letting out bids for new or renewal contracts for the purpose thereof.

(g) Review and recommend training procedures.

III. To facilitate the Committee's work, the department shall investigate and maintain records of all job-related accidents, injuries, deaths, and illnesses. Such records and investigative reports shall be available to the Committee upon request.

IV. The Committee shall have the authority, by a majority vote of its members (ie., four or more) to set policy on:

(a) Changes to, additions to, purchase (and specifications) and testing of fire fighters' personal protective apparel and equipment.

(b) Changes to, additions to, purchase (and specifications) and testing of equipment essential to the maintenance of safe living quarters.

(c) Correction of unsafe or harmful working conditions, including the setting of a deadline for the abatement of such conditions, as they relate to fire fighters' personal protective equipment and the maintenance of safe living quarters.

(d) The cleaning and testing of air compressors.

All policies/amendments adopted by the Committee shall be made to the Fire Commissioner in writing.

Residency

Union's Final Offer

The Union proposes to revise Article 10 Residency as follows:

Effective June 30, 2001, residency shall not be a condition of employment for any member of the bargaining unit.

City's Final Offer

The City proposes as its last offer a settlement that Article 10 be amended as follows:

Pursuant to Public Act 212 of 1999, there is no longer a requirement for bargaining unit members to reside within the City of Detroit.

Union's Position

The Union maintains that the City's non-residency proposal is dependent on Act 212 of 1999. Should Act 212 ever be repealed, the City may argue that its version of the non-residency clause is without effect. As a result, firefighters who may have moved out of the City after the award or those firefighters who may have been hired after the award has been issued would face the risk that they would have to leave their communities and move back to the City.

Additionally the City's non-residency language arguably guarantees only that bargaining unit employees no longer have to live in the City of Detroit. Yet Public Act 212 permits employers to impose a 20 mile limit on employees' place of residence. Because the City's language is silent about this 20 mile limit, it may argue, at the close of

this hearing or at any future time, that its contractual language permits it to impose a 20 mile limit at any time. Since the City's proposal is an invitation to litigation, it should be rejected and its proposal implemented.

City Position

The City maintains that its proposal more nearly reflects the reality that led to the elimination of residency from the collective bargaining agreement. The elimination of residency will have a negative economic impact on the City. Past Act 312 awards demonstrate that this has been a contentious issue between the parties for decades. Residency was ultimately removed from the collective bargaining agreement by operation of a state statute, not as a result of negotiations or an Act 312 award. The language should reflect that process.

Discussion

During the course of these proceedings, the State of Michigan passed Public Act 212, which provides:

> Sec.2 (1) Except as provided in subsection (2), a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.
>
> (2) Section (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However the specified distance shall be 20 miles or another specified distance greater than 20 miles.

Under both proposals, residency in the City of Detroit is no longer a condition of employment. The practical difference between them on the surface concerns the effect of either proposal on the right of the City to impose following the issuance of this award a requirement that employees live within a 20 mile radius of the City. Yet this distinction

may be more illusory than real, for the City during the life of the new agreement has not proposed any such requirement. Furthermore, as negotiations for this contract are effectively closed, it could not seek to introduce any such new requirements during its duration. Moreover, any new residency limitations beyond the period of this agreement would have to be negotiated. Consequently, the City's proposal does not compromise the newly won statutory right of employees to live where they choose. Conversely the Union's proposal does negate the City's right to negotiate in successor contracts a residency requirement.

Nonetheless the Panel is sensitive to the concerns of both sides on this hotly contested issue. The City wants to emphasize that the elimination of the residency requirement was statutorily mandated, and not one that was negotiated or awarded in Act 312. The Union is concerned that members who may move out of the City will be concerned that their freedom to choose a place to live might be jeopardized by efforts by the City to require that they move within a 20 mile distance of the City. This Panel has no jurisdiction over the actions the City might take in the future negotiations to impose some kind of residency requirement. At the same time, it can craft language that addresses the concerns of both parties on this matter during the life of the current agreement. For this reason the Panel will modify both parties' last offers of settlement and will put in place the following provision:

Pursuant to Public Act 212 of 1999, there is no longer a requirement for bargaining unit members to reside within the City of Detroit. During the life of this contract, residency shall not be a condition of employment for any member of the bargaining unit.

Substance Abuse (Non-Economic)

City's Final Offer

The City proposes as its last offer of settlement that the following new provision, Article 25, substance abuse, be added to the labor agreement:

The parties recognize that the use or possession of alcohol or controlled substances by employees while on city property or engaged in providing city services threatens the safety of employees and the public and is detrimental to the provision of fire service. Pursuant to the City's zero tolerance policy against alcohol and substance abuse, the parties agree that the penalties set out in Exhibit 25A shall apply to the listed offenses and shall not be changed unilaterally.

Union's Final Offer

The Union rejects the City's last position on the addition of a new Article 25 substance abuse and proposes as its last offer of settlement that the status quo be maintained.

City Position

The City contends that its substance abuse policy is reasonable, as it details what is prohibited as well as the penalties for engaging in prohibited conduct. There is no ambiguity and as a result employees will know precisely what conduct they must refrain from. Moreover, the goals of the substance abuse policy are reasonable. These include: a safe work requirement, the prevention of injury, responsible provision of services to the public, promotion of health and fitness among employees, and the rehabilitation of employees who compulsively engage in prohibited conduct.

The City also contends that it has the right to regulate the off-duty conduct of employees. Firefighters are subject to public scrutiny off-duty as well as on duty. They represent the City at all times and engaging in the use, possession, sale, or delivery of controlled substances clearly reflects negatively on the City and the department. Worse it diminishes public trust in the department, because drug use or trafficking is completely inconsistent with its mission of protecting the public. Furthermore the City

EXHIBIT 25A - SUBSTANCE ABUSE DISCIPLINARY GUIDELINES

OFFENSE	PENALTY	RETENTION	OTHER CONDITIONS OF EMPLOYMENT
Alcohol - testing .02 *Marijuana - testing positive without being involved in injury to life or damage to property.*	*1st offense - 3 tours of duty suspension (24 hour employee); 9 tours of duty suspension (40 hour employee); 7 tours of duty suspension (10 hour employee)* *2nd offense - discharge*	*Three (3) Years*	*1st offense - Referral to Personal Guidance Unit (PGU) for assessment and treatment as needed.* *2nd offense, see Substance Abuse Policy No. 10.*
Alcohol - testing positive .04 or more	*1st offense - discharge*	*None, unless the City exercises its discretion to execute a LCA, then Five (5) Years*	
Alcohol - Drinking on duty *Marijuana - testing positive in situation where there is injury to life or damage to property*	*1st offense - 29 day suspension* *2nd offense - discharge*	*Three (3) Years*	*Referral to PGU* *Also, see Substance Abuse Policy No. 10.*
Using or being under the influence of alcohol and/or illegal or controlled substances off duty in complete uniform or partial uniform.	*1st offense - 2 tours of duty suspension (24 hour employee), 6 tours of duty suspension (8 hour employee), 5 tours of duty suspension (10 hour employee)* *2nd offense - 4 tours of duty suspension (24 hour employee), 12 tours of duty suspension (8 hour employee), 10 tour of duty suspension (10 hour employee)* *3rd offense - discharge*	*Three (3) Years*	*2nd offense - Referral to PGU*
Use, sale delivery, or possession of illegal or controlled substances by employees while on duty.	*1st offense - discharge*	*Not applicable, unless the City exercises its discretion to execute a LCA, then Five (5) Years*	*Referral to PGU* *Also see Substance Abuse Policy No. 10.*
Testing positive for illegal or controlled substances (other than marijuana) unless prescribed by an physician.	*1st offense - discharge*	*Not applicable, unless the City exercises its discretion to execute a LCA, then Five (5) Years*	*Referral to PGU* *Also see Substance Abuse Policy No. 10.*
Refusal to submit to alcohol or drug testing while on duty or off duty in complete uniform or partial uniform	*1st offense - discharge*	*Not applicable, unless the City exercises its discretion to execute a LCA, then Five (5) Years*	

<u>PENALTY GUIDELINES FOR VIOLATIONS OF THIS POLICY</u> In order that employees of the Department are on notice of the seriousness with which the Department regards violations of this policy, penalty guidelines are set forth above. These guidelines are designed to cover the most common infractions. They are not meant to be to be all inclusive. They are to serve as a guide to insure consistency and fairness in the treatment of employees. Moreover, settlement agreements/Last Chance Agreements may contain additional conditions of employment.

It is understood that failure to report and/or investigate is considered neglect of duty.

notes that arbitrators have upheld the discipline of public employees for off-duty misconduct.

The City is aware that portions of the substance abuse policy may require firefighters to report instances of drug use. Yet firefighters have a responsibility to police themselves and should be held accountable for failing to do so. Moreover, with respect to substance abuse, the requirement is necessary to prevent drug use and its attendant negative effects on safety and morale from becoming even more prevalent because management does not know of its occurrence.

The City also notes that an employee's discipline under the proposed policies and penalty guidelines would remain subject to the just cause standard. As a result, employees who are inappropriately disciplined would be protected. Employees also have the additional protection of appeal of discipline to a Trial Board consisting of a jury composed of a majority of their members.

Union Position

The Union maintains that the drug testing policy should be rejected, because it intrudes deeply into a firefighter's off-duty privacy. Such an approach violates a large body of arbitral precedent, which holds that employers may not serve as the "morality police" for their employees. In this regard, employers have no right to punish employees for off-duty conduct including illegal drug use, unless the employer can establish, with specific reference to the facts of each case, that the employee's drug use interfered with some legitimate goal or concerns of the workplace. The City's drug testing plan violates arbitral precedent, by allowing the City to discipline employees for

off duty drug use without proving that such drug use has any connection to the City's workplace concerns.

The City also should not be permitted to penalize employees who fail to detect possible signs of impairment in other workers. The Union maintains that the signs of drug use are subtle and may be difficult to discern. Under the City's policy, a firefighter may be subject to discipline, because he failed to report misconduct when he innocently mistook another firefighter's impairment for simple exhaustion. Firefighters who wish to avoid discipline under the City's policy can do so, but only at the cost of reporting all unusual behavior to a superior officer. This sort of widespread defensive reporting can only serve to undermine morale.

Discussion

The Union is opposed to the City's policy, because it would impose discipline for off-duty drug use, without first requiring that such drug use be demonstrated as having a negative impact upon the employer's workplace concerns. The Union notes that under sections 4.1 and 4.3 of the proposed policy, the use, possession, sale, or delivery of any illegal drugs on or off-duty would be prohibited. Additionally, under section 9.2 of the proposed policy, employees arrested for drug-related crimes may be subject to discipline. (City Ex.191) All of these sections license discipline for off-duty conduct, and none of them require the City to prove that the conduct bears any relationship to any legitimate workplace concerns. Additionally, if an employee tests positive for illegal drugs under exhibit 25 a, then the appropriate penalty for this offenses is automatic discharge. However, because a drug test cannot specify when an individual has ingested drugs, both the arrest, which triggered the drug test and the drug

use that yielded the positive test result, may all have occurred off-duty. The City's proposal would license the automatic discharge of an employee whose ability to perform may never have been diminished. According to the Union, such efforts are clearly contrary to prevailing arbitral precedent.

This Panel recognizes that in regular industrial and organizational settings, employers who discipline or discharge employees for off duty behavior are required to demonstrate that the off-duty conduct has a negative impact on the worker's ability to perform his/her regular duties or has a detrimental effect on the employer's public image. However, there are exceptions, particularly when employees occupy safety sensitive positions.

The Omnibus Transportation Employees Testing Act of 1991 declares that the "greatest efforts must be expended to eliminate the abuse of alcohol and the use of illegal drugs, whether on duty or off-duty by those individuals who are involved in the operation of aircraft, trains, trucks, and buses." (Section 2 (3) Also the Civil Space Employees Testing Act of 1991 contains a similar declaration concerning "those individuals who are involved in positions affecting safety, security, and national security."(Section 21(b)(3) Under these statutes, employers are even permitted to engage in random drug testing to prevent off duty drug use.

There is no question that firefighters are engaged in safety sensitive positions. Thus a firefighter's basic job responsibility and duty is to protect public safety. It is self-evident that given the life-threatening hazards and risks associated with their job duties, even minor errors resulting from an employee's excessive use of alcohol or consumption of illegal drugs can be devastating for their co-workers and the public at large. Given

their extraordinary safety related responsibilities, it is neither unusual nor unreasonable to hold them to a higher standard than those employed in other settings.

The thrust of the City's substance abuse policy is to prevent and penalize employees who engage in the possession and/or use of alcohol or illegal drugs by employees located on employer property. Additionally, employees who test positive for illegal substances or high concentrations of alcohol following reasonable suspicion testing are also subject to discipline. In implementing this policy, the City is reacting understandably to the harmful effects that drug use generally has on an employee's capacity to work. For example, amphetamines can produce such symptoms as hypersensitivity and exhaustion. Cocaine use brings about mood swings, depression, and restlessness. Marijuana use can result in reduced concentration, slowed thinking and short-term memory loss. Opiates such as heroin can produce such reactions as mental confusion, memory loss, as well as short attention span. Users of PCP may experience hallucinations and signs of intoxication. (William Atkinson, Drug Abuse and Alcohol Misuse Training Guide, Kendall/Hunt Publishing Co., 1995, pp.10-17)

Tests have shown that the effects of drugs on people are longer than first thought. For example with marijuana, impairment can last more than 24 hours after its use. Thus the body actually stores the drug for days, weeks, and in some cases months depending on the frequency of use. (Id, p.14) As a result, off duty drug use creates a serious risk of on the job impairment. Given the hazardous operational settings in which firefighters operate, mistakes due to diminished physical or mental capacity because of the lingering effects of off duty drug use can have a disastrous effect on the safety of the

public and firefighters. Under such circumstances, the City is justified in imposing a zero tolerance policy on illegal drug use even when employees are off duty.

There are other factors that eliminate any meaningful distinctions for employees between on and off duty behavior in the fire department as it relates to drug use. Fire fighters can be recalled to duty on short notice. Such occurrences may become very frequent as a result of the implementation of this Panel's award on staffing. Thus the City's obligation to staff companies with four firefighters may well require firefighters off duty to report in to work overtime. As a result, any off duty drug usage will carry an even higher risk of on the job impairment.

Significantly, the federal courts have also held that firefighters occupy safety sensitive positions and that cities have "a compelling interest in ensuring that the duties of firefighters and police officers are performed free of any risk of impairment by the use of illegal drugs." (Penny v. Kennedy, 5 IER 1290, 1292, 6th Cir. 1990) Additionally, in safety sensitive positions, arbitrators have frequently upheld an employer's dismissal of employees who in violation of the employer's policy have tested positive for drugs. (Mayflower Contract Services, 91 LA 1353, 1988, U. S. Air Corp., 91 LA 6, 1988, Marathon Petroleum, 89 LA 716, 1987, and Metropolitan Transit authority, 88 LA 1247, 1987). In upholding the City 's zero tolerance policy, the Panel agrees with the comments of arbitrator William Reich:

> It is incompatible with the functions of the police communications dispatcher to have a person employed in that role admittedly taking cocaine or other controlled substances. This classification is one that receives telephone calls from the public regarding possible life-threatening situations which must be rapidly analyzed in order to dispatch uniformed police officers to the scene. It requires full concentration of the dispatcher's facilities while in the performance of their duties and the use of controlled substances such as cocaine impairs that function. (San Francisco Police Department, 87 LA 791,792, 1986)

Arbitrator Reich's remarks are equally relevant for firefighters engaged in dispatch or fire suppression duties. Use of illegal drugs creates the serious risk of performance impairment that the City has the responsibility to prevent. As the City's substance abuse policy is reasonably related to the promotion of the public's safety as well as the safety of all firefighters, it merits the Panel's support.

The Union has also criticized the City's policy claiming that it would permit management to punish innocent employees who fail to detect possible signs of impairment in others. The Union maintains that such discipline is improper, as signs of drug or alcohol use are subtle and therefore may be difficult to discern. As a result, the only way employees can avoid discipline is to report all unusual behavior to a superior officer. This sort of widespread defensive reporting can only serve to undermine morale.

The Panel finds the reporting requirement reasonable given the department's unique management structure. There are only three non-union managers in the fire department. As a result, management is not in a position to provide direct supervision to the department's 1300 employees. All other supervisors such as sergeants, lieutenants, captains, and battalion commanders are themselves members of the union and thereby subject to the labor agreement. For the substance abuse policy to be enforced, employees must police themselves and be held accountable for failing to do so. Furthermore, rather than being viewed punitively, the reporting requirement provides protection to the many employees who oppose drug use and who because of peer

pressure might refrain from informing their supervisors of a policy violations. As a result, employees will be empowered to report incidents of drug use that threaten their safety and that of the public.

Finally the Union has somewhat inflated the concern that employees may be unfairly disciplined for not reporting violations, when they may be unable to detect illegal usage of alcohol or drugs. Here obviously a standard of reasonableness will have to be applied to determine the scope of an employee's reporting duties. This standard is implicit in the City's policy which provides that a "failure to report or investigate is considered neglect." Thus in arbitration, establishing culpable negligence has required proof of some combination of the following:

(1) that the employee was under a clear obligation to carry out the omitted task or to refrain from committing the act charged as negligence. (International Nickel Co., 44 LA 376, 1965)

(2) that the action or omission was unreasonable. (Production Steel Co., 82 LA 229, 1984)

(3) that the damage or adverse consequences were reasonably forseeable by the offending employee.(Alpac Corp., 68 LA 732, 1977)

(4) that the alleged negligence was the proximate cause of the damage.(Stauffer Chemical Co. 83 LA 272, 1984)

(5) that the company was substantially damaged or otherwise adversely affected in a significant way by the alleged negligence. (Municipality of Anchorage Alaska, 82 LA 256, 1984)

(6) that the employee received adequate training or instruction in the performance of the task in question. (Leavenworth Times, 71 LA 396, 1978)

(7) that the employee was on notice that the action or omission could lead to discipline.(Singer Co. 85 LA 152, 1985)

Employees disciplined for failure to report or investigate misconduct can appeal their discipline to arbitration. Within that forum the rights of employees should be protected. Given the above considerations, the Panel adopts the City's position on this issue.

Summary of Panel's Dispositions

In summary, the Panel makes the following awards.

(1) The Panel, with the Union Delegate dissenting, adopts the City's position on the issue of temporary assignment pay.

(2) The Panel, with the City Delegate dissenting, adopts the Union's position on the issue of additional furlough days.

(3) The Panel, with the Union Delegate dissenting, adopts the City's position on the issue of meal allowance.

(4) The Panel, with the Union Delegate dissenting, adopts the City's position on the issue of pay for tiller operator.

(5) The Panel, with the Union Delegate dissenting, adopts the City's position on the issue of pay for Senior FEO.

(6) The Panel, with the Union Delegate dissenting, adopts the City's position on the issue of pay for Senior Firefighters.

(7) The Panel, with the City Delegate dissenting, adopts the Union's position on the issue of company staffing.

(8) The Panel, with the City Delegate dissenting, adopts the Union's position on the issue of furlough sell-back.

(9) The Panel, with the Union Delegate dissenting, adopts the City's position on the issue of central office staffing.

(10) The Panel, with the City Delegate dissenting, adopts the Union's position on the issue of lunch and breaks for central office employees.

(11) The Panel, with the City Delegate dissenting, adopts the Union's position on the issue of joint safety committee.

(12) The Panel unanimously adopts the Chairman's proposal on residency.

(13) The Panel, with the Union Delegate dissenting, adopts the City's position on the issue of substance abuse policy.

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October 15, 2001 Benjamin Wolkinson, Chairman

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Roger Cheek, City Delegate

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John King, Union Delegate

Appendix A

Article 23D – Safety (Haz Mat Unit)

D. Effective June 1, 2001, employees assigned to Haz Mat Unit, and meeting necessary criteria, shall receive two hundred dollars ($200) per month hazardous material duty pay.

Any employee permanently assigned to the Haz Mat unit for a portion of any month, shall receive a pro-rata amount of the two hundred dollars ($200) per month hazardous material duty pay.

Members assigned on a daily basis (detailed in) shall receive twenty dollars ($20) per day for each day worked. A minimum of eight (8) hours must be worked. Any member working for a member assigned to the Haz Mat unit shall not receive the hazardous material duty pay or any additional pay above what he or she is already receiving if already assigned to the Haz Mat Unit.

Only those employees meeting the criteria necessary to be placed on the Haz Mat Unit and having been placed on the qualified list shall be eligible to be permanently or temporarily assigned (detailed in) to the Haz Mat Unit and receive hazardous material duty pay.

All hazardous material duty pay shall be paid on a quarterly basis.

Members can only be permanently assigned one stipend program at one time (e.g. Haz Mat). Any member eligible for a monthly stipend in his /her regular assigned position shall only be entitled to receive the per diem rate (daily stipend) when temporarily assigned (detailed in) to another program which receives a monthly stipend.

The Union waives, on it own behalf and on the behalf of its members, any claim for legal or equitable relief, to which the Union or its members would otherwise be entitled as a result of Article 23(D). This waiver will only be effective for the period commencing June 1, 2001, and ending on the date of the issuance of the Act 312 Award in MERC Case No. D98-D0644. Thereafter, this waiver will expire, and the Union reserves the right to enforce Article 23(E) as then written in any forum or proceeding provided by law or contract.

Appendix B

Safety (Detroit City Airport), Article 23 (E), Economic

E. Detroit City Airport

Effective June 30, 2001, employees, assigned to the Detroit City Airport roster and meeting necessary criteria, shall receive seventy-five dollars ($75.00) per month airport duty pay. Any employee permanently assigned to the Airport roster for a portion of any month, shall receive a pro-rata amount of the seventy-five dollars ($75.00) per month airport duty pay.

If in the future a passenger-carrying airline begins providing scheduled passenger airline service to the Airport (Pro-Air and Southwest being non-exclusive examples of such scheduled passenger airline service), then the airport duty pay shall be increased to two-hundred dollars ($200.00) per month and shall continue to be paid in that amount throughout the term of such scheduled passenger airline services. Throughout the term of such scheduled passenger airline service, any employee permanently assigned to the Airport roster for a portion of any month, shall receive a pro-rata amount of two-hundred dollars ($200.00) per month airport duty pay.

If the scheduled passenger airline services later terminate, the airport duty pay shall revert to the seventy-five dollars ($75.00) per month amount.

Members assigned on a daily basis (detailed in) shall receive $1/10^{th}$ per each day worked of the monthly airport duty pay. An employee will be eligible for this daily pay if he or she works in the assignment for the period specified in Article 17(A).

All airport duty pay shall be paid on a quarterly basis, on the same dates as hazardous material duty is paid under Article 23(D).

The Union waives, on it own behalf and on the behalf of its members, any claim for legal or equitable relief, to which the Union or its members would otherwise be entitled as a result of Article 23(E). This waiver will only be effective for the period commencing June 30, 2001, and ending on the date of the issuance of the Act 312 Award in MERC Case No. D98-D0644. Thereafter, this waiver will expire, and the Union reserves the right to enforce Article 23(E) as then written in any forum or proceeding provided by law or contract.