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STATE OF MICHIGAN

Department of Labor

Employment Relations Commission

Arbitration Under Act 312

(Public Act of 1969 as amended)

In the Matter of

Detroit Fire Fighters Association

and

City of Detroit

MERC Case No. D 86-C450

Award of Panel on Economic and Non-Economic Issues

Panel Members: Thomas Giles Kavanagh, Chairman
Dennis Rasch, City Delegate
Mark Brewer, Union Delegate

September 28, 1987

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

STATEMENT OF PROCEEDINGS

On June 24, 1986, the Detroit Fire Fighters Association (Union) filed a Petition for Arbitration pursuant to Act 312, Public Acts of 1969, as amended, with the Michigan Employment Relations Commission, requesting the initiation of binding arbitration proceedings regarding terms and conditions of employment to be included in a collective bargaining agreement. Subsequently, the City filed its petition and the cases were consolidated. In July 1986, Thomas Giles Kavanagh was appointed to serve as Chairman of a panel of arbitrators. The other members of the arbitration panel selected by the respective parties were Dennis Rasch, the Designant for the City, and Mark Brewer, the Designant for the Union.

Between August 1, 1986 and May 29, 1987, the Arbitrator presided over 35 hearings referable to the matter. Thereafter, the parties submitted their last offers of settlement on each economic issue to the Panel. Subsequent thereto, the parties also submitted briefs in support of their respective positions on the issues.

Section 8 of Act 312 provides:

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

arbitration panel, more nearly complies with the applicable factors prescribed in Section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in Section 9. This section as amended shall be applicable only to arbitration proceedings initiated under section 3 on or after January 1, 1973." (footnotes omitted)

Section 9 of Act 312 provides:

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

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

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

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

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

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

Consistent with the Supreme Court's directive in Detroit v DPOA, 408 Mich 410 (1980), this Panel has, with respect to economic issues, adopted the last offer of settlement which, in our judgment, more nearly complies with the applicable Section 9 factors. With respect to non-economic issues, we based our findings upon the Section 9 factors to the extent we found them applicable. Where we have indicated "not applicable" or "not implicated," we did so to point out that we attached greater significance to other factors, not that we did not consider them all.

CHARACTERIZATION OF ISSUES

Section 8 of the statute requires a panel to determine which issues in dispute are economic issues and to adopt the last offer of settlement which, in the opinion of the panel, more nearly complies with the applicable factors in Section 9.

The statute does not define "economic issue," and the parties to this proceeding disagree over whether some of the issues are "economic" or "non-economic."

Of the awards cited, only the Howlett award spoke to the question. In resolving the disagreement thereon, the Award states, "In the Chairman's opinion an economic issue is a contract proposal which involves payment of compensation or provides fringe benefits directly to employees."

Here, the City urges the Panel to determine the matter by applying the test: "The basic test to be applied is whether an economic cost to the City is involved or an economic benefit is conferred upon the affected employee." We consider that test too broad.

Certainly any contract proposal which costs an employer money to implement in a sense raises an "economic" issue, but some proposals which do so, confer on employees no "economic benefit" directly.

To call any issue involving an economic cost to the City an "economic" issue would largely defeat the purpose of distinguishing between "economic" and "non-economic" issues. We do not think that is what the Legislature had in mind.

Accordingly, we adopt the definition used by Chairman Howlett.

Inasmuch as the Section 9 factors are the touchstone for resolving either type of issue, we will accept the parties' characterization of the issues and decide the question of characterization only where there is disagreement.

The disputed issues are, therefore, decided as follows: "J" time sick leave in Communications Division and Parking at Headquarters are held to be economic issues on which the Panel will adopt one party's last offer.

The remaining issues: work week reduction; protective trousers; station work uniforms; blankets and pillows; smoke ejectors; light and air vehicle; Medical Division alternative; and minimum shift

staffing in Communications Division are held to be non-economic issues on which we will base our decision on the applicable factors in Section 9, but not be limited to the parties' last offers.

JURISDICTION

The City asserts that 12 issues are not subject to the Panel's determination, either because they infringe on management prerogatives or are beyond the ambit of Act 312.

The Union asserts that all 30 issues are properly before the Panel either because the City has negotiated over them in the past and failed to object to consideration of them by prior panels, or is now estopped to object on account of its failure to follow MERC Resolution 104 requiring MERC determination prior to appointing an arbitrator.

An Act 312 arbitration panel has plenary power under the statute to decide issues submitted to it by agreement of the parties or Order of the Commission, but not otherwise.

Here, in light of the City's election not to submit the arbitrability of any issue to prior MERC determination, this Panel rules that all 30 issues are properly before it and its determination thereof will bind the parties for the duration of the contract resulting therefrom.

ORDERS PURSUANT TO STIPULATIONS OF PARTIES

Based upon the stipulation of the parties, the Panel orders:

1) The duration of the agreement resulting from this proceeding shall be three (3) years from July 1, 1986 through June 30, 1989.

2) The agreement resulting from this proceeding consists of all of the provisions of the contract of July 1, 1980 through June 30, 1983, as modified and as extended through June 30, 1986 by the Kiefer award in MERC Case No. D-83-595 with necessary date changes, as modified by mutual agreement of the parties and/or as ordered by this Panel.

3) The status quo regarding Police/Fire parity (including the Kiefer contingent parity award) shall continue and shall govern this award.

4) The arbitration award of Sandra Silver, dated April 1, 1986, American Arbitration Association Case No. 54-39-1770-85 (Grievant David Johnson) shall be vacated and the award shall be without precedential effect.

5) All issues raised by the parties in their respective petitions not decided herein are deemed withdrawn without prejudice from this Panel's consideration.

DECISIONS ON DISPUTED ISSUES

All issues were decided by majority vote and each of the members of the Panel has signed this opinion, indicating his agreement with the decision except where noted in his dissent.

ISSUE NO. 1. - RESIDENCY - (NON-ECONOMIC)

The Union proposes:

Amend the first sentence of Article 10 (Residency) to read as follows:

> "All members of the bargaining unit shall be residents of Wayne County."

The City asks that the present contract provision be maintained:

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

This perennial issue evokes strong emotional reaction. The essence of the Union's attack on the residence provision is summed up in its brief:

> "There is perhaps no condition of employment affecting Detroit fire fighters which is more onerous, unfair and intrusive into private, off-duty lives of members and their families than the current requirement that fire fighters maintain their residence within the corporate limits of Detroit (Article 10). The continuance of that requirement is a manifest insult to concepts of personal liberty, runs counter to applicable trends including arbitration decisions in Act 312 cases, fails to stand up under comparability analysis, and is indefensible based on any functional need of the Department. For these reasons, developed more fully below, including significant worsening in the crime situation and manifest continued deterioration of home values and of the public schools in Detroit since the award of the Kiefer Panel, the Association submits that the present restriction should be modified to permit firemen to live outside the City boundaries, yet within Wayne County."

The City's position while formally countering each of the Union's assertions is probably best summed up in Mayor Young's Budget message in April 1984 (City Exhibit 50):

"If you do not believe in this City enough to live in it, you should not work for it" and his testimony before the Kiefer-DPOA Act 312 proceeding:

"If the residency issue is thrown out, I would think it would be an announcement, for anyone who's interested, that the will of the People in this matter doesn't mean a damn thing, but that the City Charter can be freely ignored, and that the major obligation flows from a contract issued by the arbitrator, and not through any will of the People or any expression of that will at the ballot box." XXX pp. 36-37, DPOA proceeding.

The Union has not proved sufficient change in circumstances since the Kiefer decision to warrant granting this proposal.

Section 9 Factors

(a) The residency requirement is within the lawful authority of the employer.

(b) Stipulation of the parties - none.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs are not disputed. We are not persuaded that direct costs are implicated. The evidence of indirect costs such as loss of tax revenue, business, etc., are speculative and at their highest are within the City's ability to bear them. The interests and welfare of the public do not mandate change in the residency requirement.

(d) This factor has limited applicability. Although a majority of the fire fighters in the Detroit Metropolitan Area and the 10 largest U.S. cities are not subject to such a residency requirement, many are and since the requirement is not illegal, comparability does not mandate its removal.

(e) Not applicable.

(f) In our view, this factor does not mandate elimination of the residency requirement.

(g) None.

(h) The evidence of crime, deterioration of neighborhoods, depression of home values; the intrusion on personal liberty and freedom of choice on personal matters such as choice of schools, etc., was substantial. Residency does indeed affect the morale of the employees, but we are not convinced that the effect on morale has yet reached the point where it limits the efficiency of the Department. The Panel is not convinced that there was been sufficient change in conditions since the Kiefer award so as to warrant the elimination of the residency requirement.

Award:

We deny the Union's proposal and order the maintenance of the status quo.

ISSUE NO. 2 - REDUCTION IN HOURS - (NON-ECONOMIC)

The Union proposes to amend Article 15 (Hours and Leave Days), paragraph 9(a) to add as follows:

> "In addition to all of the foregoing, effective July 1, 1988, uniformed members of the Fire Fighting Division of the Fire Department shall receive such periodic additional twenty-four (24) consecutive hours off duty thereby requiring such persons to work an average of 48 hours per week."

Under the Union's proposal, the present 24-hour shifts would be be continued.

The City asks that the status quo be maintained:

> "The City believes that this is an economic issue which has a substantial cost impact and asks the arbitrator to deny the Union's proposal. The City proposes as its last best offer that the status quo be maintained and that all contractual references to the current 50.4 hour week remain unchanged."

The Panel is convinced based upon the record that circumstances have changed significantly and that new evidence has developed since the Kiefer and Howlett Arbitration Panels denied a reduction to a 46-hour week so that the evidence now clearly warrants granting the Union's 48-hour proposal as modified.

Since the beginning of the century, there have been periodic reductions in the workweek of Detroit fire fighters (U Ex 144). In the 15 years since the last reduction in hours by the Killingsworth Panel, the broad national trend toward shorter hours in the hazardous occupation of firefighting has steadily continued as demonstrated by Union exhibits (U Ex's 145-151) and by expert testimony from noted labor economist James Kilgallon. For example, the average fire fighter workweek in the 6 comparable cities of over a million in population has now dropped to 45.8 hours/week and the

average for all cities designated as comparable by either party is 44.82 hours/week, both well below the Union's proposal. The average workweek of another comparable universe, U.S. eastern cities, is also below the Union's proposal. In addition, the application of the Fair Labor Standards Act to fire fighters is also forcing further reductions in the average workweek across the nation. Moreover, a reduction to 48 hours/week is consistent with Detroit's position as the historic leader in workweek reduction in Michigan.

The evidence further showed that the Detroit fire fighter's compensation is inadequate in relation to the present workweek, as, even with the parity wage increase for 1986-89 included, Detroit remains below the average of comparable cities in hourly compensation if the workweek is not reduced as proposed (U Ex's 231, 243).

For all of these reasons, the Panel grants the Union's proposal as modified to ameliorate its cost.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) The interests and welfare of the public are served by recognizing the stress and danger of firefighting through a reduction in the workweek. The City has not asserted a financial inability to meet the cost of the proposal, nor did its proofs establish it. The claimed substantial cost of the proposal is outweighed by its merits and the other

relevant Section 9 factors. Moreover, the health and safety improvements awarded infra as well as the two-step implementation of the proposal should lower the cost.

(d) All of the comparables indicate that the reduction is warranted and we give this factor considerable weight.

(e) Not applicable.

(f) The Union's proposal does not raise the overall compensation of Department personnel.

(g) None.

(h) Employee morale and continuation of Detroit as the workweek reduction leader in Michigan are other factors which indicate that the proposal should be granted.

The Union proposal is granted as modified and it is ordered that Article 15, paragraph 9(a) be amended by adding the following:

> "In addition to all of the foregoing, effective July 1, 1988, uniformed members of the Fire Fighting Division of the Fire Department shall receive such periodic additional twenty-four (24) consecutive hours off duty thereby requiring such persons to work an average of 49 hours per week; and effective June 1, 1989, uniformed members of the Fire Fighting Division of the Fire Department shall receive such periodic additional twenty-four (24) consecutive hours off duty thereby requiring such persons to work an average of 48 hours per week."

ISSUE NO. 3. - PROTECTIVE TROUSERS (BUNKER PANTS) - (NON-ECONOMIC)

The Union proposes:

Amend Article 23, Section B.7. (Safety Equipment) to add:

> "To protect the health and safety of Department employees, on or before January 1, 1988, the City shall furnish to all members of the Fire Fighting and Arson Divisions and to all Apparatus Emergency Mechanics one (1) pair of protective trousers (also known as bunker pants) as defined in NFPA 1971, Standard on Protective Clothing for Structural Fire Fighting (1986 edition). Such trousers shall meet or exceed all of the standards established by the NFPA 1971, Standard on Protective Clothing for Structural Fire Fighting (1986 edition). The City shall replace these trousers as needed with trousers meeting or exceeding the same standards."

The City position:

> "The City believes that more burn injuries can be avoided by allocating its limited resources on improvements to other fire-fighting protective gear, such as hoods, rather than by purchasing bunker pants. The City asks the arbitrator to deny the union's proposal and permit the issue of purchasing hoods, bunker pants, and other fire-fighting protective gear to be referred to the Department Safety Committee for recommendation."

The Union presented a strong case for supplying these protective trousers for the Fire Fighting Division. The evidence of severe and painful burns suffered by some Detroit fire fighters and the cost to the City on account of them convinced the Panel that these "bunker pants" should be supplied.

The City's evidence that the 3/4 high boots and the other safety equipment currently being supplied meet all statutory standards only convinced the Panel that the standards were too low.

The failure of the Safety Committee to recommend that purchase of the pants or other safety devices to accomplish their purpose convinced the Panel that the Safety Committee was remiss rather than that the pants should not be purchased.

In the Panel's view, no sufficient case was made for supplying these protective trousers to the Arson Division, and in

light of the substantial cost involved the Department should be given more time to implement this directive. Accordingly, we have modified the Union's proposal.

Section 9 factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) No disagreement that the interests and welfare of the public are served by the proposal nor is there an assertion of financial inability to meet the costs.

(d) The use of bunker pants by other fire departments is well documented (Union Exhibits 28, 29).

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The employer's obligation to supply safety equipment to employees engaged in hazardous occupations supports the proposal.

Award:

The Union proposal as modified is granted and it is ordered that Article 23. Section B. 7. (Safety Equipment) be amended to add:

> "To protect the health and safety of Department employees, on or before July 1, 1988, the City shall furnish to all members of the Fire Fighting Division and all Apparatus Emergency Mechanics one (1) pair of protective trousers (also known as bunker pants) as defined in NFPA 1971, Standard on Protective Clothing for Structural Fire Fighting

(1986 edition). Such trousers shall meet or exceed all of the standards established by the NFPA 1971, Standard on Protective Clothing for Structural Fire Fighting (1986 edition). The City shall replace these trousers as needed with trousers meeting or exceeding the same standards."

ISSUE NO. 4 - STATION/WORK UNIFORMS - (NON-ECONOMIC)

The Union proposes:

Amend Article 22, Section B.7. (Safety Equipment) to add:

"To protect the health and safety of Department employees, as existing station/work uniforms are replaced, the City shall furnish to all members of the Fire Fighting and Arson Divisions and to all Apparatus Emergency Mechanics station/work uniforms which meet or exceed all of the standards of NFPA 1975, Standard on Station/Work Uniforms for Fire Fighters (1985 edition). Replacement of all existing station/work uniforms by those meeting or exceeding the NFPA 1975 Standard (1985 edition) standards shall be completed by June 30, 1989, and subsequent replacement uniforms shall meet or exceed the same standards."

The City asks for maintenance of the status quo and that the matter be referred to the Department Safety Committee for recommendation.

The thrust of the City's argument is that the matter of fire retardant uniforms has been considered by the Safety Committee and the Committee was not convinced that the uniforms should be purchased at the time.

The Union presented persuasive evidence that the fire retardant uniforms would likely minimize or prevent certain burns to fire fighters in some situations. Inasmuch as the proposal contemplates replacement as needed, the additional cost, if any, is not a major consideration.

The Panel is persuaded from the testimony of both the Department's and the Union's witnesses that the present Safety Committee does an inadequate job of addressing the concerns of the fire fighters in a timely manner. Accordingly, we were not impressed with the fact that the Committee had considered the issue and declined to act on it.

The Panel was not persuaded that the Arson Division needed these uniforms and accordingly modified the proposal to exclude members of the Arson Division.

Section 9 factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) No disagreement that the interests and welfare of the public are served by the proposal nor is there an assertion of financial inability to meet the cost of safety equipment.

(d) The adoption of flame-retardant uniforms by other major fire departments is well documented (Union Exhibit 28).

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The employer's obligation to provide safety equipment supports the proposal.

Award:

As modified the Union proposal is granted and it is ordered that Article 22., Section B. 7. (Safety Equipment) be amended to add:

> "To protect the health and safety of Department employees, as existing station/work uniforms are replaced, the City shall furnish to all members of the Fire Fighting Division and to all Apparatus Emergency Mechanics station/work uniforms which meet or exceed all of the standards of NFPA 1975, Standard on Station/Work Uniforms for Fire Fighters (1985 edition). Replacement of all existing station/work uniforms by those meeting or exceeding the NFPA 1975 Standard (1985 edition) standards shall be completed by June 30, 1989, and subsequent replacement uniforms shall meet or exceed the same standards."

ISSUE NO. 5. - JOINT HEALTH AND SAFETY COMMITTEE - (NON-ECONOMIC)

The Union proposes:

Amend Article 23, Section B.7. (Safety Equipment) to add as follows:

> "JOINT HEALTH AND SAFETY COMMITTEE
>
> It is the desire of the Detroit Fire Department and the Union to maintain the highest standards of safety and health in the Fire Department in order to eliminate, as much as possible, accidents, death, injuries and illness to all members.
>
> In order to achieve these goals, effective the date of the issuance of the award in MERC Case No. D86 C-450, there shall be established a joint Health and Safety Committee of the Detroit Fire Department composed of six (6) persons. Three (3) members shall be appointed by the Fire Commissioner and shall serve at his pleasure. Three (3) members shall be appointed by the President of the Union and shall serve at his pleasure. The Fire Commissioner and the President also shall each appoint three (3) 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 perform Committee work. All prior health and/or safety committees of the Department shall be abolished.

The Committee shall select a Chairman from among its members at each meeting to preside over that meeting. If a Chairman cannot be selected in this manner, the Chairmanship shall alternate at each meeting beginning with a Commissioner appointee, followed by a Union President appointee, and continuing to alternate in that manner at subsequent meetings.

The Committee shall meet no less than bi-monthly at a regularly scheduled time 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 ten (10) working days after the written demand, in order to discuss urgent issues. A quorum of four (4) 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 at least one (1) week in advance of the meeting by the alternating Chairman, and the other Committee members shall have the right to make additions to the agenda at any time before the date of the meeting.

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

(a) review and analyze all reports of accidents, deaths, injuries, and illnesses;

(b) make detailed investigations into accidents, deaths, and major injuries to determine the cause(s);

(c) develop information on accident and injury sources and rates;

(d) make periodic, but not less than annual, inspections of Fire Department facilities and equipment;

(e) investigate Fire Department facilities and equipment to detect hazardous conditions or unsafe work methods, including but not limited to training procedures;

(f) promote safety for all Department members; and

(g) study hazardous material issues and equipment.

To facilitate the Committee's work, the Department shall maintain records of all accidents, injuries, deaths, and illnesses and copies of all such records shall be available to Committee members upon request.

The Committee shall have the authority, by a majority vote of its members (i.e., four (4) or more), to effectively recommend:

(a) changes to, addition to, or purchase of fire fighters' protective apparel and equipment;

(b) Department rules 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 response and handling.

All recommendations adopted by the Committee shall be made to the Fire Commissioner in writing.

The Committee also shall review and modify, as required, all specifications for protective equipment, protective apparel, or devices prior to letting out bids for contracts on purchasing same. Upon the Completion of the bid process, the Committee shall review the bids and samples accompanying same in order to ascertain whether the bids meet the specifications of the items to be purchased. This procedure shall be followed both with new contracts and renewal contracts.

All disputes arising under this provision, including a deadlock on a Committee recommendation to the Fire Commissioner, which are not resolved by the Committee shall be submitted to arbitration under the procedures of Article 7 of this agreement without the necessity

of filing a grievance. Arbitration decisions resolving Committee deadlocks on recommendations to the Fire Commissioner shall have the same effect as Committee recommendations adopted by majority vote.

Nothing in this provision relieves the Department of its health and safety responsibilities to its employees. Nor by this provision does the Union assume such health and safety responsibilities."

The City asks that we maintain the status quo and says:

"Since seven out of eight committee persons are currently union members, the City proposes that the composition of the current Safety Committee not be changed and asks the arbitrator to deny the union's proposal."

The Union witnesses presented convincing evidence that the present Safety Committee has been ineffective in achieving prompt and principled attention to the fire fighters' safety concerns and recommendations.

The City's witnesses did little to rebut the Union's evidence.

The thrust of the City's objections to the proposal is that the present committee could work and under the proposal too much authority would be vested in the committee.

The Panel is convinced that the proposal is, in the main, sound and should be granted. We have modified the proposal to meet some of the City's objections.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) The interests and welfare of the public are best served by

an effective safety committee. No costs are involved in this proposal.

(d) Joint safety committees are commonly used in comparable fire departments.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The morale of the fire fighters should be improved by the creation of a Joint Health and Safety Committee. It is a sound labor-management practice to form joint safety committees.

Award:

We order that the current Safety Committee of the Department be abolished and that an Article be added to the contract to provide for a Joint Health and Safety Committee as follows:

"JOINT HEALTH AND SAFETY COMMITTEE

Effective immediately, there shall be established a joint Health and Safety Committee of the Detroit Fire Department composed of six (6) persons. Three (3) members shall be appointed by the Fire Commissioner and shall serve at his pleasure. Three (3) members shall be appointed by the President of the Union and shall serve at his pleasure. The Fire Commissioner and the President also shall each appoint three (3) 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 a Commissioner appointee, followed by a Union President appointee, and continuing to alternate in that manner at subsequent meetings.

The Committee shall meet no less than once every two (2) 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 ten (10) working days after the written demand, in order to discuss urgent issues. A quorum of four (4) 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 (1) week in advance of the meeting.

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;

(d) promote safety for all Department members;

(e) study hazardous material issues and equipment; and

(f) Review all specifications for protective equipment, apparel, or devices prior to letting out bids for new or renewal contracts for the purchase thereof.

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.

The Committee shall have the authority, by a majority vote of its members (i.e., four (4) or more), to recommend:

(a) changes to, addition to, or purchase (and specifications) of fire fighters' protective apparel and equipment;

(b) Department rules 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 response and handling.

All recommendations adopted by the Committee shall be made to the Fire Commissioner in writing. The Commissioner shall promptly respond to such recommendations, in writing, stating his reasons for adopting or rejecting them. The Committees' findings and recommendations shall be advisory only and not constitute any limitation on the managerial prerogatives of the Fire Commissioner nor the City.

Nothing in this provision relieves the Department of its health and safety responsibilities to its employees. Nor by this provision does the Union assume such health and safety responsibilities."

ISSUE NO. 6. - BLANKETS AND PILLOWS - (NON-ECONOMIC)

The Union proposes:

Amend Article 23., Section B.7. (Safety Equipment) to add as follows:

"To protect their health and safety, effective immediately, all 24-hour non-civilian employees of the Fire Department shall be issued two (2) blankets and one (1) pillow as part of their personal issue which blankets and pillow shall be replaced by the City as needed."

The City asserts:

> "The City believes that this is not an issue properly before the panel. Labelling the issue one of safety is a misnomer and is not consistent with the long-term common and ordinary meaning given term in the lexicon of labor relations professionals."

Whether or not this issue raises a question of "safety," the Panel is convinced it does raise a question of health and is a proper subject for bargaining.

The testimony of the Union's expert, Richard M. Duffy, an Industrial Hygienist by profession, was very persuasive that the increase of contagious disease warrants immediate attention to the situation sought to be ameliorated by this proposal.

The City's case on this issue was not persuasive.

The Panel is convinced that the proposal should be granted.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) The interests and welfare of the public require attention to the health of employees. The cost of the proposal does not exceed the financial ability of the City to meet that cost.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) Personal hygiene is a proper concern of both the employer and employee.

Award:

We order that Article 23., Section B. 7. (Safety Equipment) be amended to add:

> "To protect their health and safety, effective immediately, all 24-hour non-civilian employees of the Fire Department shall be issued two (2) blankets and one (1) pillow as part of their personal issue which blankets and pillow shall be replaced by the City as needed."

ISSUE NO. 7. - SMOKE EJECTORS - (NON-ECONOMIC)

The Union proposes:

Amend Article 12, Section E., paragraph 5 (Miscellaneous) to add:

> "For the protection of the health and safety of the employees of the Department, each squad shall be equipped with one (1) operational explosion-proof smoke ejector capable of ejecting at least five thousand (5000) cubic feet of smoke per minute (CFM)."

The City asserts:

> "The City has smoke ejectors on hand and all are available for use by the fire-fighting division. The City proposes that how the smoke ejectors are employed remain as a management decision."

It became apparent from the testimony of the City witnesses that the Department has for some time had several smoke ejectors on hand. This fact was apparently not made known to all members of the Department.

In view of this, the Panel is persuaded that no case was made out for acquiring more smoke ejectors nor the need established for altering the method of their deployment.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The evidence established that smoke ejectors are available.

Award:

We deny the Union's proposal and order the maintainance of the status quo.

ISSUE NO. 8. - AIR AND LIGHT RIG - (NON-ECONOMIC)

The Union proposes:

Amend Article 12, (Miscellaneous) to add:

> "V. For the protection of health and safety of the employees of the Department, the Department shall maintain a fully equipped vehicle with sufficient equipment, including a compressor, cascade system, and spare air tanks, to recharge depleted air tanks at fire scenes and with sufficient equipment, including 10 quartz lights providing 35,000 lumens each, to illuminate a fire scene."

The City asserts:

> "The City believes that the responsibility for providing an adequate supply of air and sufficient lighting at all fires is a management responsibility which has been very adequately exercised in the past. The status quo should be maintained, therefore, the City ask the arbitrator to deny the Union's proposal."

The testimony established that the fire fighters have often complained of an inadequate method of replenishing their air supply and insufficient lighting at fires.

Deputy Commissioner Gorak testified that the Department has taken steps to remedy the air situation by ordering four (4) air compressors which, he testified on October 27, 1986, should be "expedited soon." Other City witnesses testified that the current lighting equipment system was adequate.

Although the Department's record of acquiring safety items promptly after agreement on necessity has not impressed the Panel, we are not persuaded that we should grant the Union proposal. The Panel was impressed with the suggestion that a former squad van could be readily adapted for such purposes with little cost and we encourage the new Health and Safety Committee to consider this suggestion.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) Departmental action should eliminate complaints and provide adequate air replenishment. No proof of inadequate lighting was adduced.

Award:

We deny the Union's proposal and order the maintainance of the status quo.

ISSUE NO. 9. - FIRE PREVENTION SECTION SCHEDULE 4/10 - (NON-ECONOMIC)

The Union proposes:

Amend Article 15. (Hours and Leave Days) to add as follows:

> "(c) Commencing January 1, 1988, the basic work week for members of the Fire Prevention Division shall be four (4) ten (10) hour tours of duty per week. The parties shall negotiate over the schedule implementing this basic work week and if no agreement is reached by October 1, 1987, the question of the schedule implementing this basic work week shall be submitted to arbitration under the procedures of Article 7 of this agreement without the necessity of filing a grievance."

The City requests that the present schedule be maintained.

The Union asserts that this proposal would boost morale, increase efficiency and productivity and in addition save the Department thousands of dollars annually.

The Arson section of the Fire Marshall Division was awarded a four day work schedule similar to that proposed here by the Kiefer Arbitration Panel in 1985. The Kiefer panel said: "Adoption of the Union proposal will not cost the City any money and will benefit the public as well as the members of the Arson Division." Union Exhibit 5, p. 45. We are similarly convinced.

The City's claim that revenue would likely be lost and costs increased was not established to this Panel's satisfaction.

Section 9 factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) None.

(c) The testimony that the proposal would result in more efficient use of time was persuasive and, if true, would serve the interests and welfare of the public. No likely substantial increase in costs was established, and on balance, some reduction in costs appears possible from the testimony.

(d) Employees in the same Division are currently working a 4-day, 10-hour schedule, and no reason was established not to extend such a schedule to this group.

(e) Not applicable.

(f) Employees in the same Division are currently working a 4-day, 10-hour schedule, and no reason was established not to extend such schedule to this group.

(g) None.

(h) This proposal could improve morale by having the same scheduling provision apply to all members of the Fire Marshall Division.

Award:

We have modified the Union's proposal to parallel the language of the Kiefer award affecting the Arson Section and as modified, we grant it. We order that Article 15 be amended to add:

> "(c) Commencing January 1, 1988, the basic work week for members of the Fire Prevention Division shall be four (4) ten (10) hour tours of duty per week. Scheduling is left to the parties to negotiate."

ISSUE NO. 10. - PERSONAL LEAVE DAYS - (NON-ECONOMIC)

The Union proposes:

Amend Article 23., Section B. (Fringe Benefits), to add as follows:

> "15. Personal Leave Days
>
> Effective immediately, personal leave days shall be available to an employee for an absence justified by urgent reasons such as attendance to personal business which cannot be normally taken care of outside of working hours. An employee desiring to use a personal leave day shall, if practicable, notify his commanding officer of his intention before taking the leave day. Personal leave days taken shall be deducted from the employee's accumulated sick leave bank.
>
> Department employees on 24-hour shifts shall have two (2) duty days of personal leave per fiscal year; Department employees working four (4) ten (10) hour days per week shall have four (4) days of personal leave per fiscal year; and Department employees working five (5) eight (8) hour days per week shall have five (5) days of personal leave days per fiscal year."

The City's position:

> "The City believes that the current twenty-four hour schedule as well as the practice of work reliefs provides non-civilians with sufficient opportunities to schedule personal business during "business hours" throughout the week. In fact, we believe their opportunities are greater than civilians who traditionally work a forty-hour week during "business hours" and, therefore, we do not believe that additional time off opportunities are warranted.
>
> Scheduling and manpower availability on each shift would be adversely affected if the Union's proposal is granted.
>
> The City asks the arbitrator to deny the Union's proposal."

The Union's proposal is premised on the assertion that the present method of obtaining leave for emergencies is

cumbersome and inadequate for dealing with urgent or emergent personal business.

"Personal leave days" are provided in contracts with the Police Officers and civil service City employees, but not fire fighters.

The present method of handling the problem is to use "work relief" wherein a fire fighter gets another fire fighter to work for him or by the use of emergency compensatory time if available.

No examples of denial of a request for emergency time off were cited, although there were several instances of the difficulty of obtaining the time off.

The City's objections are based primarily on the fact that the system is presently working and because of a fire fighter's unique schedule, no need exists to provide for him as for employees on a different schedule.

The Panel is not convinced the present method of dealing with emergency leave is inadequate. The Fire Department's scheduling is unique, and although the granting of emergency time off to fire fighters is discretionary with the supervisory personnel, no instance of abuse of that discretion was established. We were convinced that the present policy affords opportunity to deal with emergencies fully equivalent to the opportunity afforded other employees.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not applicable.

(d) Comparing other employees' emergency leave provisions with the present Fire Department policy dealing with emergency requests convinces the Panel that such comparison does not mandate change.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The Panel was not persuaded that the case for this proposal was made out.

Award:

We deny the Union's proposal and order maintenance of the status quo.

ISSUE NO. 11. - "J" TIME FOR COMMUNICATIONS DIVISION - (ECONOMIC)

The Union proposes:

Amend Article 12. (Miscellaneous) to add as follows:

> "W. For the protection of their health, effective immediately, all Communications Division Employees shall be covered by the sick leave (known as "J" time) provisions of the Common Council Resolution 52E."

The City's position:

> "The City believes that the "J-Time Program" should continue to be a benefit for non-civilian employees but not be extended to civilian office employees who are not subject to the hazards of fire-fighting.
>
> Our negotiating position and last offer to the Union on this matter is that the status quo be maintained."

The City recounts that the City Council in 1946 enacted Ordinance Number 52-E to amend the City Charter so as to provide for classification of Fire Department employees as civilian or non-civilian for the purposes of compensation and leave.

The employees in the Communications Division are civilian employees. In 1970 certain positions in the Fire Marshal Division Arson Section were reclassified as non-civilian because they were subject to the hazards of fire fighting.

The employees affected by this proposal are not subject to the hazards of fire fighting.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not directly implicated.

(d) The civilian employees pursuant to Ordinance 52-E are governed and compensated according to all ordinances and resolutions covering regular City employees. Regular Civil Service City employees do not receive "J" time.

(e) Not applicable.

(f) The civilian employees pursuant to Ordinance 52-E are governed and compensated according to all ordinances and resolutions covering regular City employees. Regular Civil Service City employees do not receive "J" time.

(g) None.

(h) None.

Award:

The Panel is convinced that the City's last offer more nearly complies with the Section 9 factors and accordingly orders maintenance of the status quo.

ISSUE NO. 12. - MEDICAL DIVISION ALTERNATIVE - (NON-ECONOMIC)

The Union proposes:

Amend Article 12. (Miscellaneous) to add as follows:

> "X. For the protection of the health, safety and morale of the employees of the Department, whenever an employee is required or permitted to use the service of the Fire Department's Medical Division, he shall have the option of using any of the clinics on a list jointly approved by the City and the Union. If an employee elects this option, he shall notify the Medical Division in advance of the clinic he elects to use.
>
> The City and the Union shall negotiate over an initial list of at least five (5) clinics available to members as alternatives to the Medical Division. If no agreement on such an initial list is reached within sixty (60) days of the issuance of the decision in MERC Case No. D85 C-450, the decision as to which clinics shall be on the initial list shall be submitted to arbitration under the procedures of Article 7 of this agreement without the necessity of filing a grievance.
>
> A clinic may be stricken from the approved list without cause at any time by either the City or the Union with 30 days' notice to the other party. Should the approved list ever contain fewer than five (5) clinics, the parties shall negotiate over supplementation of the list so that it shall contain at least five (5) clinics. If no agreement on such supplementation is reached within sixty (60) days, the question as to supplementation shall be submitted to arbitration under the procedures of Article 7 of this agreement without the necessity of filing a grievance.

> Nothing in this provision relieves the Department of its health and safety responsibilities to its employees or of its obligation to pay for the services provided by the clinic the employee elects to use. Nor by this provision does the Union assume such health and safety responsibilities or cost."

The City's position:

> "The City believes that the decision to use a Medical Division is reserved to management and beyond the jurisdiction of an Act 312 panel. The issue is not concerned with wages, hours, terms or conditions of employment and thus is not a mandatory subject of bargaining entitled to Act 312 coverage. Therefore, while it is our position that the Act 312 arbitrator lacks the legal authority to issue a binding award on this non-mandatory issue, our negotiating position and last offer to the Union on this matter is that the status quo be maintained."

The thrust of the Union's argument is that the operation of the Medical Division has become "politicized" and that in order to correct the abuse of this Division's powers, an employee should be provided an alternative independent medical facility.

The Medical Division physicians evaluate individuals in connection with promotions, deal with injuries or illnesses which occur during the course of employment, determine whether injuries or illnesses are or are not duty-connected, and determine when a disabled employee can go back to work.

The Union presented convincing evidence that the Department has abused the process. The fact that grievance arbitrators, to some extent, have been able to correct the injustices resulting from such abuse does not warrant its maintenance, but this record will not, in our opinion, allow us to grant the Union proposal.

There was no evidence of the cost of the proposal so as to permit us to consider its implementation.

Continued abuse will inevitably result in the abolishment of the Medical Division, we believe, so it behooves the parties to negotiate seriously over methods to prevent it.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) The interest and welfare of the public certainly would be served by a proposal to eliminate the abuses of the present system but the cost of the proposal would have to be demonstrated to be within the financial ability of the City to meet its costs. Here, no such evidence was presented.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) No other factor normally considered mandates granting the proposal.

Award:

We deny the Union's proposal and order the maintenance of the status quo.

ISSUE NO. 13. - PARKING - (ECONOMIC)

The Union proposes:

Amend Article 12 (Miscellaneous) to add:

"Y. Effective thirty (30) days after the issuance of the decision in MERC Case No. D86 C-450, the Department shall supply free parking for all non-civilian members assigned to Fire Department Headquarters during the hours of such assignments."

The City asserts this is an economic issue and asks for the maintenance of status quo.

The Union makes this proposal to bring these employees into line with all of the other members of the bargaining unit.

The City asserts that these employees are adequately compensated for the use of their personal cars on Department business and that the case is not made out to grant the proposal.

The evidence was undisputed that about 25 Fire Prevention Inspectors report to Headquarters each day, usually spend 1 - 2 hours in making reports, getting their assignment, etc., and then leave.

The City relies on the mileage reimbursement plan set forth in Union Exhibit 6, paragraph 1, and the fact that other City employees are required to use their cars in their work and do not receive free parking.

The Panel is persuaded that the case is made out for eliminating the difference in treatment of the Fire Prevention Inspectors and other members of the bargaining unit who work at Fire Headquarters.

Accordingly, to standardize the treatment of the members of the bargaining unit, we have granted the proposal.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Public interest and welfare is not affected. There is minimal cost involved in this proposal in that most assignments at headquarters will not exceed two (2) hours.

(d) Parking is provided all other DFFA bargaining unit members.

(e) Not applicable.

(f) Equalizes overall compensation granted other DFFA bargaining unit members.

(g) None.

(h) Other factors - reduces differences between other bargaining unit members.

Award:

The Union's last offer more nearly complies with the Section 9 factors and so we order that Article 12 (Miscellaneous) be amended to add:

> "Y. Effective thirty (30) days after the issuance of the decision in MERC Case No. D86 C-450, the Department shall supply free parking for all non-civilian members assigned to Fire Department Headquarters during the hours of such assignments."

ISSUE NO. 14. - DRESS CODE RELAXATION - (NON-ECONOMIC)

The Union proposes:

Amend Article 23, Section B.8. (Uniforms) to add as follows:

> "e. Members shall be permitted to purchase at their own expense and wear "T-shirts" or "golf shirts" in warm weather and sweatshirts in cold weather as part of their station/work uniforms. All such items shall be from an approved list and the City and the Union shall negotiate over that list. If no agreement is reached within sixty

(60) days of the issuance of the award in MERC Case No. D86 C-450, the contents of the approved list shall be submitted to arbitration under the procedures of Article 7 of this agreement without the necessity of filing a grievance."

The City asks that the status quo be maintained.

The Union presented convincing evidence that the comfort of the employees would be enhanced by allowing them to purchase and use these items of clothing. No adverse effect on the Department was proved to the Panel's satisfaction.

In an effort to meet City objections, the proposal is modified, and so modified it is granted.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) No public interest or welfare is directly implicated and no cost to the City is involved.

(d) Other fire departments allow such clothing to be worn.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) Employee morale is enhanced by allowing more comfortable items of work uniforms to be purchased and used by them.

Award:

The Union's proposal is granted as modified and it is ordered that Article 23, Section B.8. (Uniforms) be amended to add:

"e. No later than January 1, 1988, members shall be permitted to purchase at their own expense and wear "T-shirts" or "golf shirts" in warm weather and sweatshirts in cold weather as part of their station/work uniforms. All such items shall be from a list developed by the Health and Safety Committee."

ISSUE NO. 15. - RESTORATION OF TITLES IN COMMUNICATIONS DIVISION (NON-ECONOMIC)

The Union proposes:

Amend Article 12. (Miscellaneous) to add as follows:

"Z. Effective immediately, to enhance the morale of and their ability to work with non-civilian uniformed members of the City's police and fire forces as they relay fire dispatch calls and deploy emergency equipment, the titles of the personnel in the Communications Division shall be restored as follows:

PRESENT TITLE	RESTORED TITLE
Supervising Fire Dispatcher	Superintendant of Fire Communications
Assistant Supervising Fire Dispatcher	Assistant Superintendant of Fire Communications
Senior Fire Dispatcher	Supervising Fire Dispatcher
Fire Dispatcher	Fire Dispatcher, Lieutenant
Senior Assistant Fire Dispatcher	Fire Dispatcher, Sergeant
Assistant Fire Dispatcher	Fire Dispatcher"

The City's position:

"The City believes that the issue of changing titles is a management decision reserved by the City under its Charter and beyond the jurisdiction of an Act 312 panel. The issue is not concerned with wages, hours, terms or conditions of employment, and thus, is not a manadatory subje t of bargaining entitled to Act 312 coverage. Therefore, while it is our

> position that the Act 312 arbitrator lacks the authority to issue a binding award on this non-mandatory issue, our negbotiating position and last offer to the Union is that the status quo be maintained."

The testimony in favor of this proposal was to the effect that the use of military titles proposed would likely get more recognition and respect in issuing dispatch orders, and would be good for the morale of the employees affected.

No evidence of refusal to follow orders was introduced.

The Panel was not convinced the proposed change was warranted.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The proposal was made on the theory that this would raise efficiency of and morale in the Communications Division.

The Panel was not convinced the case was made for it.

Award:

We deny the Union's proposal and order the maintenance of the status quo.

ISSUE NO. 16. - MINIMUM STAFFING-COMMUNICATIONS DIVISION - (NON-ECONOMIC)

The Union proposes:

Amend Article 12. (Miscellaneous) to add as follows:

> "AA. For the protection of the health and safety of the employees of the Department through the more rapid and efficient relaying of Emergency Medical Service (EMS) and emergency fire dispatch calls to EMS and to fire fighting personnel, respectively, and through the more rapid and efficient deployment of additional equipment to fire scenes, there shall be a minimum of six (6) persons per shift on duty in the Communications Division."

The City's position:

> "The City believes that the issue of determining staffing is a management right reserved to the City and beyond the jurisdiction of an Act 312 panel. The subject does not involve wages, hours, terms or conditions of employment, thus, it is not a mandatory subject of bargaining entitled to Act 312 arbitrator coverage. Therefore, while it is our position that an Act 312 arbitrator lacks authority to issue a binding award on this non-mandatory subject, our negotiating position and last offer to the Union is that the status quo be maintained."

The Union produced evidence that on occasion less than six (6) persons staff the Communications Division. The argument was made that on those occasions, there was added stress to this already stressful position.

The importance of speed and accuracy of communications was not disputed.

The Panel was not convinced that the present staffing policy has caused any problem in this Division. No evidence of harm to employees on account of stress or anyone else on account of delayed orders was presented.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) The Panel was not persuaded the public interest and welfare mandated the proposal.

(d) No evidence presented.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The Panel was not convinced that employee health or morale were jeopardized by the present staffing.

Award:

We deny the Union's proposal and order the maintenance of the status quo.

ISSUE NO. 17. - APPARATUS DIVISION COMPENSATION - (ECONOMIC)

The Union proposes:

Amend Article 23, Section B. 12. (Apparatus Division Employees), paragraph number 1. to read as follows :

> "1. Effective July 1, 1986, pay rates for the following classifications in the Apparatus Division shall be established by applying the rates and increases equivalent to those granted the comparable Fire Fighting Division classifications listed below. Effective July 1, 1986, fringes for the following classifications in the Apparatus Division shall be the same applied to the comparable General City classifications listed below and shall be in accordance with the ordinances and resolutions governing such fringes.

Apparatus Division Titles	Fire Fighting Division Titles	General City Titles
Assistant Superintendent of Fire Apparatus	Fire Lieutenant	Average of Maintenance Supervisor and Senior Supervisor of Mechanical Maintenance
Senior Auto Repair Foreman	Mean average of Fire Sergeant and Fire Lieutenant	Senior Auto Repair Foreman
Mechanical Maintenance Foreman	Fire Sergeant	Mechanical Maintenance Foreman
Auto Painter & Striper Sub-Foreman	Fire Fighter Driver	Auto Repair Sub-Foreman
Apparatus Emergency Mechanic	Fire Fighter	General Auto Mechanic

---

1. The parties have already agreed to the comparability of Assistant Superintendent of Fire Apparatus and Fire Lieutenant - it is included in the offer for completeness."

The City proposes:

> "The City believes that the issue of pay for civilian employees who are not subject to the hazards of firefighting cannot be properly before an Act 312 panel. Therefore, while it is our position that the Act 312 arbitrator lacks the legal authority to issue a binding award on this issue, our negotiating position and last offer to the Union is that the traditional pay relationships for civilian employees be maintained."

The Union asserts that the work of these Apparatus Division employees is more closely comparable to the work of the Fire Fighting Division employees in the Department than the work of the employees in the General City civilian-titled positions and, therefore, should be linked to the Fire Fighting Division pay rather than General City pay.

The City maintains that the work of these employees is more like their counterparts in the General City classifications and that the present pay relationships should be maintained.

Certainly these employees are, on occasion, exposed to the hazards of fire fighting, but in many respects their treatment already takes that into account: they are issued fire fighters' gear; get the same extra furlough days; shift differential; "J" time benefits; and save pensions alone, receive all of the fire fighters' fringe benefits.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) The City's interest and welfare is certainly served by fair treatment of its employees, and the proposal is well within the City's financial ability to meet the costs inherent in it. However, the Panel is not convinced that this factor mandates approval.

(d) The comparability of the pay for the positions involved with the pay for the positions to which they are presently linked persuades the Panel to maintain the status quo.

(e) Not applicable.

(f) The case was not made that these employees are underpaid.

(g) None.

(h) No other factor typically considered persuaded the Panel to grant the proposal.

Award:

The Union proposal is denied. The City's last offer, maintenance of status quo, more nearly complies with the applicable factors of Section 9. Accordingly we order the maintenance of the status quo.

ISSUE NO. 18. - TOOL ALLOWANCE - (ECONOMIC)

The Union proposes:

Amend Article 23, Section B. 12. (Apparatus Division Employees) to add as follows:

> "5. Effective July 1, 1986, the tool allowance for the Apparatus Emergency Mechanic shall be $250.00 per year."

The City's position:

> "The City believes that the issue of compensation for civilian employees who are not subject to the hazards to fire fighting cannot be properly before an Act 312 panel. Therefore, while it is our position that the Act 312 arbitrator lacks the legal authority to issue a binding award on this issue, our negotiating position and last offer to the Union is that the present tool allowance which is currently granted to other civilians engaged in mechanical repair operations be maintained."

The Union urges that the present tool allowance of $150.00 per year which has been in effect for seven (7) years is inadequate today.

The City responds that the tool allowance was never intended to meet the whole cost of the tools but only to help defray some of the cost.

The testimony that a mechanic usually spends $300.00 to $600.00 per year buying new tools replacing outmoded, broken or stolen tools was persuasive that perhaps a more generous allowance is warranted.

Inasmuch as the pay of the mechanics in the Apparatus Division is linked to the pay of other City mechanics, the panel is convinced that the proposal should be denied.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) Not applicable.

(d) Comparability of compensation for the positions involved with the compensation for the positions to which they are presently linked persuades the Panel to maintain the status quo.

(e) Not applicable.

(f) The case was not made out that these employees are underpaid.

(g) None.

(h) No other factor typically considered persuaded the Panel to grant the proposal.

Award:

The Union proposal is denied. The City's last offer, maintenance of status quo, more nearly complies with the applicable factors of Section 9, and is granted. Accordingly, we order the maintenance of the status quo.

ISSUE NO. 19. - UPGRADE FIRE DISPATCHERS - (ECONOMIC)

The Union proposes:

Amend Article 12. (Miscellaneous) to add as follows[2] :

> "T. Effective July 1, 1986, the four (4) most senior Assistant Fire Dispatchers in the Communications Division shall be classified and paid as Senior Assistant Fire Dispatchers."

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2. If the offer in Union Issue No. 15 is accepted, this offer requests classification and pay under the title which would be restored thereby, Fire Dispatcher, Sergeant."

The City's position:

> "The City believes that issues concerning the determination of staffing and levels of responsibility are management rights reserved to the City and beyond the jurisdiction of an Act 312 panel. The issue is not one of wages, hours, or terms or conditions of employment, thus, it is not a mandatory subject of bargaining. Therefore, while it is our position that an Act 312 arbitrator lacks the legal authority to issue a binding award on this non-mandatory issue, our negotiating position and last offer to the Union is that there be no change of current allocation and that the status quo be maintained."

This Union proposal would raise the classification of four (4) employees in the Communications Division who handle the EMS operations. It is prompted by the comparison with the Senior Assistant Fire Dispatcher as to job content and responsibilities.

The Panel was not convinced that present arrangement and assignment of duties in the Communications Division is working inefficiently or imposing undue burdens on any employees in the Division.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) No threat to the interests and welfare of the public was established or improvement in the operation of the Department promised by the proposal so as to warrant its grant.

(d) Not applicable.

(e) Not applicable.

(f) Overall compensation not proved to be inadequate.

(g) None.

(h) No other factors typically considered persuaded the panel to grant the proposal.

Award:

The Union proposal is denied. The City's last offer of maintenance of the status quo more closely complies with the applicable factors of Section 9 and is ordered.

ISSUE NO. 20. - UPGRADE DUAL TITLE POSITION - (ECONOMIC)

The Union proposes:

Amend Article 12. (Miscellaneous) to add as follows:

"U. Effective July 1, 1986, the Senior Assistant Fire Dispatcher/Fire Dispatcher in the Communications Division shall be classified and paid as a Fire Dispatcher."

The City's last offer is to submit a status change for the incumbent to the single title of Fire Dispatcher and asks that the Union's proposal be denied.

It became apparent at the hearing that the incumbent of this dual title classification position spends all of his time performing the duties of Fire Dispatcher. It was agreed that under such circumstance he should be paid at the rate for the higher classification.

The offer of the City to change his status solves the current problem. The Panel is convinced the case for the Union's proposal has not been made out.

Section 9 Factors:

(a) It is not disputed that the proposals are within the lawful authority of the employer.

(b) None.

(c) Not implicated.

(d) If an employee performs the duties of a classification on a regular basis he should be compensated at the established rate for that that classification. The principle of dual classification, if an employee in fact performs work in separate classifications and is compensated according to the established rate for work done in each classification, is not objectionable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) Not applicable.

Award:

The City's last offer more nearly complies with the Section 9 factors and accordingly, the City's offer to change the dual title status of the incumbent to the single title of "Fire Dispatcher" is ordered, effective upon the issuance of this award. The Union's proposal is denied.

ISSUE NO. 21. - TEMPORARY ASSIGNMENTS/EXPANSION OF ACTING PAY PROVISIONS - (ECONOMIC)

The Union proposes:

Amend Article 17. (Temporary Assignments), Section B. to read as follows:

"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 a period of eight (8) hours or more, he shall be compensated at the rate of higher classification.

Regular Classification

Deputy Fire Chief
Senior Fire Chief
Battalion Fire Chief
Assistant Fire Marshal
Fire Investigator-Captain
Senior Fire Prevention Inspector
Fire Investigator-Lieutenant
Fire Prevention Inspector"

The City asserts that this proposal is covered by the parity understanding between the parties and asks for maintenance of the status quo.

The Union claims that since the proposal only seeks application of "acting pay" treatment to additional classifications, it does not implicate parity.

The City called no witnesses on this issue, relying on its claim that the parity principle required its denial. We are not persuaded the application of acting pay is a parity item.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) Not implicated.

(d) This proposal only involves payment for out of grade work - a practice agreed to and implemented by the parties for a long time. If there is an assignment in fact to the higher grade and performance of those duties for the requisite time, the practice requires payment for that grade.

(e) Not applicable.

(f) Not affected by this proposal.

(g) None.

(h) The long established practice of paying for out of grade work has not been shown to be onerous and should be extended to the classifications requested.

Award:

We are convinced that it more nearly complies with the Section 9 factors, so we grant the Union's proposal, and order that Article 17. (Temporary Assignments), Section B., read as follows:

"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 a period of eight (8) hours or more, he shall be compensated at the rate of higher classification.

Regular Classification

Deputy Fire Chief
Senior Fire Chief
Battalion Fire Chief
Assistant Fire Marshal
Fire Investigator-Captain
Senior Fire Prevention Inspector
Fire Investigator-Lieutenant
Fire Prevention Inspector"

ISSUE NO. 22. - TEMPORARY ASSIGNMENTS/APPOINTMENT OF ACTING SENIOR FIRE CHIEF - (ECONOMIC)

The Union proposes:

Amend Article 17. (Temporary Assignments) to add as follows:

"C. Effective July 1, 1987, in the absence of a Senior Fire Chief, the most senior Battalion Chief shall serve as Acting Senior Fire Chief and shall be compensated according to Article 17.B."

The City's position is that this is a parity item and so should be denied.

The City presented no witnesses on this issue. We are not convinced it is a parity issue.

The Panel is not persuaded that the temporary assignment to acting Senior Fire Chief need be made based upon seniority.

No case is made out for this proposal.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) Not implicated.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The Department appoints the Senior Fire Chief and in our view should appoint the acting Senior Fire Chief.

Award:

The Union's proposal is denied. The City's last offer for the maintenance of status quo more nearly complies with the Section 9 factors. Accordingly we order the maintenance of the status quo.

ISSUE NO. 23. - FURLOUGH SELECTION - (ECONOMIC)

The Union proposes:

Amend Article 19. (Furlough Selection) to add as follows:

"W. Effective July 1, 1987, all eight (8) hour non-civilian personnel in the Department listed in Schedule II.A.2. shall be entitled to the following furlough:

After 1 year of service - 10 furlough days per year

After 2 years of service - 12 furlough days per year

After 3 years of service - 14 furlough days per year

After 4 years of service - 16 furlough days per year

After 5 years of service - 18 furlough days per year

After 6 years of service - 20 furlough days per year

Thereafter, one (1) additional furlough day per year of service, to a maximum of thirty (30) furlough days per year.

No member of the Union as of June 30, 1987 shall have furlough benefits he was theretofore entitled to reduced by this provision."

The City's position is:

> "The City proposes that the issue of increased furlough be included as part of the parity understanding between the parties. Off time benefits, particularly where an increase has been requested, are regularly regarded as another form of employee wages, therefore, since the police unions had sought similar improvements and were denied them, the DFFA's number of furlough days should not, for reason of retaining employee compensation parity, be changed."

The Panel is not convinced that this item should be considered a parity item.

A similar proposal was submitted to and rejected by the recent Lieutenants and Sergeants Association Arbitration Panel (Union Exhibits 213, p. 14). We are persuaded that under the principle of comparability, we too should reject the proposal.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulations.

(c) Not applicable.

(d) Comparable City non 24-hour employees in the police department have the same furlough allotment. Under the historic comparability principle, no change is in order.

(e) Not applicable.

(f) Under comparable overall compensation (including other excused time) this proposal should be denied.

(g) None.

(h) Furloughs are generally regarded as part of compensation. The wage increase and denial of the similar proposal to the comparable police department employees mandates denial here.

Award:

The Union's proposal is denied. We conclude that the City's proposal of maintaining the status quo more nearly complies with the Section 9 factors. Consequently, the Union proposal is denied and the status quo is ordered maintained.

ISSUE NO. 24. - UPGRADE OF AERIAL PLATFORM OPERATOR - (ECONOMIC)

The Union proposes:

Amend Schedule I., Section B., paragraph number 3. to add, after "Operator," as follows:

> "Operator of an aerial tower or platform apparatus (effective July 1, 1987),"

The City's position is:

> "The issue of determining the level of responsibility for operating the aerial ladder truck is reserved by the City as a management right and is beyond the jurisdiction of an Act 312 panel. The matter does not concern wages, hours, terms of conditions of employment, thus, it is not a mandatory subject of bargaining. Therefore, while it is our position that an Act 312 arbitrator lacks the legal authority to issue a binding award on this non-mandatory subject of

bargaining, our negotiating position and last offer to the Union is that the appropriate staffing decision has already been made by management, no change of current allocation is warranted, and the status quo should be maintained."

There is no disagreement between the parties over the duties of the Aerial Platform Operator. There was some dispute over how often the pumping skills required of Fire Engine Operators were used by the Aerial Platform Operator - the City claiming very seldom and the Union asserting greater frequency.

Because the higher rated skill is required, however often used, the Panel is persuaded the position should carry a higher rate than Fire Fighter Driver.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) None.

(c) The public's interest and welfare are best served by accurate evaluation of classifications of employees. Here the proposal is a modest increase affecting few employees and is well within the City's ability to meet the cost.

(d) The comparable rate for the operation of similar equipment is that of Fire Engine Operator.

(e) Not applicable.

(f) The proposed rate is equal to the rate for other Fire Engine Operators.

(g) None.

(h) None.

Award:

The Panel is convinced the Union's proposal more nearly complies with the Section 9 factors so it is granted. We order that Schedule I., Section B., paragraph number 3. be amended to add after "Operator," as follows:

> "Operator of an aerial tower or platform apparatus (effective July 1, 1987),"

ISSUE NO. 25. - DEPUTY FIRE CHIEF - POLICE COMMANDER PAY - (ECONOMIC)

The Union proposes:

Delete Schedule I., Section B., paragraph number 9, and amend Schedule I., Section A. to add after "Inspector," as follows:

> "the Deputy Fire Chief with the Police Commander (effective July 1, 1986),"

The City's position:

> "The City believes that the current pay relationship of the Deputy Fire Chief to the Chief of Department should be maintained.
>
> The City asks the arbitrator to deny the union's proposal and to award the status quo language which is as follows:
>
> > "The salary of Deputy Fire Chief shall be 88.64% of the salary of Chief of Department."

While the Union presents strong arguments in favor of its proposal, the Panel was not persuaded that there was sufficient evidence of inequity presented to warrant our interference with the agreement of the parties over the appropriate parity relationship.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) There were no stipulations on this issue.

(c) The interest and welfare of the public in appropriate pay and the City's ability to meet the costs of the proposal were not disputed.

(d) The comparability of the corresponding positions in the Fire and Police Departments has been agreed to by the parties. The Panel found the evidence in support of a change insufficient to warrant change by us.

(e) Not applicable.

(f) While the proposal is for a modest increase in the overall compensation for this very responsible position, the Panel declines to grant it.

(g) None.

(h) Because the positions here involved entail the heaviest of responsibilities for running an effective department, the Panel was convinced that the appropriate compensation for them should be established by agreement of the parties.

Award:

The Union's proposal is denied. Because the City's last offer more nearly complies with the Section 9 factors, we order the maintenance of the status quo.

ISSUE NO. 26. - SENIOR FIRE CHIEF PAY - (ECONOMIC)

The Union proposes:

Amend Schedule I., Section B. to add as follows:

> "11. Effective July 1, 1986, the salary of a Senior Fire Chief shall be 88.64% of the salary of the Chief of the Fire Department."

The City's position:

> "The City believes that all Battalion Fire Chiefs should receive identical pay and that the current pay relationship to Police Inspector should be continued under the parties' parity agreement.
>
> The City's classification plan does not recognize a formal title of "Senior Battalion Fire Chief", with such a position having significantly identifiable skill requirements or duties apart from all other Battalion Fire Chiefs. Any informal recognition of that "unofficial title" does not merit any change in the changed wages established for that class.
>
> The determination of skill requirements and duties are the responsibility of management and are not concerned with wages, hours, terms or conditions of employment, thus it is not a mandatory subject of bargaining subject to Act 312 jurisdiction. Therefore, it is the position of the City that the Act 312 arbitrator lacks the legal authority to issue a binding award on this non-mandatory subject of bargaining and the City's negotiating position and last offer to the union is that the status quo be maintained."

This issue implicates many of the same considerations as Issue No. 25.

The Panel was not persuaded that the present method of compensation is so inequitable as to warrant our interference with it.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) There were no stipulations on this issue.

(c) The interest and welfare of the public in appropriate pay and the City's ability to meet the costs of the proposal were not disputed.

(d) The evidence on whether a "Senior" Fire Chief is 'first among equals' or bears significantly heavier responsibilities was conflicting. The Panel was not persuaded to enter the dispute. Accordingly, the comparability or difference in the compensation will not be ordered changed by us.

(e) Not applicable.

(f) The Panel was made well aware of the importance of the office and the heavy responsibility of those who occupy it. The overall compensation, even if the proposal were granted, impressed us as not excessive.

(g) None.

(h) As in Issue No. 25., the Panel was here persuaded that it had insufficient evidence of inappropriateness of compensation to warrant granting the proposal. Because of the importance of the office, we are convinced the parties should fix a rate of compensation that recognizes it. We were not convinced they did not.

Award:

The Union's proposal is denied. Because the City's last offer more nearly complies with the Section 9 factors, we deny the Union's proposal and order the maintenance of the status quo.

ISSUE NO. 27. - REDUCTION OF SENIORITY - (NON-ECONOMIC)

The City proposes:

Loss of Seniority for Any Suspension in Excess of Thirty (30) Calendar Days

The City of Detroit proposes that the current language in Article 9, Seniority, be amended as follows (changes are underlined):

"9. SENIORITY

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

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

"C. An employee shall forfeit his seniority, or have his seniority reduced, only for the following reasons:

1. he resigns or quits;

2. he is discharged or permanently removed from the payroll and such separation is not reversed through the grievance procedure or other legal action;

3. he does not return to work within five (5) calendar days after recall;

4. he does not return to work within three (3) calendar days after the expiration of a leave of absence; except a military leave of absence;

5. he retires on regular service retirement;

6. he is suspended for thirty (30) calendar days or more. In such event, the employee's seniority, for purposes of promotion only, shall be reduced by the length of the suspension.

Paragraphs 9D through 9E are to remain the same.
Paragraph 9F - See City's Non-Economic Proposal #2.
Paragraph 9G through K are to remain the same."

The Union's position:

> "The Union as its final offer opposes the change proposed by the City and proposes continuation of the status quo."

The City's only witness on this question was Administrative Assistant John King, who stated the reason why the City proposal was made:

> "A. There is one basic reason. We believe that an individual that is suspended for 30 days or more will only be suspended for the most grievious of charges, and we believe that he shouldn't accrue seniority for promotions while he is not actually working for the Fire Department, during that suspended time.
>
> We do not have a problem, in all other areas, such as lay-offs, such as has been bargained for by the Union, longevity, or any other thing. This strictly deals with promotions." Vol. XVIII, p. 123.

The Union opposes the proposal on several grounds:

1. It is unnecessary - the penalties are already adequate to redress the offenses for which they are prescribed;

2. This penalty is unduly severe because it has a career-long effect on an individual and is in some respects like a permanent demotion;

3. The proposal impinges upon the seniority controversy decided by the Chiesa panel, now on appeal, and should be abated pursuant to our Order in limine.

The Panel does not regard the proposal as affecting the seniority system or the matters under consideration in the Chiesa arbitration. Likewise, we are convinced that the penalty of

dismissal when available as punishment subsumes the penalty proposed so that the proposal may not properly be deemed unduly severe.

The Union's argument that no compelling need for its adoption has been shown, and that it is unnecessary because the available penalties are adequate was most difficult to resolve.

We were satisfied that the proposal was unclear as presented but as a result of Mr. King's explanation that it was intended to affect only "any individual who was charged on a first offense, with a violation that carried a dismissal on the first offense" Vol. XVIII, p. 150, we limited our consideration to that circumstance.

We are convinced that the availability of the greater penalty of dismissal makes available all lesser penalties including that proposed.

The propriety of any penalty imposed on an individual is subject to test in the established grievance procedure and one imposed may be reduced on a proper showing.

We are persuaded that the proposal only makes clear that which has been implicit all along.

As modified we grant the proposal.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The proposal makes explicit the circumstances of one available penalty.

Award:

We modify the City's proposal, and so amended grant it and order that effective thirty (30) days from the date of this award, Article 9, Section C, shall read:

> "C. An employee shall forfeit his seniority, or have his seniority reduced, only for the following reasons:
>
> 1. he resigns or quits;
>
> 2. he is discharged or permanently removed from the payroll and such separation is not reversed through the grievance procedure or other legal action;
>
> 3. he does not return to work within five (5) calendar days after recall;
>
> 4. he does not return to work within three (3) calendar days after the expiration of a leave of absence; except a military leave of absence;
>
> 5. he retires on regular service retirement;
>
> 6. he is suspended for thirty (30) calendar days or more for a single incident which carries a possible first offense penalty up to dismissal. In such event, the employee's seniority, for purposes of promotion only, shall be reduced by the length of the suspension."

ISSUE NO. 28. - UNIFICATION OF FIRE MARSHAL SECTIONS - (NON-ECONOMIC)

The City proposes:

To amend Article 9, Section F to read as follows:

"TRANSFER FROM FIRE FIGHTING DIVISION AND PROMOTION OR RECLASSIFICATION IN OTHER DIVISION OF THE DEPARTMENT.

"1. Members may apply for transfer to the Fire Marshal Division under procedures to be outlined in a Fire Department Bulletin.

"All applications, within the time periods set forth on the bulletins as currently issued from time to time, must be in writing.

"2. As openings occur in the Fire Marshal Division, the member who is senior on the list shall be transferred to the Fire Marshal Division at which time he then commences to serve a six (6) months probationary period. Upon request of the Fire Marshal, the probation period may be extended once for a period not to exceed the original probation.

"4. At the conclusion of the probationary period, upon recommendation of the Fire Marshal, the member is either promoted or is rejected for said promotion and returned to the Fire Fighting Division or other division without loss of seniority.

"5. During the member's probationary period in the Fire Marshal Division, his/her seniority in the Fire Fighting Division continues to accrue toward his next promotion in that division. Seniority ceases to accrue in Fire Fighting and commence for higher promotion in the Fire Marshal Division at the effective date of change of classification or promotion in that division.

"6. Members, once transferred and reclassified in the Fire Marshal Division, may apply for transfer to other section within the Fire Marshal Division by initiating a request in writing to the Fire Marshal. The Fire Marshal then reviews the qualifications of each applicable and makes his recommendation to the Fire Commissioner for the transfer.

"Transfer into the Plan Examination Section requires certain college credits in this regard and must be certified by the Personnel Department. Any member of the Fire Marshal Division may apply for this position if he/she has the required qualifications.

7. The Fire Marshal Division is subdivided into the following Section with the classification of positions listed for each Section as follows:

Fire Marshal
Assistant Fire Marshal

FIRE PREVENTION SECTION
Senior Fire Prevention Inspector
Fire Prevention Inspector

ARSON INVESTIGATION SECTION
Fire Investigator Chief
Fire Investigator Captain
Fire Investigator Lieutenant

PUBLIC RELATIONS SECTION
Senior Fire Prevention Instructor
Fire Prevention Instructor

PLAN EXAMINATION SECTION
Supervisor of Fire Protection Engineering

Senior Assistant Architectural Engineer - Plan Examiner - Fire Protection"

The Union asks that the status quo be maintained.

Testimony in favor of the City's proposal came from Fire Marshall Robinson. While he favored the proposal as providing a broader base for selection of transfers into the Arson Section, he testified that it could result in the selection of an applicant with less seniority over one with greater seniority on the list presently maintained.

The Union's objection to the proposal is essentially that it upsets the seniority concept that has governed transfers heretofor, permits favoritism, and generally adversely affects the morale of those who have qualified for consideration under the present rules.

The Panel was not convinced that the present system is so deficient as to warrant the change proposed.

Section 9 factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not directly implicated.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) No sufficient need for change having been demonstrated, the usual rule for maintenance of status quo applies.

Award:

We deny the City's proposal and order the maintenance of the status quo.

ISSUE NO. 29 - WORK RELIEFS - (NON-ECONOMIC)

The City proposes:

The City of Detroit proposes that current language in Article 18, Work Reliefs, be amended as follows (changes are underlined):

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

> "A. Employees are responsible for working their assigned and scheduled hours.
>
> B. "Buddy Reliefs" in the morning will continue as in the past.
>
> C. Employees may send substitutes to work an assigned and schedule tour of duty for them, provided the substitution is acceptable to the Fire Department and the substitution is made in accordance with departmental rules regarding work reliefs. Work reliefs can be accomplished in only two ways: straight exchange or payment by transfer of CT.

D. Upon the approval of a properly signed request for a 12 or 24-hour relief, the relieving member shall be governed by, and afforded the protection of the General Rules and Policy Directives of the Department, as though working his own scheduled tour of duty. Should sickness, or other valid and substantiated reason prevent the relieving member from assuming an approved relief tour, the member being relieved will not be affected. Upon the relieving member's return to duty he shall work his first scheduled XL to complete the exchange.

E. The Detroit Fire Department will keep records of all work relief exchanges. Records of work relief exchanges will be kept within the appropriate battalion(s), and the battalion chief(s) will be responsible for the operation of the work relief program. The commanding officer will be responsible for posting accurate records, which will be audited quarterly.

F. Employees shall not participate in more than ninety-six (96) hours of CT transfers per quarter."

G. Delete.

H. Delete.

The Union's position:

"The Union as its final offer opposes the change proposed by the City and proposes continuation of the status quo."

The thrust of the City's case is that the present method of handling work reliefs is subject to abuse and has in fact been abused in some instances.

The Union maintains that the proposed changes have not been the subject of negotiation and no case for the proposal has been made out.

The Panel is convinced that the evidence of abuse warrants some but not all of the changes proposed. Accordingly we have

amended the proposal and as amended granted it. The Policy Directive proposed by the City is not adopted but left to the resolution of the parties.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The Panel was convinced that the payment in cash for a work relief was an unacceptable practice. In order to comply with the Fair Labor Standards Act, the Department should keep records of work reliefs.

Award:

The City proposal is modified and as modified is granted. We order effective thirty (30) days from the date of this award that Article 18, Work Reliefs, shall be amended to read:

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

A. Employees are responsible for working their assigned and scheduled hours.

B. "Buddy Reliefs" in the morning will continue as in the past.

C. Employees may send substitutes to work an assigned and scheduled tour of duty for them, provided the substitute is acceptable to the Fire Department. Work reliefs can be accomplished

in only two ways: straight exchange or payment by transfer of CT. Although a written record will be made of the substitute's presence on the job, the employee originally scheduled will be paid for the tour of duty.

D. If an employee is absent and his substitute fails to show up for any reason or the substitute is unacceptable to the Fire Department for any reason, the scheduled employee shall be considered AWOL.

E. The Fire Department will keep records of all work relief exchanges and will not approve or disapprove such exchanges (except as to acceptability per paragraph F below) and will not be a party involved in any such exchanges. Records of work relief exchanges will be kept within the appropriate battalion(s) and the Battalion Chiefs will be responsible for posting accurate records which will be audited quarterly.

F. When a substitute presents himself at the beginning of a tour of duty, the Detroit Fire Department will accept him or reject him as fit for duty and qualified to perform the job involved. If a substitute is rejected, the employee scheduled to work the tour of duty remains responsible for doing so. The Fire Commissioner will post, within a reasonable time after the effective date of this Agreement, guidelines regarding grounds for acceptability and non-acceptability of potential substitutes. An employee may request, in advance, a ruling as to whether a particular employee is an acceptable substitute for him, subject to his fitness for duty at the time of the substitution.

G. Once accepted a substitute will be treated as on-duty.

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

I. All fire fighters are required to actually work a minimum of sixty-five (65) duty tours per year (exclusive of disability or illness).

ISSUE NO. 30. - TWELVE (12) HOUR WORK DAY - (NON-ECONOMIC)

The City proposes:

> "During the course of this contract period, the City shall, consistent with its powers, authority, and obligations to improve departmental operations, have the option to implement a twelve (12) hour work schedule which shall replace the 24-hour work schedule of employees affected."

The Union position:

> The Union as its final offer opposes the change proposed by the City whatever its specifics and proposes continuation of the status quo as to the shift system, a twenty-four (24) hour shift, for the Fire Fighting Division."

This proposal was advanced by the City to be considered only in the event that we granted the Union's proposal to reduce the work week to 48 hours. Because we granted that proposal, we consider this request.

The City's case is premised on its assertion that its management prerogatives allow it to fix the work schedule without bargaining over it with the Union. We are of the opinion that the City is obliged to bargain work schedules under PERA, and also that this Panel is without power to absolve the City of that duty.

In any event, we are convinced that on this record, the case for the proposal is not made out. No compelling reason was advanced to change the 24-hour schedule which has been in effect for many years.

Section 9 Factors:

(a) It is not disputed that the proposal is within the lawful authority of the employer.

(b) No stipulation.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) None.

(h) The proposal seeks authority for the City to unilaterally set a 12-hour rather than a 24-hour work schedule. All of the evidence established that this could be accomplished only by a split shift arrangement of some sort. The Panel is convinced this could not and should not be done unilaterally.

Award:

We deny the City's proposal and order the maintenance of the status quo.

Thomas Giles Kavanagh
THOMAS GILES KAVANAGH, Chairman

Dennis C. Rasch
DENNIS RASCH, City Delegate
Concurring as to issues 1, 7, 8, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 23, 25, 26, 27, 29; and dissenting as to the remaining issues as set forth in the attached dissent.

Mark Brewer
MARK BREWER, Union Delegate
Concurring in Characterization of Issues; Jurisdiction; the Order Implementing the Stipulations of the Parties; and the decisions as to issues 2, 3, 4, 5, 6, 9, 13, 14, 21, 24, 28, 30; and dissenting as to the remaining issues.

CONCURRING AND DISSENTING OPINION OF DELEGATE MARK BREWER

I concur in the decisions of the Panel as to the Characterization of Issues; Jurisdiction; the orders implementing the stipulations of the parties; and as to Issues 2,3, 4, 5, 6, 9, 13, 14, 21, 24, 28 and 30. I respectfully dissent from the decisions as to Issues 1, 7, 8, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 23, 25, 26, 27 and 29. I write separately to particularly note my dissent from the Panel's decision on Issue 1, Residency, but do not thereby imply concurrence in the other awards from which I dissent, but have not chosen to highlight as I do with residency.

RESIDENCY

As demonstrated by the Union, there is perhaps no condition of employment affecting Detroit fire fighters which is more onerous, unfair and intrusive into the private, off-duty lives of members and their families than the current requirement that fire fighters maintain their residence within the corporate limits of Detroit. The continuation of that requirement is a manifest insult to concepts of personal liberty, runs counter to applicable trends including arbitration decisions in Act 312 cases, fails to stand up under comparability analysis, and is indefensible based on any functional need of the Department. For all of these reasons, including significant worsening in the crime situation and manifest continued deterioration of home values in Detroit since the award of the Kiefer Panel, the Panel is remiss in not modifying the

present restriction to permit fire fighters to live outside the City boundaries, yet within Wayne County.

The Panel acknowledges in its opinion that

> The evidence of crime, deterioration of neighborhoods, depression of home values, the intrusion on personal liberty and freedom of choice on personal matters such as choice of schools, etc., was substantial."

Moreover the Panel recognizes that the residency requirement adversely affects employee morale. Nonetheless, the Panel denies the Union's proposal and imposes on the Union the burden of proving that the effect on morale "limits the efficiency of the Department." Such a burden is not required by the Act and is unfair to the dedicated fire fighters of Detroit who have never permitted any adverse condition of employment, no matter how onerous or unfair, to affect their professionalism or dedication to the protection of lives and property in this City.

As the Chairman of this Panel observed at the hearing, the Kiefer Panel had more than enough evidence to eliminate the residency clause. The weight of that evidence has since substantially increased, can no longer be ignored, and compels adoption of the Union's proposal.

I respectfully dissent from the Panel's decision maintaining the Detroit residency requirement.

CONCLUSION

For the foregoing reasons, I concur in and respectfully dissent from the Panel's decisions as indicated.

Mark Brewer

MARK BREWER

Dated: September 28, 1987

CITY PANELIST'S DISSENT

As the City's Panel Delegate, I fully recognize the difficulty which faced the Panel Chairman in dealing with ultimately thirty (30) issues, (26 by the Union and 4 by the City), which were submitted to him during the course of the proceedings. However, much of this difficulty was created by the Panel's unwillingness to declare certain issues to be non-mandatory subjects of bargaining. The City has expressed its opposition to an award on those issues during the course of the proceedings and in its last offers. In light of such, I must dissent on those issues on the basis that such awards on those issues CANNOT be binding on the parties and on those decisions reached by the Panel which do not comply with the statutory mandates of Act 312.

With respect to the jurisdiction matter, the majority of the Panel believes that the issues were properly before the Panel and that its decisions are to have a binding effect upon the parties because there was an "election not to submit the arbitrability of any issue" to the Michigan Employment Relations Commission prior to proceeding with the hearing. The majority of the Panel also acknowledged the Union's argument that the City may be estopped from objecting because it willingly bargained over the issues.

I respectfully disagree with the Panel majority's position on the "arbitrability" and "binding" effect of awards on issues that may have been negotiated during pre-Act 312 bargaining by the parties. Furthermore, I submit that the Panel's ruling and the Union's position begs the question. For, no amount of prior willingness to bargain over them and no academic debate about when the issue of arbitrability could have been raised can convert a non-mandatory

subject of bargaining into a mandatory one, and that IS the question which faced the Panel.

Unlike the breadth of issues which the parties are free to engage in during collective bargaining, the jurisdiction of an Act 312 Arbitration Panel is limited to mandatory subjects of bargaining, and mandatory subjects of bargaining are issues concerning wages, hours, terms, and other conditions of employment. The question of whether an issue can be subsumed into one of those categories is determined only by examining its intended effect on the parties' relationship, i.e., will it bear on the level of wages, the number of hours, etc. To hold that the manner in which a party conducts its bargaining activities could in any way alter the intended effect of those issues is not only logically unsound, but, I believe that it is without precedent in the law of Michigan, specifically, and labor law generally. The case-by-case, jurisdiction-by-jurisdiction determinations of what subjects are mandatorily bargainable is the body of law that is applicable to all other bargaining jurisdictions in the State. Could it be then that such important state-wide matters in labor relations are determined by the peculiar negotiation table policies or strategies exercised by a particular union or employer? I think not.

Indeed, MERC and the courts have made it clear that the willingness and the frequency with which parties bargain over a non-mandatory subject will not convert that subject into a mandatory one. I further believe that, even if an award is issued and later it is determined that a particular issue was not a mandatory subject of bargaining, the award would have no binding effect and could not be enforced against the objecting party.

In addition to the foregoing arguments, I wish to dissent on issues #2, 3, 4, 5, 6, 9, 13, 14, 21, 24, 28 and 30 with respect to the Panel majority's non-compliance with Section 9 criteria of Act 312. Of these, I have elected to submit comments on five issues while reserving comments on others.

Reduction in Hours (Issue #2)

12-Hour Schedule (Issue #30)

"Its time has come!" This is the reason set forth by the Union's President in explaining why Detroit firefighters should have a shortened work week. The fact that the average firefighter spends less than two out of 50.4 hours a week productively fighting fires is not of concern. The fact that the City presented evidence that this unwarranted request will cost $2.6 million dollars initially and $4.5 million dollars each succeeding year to make up for the 4.76% loss in fire service hours was thought to be unimportant. The fact that the last two Act 312 Arbitration Panels awarded additional furlough days to reduce the number of hours that a firefighter has to work was also of no significance to this Panel's majority.

The last three Act 312 Arbitrator Panels had responsibly recognized the substantial cost of reducing hours and that firefighters had been granted wages and economic benefits greater than most general City employees. Under this award, firefighters will continue to outstrip them with a $21.6 million dollar increase in their wage and benefits package in addition to the reduced work week award.

As argument, the Panel cites the recent amendment to the Fair Labor Standards Act as an example of the nationwide trend to

lower firefighter hours, but even this Act recognizes that a 53 hour work week is not unreasonable for firefighters. The Panel, while citing examples of other large city fire departments who have reduced their work week, completely ignored the fact that only municipalities in the State of Michigan are saddled with an antiquated "Firemen Hour of Labor Statute" which effectively prevents any reasonable scheduling to offset the cost of this award. Further, by denying the City's request to have some flexibility in scheduling, the Panel eliminated any opportunity for the City to reduce the economic impact of this award.

Under the Act, the Panel was required to rule on whether or not a particular issue was economic or non-economic. There is no question that firefighters will have more excused time off as a result of this award. Act 312 requires that such benefits are to be considered part of "overall compensation" [See Section 423.329 Section D - Paragraph (f)]. To request and receive pay and benefit parity with the Police on the one hand, while on the other hand requesting a 4.76% reduction in productive service hours, or in other words, a 4.76% increase in excused time off benefits, when the police did not get the same, amounts to an obvious contradiction and, consequently, they will receive an undeniable additional economic benefit of exceptional worth. Since, the firefighters' overall compensation is increased by the award, I believe that the reduction in hours should have been determined to be an economic issue.

Once again in this proceeding, as in previous proceedings, there was no showing that the interest and welfare of the public,

i.e., the taxpayers, will be served. In fact, the reordering of priorities as a result of this award can only lead to a disservice to the citizens and the representatives they elect. In summary, the record is woefully void of an evidentiary record which can adequately support the award.

Four - Ten Hour Days - Fire Marshal Division (Issue #9)

With the possible exception of safety considerations, the establishment of a work schedule is traditionally reserved to management. This intrusive proposal was not premised on safety but was advanced merely to cater to employee preference and without any regard to the nature of the work involved. Since there is no issue of safety involved here, the Panel dealt with a non-mandatory subject of bargaining; a subject which is clearly outside its jurisdiction. The award of this non-mandatory subject should not have been awarded and cannot be binding upon the parties.

Relaxation of the Dress Code (Issue #13)

In those instances where employers provide uniforms at no cost to the employee, it is generally respected and acknowledged that the employer determines rules and regulations regarding its wear. The Panel's decision to allow for the non-wearing of the uniform is another equally unwarranted intrusion into the decision-making function of the Fire Department. In this instance, the record indicated the Fire Department had acted promptly and favorably when properly confronted with the issue of wearing sweat shirts at the station house. As to the wearing of T-shirts, the Union was unable

to dispute the Fire Department's concerns nor prove that the Union's request had not been given due consideration.

Although the Union argues in its brief that uniforms are a proper subject for bargaining, the case cited deals only with the question of discontinuing a benefit and not with the management decision of proper attire. Here again the Panel is dealing with a non-mandatory subject of bargaining which is beyond its jurisdiction. The award of a non-mandatory demand cannot be binding upon the parties.

Expansion of the Temporary Assignment Provisions (Issue #22)

Most large organizations, including both military and non-military, do not provide additional compensation to management and supervisory employees during the temporary absences of their superiors. In the Detroit Police Department, Lieutenants and Sergeants, with whom firefighters claim to have a pay parity relationship, recognize this condition of employment and have a provision which provides additional compensation only after thirty (30) days. To expand this notion that supervisors and administrators are entitled to additional compensation after a brief absence of twelve (12) hours is without merit, and unwarranted, and not supported by the record.

Conclusion

In summary, I believe that the lack of any real incentive to reach a voluntary agreement has again allowed Act 312 to be invoked, thereby successfully avoiding the necessity of having to engage in true collective bargaining. This belief is based on the

number and the nature of the issues presented by the Union during this proceeding. The experiment of the Michigan Legislature with compulsory arbitration continues but only at great expense to the public and the parties who are required to participate in the process. What is even more disturbing is the fact that the Act seemingly allows non-elected officials the opportunity to ignore and subvert the will of the people by ruling on issues of a highly sensitive, political nature. As long as the process permits this happening, serious labor relation difficulties will exist between the parties.

Nothing in this dissent should be construed as an expression of displeasure with the manner in which the proceedings were conducted and how the award was issued. I wish to thank the Panel Chairman and fellow Panel Delegate for extending to me the opportunity of filing this dissent.

Dennis C. Rasch

DENNIS C. RASCH
Panel Delegate for
City of Detroit

Dissenting on issues #2, 3, 4, 5, 6, 9, 13, 14, 21, 24, 28 and 30.

Concurring on issues #1, 7, 8, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 23, 25, 26, 27 and 29.