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**STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
EMPLOYMENT RELATIONS COMMISSION**

**In the Matter of the Act 312 Arbitration between:**

**CITY OF GRAND RAPIDS (MICHIGAN)**

**Employer**

**-and-**

**Opinion and Award  
Of The Panel  
In No. L97 C-6014  
October 26, 1999**

**LOCAL 366 OF THE INTERNATIONAL  
ASSOCIATION OF FIRE FIGHTERS  
a/k/a the GRAND RAPIDS FIRE FIGHTERS  
ASSOCIATION (AFL-CIO)**

**Union**

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**APPEARANCES:**

**Chair and Neutral Panel Delegate:**

**Donald F. Sugerman**

**Employer Advocate and Panel Delegate:**

**John Patrick White, Esq. of Varnum, Riddering, Schmidt & Howlett, L.L.P.,  
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**Union Advocate and Panel Delegate:**

**Randall D. Fielstra, Esq. of Randall D. Fielstra, P.C., Muskegon, Michigan**

## O P I N I O N<sup>1</sup>

### Introduction

As might be expected, the parties were separated by numerous issues in the early stages of negotiations. By the time of the hearing, this number had been reduced to four economic and four non-economic issues. The Chair acknowledges, with thanks, the conscientious effort of the parties to pare down the issues separating them and their resolution of the important issue of Employee Health Insurance (discussed below because of its asserted impact on overall costs). The remaining issues are:

1. Duration of the Agreement.

Union

2. Wages.
3. Retiree Health Insurance (Medicare Supplement).
4. Pension—Increase in multiplier, post retirement escalator, 13<sup>th</sup> check.
5. Pay for unused sick leave.

City

6. Limited Duty Activities.
7. Drug testing of Equipment Operators.
8. Physical Performance Testing.

The parties stipulated that wages, retiree health, pension items, and sick leave incentive are economic issues. The issues concerning limited duty activities, drug testing and physical performance testing are non-economic items. The issue regarding the duration of the agreement was raised, for the first time, by the Union, at the pre-hearing conference. This issue was not mentioned in the Act 312 Petition or in the negotiating sessions between the parties. Each issue will be discussed in detail below.

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<sup>1</sup>The Chair has authored this document and is solely responsible for its contents.

In addition to the voluminous exhibits and testimony presented at the hearing, just prior to the filing of post-hearing briefs, the parties reached agreement to add the following exhibits to the hearing record: 1) The recently ratified contract between the City and Police Officers Labor Council ("POLC"), covering sergeants and police officers—a so-called internal comparable; 2) The recently ratified contract between the City and the Grand Rapids Employees Independent Union ("GREIU") covering most non-uniformed City employees—another internal comparable); 3) The recently ratified contract between the City of Muskegon and IAFF Local 370 covering firefighters, one of seven external cities stipulated to by the parties as comparable to Grand Rapids), and 4) Changes to the City's Management Compensation Handbook.<sup>2</sup>

### Background

For many years, the **City of Grand Rapids** ("Employer" or "City") has recognized **Local 366 of the International Association of Fire Fighters** ("Union" or "IAFF") as the exclusive representative of its full-time fire service employees below the rank of Fire Chief. There are about 245 unit employees who make up the fire suppression and prevention service.<sup>3</sup> As for other City employees, the police officers and sergeants represented by the POLC number about 350 and Grand Rapids Employees Independent Union ("GREIU") represents about 680 personnel. Together, these employees provide the usual and customary services to the City's residents, businesses and others.

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<sup>2</sup>These are received pursuant to the statutory criteria Sec. 9(g).

<sup>3</sup>The fire suppression classifications are as follows: Chief, Deputy Chief, Battalion Chief, Training Chief, Captain, Lieutenant, Equipment Operator, Dispatcher and Inspector.

In addition to the fire suppression and prevention duties required of the City's fire fighters, they are also responsible for certain emergency response activities and have received subject specific training relating to first responder medical runs, hazardous materials responses and confined space, river and aircraft emergency rescues. The fire fighters are required by law to hold first responder certificates, which enable them to provide the necessary medical, CPR and first aid to rescue victims. Moreover, the law requires these employees to have training and certification to operate automatic defibrillator equipment (also used in their first responder runs). Unlike all of the other comparable communities, the City's fire fighters do not receive additional stipends, bonuses, or other compensation for this specialized part of their work.<sup>4</sup>

These fire fighters work a 50.4 hour workweek, on a 24 hour shift per day and 28 days per month on a platoon system. On average assessed property values, Grand Rapids at \$58,300 ranks second to Ann Arbor at \$116,400. It has the highest number of fire fighters among the comparable communities, only twelve more than Lansing at 234, but 150 over Ann Arbor (96) and 209 over the smallest of the units, Muskegon with 37. As for population per fire fighter, Ann Arbor again ranks number one, while Grand Rapids is ranked fourth behind Muskegon and Saginaw.<sup>5</sup>

A summary of the fire fighter wages among the comparable communities shows that the City was ranked second behind Ann Arbor as of 1996. The average per capita income

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<sup>4</sup>Each of the other comparable communities provide wage enhancements in the form of emergency medical certification pay ranging from \$250 (Battle Creek) to \$3,160 (Pontiac) for employee with such certifications.

<sup>5</sup>Among the comparable communities, Grand Rapids has the greatest overall population. It is the second largest city in Michigan.

for Grand Rapids puts it fourth behind Ann Arbor, Battle Creek and Lansing, respectively. Like most of the comparable communities, fire fighters in Grand Rapids receive many other benefits. These include: Longevity pay, pensions (with other post-retirement benefits), health insurance (for current and retired employees), etc. According to the evidence at the hearing, as of June 30, 1997, the fire service accounted for 18.2 percent of the City's budget. Any additional background facts will be set forth in the specific discussion of each issue.

#### Criteria for Determination

Section 9 of Public Act 312 of 1969 sets forth the factors upon which this Panel is required (and has in fact) based its decision. They are:

- (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 wages, hours and conditions of employment of the employees involved in the arbitration proceedings 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.

### The Last Offer Of Settlement

1. **Duration or Term of the Agreement (non-economic):** The Union's last offer was for a four year contract from July 1, 1997, through June 30, 2001. The City's last offer was for a three year contract; July 1, 1997 through June 30, 2000. (The City's also provided for a fourth year in the event the Union's position was adopted).
2. **Wages (economic):** The Union's last offer for each of the four years (based upon a four year agreement) is 3.0 percent, 3.25 percent, 3.25 percent and 3.0 percent. The City's last offer (based upon a four year agreement) is 3.0 percent for each of the years of the agreement.
3. **Retiree Health Insurance - Medicare Supplement (economic):** The Union proposes to increase the City's contribution to the Fund from 0.5% of payroll to 0.75%. The City proposes to increase the contribution to 0.7%. The Fund is used by the Trustees to assist retired fire fighters by paying for their health care coverage once they reach age 65, leave City coverage, and are required to go on Medicare. Payments for health care coverage for about 25/26 retirees amounts to around \$28,500.00 annually. This pays for about 75% of the costs for such insurance.
4. **Pensions (economic):**
  - a) **Pension Multiplier:** The Union's last offer proposes that, effective July 1, 1997, an increase from 2.5 percent to 2.6 percent including changes to the formulas (determined by hire dates). The City's last offer proposes that no change or increase be made to the contract language.
  - b) **Post Retirement Escalator:** The Union's last offer proposes that Article 52, Section 2, subsection "K" be added to the agreement containing a 2 percent post retirement escalator provision. The City's last offer proposes that no change or increase be made to the contract language to add any post retirement escalator.
  - c) **13<sup>th</sup> Check:** The Union's last offer proposes that, effective July 1, 1999, an increase from 50 percent to 75 percent of net investment income over 8 percent. The City's last offer likewise proposes an increase, but only to 60 percent of net investment income over 8 percent.

5. **Pay for Unused Sick Leave (economic):** The Union's last offer proposes that effective July 1, 1999, after 10 years of service, for employees who work 40 hour week and retire, they be paid 50 percent of the daily wage at the time of retirement x the number of unused accumulated sick days up to a maximum of 180 days or 25 percent for employees who resign; that employees who work a 24 hour week, be paid 50 percent of the daily wage at the time of retirement x the number of unused accumulated sick days up to a maximum of 90 days or 25 percent for employees who resign. The City's last offer proposes that no change be made to the present contract provision.
6. **Limited Duty Activities (non-economic):** The City's last offer proposes (effective the date of the Award), a change to the limited duty time providing that an exception be made for two training exercises (per year) to take place during such limited duty time. The Union's last offer proposes that no change be made to the present language contained in the agreement.
7. **Drug Testing of Equipment Operators (non-economic):** The City's last offer proposes (effective the date of the Award) to add additional language to the current drug testing provision providing for post accident testing for all fire equipment operators specifically pursuant to D.O.T. regulations. The Union's last offer proposes that no change be made to the agreement to add such language.
8. **Physical Performance Testing (non-economic):** The City's last offer proposes to add language to the current agreement, effective July 1, 1999, requiring annual physical performance evaluations (testing for fitness for duty using the physical agility and fitness test first administered to department recruits) of its current employees with specific penalties if such employees are not able to successfully complete such tests. The Union's last offer proposes that no modification be made to the agreement.

### Comparability

Pursuant to Section 9(b) and (d), the parties stipulated, that for the purpose of this proceeding, the cities of Ann Arbor, Battle Creek, Flint, Lansing, Muskegon, Pontiac, and Saginaw are comparable to Grand Rapids.

### Internal Comparables and Other Factors

Section 9 sets forth various factors that may be used when making a determination of

the issues. Internally, the City bargains with other unions (POLC,<sup>6</sup> GREIU) that have recently settled their contracts. The Panel agreed that this information, in addition to the various external comparable communities, should be considered when making a determination on the issues.<sup>7</sup> Furthermore, the statute sets forth various other factors that may be considered by this Panel when making a determination.

### Discussion

It has often been said that the function of an Act 312 Panel is to resolve the impasse issues as the parties would/should have done had their negotiations been successful. In discharging this obligation, the Panel measures the LOS against criteria of Section 9. It then selects the LOS that satisfies, what it considers to be, the most appropriate factor(s). There is, of course, considerable latitude. The statute leaves to the judgement of the Panel, the weight to be given the specified criteria. In attempting to fulfill this obligation, it is important to focus on the cost and effect of each economic item. In addition, it is necessary to consider the total cost of the entire economic package. Thus, the first issue to be decided in the instant case is whether to consider as part of overall costs, an increase to the fire fighter payroll for the recently negotiated Unified Health Care Plan ("unified plan" or "plan").

Spiraling health care costs have been a major bone of contention between labor and management throughout the country. This has prompted employers to seek a variety of

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<sup>6</sup>POLC represents a unit of sergeants and patrol officers and a unit of emergency communications officers.

<sup>7</sup>While agreeing to the consideration of the contracts, the Union vigorously objects to there use for the proposition that any settlement be limited to 9.9%; the amount of the total economic settlements which were folded into wages only.



methods whereby they might contain costs or even reduce them. Some of the more popular proposals are: Changing the means of delivery (from traditional insurance to an HMO or PPO), reducing benefits, adding or increasing co-payments, capping added costs, etc.

In the last round of negotiations, the City, too, sought to have its employees share in the rising cost of health insurance premiums. While the unions bargain separately with the City each was resistant to such proposals. Some attempt at "joint" or "coalition" bargaining on health care was made. In this format, one of the ideas discussed involved replacing the various plans set forth in each of the contracts with a single unified plan covering all represented employees (and, presumably, other employees of the City as well). Some progress had been made along these lines, but an agreement was elusive.

Finally, after substantial investigation and consideration, the City informed the unions that it would consider a unified, single formula, plan if the composite premium rate did not exceed \$417.17 per employee per month. It appears that this was the amount the City had budgeted for this item. Blue Cross/Shield of Michigan, the Third Party Administrator ("TPA") of one of the then existing plans, was able to design a plan that met the needs of all concerned. This plan was endorsed by the unions and accepted by the City. The new plan is said to be a combination of traditional insurance and HMO style benefits.<sup>8</sup> It has no employee deductibles, nominal co-payments and no premium sharing by employees. None of the unions were asked to reduce benefits. Instead, benefits were established at the highest level. Exactly how this was accomplished is not disclosed in the record. What is known is

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<sup>8</sup>The plan is actually self insured by the City and administered by Blue Cross, the same arrangement as previously, but with different benefits.

that fire fighters benefits increased under the unified plan.

The City contends that effective January 1, 1998, its cost to provide this unified plan to fire fighters was substantially increased. To determine this cost, the TPA totaled the annual "premium" for the three different types of coverage under the old plan (broken down by active and retired employees producing six different premiums, using the actual number of employees in each category) and compared the resulting number of \$1,630, 756 to the single premium cost for active and retired fire fighters of \$1,701,972; a difference of \$71,215.00. According to the City this represents 0.6% of the fire fighter payroll that it says must be taken into account in deciding the economic issues in this case.

For its part, the Union claims it was never advised during negotiations that 0.6%, or, for that matter, any other amount was going to be considered in conjunction with a settlement of the economic issues facing the parties. Therefore, it should not now be considered part of the total economic settlement. In addition, the Union points out that the new premium amount is \$5.13 less per month, per active fire service employee than the last premiums the City was already paying Blue Cross for coverage.<sup>9</sup> The Union claims that mathematically the City's position "makes no sense."

Countering, the City contends that it is unreasonable and unrealistic for the Union to argue against considering this cost given that health care upgrades have always been a relevant cost factor when calculating economic packages. According to the testimony, the

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<sup>9</sup>It is true that under the former plan the cost of the premium for traditional insurance was \$5.13 higher than under the new plan, but it applied only to 44 employees. All of the other premiums were below the new rate. This difference would not change the computation.

topic of costs to the City for the health insurance upgrade was never discussed by the parties. While the Union was aware that the plan did not involve additional cost to its members, it was never told that the improvement costs were to be a factor in the settlement of its contract until just a few days before the hearing in this case was to scheduled begin.

As noted, the City advised the unions it would agree to a unified plan if the composite cost met the amounts it had budgeted. There is no information here on how (or even whether) the costs were allocated to the employees of each of the separate unions. This would seemingly depend on the number of employees (and dependants) in each of the former plans and possibly the overall "experience" of the group. It appears that at least some of the benefits for police and general employees were also improved. In this regard the Union's President and the Human Resources Director testified that the fire fighters received the **most** improvements to their coverages, inferring that others received some improvements as well.

Presumably the City found a unified single formula plan to be an advantage over the existing system. Once this plan was agreed to, the constituent labor organizations lost their separate identity. They became, in essence, one group, subject to the same benefits, administrative costs, premium costs, and overall experience. In addition, there is no evidence on whether the City took into account in its negotiations with POLC and GREIU any increases or decreases attributable to the cost of the unified plan for employees in those units. Indeed, it is the purpose of a unified plan to treat everyone alike. Gains for one group might be offset by reductions for another.

For these reasons, I conclude it is inappropriate to attribute the 0.6% charge to the overall economic costs of the settlement in the instant case.

### **Issue No. 1 - Duration of the Agreement**

The Union proposes a four year agreement through June 30, 2001, while the City does not want to change the historically negotiated three-year contracts which would expire on June 30, 2000. Both parties make persuasive arguments for their respective positions. The Union maintains that a four-year agreement would be more beneficial for the parties because the current agreement will expire soon after this Act 312 Arbitration is concluded. Given that, it argues, a four-year agreement would give the parties "breathing space" before having to begin negotiations on the next contract. Moreover, as the City recently negotiated contracts with the POLC and GREIU for four-year terms, it would be in the best interests of the parties to have a four-year agreement with the IAFF, as well.

Relying on its historically negotiated three-year agreements with this unit as well as previous three-year agreements with the police and independent union the City argues against a change. More than that, however, the City asserts that because the Union did not present this issue in its Act 312 Petition—filed more than one year ago or at the pre-hearing stage of this proceeding—it is now procedurally precluded from offering it as an issue for determination.

Further, the City argues that the statutory scheme requires that only issues that have been fully bargained may be presented for Act 312 Arbitration. As this issue was never presented for bargaining, it is not preserved as an issue at impasse for this proceeding. The

City also points out that if the Chair were to admit this new issue at the hearing stage, it would undercut the entire bargaining process. As this was not a major concern for the Union at the outset, the City maintains that it should not be considered now, certainly not at this stage in the arbitration process.

Historically, the parties have negotiated three-year agreements. There was no evidence that agreements for three-years posed any problems or hardship with respect to bargaining and/or implementation, especially when they had to present issues for Act 312 Arbitration. Moreover there was no evidence that it was more or less beneficial given the City's other units, as the Union now claims.

An equitable argument can be made for either position. A four-year agreement has the benefit of stabilizing labor-management relations for a longer period. From the City's perspective, it may not be advantageous to have all contracts expire at or near the same time. Putting the three unions on the same bargaining track, is not in and of itself a compelling reason to extend this agreement to four years. Similarly, some "breathing room" between contracts is not a governing factor that this Panel should consider in deciding the issue.

Rather, it must look specifically to the statute and to the idea of preserving the integrity of the bargaining process in arriving at a decision. That favors the City's position. Significantly, in my letter to the parties on June 11, 1998, confirming the agreements and understandings made at the pre-hearing conference, I wrote: "The new contract will be of three years duration . . . You are going to consider whether a fourth year will be added."

In other words, the contract was to be for three years unless there was "mutual

agreement" to add a fourth year. As there is no such agreement, the Panel is constrained to limit the application of this Award to three years. Although there is a definite trend toward longer multi year contracts, and the City has apparently adopted this concept, the factors supporting a four year contract in the immediate case are not sufficient to trump those requiring the shorter period (notwithstanding my personal feeling that a four year contract might be of greater benefit).

### **Issue No. 2 - Wages**

For 1997 - 1998 both parties have proposed, in their respective LOS, a wage increase of 3.0%. The Panel must determine the wage rate for 1998-1999 and 1999-2000. The Union has proposed a 3.25% increase and the City has proposed a 3.0% increase for each of these years. The Panel has the option of selecting from the competing last final wage offers on a "bulk"(three years v. three years) or on an annual basis (picking from among the proposals year by year). Each party argues that its bulk offer is the most reasonable and appropriate one and should be adopted by the Panel. .

There is only a total of 0.5% separating the two offers. While the figures are close and would likely have resulted in an agreement were it the only economic issue on the table, it must be considered in the light of the overall economic settlement. Turning now to the issue of wages, the Panel opts for adopting the Union's offer of 3.0, 3.25, and 3.25 as more closely meeting the requirement of Section 9 criteria. This conclusion is consistent with both the internal and the external comparable communities when all economic factors are considered.

Recently settled agreements with the City's other major internal units (POLC and GREIU) employees received wage increases for each of the years in four year contracts. The first three years show total increases for GREIU of 9.45% (adjusted for calendar year effective dates) and 9.99% for the POLC.<sup>10</sup> The combined three year averages are 9.72% or 3.27% per year.

Using the wage increases of 3.0, 3.25, 3.25, the IAFF falls below the internal units for the three year totals and the three year average (9.5 and 3.16). Adopting the City's wage proposal would put the fire fighters at a disadvantage with their brethren in the City. Using the external comparable communities is problematic as there is no current information for six of the seven cities. Many are either in negotiations and/or Act 312 Arbitration. Muskegon is the only city with a contract settled through the year 2001. Only three of the remaining cities have wage information available for 1997. This makes a comparison quite difficult.<sup>11</sup>

Here, the internal comparable units are given greater weight because of the paucity of available data for the external comparable communities for 1998 and 1999. However, the settlement in Muskegon and the other communities tends to confirm the award. For the three year period, Muskegon fire fighters received an average annual increase of 3.625% (adjusted for fiscal years). Thus, the average among those with a wage increase was 3.43%. For the above reasons, a Panel majority adopts the Union's LOS.

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<sup>10</sup>For Emergency Communications Operators this total is 10.09%.

<sup>11</sup>Flint fire fighters did not get a wage increase, but did receive a COLA increase of 1.8%. In Lansing the settlement was 2.3% and in Pontiac it was 4.0%.

### **Issue No. 3 - Retiree Health Insurance (Medicare Supplement)**

Little need be said about this proposal. The parties are separated by 0.05%. On June 30, 1998, the Fund administered by Union and City appointed Trustees had a balance of over \$761,000.00. Annual payments are small; in the area of 2.4%. Whether the amount contributed is 0.7% as proposed by the City or 0.75% as proposed by the Union is insignificant in the scheme of things. Based on a payroll of roughly 1.8 million dollars, the amount in controversy is \$900.00. This will not affect the amount paid by the Trustees on behalf of retirees. For this reason, the Employer's LOS will be adopted.

### **Issue No. 4 - Pension Matters**

For resolution, the Union has proposed three separate increases to the pension plan: the multiplier, a post-retirement escalator and 13<sup>th</sup> check. Each one will be discussed below.

#### **Pension Multiplier**

To begin, the Union's last offer is to increase the multiplier from 2.5% to 2.6%, multiplied by the final average compensation, multiplied by the years of service up to a maximum number of years. The City proposes to keep the multiplier at the current 2.5 percent.

In general the City's pension fund for the Police/Fire employees is well managed and for the past several years has been over funded. As the current fund assets far exceed its liabilities, the City has not been required to make contributions since 1992. Currently the plan is funded at 122/123% of its funding requirement. As a result of a negotiated settlement between the parties and pursuant to a city ordinance, the City's overall contribution was



reduced to zero. The employees' contribution was likewise reduced by 1% of the normal contribution. It is currently at 5.35% (down from 6.35%). It will continue at this level as long as the City's contribution is zero.

According to the Annual Actuarial Valuation provided to the parties, the likelihood of the City having to make contributions to the fund in the immediate future appears to be small. It is always dangerous, however, to predict the future. If the fund drops 10% at any given point the City must resume its full funding obligations. In this manner, the benefit paid to police and fire officers is guaranteed.

The negotiated 2.5 percent multiplier has been in effect since 1989 when it was increased from 2.4 percent. Looking at the internal comparable units, granting the Union a 0.1% multiplier increase would place its members above all of the internal units (currently at the 2.5% multiplier rate). Several of the external comparable communities use a 2.5% multiplier. Flint does, but it has a higher retirement age and a longer service requirement. Muskegon does too, but it uses fewer years than Grand Rapids for which the multiplier is applied (32 v. 40) and has a lower maximum benefit rate (80%). Ann Arbor uses a multiplier of 2.75 for 25 years and 1.5 thereafter. This results in a greater pension for an employee retiring with 25 years of service, but a progressively smaller pension for an employee who works beyond that time. Battle Creek has a higher multiplier, but it is applied only for 25 years with a maximum rate of 75%.

The increase to payroll of such an increased benefit would be 1.91% for a 15 year funding and 1.46% based upon a 30 year funding. Neither the internal comparable units nor

the external comparable communities support an increase in the multipliers. A Panel majority declines to award this benefit.

### **Post Retirement Pension Escalator**

The Union has proposed an automatic 2% per year (of the original retirement benefit) post retirement pension escalator in addition to the current monthly pension benefit. The current pension benefit does not contain an escalator. The purpose of an escalator is to act as a cost of living adjustment applied over and above the fixed pension to allow increases over time for retirees age 65 and over. The City opposes the pension escalator as it is a costly benefit. The cost has been projected to be as low as 3.22% (assuming 30 year funding) or as high as 4.26% (assuming 15 year funding) of the annual fire service payroll. Further the City maintains that such a benefit is unnecessary given that retirees already receive a substantial and improving 13<sup>th</sup> check benefit.

None of the internal comparable units have negotiated pension escalators. According to the summaries of pension benefits afforded to the external comparable communities, only Pontiac receives a 2% COLA increase, however its fire fighters do not receive a 13<sup>th</sup> check investment income benefit.

For the reasons above, the pension escalator cannot be awarded in this case.

### **13<sup>th</sup> Check**

Both the Union and the City propose to increase the 13<sup>th</sup> check benefit from 50% of net investment income over 8%, but in differing amounts: Union - 75% over 8%; City - 60%

over 8%. Both parties agree that the increase, whatever amount is determined, should take effect July 1, 1999. The benefit was first negotiated in 1989 by the parties to provide investment income to retirees. The 13<sup>th</sup> check is distributed in January to retirees who have five years into retirement. Each receives a supplemental check that continues for the life of the pension. Currently, the check amount is derived by a formula of 50% of the net investment income over 8% to be deposited into the fund. All the internal units receive 13<sup>th</sup> checks based on this formula. This amount was not increased for the GREIU and POLC.

Actuarial reports determine that the costs associated with the increases would be 1.% of payroll for the Union's LOS and 0.4% for the City's LOS. On average, Union retirees received \$5402 for their 13<sup>th</sup> check in 1997. No other external comparable community receives an amount even close to this. The City's 13<sup>th</sup> check benefit is the most generous of all the comparable communities. Given the other economic improvements obtained by the Union, and as both parties agree that there should be some increase, the City's offer is quite reasonable and is accepted by a Panel majority.<sup>12</sup>

#### **Issue No. 5 - Pay for Unused Sick Leave**

The Union's last offer contains a proposal to substantially increase the dollar amount paid to employees for unused accumulated sick leave upon retirement and/or resignation. Specifically, the Union is proposing a new formula: For retirees—50% of the fire fighter's pay at retirement multiplied by the number of unused days, up to a maximum of 180 days for

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<sup>12</sup>When the economic benefits awarded to the Union are considered *in toto*, the settlement is within the range of those made with the other unions, albeit fractionally higher.

40 hour employees and 90 days for 24 hour employees; In the case of resignation—25% of pay using the same formula.

Currently, the Agreement contains a provision that provides 24 hour employees with 6 sick leave days per year and 40 hour employees with 12 days per year, both to an unlimited number of days. Upon retirement, 24 hour employees are compensated at \$2.00 per day multiplied by the number of unused days, up to the maximum of 45 days x the number of years of service at retirement. Likewise, 40 hour employees receive \$1.00 per day up to the maximum of 90 unused days using the same formula. All City employees are compensated using the same formula with the exception of management.

While the purpose of the benefit was to ultimately reduce sick leave usage, experience has shown that it has had no effect upon the sick time taken. As a result, the City is proposing that no change be made to the benefit as it would significantly increase its costs without any deterrent effect on sick leave usage or reward effect to the employees for accumulated days. There was no claim of abuse of sick time by its fire department employees.

All of the external comparable communities offer sick leave incentives consistent with the one proposed by the Union. Overall, the current benefit is significantly less than all other comparable communities. Using the current formula, the maximum amount a 30 year employee with all 180 unused sick days and using the highest wage would receive \$2,700. Under the new proposed formula, that same 30 year employee would receive as much as \$23,000. Using the formulas set forth in the comparable communities, the pay out would be

between \$12,000 and \$22,000 per year. According to the City, the estimated cost of this benefit is 1.9% of payroll. The Union was unable to place a cost on this benefit other than to agree that it would cost the City a substantial amount of money.

As mentioned earlier, the goal of the Act 312 Panel is to put in place the contract the parties would likely have reached if negotiations bore fruit. The comparable communities factor is used to assist the Panel in its determination. It is unlike Major League baseball arbitration where, in effect, the comparables dictate the result. If this were the case in Act 312, arbitration would become simply a matter of pure mathematics. It is much more than that. While the comparable communities enjoy an advantage over Grand Rapids fire fighters on the issue of pay for unused sick leave, it is highly unlikely that the Union could have achieved such a costly benefit in negotiations. Certainly not of this magnitude in one fell swoop. And not one where its others gains must be taken into consideration. For this reason, the City's LOS is adopted.

#### **Issue No. 6 - Limited Duty Activities**

In its first of three non-economic proposals, the City has proposed an exception to the fire-fighters' existing limited duty time for the purposes of conducting two additional training exercises per year. Such training exercises would take place during the already negotiated limited duty time and would be highly beneficial to the City's fire-fighters with the focus on area wide mutual aid and disaster training. The Union maintains that such training exercises conducted during this time are neither necessary nor reasonable. It says the City has not demonstrated any need for conducting such exercises in this time frame.

Lengthy blocks of time are provided in the current agreement (from 4:00 p.m. to 7:45 a.m. weekdays and from 12:00 p.m. to 7:00 a.m. on Saturdays, Sundays and holidays), that are considered "limited duty." During this time fire fighters can only be required to perform emergency response duties. Specifically the City is seeking two additional training exercises to focus on such things as terrorism, biological or chemical attack, and natural disasters.

The reason that the City is proposing to cut into this previously sacrosanct time is because of the importance of coordinating such training exercises with hospitals and other medical providers during their down times and/or light loads. This would mean during the limited duty time of the fire fighters: Late afternoons, evenings and weekends. Such participation with the other providers will facilitate a community wide effort to be ready for greater types of emergencies under a wide variety of conditions.

Upon review of the comparable communities on the issue of limited duty time, only Battle Creek has limited duty time and this appears to be during the meal time hours (2 hours per on-duty day). The remaining six cities do not have any limited duty time. Thus, there is little guidance on this subject. As each Grand Rapids fire fighter receives pay for the 24 hours he is on duty, regardless of whether it is time on-duty or limited duty, he is actually receiving a benefit when compared with the other cities. Moreover this benefit can be considered significant as the only Battle Creek has limited duty time and it is much less restricted than the fire fighters here enjoy.

The basis for the exception appears to be reasonable and legitimate. It is solely within the City's rights to train its workers in the most economical and beneficial fashion. While

there was no testimony as to the length of the two training exercises (which must be “reasonable” in light of all surrounding circumstances), two such exercises per year is neither unreasonable nor burdensome. This is true especially when the proposed training will not only benefit the entire community, but will benefit the safety of fire fighters as well. Accordingly, the City’s proposal for an exception to the limited duty time is accepted.

### **Issue No. 7 - Drug Testing of Equipment Operators**

The Agreement contains a provision dealing with drug and alcohol testing procedures solely under circumstances of “reasonable cause to suspect” as defined in the agreement.<sup>13</sup> The City is now proposing to expand its authority to test fire equipment operators and other personnel who operate fire department vehicles for drugs and/or alcohol under a protocol of post- accident testing. This new testing provision would be pursuant to, and governed by, the Federal Department of Transportation (“D.O.T.”) Regulations regarding post-accident drug and alcohol testing of individuals with a commercial driver’s license (“CDL”).

Under this proposed requirement, equipment operators would only be subject to mandatory testing when the employee who was driving a City vehicle (performing a safety sensitive function) was involved in an accident which resulted in a fatality, bodily injury which required medical treatment away from the accident scene or damage to a vehicle sufficient to require that the vehicle be transported from the accident scene. In all other circumstances, the fire equipment operators would be subject to testing pursuant to the reasonable cause criteria already set forth in the Agreement.

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<sup>13</sup>Reasonable cause to suspect is referred to herein as “reasonable cause” or “reasonable suspicion.”

The City maintains that this additional requirement is reasonable for fire equipment operators as they operate vehicles that are as large as tractor trailer rigs and they do so under what may be described as "battle conditions." Inasmuch as this type of driving is much more dangerous than regular over-the-road driving, it is reasonable to treat fire fighters no differently than truck and bus drivers, especially since they, too, are required to have a CDL to perform their jobs. The City also argues that it is important for the public's perception and confidence, the safety of the equipment operators, and its own liability that everyone is confident that drivers of fire fighting equipment are not working while under the influence of drugs and/or alcohol.

Finally, the City was hopeful that this type of provision would have some deterrent effect upon its fire-fighters even though there was no testimony that working while under the influence was a problem for these employees. The City acknowledged that this type of heightened testing was an intrusion of privacy, however, it stated that in all probability it would come into play only an estimated five times per year and would therefore be a very slight intrusion.<sup>14</sup> This intrusion is, it says, clearly outweighed by the public interest.

The Union maintains that this proposal is without any rational necessity given that the parties already have a comprehensive drug and/or alcohol testing policy in the Agreement. It suggests that the reasonable suspicion testing requirements are more than adequate to secure the confidence of the public especially given the fact that during his tenure, the Chief has not suspected any fire equipment operator of using drugs and/or alcohol on the job nor

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<sup>14</sup> This figure was estimated by Fire Chief Connors. He stated that this small figure was out of a total 30-40 accidents per year.



have any instances of such been reported to him by any officer or other person.

That the City's fire fighters have experienced so few instances of on-the-job accidents is reassuring and places the City, the Department and fire fighters in an extremely positive light. However, given that the taxpayers are the ones funding the payroll, it would be advantageous (financially, maintaining the public's confidence, from a public relations stand point, and for liability purposes) to confirm in those few instances of accidents that drugs and alcohol played no role whatsoever in the incident.<sup>15</sup>

Substance abuse either in the form of drugs and/or alcohol knows no boundaries. Truck drivers and public transportation drivers alike are subject to the D.O.T. Regulations for drug and alcohol testing. Fire-fighters should not be exempt simply because they are given more training. A review of the external comparable communities shows that Muskegon permits testing as part of an accident investigation, that Saginaw permits such as part of any promotion physical, on the job injury or accidents. The other communities have reasonable suspicion testing. I note that the parties are contractually committed to "establish and maintain a safe, healthy, drug free working environment for all employees in accordance with the Drug Free Workplace Act of 1988." Accident testing in the limited circumstances proposed here will assist them in discharging their obligation to each other, to fire fighters generally, and to the public they all serve.

Weighing the seriousness of this issue, the great public interest against the minimal intrusion to fire-fighters, and the other factors above, a majority of the Panel concludes that

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<sup>15</sup>The down side does not appear to be odorous in the event a driver should test positive. He/she would be referred to the program set up by the parties to deal with such cases.

the City's offer should be accepted.

### **Issue No. 8 - Physical Performance Testing**

The Agreement contains a provision that each fire fighter engage in a minimum of thirty (30) minutes of mandatory, supervised and structured physical exercise per on-duty day.<sup>16</sup> The aim of this provision is to develop an exercise program that will facilitate and maintain the physical fitness of fire fighters to carry out their duties and responsibilities and for the overall efficiency of the fire department. The City presented testimony that it currently did not have any mechanism to test individual fire fighters beyond the initial agility, strength and endurance test taken as recruits. Presently, the only way that the City can determine a fire fighter's physical fitness for duty is if some deficiency is revealed during his/her performance on the job.

Thus, in order to ensure that its fire department employees are in top physical shape, the City is proposing an annual testing requirement, similar to that of the entry-level recruits, with penalties and consequences if he or she cannot meet the requirements within an allotted 180 day period. The City maintains that under the current provision, the City is not properly equipped to determine whether or not its fire-fighters are in top physical shape. Given this, the City argues that it does not wish to find out such a fact during an emergency rescue before it can take some remedial action to correct a deficiency.

In contrast, the Union maintains that the current provision as it stands is sufficient to

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<sup>16</sup>This would mean only thirty minutes for nine days per month, assuming each fire fighter worked all nine scheduled days.

maintain the physical fitness of the fire-fighters and as such requests that no change be made to the provision. The comparable communities provide some guidance; none of them have a contract provision on this subject. And neither do the contracts of the internal comparable units. On this score, one would expect that the same kinds of concerns raised by the City apply to police officers, too. The question is whether there is a need for such a provision and if so, whether or not the proposal is reasonable. Currently, in addition to the 30 minutes per on-duty day exercise requirement, fire fighters must undergo an annual physical examination. If a deficiency or problem is determined, the fire fighter is referred for further medical testing.

Historically, as testified to by Chief Connors and Captain Verberg, the City could recall only one instance with respect to an employee suffering from a physical problem that required remedial action. In that particular instance, the problem was diagnosed, treated, and resolved. There were no further problems. Currently, it is an Officer's responsibility to determine if a fire fighter is having physical difficulties with respect to his/ her duties and to pursue some type of remediation based upon the specific circumstances of each case.

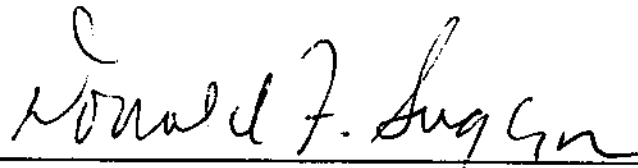
Chief Connors pointed out that fire fighters and officers are all in the same bargaining unit and members of the same union. He inferred that an officer would be hesitant to jeopardize the employment of a fellow fire fighter. There is no evidence to support this fear. It must be assumed that an officer (or fire fighter) would not permit a co-worker who was unable to perform on the fire ground to nevertheless do so out of a sense of loyalty. While loyalty has its place, I feel confident that it will be subordinated to matters of safety and the


welfare of all of the participants. The fact remains that there currently is a mechanism in place through the proper chain of command to report and resolve such problems on a case-by-case basis. Thus far, the system has worked. Given that, there does not appear to be a pressing need for instituting the far reaching provision proposed by the City. The Union's LOS will be accepted.


### A W A R D

The term of the new collective bargaining agreement shall be for three years: July 1, 1997 - June 30, 1998; July 1, 1998 - June 30, 1999; July 1, 1999 - June 30, 2000. The City's LOS is adopted.

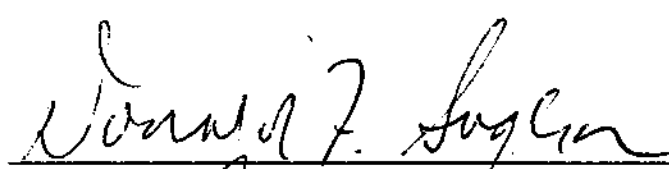
All terms and conditions of employment agreed to by the parties shall be incorporated into their new agreement. All terms and conditions of employment added, modified or changed by this Award shall also become a part of said Agreement. All provisions not changed by agreement or by this Act 312 Award shall continue unchanged. This Award may be signed in counterpart

  
Donald F. Sugerman, Chair


  
John Patrick White, Delegate

  
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Randall D. Fielstra, Delegate  
(dissent)

Fire fighter wages shall be increased as follows: For the first year of the Agreement 3.%, for the second year 3.25%, for the third year 3.25%. The Union's LOS is selected.

  
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Donald F. Sugerman, Chair

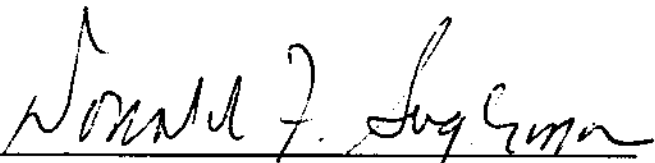
  
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Randall D. Fielstra, Delegate


  
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John Patrick White, Delegate  
(dissenting)

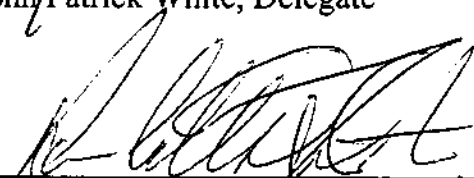
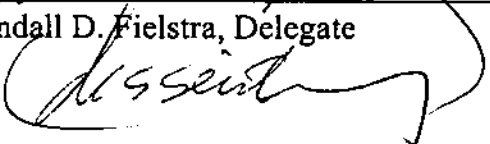
The City's LOS is accepted on Retiree Health Insurance (Medicare Supplement), on all of the Pension issues (Multiplier, Post Retirement Escalator, 13th Check), on Pay for Unused Sick Leave, on Limited Duty Activities, and on Drug Testing of Equipment Operators.<sup>17</sup>

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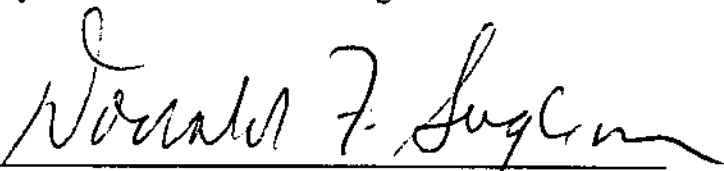
<sup>17</sup> Retiree Health Insurance will be effective July 1, 1998, the 13<sup>th</sup> check will be effective July 1, 1999, the limited duty activities and drug testing will be effective on the date of this award.

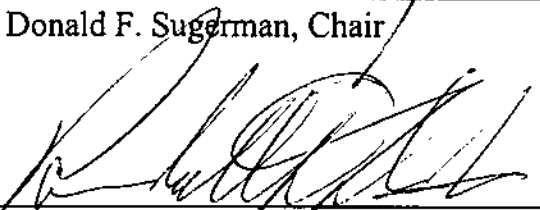
  
Donald F. Sugerman, Chair

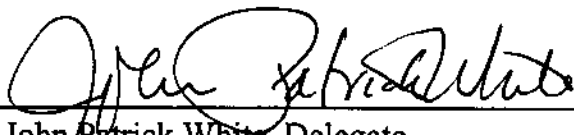
  
John Patrick White, Delegate

  
Randall D. Fielstra, Delegate  


The Union's LOS is accepted on Physical Performance Testing.

  
Donald F. Sugerman, Chair

  
Randall D. Fielstra, Delegate

  
John Patrick White, Delegate  
(dissenting)