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**STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION**

In the matter of Act 312 Arbitration between:

CITY OF GRAND RAPIDS,

Case No. L03 D-7010

Employer,

Arbitration Panel:

and

Jerold Lax, Chairperson  
George Childers, Employer Delegate  
Alison L. Paton, Union Delegate

GRAND RAPIDS FIRE FIGHTERS UNION,  
IAFF Local 366,

Union.

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**Appearances:**

For the Employer:

For the Union:

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**OPINION AND AWARD**

**I. Factual background.**

This arbitration proceeding under Public Act 312 of 1969 involves the City of Grand Rapids (hereinafter "City") and the Grand Rapids Fire Fighters Union, IAFF Local 366 (hereinafter "Union"), and relates exclusively to one issue and its implications: the desire of the City to have the dispatching of fire fighting personnel, heretofore done by Union members classified as Fire Alarm Operators (FAO's), done instead by Emergency Communication

Operators (ECO's), who, according to the City's plan, would dispatch both fire and police personnel.

The last collective bargaining agreement between the parties expired June 30, 2003, and the parties were ultimately able to negotiate a new contract covering the period July 1, 2003 - June 30, 2007 which resolved all issues other than the dispatch question, concerning which the parties signed a June 23, 2004 letter of understanding providing: "The parties agree to continue negotiating over the City's dispatch proposal even if the main contract is resolved before such time." While some discussion occurred between the parties regarding the dispatch question, no agreement was reached, and the City indicated its intention to implement its plan to utilize cross-trained dispatchers for police and fire services in April, 2005.

The Union filed the instant Act 312 petition on January 25, 2005, specifying the following issue for panel resolution: "Fire Alarm/Dispatch (decision to centralize and/or civilianize, and/or to remove bargaining unit work, as well as all related impact issues.)" The City filed a motion with MERC seeking to have the Act 312 petition dismissed on the ground that the issue raised by the Union was not a mandatory subject of bargaining, and therefore not within the jurisdiction of an Act 312 panel. This motion was denied on the ground that the jurisdictional question raised by the City should first be addressed by the panel.

At a prehearing conference on June 1, 2005, the panel chairperson determined that further bargaining should occur through June 22, 2005. No agreement having been reached, the first day of hearing occurred on July 1, 2005, and the hearing continued on July 8, 19, and 22. Final offers and post-hearing briefs were subsequently submitted.

The following summarizes the conclusions of the panel regarding disputed issues, with any dissents appropriately noted. All panel members are in agreement that this award shall be

regarded as timely under Act 312. In rendering this award, the panel has adhered to the directive of Section 9 of Act 312 that it base its findings, opinion and order upon the following factors, as applicable.

- (a) The lawful authority of the employer;
- (b) Stipulations of the parties;
- (c) The interest 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.
- (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 sector or in private employment.

Further, the panel has adhered to the directive of Section 8 of the statute that on economic issues, it adopt the last offer of settlement which, in the opinion of the panel, more nearly complies with the applicable factors prescribed in Section 9. The panel notes, however, that with regard to any particular issue, each Section 9 factor need not be accorded equal weight. *City of Detroit v Detroit Police Officers Association*, 408 Mich 410 (1980).

## II. Resolution of Disputed Issues.

(1) Summary of Issues.

During negotiations between the parties, and at the commencement of the hearing process, it had been the position of the City that the seven current FAO's would have the opportunity to train as ECO's, and could then function as ECO's if the City were permitted to proceed with its plan to eliminate the FAO classification. It was therefore initially assumed by the Union that the impact issues which would be addressed if the plan proceeded would include, among other things, the unit placement of former FAO's, since the present ECO's were in a unit represented by the Police Officers Labor Council and the FAO's wished to retain the possibility of representation by the Fire Fighters Union. The City, however, took the position that unit placement was not a matter which was subject to Act 312 resolution and the Union thereupon stipulated that none of the FAO's desired to avail themselves of the opportunity to train for an ECO position. Hence, the parties stipulated to a narrower (albeit significant) list of issues to be resolved, as follows:

B. UNRESOLVED ISSUES.

1. Decision to reorganize/remove bargaining unit work. The initial issue for the Act 312 panel involves the decision to reorganize the public safety dispatching function and to remove fire dispatching functions performed by FAO's and assign that work to civilian Emergency Communication Operators. This involves the following issues:

(a) Jurisdiction of the Act 312 Panel. The City has raised two preliminary issues regarding the jurisdiction of the Act 312 Panel to address the decision to reorganize/remove bargaining unit work. The City does not contest the jurisdiction of the Act 312 Panel to address the impact issues resulting from that decision.

(1) City's challenge to the jurisdiction of the Act 312 Panel to address decisional bargaining disputes. It is the position of the City that the jurisdiction of Act 312 panel is limited to contract formation disputes and that it has no authority to address decisional bargaining disputes. As a preliminary legal issue the Act 312 Panel will have to determine if it has authority under Act 312 to resolve a dispute involving bargaining over a decision to reorganize. The Union's position is that this decision is a mandatory subject of bargaining and

that it is within the authority /jurisdiction of the Act 312 Panel to resolve the decision to reorganize/remove bargaining unit work.

(2) City's challenge to the jurisdiction of the Act 312 Panel to address this particular decisional bargaining dispute. It is the position of the City that dispatching has not been performed exclusively by Union members and that the decision to transfer this work to another bargaining unit involves a permissive subject of bargaining. As a preliminary legal issue the Act 312 panel will have to determine if this particular decision involves a permissive or mandatory subject of bargaining. The Union's position is that this decision is a mandatory subject of bargaining that is within the authority/jurisdiction of the Act 312 Panel to resolve.

(b) Decision to reorganize/remove bargaining unit work. In the event that the Act 312 Panel has authority to address the decision to reorganize/remove bargaining unit work, the City considers this to be an economic issue. The Union considers this to be a non-economic issue.

2. Impact issues. In the event that the Act 312 Panel grants the City's proposal to reorganize/remove bargaining unit work, the impact issues are as follows:

(a) Timing of the Elimination of the FAO positions. This issue involves the possibility of FAO positions being eliminated on the basis of natural attrition with the FAO's having the option to stay in fire dispatch until they terminate unless they chose to leave dispatch earlier. The Union contends that this is an impact issue independent of the decisional issue referenced in Paragraph B(1)(b). The Union considers this to be a non-economic issue. The City contends that this is not an impact issue but rather is part of the decisional issue referenced in Paragraph B(1)(b). In the event that it is an impact issue, the City considers this to be an economic issue. This issue will also require resolution of the following additional issues if the Union's position is granted:

(1) Wage rate in the event that FAO positions will be eliminated by natural attrition. In the event that FAO's are allowed to remain in fire dispatch until they elect to leave by natural attrition, the wage rate to be paid to those FAOs must be established. The City and the Union agree that this is an economic issue.

(2) Work Schedule in the event that FAO positions will be eliminated by natural attrition. In the event that FAO's are allowed to remain in fire dispatch until they elect to leave by natural attrition, the work schedule for those FAOs must be established. The City and the Union agree that this is a non-economic issue.

The benefits to be provided to FAO's who remain as non-cross trained fire dispatchers is not at issue, since the City is not contending that their benefit package should be different from the other Fire Department classifications.

(b) Continued performance of fire dispatching duties/timetable. This issue involves the time table for continued performance of fire dispatch functions during the transition period while ECO's are being cross-trained, the time table for departure from dispatch and the order to be followed in departure from dispatch. The City and the Union agree that this is a non-economic issue.

(c) Wage rate during transition period. This issue involves the wage rate to be paid to FAO's during the transition period when they are performing fire dispatch functions while ECO's are being cross-trained. The City and the Union agree that this is an economic issue. The benefits to be provided to FAO's during the transition period is not at issue, since the City is not contending that their benefit package should be different from the other Fire Department classifications.

(d) Work Schedule during transition period. This issue involves the work schedule and hours to be worked by FAO's during the transition period when they are performing fire dispatch functions while ECO's are being cross-trained. The City and the Union agree that this is a non-economic issue.

(e) Job Security/Employment Rights after elimination of FAO Classification. This issue involves the rights of FAO's to continued employment in the event that their positions are eliminated, and the ability for FAO's to be assigned to other positions in the Fire Department after the transition period during which ECO's are being cross-trained. They City and the Union agree that this is an economic issue.

(f) Post-transition Wages. This issue involves the wages for FAO's who fill other positions in the Fire Department after the transition period during which ECO's are being cross-trained. The City and the Union agree that this is an economic issue.

3. FAO Television use. This issue involves the ability of FAO's to watch television while on duty. The City and the Union agree that this is a non-economic issue.

(2) Decision to Remove Bargaining Unit Work.

(a) Jurisdiction to Consider the Issue.

As previously indicated, it is the City's contention that the panel has no jurisdiction to consider the propriety of the City's decision to transfer FAO functions to ECO's for at least two reasons, both of which the Union disputes. First, the City distinguishes among three allegedly

separate types of bargaining - "decisional," "contract formation," and "grievance" - the first of these relating to "inherently managerial decisions." The City contends that the primary issue involved in this case is decisional, and while collective bargaining may, in the City's view, be required on some decisional issues if they fall within the category of mandatory subjects of bargaining, they nonetheless are beyond the scope of Act 312 jurisdiction if the parties fail to reach agreement on such issues. Second, the City contends that even if Act 312 panels have jurisdiction over some decisional issues, the issue involved in this case is not a mandatory subject of bargaining because the work which would be transferred from FAO's to ECO's had not been performed exclusively by FAO's, and transfer of work is a mandatory subject of bargaining only if the work had been the exclusive province of the employees who would lose the work if the transfer occurred.

Regarding the City's contention that "decisional" issues are legislatively precluded from Act 312 jurisdiction, the panel majority is not persuaded that the City's analysis of the legislative history of the Public Employment Relations Act supports this conclusion. The Act makes no apparent distinction between "decisional" and "contract formation" issues, and there is no reason to conclude that an "inherently managerial issue" - even assuming that term to have a clear meaning - is necessarily beyond the scope of an Act 312 panel's jurisdiction if the issue otherwise falls within the category of a mandatory subject of bargaining.

The City's contention that the issue in this case is not a mandatory subject of bargaining because the work of fire dispatch had not been performed exclusively by FAO's may present a somewhat more difficult question, for the reason that the testimony indicated that a number of 911 emergency calls which are ultimately routed to FAO's for dispatch of firefighting personnel and equipment are initially taken by ECO's and are thereafter routed to FAO's if the dispatch of

fire personnel and equipment is required. The split decision of the Michigan Supreme Court in Southfield Police Officers Association v Southfield, 433 Mich 168 (1989) lends support to the conclusion that the transfer of work is not a mandatory subject of bargaining where "job functions have historically assigned interchangeably to both unit and nonunit employees," 433 Mich at 179, a proposition referred to by the Court majority as the "exclusivity rule." Even the Court majority, however, acknowledges that "exclusivity is a flexible concept which must take into account the relationship of the affected bargaining units vis-à-vis the employer on a case-by-case basis." 433 Mich at 188. In the present case, the panel majority does not view the exclusivity rule as necessitating a finding that the City's proposal is not a mandatory subject of bargaining.

In evaluating the City's position, attention must first be given to the "functions" which have allegedly been handled interchangeably by FAO's and ECO's, and therefore not exclusively by FAO's. If the concept of function were viewed broadly enough, the conclusion would ultimately be reached that virtually no transfer of work between fire and police units was a mandatory subject of bargaining, since all functions of either unit broadly constitute "public safety," and are therefore handled interchangeably by fire and police units. The concept of "function" must obviously be viewed more narrowly than this to allow collective bargaining over work transfer under PERA to be meaningful, and the issue in this case is whether the fact that ECO's initially process some emergency calls which are then routed to FAO's for specific allocation of firefighting resources should be viewed as interchangeability of function. The panel majority consider the ultimate decisions as to the allocation of firefighting resources as sufficiently distinguishable from the initial intake of emergency calls so as to render the allocation decision a separate function which has not historically been assigned interchangeably



to both unit and nonunit employees, and the decision to transfer the fire dispatch work is therefore a mandatory subject of bargaining and subject to Act 312 jurisdiction.

Panel member Childers dissents from the panel's jurisdictional conclusion.

(b) Substantive Resolution of the Issue.

The City's final offer regarding the work of fire dispatch is as follows:

The City proposes that the classification of Fire Alarm Operator will be eliminated as of the date of the Act 312 decision and the work previously performed by that classification be transferred to the ECO classifications.

The Union's final offer is this:

Any and all dispatch functions involving the Grand Rapids Fire Department which were performed exclusively by Fire Alarm Operators in the IAFF bargaining unit during the parties' prior 2001-2003 contract shall continue to be performed exclusively by Fire Alarm Operators in the IAFF bargaining unit.

The parties disagree as to whether this issue is an economic or non-economic issue, and thus whether one or the other final offer must be accepted in its entirety, with the City regarding the issue as economic.

The City bases its proposal on a number of factors. It suggests that the City is facing difficult financial circumstances, with budget projections that include increasing deficits, particularly if the likely cost of retiree health benefits is considered, and with a number of employment positions - both in public safety and in other municipal areas - having been abolished and with additional elimination of positions being contemplated. The City regards the transfer of FAO work to ECO's as consistent with public safety, and as an appropriate method of reducing the City's economic burdens, because, in the City's view, FAO compensation is not only unjustifiably high in comparison both to the compensation of ECO's in performing dispatch work for the City and of employees performing dispatch work in

comparable communities,<sup>1</sup> but because the 12-hour work schedule of the FAO's (i.e. four consecutive 12-hour shifts followed by four days off) results in the payment of significant overtime. The City suggests that the disparity in compensation between FAO's and ECO's performing dispatch work in the same facility causes friction between those employee groups, and that elimination of this friction is also a legitimate factor to take into account in resolving this issue. Further, the City notes that all the communities regarded as comparable, as well as many other communities have adopted a system of unified dispatch for police and fire services, with no apparent reduction in safety.

The Union questions whether the City is in fact in economic difficulty, noting that as of June 30, 2004, the City had a general fund balance of over \$15 million, which the Union contends is, on the basis of percentage of expenditures, in excess of general accounting guidelines for what is prudent, and noting further that the City expended \$5 million on its new dispatch facility and \$500,000 on a dispatch computer system which proved ineffective. The Union views the City's budget as only a projection of future conditions, and not necessarily a reliable guide to the City's economic capacity. Further, the Union contends that even if the City were facing economic problems, it should not be allowed to use these problems as a justification for paying wages viewed by the Union as unfairly low. The Union also argues vigorously that the Section 9 factor of the welfare of the public should be given great weight in resolving this issue. The public, through surveys, has indicated the importance of adequate fire protection, and the Union contends that FAO's, who require five years experience as

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<sup>1</sup> The communities which have been regarded as comparable in recent Act 312 proceedings involving these parties have been the cities of Ann Arbor, Battle Creek, Flint, Lansing, Muskegon, Pontiac, and Saginaw. The City initially suggested that for the present case, the comparables be Muskegon, Kentwood, Holland, Wyoming, Lansing, and Battle Creek. Both because the City in fact appears to place principal reliance on the

firefighters before becoming dispatchers, are better able to assure the safety of the public and of firefighting personnel than are ECO's, who are not required to have prior field experience in either fire or police work.

While the panel agrees with the Union that the safety of the public and of firefighting personnel is of critical importance, the majority of the panel is nonetheless of the view that, taking all relevant Section 9 factors into account, the City's proposal to dispatch both police and fire personnel through the use of ECO's should be adopted. The prior firefighting experience of the FAO's is undoubtedly of use in enabling them to assess how resources should be allocated, but the experience of other communities appears adequately to demonstrate that a combined fire and police dispatch system, even without extensive prior field experience for the dispatchers, is not likely to jeopardize the safety of the public or of public safety employees. The FAO wage structure, while the result of good faith bargaining and no doubt in part reflective of the prior training of the FAO's, does not appear to the majority of the panel as consistent with internal and external comparables regarding similar work, although the record admittedly may not make it entirely clear how close the similarity is. As examples, the record indicates that at comparable levels, the FAO wage rate as of July 1, 2005, is \$62,445 as compared to an ECO III rate of \$57,739. The highest rates for dispatchers in comparable communities, for roughly the same time period, appear to range from \$38,170 to \$54,184. The City's economic situation, though not decisive, enhances the appropriateness of permitting the City to obtain the benefit of somewhat reduced dispatch wages; while the budget may be in part a projection of future conditions, there is little reason to question whether those projections have been made in good faith.

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historic list of comparables and because the City has advanced no rationale for modifying the list, the panel

As earlier indicated, the parties are not in accord as to whether the general issue of combining fire and police dispatching is an economic issue. Resolution of this issue of course has significant economic consequences, but the majority of the panel is inclined to adopt the view of Robert Howlett, reaffirmed by Thomas Giles Kavanaugh, that for Act 312 purposes, an economic issue is "a contract proposal which involves payment of compensation or provides fringe benefits directly to employees." *City of Detroit (DFFA)*, MERC Case No. D 86 C-450 (1987). Hence, while the panel adopts the City's basic approach to this issue, it is not constrained to adopt the precise terms of the City's final offer, and in particular is not required to conclude that the FAO classification be eliminated as of the date of this award.<sup>2</sup>

Based on the foregoing discussion, the panel awards as follows: The City may transfer the work performed by employees in the FAO classification to employees in the ECO classification, in a manner consistent with the remaining terms of this award.

Panel member Paton dissents.

(3) Timing of Elimination of FAO Positions.

The City's final offer is as follows:

The decision of the City involved the immediate elimination of the position of Fire Alarm Operator and the transfer of the work previously performed by employees in that classification to the ECO classifications. The City proposes that the elimination of the FAO classification be effective as of the date of the issuance of the Act 312 Award, but that the City retain the right to continue to temporarily utilize former FAO's to assist in the dispatching function during the transition period while ECO's are being cross-trained.

The Union Offers the following:

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regards the comparables used in recent prior Act 312 proceedings between these parties as appropriate.

<sup>2</sup> Contrary to the City's suggestion, a determination by an Act 312 panel that an issue not be classified as an economic issue is not thereby a determination that the issue is not a mandatory subject of bargaining; if it were, a panel could not reach binding conclusions on non-economic issues.

Notwithstanding any other provisions of the parties' collective bargaining agreement, the seven (7) permanent FAO's (namely, Mark Danley, Dennis Dykhouse, Steve Christians, Ronald Truer, Brian DeForest, William Deback, and Gary Dredge) shall have the option, in addition to whatever other options they may have, of remaining as a FAO in the IAFF bargaining unit for the remainder of their employment with the Grand Rapids Fire Department, with their FAO position being phased out through natural attrition.

The Union contends this issue is non-economic, while the City contends it is economic.

The City contends that the question of the timing of the elimination of FAO positions is not an impact issue, but rather part of the "decisional" issue of whether the positions should be eliminated, and therefore not an issue subject to the panel's jurisdiction. The panel's conclusion regarding the City's jurisdiction argument renders this contention moot. The City also argues that, in any event, administrative problems would result from allowing FAO positions to be eliminated by attrition in that the City would be unable to determine how many ECO positions to create.

The Union refers to experience in comparable communities to support its position, noting that while five of the comparables (Battle Creek, Flint, Muskegon, Pontiac, and Saginaw) have been using civilian dispatchers for a sufficiently long time so as to make it difficult to determine whether uniformed firefighters were ever eliminated from such positions by attrition, data from Ann Arbor and Lansing indicates that attrition was used in the creation of unified civilian fire and police dispatch systems in those cities, and that in Lansing, attrition was used some 20 years ago in moving from uniformed fire dispatchers to civilian dispatchers. The City does not dispute this data. The panel notes that in addressing this issue, the Union suggests that because the FAO's have endured hostile treatment for the last few years, Union members have some trepidation about exercising any right to remain as FAO's while those positions are eliminated by attrition, and that - at least as long as its other impact proposals are

accepted - it would be satisfied that attrition be utilized only in the case of Steve Christians, a disabled employee.

While the majority of the panel acknowledges that comparable data lends at least some support to the Union's proposal, it nevertheless concludes, particularly in light of the Union's expressed concern that allowing elimination of FAO positions by attrition would cause continuing workplace controversy, that it is appropriate for these positions to be eliminated on a more prompt and predictable timetable to further the legitimate interests which support the underlying decision to unify the fire and police dispatch systems, as discussed more fully above. Hence, the majority concludes that the City's basic position on this issue should prevail. However, because - for the same reason that the underlying issue was classified by the panel as non-economic - this issue is also most appropriately viewed as non-economic, the majority has greater flexibility in determining how its result should be expressed, and awards as follows: The FAO positions need not be eliminated by attrition, but shall be eliminated in a manner consistent with the other terms of this award.

Panel member Paton dissents.

(4) Timetable for Continued Performance of FAO Duties.

In light of the panel's conclusion regarding the elimination of FAO positions by attrition, the issue of work schedules during an attrition period becomes moot, but several impact issues remain including the timetable for continued performance of FAO duties during the transition period until an adequate number of ECO's are trained to carry out the combined dispatch responsibilities. Both parties regard this issue as non-economic. The City's final offer on the issue is as follows:

The City intends to complete the cross-training of ECO's in fire dispatch functions as soon as practicable. The City proposes that during the transition period when there are not enough cross-trained ECO-III's to perform fire dispatching duties the City will offer the available fire dispatching work to former FAO's in order of seniority. In the event that there are no sufficient former FAO volunteers, the City will make temporary assignments of this work during the transition period utilizing the least senior former FAO's who are currently assigned to fire dispatch operations keeping those former FAO's necessary to perform this function.

The Union proposes the following:

Notwithstanding any other provisions of the collective bargaining agreement, all seven (7) permanent FAOs (namely, Mark Danley, Dennis Dykhous, Steve Christians, Ronal Truer, Brian DeForest, William Deback, and Gary Dredge) shall have the unconditional right to transfer out of dispatch to another IAFF bargaining unit position by no later than June 1, 2006 or such earlier date that the City determines that it has a sufficient number of cross-trained ECO's that it no longer needs the services of any FAOs.

Until June 1, 2006 or such earlier date that the City determines that it has a sufficient number of cross-trained ECO's that it no longer needs the services of any FAOs, the City may determine at various intervals that it no longer needs the services of all seven (7) permanent FAOs, and if so, will offer early unconditional transfer out of dispatch first to the FAO having the most bargaining unit seniority, and if declined, to the FAO having the next most bargaining unit seniority, and so on. In the event all the FAOs decline the offer for early unconditional transfer out of dispatch, the FAO(s) having the least bargaining unit seniority shall be given the early unconditional transfer out of dispatch.

Any and all transfers of FAOs out of dispatch under this provision shall be to the IAFF bargaining unit position/classification last held by the FAO before becoming a FAO. In the event there is a dispute over the FAO's physical fitness to perform the duties of his position/classification last held before becoming a FAO, the provisions under Issue 2(e) shall apply.

Although the Union's proposal is by its terms more comprehensive in addressing the question of the use of seniority in determining which FAO's will be transferred as ECO cross-training processes, the parties do not in fact appear to disagree concerning the process; rather, the parties differ principally on the question of whether a definite cutoff date should be

established for completion of the transition. While, as a result of subsequent aspects of this award regarding wages and schedules during the transition process, the City is likely to have some incentive to complete the process expeditiously, the majority of the panel is of the view that providing a definite cutoff date will serve the interests of the public and of workplace harmony by enhancing the level of certainty as to when the transition will occur. While, the issues being non-economic, the panel is not bound by the specific terms of the offer of either party, the June 1, 2006 date contained in the Union's offer is consistent with the schedule the City representatives testified they could accommodate, and the majority of the panel therefore adopts as its award the Union's proposal, as detailed above, with the exception that the final sentence shall be replaced with the following:

In the event there is a dispute over the FAO's fitness to perform duties of his position/classification last held before becoming a FAO, the dispute shall be resolved in accordance with the panel's subsequent award on the issue of job security/employment rights after elimination of FAO classification.

Panel member Childers dissents.

(5) Wage Rate During Transition Period.

On this issue, which both parties agree to be economic, the City's final offer is as follows:

The City proposes that the former FAO's who continue to perform fire dispatch functions during the temporary transition period will be paid at the rate of \$59,438.

The offer of the Union is this:

During the period that any or all of the seven (7) permanent FAOs (namely, Mark Danley, Dennis Dykhouse, Steve Christians, Ronald Turner, Brian DeForset, William Deback, and Gary Dredge) continue to work in fire dispatch while ECO's are being cross-trained to perform fire dispatch functions, their wage shall be at the wage rates set forth for FAO in the appendices to the collective bargaining agreement.



The wage rate proposed by the City is the wage rate which was in effect as of July 1, 2003, while the Union's proposal would accommodate the 2004 and 2005 increases contained in the collective bargaining agreement which the parties negotiated while reserving the job transfer issue involved in this arbitration.

The City argues that the July, 2003 rate is more consistent with, though higher than, the wage rates for dispatchers in comparable communities. The Union contends that such comparison is inappropriate because dispatchers in other communities do not possess the firefighting experience of the FOA's and that, at least in the case of Lansing, firefighters experienced no wage reduction when their positions were eliminated by attrition in the process of creating a civilian dispatch system several years ago. Further, the Union argues that general concerns of fairness, equity, and morale, which it regards as encompassed by Section 9(h) of Act 312, are furthered by adoption of the union's position.

It is the determination of the majority of the panel that, at least for the transition period, the parties should be governed by the wage rates established by the 2003-2007 collective bargaining agreement, which rates were contractually agreed by the parties to be applicable to the FAO classification while it exists. As indicated above, evidence regarding comparables provides some basis for argument by each party, and for the transition period is in any event outweighed by the other general concerns emphasized by the Union. Hence, it is the award of the panel that the offer of the Union be adopted.

Panel member Childers dissents.

(6) Work Schedule During Transition Period.

Both parties agree that this issue is non-economic. The City proposes:

The City proposes that former FAO's will continue to work the prior 12 hour shift during the transition period as long as that schedule is administratively maintainable, but will be offered the option as a group to work the same 8 hour shift as ECO III's with scheduled breaks and meal periods.

The Union's offer is as follows:

During the period that any or all of the seven (7) permanent FAOs (namely, Mark Danley, Dennis Dykhous, Steve Christians, Ronald Truer, Brian DeForest, William Deback, and Gary Dredge) continue to work in fire dispatch while ECO's are being cross-trained to perform dispatch functions, their work hours and work schedule shall be as set forth in Article 42, Section 3.

Thus, each party would allow the current 12-hour work schedule of FAO's to continue during the transition period, the principal difference between the offers being that that the City would reserve the ability to alter the schedule if it determines the schedule is no longer "administratively maintainable," and would also offer FAO's the opportunity to work the 8-hour shift worked by ECO's. The Union argues that allowing the City to retain the ability to alter the schedule would deprive the Union of the right under PERA to bargain collectively regarding hours.

Whether or not permitting the City to retain the requested flexibility would constitute a deprivation of rights granted by PERA, the majority of the panel is of the view that the Union's basic proposal is most consistent with the maintenance of morale during the transition period, and is therefore justifiable under the statute. The panel is further of the view that no reason exists for precluding the FAO's from opting for the 8-hour schedule worked by ECO's. Hence it is the award of the panel that the Union's offer be adopted with the following addition:

The FAO's will be offered the option as a group to work the same 8 hour shift as ECO III's with scheduled breaks and meal periods.

Panel member Childers dissents with regard to that portion of the award which precludes unilateral schedule alteration by the City.

(7) Job Security/Employment Rights After Elimination of FAO Classification.

Both parties agree this issue is economic. The City's offer is as follows:

The City proposes that the FAO's be considered to have been laid off and will offer them employment opportunities in other Fire Department positions in accordance with the demotion in lieu of layoff provisions of the IAFF Agreement. Any former FAO who is physically unable to perform a position in the Fire Department will be considered for another City position in accordance with the City's existing humanitarian transfer policy.

The Union offers the following:

Notwithstanding any other provisions of the collective bargaining agreement, none of the seven (7) permanent FAOs (namely, Mark Danley, Dennis Dykhouse, Steve Christians, Ronald Truer, Brian DeForest, William Deback, and Gary Dredge) shall be laid off or otherwise lose their employment with the Grand Rapids Fire Department in an IAFF bargaining unit position as a result of the City's establishment of cross-trained, combined fire/police dispatch. All seven (7) permanent FAOs shall have the right to return to the position/classification last held by the FAO before becoming a FAO, and the City shall not impose any requirements or procedures for return to that prior position classification last held which are inconsistent with what has previously been applied for purposes of transfers or demotions to that position/classification.

In the event the City determines that the FAO is not physically fit to perform the position/classification last held by the FAO before becoming a FAO, the following shall apply:

- 1) The City's physician shall provide a written report to the employee detailing the reasons for his/her determination that the former FAO is not physically fit to perform the duties of his prior position/classification.
- 2) If the former FAO does not dispute the City physician's determination that he is not physically fit to perform the duties of his prior position/classification, then the former FAO shall be assigned to an alternative full-time Fire Department position within the IAFF bargaining unit which is appropriate to his physical condition. Any dispute as to whether the alternative position is appropriate to the

physical condition of the former FAO shall be subject to the dispute resolution process set forth under Paragraph 4 below.

3) If the former FAO does not agree with the City physician's determination, he shall provide to the City a written report from his own physician detailing the reasons for his/her determination that the FAO is physically fit to perform the duties of his prior position/classification. In the event the dispute cannot be resolved by agreement of the City, the Union, and the employee, it will be subject to the dispute resolution process set forth under Paragraph 4 below.

4) Dispute resolution process: Any and all disputes which arise under this provision shall be submitted for binding resolution to the grievance arbitrator who is next up for appointment by rotation as provided in Article 8, Section 3(C)(1). The grievance arbitrator shall have jurisdiction to resolve all issues pertaining to the dispute, provided however that if the grievance arbitrator determines that there is an issue involving medical expertise which would be better-suited for determination by a medical practitioner, the arbitrator may refer that issue for binding determination by a medical practitioner mutually agreed upon by the City and the Union, or in the event of no mutual agreement, a medical practitioner selected by the arbitrator. Should it be determined through dispute resolution process that the former FAO is not physically fit to perform his prior position/classification, he shall be assigned in accordance with Paragraph 2 above.

The parties are in essential agreement as to the right of FAO's to return to their former firefighter positions under each of these proposals; they differ principally regarding the procedures and remedies which should be available to an FAO who is not physically able to resume his former position. In the present case, it would appear that only one FAO, Steve Christians, is likely to be affected by the resolution of this issue.

The City's proposal relies on existing contractual provisions found in Articles 40 and 41 of the collective bargaining argument which the City asserts form components of the "humanitarian transfer policy" which is referred to, but otherwise undefined, in the City's

offer.<sup>3</sup> These contractual provisions do appear to hold open possibility of light duty work or compensating for an incapacitated employee, but they do not attain what appears to be the principal Union goal for a disabled member, namely that the member be provided some position of employment within the bargaining unit if he is physically unable to return to a former position as firefighter or equipment operator. While the Union's offer does not, as suggested by the City, preclude the City Physician from playing an active role in the process of assessing the employee's physical condition, and while the Union's offer also make use of the contractual grievance process and panel of arbitrators, the offer does modify the grievance process by permitting use of an outside medical expert as a decision-maker, and does require placement of a disabled employee in a bargaining unit position appropriate to his physical condition. The City contends that these novel features of the process are unjustified.

While acknowledging that the Union's offer provides a level of protection to a disabled employee in the bargaining unit beyond that provided to other employees, it is the conclusion of a majority of the panel that this degree of individualized attention is appropriate in the present case and falls within the scope of the factors referred to in Section 9(h) of the statute. While, for the City to achieve the overall objectives the panel has found to be legitimate in transferring work from FAO's to ECO's, it may be necessary that not all FAO's retain all benefits of their former positions, it is consistent with fairness and the maintenance of morale that the disabled employee remain within the bargaining unit. Hence, it is the award of the panel that the offer of the Union be adopted.

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<sup>3</sup> The City, in its post-hearing brief, suggests that a Disabled Employee Program, attached as Exhibit A to the brief, is also a component of the humanitarian transfer policy. The Union has objected to any reliance on this document, which was not introduced during the hearing. Because the document is dated 1990 and appears to relate to a particular union not party to these proceedings, the panel is not in a position to place any appreciable weight on this document.

Panel member Childers dissents.

(8) Post Transition Wages.

Both parties agree that this issue is economic. The City's final offer is as follows:

The City proposes that former FAOs who are demoted in lieu of layoff into other Fire Department positions should be paid at the contractual rate for that classification in accordance with the provisions of the IAFF Agreement.

The Union offers the following:

Notwithstanding any other provisions of the collective bargaining agreement, each of the seven (7) permanent FAOs (namely, Mark Danley, Dennis Dykhouse, Steve Christians, Ronald Truer, Brian DeForest, William Deback, and Gary Dredge) shall, upon his departure from dispatch, continue to receive the contractual wage rates applicable to FAO (or applicable to Fire Lieutenant in the event the FAO wage rates are in the future eliminated from the contract), including all wage-based benefits based on wage rates, for a guaranteed period of time based on the following formula:

The guaranteed period of time shall be equal to the time period from the date of promotion to FAO to the date of departure from dispatch (rounded off to the nearest week), unless and until the former FAO is promoted to another position/classification for which the wage is equal or greater than the wage for FAO/Fire Lieutenant, or ceases to be employed by the Grand Rapids Fire Department.

This wage continuation guarantee shall apply to any FAO who is assigned to continue working in dispatch due to a determination that he is not physically fit to return to the position/classification he held prior to becoming a FAO.

The Union contends that examination of the manner in which the reorganization of dispatch functions was accomplished in other internal and external situations supports the conclusion that the FAOs should not suffer a reduction in wages upon resuming firefighting positions. Among other things, the Union refers to the affidavit of the former president of the City police union indicating that the pay of police officers who were assigned as dispatchers was not reduced when they ceased to function as dispatchers, the Union notes that City ECO's

did not have their wages reduced if they chose not to cross-train as ECO III's capable of dispatching both fire and police personnel, and the Union suggests that Lansing and Ann Arbor uniformed dispatchers did not lose wages when civilian dispatch was instituted. The Union further argues that even if FAO wages were maintained at the level sought by the Union, the City would nonetheless attain, through reduction of overtime and other factors, much of the cost reduction it hoped to achieve by utilizing ECO's for police and fire dispatch. Finally, the Union suggests that, if the City's proposal were adopted, calculations of final average compensation would unfairly reduce the pensions otherwise available to former FAO's. The City contends that the Union's offer would result in the former FAO's receiving wages in excess of wages received by other firefighters performing the same work, which is both inequitable and a potential source of workplace unrest.

While the panel is mindful that some economic hardships would result from a reduction of FAO wages upon the assumption of former classifications, it is nonetheless the conclusion of the majority of the panel that the City's proposal is most consistent with the statutory factors, and in particular the factor of comparability with the wages, hours, and conditions of employment of other employees performing similar services. Former FAO's returning to former classifications would, under the City's proposal, receive wages applicable to those other classifications, while, under the Union's proposal, they would receive wages significantly higher, albeit equivalent to the wages they had formerly received for performing different work. Whether the City is correct in its assertion that this disparity would cause bargaining unit strife, or whether the Union is correct in its counterargument that the bargaining unit would comfortably accommodate the disparity, the disparity would nonetheless exist. The comparability upon which the Union relies in an effort to demonstrate that employees in

situations similar to that of the FAO's did not suffer wage loss is an alleged comparability in how a shift in the dispatch function was accomplished and not a comparability of the wages of those performing similar work, and is in any event too fragmentary to be entirely convincing. With particular regard to the situation involving the Grand Rapids Police Department, it appears that the uniformed dispatchers had performed dispatching duties on assignment and that their wages remained the wages of uniformed police officers before, during, and after that assignment; thus, the example does not support the conclusion that any higher dispatch wages were maintained. It should also be noted that Article 2 of the City Code would appear to define "final average salary" for purposes of the Police and Fire Retirement System as "the average of the employee's highest rates of salary . . . during the three (3) consecutive calendar years of employment when such salary rates were highest." Hence, the Union's concern with the impact of the City's offer on FAO pensions may be overstated.<sup>4</sup>

Based on the foregoing, it is the award of the panel that the City's offer be adopted.

Panel member Paton dissents.

(9) FAO Television Use.

Regarding the issue, agreed by the parties to be noneconomic, the City's final offer is as follows:

The City proposes that former FAO's not be permitted to watch television while on duty except for City approved usages such as news and weather programs which may be necessary to stay current with breaking news events and severe weather outbreaks necessary for dispatch operations. The City shall determine the appropriate location of any television used for these purposes.

The Union offers:

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<sup>4</sup> The Union raises a legitimate question regarding whether the City's proposal adequately deals with wages for an employee not physically able to return to a former position. The panel is of the view that this issue may be dealt with appropriately in the context of determining a position for a disabled employee through the process awarded above under the heading "Job Security/Employment Rights after Elimination of FAO Classification."

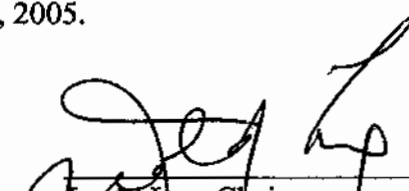


The FAOs shall continue to have the right to watch television while on duty, consistent with past practice and the award of Mario Chiesa dated July 24, 2003.

While the panel acknowledges the paramount importance of public safety and the significant role the dispatch function plays in assuring such safety, and further acknowledges that the award of Arbitrator Chiesa only determined that alteration of the practice of television viewing by FAO's required collective bargaining, not that the practice was desirable, it is nonetheless the conclusion of the majority of the panel that the evidence does not so clearly demonstrate that the practice has an adverse impact on safety as to require modification of the practice through this award. It may well be the case that television viewing by FAO's causes a degree of resentment among ECO's, but the overall thrust of this decision is that the source of any such resentment will shortly be removed. Hence, it is the award of the panel that the Union offer be adopted.

Panel member Childers dissents.

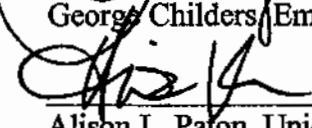
This award is issued 11/28, 2005.



Harold Lax, Chairperson



George Childers, Employer Delegate



Alison L. Paton, Union Delegate