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CITY OF NOVI

Employer,
- and -

MERC 312 Case No. D04 G-1147

NOVI FIRE FIGHTERS ASSOCIATION

Union.

OPINION AND AWARD

**Panel Chair Thomas J. Barnes
June 29, 2007**

CHRONOLOGY

Petition Filed:	December 19, 2005
Prehearing:	June 19, 2006
Hearing Dates:	February 6, 2007 February 23, 2007 March 16, 2007
Last Best Offers:	April 17, 2007
Briefs Exchanged:	June 18, 2007

APPEARANCES

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Dennis DuBay

Fred Timpner

PANEL DELEGATES

For the Employer:

For the Union:

Dennis DuBay

Fred Timpner

INTRODUCTION

There are 4 issues to be decided by the panel; 3 raised by the City (i.e., attendance, longevity, and stand-by pay), and 1 raised by the Union (i.e., wages). The arbitrator has had the benefit of thoroughly presented evidence at three days of hearing, responsible last best offers, and very helpful briefs.

THE ISSUES

Attendance

The first issue to be decided by the panel is the attendance issue, the subject which occupied the greatest portion of the testimony at the 312 hearings. The City's brief treats each of the subsections and subparts of Article 6 (Sections 1-4) seriatim and these were presented in that fashion at the hearing and thus will be considered in that manner here. While it was ultimately agreed this issue would be considered economic, there was some initial hesitance by both parties to designate the attendance issue as economic or non-economic. The interests of the parties and that of statute will best be served if the issue is considered economic (as the parties ultimately agreed) but each issue within attendance is considered and awarded separately. These issues as awarded are then combined as the awarded Article 6 on pages 11-12.

There are some less significant aspects of the attendance policy with regard to which the parties are not in agreement and there is one major disagreement. The major issue concerns the minimum percentage of calls to which a bargaining unit member is expected to respond out of his or her assigned station which occur when an employee is "not out of service." Currently the City has a general rule (City Ex. 26) that provides that "members must maintain a 40% response record to incidents within their District during the course of six (6) months unless excused for

reasonable cause." (City Ex. 26). The review is done quarterly. The following "construction" of Article 6 is considered and awarded in the chronological order used by the City in its LBO.

Section 1 - Out of Service Time

The City proposal on Article 6, Section 1 to exclude twelve hour shift assignments (507 shifts) was testified to somewhat equivocally ("That's the way I understand it" - Tr III 109) ("this is for clarification," "clearly defines what those absences will be" - Tr III 105) as being considered "Out of Service Time" in the past and there is no compelling record testimony to order it here. The Union brief states: "There is nothing out of service about the time spent on a 507 shift" (Union brief 6). I am compelled to agree since being at the station ready, able, and available to respond isn't anything but being "in service." There was scant testimony on the necessity for this "clarification" of the present practice (See Tr. III, 107-109). In fact, it disadvantages those POC who work the 12-hour shifts and these worked shifts represent an even greater commitment to the City than the firefighters who chose to not work them and only respond to calls while at home. While the comparables are not definitive on this issue none of them convert service time to out of service time. Of course it goes without stating the obvious that the City could count the calls to 507 personnel as well as the responses so that the statistics are properly aligned.

The other minor difference in the competing LBOs on Section 1 is the City's addition of "other reasonable cause" to the Out of Service Time definition. Both parties have the language "approved excused time off (ETO)" and that adequately covers it and makes the additional verbiage unnecessary. Therefore, Section 1 (the Union's LBO language) is awarded.

Section 2 - Excused Time Off

The City has proposed specific language (not currently a policy) to provide a specific vacation benefit and a schedule for vacation time off well in advance and to memorialize and make more formal the scheduling of time off. The comparables do not support the City. POC is different than the full time Unit I in having to schedule vacation in advance, there is no compelling reason on the record to alter the status quo and the inequities that could be visited upon the POC are real (Union brief, p. 8) when at least two of their members are engaged in worthy community service elsewhere. I am mindful of the City's point that "random happenstance" in vacation scheduling can only create future problems and detract from an orderly operation. I have the strong impression from Deputy Chief Johnson's testimony that he can handle it. He has so far; if it becomes a problem, future bargaining / Act 312 are remedies available and, of course, the POC might do well to make this work lest there has to be a remedy via formal, fixed contract language. Therefore the Union LBO on Section 2 to maintain the status quo is awarded (no definition of excused time off).

Section 3 - Training

The parties Section 3 Training LBO language is virtually identical. The Union language is awarded since it is a little more explicit in defining "responses." This now becomes Section 2 in the awarded language since the City's Section 2 has not been awarded.

Section 4 Call-outs and Response

Section 4.A.

The parties offers are identical and the City's LBO language is awarded since it does not contain any typographical errors.

Section 4.B.

The parties offers are similar (the difference being the City's use of "a month" as a measuring period and the union "a quarter" as is the current practice. The City language is awarded since it tightens very moderately the current situation which uses the quarter as the timeframe for measuring. The Union is being awarded other "trade offs" set forth herein (e.g., 507 shift counting, no defined ETO, counting calls outside regular POC hours) and thus viewing this monthly, given the Department's preference not to discipline, is fair and responsible. It should not be a burden to hardly any POC since all but two were above 40% and they are simply required to maintain that average monthly rather than quarterly.

Section 4.C (4.B in awarded language)

The City's last best offer imposes a new minimum of 55% of the toned out alerts to respond to a call (call-outs) out of his/her assigned station that occur when the POC is not out of service each calendar quarter. The City last best offer also proposes a reduction of that minimum 55% per quarter by 1% for each Unit II 12-hour station assignment completed by an employee in that quarter up to a maximum of a 10% reduction (i.e., to 45%). The Union proposes the status quo (no additional % requirement above the 40%) but changes the six month period to "each calendar quarter" and then adds the same remitter as the City 12-hour station assignment (i.e., 1% reduction for each 12 hour assignment to a maximum of 10%).

The comparables are found in City Ex. 30 which contains 13 proposed comparables and Union Ex. 45 which contains 9 proposed comparables. The qualifications for excused time allowed vary significantly and the percentage of runs required in those comparable municipalities vary widely. For example, Commerce Township does not provide for any excused time but requires 30 runs per month for those employees with up to 2 years of service,

25 runs per month for those employees between 2 and 5 years of service, and 20 runs per month for those employees with 5 years of service or more. Holly provides for a 70% run requirement but "when available" with excused time off "in advance in writing." On the other hand, Oxford, Walled Lake, White Lake, and Wixom all require only a 15% run requirement but 2 of those (Walled Lake and White Lake) provide for no excused time. Wixom provides for 5 consecutive days per month excused time, and Oxford does allow excused time "in advance in writing." The City and Union comparables are set out below:

CITY EX. 30	
Auburn Hills	n/a
Commerce Twp.	30 runs/mo 0-2 yrs seniority, 25 2-5 yrs 20 5+ yrs
Franklin/Bingham	n/a
Groveland	50% of fire calls No % req. medical
Holly	70% when available
Milford	n/a
Oakland Twp.	n/a
Oxford	15%

UNION EX. 45	
Brighton Area	20%
Farmington Hills	35%
Flatrock	20% (of all alarms for which they are available)
Macomb Township	30%
Milford	40% (of all emergency calls)
Northfield Township	30%
Northville City	25% (of all calls for which eligible)
Van Buren	20% (not mandatory)

CITY EX. 30	
Rochester Hills	40%
Springfield	25%
Walled Lake	15%
White Lake	15%
Wixom	15%
Novi	40%

UNION EX. 45	
Wixom	15% (of all monthly calls for emergency services)

There is no further definition in those municipalities that provide for excused time "in advance in writing." In summary, with regard to the City's proposed Section 4.C. the comparables fairly strongly support the Union's last best offer (Union Ex. 45; Employer Ex. 30). Among all the comparables, Novi is either at or near the top in terms of a high minimum run requirement. Of all 22 proposed comparables only two can be said to possibly have a higher percentage call requirement (Groveland and Holly)!

In addition, considering the record as a whole, there was no testimony that the City was not able to muster the necessary call-ins of Unit II personnel for fire calls and insufficient testimony for medical calls requiring an appropriate level of manpower. A close review of the record (City Ex. 27) regarding call-ins for 2006 reveals:

- Only 2 employees were below 40% (36 and 39%) (excluding of course probationers, leaves of absence, employees working less than a year.
- Only 7 employees were below 50%
- 3 were in the 50-60% range

- All the rest were above 60%

There was no issue regarding sufficient POC according to the Fire Chief with regard to fire alarms (Tr. III 168) ("everyone will - people will leave a big dinner for a fire") (Tr. III 173). With regard to medical calls, the Chief did have concerns. While he hasn't been on the job all that long he estimates "maybe several times a month" when POC response on medical calls isn't sufficient (Tr. III 173). While I don't discount the importance of the medical calls, it is not the primary function of the Department. Moreover, EMS is the first responder (90% of time they must be there within 8 minutes) on medical calls and thus the public has two agencies that can assist medical emergencies. In addition, the Chief offered no specific instances (Tr III 170) where medical calls went unattended, instead he relied on those calls where 10% of the time 8 minutes elapsed without an EMS response. (Tr III 170 and 173.) Those facts are not substantial enough to place the blame on the POCs, albeit everyone should be of a mind to listen to the Chief's request as fair and attainable: "and that's all I want them to do, is to respond when we want them" (Tr III 171).

I don't perceive a significant problem here for the City with the 40% call requirement, but if there is one, Assistant Fire Chief Jerry Johnson (who handles these matters) is more than ably qualified to deal with it by counseling, training, and if necessary, discipline. I observed him testify for a fair length of time. He is knowledgeable, straight forward, committed to making the team work, and very fair minded. While new, the same appears to be true for Chief Smith who has a wealth of prior lifelong experience in fire departments. I'm sure young or new firefighters to the Department will find it prudent to follow their wise counsel, including when they don't seem to be attending (at less than 40%) to a job and calling they desired. Job incumbents may

also find it in their best interest to not be a drag on the otherwise good attendance record of their fellow firefighters lest this become an issue that raises its head in future negotiations and perhaps 312's!

Since this is a first contract between the parties, it is not unfair to put the burden on the City to demonstrate that the existing policy and practice of a 40% call requirement has not worked and has caused the City significant problems, or is just unduly low relative to the comparables. I could not find that that is the case under any of those circumstances. Moreover, increasing the call requirement to 55% (even though it may be reduced by 1% for 12-hour station assignments) is a very significant increase under the circumstances. The 55% requirement per quarter is, in reality, a 55% average requirement for each month or just short of a 40% (15/40) increase in the call requirement! At least that's the case for the POC who do not volunteer for 507 duty. For a first contract that would appear to be very aggressive under the circumstances and a fairly significant departure from past policy and practice without a significant showing of need on the part of the City. While it is true that most POC, according to City Ex. 27 did exceed 55% there is no reason to believe that essentially keeping the status quo will reduce benchmarks (to date there are very few POC who hover at the low end of the attendance standard). That should not mean for future contracts or future Act 312's that the 40% requirement is not subject to change as conditions change; imposing such a significant increase requirement on the incumbent employees is just too important a change in the work and family life of the incumbent paid on-call fire fighters at this time.

Therefore the Union's proposal to maintain the status quo is awarded and the City's proposed 4.C. is rejected. (This Union LBO now becomes Section 4.B. in the awarded

language). However in awarding essentially the status quo the Union's and City's remitter language which is the same is rejected for the following reasons.

The Union's last best offer language in Section 4.C. uses the City's approach of a 1% reduction for each 12-hour shift. The City takes the position it is a new issue and can't therefore be ruled on. While I may not agree with *Ottawa County* as conducive to good labor relations, I am bound by it and therefore cannot rule the Union last best offer out of order on the basis it was not in the original submission. However, the Union's last best offer here on one section or part of Article 6, when the whole Section is before the panel, does not make this a new issue. It is part and parcel of the Attendance, Article 6 submission and what the hearing was primarily about. (Tr III 104; City Ex. 3, pp. 6-7 blocked language.) This is no different than either party offering last best offers on wages that differ from their table/hearing positions. In fact 312 encourages parties to carefully review the record before submitting last best offers so that their final positions appear reasonable and comport with the evidence. The Union last best offer language is taken directly from the City's language. The City advanced the concept and the Union engrafted it unto their "final offer" (LBO).

In view of maintaining the existing 40% standard by this award, there is not sufficient record testimony to justify the, up to, 10% bonus for attending 507 shifts. The POC are well paid by most standards and nearly all the comparables, the City last best offer wage increases are fair, there is no record testimony the Department unfairly disciplines for anything including attendance and the attendance policy before and after this award is not burdensome to the POC. To the contrary, these are very good secondary jobs, somewhat scarce in a state with a rapidly declining industrial base. Imposing a 1% to 10% deduction from an established and traditional benchmark of 40% is too drastic and provides too great of a lower end safe harbor!

Union leadership needs to be vigilant with its members so they recognize what they have - - and what they are at risk of losing if a significant number of POC decide to "ride the line" on the 40% attendance requirement! Even if the complaint is "we're having to do more with less - isn't that true just about with every employee, everywhere from the maintenance person to the skilled workers to supervisors, managers, CEOs and Board of Directors?

Last, this issue has the attention of City Council - they directed it (Tr III 118). Shutdowns of stations have occurred (Tr III 190), stations have had less than 2 POCs (Tr II 186-87), 6 times in 2006 a station was toned out and no POCs showed up (Tr III 159), and no second vehicle coverage (Tr III 160-162) has also happened. Fortunately, there were no untoward or disastrous consequences - if one were to occur there would likely be consequences and a "prescription written."

New 4.C. - Definition of Toned Out Alerts

Finally, the Union LBO credits time for responding to any toned out alert (including non POC hours of operation). Calls answered outside the normal POC hours are infrequent and thus it is not a significant alteration to the present practice to count those responses since presumably the POCs are needed and thus the Union LBO language is awarded.

Section 4.D.

The parties competing LBOs here are different in that the Union would have discipline possible where a POC fails to obtain the minimum (40%) response during a 12 month calendar year. The City's LBO would disqualify the POC who fails to meet the minimum response during a quarter from any 507 assignment in the succeeding month and in recurrent cases subject to termination. The Union's language on Section D is awarded for the reasons: (1) that the City's LBO is too big a departure from current practice; (2) discipline has not been a major headache

(the Department is professional in this regard, preferring to counsel the individual POC and having him arrive at the decision to quit rather than be terminated; (3) making a POC ineligible for 507 assignments defeats the purpose of trying to ensure those turns of duty are filled.

For the foregoing reasons, as discussed and awarded above, the Employer and Union last best offers concerning Article 6 are adopted by the panel (since City Section 2 was rejected the following LBO sections advance one):

ARTICLE 6 - ATTENDANCE

Section 1 - Out of Service Time

Out of Service Time is that time on approved medical leaves, approved workers' compensation leaves, approved absence due to work obligations, and approved excused time off (ETO).

Section 2 - Training

Employees shall attend 30 hours per year of state mandated Fire and EMT training and twelve (12) additional hours of training each year. Mandatory training shall be posted a minimum of thirty (30) days in advance. Responses to alarms and tone-outs during training time shall be treated in accordance with past practice and compensation.

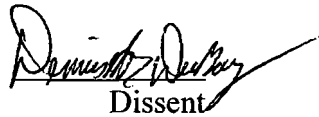
Section 3 - Call-Outs and Responses

- A. A call-out is a toned-out alert to respond to a call occurring between the hours of 6:00 p.m. and 6:00 a.m. Monday through Friday and 6:00 a.m. Saturday to 6:00 a.m. Monday, or in the event of an "all-call" (Response Period). A response is a timely reporting to the appropriate station within fifteen (15) minutes of the time of a call during the "response period."
- B. An employee who reports to the appropriate station in a timely manner but is released by the Department shall receive credit for a response. Each employee must respond to a minimum of 40% of the calls out of his/her assigned station that occur when the employee is not "out of service" of each calendar quarter.
- C. Unit two (2) employees who responded to any toned out alert shall receive credit for the run attended.

D. Employees who fail to attain the minimum response standard during a 12 month calendar year may be subject to disciplinary action up to and including termination.

For the City

Concur


Dissent

For the Union

Concur

Dissent

Longevity

The City has a current practice in the bargaining unit of paying longevity of \$250 after 5 years of service and increasing by \$50 per year up to 10 years of service with a maximum of \$500. The City's last best offer clarifies the language so as to maintain the current practice for employees hired prior to January 1, 2007. It is adopted for the reason that it is supported by all of the internal comparables. The City has 5 other bargaining units and an administrative (non-union) unit and all of those units at some point in the past (going as far back as 10/1/94) have been grandfathered under the longevity program so that new hires were not eligible for the program. (City Exs. 36-41; Tr. 272-276) At least as far as the City bargaining units are concerned, it is a vestige of the past and the City has acted responsibly in not taking that benefit away from employees who have enjoyed it over the years and has simply not made it available to new hires.

For those reasons, the City's last best offer which appears as follows is adopted:

Article 20 - Longevity shall provide as follows:

Section 1.

Employees hired prior to January 1, 2007, shall be eligible for longevity pay as follows:

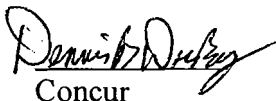
Annually on or before the first pay in December the City will pay to eligible employees in addition to base rate of compensation, longevity payments. Upon five (5) years of service, the paid-on-call shall receive longevity pay of \$250.00. This amount shall increase by \$50.00 per year up to ten (10) years of service to a maximum of \$500.00.

Seniority for each of the above must be obtained prior to December 1 for payment. Employees hired after January 1, 2007, will not be eligible for longevity.

Section 2.

Any employee qualified to receive longevity absent from active participation for six (6) months or more of the qualifying longevity period shall not receive any longevity benefits for that period.

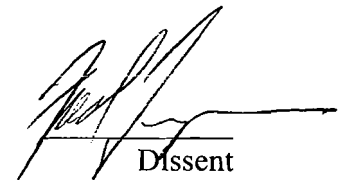
For the City


Concur

_____ Dissent

For the Union

_____ Concur


_____ Dissent

Standby Duty

Standby duty occurs when a paid on-call fire fighter is called in to the fire station but is not dispatched to emergency calls. Currently paid on-call is paid at the hourly alarm pay rate when they are called in as provided in the wage schedule. According to the record testimony, this does not occur a significant amount of time. The City has proposed to pay that work in its last best offer at 3/4 of the alarm pay rate. The Union proposes to continue the pay at the hourly alarm pay rate set forth in the wage schedule. The Union testimony pointed out that there are problems that occur in terms of which employees should be dispatched who are returning from a fire or medical call and those that have remained at the station. There also is concern that there might be a scramble of officers getting to the station first so that they could get the alarm rate of

pay, as opposed to the lesser rate for remaining on standby. I do not credit the latter testimony since I find that scenario remote given the traffic laws and the fire fighters good common sense.

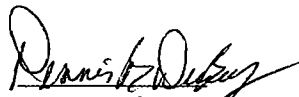
No other comparable has standby pay (Employer Ex. 35); Tr. 258). As importantly, the regular full-time firefighters (Unit I) do not have standby pay and they likely spend as much time "standing by" as the POC. City Exhibits 33 and 34 while helpful demonstrate the wide variation in the POC firefighters standby (15 to 100%) but it is far too limited a time (Dec. 1-25) to draw any conclusions. There is not a convincing case for changing the status quo and therefore, the Union's last best offer of maintaining the current hourly alarm pay rate is adopted with the following language:

Article 13 - Section 5 - Stand-by-Duty

Stand-by Duty is defined as when, in the discretion of the Employer, a member of the Association is required to be physically at a fire station to respond to emergency calls. Stand-by Duty shall be paid at the hourly alarm pay rate.

For the City

Concur


Dissent

For the Union

Concur

Dissent

Wages

Finally, the parties last best offers on wages are remarkably close. The last best offers are at variance in only two respects, the initial year and the July 1, 2005, rates. The City's offer of 3.25% for the year beginning July 1, 2005, is adopted and the parties offers of 3% for the year beginning July 1, 2006, and the year beginning July 1, 2007, are adopted since they are identical at 3% each year.

The POC bargaining unit was certified on July 19, 2004 (Case RO 4E-062), and bargaining began in February 2005 (Tr. II 33). While it is true that the last wage increases were in 2001 (Tr. III 48) the Union last best offer would start wage improvements on July 1, 2004, before bargaining even commenced! I entertain great doubt whether the panel has jurisdiction to make any award prior to the commencement of bargaining since it is an extension of that process not a precursor to it. It is not necessary to resolve that doubt since the City's last best offer is justified on other grounds. First, the City's last best offer provides nearly two years of retroactivity at this point - - a fairly generous concession for a first contract - - somewhat rare even in the public sector and unheard of in the private sector (where the average time to negotiate an initial contract is 18-20 months [and that often commences 2-3 months after certification])

Second, the internal comparables are consistent with what all other full-time bargaining unit employees received for 2005, 2006, and 2007.

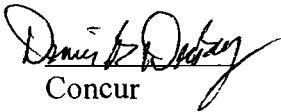
Third and finally, it can be generally noted with regard to comparable community wages that Novi is very competitive since the maximum rates which will be effective in a few days (7/1/07) are the highest of any of the comparables listed (City Ex. 25). Commerce Township is the closest at \$18 at the max and Milford and Oxford are at the \$16 mark. It can be noted that the minimum rate at Novi is on the low end compared to the comparables. In fact is at the lowest of the comparables the City lists (excluding Franklin Village/Bingham Farms which is a volunteer department) but that is compensated for by a hefty \$3.34 increase when a recruit moves to Level 1 and apparently the City has not had difficulty hiring paid on-call recently since it had recently hired 11 new paid on-call fire fighters.

Therefore, the City's wage last best offer is adopted as follows:

July 1, 2004 0%
 July 1, 2005 3.25%
 July 1, 2006 3.00%
 July 1, 2007 3.00%

Appendix A				
Wage Schedule				
Level	7/1/2004	7/1/2005	7/1/2006	7/1/2007
Recruit	6.95	7.18	7.40	7.62
I	10.00	10.33	10.64	10.96
II	14.00	14.46	14.89	15.34
III	15.00	15.49	15.95	16.43
IV	17.00	17.55	18.08	18.62

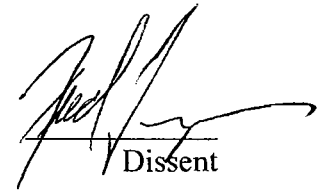
For the City


 Concur

_____ Dissent

For the Union

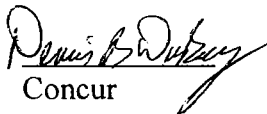
_____ Concur


 _____ Dissent

Tentative Agreements Between the Parties

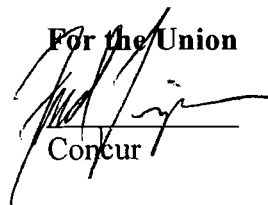
Finally, the parties have agreed to incorporate in this Award their tentative agreement (City Ex. 1) on all other provisions for their first contract.

For the City


 Concur

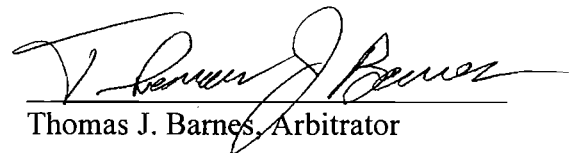
_____ Dissent

For the Union


 Concur

_____ Dissent

Dated: 6-29-07


 Thomas J. Barnes, Arbitrator