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In the Matter of Arbitration between  
Local 2659, I.A.F.F.

-and-

City of Farmington Hills, Michigan

LABOR AND INDUSTRIAL  
RELATIONS  
Michigan State University

8/7/79

ARB

Act 312 Proceeding

Case No. D79 A-160

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Preliminary Statement

This arbitration proceeding has been conducted pursuant to Act No. 312, Michigan Public Acts of 1969 as amended. The proceeding was initiated on March 28, 1979 by a joint request from Local 2659, I.A.F.F. (hereafter called the Union) and the City of Farmington Hills (hereafter called the City) to the Michigan Employment Relations Commission. On May 21, 1979, Dallas L. Jones was appointed by the Michigan Employment Relations Commission to serve as the chairman of the panel of arbitrators. Mr. Stephen Hume was selected to serve as the Union's delegate to the arbitration panel. Mr. Lawrence Savage was selected to serve as the City's delegate to the arbitration panel.

The Panel met in executive session on June 4, 1979 to discuss procedural matters. (The parties agree that this meeting constitutes the initiation of proceedings in this matter.) The results of this meeting were communicated to the parties.

The hearing was held on July 3, 1979. Mr. John C. Miracle, Michigan State Fire Fighters, appeared for the Union. Mr. Dennis Dubay, Attorney, appeared for the City. A verbatim transcript of the proceedings was made. The record consisted of eight joint exhibits, two Union exhibits, and 22 City exhibits. The hearing was closed on July 19, 1979 upon receipt of the transcript by the chairman.

Jones, Dallas L.

Farmington Hills, City of

The Panel met in executive session on August 1, 1979 to discuss the evidence and to reach a decision; thereafter, this decision was written by the chairman of the Panel. Full recognition has been accorded the views of the other Panel members. Concurrence in this Award by the City member of the Panel does not necessarily indicate agreement with everything stated in the Opinion.

### Opinion

The issues in this dispute are the length of the work day and the length of the work week. The parties agree that the issues are economic in nature. Therefore, under the terms of Section 8 of Act 312, the Panel must "adopt the last offer of settlement, which in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9." The last offers of the parties were:

|                  | <u>Union Position</u> | <u>City Position</u> |
|------------------|-----------------------|----------------------|
| <u>Work Day</u>  | 24 hours              | 8 hours              |
| <u>Work Week</u> | 56 hours              | 40 hours.            |

In reaching the decision set forth below, the Panel has taken into account the applicable criteria set forth in Section 9 of Act 312.

### Background:

The City of Farmington Hills encompasses 34 square miles, 92% of the property is residential. There are four fire stations, one located in each corner of the city approximately equal distances apart [City Exhibit No. 5]. Until 1977, the City had an all volunteer fire force. In 1976, Mr. John Van DeVoort was employed by the City as fire chief. After consulting

with the volunteer command officers and reviewing the problems and needs of the City, Chief Van DeVoort recommended to the city council that during the hours of 7:00 a.m. to 3:00 p.m., Monday through Friday, the volunteer fire force be replaced with eight full-time fire fighters with two fire fighters assigned to each station. Between the hours of 3:00 p.m. and 7:00 a.m. and on Saturdays and Sundays, the City would continue to rely upon volunteers or paid call-backs, as they are termed. The City adopted this recommendation.

Beginning in 1977, the City began to fill the positions that had been authorized. At the time of the hearing, seven fire fighters had been employed and another was expected to be hired momentarily; thus, two fire fighters are assigned to each of three stations and one to the fourth.

It is the City's position that this work schedule should be maintained; that is, an eight-hour work day and a forty-hour work week. The City advances, in brief, the following arguments in support of its position:

1. It is the prerogative of the City to determine the level of fire service that will be provided the community. The City Charter contemplates a volunteer fire department with some flexibility in establishing a full-time department. The city council accepted the recommendation of Chief Van DeVoort and the city manager in establishing the present combined full-time and volunteer arrangement.

2. The present work day and work week fully meet the needs of the City. This schedule was adopted because it was difficult to obtain an adequate number of volunteers during the

hours from 7:00 a.m. to 3:00 p.m., Monday through Friday. This is not true from 3:00 p.m. to 7:00 a.m. on weekdays and on Saturdays and Sundays [City Exhibit No. 6]. Thus, the present schedule was adopted to meet the City's greatest need, and the schedule meets the recommendations of the National Fire Commission.

3. The present schedule is more efficient and productive than a twenty-four hour work day and fifty-six hour work week schedule. The present schedule accounts for approximately 24% of the 168 hours in the week; however, this 24% of the time accounts for approximately 32% of all the alarms received by the department [City Exhibit No. 6]. Studies also indicate that the eight-hour day, forty-hour week is more productive because there is far less non-productive time for fire fighters. On the eight-hour day, forty-hour week, fire fighters can use the time spent in the fire station to engage in maintenance work and fire inspection, rather than in preparing and eating meals watching T.V., etc., such as is true on a twenty-four hour day - fifty-six hour week schedule.

4. If the Union's proposal were adopted and no additional personnel were employed, three people would be on duty for fourteen days of a twenty-one day cycle and two people would be on duty for seven days [City Exhibit No. 12]. This system would not provide the level of service required during the daylight hours when it is difficult to obtain volunteers. In order to provide the same level of service between 7:00 a.m. and 3:00 p.m., the City would have to hire sixteen additional fire fighters at a present cost of \$268,526.72 [City Exhibit No. 13]. In addition, there would be other costs, such as administrative

costs, clothing, equipment, etc. The City urges that this is a tremendous cost for a service that is not required.

5. The City notes that the Union has premised its case on greater safety for the fire fighters and the community; however, the Union has submitted no evidence to support its position. Indeed, urges the City, unless sixteen additional fire fighters were employed, there would not be greater safety for fire fighters because on certain occasions they would be working alone. Moreover, even if there were a driver on duty and he responded to an alarm, there would be little he could do when he reached the scene of the fire until additional manpower arrived. The City notes that under the present system, there is not a significant difference between the response time of the full-time firefighters and the volunteers [City Exhibit No. 8].

6. Finally, the City notes that many other communities rely upon volunteer fire fighters; thus, the City is not unique in this respect [City Exhibit No. 16]. The City also urges that this is a practice that has been established, employees were aware of the schedule when they were employed, and the City is not attempting to change it. Thus, even though the system is a new one, the City should be given the opportunity to prove it will work satisfactorily.

It is the Union's position that the City should be required to establish a twenty-four hour work day and a fifty-six hour work week. In support of its position, the Union advances, in brief, the following arguments:

1. The primary reason for adoption of the twenty-four hour work day and the fifty-six hour work week is safety - safety

for both the fire fighters and the community. There is no evidence that more fires occur during the day than at night. The Union is opposed to any system that, "by cutting corners," jeopardizes the safety of fire fighters and the community. Safety for the fire fighters and the community can be assured only when there are fire fighters on duty twenty-four hours a day, whether they work a fifty-six hour week or a forty-hour week.

2. The twenty-four hour work day and fifty-six hour work week can be accomplished with a complement of eight fire fighters. There would be two men on duty twenty-four hours a day with a third acting as a swing man. With a fire fighter on duty twenty-four hours a day, the response time would be reduced. The Union notes that the average response time at present between 7:00 a.m. and 3:00 p.m., when fire fighters are on duty, is 3.89 minutes; between 3:00 p.m. and 7:00 a.m., it is 5.42 minutes. This difference is important. The fire fighter on duty could get the equipment to the scene and either suppress the fire or begin the preparations to suppress the fire. On emergency medical calls, response time can mean the saving of an individual's life.

3. The Union points to its Exhibits No. 1 and No. 2 for comparable data. Union Exhibit No. 1 is a list of fire departments in Oakland County which are organized by the I.A.F.F., and which have a driver on duty twenty-four hours. Union Exhibit No. 2 is a survey by the I.A.F.F. of communities in Michigan organized by the I.A.F.F.; most communities have fire fighters on duty twenty-four hours. The Union also queries the relevance of Company Exhibit No. 16 but also points out that

the City of Farmington Hills is the only community in its size category in the region which does not have twenty-four hour protection.

Discussion:

I

It should be noted at the outset that the parties have agreed that the issue in this dispute is an economic issue. The fact that the issue has been defined as an economic issue requires the Panel to adopt either the last offer of settlement made by the Union or the last offer of settlement made by the City. Thus, even though the Union suggested at the hearing that it would consider a work week of other than fifty-six hours, this proposal cannot be considered by the Panel.

The City contends that it is the prerogative of the City to determine the work that is available and to schedule the work force in such a manner as to meet the needs of the community. In part, this argument has validity; in part, it does not. Hours and working conditions are mandatory subjects of collective bargaining. Thus, through collective bargaining the managerial right to schedule work may be restricted. The fact that employees were hired to work the present work schedule and were aware of that schedule when they were employed, does not have any great significance to a resolution of this dispute. Collective bargaining is the means by which employees seek to change working conditions that are deemed unsatisfactory, no matter how long those conditions have been in effect.

While the parties defined the issue as an economic issue, there was no explicit evidence submitted in regard to the

City's ability or inability to pay. In part, perhaps, this stems from the fact that this was the first issue to be discussed by the parties and an impasse developed without consideration of other cost items; it may also stem in part from the fact that if the eight-hour day, fifty-six hour week were adopted with no increase in the number of fire fighters, the additional cost would not be overwhelming. The City contends, however, that in order to meet the City's need in terms of fire protection, the adoption of the twenty-four hour day - fifty-six hour week would require the employment of sixteen additional fire fighters at a cost of over \$268,000. Thus, while ability to pay is not a direct factor in this dispute, cost does come into play in considering "the interests and welfare of the public" [Section 9(c)] and in considering the cost-benefit factor of adopting a twenty-four hour day - fifty-six hour week, if additional personnel are required for such a schedule (Section 9h).

The Union's case for the adoption of the twenty-four hour day - fifty-six hour week was premised on two contentions: (1) comparisons with other communities, and (2) the safety of fire fighters and the safety of the community. While comparisons are always important - particularly in wage disputes - comparative data is only one of several criteria that should be considered, and in any given case, comparative data is not necessarily the most important. Moreover, if comparisons are made, they must be presented with sufficient detail. Thus, for example, to argue that City A should pay a certain salary because Cities B, C, and D pay such a salary is not useful unless other



elements of the salary package (i.e., fringes, etc.) and other factors (i.e., the skills required of employees) are known. Thus, while it is clear from the Union exhibits that most of the cities in Michigan organized by the I.A.F.F. have twenty-four hour protection by paid firemen and that certain fire departments in Oakland County organized by the I.A.F.F. utilize drivers on a twenty-four hour basis, this information does not alone, in the Chairman's opinion, provide sufficient reason to hold that the City of Farmington should have paid fire fighters on duty twenty-four hours per day, seven days per week. By the same token, it may be added, the fact that some cities rely solely upon volunteer firemen does little to advance the City's position that it should not have twenty-four hour protection. This is especially so in view of the fact that the City of Farmington Hills is the only city in its size category without more complete protection. In short, the Chairman finds the comparative data advanced by both parties of little help in resolving this dispute.

While the Union contends that the safety of fire fighters would be increased by the adoption of the twenty-four hour day - fifty-six hour week, no evidence was advanced to support this assertion. Indeed, if the twenty-four hour day - fifty-six hour week system were adopted and the City did not add personnel, it can be argued that the safety of the fire fighters would be decreased because they might well be working alone. Thus, if the twenty-four hour day - fifty-six hour week system were adopted with no increase in personnel, two stations could be manned with one man at all times and there would be a

"swing-man" available two weeks out of a three-week cycle. As the City noted, the Union has urged in other Act 312 cases and in grievance arbitrations, that for safety reasons a fireman should not work alone. If sixteen additional fire fighters were added so that each station would be manned twenty-four hours per day, the situation would be the same as it is at present.

The Union argues that safety to the community would be increased with the present manpower under the twenty-four hour day - fifty-six hour week system, because the response time would be decreased; that is, the amount of time required to get the equipment to the scene of the fire once the notice of a fire (alarm) has been received. With minor qualifications, this is true. However, there would be only one fireman at the scene. The Chairman was impressed with the testimony of Chief Van DeVoort, whom the Union admits is an expert, that having the equipment at the scene means little unless there is also sufficient personnel to man the equipment. Thus, even with a fire fighter on duty twenty-four hours, the critical factor will still be the response time of the volunteers. The one clear advantage of having a fire fighter on duty twenty-four hours is in terms of emergency medical runs. The Chairman does not believe, therefore, that fire protection would be increased under a twenty-four hour day - fifty-six hour week with an eight-man force; indeed, the level of protection may decline because of the inability to obtain volunteers between 7:00 a.m. and 3:00 p.m.

If sixteen fire fighters were added to the force in order that each station could be manned twenty-four hours per day,

seven days per week with two fire fighters, there is no question that the safety of the community would be enhanced. Moreover, fire fighters would not be required to work alone. This can be done, however, only at considerable cost. The question is whether the interest of the community demands that such a schedule be adopted; that is, is the cost worth the benefit? The Chairman believes that the answer to this question is "no."

The eight-hour day, forty-hour week system is an innovative system recommended by the National Fire Commission as an alternative to the twenty-four hour day - fifty-six hour week system for those communities which can depend upon volunteers during certain hours of the day and certain days of the week, but can not do so at other times. While the Chairman is always suspicious of averages (i.e., average number of volunteers responding to a call and average response time), the evidence presented by the City indicates that except for the hours between 7:00 a.m. and 3:00 p.m., the City can meet its needs in a reasonable fashion with volunteers. Certainly, there is no clear and convincing evidence to the contrary. The only reason for the creation of a group of paid fire fighters to work from 7:00 a.m. to 3:00 p.m., Monday through Friday, was to overcome the problem of inadequate volunteer response during these hours.

It is also clear that under the present system, the time spent on duty by the fire fighters can be used effectively; there is little non-productive time. Under the present system, when fire fighters are not engaged in responding to fires or carrying out necessary maintenance work, fire fighters can be

used to carry out inspections. Under the twenty-four hour day - fifty-six hour week system, unless sixteen additional fire fighters were employed, inspections would have to be carried out by other personnel. But if sixteen additional fire fighters were employed, there would be a great number of non-productive hours.

In the context of our times, the interest and welfare of the community demands that public services be carried out as efficiently as possible to meet reasonable needs. In the absence of convincing evidence that the welfare and interest of the community demand a service that can be provided only at considerable cost, or that the safety of fire fighters is at stake, the Union's position in this dispute must be denied and the City's position sustained.

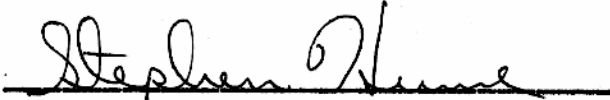
## II


The parties in this dispute are negotiating their first contract. As noted above, they reached an impasse in regard to the work schedule to be adopted, and they have not been able to discuss other issues until this matter was resolved. The parties have requested, therefore, that the Panel retain jurisdiction until the negotiations are completed in order to resolve any impasses which may occur in the course of these negotiations. Hopefully, no other impasses will develop. However, the Panel (all members) accedes to the request of the parties and will retain jurisdiction of this matter until October 1, 1979, unless notified by the parties prior to this date that all issues have been resolved. A short extension of time will be granted upon a mutual request from the parties.


Award

1. The last offer of the City is adopted by a majority of the Panel. The work day shall consist of eight hours. The work week shall be forty hours.

2. The Panel shall retain jurisdiction of this dispute until October 1, 1979, as set forth above.

  
Stephen Hume, Dissenting

  
Lawrence Savage, Concurring

  
Dallas L. Jones  
Chairman

Dated: August 7, 1979

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