STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of Statutory Arbitration Between:

Detroit Fire Fighters Association, Local 344,
IAFF, AFL-CIO

-and- MERC Case No: D01 E-064

City of Detroit
_____/

Michael P. Long, Chair
Daniel F. McNamara, Fire Fighter Delegate
Leonard Givens, Employer Delegate

DECISION REGARDING JURISDICTIONAL ISSUES

This decision involves jurisdictional issues that have arisen in an Act 312 Arbitration proceeding between the Detroit Fire Fighters' Association (the Fire Fighters or Union or DFFA) and the City of Detroit (the City or Employer). These issues were raised during the course of presentation of proofs in the Act 312 proceeding, and are based on the City's objections to the consideration of a number of proposals set forth by the Union.

After some discussion between the Parties, and among the Panel members, the Chairman determined that the Parties would continue to present their proofs regarding the issues in which disputed had arisen regarding jurisdiction and preclusion because of an agreement to maintain parity. It was determined that after the close of proofs, the Parties would file briefs regarding the jurisdictional and parity objections, so that the Panel could decide those objections before the Parties submitted last best offers. This way, the parties could formulate their final offers and concentrate their efforts only on the issues that would be within the

jurisdiction of the arbitration panel.

MANDATORY SUBJECTS OF BARGAINING

It is undisputed that Michigan Act 312 provides an arbitrator tribunal impaneled under its auspices with jurisdiction over only the mandatory subjects of bargaining.

Collective bargaining in the public sector is governed by Michigan's Public Employment Relations Act, MCLA 423.201 et seq; MSA 17.455 (1) et seq. ("PERA"). PERA requires that public employers and employees bargain in good faith regarding "wages, hours and other terms and conditions of employment." Mich. Comp. Laws Ann. §423.215 (West 2002). This requirement extends only to those matters which constitute "mandatory subjects of bargaining" *City of Detroit v Michigan Council 25, AFSCME*, 118 Mich App 211, 324 NW2d 578 (1982); *Detroit Police Officers Ass'n v Detroit*, 61 Mich App 487, 233 NW2d 49 (1975); De*troit Police Officers Association v City of Detroit*, 391 Mich 44, 54; 214 NW 2d 803 (1974); *Amalgamated Transit Union, Local 1564, AFL-CIO v Southeastern Michigan Transportation Authority*, 437 Mich 441; 473 NW2d 249 (1991); *Metropolitan Council No. 23, AFSCME Local 1277* v *Center Line*, 414 Mich 642, 653, 327 NW2d 822 (1982).

> The distinction drawn between mandatory and permissive subjects of bargaining is significant in determining the scope of the Act 312 arbitration panel's authority. Given the fact that Act 312 complements PERA and; that under § 15 of PERA the duty to bargain only extends to mandatory subjects, we conclude that the arbitration panel can only compel agreement as to mandatory subjects. *Center Line, supra* at 654.

Because the phrase "terms and conditions of employment" is borrowed from the federal National Labor Relations Act, or NLRA, 29 U.S.C.A. §158(d) (West 1998),

Michigan courts rely on federal case law when they interpret the scope of this phrase. Metropolitan Council No. 23 and Local 1277 of AFSCME v. City of Centerline, 414 Mich. 642, 653, 327 N.W.2d 822, 826 (1982); Detroit Police Officers Association, 391 Mich. at 52-53, 214 N.W.2d at 807-08. However, because public employees in Michigan are forbidden to strike, Michigan courts define "mandatory subjects of bargaining" under PERA somewhat more broadly than do federal courts under the NLRA. West Ottawa Educ. Assoc. v. West Ottawa Public Schools Bd. of Educ., 126 Mich. App. 306, 315, 337 N.W.2d 533, 539 (1983); Detroit Police Officers Assoc. v. City of Detroit, 61 Mich. App. 487, 491, 233 N.W.2d 49, 51 (1975), and cases cited therein.

A proposal is a "mandatory subject of bargaining" if it "has a significant impact upon wages, hours or other conditions of employment, or settles an aspect of the employer-employee relationship." City of Manistee v. Manistee Fire Fighters, 174 Mich. App. 118, 122, 435 N.W.2d 778, 780 (1989); City of Detroit v. Michigan Council 25, AFSCME, 118 Mich. App. 211, 215, 324 N.W.2d 578, 580 (1982). This Panel has the authority to issue a "final and binding" award, enforceable by the courts of the State of Michigan, regarding any mandatory subject of bargaining which is submitted to it. City of Centerline, 414 Mich. at 654-55, 327 N.W.2d at 827.

Analysis of whether an issue constitutes a mandatory subject of bargaining under the criteria set by the statute and interpreted by the courts proceeds on a case-by-case basis, *City of Detroit v Michigan Council 25, AFSCME, supra*, at 118 Mich App 215; *Detroit Police* Officers *Association v City of Detroit, supra*, 61 Mich App at 490-419. The MERC, the NLRB, and the Michigan and federal courts have utilized various tests to determine what constitutes a mandatory subject of bargaining.

Detroit Police Officers Ass'n., n 8 *supra*; *Jackson Community College Classified & Technical Ass'n. v. Jackson Community College*, 187 Mich. App. 708, 712-713 (1991); *Houghton Lake Ed. Ass'n. v. Houghton Lake Community School Bd. of Ed.*, 109 Mich. App.1 (1981). The Michigan courts have synthesized the various tests into a single test, which guides a case-by-case determination of whether a particular issue is a mandatory or permissive subject of bargaining under PERA:

> "Any matter which has a material or significant impact upon wages, hours, or other conditions of employment ... except for management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security." *Grand Rapids Community College Faculty Ass'n.*, n 50 supra, citing *West Ottawa Ed. Ass'n. v. West Ottawa Public Schools Bd. of Ed.*, 126 Mich. App. 306, 322 (1983); *St Clair County Intermediate School District*, 2000 MERC Lab Op 55, 61.

Policy considerations often fall within the spectrum of management prerogatives, and thus, are not generally mandatory subjects of bargaining. *Central Michigan Faculty Ass'n. v. Central Michigan University*, 404 Mich. 268, 290 (1978); *Detroit Police Officers Ass'n.*, n 54 *supra*, p 495; *Grand Rapids Community College Faculty Ass'n.*, n 50 *supra*, p 659.

The concepts of "entrepreneurial control," and "corporate enterprise" were developed in cases decided under the NLRA, *Fibreboard, supra*, at 223, but have been applied under PERA to issues involving policy-related decision-making which falls within managerial prerogative, *see, e.g., Central Michigan University Faculty Association v Central Michigan University*, 404 Mich 268, 280-283, 273 NW2d 21 (1978).; *Detroit Police Officers Association, supra*, 61 Mich App at 494. Public Employers have no duty to bargain over matters that fall within management's prerogative. *Center Line, supra*, at 660:

> As stated earlier, the layoff provision provided that layoffs of police officers for lack of funds could only be made in conjunction with layoffs and cutbacks in other departments. We interpret this clause as one that is within the scope of management prerogative. The clause unduly restricts the city in its ability to make decisions regarding the size and scope of municipal services. . . .

In *Detroit Police Officers Ass'n v City of Detroit, supra*, the Michigan Court of Appeals specifically adopted the 'managerial prerogative' test as articulated by Justice Stewart in *Fiberboard Paper Products Corp v NLRB*, 379 US 203, 223; 85 S Ct 398; 13 L Ed2d 233 (1964):

> Those management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from that area of mandatory subjects.

MERC has also adhered to the proposition that a public employer has the managerial prerogative to make decisions regarding the "*size*" and "*scope*" of service it provides. *See School District of City of Flint,* 13 MPER ¶ 31005 (Oct. 1999). It is widely recognized that management reserves the right to make policy decisions regarding the overall structure and operation of a public employer. *Pinckney Community Schools*, 9 MPER ¶ 27085 (July 1996).

Judicial consideration of the nexus of managerial prerogative and the requirement to bargain in the area of public safety have often revolved around the right of the public employer to determine staffing levels. Both Michigan courts and the MERC have consistently held that the duty to bargain does *not* extend to employers' decisions regarding staffing levels of its employees. *Jackson Firefighters Ass'n Local 1306, IAFF, AFL-CIO v City of Jackson,* 227 Mich App 520 (1998); *City of Ecorse*, 11 MPER ¶ 29069 (June 1998).

In *Bay City Education Association v Bay City Public Schools*, 430 Mich 370, 422 NW2d 504 (1988), the Court reiterated the *Centerline* principle that:

> Certain subjects are within the scope of management prerogative, and the public employer, who remains politically accountable for such decisions, must not be severely restricted in its ability to function effectively. *Id*, 430 Mich 376.

An exception to the general rule concerning staffing levels occurs when employee health or safety is at issue. Safety is a mandatory subject of bargaining because it is a "term and condition of employment." Fibreboard Paper Products Corp. v. National Labor Relations Board, 379 U.S. 203, 222 (1964) (Stewart, J., concurring); City of Centerline, 414 Mich. at 663; 327 N.W.2d at 831. /[1]

POLICE-FIRE PARITY

There is no dispute that parity is not a jurisdictional bar to consideration of an issue for Act 312 determination. The parties have stipulated that they want a parity relationship to remain. The determination to be made regarding parity is its definition so that wages, hours and other terms and conditions of employment governed thereunder can be maintained. This determination is being made so as to clarify which, if any or all, of the Union's proposals would, if granted, would conflict with the parity relationship.

The term "Parity" denotes the mechanism by which the parties maintain the historical relationship of equality between uniformed employees of the Detroit

---

[1]/Fibreboard, 379 U.S. at 222 (Steward, J., concurring) ("[W]hat safety practices are observed would . . . seem conditions of one's employment."); National Labor Relations Board v. Gulf Power Co., 384 F.2d 822, 825 (5th Cir. 1967) ("safety rules and practices . . . are undoubtedly conditions of employment"); Asarco, Inc. v. National Labor Relations Board, 806 F.2d 194, 198 (6th Cir. 1986) ("Employee safety, as a condition of employment, is a mandatory subject of collective bargaining."); Oil, Chemical & Atomic Workers Local Union No. 6-418 v. National Labor Relations Board, 711 F.2d 348, 360 (D.C. Cir. 1983) ("Employee health and safety indisputably are mandatory subjects of collective bargaining . . . .").

Police Department and members of the DFFA with respect to salary and economic benefits, as well as the internal salary relationships among ranks and positions within the Fire Department. The term does not appear in the "Definition" section of the agreement. It is specifically addressed in Schedule I, at the end of the agreement.

"RE: TRADITIONAL POLICE-FIRE PAY PARITY AND OTHER SALARY RELATIONSHIPS:

A. Traditional police-fire pay parity means that the full time Police Officer and the full time Fire Fighter, whose base salaries are the same, will experience identical salary rate changes with identical effective dates throughout the fiscal year so that the total base pay of a Police Officer is equal to that of a Fire Fighter in any fiscal year covered by this Agreement. Similarly, the Fire Sergeant and Fire Engine Operator have parity with the Police Investigator, the Fire Lieutenant has parity with the Police Sergeant, the Fire Captain with the Police Lieutenant, the Battalion Fire Chief with the Police Inspector, and the Chief of Fire Department with the Deputy Chief-West Operations.

B. For purposes of this Agreement, parity shall also mean the following salary relationships which are internal to the Fire Department.
   1. Classifications equal to Fire Fighters
      a. Boiler Operator - High Pressure - 24 Hour Service Interim
      b. Assistant Fire Dispatcher
      c. The salary of Fire Fighter Driver shall be 105% of the maximum salary of Fire Fighter.
      d. Classifications equal to Fire Sergeant:
         a) Fire Engine Operator
         b) Operator of an aerial tower or platform apparatus
         c) Senior Assistant Fire Dispatcher
   2. Classifications equal to Fire Lieutenant:

a. Fire Training School Instructor - Lieutenant
b. Fire Community Relations Officer - Lieutenant
c. Fire Investigator - Lieutenant
d. Fire Prevention Inspector
e. Fire Prevention Instructor
f. Fire Research & Development Assistant - Lieutenant
g. Fire Dispatcher

3. The salary for the classification of Senior Fire Dispatcher (73-60-61) shall be the arithmetic mean (rounded to the next highest whole dollar) of the salaries for the classifications of Fire Lieutenant and Fire Captain.

4. The salary of the Assistant Superintendent of the Apparatus Division shall be 93% of the salary of Captain; the fringe benefits of that position shall remain tied to civilian employees.

5. Classifications equal to Fire Captain:
a. Fire Training School Instructor - Captain
b. Plan Examiner - Fire Protection
c. Fire Investigator - Captain
d. Senior Fire Prevention Instructor
e. Assistant Supervising Fire Dispatcher
f. Senior Fire Prevention Inspector
g. Fire Research and Development Assistant - Captain
h. Assistant Community Relations Coordinator

6. Classifications equal to Battalion Fire Chief:
a. Supervisor of Fire Department Training School
b. Assistant Fire Marshal
c. Fire Investigator - Chief
d. Supervisor of Fire Protection Engineering
e. Fire Department Community Relations Coordinator
f. Fire Department Research and Development Coordinator
g. Supervising Fire Dispatcher

h. Superintendent of Fire Apparatus
i. Technical Support Supervisor - Fire Marshal Division.

7. Effective July 1, 1995, there shall be two (2) Senior Chiefs, Unit 1 and Unit 2. The Senior Chiefs shall be the two (2) most senior employees from the rank of Battalion Chief. Salary of the Senior Chief, Unit I and Unit 2, shall be eighty-nine percent (89%) of the Chief of Fire Department.

8. The salary of Deputy Fire Chief shall be 93% of the salary of Chief of Department.

9. The salary of the Fire Marshall shall be 97.73% of the salary of Chief of Fire Department.

C. All salaries shall be expressed in whole dollars. After applying percentages per the relationships described above, the salaries shall be rounded up to the next highest whole dollar.

D. Traditional police-fire pay parity as heretofore defined and applied shall continue. This shall include, by way of illustration and not limitation, the compensation adjustments in the 1969 PA 312 George Roumell DPOA-City Award, dated February 20, 1995; the Memorandum of Understanding Between the City and the DFFA pertaining to changes and improvements in the Detroit Policemen and Firemen Retirement System, dated April 22, 1993, effective July 1, 1992; Ordinance No. 2-93, Chapter 47, to provide for changes in pension benefits in the General Retirement System, enacted February 1993, retroactive to July 1, 1992; the duty disability program adopted pursuant to the 1969 PA 312 Roumell DPOA-City Award, dated February 20, 1995 (as referenced in Mr. Roumell's February 22, 1995 letter to counsel for the DPOA and City) provided that references to "police officer" or "Union" shall be modified to "fire fighter" or "DFFA" respectively; effective October 1, 1995, the health care insurance award if 1969 PA 312 Roumell DPOA-City award dated February 20, 1995 ("21. Hospitalization, Medical Dental

and Optical Care," at pages 100-106; and item 2 of the Roumell February 21, 1995 letter to DPOA and City counsel), provided that, although the DFFA agrees to the level of health care premiums therein provided to be paid by the city to the Coalition of Public Safety Employees Health Trust, the DFFA reserves the option to participate in that Trust or to create its own trust and further provided that members of the DFFA bargaining unit reserve the personal option, alternately, to continue under City-maintained current carriers and programs, subject to parity and applicable premium levels.

E. Contingent Parity

If there is establishes for 1998-2001 by arbitration, negotiations or otherwise different compensation or cash benefits for non-civilian employees or Officers of the Detroit Police Department that are found in this Agreement, this Agreement shall be adjusted to conform thereto so as to maintain the traditional relationship for all corresponding ranks, of fire-police parity."

"Parity" is referenced a number of times in the body of the collective bargaining agreement. It is referenced in Article 22 – Economic Provisions in section A.1, which states, "Salary Rates for employees in the bargaining unit shall be maintained in accordance with the traditional police-fire pay parity concepts. . . ." In Article 22, Section A.3 it states, "Ranks having a parity relationship with the DPCOA Unit 1 (Police Inspectors) shall be paid the following wage adjustments: . . ." At Article 22, Section 3 a, it states, ". . . the Association agrees that members with a parity relationship with the DCPOA Unit 1 will be included in the City's Executive Compensation Plan and fall within the same minimum and maximum compensation range as a non-union Police Inspector . . ."

In Article 22, Section B.1,a, it states, "For Employees with a Parity Relationship with the DPLSA, the Following Shall Apply." It then goes on to set forth a hospitalization plan for those employees. Section B, 1, b states: "For Employees with a Parity Relationship with the DPOA and the DPCOA, Unit I, the Following

Shall Apply . . ." It then goes on to set forth a hospitalization plan for those employees. In d (1) it references employees in ranks or classifications with a parity relationship to the employees represented by the Detroit Police Lieutenants and Sergeants Association for purposes of setting retirement hospitalization benefits. Death benefits in B., 2, (a), (2), (b) are set for those who have a parity relationship with DPOA members. B, 2, c, (2) sets Group Life Insurance contributions for employees with DPLSA parity. B, 5 sets Uniform Cleaning Allowance for classifications with a parity relationship with the DPOA, DPLSA and higher. (The "Uniforms" provision in B, 7 does not mention parity.)

Sick leave rules are set to be the same for civilians as for non civilians according to B, 9, f. "Equivalency" in wages for Fire Department Apparatus Division and Fire Boat employees is set in relation to General City employees in Sections B, 12 and 13. Because these two do not involve any equivalencies with Police Department employees, it is assumed that general "parity" as it is intended by the parties is not applicable here.

In B, 13, f, Longevity Pay is set for members with a "parity" relationship with DPOA, DPLSA and DPCOA. Pensions in B, 14, d (1) and (2) are set according to parity. Early Pensions are regulated by parity in B, 14, f, (4), (7) and (9). B, 14, I defines average compensation using parity. The Post Retirement Escalator is set using parity at B, 14, n. Duty Disability Retirement at B, 14, o references parity. Eligibility for the Deferred Retirement Option Program is set based on parity in B, 14, p.

Parity, in terms of establishment of wage and benefits, flows in only from Police ranks to corresponding ranks in the Fire Department. Police employees are represented by three Unions: The Detroit Police Officers (DPOA), which represents

the rank of Police Officer; Detroit Police Lieutenants and Sergeants Association (DPLSA), which represents the ranks of Police Lieutenants and Sergeants, and the Detroit Police Command Officers Association (DPCOA), which represents individuals at the rank of Inspectors and Commanders. Under parity, as defined by the bargaining agreement, it is the Police unions that bargain with the employer for wages and benefits. Whatever the outcome, the result is automatically passed on to the Fire Fighters. While the Fire Fighters have been allowed an observer in Police / City Act 312 proceedings, the Fire Fighters have not been determined to have any independent right to take part as a principal party in the proceedings.

While parity is established and maintained by agreement of the parties, the current scope and detail of that agreement has been largely defined and implemented through the Act 312 process. How parity operates, and - more particularly - what is included within its reach, has often been the subject of dispute between the parties, and necessarily, the subject of consideration and opinion by prior Act 312 arbitrators. Act 312, itself, incorporates many of the principles of parity in its list of matters to be considered by an arbitrator in making determinations regarding wages, hours and other terms and conditions of employment when it lists as criteria comparables of wages, hours and other terms and conditions of employment of other employees of the same employer and employees of other employers performing similar duties.2

---

2 M.C.L. 423.239 Findings and orders; factors considered.
Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
. . .
(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of
other employees performing similar services and with other employees generally:
(i) In public employment in comparable communities.

Parity has deep historical roots with respect to wages in Detroit, even without Act 312 arbitration.

According to the City, it has always supported and applied absolute wage parity between uniformed Police and Fire employees. The City has, however, frequently argued either wholesale against the application of parity, or sought to specifically limit and define the items to which parity should apply. The parity provisions in the contracts have evolved over a long period of time. The challenge for Arbitrators, given the evolution of the theory, is to divine what items could reasonably be held to be included within the definition of parity.

The City states that its resistance to parity in the context of bargaining and Act 312 in the past is that parity has become progressively less and less meaningful as a mechanism by which the City can settle economic issues with the DFFA. The City asserts that the theory of parity is that if the subject of a DFFA (or City) proposal is deemed to be covered by the parity principle, then it is not to be independently negotiated or arbitrated by the DFFA and the City; rather, the DFFA inherits, or is bound by, whatever determination has been made with respect to that item through negotiations or Act 312 awards with respect to the Police Unions. In theory, once the Police contracts are settled, the economic portions simply flow through to DFFA members, and the City and DFFA are then free to concentrate bargaining on unique

---

(ii) In private employment in comparable communities.

. . .

(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.

. . .

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

non-economic issues affecting the Fire Department and its employees. The problem, from the City's perspective is that parity no longer functions as a settlement of economic issues based on Police benchmarks. Rather, the DFFA now treats parity as merely an economic base that it should be allowed to augment through additions and extensions to obtain economic improvements over and above Police awards or negotiations.

In this arbitration, the City asserts that it is not challenging parity, but rather, asking the Arbitrator to apply what should be its preclusive effects against those proposals. In the City's words, the "DFFA's patchwork of economic ornamentation to settled wages and benefits does more than merely obscure the purpose of parity: the continual heaping of exceptions to the parity principle in effect swallows the rule."

The City points out that some basic principles can be distilled from arbitral application of the theory of parity. It states that parity is at its root a mechanism by which uniformed Fire Department and Police Department maintain overall economic equality in wages and benefits. The theory proposed in support of keeping the mechanism in place is that Police and Fire employees are both engaged in, and exposed to the hazards of, public safety work, and should therefore remain equivalent in the economic recompense they receive for such work. To allow one group to outdistance the other economically would affect employee morale and adversely impact the safety and well being of the public.

The City continues by referencing the body of 312 arbitral history that indicates while both Police and Fire employees work in public safety, both the work content and institutional structures within which they do this work diverge enough that some differences in amounts and kinds of remuneration may have to be allowed for.

Thus, while parity can be used to specifically define areas of absolute equality, differences in circumstances or duties may give rise to differences in rewards.

Base wages of the primary ranks, for example, and a number of other health care and pension benefits, are precisely identical for both uniformed Police and Fire employees. However, Fire Fighters, because progression is based on strict seniority only, have the opportunity to work out of grade at higher pay, while Police employees, who must test competitively for promotions, do not have such opportunity. The City insists that these allowable differences

1. must fit within the principles of the parity structure so that they do not eviscerate the logic of the rule; and,
2. should not distort the economic equivalency that parity is designed to maintain.

The City asserts that to the extent a DFFA economic proposal does not fall within these guidelines, it should be considered precluded by parity.

Parity In Act 312 Awards

The DFFA and the City have extensively litigated the issue of what is included in within the parity principle in prior Act 312 proceedings. Both parties have taken varying and sometimes inconsistent positions on whether a particular economic benefit is subject to parity, and arbitrators have opined on these positions in their awards.

A number of 312 arbitration awards are cited by the City and have been admitted into the record of the instant proceeding:

- January 4, 1971 Opinion and Award by Harry H. Platt (Employer Exhibit 1)

- December 1, 1971 Opinion and Award by Charles C. Killingsworth (Employer Exhibit 2)
- May 19, 1973 Opinion and Award by Leon J. Herman (Employer Exhibit 3)
- October 1, 1979 Opinion and Award by Robert G. Howlett (Employer Exhibit 4)
- July 8, 1985 Opinion and Award by John B. Kiefer (Employer Exhibit 5)
- September 28, 1987 Opinion and Award by Thomas Giles Kavanagh (Employer Exhibit 6)
- October 15, 2001 Opinion and Award by Benjamin Wolkinson (Employer Exhibit 8)
- The May 28, 1992 Opinion and Award by Richard Kanner does not discuss parity.

In the present case, the City states that it does not challenge parity, but rather seeks to enforce it, and admits that such has not always been the City's position. The City challenged absolute wage parity in early Act 312 proceedings before Arbitrators Platt, Killingsworth and Herman, in all cases without success.
In the *Platt* case, the City argued that differences in hours, risks and duties of the jobs warranted "salary separation" and that parity should be voluntary, i.e. based only on *negotiated* salary outcomes rather than on salary levels *awarded* by Act 312 Arbitrators. By way of background, the DPOA had been awarded a salary higher than the City's offer to both the DPOA and the DFFA. Rejecting the City's position, Arbitrator Platt found that Police-Fire pay parity was an operative principle in a number of national and Michigan cities. He opined that the job differences cited by the City were immaterial distinctions in light of the fact that both involved public safety duties with similar attendant risks. Platt found a "generally prevailing notion" that parity was necessary to maintain morale among employees in public safety jobs. He also cited the fact that the parity relationship had existed since 1907, and that maintaining this relationship had previously been the consistently expressed intent of the City. Arbitrator Platt further rejected the City's suggestion

of a distinction between negotiated and arbitrated salaries and suggested that the City's "motive" for eliminating parity was to avoid implementation of the higher DPOA salary award.

Arbitrator Platt also found the following benefits to be subject to the parity principle:

- Step increases
- Shift premiums
- Holidays fall during extra leave
- Holiday overtime
- Meal allowances
- The DFFA demand for SL-CT

In the *Killingsworth* case, the DPOA had not yet concluded its Act 312 hearings. The City argued that wage parity could not be maintained in the face of an uncertain future award. The DFFA contended that this reversal of the typical timing pattern of DPOA and DFFA awards was a gambit on the part of the City to eliminate parity. Arbitrator Killingsworth noted that the DFFA was asking for a "type of contingency clause" which would require the City to apply to the DFFA membership the wage and benefit adjustments awarded in the subsequent DPOA award. The City argued that such an award lacked finality.

Arbitrator Killingsworth, like Arbitrator Pratt, considered both the historical nature of Police-Fire parity, as well as its prevalence in other communities. He concluded that Act 312 provided the arbitrator with the power to award anything the parties could themselves legally agree to, and that contingency clauses were not only a common feature in labor agreements, but indeed, were to be found in many of the City's existing agreements with other Unions, including that with the DPLSA. Arbitrator Killingsworth also opined that, as Act 312 Arbitrator, with jurisdiction to

resolve disputes concerning mandatory subjects of bargaining, also had the authority to ignore the parity principle altogether.

The City also argued that the retroactive application of a DPOA award constituted an improper delegation of authority by granting broad discretion over *Fire Fighter* salaries to a *Police* Arbitrator. Killingsworth rejected this on the grounds that the "contingent" clause sought by the DFFA would merely establish Fire Fighter salaries in the same way past settlements and awards had done. *Killingsworth*, p. 27. Arbitrator Killingsworth concluded that the timing reversal of the Act 312 proceedings should not be allowed to eviscerate the operation of parity because:

> The Police-Fire parity principle has a rational economic and equitable basis, in addition to having the force of more than sixty years of mutual, voluntary acceptance by the parties themselves. *Killingsworth*, p. 27.

Arbitrator Killingsworth ultimately determined that the following wage-related items were subject to parity:

- Wage increases, p. 29
- Cost of living allowance, p. 45
- Overtime, p. 46
- Holiday Overtime, p. 49
- Step increases, p. 51

In addition, Arbitrator Killingsworth included the following non-wage items within the parity principle:

- Longevity payments (based on civilian as well as uniformed employees) pp. 47-48
- Food allowance - Killingsworth compared to this the Police gun allowance and held that if the DPOA was awarded a gun allowance, parity would require awarding the Fire Fighters food allowance demand. pp. 48-49
- Swing Holiday p. 50

- Uniform cleaning allowances p. 55

Killingsworth awarded salary increases *higher* than those subsequently awarded to the DPOA. The DFFA, however, accepted the lower pay "in order to maintain the purity of the parity relationship."

In the *Herman* Act 312arbitration proceeding for the 1972-74 contract, the City argued that even the lower wage demand should not be granted under parity because the Fire Fighters had already received an effective wage increase as a result of the reduction in work hours awarded by Arbitrator Killingsworth. The DFFA contended that differences in circumstances between the Police and Fire Department employees should not impact the application of parity. The Union argued that:

> ... it has never contended that all working conditions of the Police and Fire Departments are necessarily analogous. Police work an 8-hour day, 40 hour work week, while up to the time of reduction in hours, the Fire Fighters worked a 24 hour day, 56 hour week. This difference, in varying degrees, has been in effect for many years and has never affected the parity program. *Herman*, p. 16.

Arbitrator Herman rejected the City's argument on two grounds: first, it was contrary to modern labor relations principles to automatically equate a reduction in hours with an increase in wages, and second, the issue as framed was, in effect, moot: the City's argument should have been made before Arbitrator Killingsworth and it was now too late to reach back into that Award and grant a wage reduction based on the reduction in hours. *Herman*, p. 16. Relying on *Pratt* and *Killingsworth*, Arbitrator Herman upheld wage parity because:

> ...the parity formula has been so deeply enrooted in the City's pay pattern that only the most compelling of circumstances would sanction its immolation. *Herman,* p. 17.

Arbitrator Herman also granted the DFFA proposals on longevity pay and retirement sick leave pay-out based on the DPOA award. *Herman*, pp. 8, 20-21.

In the *Howlett* case in 1979, the City and DFFA stipulated that the following items were subject to parity:

- Wages
- Cost-Of-Living Adjustments
- Dental Care
- Liquidation of Unused Sick Leave Time
- Retirement System Improvement (Pensions)
- Holiday Pay

The parties also determined that if liquidation of unused sick leave award in the Police Lieutenants and Sergeants' case was applied to Police Inspector and Police Deputy Chief, it would be applied to the ranks of Battalion Chief, Deputy Fire Chief, Chief of Fire Department, Fire Marshall and all other equivalent ranks and classifications. p.145.

In the *Kiefer* Arbitration of 1985, the City proposed to amend the contingent parity provision by specifically enumerating those items that would be included as the full and complete definition of Parity:

Wages, COLA	Longevity	Layoff Benefits
Overtime	Sick Leave	Pension
Holiday Premium	Unused Sick Leave Payout	Death Benefits
Number of Holidays	Shift Premium	Life Insurance
Medical Insurance	SL-CT (Bonus Vacation)	Tuition Refund

The DFFA's counter proposal to maintain the existing *contingent* parity language, which allows matters to be added to parity as they arise, was ultimately adopted instead. Arbitrator Kiefer reasoned that the parties have been able to apply the principle of parity without the necessity of a list of benefit areas.

The most recent pronouncement on parity in the context of Act 312 between these parties is the October 15, 2001 Wolkinson Award. Arbitrator Wolkinson had the opportunity to consider and decide some of the same issues and objections now before the arbitration panel in the instant case, including Meal allowance, Senior FEO pay and Senior Firefighter pay. Arbitrator Wolkinson found that parity did not preclude an Act 312 Arbitrator from taking jurisdiction over these issues. He opined that a party cannot be barred from raising a subject because it either has been, or could be, governed by parity, because to do so would limit or eliminate the freedom parties must legally be afforded to negotiate conditions of employment. *Wolkinson*, 36-37. Arbitrator Wolkinson held that because parity is a matter of agreement, parties are free to link and unlink particular issues to parity. *Wolkinson*, 36-37. He concluded, however, that parity, like historical wage patterns and practices, should be considered on the merits of an issue because it is rooted in considerations of equity and collective bargaining stability. *Wolkinson*, 36-37.

The City agrees that parity should be a consideration - indeed a deciding factor - on the merits of an economic issue. It notes that in some proposals the subject of the proposal can be considered outside of parity because it is so peculiar to the terms and conditions of fire fighting employment, and so unrelated to terms and conditions of police employment, that it cannot be tied analytically or economically from one to the other, but even in those cases parity as a mechanism for maintaining economic equality would be a paramount consideration on the merits.

The City asserts that even under those circumstances the DFFA, having committed itself to the overall concept and to particular issues, such as wages and specific benefits, and the City having negotiated and or arbitrated with the Police unions in reliance on that commitment, should not be afforded a second bite at the economic apple to seek pecuniary enhancements additional to economic subjects already concluded between the City and Police Unions. The City points out that parity is, in effect, an agreement by the DFFA to allow the Police Unions to negotiate economic terms and conditions, and should operate as a preclusive waiver of the right to independently re-negotiate such items, including items that correspond or relate to the economics concluded in the City/Police negotiations or Act 312.

The City makes a very valid point that corresponds with its argument that by the allowance of economic issues to fall outside of parity, parity is relegated to the status of a base from which further enhancements can be sought. On the other hand, under such circumstances, the City can also seek enhancements to its own positions.

Parity has continually evolved over the history of collective bargaining between the City and the Union. Parity's scope and, therefore, its definition, are defined contract by contract. Absent a stipulation by the parties (the second criterion for consideration by the arbitration panel as a basis for findings and opinions after the lawful authority of the employer) as to what parity encompasses and what it does not, the 312 arbitration panel must consider all the other criteria of Section 9 of Act 312 in determining parity's definition and scope. Certainly the relationship of the wages, hours and conditions of employment of the parties involved in the arbitration proceeding to the other employees of the employer includes all the aspects that are a part of parity.

Internal parity Among Fire Fighter Ranks

Parity under the Collective Bargaining Agreement also expressly operates as to *internal* Fire Department salary relationships (Joint Exhibit 1, pp 70-71). Schedule I, Section B states:

> For purposes of this Agreement, *parity* shall also mean the following salary relationships which are *internal* to the Fire Department.

This creates not only a parity relationship between the wages, hours and other conditions of employment of police and fire fighters (and sometimes civilian employees), but then a second generation parity between fire fighters and other fire fighters. Certain fire fighter positions are equated to specific police positions, and form benchmarks. Then further delineation occurs based on differentiation in such things as specialties, skills applied and other duties in general within the fire department from one fire fighter to another using the (police) benchmarked fire fighter positions as benchmarks for other firefighter positions within the department as set forth in Section B of Schedule I of the contract.

This concept of "internal parity" was established in the *Howlett* Act 312. Pursuant to internal parity, the Boiler Operator and Assistant Fire Dispatcher are equal to the Fire Fighter position; the Fire Fighter Driver is 105% of the maximum salary of a Fire Fighter; the Fire Engine Operator, Aerial Tower Operator and Senior Assistant Fire Dispatcher are equal to the rank of Fire Sergeant; and, a number of other ranks in the various divisions are equal to Fire Lieutenant.

In addition, the Senior Fire Dispatcher and Assistant Fire Department Community Relations Coordinator salaries are established through internal parity as the "arithmetic mean" for the salaries for the classifications of Fire Lieutenant and Fire

Captain. The salary of the Assistant Superintendent of the Apparatus Division is 93% of the salary of the Captain, while a number of other positions within the various divisions of the department are classified as equal to the salary of Fire Captain and/or the Battalion Fire Chief. The salaries of the two senior Chiefs are set at 89% of the Chief of the Fire Department; the salary of the Deputy Fire Chief is set at 93% of the Chief of the department; the salary of Fire Marshall is set as 97.73% of the salary of the Chief of the department.

The City notes that all fire fighter wage parity, internal and otherwise, is ultimately based on Police wages. It asserts that because internal Fire Department salaries are based on Police wages, the internal relationships are necessarily based on a logic and wage pattern that cannot be disrupted any more than the base wages of a Police linked position can be renegotiated. There is, for example, a specific salary relationship between Fire Sergeant, FEO and Fire Lieutenant. If the FEO salary is altered, it will necessarily distort the salary relationships of the other positions, and commence what will likely be a never ending round of internal adjustments that will ultimately make the Police-Fire parity relationship a fiction.

It is undisputed that Michigan Act 312 provides an arbitrator panel with jurisdiction over only the mandatory subjects of bargaining. Section 9 states: "Where there is no agreement between the parties, . . . the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable: . . ." The word "shall" is not permissive. It confers a duty for the panel to base its findings on the factors set forth. Then it goes on to list the factors to be considered:

(a) The lawful authority of the employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
    (i) In public employment in comparable communities.
    (ii) In private employment in comparable communities.

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

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

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

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

The reason that this decision must be made to resolve the objections of the City is that, while the parties have agreed that they want to continue the traditional police-fire parity, there is no agreement or stipulation as to whether the disputed issues are or are not incorporated in traditional parity as being allowed or precluded.

The parties d set forth the following in relation to parity in the contract at Schedule I.

> "Traditional police-fire pay parity means that the full time Police Officer and the full time Fire Fighter, whose base salaries are the same, will experience identical salary rate changes with identical effective dates throughout the fiscal year so that the total base pay of a Police Officer is equal to that of a Fire Fighter in any fiscal year covered by this Agreement. Similarly, the Fire Sergeant and Fire Engine Operator have parity with the Police Investigator, the Fire Lieutenant has parity with the Police Sergeant, the Fire Captain with

> the Police Lieutenant, the Battalion Fire Chief with the Police Inspector, and the Chief of Fire Department with the Deputy Chief-West Operations."

There is more included in Schedule I, which is duplicated at pages 6, 7 & 8 of this opinion.

It is important to note that the word "parity" is modified by the adjective "Traditional." Traditionally, there have been definitions and re-definitions as to what does or does not fall under the umbrella of parity by a number of 312 arbitration panels.

I agree with the principle that a party cannot be barred from raising a subject because it either has been or could be governed by parity. Parity is the subject of an agreement between the parties, and the parties are free to link and unlink particular issues to it, unless they agree not to do so

To bar the consideration of issues where there is no clear and unequivocal agreement to do so would limit or eliminate the freedom parties must legally be afforded to properly discharge their duties to confer in good faith regarding wages, hours and other terms and conditions of employment. Matters in dispute concerning parity have been historically, and must, as a practical matter, be considered as they arise where no agreement or stipulation has been entered into to resolve them. Unless there is a clear and unambiguous agreement settling whether a matter falls under the umbrella of parity, and waiving the right to bargain regarding it, the duty of the Act 312 arbitration panel to consider the proposal under the criteria set forth in Section 9 cannot be considered to be waived.

Each of the parties' arguments regarding the issues presented in this decision that remain germane to the consideration of the final offers of the parties may be incorporated by their final arguments regarding the issues to be decided.

The chart below includes the issues presented during the Act 312 proceeding that were objected to by the City with a brief indication of the areas of the current agreement that are would be affected and a brief indication of the reason for the objection. Following each subject is my ruling regarding the objection. The ruling is based on the discussions set forth above in this opinion/ruling.

Please note that the ruling on whether the matter will be considered by the Act 312 arbitration panel is not, nor should it be taken to be, any indication as to which party's position regarding its final offer will prevail.

The proposals that have been put forward by the Union to which the Employer objects follow in a chart that briefly sets forth the subject matter of the proposal, the change and the nature of the objection. This is followed by a decision regarding the arbitration panel will consider final offers emanating from this proposal.

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue No 1 (Economic) Add Meal Allowance of $1,000 annually for each member of bargaining unit	Amend Art. 12, Sect. P Page 21 Fire Fighters are required to contribute to common meals in fire stations	Precluded by Police-Fire Parity
This issue is not precluded by Police-Fire Parity. The arbitration panel will consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 4 (Economic) Add "Senior Fire Fighter" position Establish "Senior Fire Fighter" pay at 102% of maximum Fire Fighter salary	Amend Schedule I, Sect. B.1.c. P. 70 No provision for Senior Fire Fighter	Precluded by Police-Fire Parity; Not a mandatory subject of bargaining
This proposal concerns second generation benchmarking under Schedule I of the contract. It concerns wages paid for work already being performed. As such, it is a mandatory subject of bargaining. The arbitration panel will consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 8 (Economic) Extend sell back of furloughs for Divisions	Amend Article 19 Sect. V Page 31 Sell back limited to Fire Fighting Division	Precluded by Police-Fire Parity
This proposal concerns second generation benchmarking under Schedule I of the contract. The arbitration panel will consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 13 (Economic) Increase number of personnel on Haz Mat roster from 50 to 70; create reserve list of 100 members	Amend Article 23 Sect. D Page 62 Permanently assigned roster is set at 50; there is currently no contractually established reserve list, only a list of persons qualified to serve on the Haz Mat roster on a daily assignment basis.	Not mandatory subject of bargaining
This proposal concerns a policy consideration, which falls within management prerogative to establish the size and scope of the service it provides. It has not been shown to be inextricably intertwined with safety. The arbitration panel will not consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 14 (Non-economic) Add new section requiring the Fireboat, when in service, to be staffed with one officer and three Fire Fighters	Amend Article 24, add new section C Page 63 Four person staffing requirement applies only to Squads, Engines, Ladders and Haz Mat units.	Not mandatory subject of bargaining
This proposal concerns a matter that, depending on the content of either of the final offers may well be inextricably intertwined with the safety of employees. It does not require that the fireboat be kept in service, but only what happens when it is in service. The arbitration panel will not consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 16 (Economic) Establish a salary for "Senior Fire Engine Operator" at 118% of maximum salary of Fire Fighter.	Add new section to Schedule I, Sect. B.1 Senior FEO pay Page 70	Precluded by Police-Fire Parity; Not a mandatory subject of bargaining
This proposal concerns second generation benchmarking under Schedule I of the contract. It concerns wages paid for work already being performed. As such, it is a mandatory subject of bargaining. The arbitration panel will consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 25 (Economic) Increase pay of Fire Fighter Driver ("FFD") to 110% of Fire Fighter pay	Amend Schedule I.B.1.c Salary is currently 105% of Fire Fighter pay	Precluded by Police-Fire Parity
This proposal concerns second generation benchmarking under Schedule I of the contract. It concerns wages paid for work already being performed. As such, it is a mandatory subject of bargaining. The arbitration panel will consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 26 (Economic) Overtime Policy	Add new Article No current provision	Not a mandatory subject of bargaining
Overtime allocation affects wages, hours and other terms and conditions of employment. This proposal affects the allocation process by which overtime hours are distributed. The arbitration panel will consider final offers emanating from this proposal.		

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 27 (Non-economic) Designate only Trucks and Squads as RIT	Amend Article 23, Section B No current provision	Not a mandatory subject of bargaining

A RIT (rapid intervention team) is a crew of fire fighters, adequately trained and equipped, who stand ready on the fire ground to rush to the aid of other fire fighters who are in immediate peril and cannot save themselves. This proposal appears to affect the RIT's ability to perform its duties, and, therefore, appears to be inextricably intertwined with the safety of employees.

The arbitration panel will consider final offers emanating from this proposal, and reserves the prerogative to make a final determination after final offers and final arguments have been presented.

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 30 (Economic) No SL/CT penalty; Eliminate deduction of Personal Leave Days from current sick bank	Amend Article 22, Section B(10) P. 44 Current provision requires that Personal Leave Days are deducted from Sick Bank	Precluded by Police-Fire Parity

Parity is not referenced specifically to this item as it is to others in Article 22,Section B, which is entitled Economic Provisions – Fringe Benefits. There is no clear and unequivocal waiver of the right to have this decided by the arbitration panel.

The arbitration panel will consider final offers emanating from this proposal.

PROPOSAL	EFFECT ON CBA	OBJECTION
Issue 32 (Economic) Require three years of college credits to transfer into Plan Exam Section	Amend Article 9 Sect. F(6) P. 15	Not mandatory subject of bargaining
This proposal addresses the qualifications for bidding for a position, a transfer or a promotion within the bargaining unit, and is a mandatory subject of bargaining. The arbitration panel will consider final offers emanating from this proposal.		

February 19, 2007

Michael P. Long
Act 312 Arbitration Panel Chair