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STATE OF MICHIGAN
Michigan Employment Relations Commission

In the Matter of the Arbitration (Pursuant To
Act 312, Public Acts of 1969, As Amended) Between:

THE CITY OF FLINT

-and-

MERC CASE NO. D83-C-1062

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

LOCAL 352

OPINION AND AWARD OF PANEL

Chairman of Arbitration Panel: Barry C. Brown

City's Delegate: Dennis DuBay

Association's Delegate: George Kruszewski

Representing the City: Dennis DuBay

Representing the Association: George Kruszewski

Executive Sessions Held: November 26, 1984, January 22, 1986
and February 18, 1986

Hearings Held: April 15, 1985

April 30, 1985

May 6, 1985

May 13, 1985

at the City Hall offices in Flint, Michigan

Briefs Received: November 12, 1985

Opinion and Award: February 19, 1986

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Flint, City of

I. STATEMENT OF THE CASE

Pursuant to Act 312 (Public Acts of 1969, as amended), this matter was set before a panel of arbitrators for the purpose of hearing and deciding unresolved issues in a contract dispute between the City of Flint and The International Association of Firefighters (IAFF) Local 352, AFL-CIO. Barry C. Brown was appointed by the Michigan Employment Relations Commission to chair the arbitration panel. The City designated Mr. Dennis DuBay as its delegate on the panel and Mr. George Kruszewski was selected by the Fire Fighters as their delegate. Both men were also the advocates in this matter.

At the beginning of the hearings, the parties stipulated and the panel agreed that the time limits set forth under Act 312 were waived.

Hearings commenced on April 15, 1985, and were continued on April 30, 1985, May 6, 1985, and May 13, 1985, during which hundreds of pages of testimony was taken and numerous exhibits entered into evidence. At the start of the hearing the parties stipulated that the sole issue submitted by the parties was non-economic. Consequently, this issue is not subject to the last best offer provisions for economic issues as set forth in Section 8 of Act 312. Therefore, the panel's award may vary from the terms of the last offer of settlement made to it by either or both parties.

Subsequent to the hearings, the parties mailed their last best offers to the chairman, who in turn forwarded those offers to opposing counsel. It should be noted that the panel members representing the City and the Firefighters disagreed with certain of the findings and awards set forth in this opinion; each generally supported the position

taken of the party whose interest he represented. Consequently, the signature of each of the panel members on this opinion and award does not represent agreement with each and every element of the final award, but constitutes a recognition that there exists a majority vote regarding the result reached in the final award.

II. THE BACKGROUND

The City and the Fire Fighters Association were signatory to numerous prior collective bargaining agreements, the last complete document of which commenced July 1, 1983 and expired on June 30, 1985. However, in the 1983 negotiations the parties could not agree on an affirmative action program for minorities. They then adopted the following letter of agreement on that subject:

AFFIRMATIVE ACTION LETTER

SECTION 1. The City and the Union agree to establish a task force on Affirmative Action to explore various alternatives to further opportunities of minorities with the Flint Fire Department.

SECTION 2. The task force shall formulate and present recommendations to the bargaining teams for the City and the Union within ninety (90) days following ratification of this Agreement.

SECTION 3. Upon receipt of the task force's recommendations, the City and the Union shall resume bargaining on the recommendations for a period of up to sixty (60) days. If the matter of affirmative action for minorities is not resolved within said sixty (60) day period, the City shall have the right, within the next fifteen (15) days only, to submit the matter to Act 312 arbitration. If the City fails to submit the matter to Act 312 within said fifteen (15) day period, the provisions of the basic labor agreement and the former Flint Civil Service Rules and Regulations shall remain in effect.

SECTION 4. It is understood and agreed that anything agreed upon by the bargaining teams for the City and the Union is subject to ratification by the Union membership and City Council.

SECTION 5. The task force shall be made up of three (3) employees designated by the Union, at least two (2) of which must be minorities, and the Union President or designee, the City's Personnel Director and three (3) representatives designated by the Fire Chief. The Equal Opportunity Officer shall act as a resource person to the task force.

SECTION 6. This letter shall remain in effect, to and including, June 30, 1984.

On June 29, 1984 the City filed its petition for arbitration under Act 312. It stated that the unresolved issue in dispute was:

"minority opportunities, i.e.,
affirmative action in the
promotion of minorities, includ-
ing seniority points"

The panel chairman was informed of his appointment on July 19, 1984. The panel first met in executive session to arrange for the hearing on November 26, 1984.

Following the hearings in May, 1985 the parties agreed that the final offers would be submitted on May 24, 1985. This due date was extended to May 28, 1985 and the offers were submitted at that time. The court reporter completed and distributed the transcript of the case on June 13, 1985. The post-hearing briefs were to be received by the panel chairman post marked not later than July 17, 1985. The parties mutually agreed to extend that due date to September 23, 1985 and then to October 18, 1985. Thereafter the parties again agreed to extend the deadline for submission to November 12, 1985. The briefs were received on that date and the chairman's first draft of an award was distributed on December 23, 1985.

The Local 352 of the IAFF is comprised of 210 uniform members, each of whom is employed as a firefighter, Sergeant, Lieutenant, Captain or Battalion Chief for the City of Flint's Fire Department. These employees work in a three platoon system, with the platoon, plus a captain, working three twenty-four hour shifts in a nine day period. Administration of the Fire Department and its employees is conducted by the non-union Fire Chief and his staff. The number and rank of employees is shown on the attached exhibit: (next page)

The City of Flint is located in the southeastern portion of

* Note: Prior to 1980 employment data not broken down by race

	1973	1974	1975	1976	1977	1978	1979	* 1980	1981	1982	1983	1984	1985
FIREFIGHTER TRAINEE	—	—						—	—	3	—	—	7
FIREFIGHTERS	176	195	195	196	188	199	199	113	42	104	102	44	28*
SERGEANTS	27	27	24	27	29	29	29	11	11	14	14	50	43
LIEUTENANTS	19	17	17	17	18	18	18	20	20	20	20	20	11
CAPTAINS	8	10	10	10	10	10	10	8	8	8	8	8	20
BATTALION CHIEFS	6	6	6	6	6	6	6	6	6	6	6	6	8
TOTAL 50.4 HOUR	255	255	252	256	251	262	262	200	194	197	197	183	200
TRAINING OFFICER	0	1	1	1	1	1	1	1	1	2	2	2	2
FIRE INSP. (CAPT)	6	6	7	5	5	5	5	5	4	4	4	3	1
FIRE MARSHALL	1			1	1	1	1	1	1	1	1	1	1
ASSISTANT CHIEF	2	2	1	1	1	1	1	1	1	1	1	1	1
TOTAL 40 HOUR (Uniformed only)	9	9	9	8	8	8	8	8	7	8	7	11	10
TOTAL FIRE DEPT. (Uniformed only)	264	264	261	264	259	270	270	208	201	205	206	194	210
NUMBER HIRED	4	8	4	2	14	8	9	0	0	0	0	0	7
	22	35	15	7	41	10	11	0	0	0	0	1	28

1973-1974
 1974-1975
 1975-1976
 1976-1977
 1977-1978
 1978-1979
 1979-1980
 1980-1981
 1981-1982
 1982-1983
 1983-1984
 1984-1985

Michigan's lower peninsula. Although its population has decreased from over 190,000 to approximately 150,000 in the last fifteen years, its economic base is relatively diverse and stable as a Michigan community. It continues to be one of the manufacturing centers in the automotive industry.

The structure and organization of the Flint Fire Department entails fire suppression, including emergency medical services and fire prevention. Fire suppression handles traditional fire fighting activities, while fire prevention personnel investigate arsons and enforce City Codes through building inspections. In addition, fire prevention personnel conducts educational programs.

There are eight Fire Stations (numbered one to eight) located throughout the City with a ninth Fire Station at the airport. Fire Station Nos. 2, 4 and 6 are located in predominantly minority neighborhoods. In addition, about half of the No.1 Fire Station's runs are to minority areas.

In general, the Chief is assisted by an Assistant Fire Chief in managing the 235 employee department. The breakdown of all personnel in the fire department shows that it now consists of 6 Battalion Chiefs, 1 Fire Marshall, 9 Captains, 20 Lieutenants, 20 Sergeants, 36 1st Drivers, 27 2nd Drivers, 88 Firefighters, and 26 others which include clerical employees, mechanics and maintenance personnel. All these employees work in fire suppression except the Fire Marshall, a Captain, six Sergeants and a secretary, who all work in Fire Prevention.

In Fire Suppression, there are two Battalion Chiefs per shift who are responsible for several Fire Stations. For example, one Battalion Chief is responsible for all the fire stations located North of the

Flint River, while the other Battalion Chief is responsible for the stations South of the river. The Battalion Chief's offices are located in stations No. 1 and No. 4, while the Chief's office is adjacent to station No. 1. The Battalion Chiefs make an effort to visit each station once a day. Captains are in charge of one fire station and are assigned to one shift while Lieutenants are in charge of the other two shifts, with the exception of the airport. Fire Sergeants work in the fire station and are usually in charge. They also fill in at vacant fire stations when there is a need for an officer.

In the rank of Assistant Fire Chief, Battalion Chief, Marshall, Captain, and Lieutenants, there are currently no minority employees. The only minority fire department command officers include the Fire Chief (who is appointed) and five of the twenty Sergeants. As noted above, the first minority was not promoted to Sergeant until August, 1984.

The hiring process in the Fire Department is described as a product of the Civil Service System which was established by the 1935 Flint City Charter. The Charter, among other things, mandated an examination for entering into classified Civil Service and sets forth the "Rule of Three". Today, the Civil Service rules and regulations that have been incorporated into the personnel rules and regulations largely reflect that Charter. Before the year 1973, when positions needed to be filled, a job announcement would be posted by the City indicating a two-week period during which persons could apply. Among other things, the job announcement would indicate the minimum entrance requirements for the position. After a person had applied for the job and it was determined that the person met the minimum entrance requirements, there were three different

examinations or tests which an applicant had to pass: a written examination, an oral examination and an agility test. However, an applicant had to pass each examination or test before he could proceed to the next test. For example, an applicant had to pass the written examination before he could proceed to the oral examination. However, once an applicant had passed all the tests, the written examination constituted 50% of his total score while the oral examination constituted the other 50%. The agility test, which was a pass/fail test, did not figure in the applicant's total score.

An applicant successful on the written examination would go before an oral examination board. This three member board would usually consist of one representative from the following areas: the Fire Department, the Personnel Department and the community. Often, the community representative was a member of the Civil Service Commission. The Fire Department representative was never the Fire Chief, but was always someone in a rank below the Fire Chief, i.e., a member of the Local 352 bargaining unit. Usually, the three member oral examination board would consist of three white males, although occasionally there would be a female.

The oral board would rate the applicant by category such as education, previous experience, etc. A numerical score from 0 to 100 was given the applicant by each oral board member. After the scores were averaged, an applicant had to achieve an average of 70% in order to pass the oral exam. Accordingly, it was possible for one person on the oral board to block or veto the applicant. For example, even if two members gave the applicant 100 points, the third member by giving the applicant a zero could keep the

applicant from passing. In fact, one member of the Civil Service Commission, who often sat on the oral board, was known for giving individual applicants a zero. Thus, there was no way those applicants could pass the oral board examination.

In the process of the oral board examination, inquiries were made concerning whether the applicants were related to or knew members of the Fire Department. In fact, this was a key question; it was viewed as very favorable if an applicant knew someone or was related to someone on the Fire Department.

The applicants who successfully passed all three exams were numerically rated on an eligibility list with the applicant who had the highest score being rated number one and so on. Then, for the first job opening the top three names on the eligibility list would be certified to the Fire Chief. This process, known as the "Rule of Three", was always used. The Fire Chief would then select one of the three certified applicants to be hired.

Changes took place in the Fire Department's hiring practice in 1973 and an effort began to recruit minorities. In addition, the written examinations were revised so that the City met the standards which were set forth in the International Personnel Act regarding the kind of test which could be used and the requirements necessary in utilizing any selection procedure. Thus, in 1973 the Fire Department administered its first examination that was content validated.

That same year, the first group of minority Firefighters was hired. That hiring was pursuant to the Emergency Employment Act (EEA) which was followed by the Comprehensive Employment Training Act (CETA). Those Acts granted the City funding to hire

the disadvantaged for trainee positions. Thus, trainee positions, which paid less than the prevailing rate for a Firefighter, were established in the Fire Department.

The current hiring procedure, like the pre-1973 hiring procedure, utilizes a written and oral examination, and an eligibility test. However, there has been substantial changes made in the testing. For example, the written tests, which are content validated, are pass/fail and are ranked on an alphabetical basis. Although the current oral examination board still consists of three members, there must be one minority and one female on each board. In contrast with the previous oral board, one member cannot veto an applicant. Under the present pass/fail system, two members would have to fail the applicant before the applicant would fail the oral examination. Applicants who pass all the tests are then listed alphabetically. In contrast with the previous Rule of Three, the entire list is certified to the Fire Chief who determines the individual(s) to be hired. In hiring, the Fire Chief may select anyone off the certified list.

The promotional procedure in the Fire Department was that prior to 1973, promotional examinations were administered for the position of sergeant. Those examinations, however, were not validated. Mr. Davis, the only minority hired prior to 1973, unsuccessfully took the examination.

Since 1973, the Fire Department has used the following steps in the promotional process. First, a member of the Personnel Office confers with the representatives of Local 352 about the written promotional examination. Specifically, the discussions

cover the weight to give portions of the exam, the method of resolving ties, the kind of examination that's going to be given, whether or not the City will publish the text that they have used in developing the examination, etc. Thereafter, the job announcement or promotional opportunity announcement is posted.

The promotional opportunity announcement has a category which indicates that only those individuals with at least three years of experience as a Firefighter are eligible to take the exam. The filing deadline and the pay period are also noted on the announcement. Further, the announcement indicates suggested readings from which the examination is constructed. Moreover, it explains that the written examination will constitute 100% of the promotional examination for Sergeant. However, those candidates achieving a passing score on the written examination will have seniority points added to their scores. The announcement also describes a review period, during which examinees may review their exam and compare it with the correct answers. Protests concerning the exam may be made within a designated period.

Once the examination is administered and the review period is over, a list is compiled of those individuals who successfully passed the exam. One point for each year of service is added to each individual's written examination score. There is no maximum accumulation of seniority points. Thus, it is possible for individuals to end up with a composite score of over 100%. For example, if a Firefighter scores 75% on the written exam and has 26 years of service, he would end up with a total score of 101% on the promotional examination. It is not at all uncommon to have a number of examinees

exceeding 100% as a result of adding seniority points. For example three Firefighters during the 1982 promotional examination received scores of over 100% due to the addition of seniority points.

Finally, Firefighters often will receive the highest composite grade or score on the test due to seniority points, even though they scored much lower than other examinees on the written examination itself. After the examination is administered and the composite scores are calculated, the eligibility list is certified to the Fire Chief. However, the "Rule of One" is in effect so that the Fire Chief must promote the top person on the eligibility list if the position is going to be filled. The eligibility list for promotions lasts for a two-year period. Accordingly, the most recent eligibility list which was published on January 16, 1985, and contains 28 names is scheduled to be in effect until January, 1987.

The Flint Police Officers Association recently negotiated an affirmative action plan for the promotion of patrol officers to police sergeant. In a previous contract (dated July 1, 1980 to June 30, 1983) the patrol officers enjoyed a Cost of Living Allowance (COLA). That contract, however, did not contain an affirmative action plan. After that contract expired, the City and the Flint Police Officers Association entered into a one year contract (dated July 1, 1983 to June 30, 1984). The 1983 to 1984 contract contained a wage freeze and eliminated the COLA provision which had been in the previous contract. The 1983 to 1984 contract contained an affirmative action letter, similar to the affirmative action letter in the Firefighters collective bargaining agreement, which provided that a task force would be established to explore various alternatives

to further opportunities of minority officers. After the parties received the task forces's recommendations, bargaining was to take place for 60 days. If the parties still had not reached agreement on the affirmative action matter the City could submit the matter to Act 312 arbitration.

The chart below shows the percentage increase in overall compensation for the Flint City employee unions in the transition from the 1982 agreements to the 1984 agreements:

	<u>1982 Overall Compensation</u>	<u>1984 Overall Compensation</u>	<u>% Increase</u>
1600	\$25,081	\$28,384	13.169%
1799	\$38,278	\$42,496	11.019%
Police	\$38,853	\$43,305	11.459%
Sergeant	\$43,016	\$47,765	11.040%
Lieutenant	\$48,721	\$53,995	10.830%
Exempt	\$59,369	\$62,795	5.771%
Average	\$42,220	\$46,457	10.040%
Firefighters	\$40,549	\$47,671	17.564%

Also attached is a chart which explains what is included in the 1984 overall compensation: (see page 16 A)

After the Police Officers settled for a wage freeze in 1984, the then incumbent mayor, one month before the election, negotiated a two year contract with the Firefighters Union with a \$1,000 salary increase each year. Thereafter, the City and Police Officers entered into negotiations, in which the Police Officers were provided an increase (to catch up to that which had been given to the Firefighters) and in which the Police Officers agreed to an affirmative action plan.

The police officers agreed to a five year affirmative action plan. The agreement provides for two separate promotional eligibility lists (one list of minorities and one list of non-minorities) and for promotions to the position of sergeant to be made on a one-to-one basis. The promotional lists last for an eighteen month period. The Rule of One is in effect so that the top individual on the eligibility list must be promoted. There's a five year cap on the utilization of seniority points. Finally, the number of sergeant positions in their unit was increased by 8, from 74 to 82.

The Police Sergeants, represented by Teamsters Local 214, have also entered into an affirmative action plan with the City. The parties' 1983 negotiations went to mediation. The Mediator's Recommended Settlement, which was ratified by both parties, contains an affirmative action plan. The Mediator's Recommended Settlement along with the contract dated July 1, 1980 to June 30, 1983 is effectively the Police Sergeants' contract from July 1, 1983 to June 30, 1985.

The Police Sergeants also agreed to an affirmative action plan which provides for two separate promotional lists; promotions are made on a one-to-one basis until the number of minority Lieutenants reaches 30%; the Rule of One is used until the 30% figure is achieved and thereafter the promotional lists are combined on the basis of test score and the Rule of 3 is utilized. In addition, eligibility lists have a duration of 18 months and a five year cap exists on the use of seniority points.

The Police Lieutenants agreed to an Affirmative Action Plan which provides for two separate promotion lists (one list of minorities and one list of non-minorities); promotions will be made on a one-to-one basis until the number of minority Captains reaches

30%; the rule of One is used until the 30% figure is achieved and, thereafter, the promotional lists are combined on the basis of test scores. The economic settlement was similar to that of the Police Sergeants.

The general city employees represented by AFSCME 1600 have also recently negotiated an affirmative action plan. Prior to the contract dated July 1, 1984 to June 30, 1986 the parties did not have an affirmative action agreement. However, the 1984 contract addresses affirmative action for promotions. First, a representative balance of 50% minority is to be achieved in the promotional ranks. The Rule of Three is used for promotions unless the under-represented class is not represented in the top 3. Then, selective certification is used to obtain minorities for certification. Promotions are then made on a one-to-one basis. If no employee of the under-represented class is on the eligibility list for promotions, the City obtains names for affirmative action certification by giving an open promotion examination (rescheduled examination). In addition there is a cap of 10 seniority points.

The Flint Civil Service Commission is established by City Charter and its main responsibility is to enforce the merit principle in all aspects of personnel administration, to conduct hearings, investigations, and try to resolve certain employee disputes. In the course of its responsibilities, the Civil Service Commission has investigated charges of irregularity in the Fire Department's disciplinary and promotional practices. The Commission has determined that significant discrimination exists in that department.

OVERALL COMPENSATION

<u>1984</u>	<u>BASE</u>	<u>COLA</u>	<u>SICK</u>	<u>VACATION</u>	<u>HOLIDAY</u>	<u>SHIFT</u>	<u>FOOD</u>	<u>RETIREMENT</u>	<u>TOTAL</u>
1600	20,022	468	1001	1151	693			5049	28,384
1799	30,180		1509	1735	1044			8028	42,496
Police Officer	28,407		1420	2415	214	910	400	9539	43,305
Sergeant	31,827		1591	2705	120	607	400	10515	47,765
Lieutenant	35,953		1798	3056	124	764	400	11900	53,995
Exempt	42,732	1144	2137	5111				11671	<u>62,795</u>
								Average	46,457
Firefighter	26,789	604	1594	3747	347	1075	670	12845	47,671

Specifically, the City's Civil Service Director testified that the Commission made an investigation of alleged discriminatory practices within the Fire Department in 1982 and 1983. This investigation was conducted pursuant to a referral from the Ombudsman. The Ombudsman, acting upon the complaint of a councilman, had made an initial investigation into the Fire Department and determined that serious racial problems existed therein. The Ombudsman, however, referred the matter to the Civil Service Commission, since he felt the Commission properly had jurisdiction over the matter.

Thereafter, the Civil Service Commission Director accompanied by the City's Equal Employment Opportunity Officer conducted an extensive investigation into these alleged discriminatory practices. In the course of the investigation, 144 employees of the Fire Department were interviewed. Those interviewed included Firefighters, Supervisors, and station officers located at all 9 Fire Stations on all 3 shifts. Of the 144 employees interviewed, 36 were minority (25%) and 108 were non-minority.

The Commission report concluded that there was significant discrimination in the Fire Department. In summarizing the interviews, the report states that minorities "expressed concern over two main areas: First, the disparity in the treatment of minority and non-minority Firefighters with regard to discipline. Second, the lack of promotional opportunities and minority officers within the Fire Department".

The statistical analysis contained in the report, stated that of the 102 Firefighters hired prior to May 22, 1973, only 10 had been disciplined (not quite 10%). Of the 52 non-minorities hired

after May 22, 1973, only 10 or 19.2% had received discipline. In comparison, of the 42 minorities hired after May 22, 1973, 30 or 71.4 % had received discipline.

The report further stated that not only were the percentages of minorities disciplined disproportionate to the non-minorities disciplined, but the number of disciplinary actions given was also disproportionate. In a 9 year period beginning May 22, 1973, minorities amassed a total of 124 disciplinary actions compared to 37 for non-minorities hired prior to 1973 and 16 for those non-minorities hired after that date. Thus, minorities received 70% of all discipline issued current Firefighters. Moreover, minorities had received 89% of the discipline issued to Firefighters hired in 1973 and thereafter although they comprised only 21% of the work force.

The report also said that there was disparity in the suspensions given minority Firefighters. Since May 22, 1973, 17 minorities were suspended. Of the non-minorities hired after that date, no suspensions were given. In addition, of the employees hired prior to 1973, only 2 received suspensions. The report summarized that minorities received nearly 95% of the disciplinary suspensions given Firefighters.

Similarly, the report reveals disparities among Firefighters hired after May 22, 1973, who quit, retired, or were discharged. Of the 27 Firefighters in that category 21 or 78% were minorities. During that period, five times as many minorities compared to non-minorities were discharged (2 non-minorities were discharged while 10 minorities were discharged).

Finally, the report shows allegedly discriminatory testing procedures in the promotion exams for the position of Sergeant.

Promotional exams administered in 1979 and 1982 were evaluated and both exams were found to violate the 4/5 rule. The 4/5 rule states that a test is discriminatory if the passing rate for minorities is less than 80% of the passing rate for non-minorities. Specifically, in August 1979, 31 non-minorities and 20 minorities took the promotional exam for Sergeant. Fifty-eight (58%) percent of the non-minorities passed compared to 20% of the minorities. Dividing the 58% rate into 20% gives 34.3% which fails to even approach the necessary 80% for the 4/5 rule. In 1982, 50 non-minorities and 26 minorities took the exam. The percentage of non-minority passers increased to 68% while the minority passers decreased to 15%. Thus, in 1982, the 4/5 rule was again severely violated by a result of 22.6% (68% divided by 15%).

Like the Civil Service Commission, the Human Relations Commission (HRC) has also recently determined that racial discrimination exists in the Fire Department. Authorized by the Flint City Charter, the HRC is charged with the responsibility of reducing unlawful discrimination and increasing mutual understanding among the residents of the community. Specifically, the Flint City Code (Article V, Section 2-20 (F) (H)) has empowered the HRC to investigate upon request or initiate investigations of racial incidents, make recommendations for corrective action and coordinate corrective community efforts toward their resolution. In addition, the HRC is empowered to initiate and conduct hearings in which the HRC has reason to believe that unlawful discrimination has occurred.

In March, 1984, Mayor Sharp requested that the HRC conduct an inquiry into alleged discriminatory practices in both the Fire and

Police Departments. The HRC subsequently conducted a series of hearings to which the public was invited. Specifically, after appointing a hearings panel, the HRC conducted public hearings on April 4, 10, 11, 1984.

The hearings attracted a vast amount of public attention. All the major local media (radio, TV, and newspaper) carried accounts of the hearings. A large number of individuals representing community organizations, concerned citizens, Fire Department employees and administrators and city council members testified at the hearings.

At the conclusion of the public hearings, the HRC published a report consisting, in part, of findings of fact, conclusions and recommendations. The alleged discriminatory practices of the Fire Department were reflected in the following findings of fact:

- a. The Commission has been advised of the existence of on-going unlawful employment discrimination in hiring and promotions in the Fire Department.
- b. The Commission has received from the Fire Department, through the Chief, documents and statistics which indicate that the Department has engaged in unlawful discrimination against minorities historically in its hiring and promotional practices.
- c. Studies performed by an expert labor economist on behalf of the Fire Department show convincingly that minorities would be represented in substantially large numbers in all ranks within the Fire Department but for prior discrimination.
- d. Throughout the entire history of the City of Flint Fire Department, only one minority person - a recently identified American Indian - has even been promoted above the entry level Firefighter classification.
- e. Prior to 1973, only one Black and no Hispanics had been hired as Firefighters.
- f. Minority persons have been doubly disadvantaged due to
 - (i) promotional examinations which were not job related and
 - (ii) a practice to award each candidate receiving minimum examination scores one percentage point for each year of employment in the Fire Department.

- g. The Commission finds that the statistical and anecdotal evidence presented to it during the course of the hearings establishes a pattern and practice of prior racial discrimination.
- h. The Commission finds that the objective of remedying the effects of past and present discrimination against minority persons in a timely fashion requires the adoption of implementation ratios which serve to accelerate the effectuation of that remedy.

Based on these and other findings of fact the HRC concluded that the Fire Department has a historical and current record of discriminatory and exclusionary policies, practices, and criteria that have adversely impacted and continue to adversely impact minorities. Thus, the HRC recommended, inter alia, that in order to avoid delay in resolving imbalances in the work force a 1 to 1 promotion of minorities to non-minorities be implemented immediately with annual reviews made to determine the need for appropriate adjustments.

Past charges of discrimination filed with the Equal Employment Opportunity Commission (EEOC) also were presented as proof of discrimination in the Fire Department's hiring practices. Two Blacks filed charges with the EEOC in 1978, claiming that they were discriminatorily denied hire as Firefighter trainees. The charges alleged that of 73 individuals (36 non-minority and 37 minority) who had passed the 1976 examinations and were certified for the position of Firefighter trainee, 26 non-minorities (72% of the non-minority applicants) were hired while only 11 minorities (30% of minority applicants) were hired. Pursuant to Conciliation Agreements signed in 1983, the Fire Department agreed to hire both men.

In a December, 1982, report prepared by the Michigan Advisory Committee to the United States Commission on Civil Rights entitled

"Affirmative Action in Michigan Cities", the Committee addressed the affirmative action programs in 10 Michigan cities. The report recommended:

"Mayors and other top executive officials must adopt affirmative action policies and institutionalize them throughout the city's government. Federal and state agencies must continue to enforce affirmative action provisions without which the programs will not be effective."

The report also noted that where affirmative action programs have succeeded in Michigan:

"a decisive factor has been a commitment of the organization's leadership, that has lead to the institutionalization of affirmative action in everyday management practices."

However, in reporting on Flint's affirmative action program the Committee after noting some progress in affirmative action between 1973 and 1980, reasoned:

"[F]lint's city workforce still presents a disparity between the city census and labor force figures and those in the city workforce. There is underrepresentation of Blacks and Hispanics across the board in city employment."

Expert witness, Dr. Marc Bendick, testified at the hearing regarding the Fire Department's employment and promotional practices concerning minorities. He said he prepared an analysis of the Flint area labor market and studied what that labor market indicated about the available labor pool for hiring into the City's Fire Department. In addition, Dr. Bendick examined what the minority representation in the Fire Department's supervisory ranks would be had the past hiring and promotion practices had no adverse impact on minorities. Dr. Bendick also studied alternative affirmative action programs designed to achieve proportional minority repre-

sentation in the Fire Department's supervisory ranks. The results of Dr. Bendick's studies were presented to the Flint Human Relations Commission in the Spring of 1984.

Dr. Bendick's studies asserted that there was discrimination in the Fire Department's hiring and promotion of minorities. His analysis of the Fire Department's hiring practices shows a difference of 29.1% between minorities as a proportion of Applications Accepted (62.5%) and minorities as a proportion of Firefighters appointed (33.4%) from 1973 through 1983. The discrepancy of 29.1% is statistically significant since that figure would have been arrived at due to chance alone fewer than one in 10,000 times. In the words of Dr. Bendick, "It's just virtually impossible," due to chance alone. According to Dr. Bendick, two key problems in the application/hiring process seem the cause. First, although minorities comprised 63.8% of all those taking the written examination, they comprised only 50.6% of those passing the written examination for a difference of 13.2%. Dr. Bendick testified that these figures indicate a violation of the 4/5 rule which states that a testing procedure is considered discriminatory if the passing rate for minorities is less than 80% of the passing rate for non-minorities.

Secondly, although minorities comprised 50.1% of the total of those certified for appointment in the Fire Department, only 33.4% of minorities were actually appointed. This discrepancy of 16.7% is also statistically significant and reflects discriminatory practices in the appointment process. Thus, Dr. Bendick concluded that although a problem did not exist in getting minorities to apply and take the written examination for entry-level positions

in the Fire Department, the process was not operating in a race neutral fashion. Rather, the process was discriminating against minorities.

Dr. Bendick also testified that the number of minorities employed in the Fire Department in 1984 was significantly lower than the number that would have been employed had the hiring been done in a non-discriminatory, "Race-Free" manner. In reaching this conclusion, Dr. Bendick relied on studies concerning the available labor pool and the minority proportion in the labor pool from which entry level Firefighters are hired. The three estimates are given of the minority proportion of the labor pool for entry level certified positions in the Fire Department in 1984. They are 62.5% reflected in the previously discussed tracking study, 44.9% as reflected in the 1980 United States Census and 54.7%, a figure arrived at through extensive calculations beginning with the 1980 Census and taking account of age, sex, education level, residency, propensity to apply for civil service jobs, etc. Dr. Bendick concluded that 54.7% most closely represented the minority proportion of the labor pool for entry level certified Firefighters in 1984. Dr. Bendick determined that the adjustments embodied in the 54.7% figure made it more accurate than the U.S Census figure, and also more accurate than the first estimate based on applications received which was likely high due to the City's affirmative action/positive recruitment efforts.

Using the same methods used in arriving at the 54% figure for 1984, Dr. Bendick estimated the majority proportion of the Fire Department's entry-level labor pool for each year between 1950

and 1984. The figures arrived at vary from 5.6% in 1950 to 53.8% in 1983. Using this information, Dr. Bendick was able to estimate how many minority Firefighters would have been employed in the Fire Department as of 1984 if hiring had been conducted in a race-free manner.

The analysis concluded that under a race neutral system 57 out of the 149 (38.3%) Firefighters who were still on the force in 1983 should have been minorities. However, the actual number of minority Firefighters hired was 47 (31.5%). And, of course, those 47 employees have less seniority than would be expected if they had been hired in a timely manner. Thus, he said the Fire Department employed ten fewer minority Firefighters and those employed had much less seniority than they would have had under a race neutral hiring scheme.

Using a similar analysis, Dr. Bendick asserted that significant discrimination also exists in all levels of Fire Department promotions. First, in 1983 there were 13 sergeants on the force. He said that under a race neutral system three or 23.1% of the sergeants would have been minorities. However, none of the sergeants were minorities. In addition, under a race neutral system the first sergeant would have been hired as early as 1968.

Second, in 1983 there were 12 lieutenants in the Fire Department. He asserted that under a race neutral system, three of them or 15.8% would have been minorities. However, none of the lieutenants were minorities.

Third, the rank of Fire Captain and above had 15 employees in 1983. He said that under a race neutral system there would have

been three minorities in these positions. Once again, however, no minorities were in the rank of captain and above in 1983. Dr. Bendick emphasized that the statistics used in these calculations were based on 1983 figures to reflect how the Fire Department would have looked as of 1984 under a race neutral scheme. Thus, the estimated figures for expected minority representation as of 1985 would have increased slightly. In addition, these calculations reflect none of the operational needs of the Department or the community needs. Rather, they reflect only what the Department could have looked like had the past been race neutral.

At the hearing, there was extensive testimony regarding three aspects of community needs. First, the City asserted that the Fire Department needs the support and assistance of the community for an effective, efficient Fire Department. The City also argued that in a community such as Flint, a racially balanced Fire Department will receive the strongest community support. On the other hand, the City maintained that the community needs a Fire Department which is racially balanced. For example, minority children in the community need minority Firefighters and Fire Officers who they can look to as role models. Third, the City argued that both the Fire Department and the community need a racially balanced Fire Department to eliminate the long existing controversy regarding discriminatory practices in the Fire Department.

On the next page is a chart which reflects the per cent of minority manpower in the Fire Departments of several large cities in mid-Michigan. Additionally the per cent of minority officers in those cities is also shown.

<u>City</u>	<u>Total Fire Department Manpower</u>	<u>Minority Manpower</u>	<u>% of Minority Manpower in Department</u>	<u>Min. Population of Community</u>
Ann Arbor	110	8	7.3%	14.9%
Battle Creek	104	3	2.9%	25.0%
Bay City	71	1	1.4%	5.3%
Grand Rapids	224	25	11.2%	19.1%
Jackson	61	4	6.6%	17.6%
Kalamazoo	146	27	18.5%	18.6%
Lansing	220	22	10.0%	19.6%
Muskegon	45	7	15.6%	24.0%
Saginaw	111	23	20.8%	42.6%
TOTAL	1092	120	11.0%	20.7%
Flint	198	70	35.4%	43.8%

	<u>Sergeant, Lieut., Capt., Batt. Chief</u>	<u>Min.</u>	
Ann Arbor	29	2	6.9%
Battle Creek	31	0	0%
Bay City	16	0	0%
Grand Rapids	58	0	0%
Jackson	13	0	0%
Kalamazoo	46	2	4.3%
Lansing	61	0	0%
Muskegon	15	1	6.7%
Saginaw	29	0	0%
GRAND TOTAL	298	10	3.3%
Flint	55	5	9.1%

The City of Flint had the highest share of minority population in this comparison. It also had one of the highest levels of minority participation below the level of command officer. Its five new sergeants give the appearance of leadership in the participation by minorities as command officers. However, there is no representation above the rank of sergeant and the sergeants are not regularly stationed in the line, fire suppression organization.

The City provided a copy of a recent Statutory Arbitration tribunal decision involving the City of Pontiac (MERC Case No. 83-L-2582 (5/7/85)). In that award the panel noted that the minority population in Pontiac was 44% and in that City's 130 member fire department there was only a 15.4% minority representation. That panel made the following observations:

"First, when government accords different treatment to different persons on the basis of racial considerations, there must be a strong basis for the difference. Clearly not every imbalance will support a preference. There must be a disparity that will support affirmative action. The Panel believes that the persistence of imbalance within the Fire Department when compared to the community as a whole is such a disparity.

Second, the City of Pontiac is in the throes of transition. While the racial composition of the city has been dramatically altered, the Fire Department is relatively unchanged. Fortunately there is no evidence or hint that the ugly hand of discrimination has played a part in this. Instead, while the City has changed, very few positions within the Department have.

been vacated that would allow the hiring of minority applicants. Thus, the Fire Department has had little or no opportunity to hire the personnel that would reflect that change. Further, the Panel is encouraged by the tremendous progress in hiring minorities when positions have become available....."

"Nevertheless, the Panel is convinced that a Fire Department reflecting the composition of the community is in the interest of both the parties and the community. Integration and racial equality are promoted, the benefits of government employment are spread throughout the community. Everyone has a greater stake in actively supporting the Fire Department. Anger, frustration and criticism fomented are removed as integration replaces imbalance. There is no doubt that the current composition of the Fire Department is perversely imbalanced by reflecting the City's past makeup. That the City has changed while the firefighters have not is due, in part, to the lack of openings caused by retirement and hard economic times. By providing an affirmative action program, combined with retirement incentives, the Union and the City will provide an opportunity for all employees to benefit. New job openings, at both the entrance level and higher levels, will immediately be created for all employees and groups, not just minorities."

The observations of the 312 panel in Pontiac, Michigan presented above are appropriate now in current situations involving the City

of Flint. The Firefighters Union is not the cause of the current racial makeup of the work force. The City has not purposely discriminated against minorities in its policies since 1973, but they have done little to overcome the effects of past discrimination. Seniority may not have negatively impacted recent appointments from current promotional lists but continued application of seniority points will clearly favor those employees hired prior to 1973 (all majority employees). Most of the 71 minority firefighters have relatively low seniority and most of the 81 majority firefighters have greater seniority on the average. Some weight should be attributed to experience in firefighting. This experience roughly equates to length of service. Too much emphasis on seniority tends to perpetuate past hiring patterns for long into the future.

III. LAST BEST OFFERS:

1. The City's

In its last best offer, the City proposed:

1. That prior to any promotional examination being given, a representative of the personnel office and the Union would continue to meet to establish the elements of the examination, with it being agreed that the selection procedure would be job-related and would satisfy the Uniform Guidelines on Employee Selection Procedures;

2. That future pomotional eligibility lists would have a duration of eighteen months;

3. That for promotions to all ranks, the City would have the option of maintaining two eligibility lists, one consisting of all minorities eligible for the position, and one consisting of non-minorities. The City would be allowed to alternate promotions from the list, i.e., first one minority, and then non-minority, until the number of minorities in that rank equalled 50%;

4. That the City in making promotions could select among the top three on the eligibility list;

5. That after a 50% representation in ranks had been satisfied, the City could utilize a rule of six in promotion (i.e., any of the top six on the list could be chosen);

6. That all seniority credit would be eliminated;

7. That future selection procedures would be constructed to eliminate adverse racial impact;

8. That this agreement would be in effect until July 1, 1990, and thereafter, unless notice was served of a desire to change the agreement.

2. The Union's

In its last best offer, the Union essentially proposed the incorporation of the current promotional system into the agreement, with certain variations designed to meet some of the City's concerns, as follows;

1. That all promotions would be governed by the Rules and Regulations of the Flint Civil Service Commission, adopted April 1, 1935, except as they have been amended by this collective bargaining agreement and other agreements of the parties;

2. That prior to any promotional examination being given, a representative of the personnel office and the Union would continue to meet to establish the elements of the examination, it being agreed that the selection procedure would be job-related and would satisfy the Uniform Guidelines on Employee Selection Procedures.

3. That future selection procedures would be constructed to minimize or eliminate adverse racial impact.

4. That seniority credits would continue to be added to passing scores on the promotional examination, with two changes-- First, there would be a maximum of fifteen points and second, only time spent in classifications subject to the hazards of Firefighting under the collective bargaining agreement would be used in determining the credit;

5. Service ratings would continue to not be included as part of the examination score;

6. Employee development would be encouraged to better prepare all employees for the examination process;

7. Supervisory training programs would be conducted for all new employees.

In summary, the parties are in disagreement in the following areas:

1. The City's proposal for the right to use two promotional lists, based upon minority status, with promotions to be made on a one-to-one basis from each list until a certain minority ration was reached within the rank.
2. The City's proposal to eliminate use of seniority credits.
3. The City's proposal to use a rule of three or a rule of six in promotions.

IV THE PANEL'S AUTHORITY:

This panel is an extension of the collective bargaining process created by authority of Act 312 of the Public Acts of 1969. This statute charges the panel to adopt a last offer of settlement or to make an award which more nearly complies with certain named factors (See MCLA 423.239; MSA 17.455 (39)). The ten factors set forth therein have been considered by the panel here. The panel based its decision especially on the interests and welfare of the public, the comparison of recent changes in the promotional clauses in the contracts of other City employees, the overall collective bargaining agreement rights and benefits enjoyed by the members of Local 352 and the changes in the circumstances under which this contract is bargained. The power structure and the population mix of Flint is changing. Such matters are normally taken into account when bargaining an agreement with the employees of a City in transition.

The Union has asserted that the panel has no authority to issue an award under which promotions would be made solely on the basis of an individual's race. While that may be correct, the panel here is faced with a proposal by the City that would base promotions in part on the employee's score achieved on an examination. While the City's proposal is an "affirmative action plan" it would not base promotions solely on the basis of an employee's race. A prior 312 panel ruled that it had jurisdiction to deal with a City's proposal of a race conscious promotional plan even if such plan entailed a change in the City's charter (City of Detroit and IAFF Local 344, Howlett, Chairman (10/1/79)).

Even though the law of the land provides that race is irrelevant

to employment decision making the courts have found it necessary to permit an employer to take the very action prohibited; that is, they have allowed race conscious "affirmative action" when necessary to remedy prior unlawful discriminatory practices. (Detroit Police Officers Assoc. v Young, 603 F2d 671, 691-692 (6th Cir 1979); Cert den, 452 US 938, 101 Sct 3079, 69 LEd2d 951 (1981)). Certainly the courts have indicated that such corrective action must be exercised with great care. They also said that the City may set up a race conscious plan and the court's role is only to review such plan, if challenged, to determine if there was justification for such affirmative action and to determine if the goals set are reasonable. (Bratton v City of Detroit, 704 F2d 878,882, Note 8, Modified 712 F2d 222 (6th Cir 1983), Cert den, ____US____, 104 Sct 703, 79 LEd2d 168 (1984)).

The Union argues that even if discrimination does exist, the 312 panel has no jurisdiction to remedy civil rights violations. Yet affirmative action plans have been held to be a subject of mandatory bargaining under PERA (DPOA v City of Detroit, 61 Mich. App 47, 233 NW2d 49 (1975)). While a City may not unilaterally alter a promotion clause in a collective bargaining agreement that is mid-term, they may bargain to impasse when the contract has expired. (Compare: City of Detroit and Detroit Firefighters Assoc. Local 344, 1976 MERC LAB. OP 652) Therefore the statutory arbitration panel here may consider a matter which has been bargained to impasse by the parties. Also noteworthy is the agreement by the Firefighters in 1983 that this matter could be referred to an Act 312 panel. The City relied, to its detriment, on this commitment by the Union

and the Union should now be estopped from reneging on that agreement.

Further, the panel here is not seeking to assume the powers of a civil rights agency or a court in approving an affirmative action plan. Rather the panel is considering a prior promotional clause in a collective bargaining agreement which has proven itself to be ineffective. The panel has the power, as do the parties, to establish a new promotion provision in the labor contract which more fairly and efficiently serves all the members of the bargaining unit. In the bargaining of every labor contract there are factors and criteria which the parties negotiate into the agreement. Thus education, age, experience, seniority, attendance, test scores, etc. may all be considered appropriate in certain promotions. Here race is a relevant criteria because of past discrimination in hiring and promotion. This panel may consider an affirmative action plan in the same context that the parties could negotiate such plan.

Chairman Howlett stated in the 1979 Detroit - Firefighter's

312 Award:

"The sole issue before the panel is whether adoption of the City's proposal to revise the promotion system will result in a more effective Fire Department, thus serving the "interests and welfare of the public", a Section 9(c) factor. (Id at 34)

The Howlett panel then ruled that the City of Detroit did not establish a prima facie case for change in the promotion system. The panel in the case now before us should also have the opportunity to consider the merits of the City's presentation.

The Union argued that even if the panel had jurisdiction to consider a promotion clause which took the matter of race into account, there has been no showing by the City that there is past discrimination

within the Flint Fire Department which would justify imposition of a race conscious promotional policy. Yet it is a fact that only one minority firefighter was hired by the City prior to 1973 even though the City had a significant percent of minority population for many years before to that date. Further, though there were many black firefighters hired thereafter and many eventually gained more than ten years seniority, not one black firefighter had been promoted to the level of sergeant prior to 1984. From this it is clear to the panel that there was a disparate racial impact in the City's personnel policies, first in hiring and then in promotion. Further, the repercussions of the failure to hire minorities prior to 1973 continues to be magnified in the command officer ranks as experience engenders higher test scores and those scores are further enhanced by greater seniority. From all of this the panel was convinced that there was credible evidence to support a change in the status quo.

The City did not show that the disciplinary policy of the fire department has been discriminatory. The current black fire chief is the top department administrator and he has not allowed black firefighters to be singled out for harsher discipline. Further, there are many low seniority, black firefighters now employed by the City and it is the low seniority, young firefighters who typically have more discipline and higher turnover. Additionally, many inner-city youths have problems adjusting to the discipline and regimentation of a para-military organization, like a municipal fire department. More discipline and a higher turnover rate will be one of the consequences of an affirmative action program. However, it is not an example of departmental discrimination. The public's

safety requires strict discipline in a fire department.

Finally, the settlement of two individual charges of discrimination in hiring in 1978 did not show a pattern of discrimination in hiring at that time. The two charges were first denied by the City but eventually the two black, male applicants were hired without back pay and without any citation by the EEOC. These cases must be treated as aberrations rather than indicators of an unlawful pattern of hiring after 1973.

In spite of these last two conclusions the panel believes that there is sufficient evidence to show that the present promotional provision in the labor contract does not allow minority employees fair access to command officer positions. Further, such provision does not allow the fire department to serve the welfare and interests of the citizens of the city of Flint because it does not seek to correct the present disparity in the racial mix of the command officers. For these reasons the panel rejects the Union's arguments that the panel has no basis to change the status quo.

The Union also argues that the dual seniority lists and the promotional racial quotas are illegal. They claim that the federal equal employment laws require only the equality of opportunity, not equality of result. However, these same Union arguments were rejected when a Michigan City previously made efforts to eradicate the effects of historic discrimination (Baker v City of Detroit, 483 F Supp 930 (ED Mich 1979)). Further, the Supreme Court has determined that a race conscious affirmative action plan designed to eliminate conspicuous racial imbalance in certain job categories is appropriate.

(United Steel Workers v Weber, 443 US 193, (1979)). Yet recent decisions have emphasized equality of opportunity and spurned quotas (Firefighters Local Union 1784 v Stotts, 104 SCt 2576 (1984)). Thus while an employer restructuring of employment practices may be justified, the goals set must be reasonable. A race conscious promotional plan is an appropriate remedy to increase minority employment rights even when the plan has the effect of overriding the seniority rights of non-minorities (Vanguards of Cleveland v City of Cleveland, 753 F2d 479 (6th Cir 1985) Cert granted, 54 USLW 3223).

It is obviously a time of less judicial favor of strident proposals such as dual seniority lists (Janowiak v City of South Bend, 750 F2d 557 (CA 7, 1984)). Additionally, the Supreme Court will soon further interpret and refine the implementation of Title VII by public employers and it appears now that a more conservative affirmative action plan will better stand the test of judicial review. (VanAken v Young, 750 F2d 43 (6th Cir 1984)). In this case the City of Flint has shown that minorities have been chronically under-represented in the command office positions. This alone is sufficient to establish a past pattern of discrimination which justifies a race-conscious affirmative action promotional policy. Thus the panel may act, as the parties could act, to create such a plan. (See Marsh v Board of Education of the City of Flint, 581 F supp 614 (ED Mich 1984)).

V. AWARD:

The parties have both made similar proposals on the following points:

1. Prior to any promotional examination being given, a representative of the City's personnel office and the Union will continue to meet to establish the elements of the examination; it being agreed that the selection procedure will be job-related and will satisfy the Uniform Guidelines on Employee Selection Procedures.

2. Future selection procedures will be constructed to minimize or eliminate adverse racial impact.

The panel agrees that these two provisions will be adopted as the first two steps of the new promotion provision.

In item 3 of the City's final offer it is proposed that there be two eligibility lists - minority and non-minority and that selection be made on a 1:1 ratio from those lists. The Union, in its last best offer, proposes incorporating the current promotional system into the agreement. Item number 1 of its proposal ties in the rules and regulations of the Civil Service Commission, Article 36 of the current collective bargaining agreement is limited to just such a provision now. The Union's items 5, 6 and 7 in its proposal would continue to exclude service ratings as part of the applicant's score and would use development and training programs to prepare employees for the examination process.

As to the last three items on the Union's final offer, those points may be covered by the selection process described in the two steps already adopted by the panel above. It is the panel's intention that except where specifically changed by this award, the past practices of the

parties in the selection process will remain unchanged.

The panel also concludes that the Union's "status quo" proposals will not provide a promotion clause that is fair and effective. Further, the few, minor changes proposed by the Union will not serve the welfare and the best interests of the citizens of the City of Flint. The panel is convinced that the firefighters must follow the lead of the other City Employee Unions and adopt a procedure which will provide prompt access to promotion to all members of the bargaining unit. Taking into account the size of this unit, the number and frequency of promotions, the number of command positions and the present racial composition of this unit in each job position, it is the panel's conclusion that the promotion clause recently adopted by Local 1600 of AFSCME is best adopted here.

The panel believes that dual seniority lists and unreasonable goals are invitations to litigation and such promotion provisions could be overturned by the courts in today's unsettled status for race conscious promotion plans. For this reason the panel adopts a plan which uses but one certification list and which does not require any affirmative action if there is representation of minorities in the applicant group certified to the chief for selection. Further, such an approach does provide a means of selective certification to place some underrepresented employees in the group offered for selection. This "surfacing" approach is a moderate remedy in that it does not mandate the selection of a minority on an alternate basis and it does not deprive the majority employees of the contractual rights and benefits they have earned in years of prior negotiations.

The City has proposed a reduction in the current 24 month duration of promotion eligibility lists. The Union seeks status quo on this issue. the City did not convince the panel that this aspect of the list should be changed. The testing system and the creation of the lists are a complicated process and they need not be undertaken too frequently. The panel recommends that new lists be promptly prepared following this award and that such lists have a duration of 24 months.

The practice in this unit has been to promote the top person on the promotion eligibility list. This is a "rule of one" in promotion. The City proposes that a rule of three be used now and that in the future a rule of six be used in promotions. The Union desires that the status quo be maintained. The inconsistency of the Union's position is that they favor the continued use of Civil Service Rules and yet under those general rules (excluding the Fire Department) the top three employees on the list are considered for promotions.

Further, in other City employee bargaining units the rule of three is employed. In the Police Sergeant's contract, implementation of the rule of three is delayed five years. Under the AFSCME local 1600, and AFSCME local 1799 contracts and in the rules for exempt employees, the city has adopted the basic rule of three in the promotional selection process. The panel believes that the department's administration should be able to promote from a pool of the top three employees on the eligibility list. Only when the "surfacing" of a minority employee occurs should that pool be enlarged to six. This plan does not mandate the selection of a minority person at any time but it does insure that there will frequently be minority individuals

in the pool from which command officers are selected.

The City has proposed that all seniority credit would be eliminated. The Union has capped seniority credit at fifteen points and they also suggested that only time spent in classifications subject to the hazards of firefighting be used in determining the credit. In the other City employee bargaining units there is wide variation in the amount of seniority credit added to passing scores on the promotional examination. The Flint Police Officers Agreement has a five year cap on the utilization of seniority points. The Sergeants and the Lieutenants Associations have contracts which also cap seniority credit at five years. The AFSCME local 1600 contract has a 10 year cap and the AFSCME local 1799 contract has no cap on seniority credit.

Certainly some credit should be given for work experience. Also length of service has long been an acceptable criteria for promotion. In fact in some cases the use of seniority has benefited and not harmed the placement of minority employees on the promotion eligibility lists. However, the use of seniority points should not be weighted too heavily, as it is now. The Union has recognized the need for some cap on the seniority credit. The panel concludes that the Union's proposal does not go far enough. For all of the reasons stated above the maximum of ten years of seniority credit will be added to passing scores on the promotional examination.

Additionally, the panel concludes that all time spent under the collective bargaining agreement will be used in determining seniority credit. All experience gained from service with the department is valuable as a command officer. It is not certain that all future job openings will involve fire suppression. Further, many minority

unit members have much valuable experience in non-firefighting classifications and such credit would be lost if the Union's definition were to be used. Finally, the process is now already a complicated one and the exclusion of some seniority credit would be a further issue for dispute and grievances. It is best to define seniority as it has always been defined and to simply cap the credit at the level of ten.

The City proposes that the affirmative action certification procedure for the command officer's positions be continued for five years or until such jobs are filled with 50% minority employees. The Union opposes any figure as an illegal "quota". The other City employees have adopted various levels of minority participation as a goal of their labor contract promotional clauses. The police officers have agreed that their new promotion plan would remain in effect for five years or until the promotional work force reaches 50% minority population. The target figure for the police sergeants is 30% and that 30% figure is also used for the police lieutenants. In the AFSCME local 1600 contract a representative balance of 50% is sought. The language in the AFSCME local 1799 is more vague. It allows the City to use an affirmative action certification procedure in job categories that have not achieved a "representative balance" of minority employees and it may not act if the job category has reached a 50% level. This plan has the duration of only one year. It is clear that each unit has negotiated a goal and a time limit that fit their own circumstances.

The firefighters already have "promotion" by straight seniority to the 2nd driver, 1st driver job classifications. The pay level

and working conditions are more favorable on these jobs. Minorities have good representation levels in these positions. These circumstances create a unique advancement opportunity for minorities in the fire department that does not exist in other City employee bargaining units. Further, an advance to a command officers position is more comparable to advancement in the police command officers unit or in the ADSCME local 1799 unit. In both of those examples the minority participation goal is less than 50% and/or the duration of the plan is shorter. Additionally, the City did not justify its 50% goal on current population levels in Flint but rather this target was the result of projections and estimates. For all of these reasons the panel finds a 50% goal to be too high and it finds that a 40% level is more appropriate and realistic based on the current situation.

This promotional clause will expire on July 1, 1989 when the parties may negotiate new terms for selection and eliminate or set new goals. The duration of this plan will allow two eligibility lists to be created and implemented for promotions. After such period the parties can evaluate their experience and adopt a promotion clause that fits the circumstances and needs that exist in 1989.

VI. NEW CONTRACT LANGUAGE:

The panel has adopted the following new contract language for the collective bargaining agreement:

ARTICLE 36
CIVIL SERVICE

Subject to Article _____, Promotions, Section 9-303 of the 1975 Flint City Charter shall apply in all Civil Service related matters.

- B. Add the following new Article entitled "Promotions" and renumber the current Articles accordingly:

ARTICLE _____
PROMOTIONS

Section 1 The Personnel Director or his/her designee will meet with the Union prior to establishing each promotional examination, it being agreed that the promotional selection procedure adopted by the City shall be job-related and shall satisfy the Uniform Guidelines on Employee Selection Procedures, 29 CFR, Sec. 1608, et seq.

Section 2 Future selection procedures will be constructed to minimize or eliminate adverse racial impact.

Section 3 For promotions to the rank of Sergeant, Lieutenant, Captain, Battalion Chief, Assistant Chief and Fire Marshall (or any other promotional rank in the Department where there are two or more employees in the position), the City shall have the right to implement an affirmative action certification procedure to promote minority employees to ranks that have not achieved a representative balance of a 40/60 ratio between minority and non-minority employees. Minority employees are those as defined by Federal law (i.e., Black Hispanic, American Indian and Asian).

A. All eligible employees attaining a passing score on the promotional examination shall have added to their examination score one point for each year of service in the Flint Fire Department, as of the filing deadline for applying to take said examination up to a maximum of ten (10) points. For periods of employment for fractions of a year, one/half point shall be added for less than six months of service and one point for six months or more of service.

B. In choosing which employee to be promoted, the City shall have the right to pick from among any of the three top employees (i.e., highest point total) on the list in question or, as set forth in this Article, the combined selection pool set forth below.

Affirmative Action certification may be used and the minorities added to the selection pool, if minority employees are not ranked in the top three.

Affirmative action certification will occur by ranking the employees of the underrepresented class in order of their point total. If no employee of the underrepresented class is in the top three (3), the appointing authority shall have certified and included within the selection pool the top three names from the promotional list and the top three (or fewer) minority individuals on the eligibility list resulting from the affirmative action certification. This list of up to six (6) employees shall constitute the combined selection pool.

The appointing authority shall make the appointment from among any of the employees in the combined selection pool.

After there has been an appointment from the affirmative action certification, the next appointment shall be an employee of the non-underrepresented class made from a regular promotional list for that rank.

C. The City shall utilize affirmative action certification for any of the above-referenced ranks that has not achieved a representative balance, i.e., 40/60 ratio between minority and non-minority.

Section 5 The parties wish to assure that the obligation of providing for equality of opportunity for all members of the bargaining unit is satisfied. Consistent with the provisions of the Uniform Guidelines on Employee Selection Procedures, future selection procedures shall be constructed to minimize or eliminate adverse racial impact.

Section 6 This Article shall be in effect for the period June 30, 1985 through July 1, 1989, and shall continue thereafter for successive periods of one (1) year unless either party shall, at least ninety (90) days prior to July 1, 1989, serve written notice on the other party of a desire to terminate, modify, alter, renegotiate, change or amend this agreement.

Barry C Brown
BARRY BROWN, Chairman

Dennis B. DuBay
DENNIS B. DuBAY, City Delegate

George W. Kruszenski
GEORGE W. KRUSZENSKI, Union Delegate

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