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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

HAMTRAMCK, CITY OF,

Employer,

-and-

HAMTRAMCK FIREFIGHTERS
ASSOCIATION, LOCAL 750,
I.A.F.F.,

Union.

MERC - Act 312 Case
No. D82 I-3792

Richard Kanner, Impartial
Arbitrator and Chairman

APPEARANCES:

FOR CITY: George Matish, Attorney

FOR ASSOCIATION: Eugene Bolanowski, Attorney

FILED
MAY 10 1982
MERC

BACKGROUND

On May 13, 1983, Local 750, International Association of Firefighters, AFL-CIO, Hamtramck Firefighters Association (the "Association"), the Hamtramck Fraternal Order of Police, Lodge 109 (the "FOP") and the Hamtramck Police Ranking Officers Association (the "ROA"), filed a joint petition with the Michigan Employment Relations Commission ("MERC" or the "Commission"), seeking to initiate binding interest arbitration proceedings under Act 312 of 1969, as amended, MCLA Section 423.231, et seq., to resolve a dispute with the City of Hamtramck (the "City" or the "Employer") over wages, hours and other terms and conditions of employment of a Collective Bargaining Agreement ("CBA") commencing coverage on July 1, 1982.

On May 19, 1983, the City formally objected to the Unions' filing jointly. The City's objections became academic when the FOP elected to withdraw from the joint proceedings, and when subsequently, the ROA followed suit.

MERC notified Richard L. Kanner, Esquire (the "Arbitrator" or "Panel Chairman") that he had been appointed to serve as Chairman of a Panel of Arbitrators, pursuant to Act 312 in the above captioned matter. Ultimately, the City designated delegate James C. Zeman, and the Association designated delegate F. Daniel Bohn to sit on the Arbitration Panel.

At the close of the proceedings, the Arbitrator ordered the parties to appear at one final session held August 14, 1985, the Panel heard closing arguments, and sent the attorneys for the parties back to their respective clients for one final attempt to settle their differences through negotiation. The effort proved unavailing and the Arbitrator set the date of November 15, 1985 for the final submission of briefs and last best offers on the economic issues.

PREVIOUS ACT 312 PROCEEDINGS
AND RELATED LITIGATION

In the fall of 1980, the City and the three Unions, representing the City's uniformed employees, submitted unresolved 1979-82 contract disputes to an Act 312 Panel chaired by Richard Strichartz pursuant to Public Act 312 of 1969, as amended, MCL/ Section 423.231, et seq. In a decision issued December 3, 1980, that Panel granted wage increases of 5-1/2%, 6-1/2% and 6-1/2% for years 1, 2 and 3 of the contract, respectively. That award, together with corresponding increases in pension payments to retired firefighters and police officers, amounted to \$1,362,884.

A number of court appeals relative to enforcement of Strichartz's award culminated in upholding that award by the court. Subsequently, the Unions filed a grievance under the Strichartz CBA, claiming that the City had failed to pay its members at the wage levels prescribed in the contract. On June 8, 1984, Arbitrator Elaine Frost issued an arbitration award finding that the City had violated the 1979-82 contract by not compensating Union members consistently with the terms of the CBA. The Unions filed suit and on June 25, 1984, the Wayne County Circuit Court ordered the City to spread the \$1,362,284 arrearage on its tax rolls, beginning with a 9.6 mills increase on the 1984 Summer tax bill. A supplemental millage necessary to discharge the entire arrearage was placed on the 1985 Summer tax bills.

The City continued to pursue relief on appeal until leave to the Supreme Court was denied on May 17, 1984. Beginning July 1, 1984, the City began to pay wages to current employees and pension benefits to retirees at levels consistent with the Strichartz award.

APPLICABLE STATUTORY CRITERIA

Subsection 8 of Public Act 312 (MSA 17.455 [38]) recites as follows:

"...As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9."...

Subsection 9 recites the applicable criteria as follows:

- "(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 pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. (MCL 423.239)"..

CITY LAST BEST OFFER OF WAGES

" ARTICLE VII, Sec. 1:

- a. The following rates of pay shall be applicable for the classifications on and after July 1, 1982:

	<u>July 1, 1982</u>	<u>July 1, 1983</u>	<u>July 1, 1984</u>	<u>July 1, 1985</u>	<u>June 30, 1986</u>
Fire Chief	\$24,617.50	\$24,617.50	\$29,932.00	\$31,129.00	\$31,752.00
Assistant Chief	23,327.50	23,327.50	28,389.00	29,525.00	30,115.00
Master Mechanic	23,327.50	23,327.50	28,389.00	29,525.00	30,115.00
Captain	22,145.00	22,145.00	26,973.00	28,052.00	28,613.00
Lieutenant	20,640.00	20,640.00	25,172.00	26,179.00	26,703.00
Motor Engineer	19,780.00	19,780.00	24,144.00	25,110.00	25,612.00
Firefighter V	18,167.50	18,167.50	22,214.00	23,103.00	23,565.00
Firefighter IV	17,737.50	17,737.50	21,696.00	22,564.00	21,916.00
Firefighter III	17,307.50	17,307.50	21,182.00	22,030.00	20,269.00

b. Effective June 30, 1986, the above rates shall be increased 2%.

c. For employees hired on and after January 1, 1986, the rates of pay shall be:

Firefighter V	(5th year or more of employment)	Maximum Rate
Firefighter IV	(4th year of employment)	Maximum Rate, less \$1,616.00
Firefighter III	(3rd year of employment)	Maximum Rate, less \$3,232.00
Firefighter II	(2nd year of employment)	Maximum Rate, less \$4,848.00
Firefighter I	(1st year of employment)	Maximum Rate, less \$6,464.00

ASSOCIATION LAST BEST OFFER

"I. WAGES 1982-1983

All members of the Hamtramck Firefighters Association shall have their wages frozen at the 1981-1982 levels established by Arbitrator Richard Strichartz in his December 3, 1980 Award, which wages are as follows:

	<u>July 1, 1981</u>
A. Fire Chief	\$29,932.00
B. Assistant Chief	28,389.00
C. Master Mechanic	28,389.00
D. Captain	26,973.00
E. Lieutenant	25,172.00
F. Motor Engineer	24,144.00
G. Firefighter III	22,214.00
H. Firefighter II	21,696.00
I. Firefighter	21,182.00

II. WAGES 1983-1984

All members of the Hamtramck Firefighters Association shall continue to have their wages frozen at the 1981-1982 levels established by Arbitrator Richard Strichartz in his December 2, 1980 Award. The wages are set out in the

Last Offer of Settlement for 1982-1983.

III. WAGES 1984-1985

All members of the Hamtramck Firefighters Association shall receive an increase of 4.5% of their salary in effect on June 30, 1983.

IV. WAGES 1985-1986

All members of the Hamtramck Firefighters Association shall receive an increase of 6% of their salary in effect on June 30, 1985."

Arbitrator Stricknartz granted wage increases of 5-1/2% for 1979 through June 30, 1980, 6-1/2% for 1980 through June 30, 1981, and 6-1/2% for 1981 through June 30, 1982 in a prior PA 312 proceeding. That award brought the benchmark salary for Firefighter III to \$22,214.00. The actual salary paid to Firefighter III for the said three years of the previous contract, however, was \$18,167.50. The \$22,214.00 salary was paid for fiscal year July 1, 1984 to June 30, 1985. Accordingly, the City offer results in the following:

<u>July 1, 1982 - June 30, 1983</u>	<u>July 1, 1983 - June 30, 1984</u>	<u>July 1, 1984 - June 30, 1985</u>	<u>July 1, 1985 - June 30, 1986</u>	<u>June 30, 1986</u>
\$18,167.50	\$18,167.50	\$22,214.00	\$23,103.00 (4%)	\$23,565.00 (2%)

Hence, the City requests a roll back of 18.2% for each of the first two years; a freeze in the third year; and a 4% increase in the fourth year with a 2% increase the last day of the fourth year.

In essence, the Association requests a freeze of \$22,214.00 for the first two years; a 4.5% increase in the third year; and a 6% increase in the fourth year of the contract.

STATUTORY CRITERION

S/S 9D:

...(i) In public 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."

COMPARISON OF TOTAL COMPENSATION EARNED

The comparison of wages, hours and conditions of employment in comparable communities is of prime importance. In my view, the rationale underlying same is that the substantive factors bearing upon the ability of each community to pay firefighter wages must be similar. Hence, I am persuaded that the City's list of comparables more closely meets the intent of Section 9D(i) and 9(f) above.

The criteria used by the City is as follows:

- "1. Communities within the Detroit SMSA (Standard Metropolitan Statistical Area).
2. Communities with a population of 10,000 - 50,000; and
3. Communities experiencing a decline in population between 1970 and 1980."

Subsumed within the above general criteria were demographic factors as follows:

Population, percentage change in number of persons from 1970 - 1980;

Percentage change in the number of households from 1970/1980 (City Exhibit 8);

1979 median household income;

1979 unemployment rate;

Percentage of persons with income below the poverty level - 1979;

Percentage of housing units built before and after 1939 and 1970. (City Exhibit 9)

Hence, the above factors deal with the economic well being of various communities. Since it is inferred, absent specific proof to the contrary, that

all firefighters generally perform similar duties in various communities, it is the ability of the community to pay wages which is the primary comparability factor to be measured. In my view the phrase, "in comparable communities" can literally only intend a comparison relative to economic status. Such conclusion follows from the fact that wages is usually the primary issue, and a level of wages paid to firefighters usually directly relates to the economic well being of the employing community.

Hence, as is asserted by the City, to compare wealthier and fast growing communities with Hamtramck is fallacious. For example, the Association's comparables include Canton Township, Harrison Township, Plymouth Township, Shelby Township, and the City of Wayne among others, all of which are experiencing considerable population growth since 1970, and a median household income of \$27,349.00; a median of 4.3% of persons with income below the poverty level; and a median unemployment rate of 7.5%. (City Exhibit 12)

The City's comparables include Ecorse, Ferndale, Highland Park, River Rouge, and Wyandotte (City Exhibit 6). The median household income of these comparables is \$16,906.00 and that of Hamtramck is \$11,432.00 (City Exhibit 9). The median percentage below the poverty level in 1979 was 13.3%, and that of Hamtramck is 18.9%; the median unemployment rate is 19.4% and that of Hamtramck is 16.9%; the median population decline is 17.5% and that of Hamtramck is 21.8% (City Exhibit 8, 9).

Accordingly, it is clear that Hamtramck more closely compares with the five comparables submitted by the City.

As articulated by a Brookings Institute Study, loss of population is significant in denoting a general economic decline. Such loss of population drives the value of property down with result in loss of tax revenue. (TR Volume V, pages 70-100) (City Exhibit 5). High unemployment and poverty indicates that the public uses municipal services, but is less able to pay for them.

Such a populace also tends to live in old housing in disrepair with resultant low assessed valuation, and lower tax revenue yield with which to enable the City to pay wages.

However, it is significant that whether by use of the Association's or the City's comparables, the City of Hamtramck is last in terms of total compensation earned. (City Exhibit 31, Page 1).

COMPARISON OF PER HOUR COMPENSATION

Notwithstanding that both parties' comparables denote Hamtramck as last, the City asserts that on a per hour basis Hamtramck is at the median when compared with the City's five comparables. Both parties agree that overall total compensation rather than wages should be compared.

Mr. Joseph Fremont, testifying for the City, compiled an analysis of 23 cities as to total compensation including such indirect benefits as pension, health and life insurance, and workman's compensation, and also compiled total hours of firefighters on duty at each city. His figures denote a median compensation for the City's five comparables of \$39,009.50 with Hamtramck again last at a level of \$34,243.00 (City Exhibit 31). But he also found that the Hamtramck Firefighters median hours of work per year was 1,970.1 while the median for the five city comparables was 2,266.1 hours. Accordingly, the Hamtramck Firefighters worked 296.1 less hours per year, or 5.9 hours less per week than the median of the City's other five comparables (City Exhibit 31, Page 2). Hence, the median per hour compensation for the five city comparables is \$17.04 per hour with Hamtramck close to the median at \$17.38 per hour based upon a Firefighter III earning \$22,214.00 in wages per its last best offer for the first two years (City Exhibit 31, Page 3).

I do not, however, agree that such a per hour figure should be given substantial weight.

First, the per hour earnings figure has more efficacy in a situation where the employees are paid by the hour and where layoffs are common. In such a case, the yearly earnings directly relate to hourly rates and number of hours worked. But in the instant situation, the firefighters depend upon a yearly, not hourly wage, and are not subject to frequent layoffs. It is their yearly total compensation - not their hourly rate that provides sustenance for their families.

Hence, the comparison with other communities of yearly salaries is more appropriate than a comparison of hourly rates.

Second, it is no great attribute for Hamtramck to fall in the median, relative to hourly rates of the five worst cities selected as comparables by the City. It is one thing to be at the median level among the worst examples, and quite another to be at the median level among an across the board sampling of communities including both good, average, and bad examples.

Third, if the City's offer of \$18,167.50 for the first two years is awarded, the hourly rate based on all compensation is reduced to \$15.33 per hour. This would put Hamtramck Firefighters in a last position among the City's five other comparables by a substantial amount.

In view of my conclusion, it is not necessary to address the Association's attack on the reliability of Mr. Fremont's compilation of total hours worked and total compensation relative to the 23 cities surveyed.

Therefore, I conclude that, by any test of comparables, Hamtramck is the lowest. Such factor strongly militates in the Association's favor.

S/S 9D:

"(ii) In private employment in comparable communities."

PRIVATE EMPLOYMENT

Based upon 1,970.1 hours actually worked per year, and taking firefighters' base wages at \$18,167.50, the hourly base wage is \$8.47. This compares unfavorably with the base wages paid for electricians (\$17.65), plumbers

(\$14.15), etc. in private industry (Association Exhibit 15).

While the above factor is to be considered, per subsection 9(ii) above, I do not deem such comparison as important as the comparison with earnings of firefighters in comparable communities. It is very difficult to equate the work performed and hours worked of firefighters with that of other occupations.

S/S 9:
i(e) The average consumer prices for goods and services, commonly known as the cost of living."

The Association presented a cost of living projection based upon the Cost Price Index beginning 1974/75 (Association Exhibit 20). Such graph denotes that at a wage rate of \$22,214.00, a firefighter would be short 32.6% from the level of \$29,462.00 based upon an escalating cost of living since that date.

But a large part of such increased cost of living was based upon three years of excessive inflation in the late 70's. I take judicial notice of the fact that inflation has slowed considerably, and is now at a rate of about 3%. Hence, I do not deem cost of living to be a significant factor bearing upon the last best offer in this case.

S/S 9:
i(c) ...the financial ability of the unit of government to meet these costs."

It is eminently clear that Hamtramck is in a very poor financial condition. Hamtramck is a victim of the illness which has been visited upon many core cities, i.e., the unremitting migration of people and industry to the suburbs. The story is graphically portrayed in city exhibits 8, 9 and 10 as aforesaid. In median household income, unemployment rate, percentage of persons below the poverty level, and percentage of housing units built since 1970, Hamtramck stands at the lowest of 23 other cities (City Exhibit 10).

In 1979 the final straw occurred when Chrysler Corporation closed the Dodge Main plant. As revenues shrank from \$8,899,494.00 to \$7,679,494.00 between 1979 and 1984, expenditures increased from \$8,793,912.00 to \$9,322,812.00.

The loss of tax revenue from Dodge Main amounted to approximately \$1,000,000.00 per year.

The deficit figures for the years of the subject contract, July 1, 1982 through June 30, 1986 based upon no wage increases are as follows:

June 30, 1983 - \$41,804.08 (City Exhibit 13, Page 23 based on \$18,167.50 firefighter wages)

June 30, 1984 - \$233,318.00 (based on the \$18,167.50 firefighter wages)

June 30, 1985 - No deficit (based on \$22,214.00 firefighter wages - City Exhibit 19, 20)

June 30, 1986 - \$2,844.757.00 (City Exhibit 19, 20)

THE EFFECT OF THE POLICE OFFICER CONTRACT

It now becomes necessary to determine the cost of the Associations' last best offer. In order to do so, the impact of its offer on the Fraternal Order of Police contract has to be taken into account for the reason that said contract is tied into the result of this PA 312 Arbitration. (City Exhibit 34) It is noted that, in effect, the police accepted the City offer herein made to the firefighters. But I do not agree with the City that by such fact it should follow that the firefighters should also accept the same offer. It is apparent by the Letter of Agreement appended to the police contract that the effect thereof is to agree to accept the City offer only in the interim subject to the disposition of the instant PA 312 award to the firefighters.

The practical effect of such agreement by the police is to forego its own PA 312 proceeding, and allow the firefighters to, in effect, proceed to arbitration under PA 312 for and in its place. Hence, the police agreed to accept whatever is finally awarded in the subject PA 312 proceedings for the firefighters, but only for fiscal 82/83, 83/84, and 84/85. It did not tie fiscal 85/86 into the firefighter 312 award. On the contrary, the police accepted the benchmark salary of \$23,103.00 for fiscal 85/86. (Employer 34) This is the real and practical effect of the police contract.

Hence, it follows that the cost of the instant PA 312 award attributed to the police must be added to the cost attributed to the firefighters.

The following cost figures represent the added cost of the Association's offer for the first three years as the cost of the City offer would be zero. For fiscal 1985/86, the cost figure represents the added cost of the City offer.

	<u>1982/83</u>	<u>1983/84</u>	<u>1984/85</u>	<u>1985/86</u>
Fire Wages: \$	168,000	\$ 168,000	\$ 41,000	\$ 37,000
Police Wages:	210,000	210,000	52,000	-0-
Fire Pension:	121,000	121,000	29,000	27,000
Police Pension:	151,000	151,000	38,000	
Deficit:	41,804	643,000	none	2,844,757
Total Deficit:	691,804	1,293,000	160,000	2,908.757
Total Deficit for four years :				5,053.561

(City Exhibit 45 - Union Exhibit 32)

THE EFFECT OF THE GENERAL MOTORS PLANT

The Union urges that the new GM Plant will have a substantial favorable impact on the city's projected budget for 1985/86 and thereafter.

What the impact of the GM tax revenues will be after the subject contract ends on June 30, 1986 is beyond the purvue of my authority to address. Suffice it to say that the record clearly reflects a maximum income from General Motors of 1.7 million to start in 1985/86. (City Exhibit 26, TR Volume VII - Pages 20 - 24) This sum has, however, been taken into account starting with the 1985/86 budget. (City Exhibit 20) But a \$1,281.107 payment on tax notes and a \$1,017.870 interest payment on loans in 1985/86 more than cancels out the 1.7 million dollar income from GM.

THE EFFICIENCY OF THE CITY AND POSSIBLE OTHER REVENUES

The Union asserts that there are certain areas of vacant commercial property which could be developed to increase tax revenues. But in my view, such argument is based upon speculation. The Chairman of PA 312 panel, entrusted as he/she is with great responsibility and whose decision seriously affects both the economic

welfare of the Union and the City, should not base an award on an "if come" proposition. When and if such property is actually developed and generates income to the City, is the time to take such factor into consideration.

The same conclusion must be reached in connection with the Union's argument that the city could save \$500,000 if it operated more efficiently. It asserts that there is a lack of administrative reorganization, a laxity in foreclosing on property for delinquent taxes, etc. In sum, it relies on the city controller's testimony that the city would realize a half million dollars if it adopted all of the Union's recommendations to enhance revenue. (TR January 29 1985, Page 97)

But I am of the view that, again, such efficiencies are speculative. The administration of Hamtramck has to be viewed in the light that it is as efficient as possible under the present administration. In sum, I cannot base an award upon "possible" additional income achieved by "possible" efficiencies.

In connection with possible additional tax revenues, it should be also pointed out that the city is currently taxing at 23 mills which is the maximum it can legally impose. (TR Volume VI, page 43)

Also, the city's assessment rate on real property is at the optimum level. (City Exhibit 29 and 30)

Finally, the Union asserts that about \$2,000,000 is paid out of the general fund to the pension fund to pay for the city's failure to adequately fund the pre 1970 pension fund. If the city had adequately funded such pension, its outlay would only be \$.96,000 per year. (TR May 28, 1985, Page 70) Hence, in effect, the city is in a poor financial position because of its own past actions in underfunding the pension.

In a past PA 312 arbitration award in the late 70's, this arbitrator took due notice of such fact and, in part, the favorable wage award to the Union therein reflected such factor.

I am again importuned by the Union to take account of such factor as militating in favor of the Union's last best offer.

On the one hand, to take account of such factor in each and every contract hereinafter would continually penalize the current city administration for the laxity and inefficiency of past administrations. But on the other hand, to allow the city to plead poverty, caused in large part by such \$2,000,000 expenditure, in the face of the Union demand for increased benefits is also unfair.

It would appear to me, however, that had past administrations fully funded the pension plan, then past budgets would have run substantial deficits. Such result would have detrimentally impacted on past wage demands of the Union. That is to say that by underfunding the pension plan, the city was better and able to grant wage increases in the past to the Union. Hence, I am of the opinion that such factor, relative to the unfunded pension plan and the need to now fund it out of the general fund, should be laid to rest. The bottom line at this time is that for various reasons, including in part past inefficiencies in managing the city, the city now is running deficits. These deficits must, per force, vitiate its ability to grant substantial wage increases.

Accordingly, I conclude that, as a general proposition over the course of a four year contract², the city has proved an inability to pay, per 9C above.

SECTION 9C
THE INTERESTS AND
WELFARE OF THE PUBLIC

The city contends that paying the cost of the Union's request to freeze wages at \$22,214.00 for the first two years, when taken together with

² Hereinafter, I will analyze the city's financial position year by year relative to four years of the subject contract and the Union's last best offer.

deficits for said two years totaling \$1,293,000 , would result in a layoff of some 20 to 25 public safety employees. Hence, the interest and welfare of the public would suffer extensively. If the public order and firefighting breaks down, additional flight from the city would occur.

To the contrary, the Union asserts that the morale of the firefighters is low due to their position at the bottom of comparable cities.

Both the City's and the Union's position will be hereinafter considered and weighed in the balance in reference to my award herein.

S/S 9:

"(h)³ 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. (MCL 423.239)"

The final criterion to be taken into account is Section 9(h) above. Involved therein is the comparison of firefighter wages with those of other employees in the City of Hamtramck, i.e., Class C employees so called.

It is a fact that, due to the dire financial circumstances of the city, these Class C employees have not received a wage increase since 1980. (Volume VI, Page 106).

Further, these employees have suffered layoffs while firefighters have enjoyed job security.

Accordingly, I find that such factor (wage levels of Class C employees) does not militate in favor of the Union.

BALANCING EQUITIES

At the outset, I do not agree with the City that a finding of financial inability to pay controls the disposition of this PA 312 arbitration. In my

³There are no "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings" (Section 9G)

view, the PA 312 statute clearly intends a weighing and balancing of the evidence pertaining to each of the criterion therein set forth. Hence, as is often the case, the resolution of the instant dispute depends upon resolving the tension between the fact of the Union's low wage status relative to other similar communities, and the City's evident poor financial position.

The Union strenuously argues that the effect of the City's attempt to roll back the wage from \$22,214.00 to \$18,167.50 is to, in effect, reverse Strickhartz's award covering the period July 1, 1979 - June 30, 1982.

I cannot agree for the reason that issues covering the term of the contract before Strickhartz did not include evidence as to the City's projected deficits after July 1, 1982. A review of his award denotes that he did not (and should not) have taken into account the City's projected financial position beyond the term of the contract with which he was concerned.

Therefore, I am not strictly bound to follow the Strickhartz award. Accordingly, the City is within its right to submit an offer which would, in effect, call upon the Union to give back 18.3% by accepting a wage of \$18,167.50.

In my judgement, the substantial deficits in 1982/83 and 1983/84 amounting to \$691,804.00 and \$1,293,000.00 respectively and facing a \$2,908,757.00 deficit in 1985/86, forces some consideration in favor of the City.

On the other hand, the Union's offer gives substantial and mature recognition to the City's financial plight. Given the fact of their last position in comparison to the five other worst financial condition cities based upon a \$22,214.00 salary, to award an 18.3% reduction for both of said years would place the Union far below the lowest of these cities.

Accordingly, I am persuaded that the equities in favor of each party are adequately balanced by accepting the City's offer for 1982/83 and the Union's offer for 1983/84.

As to fiscal 84/85, it is noted that the difference between the City offer to freeze pay at \$22,214.00 and the Union's offer for a 4.5% increase is \$60,000.00 in a year when no deficit is projected. (City 45, Union 32) In view of such factor, together with the roll back in 82/83 and the freeze in 83/84, the Panel is persuaded to the Union offer for the third year, 84/85.

As to fiscal 85/86, it is noted that the result of the 4.5% increase in fiscal 84/85 places Firefighter III at \$23,213.63. The City offer for 85/86 is \$23,103.00 which, if accepted, would constitute a roll back of firefighter wages, albeit only \$110.00 per year. The Panel is therefore persuaded to the Union offer for the fourth year, 85/86.

It is acknowledged that the aforestated deficits remain excessive resulting in the City having to reorder priorities, affect layoffs, and attempt to refinance the amortization of the loans from the State. But, as stated by Strichartz in his award:

"But that does not mean the City has no options. It has been in fiscal difficulty before and has overcome them. In the selection of priorities the City may have to devote more funds to assure the community it will continue to have the safety and protection the citizens require." (Exhibit A)

WAGE AWARD

City's offer:

1. WAGES JULY 1, 1982 - JUNE 30, 1983

A. Fire Chief	\$24,617.50
B. Assistant Chief	23,327.50
C. Master Mechanic	23,327.50
D. Captain	22,145.00
E. Lieutenant	20,640.00
F. Motor Engineer	19,780.00
G. Firefighter III	18,167.50
H. Firefighter II	17,737.50
I. Firefighter I	17,307.50

Union's offer:

II. WAGES JULY 1, 1983 - JUNE 30, 1984

All members of the Hamtramck Firefighters Association shall have their wages frozen at the 1981-82 levels established by Arbitrator Richard Strichartz in his December 3, 1980 Award, which wages are as follows:

	<u>July 1, 1983</u>
A. Fire Chief	\$29,932.00
B. Assistant Chief	28,389.00
C. Master Mechanic	28,389.00
D. Captain	26,973.00
E. Lieutenant	25,172.00
F. Motor Engineer	24,144.00
G. Firefighter III	22,214.00
H. Firefighter II	21,696.00
I. Firefighter I	21,182.00

Union's offer:

III. WAGES JULY 1, 1984 - JUNE 30, 1985

All members of the Hamtramck Firefighters Association shall receive an increase of 4.5% of their salary in effect on June 30, 1984.

Union's offer:

IV. WAGES JULY 1, 1985 - JUNE 30, 1986

All members of the Hamtramck Firefighters Association shall receive an increase of 6% of their salary in effect on June 30, 1985.

PENSIONS

City last best offer:

ARTICLE IX, PENSIONS AND RETIREMENT:

Sec. 2 - Military Buyback (Old Pension --Municipal)

Employees may purchase additional years of service credit for military duty. Any such years purchased, plus Department service time equaling 20 or more years, will enable said employee to full pension benefits. The employee contribution shall be 6% of annual base salary (excluding back pay awarded or to be awarded). If sufficient monies are available, it may be deducted from any lump sum payment due employees at the time of retirement at the option of the employee.

Sec. 3 - Pension Improvement (MERS):

A. Employees may purchase additional years of service credit,

pursuant to MERS regulations, for military service. The employee contribution shall be 6% of annual earned salary for each year of service. If sufficient monies are available, it may be deducted from any lump sum payment due employees at the time of retirement at the option of the employee.

- B. F50 (25 years and age 50) full benefits pursuant to MERS regulations beginning June 30, 1986. Beginning on the same date, employees covered by MERS will contribute an additional 2% per year (Total - 7%) for this improvement until 6/30/88.

Union last best offer:

V. PENSION IMPROVEMENT EFFECTIVE IMMEDIATELY

All members of the Hamtramck Firefighters Association who participated in a Public Act 135 Pension Plan, shall now participate in a Public Act 345 Pension Plan (MCLA 38.551, et seq.) as is provided in the following contract language to be adopted:

ARTICLE XI - PENSION AND RETIREMENT

- A. Current bargaining personnel shall be appropriately subject to and entitled to a Public Act 345 Pension Plan (MCLA 38.551, et seq.) which shall provide for retirement after 25 years of service without regard to age, which benefit shall accrue to those employees under said Public Act 345 Plan from their date of hire and not from the date of commencement of such plan.
- B. That the Public Act 345 statutory composition of the Fire and Police Pension Board, shall be amended so that the Board shall consist of:
- 1) City Treasurer of the City of Hamtramck.
 - 2) Two active members of the Fire Department to be elected by majority vote of the members of said department.
 - 3) One member to be appointed by a person or body authorized by the City of Village Charter to appoint administrative officials.
 - 4) One member to be appointed by a person or body authorized by the City or Village Charter to appoint administrative officials, but subject to advice and consent of a majority of the members of the Fire Department.

DISCUSSION AND OPINION

The cost differential between the two offers is approximately \$24,000.00 for the City and \$31,255.00 to \$43,557.00 for the Union (C 46, U 33) Hence, the Panel does not deem the respective costs as controlling.

It is also noted that both pension offers are prospective by taking effect after the subject contract. Also, only five of the Union's comparables have Act 345 Pension Plans. (Union 26).

While each offer has advantages and disadvantages, the controlling factor, in the Panel's view, is that the City offer (MERS) places pension contributions under the supervision of the State rather than the City of Hamtramck. Such factor better assures the Union that pension contributions will be made in view of the past history of under funding by the City.

AWARD

The Panel awards the City offer as to pensions.

PROFESSIONAL LIABILITY INSURANCE

Union last best offer:

VII. PROFESSIONAL LIABILITY INSURANCE

Effective July 1 1982, Professional Liability Insurance coverage provided employees of the Hamtramck Firefighters Association shall conform to the general liability policy issued to the City of Hamtramck on behalf of its employees and the following language shall be adopted:

ARTICLE XVI - WORKING CONDITIONS

GENERAL AND PROFESSIONAL LIABILITY INSURANCE

The City shall provide a fully paid general liability policy which provides for Professional Liability Insurance in the amount of One Million (\$1,000,000) Dollars per person per occurrence to cover the following operations and hazards:

Ambulance Drivers and Attendants Malpractice Fire Department Professional Liability

- 1) Firefighting Operations
- 2) Fire Inspection Services
- 3) Fire Rescue Services
- 4) Emergency Medical
- 5) Dispatching of Fire Department Service Calls

Last best offer of the City:

None.

No comparables or cost figures were submitted by either party. Nor am

I referred to any testimony in the record on this issue.

Therefore, per the Union's argument in connection with the next issue addressed hereinafter, I have no authority to award the Union offer.

AWARD

The Panel awards the status quo.

DEFINITION OF THE BARGAINING UNIT MEMBERSHIP

City last best offer:

ARTICLE II, COVERAGE:

This Agreement shall be applicable to all full-time and part-time employees of the Fire Department, except civilian employees.

ARTICLE III, RECOGNITION:

The City recognizes the Union as the sole and exclusive bargaining representative of the full-time and part-time non-civilian employees of the Fire Department.

Union last best offer:

None.

DISCUSSION AND OPINION

No evidence or testimony was presented by the City to sustain the above last best offer. Although there is some testimony, as aforesaid, that the City may have to layoff 20 to 25 public safety employees, there is no testimony or evidence bearing upon the merits of hiring part-time firefighters.

Accordingly, as argued by the Union, I have no authority to address such issue. This is for the reason that the Panel's award must be based upon competent, material and substantial evidence on the whole record.

AWARD

The Panel awards the status quo.

STAFFING OF EMS OPERATIONS

City last best offer:

ARTICLE XVI, SECTION 11:

Add new section 11 to Article XVI:

- (c) Should an insufficient number of licensed State Emergency Technicians be available for assignment to "ambulance duty",

the City reserves the right to unilaterally discontinue such service or provide said service by alternative means.

Union last best offer:

None.

DISCUSSION AND OPINION

The Union asserts that there is no evidence related to the above issue. I agree. Accordingly, I have no authority to address it.

PARITY

City last best offer:

The City proposes to eliminate Article XVII, Parity Clause, from the Collective Bargaining Agreement.

ARTICLE XVII COVERAGE:

No disparity in pay shall exist between Police and Fire Departments and comparable level (sic) or classifications.

Union last best offer:

The Union offers no change in the current contract language.

DISCUSSION AND OPINION

As stated, the police contract parallels the Union contract as to 82/83 through 84/85. (City Exhibit 34) Therefore, they remain in parity for those fiscal years. But the Panel has not accepted the City's last best offer for 85/86 of \$23,103.00 which would have paralleled that amount accepted by the FOP. To the contrary, the Panel accepted the Union's 6% offer in that year which, at \$24,605.00, is substantially higher than the 85/86 police salary.

Accordingly, parity between the police and firefighters' contract no longer exists. Hence, it is a contradiction to award parity in the subject contract.

AWARD

The above City offer as to parity is awarded.

RESIDENCY

City last best offer:

ARTICLE XVI, WORKING CONDITIONS:

Sec. 7 - Residency:

All employees of the Fire Department hired on/or after January 1, 1986, shall establish residency in Hamtramck and maintain their domicile in the City as a condition of continuing employment.

All employees shall maintain one, and only one, domicile.

Union last best offer:

None.

DISCUSSION AND OPINION

The Union asserts that there is no evidence relating to the above issue. I agree. Accordingly, I have no authority to address it.

AWARD

The Panel awards the status quo.

DURATION OF THE CONTRACT

City and Union last best offer:

Sec. 1 - Duration:

The duration of this contract, both as to economic and non-economic provisions, shall be from July 1, 1982 through July 30, 1986.

AWARD

The Panel awards the above offer.

ANNUAL LEAVES

City last best offer:

ARTICLE VIII, Sec. 1, Vacations:

All employees of the Fire Department hired before July 1, 1985, shall be entitled to one (1) calendar month annual leave with pay per year. For all intent and purposes, this shall be deemed to be eight (8) work days in the summer and seven (7) work days in the winter months. All Kelly days within a furlough shall be added to ATO time. For employees hired on and after January 1, 1986, the following annual leave shall be granted:

- a. Employees with fewer than three (3) years of service shall be given five (5) work days of annual leave, three (3) in the summer and two (2) in the winter.
- b. After three (3) years of service, the employee shall be given ten (10) work days of annual leave, five (5) in the summer and five (5) in the winter. All Kelly days within a furlough will be added to ATO time.
- c. After five (5) years of service, the employee shall be given one (1) calendar month annual leave with pay per year. For all intent and purposes, this shall be deemed to be eight (8) work days in the summer and seven (7) work days in the winter months. All Kelly days within a furlough shall be added to ATO time.

Union last best offer:

None.

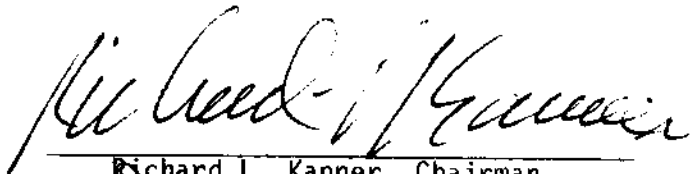
DISCUSSION AND OPINION

The Union asserts that there is no evidence relating to the above issue. I agree. Accordingly, I have no authority to address it.

AWARD

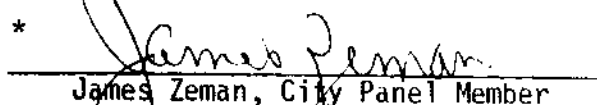
The Panel awards the status quo.

August 20, 1986



Richard L. Kanner, Chairman

*



James Zeman, City Panel Member



Dan Bohn, Union Panel Member

Concurring

*The City's Panel Member respectfully concurs only with the award relative to the majority's position on the following issues:

- A. 1982-83 wages found at page 18 of the award.
- B. Professionable liability insurance at page 21 of the award.
- C. Parity found at page 23 of the award; and
- D. Duration of contract found at page 24 of the award.

On the remaining issues, he respectfully dissents as reflected in the accompanying document entitled Dissenting Opinion of City Delegate.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

HAMTRAMCK, CITY OF,

Employer

MERC - Act 312 Case

and

No. D82 I-3792

HAMTRAMCK FIREFIGHTERS ASSOCIATION,
LOCAL 750, I.A.F.F.,

Union.

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DISSENTING OPINION OF CITY DELEGATE, JAMES C. ZEMAN

As indicated in the majority opinion, I have concurred in the Panel's decision on a number of issues. As to all issues in which I have not concurred by signing the opinion, I respectfully dissent, as follows:

A. Wages. With respect to the majority's decision to accept the Union's last best wage offer for each of the contract years 1983-4, 1984-5, and 1985-6, I rely on and incorporate by reference, pages 11 - 29 and 44 - 54 of the Employer's post hearing brief submitted in this proceeding. Further, one must note that the 1983-4 wages suggested by the majority has the effect of nearly doubling the deficit already recorded for that year, bringing it to a total of \$1,293,000 (page 13 majority's opinion). Also noteworthy is that the majority would grant a wage increase during the last year, 1985-6, of the contract in the face of an almost 3 Million Dollar deficit.

Finally, one is struck by the anomaly that the Firefighters, the bargaining unit that chose to pursue its legal remedies in the Act 312 process, will be granted higher wage levels than the members of the POP, the police union, who understood the City's financial plight and came to agreement at the bargaining table for the year 1985-6. For that year alone, a fully paid firefighter receives \$1,500 more in wages than his law enforcement counterpart.

The disparity between the Firefighters' and Police Officers' 1985-6 wage levels serves to create a counter-incentive to reaching agreement at the bargaining table. Instead of exhausting efforts to reach agreement short of entering Act 312 proceedings, in the future, the uniformed unions in Hamtramck are more likely to reject reasonable wage offers in the belief that Act 312 will yield a more economically beneficial pact. This runs counter to public policy and one of Act 312's underlying purposes, that of encouraging parties to labor agreements to resolve differences at the bargaining table. The long term effects of the fourth year of this award will be felt in the City of Hamtramck for years to come.

B. Pensions. While the majority has elected to select the City's pension proposal over that of the Union, the City nevertheless dissents on the basis that the pension award could not take effect until after the expiration of the contract. Thus, the Panel will be making a prospective award which is clearly beyond the scope of its authority under the statute.

C. Definition of bargaining unit. In dissenting from the majority's decision on this issue, the City relies on and incorporates by reference pages 32 - 35 of the Employer's post hearing brief in this proceeding, which, in

essence, notes that the City may be in a position to lay off firefighters due to financial fiscal constraints, particularly in the light of the wage award and the increased budget deficits created thereby. Under those circumstances, a reasonable means of accommodating the City's duty to provide fire protection to its citizens in light of its dire fiscal problems, may be the availability of part-time firefighters to assist a regular force on a "call in" basis.

D. Staffing of EMS Operations. In dissenting from the majority's decision on this issue, the City relies on and incorporates by reference pages 35 - 36 of the Employer's post hearing brief in this proceeding. In effect, the majority's decision requires the City to maintain EMS operations, but permits the Union to frustrate the City's efforts to meet such an obligation.

E. Residency. In dissenting from the majority's decision on this issue, the City relies on and incorporates by reference pages 39 - 40 of the Employer's post hearing brief in this proceeding. The argument here is two-fold. A firefighter resident is able to respond more readily to an emergency situation requiring his "call in" if he lives within the boundaries of the City. Additionally, one of the reasons the City has experienced its fiscal difficulties is due to the exodus of its citizens to the suburbs. The requirement that new hires be residents reverses that trend and establishes a base for new growth.

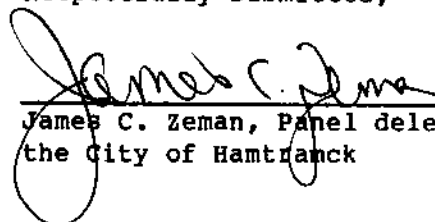
F. Annual Leaves. In dissenting from the majority's decision on this issue, the City relies on and incorporates by reference pages 42 - 44 of the Employer's post hearing brief in this proceeding. Further, the panel chairman's observation that the record contains no support for the City's

position is incorrect. The Freemont Study, City Ex. 31, includes a list of the vacation/leave time provided in the collective bargaining agreements of the City's comparables, as follows:

Ecorse	240 hours
Ferndale	240 hours
Highland Park	288 hours
River Rouge	240 hours
Wyandotte	288 hours

Current vacation time for firefighters under the collective bargaining agreement in Hamtramck is 360 hours. In addition, they receive 48 hours of holiday time and 72 hours of emergency leave. Under these circumstances, the City's proposal, that incoming firefighters spend five years on the job before receiving the full complement of annual vacation time, seems eminently reasonable.

Respectfully submitted,


James C. Zeman, Panel delegate for
the City of Hamtramck

DATED: September 23, 1986.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

HAMTRAMCK, CITY OF,
EMPLOYER

MERC - Act 312 Case
No. D82 1-3792

-and-

HAMTRAMCK FIREFIGHTERS ASSOCIATION,
LOCAL 750, I.A.F.F.,
UNION

CONCURRING OPINION OF
UNION DELEGATE F. DANIEL BOHN

I concur with the Award in the instant matter. In doing so, it must be observed that many issues are presented to a panel in the typical Act 312 proceeding, and as the multiplicity of issues increases, I suppose the likelihood of one party getting everything it demands necessarily decreases. The failure of a party to prevail on every issue in such a case should not preclude an award in which that party can nevertheless join. Thus, lest there be any confusion, I repeat that I concur with the Award in the within matter even though my principal, Hamtramck Fire Fighters Association, Local 750, I.A.F.F., did not prevail on every issue.

Since I was never expected to be a disinterested observer in this proceeding I think it fitting, even necessary, to express my strongest objection to the wage roll-back in the Award for the 1982/1983 contract year. I do so not simply because the Union did not receive its demand on that issue, but because of the circumstances which pertain to that issue.

In the first instance, it has been established that the "benchmark" pay rate for a Fire Fighter III at the end of the 1981/1982 contract year was \$22,214.00, as set forth in a previous arbitration proceeding. That rate of pay was not paid by the City during 1981/1982 and was not recognized by it as the basis for negotiations for a successor contract to begin July 1, 1982. Through various proceedings in the courts and MERC, the issue of whether the City was obligated to honor the \$22,214.00 pay rate as awarded was argued by the parties, and the Michigan Court of Appeals ruled on March 10, 1986

that that rate was, indeed, to be honored by the City both as to payment and as to its continuing effect for purposes of collective bargaining for a successor contract. Thus, it must be concluded that the "benchmark" rate of pay for a Fire Fighter III at July 1, 1982 was \$22,214.00, and this panel's award of \$18,167.50 constitutes a wage roll-back for the year 7/1/82 to 7/1/83, which the Award recognizes (p.17). It should be pointed out that the City paid the \$22,214.00 rate for the year 1981/1982 in 1984 after enforcement by the Union, but reverted to \$18,167.50 for 1982/1983. The Union's last best offer for 1982/1983 demands \$22,214.00 in the form of a "wage freeze".

Section 10 of Act 312 (MCL §423.240) provides, in pertinent part, that "...increases...may be awarded retroactively...." Nowhere in the Act is a retroactive wage roll-back contemplated, and I am persuaded that the Act does not authorize same.

Moreover, I am troubled by the failure to award a \$22,214.00 wage "freeze" for 1982/1983 because I believe that the passage of time between the inception of negotiations in May, 1982 for a successor contract and the issuance of an Award in August of 1986 has unduly prejudiced the Union. The members of this union can in no way be considered highly paid people, in my opinion, and it seems heartless if not downright outrageous for someone who has no economic stake in the Award to be deciding in mid-1986 what someone else should be paid for 1982/1983. I believe that when the rate of pay becomes such a "historical" matter, the significance of it tends to pale, inevitably to the detriment of the workers involved. While I do not attribute this attitude to any member of this panel (on the contrary, I hold them to be of the highest integrity and fairness) I cannot help but believe that there may be a subconscious supposition that because they are still alive and at work after all this time, the workers will get along without the money they never received anyway. It is surely difficult to remember now that the money does not represent an unrealized increase that had been hoped for, but a rate of pay which had been awarded and intended to take effect well before the contract year now under consideration. It was not "hoped for" money, but reasonably anticipated money. I fear that the real impact of its loss is lost on the panel, not out of hardness of heart but by reason of its burial in the "ancient past".

Finally, I object to the 1982/1983 roll-back on the ground that there is no evidence of any community (comparable or otherwise) in any other Act 312 proceeding which has been "awarded" a wage roll-back either retroactively or prospectively. This action is, so far as I am aware, unprecedented.

These matters must ultimately be concluded and cannot be held up forever by insistence on victory in the matter of every issue. The Award addresses multiple issues, not just one. My objection to the outcome on the issue of wages for 1982/1983 should in no way be construed as a failure to concur in this Award, albeit in some measure for reasons not wholly in agreement with those of the panel Chairman.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "F. Daniel Bohn", written over a horizontal line.

F. Daniel Bohn, Panel delegate for
Hamtramck Firefighters Association,
Local 750, I.A.F.F.

September 10, 1986