

9/21/73 ARB

Bay City, City of

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF BAY CITY, MICHIGAN

-and-

BAY CITY FIRE FIGHTERS UNION

Affiliated with

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Local No. 1435

FINDINGS OF FACT, OPINION AND AWARD
Pursuant to Act 312, Public Acts of 1969 as amended

ARBITRATION PANEL

Leon J. Herman, Impartial Chairman
Ward O. Morgan, City Designee
Earl D. DeGuise, Union Designee

Issued September 21, 1973

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This is a proceeding in arbitration pursuant to Act 312 of Public Acts of 1969. Ward O. Morgan was named by the City as designee to the panel. Earl D. DeGuise was appointed by the Union as its designee. On April 19, 1973, the undersigned Leon J. Herman was appointed by mutual consent as Impartial Chairman of the Arbitration Panel.

A prehearing conference was held on July 10, 1973 and a formal hearing held and testimony taken on July 11th at Holiday Inn in the City of Bay City. Thereafter a conference between the members of the Panel of Arbitrators was held on September 21, 1973. A verbatim record of the proceedings was made and a transcript delivered to the panel.

Peter G. Seward of the firm of Seward, Tally & Newcombe and Joseph Favazza, City Attorney, represented the City of Bay City. Ronald R. Helveston of the firm of Marston, Sachs, O'Connell, Nunn & Freid appeared on behalf of Local 1435 of the Bay City Fire Fighters Union.

Testimony on behalf of the Union was presented by Joseph Malenfant, a Fire Fighter employed by the Bay City Fire Department and a Trustee of the Local. Charles E. Crampton, Chief of the City Fire Department and Edward J. Redmond, City Manager, testified on behalf of the City. Full opportunity for examination, cross examination and redirect examination was offered to both parties. A full day was spent in the

course of the hearing with 28 exhibits submitted. The transcript consisted of 215 pages.

Both parties entered in good faith into the proceeding. No issue of arbitrability was raised. No question was raised as to the legality or authority of the arbitration panel to determine the issue presented. Time limits were extended as required to meet the restrictions of the statute.

Local 1435 of the Bay City Fire Fighters Union has been the bargaining agent for the City Fire Fighters for a substantial number of years. It claims the right of representation for 111 members of the Department. For 1971-74 the parties have agreed upon all issues with respect to wages, hours and other terms and conditions of employment with the exception of the one issue presented by stipulation to this panel for determination. The one issue involved is out-city residency.

The statute pursuant to which this proceeding came into being and under which this panel functions poses certain specific criteria which the panel must consider in arriving at a conclusion. Insofar as economic factors are concerned, agreement has already been reached between the parties. Only the one issue of residency has been left for panel determination.

The City agrees that it has the lawful authority and obligation to negotiate and conclude an agreement in consonance with the award of this panel. The parties have stipulated that the panel may consider the issue presented and render an award

thereon which both will accept; that all proceedings of this Panel of Arbitrators have been properly taken in compliance with the governing statute and that this award is duly processed and is binding upon the parties. At the close of the hearing the City agreed that it would take no affirmative action with reference to the issue involved pending the determination of the panel.

It should be emphasized at this point that all comments, opinions and interpretations of factual evidence stated herein are solely and exclusively the responsibility of the Impartial Arbitrator unless specifically attributed to another member of the panel.

On February 26, 1973, the parties concluded a collective bargaining agreement effective July 1, 1971 which will remain in full force and effect to and including June 30, 1974. Section 1:9 of Article 1 and Article 18 are of particular relevance to this proceeding:

Sec. 1:9--Changes in Wages, Hours or Terms and
Conditions of Employment

The City and the Union mutually agree to make no unilateral changes in wages, hours or terms and condition of employment either contrary to this Agreement or otherwise.

ARTICLE 18
Out-City Residence

The City of Bay City, Michigan and Local 1435 IAFF, AFL-CIO, mutually agree to submit Article 18, Out-City Residence, of the written agreement between the City of Bay City and Local 1435, IAFF, AFL-CIO, dated February 22, 1973, to Compulsory and Binding Arbitration, as provided by Act 312 of Public Acts of 1969.

The historical background of this matter is of especial significance. At its regular meeting on October 13, 1969, the City Commission adopted a resolution:

Resolved: That Section 2-3.1 of the Code of Ordinances of the City of Bay City be amended, pursuant to Article IV, Section 12 of the Charter of said City, to read as follows:

Section 2-3.1 City employees: domicile in city required: forfeiture of employment for noncompliance.

Hereafter all new employees of the City of Bay City shall be domiciled in said city, and failing to comply with the provisions of this ordinance (section), such employee shall forfeit his employment thirty days after written notice shall be given such employee by city clerk, which notice shall require said employee to establish a domicile in the City of Bay City within said period of time. Said forfeiture of employment shall not be considered involuntary separation from service as an employee, and when any employee ceases to be domiciled in said city, that such act shall constitute a resignation.

Provided, however, that anything contained in this ordinance to the contrary notwithstanding, any person who has been an employee of the City of Bay City for a period of twelve (12) or more calendar months, may after said period, reside or be domiciled outside the corporate limits of the City of Bay City but within the limits or confines of the County of Bay.

The City and the Union negotiated in 1971 and 1972 for a collective bargaining agreement covering the fiscal year 1971-72 ending on June 30, 1972. The negotiations continued for so long a

time that when completed the parties were ready to proceed with negotiations for 1972-73. Both City and Union felt that it would be a waste of money to print a contract which was already in process of expiration. An understanding had been reached and an "Agreement to Recommend for Ratification" typed up for submission to both principals. One of the items upon which agreement had been reached was the residency issue. It was incorporated in the Agreement to Recommend:

The residence requirement negotiated between the City and Union and approved by both groups (CP Oct. 13, 1969) shall be reduced to writing and included in the written agreement between the City and Union.

The agreement to recommend was signed on behalf of the City by Horace D. Hodge, City Manager, and Edward J. Redmond, City Controller.

The parties promptly went into negotiation for the fiscal year beginning July 1, 1972. The final agreement was consummated on February 26, 1973. Because no 1971-72 agreement had ever been executed in final form the current contract was made retroactive to July 1, 1971. The City refused to sign the agreement with a residency restriction included. It was therefore agreed that Article 18 be adopted, referring the issue to "Compulsory and Binding Arbitration, as provided by Act 312 of Public Acts of 1969."

On June 13, 1972, City Manager Hodge sent a memorandum with reference to residency to all department heads, including the Fire Chief:

The City Commission last night discussed the matter of people violating the rules by living outside the County of Bay.

Effective this date all persons living outside the County will be required to live in the limits of Bay County within the next thirty days. If not we will terminate their employment and consider their refusal to move in as official resignation.

The memorandum did not disturb the Fire Fighters in any way, since they asked only that Fire Fighters be permitted to reside within Bay County and the memorandum confirmed that understanding.

Discussion continued between the parties with respect to out-city residency. Mediation was initiated on May 24, 1972.

A request for compulsory arbitration was made on June 29, 1972.

On July 5, 1972 the Bay City City Commission adopted Ordinance No. 1972-14:

An Ordinance of the City of Bay City providing that the Code of Ordinances, City of Bay City be amended by revising Section 2-2 of said code; providing that city employees reside in the City of Bay City.

Be It Ordained by the City Commission of the City of Bay City:

That Chapter 2 entitled "Administration" Section 2-2 of the Code of Ordinances of the City of Bay City be amended so that such section shall read as follows:

"Sec. 2-2. Domicile of city employees.

(a) All employees of the City of Bay City shall be domiciled in said city, and failing to comply with the provisions of this section, such employee shall forfeit his employment thirty (30) days after written notice shall be given such employee by the city manager,

which notice shall require said employee to establish a domicile in the City of Bay City within said period of time. Said forfeiture of employment shall not be considered involuntary separation from service as an employee, and when any employee ceases to be domiciled in said city such act shall constitute a resignation.

(b) Provided, however, that the provisions of of paragraph (a) above shall not apply to any person or persons currently employed by the city and who have established and maintained good faith residence and domicile within the territorial limits or confines of the County of Bay, Michigan, or to any employee who has begun construction of a new home in Bay County before the date this ordinance takes effect.

(c) Provided, further, that if any current city employee now residing outside the city limits changes domicile, he shall establish residence in the City of Bay City and failing to comply with the provisions of this section such employee shall forfeit his employment thirty (30) days after written notice shall be given such employee by the city manager, which notice shall require said employee to establish a domicile in the City of Bay City within said period of time. Said forfeiture of employment shall not be considered involuntary separation from service as an employee and such act shall constitute a resignation."

The resolution was adopted in spite of an opinion dated June 27th on the enforceability of the proposed amended residency ordinance as against Fire Fighters, submitted to the Commission by Joseph J. Favazza, the City Attorney. He concluded that:

From an examination of the Collective Bargaining Agreement and the present ordinance adopted in 1969, it is my opinion that the proposed amended ordinance, if adopted, is unenforceable against the Firefighters at least until a new contract is negotiated. (under-scoring in original)

The Union promptly filed a grievance protesting the ordinance, to which the Fire Chief replied:

Regarding changes in wages, hours or terms and conditions of employment; re; out-city residency particularly.

It is my opinion that before any change is made this matter will have to be negotiated. It is also my opinion that the ordinance of the City of Bay City, which was adopted July 5, 1972 regarding out-city residency is unenforceable as far as FIRE DEPARTMENT EMPLOYEES ARE CONCERNED. (underscoring in original)

It therefore, is my opinion you do not have a grievance.

The grievance was carried to the City Manager, who denied it.

Mr. Malenfant testified that prior to 1969 Fire Fighters were subject to a City ordinance which required that they reside within the City limits. An agreement made during contract negotiations in 1969 led to the adoption of the 1969 ordinance, which permitted residence outside the City after the employee had been in the service of the City for 12 months. The 1971 agreement was tentative in that it had never been reduced to a formal written document. The negotiations leading to the present agreement resulted in an understanding between the negotiators that the firemen would be permitted to reside anywhere in Bay County. The City refused to agree to this residency clause and as a result Article 18 was incorporated into the agreement. As will be noted, the ordinance contains a grandfather clause, although any employee living outside the City must move back into the city if he changes his current residence. The ordinance has never been enforced.

This proceeding was instituted because the Fire Fighters are greatly concerned about their right to live anywhere within the

County rather than within City limits. Some Fire Fighters living within the City have invested in property elsewhere in the County. Since the July 5 ordinance was adopted two firemen, James Torka and James Cramer, have moved their out-city residences from Portsmouth Township to Bangor Township and Franklin Township, respectively. There has been no disciplinary action taken against either man. Three Fire Fighters have written to the Chief of their intent to move outside the City. Two have done so since, without penalty.

It is pointed out that the City occupies an area of 10.5 square miles. No place in Bay County is more than 35 miles from the City and the roads leading into the City from throughout the County are excellent. Moreover, no fireman has ever been recalled to duty for an emergency such as conflagration, pestilence, disease or the like, as recited in Section 123.841 of Michigan Compiled Laws. There have been a substantial number of call backs, but only to fill out the required complement of 28 men per shift when illness or some such excuse kept a fireman from reporting to duty.

It is pointed out that the City is bisected by a river. There are three bridges which, when opened for shipping, may cause delay in traveling from one side of the City to the other. It is just as easy and convenient to travel from anywhere else in Bay County.

It is pointed out that the City by contract services a number of plants and installations outside City limits. The City is also party to mutual aid pacts with other communities in the area. Thus a fireman may well be called to work out-county on occasion

rather than in the City.

It is pointed out that the City has a population of 49,500 people. The housing situation is very tight. The Bay City Housing Commission has reported that 138 low income houses have been built in the past three years, which occupy 138 building lots. The builder has received approval from the Housing and Urban Development Administration to build an additional 89 homes for low income families. He has had difficulty to find enough building plots to meet HUD requirements. Other property available for development is either undeveloped or too expensive.

Two subdivisions in the planning: Town and County with 30 lots and Gregory-Pressler with 150 lots have just been annexed to the City. The Belinda Street Bridge is in process of demolition and reconstruction. The work will require the razing of 250 homes and thus displace 250 low income families.

Mr. Malenfant further insists that the July 5 ordinance is discriminatory against the Fire Department. It points out that 24 general City employees and 12 police officers live outside the City. Only 18 Fire Fighters out of 111 men in the Department reside out-County. The effect of the ordinance is particularly harassing because there is no housing available within the City except for the low income properties, for which the Fire Fighters do not qualify.

It is insisted that the Fire Fighters request permission to reside outside the City in Bay County as an expression

of personal liberty. They want the right to raise their children where they please and give them whatever advantages a less urbanized area would offer. It is emphasized that no racial antagonism is here involved. The City and the County are 99% white.

It is pointed out that of 11 Area 2 cities with population of 25,000 or more, only Saginaw denies its fire fighters permission to reside outside of the City.

Charles E. Crampton has been with the Bay City Fire Department over 33 years. He has been Chief for the past eight years. He testified that up to 1969 the City had required that all its Fire Fighters reside within the City. Even when off duty, only ten Fire Fighters at a time were permitted to travel outside Bay City.

In all the time the Chief has been head of the Department he has never had to recall off duty Fire Fighters because of great conflagration, pestilence, disease or the like. He has made numerous call backs in order to fill in for absentees so that the full complement of 28 men per shift would be on duty at all times. The most serious fires the Department has had to contend with were a radio cabinet plant in 1941-42 which spread to about 10 roofs and the Golden Key Bar Fire on January 1, 1968 when more help was needed because the temperature was 15 degrees below zero and the firemen on duty needed some relief. In another fire in 1942 or 1943 a wall blew out which covered two or three fire fighters. On January 27, 1967 he recalled a number of men, not because of a fire but because such

heavy snowdrifts had piled up in the City that he feared he would need all the help he could muster in case of a fire. In the past year he has authorized \$12,000 in overtime pay for Fire Fighters, but only to fill in for absenteeism. There was no special occurrence which required extra help. He conceded that the men when called need not comply unless an emergency as set forth by statute should occur. In the past eight years in which he has been Chief there has been no emergency except for the 1967 snow storm, if it could be called that. He has had no difficulty getting the men he needed for fill ins on call back since 1967.

All Fire Fighters lived within the City until 1969, when the men started to negotiate collective bargaining agreements. With the advent of the 1969 ordinance a number of men moved out. This could create a problem if men were needed in a hurry. For example, one Fire Fighter lives in such a remote area in the County that the cost of installing a telephone would be prohibitive. There is no way in which he can be reached if necessary. On the other hand, he also agreed that when he needed men he got them.

In its brief the City argues that "The only issue to be decided by this Arbitration Panel is how can the best interests of the City of Bay City and the Fire Fighters be served with respect to the place of residency of the Fire Fighters." It is argued that the agreement in 1969 and the 1969 ordinance are no longer relevant to this situation. When the City barred out-city residence prior to

the latest contract it in effect revoked its previous agreement and said in effect "With respect to out-city residency we will start from scratch. All our prior discussions and agreements are not material; the arbitrators must decide." Thus Article 18 sealed in the issue of what is best for the people and property of Bay City.

It is pointed out that in case of a major fire or other emergency, in order to provide adequate protection for the people and property of Bay City, the Fire Fighters employed by the City should be required to live within the corporate limits of the City. This is not a deprivation of personal liberty. It is public policy in this State that police and fire department employees may not strike. An individual on becoming a member of either department knowingly and voluntarily surrenders the right to strike. Some of his other interests must also be subordinated to the rights of the people and the property of the City to be protected. The wishes, desires and aspirations of the individual firemen are subordinate to the protection of the City, except where they can be served without serious conflict. It is conceded that the probability of a major fire or disaster in a city the size of Bay City is not great. However, should such catastrophe strike, the City must be prepared. Requiring the firemen to live in the City is a small price to pay for adequate protection. As testified by Chief Crampton, the sooner a full complement of men and equipment arrives at the scene of a fire the better are the chances of controlling it. It is thus of serious importance that the Fire Fighters reside close to their place of work. The farthest point from the southwest to the northwest corner of the City limits is some seven miles. No fire station is more

than three miles from another. The distance from Bay City to the northern corner of Bay County is 35 miles. The obvious conclusion is that an off duty fireman living in the City would be able to report to his duty station far sooner than one who lives outside in the County.

The City feels that by ending the Fire Fighters' movement out of the City it will strengthen its ability to provide the necessary protection demanded by its taxpayers. It grandfathered the rights of out city residents in order to protect their property rights. They are entitled to no more. As it is the Department must constantly activate its call back list merely to maintain normal departmental strength. To allow men to live up to 35 miles away from the City would place the Department in a difficult situation in case of emergency. The reimposition of the out-city residency ban would remedy the situation.

The Union replied that the collective bargaining history between the Union and the City establishes a continuing past practice of county-wide residency. It began in 1969, when the residency ordinance was passed as a result of an agreement between the City and its Fire Fighters. The City wrongfully withdrew the Fire Fighters' out-city residency rights on July 5, 1972 in direct violation of Act 312, although both Chief Crampton and City Attorney Favazza concurred that the later ordinance was unenforceable. The City has shown nothing which would warrant a change in the past practice. There have been no emergencies for years. There has been no increase in the number of alarms since 1967. The City itself recognizes that the ordinance is unenforceable, since it has made no

attempt to enforce it.

The Union declares that residency is a basic liberty which should not suffer by arbitrary or official action. These employees have a right to privacy and personal freedom. They should be able to live where they wish, raise their families as they please and send their children to school where it best suits them. There is no compelling reason why the ordinance should be enforced.

What is more, there is a scarcity of available housing and property in Bay City. The Fire Fighters are unable to qualify for Federal Housing Units and the City does not afford enough moderately priced housing to accord the Fire Fighters a fair choice in the selection of accommodations at their income levels. The only new housing presently under construction is on land which the City had to annex.

Surveys of surrounding cities indicate that 11 of 12 cities polled do not require their fire fighters to live within corporate city limits. Within the State of Michigan, 43 cities with unionized fire fighters allow out of city residency. There is no more compelling reason in Bay City than there is in other cities to abridge the freedom of a fire fighter to choose where he and his family may live. As to the rapidity of response to a call back, it is pointed out that these come about only to fill in for absenteeism. The Fire Fighters living out-county could respond more quickly to their fire stations than if they lived within the City limits. The City is divided in half by a bridge which is occasionally open for 12 or 15 minutes to permit passage of shipping.

The distance from the farthest point in the County to the City is only 35 miles, with a good highway system available. In the event of a heavy snow storm a fire fighter would be delayed regardless of his place of residence.

The fear of a holocaust is inflated, since there has not been one such incident for years. In the past five years not one fire fighter has been called back for an emergency situation. The most recent call back in that period was in 1968, when a fire on New Years Day in extremely cold weather necessitated calling the day crew two hours earlier to replace the night shift. It is therefore submitted that the City should be compelled to permit out-city residence within Bay County for its Fire Fighters.

Perhaps the first order of business in determining this matter is to consider the validity of the July 5, 1972 ordinance. The antecedent dates are particularly relevant.

Early in February 1972, the City representatives negotiated an agreement covering fringe benefits which they agreed to recommend to their respective principals for ratification. On February 14, 1972 the proposed fringe benefit agreement was submitted to the City Commission. Included was Item 14:

The residence requirement negotiated between the City and Union and approved by both groups (CP October 13, 1969) shall be reduced to writing and included in the written agreement.

The minutes of the City Commission meeting on that date show that the proposal for fringe benefits including Item 14 was adopted unanimously.

On May 24, 1972, the Union forwarded a request for mediation to Michigan Employment Relations Commission. A copy was sent to Horace Hodge, City Manager.

On June 29, 1972, the Union sent a request for arbitration pursuant to Act 312 Public Acts of 1969 to the City of Bay City, Attention of Mr. Hodge. A copy was sent to the Michigan Employment Relations Commission.

On June 27, 1972, Joseph J. Favazza, City Attorney, sent the memorandum to the City Commission concerning a proposed amended residency ordinance as it affected Fire Fighters. He reminded the City that on February 14th it had formally adopted the agreement entered into February 2, 1972 with reference to certain fringe benefits negotiated with the Fire Fighters. He quoted Item 14 of the fringe benefit agreement and Section 2-2 of the October 13, 1969 ordinance. In the memorandum he pointed out that the proposed amended residency ordinance "imposes additional limitations and restrictions upon the domicile of City employees." His conclusion was that the proposed amended ordinance would be "unenforceable against the Fire Fighters at least until a new contract is negotiated." (underscoring in original)

On July 5, 1972, the City Commission adopted Ordinance No. 1972-14.

On February 26, 1973, the City and Local 1435 entered into a collective bargaining agreement effective July 1, 1971 and terminating June 30, 1974. The agreement contains the following provisions:

Section 1:8--Continuation of Working Conditions

The City agrees to maintain all present conditions of employment that are specifically accorded the employee, or are awarded to them by practice and custom, where said conditions relating to the vacations, wages, hours and conditions of employment are now in effect by rule or custom or practice, except where said conditions as referred to are improved by this Contract and, in such event, this Contract shall control.

This section is not intended to include any practices or customs or rules arising after the date of this Contract but is merely intended to insure a continuation of practices, rules and/or customs in use prior to this Agreement.

Section 1:9--Changes in Wages, Hours or Terms and Conditions of Employment

The City and the Union mutually agree to make no unilateral changes in wages, hours or terms and condition of employment either contrary to this Agreement or otherwise.

ARTICLE 18
Out-City Residence

The City of Bay City, Michigan and Local 1435, IAFF, AFL-CIO mutually agree to submit Article 18, Out-City Residence, of the written agreement, between the City of Bay City and Local 1435, IAFF, AFL-CIO, dated February 22, 1973, to Compulsory and Binding Arbitration, as provided by Act 312 of Public Acts of 1969.

I find the ordinance to be a nullity under Sections 1:8 and 1:9 of the collective bargaining agreement of February 26, 1973. That agreement by its terms was made effective as of July 1, 1971. Those contractual sections must also be deemed to be effective as of July 1, 1971. In Section 1:8 "The City agrees to maintain all present conditions of employment that are specifically accorded the employee or are awarded to them by practice and custom." The section " is merely intended to ensure a continuation of practices, rules and/or customs in use prior to this Agreement."

By Section 1:9 "The City and the Union mutually agree to make no unilateral changes in terms and condition of employment either contrary to this Agreement or otherwise." Certainly the 1972 ordinance was a change in conditions of employment, unilaterally made by the City. Even were the ordinance to be deemed proper under Section 13 of Act 312, which bans unilateral changes in working conditions during the pendency of arbitration, it was clearly voided by the City's undertaking with the Union to maintain working conditions in effect on the effective date of the collective bargaining agreement.

I therefore conclude that City Ordinance 1972-14 is null and void insofar as the Fire Fighters are concerned.

In a statutory arbitration proceeding between the City of Detroit and the Detroit Fire Fighters Association, I wrote an opinion dated May 19, 1973 which dealt in part with the issue of residency. In that case the city had refused to bargain on the issue of residency, relying upon an opinion of the State Court of Appeals that residency is not a mandatory subject of bargaining. The panel of

arbitrators in that case agreed unanimously that a proceeding under Act 312 is an extension of the bargaining process. The panel could not compel the city to negotiate upon a proposal which was not a mandatory subject of bargaining, in the state of the law as it then and currently exists. The Detroit Fire Fighters Union's demand for the right to reside outside the city in contravention of a city ordinance was rejected, on the ground that the panel had no authority to rule upon the matter.

In this case no such legal impediment exists. While a union demand may not be a mandatory bargaining issue, the parties may agree to bargain with respect to the matter and the agreement reached by them is binding upon both parties. In this proceeding the City has waived any objection to the bargaining status of residency by agreement in Article 18 to submit the matter of out-city residence to compulsory and binding arbitration under Act 312. The City has also agreed in Section 1:8 to maintain conditions of employment, as they existed at the commencement of the contract, throughout its entire term. The City further agreed in Section 1:9 that no unilateral change in terms and conditions of employment contrary to the agreement would be made.

The contract between the City and the Union was made effective as of July 1, 1971. The 1969 ordinance permitted out-city residence after 12 months of employment. The 1969 ordinance was again approved and adopted at the meeting of the City Commission on February 14, 1972.

I am of the opinion that these acts on the part of the City affirmatively confirmed its approval of out-city residence for Fire

Fighters. Article 18 did no more than refer to this panel the question of whether the 1969 ordinance is binding upon the City. It is my conclusion that the acceptance of Section 1:8 and Section 1:9 bars the City from denying out-city residence to Fire Fighters for the duration of the contractual term.

As to the catastrophic damage which might result were Fire Fighters permitted to live outside the City limits, I deduce from the testimony of Chief Crampton and from the brief submitted by the City following the hearing, that the potential damages are more hypothetical than real. There have been no more than three or four major fires in the City's history since the early 1940s. In the past five years the only occasion to call back Fire Fighters, except to fill in for absentees, was a heavy snow storm which would have required more men if a fire occurred. None did. The Chief pointed to no instance where it was necessary to call Fire Fighters back to attend a fire. The Golden Key fire on January 1, 1968 required extra men only because the cold was so intense that the men working the fire needed relief. Even then men were called in only two hours before the start of their shift. The only support for the City's present position on residency is the supposition that the men might be needed and could not arrive on time. Nothing in the history of the Department in the past 20 years supports that fear. Nothing in the conduct of the City Commission since passage of the 1972 ordinance indicates that the City seriously views out-county residency as deleterious to City welfare. Were it otherwise, action would have been taken against fire fighters who changed residence or left the City confines since

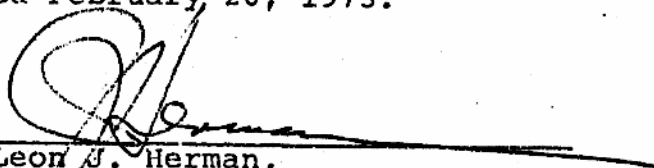
July, 1972. The inaction of the City lends color to the inference that the ordinance was no more than a negotiating ploy.

As between the City's need to protect life and property and the Fire Fighters' right to live as and where they please, the City's needs must be given priority. Fire fighters are employed to protect life and property. They must subordinate their own right to privacy and liberty to the essentials of their occupation. I agree wholeheartedly with the City in that respect. It has not been shown, however, that the City's needs are such that the men should be deprived of their right to live outside the City. The evidence instead establishes affirmatively that they are rarely needed for recall when off duty.

On the other side of the coin, the housing situation in Bay City is extremely tight. The only construction within the City has been rebuilding of slum areas under HUD sponsorship. Homes must be found for 250 families who will be evacuated because of the Belinda Street Bridge construction. None of the HUD homes are available to firemen because of income restrictions. What moderate income homes are now under construction are in an area annexed to the City, because there is no property within the City upon which to build. In the circumstances it seems unfair to require Fire Fighters to seek homes in a city in which very few are available, where the necessity does not appear to be momentous.

In light of the statutory and contractual provisions, and of the City's inability to demonstrate a need for the domiciliary restrictions of Ordinance No. 1972-14, I direct that the October 13, 1969 ordinance as to residency, specifically Section 2-3.1 of the Code of Ordinances of the City of Bay City, be reinstated,

and that a provision to that effect be incorporated into the
collective bargaining agreement dated February 26, 1973.



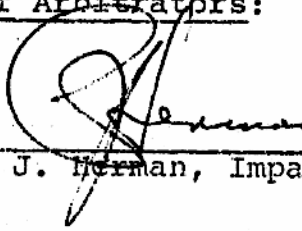
Leon J. Herman,
Impartial Arbitrator

Southfield, Michigan
September 21, 1973

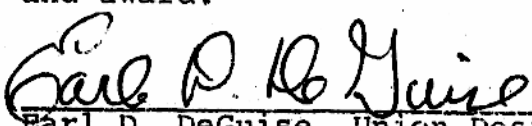
A W A R D

The City of Bay City, Michigan is directed to revoke Ordinance No. 1972-14 adopted July 5, 1972 and to reinstate Section 2-3.1 of the Code of Ordinances as amended and adopted October 13, 1969. A provision incorporating the ordinance dated October 13, 1969 shall be included in the collective bargaining agreement dated February 26, 1973 between City of Bay City and Bay City Fire Fighters' Union, Local 1435 of International Association of Fire Fighters.

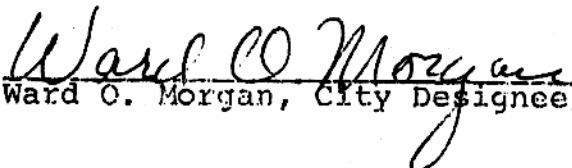
By Order of the Panel of Arbitrators:


Leon J. Herman, Impartial Arbitrator

I concur with the foregoing opinion and award.


Earl D. DeGuise, Union Designee

I dissent from the foregoing opinion and award.


Ward O. Morgan, City Designee

September 21, 1973