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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF STATUTORY
ARBITRATION BETWEEN:

CITY OF MADISON HEIGHTS /
and /
MADISON HEIGHTS FIRE FIGHTERS /
ASSOCIATION, LOCAL 1357, IAFF, /
AFL-CIO /

PANEL

CHAIRMAN: William P. Daniel
EMPLOYER: Allen J. Kovinsky, Attorney
UNION: Ronald R. Helveston, Attorney

APPEARANCES

EMPLOYER: John C. Claya, Assistant City Attorney
UNION: George H. Kruszewski, Attorney

This matter having been duly scheduled and
heard in accordance with Act 312, Public Acts of 1969,
as amended, and the Panel having met and deliberated,
the following award and determination is made:

NON-ECONOMIC ISSUES

1. Maintenance of Conditions.

It is considered that the language offered
by the City and that set forth by the union each are
inappropriate either due to vagueness or inclusion of
unnecessary specification. For that reason the follow-

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Madison Heights, City of

ing language is adopted:

"Wages, hours and conditions of employment in effect at the execution of this Agreement shall, except as improved herein, be maintained during the term of this Agreement."

All Panel Members concur.

2. Grievance Procedure.

Between the City's proposal of a seven day time period within which a grievance is to be advanced in Step 4 and the union's proposal that the period be fourteen days, it would appear in consideration of the work scheduling of employees in the unit and the necessary contacts to be made with their representatives in the course of grievance processing that the longer period of time would be justified. For this reason the union's position is adopted in this regard and the fourteen day period shall be included in the contract.

All Panel Members concur.

3. Management Rights.

The thrust of this proposal by the City is to increase its right to utilize fire fighters not engaged in those particular duties for other possible assignments throughout the City. Aside from questions of whether such a proposal falls outside the purview of Act 312 considerations or interference with the jurisdiction of other City bargaining units, there is no basis in comparables or in logic for such a variation. It is the nature of the fire fighters position that lengthy periods of time are spent in apparent inaction, but

that is not a justification or basis for the proposal as made by the employer. For that reason the employer's proposal is rejected and that of the union - to maintain the current language unchanged is adopted.

Employer Panel Member dissents.

4. Rules and Regulations.

The City proposes language which would permit the City during the term of the contract to adopt or change existing work rules. The union maintains the current language should continue. A review of other comparables indicate a majority permit such activity on the part of the employer, provided safeguards are present. It would appear that the language would appropriately be included in the contract with such safeguards and such is hereby adopted:

"Section 4. It is the City's responsibility to adopt, review, and enforce work rules and regulations which shall not be in conflict with the terms of this contract, subject to the rule of reasonableness; provided, however, that application and enforcement of such rules is subject to the grievance procedure."

All Panel Members concur.

ECONOMIC ISSUES

1. Vacations.

The union seeks in the second year of the contract, effective July 1, 1980, to increase the number of vacation days by one for each step in the current schedule. The City proposes that the current vacation provisions be maintained. Considering the fact that a substantial number of vacation days are currently not

used, that the current provisions are consistent with those pertaining to other units in the City and that comparables do not reflect any extreme variation, it is found appropriate to maintain this benefit at the current level. Further note should be made of the potential staffing problem which might arise by use of additional vacation days.

Union Panel Member dissents.

2. Work Week.

Currently there is an average 56 hour work week for fire fighters which the union proposes to reduce to 54 hours. The basis upon which this proposal is appropriately to be reviewed is in comparison with other municipalities. In that regard there is as contended by the union a substantial majority of communities at the 54 hour work schedule or less which tends with other evidence to reflect a trend toward a work week shorter than the traditional 56 hours. Further it would appear that the City is able, with appropriate staffing, to adapt to such work week with little if any increase in cost. For this reason the proposal of the union is hereby adopted for a 54 hour work schedule.

City Panel Member dissents.

3. Holidays.

All other employees represented by unions in the City have 12 holidays annually. The City proposes to increase the current fire fighter holidays to 12,

commencing in the 1980-81 contract year. The union proposes to add an additional holiday in both the first and second year of the contract. It is inappropriate to consider other comparable cities in this regard because the systems employed as to holiday benefits vary widely and are substantially different. Of primary consideration is the internal system of consistent benefits which is important to be maintained where such is reasonable and a comparison of the fire fighter and other employees is justified. In this case it is found that there is a firm basis for the City's proposal in the consistency of the benefit throughout the City system and for that reason the City's proposal and last offer is hereby accepted. There shall be one additional holiday as proposed by the City commencing in the year of the contract 1980-81.

Union Panel Member dissents.

4. Sick Leave Payout.

The union proposes to increase the current payout upon retirement from 50% to 65%. Basically the City proposes to keep the percentile the same as current, though in a separate issue noted below, expands upon this subject matter. There is no discernable certain pattern to be found among comparables and a wide variation of systems is noted. Within the City, other represented employee units with one exception follow the 50% system. On this basis the proposal by the union is appropriately to be rejected and the status quo in this respect is to be maintained.

Union Panel Member dissents.

5. Sick Leave - Buy Back System
and Insurance.

The City proposes in addition to maintaining the 50% buy back rate as noted above to reduce the current accumulation cap, establish a reserve sick bank for current employees and place limitations upon future pay out. In conjunction with this, the City proposes also to provide certain short term and long term health and accident insurance coverage. Basically the union contends that such a program unfairly reduces the benefit and in fact endangers the ability of the employees to maintain themselves in periods of extreme catastrophe. It further raises questions of actual benefit to the City attainable under such a plan. The City points to the comparables within its own system and contends that continuity would be an important goal.

An essential item of consideration in this matter is the internal systems by which a great majority of the employees in the City are protected by means of short and long term insurance against disabling injuries or accidents. From that standpoint a consistence approach strongly supports the City's position. Clearly under such a system the former method of payoff has to be modified and it would appear that the City proposal appropriately accomplishes that. The City believes that it can attain real financial benefit from such a proposal without any lessening of the benefit to employees and on its face such would appear to be so.

The Panel is informed that the proposal of the City relates only to the subject of wage protection and that the change proposed by the City has no intended impact whatever on fringe benefit entitlements, such as hospitalization insurance, life insurance, etc.

For the above reasons it is found that the City's proposal should be adopted.

Union Panel Member dissents.

6. Call-in, Stand-by Time, Overtime.

A. Call-in. The union seeks to increase the current three hour minimum to four hours based largely upon the disruption and inconvenience to personal living schedule. The City proposes to maintain the current contractual provision. A review of comparable communities shows little support for the proposal of the union and for this reason it is rejected and the City's proposal accepted.

Union Panel Member dissents.

B. Stand-by. This matter concerns compensatory time which currently must be paid in cash if the employee cannot be released within 60 days after the incident. The City proposes to increase this period to six month; the union proposes that no change at all be made. There is no justification for such change in any comparable communities and such a change would appear to be an undue burden to be imposed upon the employee. It is therefore determined that the current 60 day provision shall continue in effect and that the City's

proposal be rejected.

All Panel Members concur.

C. Overtime. Currently employees called on to work on an emergency basis are paid time and one-half for all hours worked at a rate determined by dividing annual salary by 2080 hours. The City proposes that the hourly rate be determined by division of the actual annual work hours. The union contends that the current system should be retained. A review of the comparable communities strongly supports the City's position in this matter. It is noted here and to be appropriately noted throughout the contract that the change in the work week to 54 hours results in a necessary modification from the current figure of 2912 hours used to 2808 hours. The proposal of the City in this respect is hereby adopted.

Union Panel Member dissents.

D. Article XIII - Section 4.

The City proposes to delete the entire section as part of its above proposals and in light of the determinations made above, such deletion appears to be appropriate. It is therefore adopted.

All Panel Members concur.

7. Food Allowance.

The current food allowance is at the level of \$260.00 and the union proposes to increase this to \$360.00 in the first year and \$400.00 in the second year. The City proposes to increase it to \$310.00 in the first

year and \$360.00 in the second year. The amounts proposed by the City would constitute approximately 19% increase in the first year and 16% in the second. It is considered this is a very substantial increase not inconsistent with the cost of living index for food in the Detroit area. Considering comparables the City's relative position in the middle third of comparable cities will be maintained approximately at the same position. For these reasons it is found that the City's last offer is the better and is to be accepted.

Union Panel Member dissents.

8. Cost of Living Allowance.

The union seeks to have folded into wages \$208.00, which is the maximum capped benefit in this respect and to have this accomplished as of the last day of the contract 1981. The basic result and direction of this proposal is to increase base wages. There is no foundation for this proposal either in outside comparables or internally in the treatment of other units generally. For these reasons the union's proposal must be rejected and the City's proposal accepted.

Union Panel Member dissents.

9. Wages.

The City offers 6% increase the first year and 7% increase the second year and the union seeks 8% for each of the two years of the contract.

It is appropriate to note that this system of arbitration under Act 312 has certain disadvantages and shortcomings, most particularly in the obligation to select one or the other of competing proposals. Frequently neither proposal meets the standard which an arbitrator might find appropriate and some middle ground appears more likely where the parties should have found their agreement. Nevertheless the system must work in accordance with the law and it therefore becomes the obligation of the Panel to select the better of the last two offers with the full realization that such may not be the best possible resolution of the issue.

It is the obligation of the Panel to review such offers from many statutory standpoints and it is essential to keep in mind that the long and protracted delay in proceedings such as this deny to the Panel the opportunity to review the contract prospectively as the parties would have done back in June of 1979. It is also important that one be aware that the passage of time inevitably works to the detriment of the parties; the City must budget without knowing the outcome and the employees must forego for a lengthy period of time the monies which, if agreed to back at the onset of the contract, would have been available to purchase consumer goods and to be committed to other financial plans which now received will buy comparably less in an inflationary economy. Comparing increases within the City to other

units may be useful in some cases but it must be remembered that the work of the various units differs substantially and the burden, risk and skill involved frequently cannot be paralleled. Those employees who have received from the City increases during the last two years equivalent to that offered the fire fighters have enjoyed a considerably increased benefit in the receipt of such monies and use during that period of time.

It is with full realization of the internal pressures between various units and the development of the economy and pressures of an inflationary nature over the last two years, both on employees in the City that this award is made.

Reference has been made to comparable communities and though the award in this case will tend to move the City upward in such competition, it is not clear altogether where all other municipalities will end up for the years involved here. Nevertheless the fact that there are still several or more communities at higher rates tends to demonstrate that the award here is not out of context with the current trend. To the degree that the result of proceedings such as this may from time to time put one side or the other out of what it perceives to be its proper relationship to others, that perceived disparity may be resolved by the parties through succeeding collective bargaining. It is noted also here that there is no claim by the City of actual inability

to pay the level of wages sought by the union but rather an expressed concern that such would result in such belt tightening and cutbacks as to drop community service below levels of expectation and efficiency. The necessary adjusting of priorities and service levels is a decision which must be left to the City management. Though the Panel is certainly concerned with the impact of this award, it can only do what is mandated by the Act - that is, to select the last best offer and thereafter the parties must adjust themselves to such outcome. The point of parity between police and fire fighters is a significant one often recognized in arbitrations of this nature but in this instance that is not such a traditional factor nor so overriding as to justify disregarding the other important factors as noted above. To the extent that the City and other bargaining units or this unit may in the future determine to base such wage standards upon that factor it is their decision. It is not the opinion of the Panel that the factor of parity can govern the statutory decision to be made in this instance.

For the reasons noted and discussed above, it is thereby found that the last offer of the union of 8% each of the two years of the contract is the better and is therefore to be adopted and implemented.

City Panel Member dissents.

SUMMARY

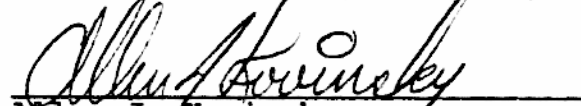
The Panel Members having duly and in accordance

with the statute conducted hearings and considered evidence and documents in this matter, and having arrived at the determination as directed by law, do hereby make this to be their award. The dissent of individual Panel Members is noted at the specific issue and by signing below neither member does intend to alter or modify the position stated therein.

DATED: 7/10/81, 1981


William P. Daniel, Chairman

DATED: 7/23/81, 1981


Allen J. Kovinsky

DATED: 7/21/81, 1981


Ronald R. Helveston

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Statutory Arbitration)
Between:)

CITY OF MADISON HEIGHTS)

-and-)

MADISON HEIGHTS FIRE FIGHTERS)
ASSOCIATION, LOCAL 1357, IAFF,)
AFL-CIO)

PANEL

CHAIRMAN: William P. Daniel

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APPEARANCES

EMPLOYER: John C. Claya, Assistant City Attorney

UNION: George H. Kruszewski, Attorney

EMPLOYER PANEL MEMBER DISSENT

While there are a number of issues upon which I have dissented in the body of the award, there are two issues in particular which I wish to not only dissent upon, but also to record my views.

A majority of the panel has voted to reduce the work week of the firefighters from the traditional 56 hours to a 54 hour week. The rationale for the granting of the Union's proposal is based upon an assumption that the City would be able with appropriate staffing to adopt such a work week with "little if any increase in cost ." It

seems to me that whether or not there is an increase or decrease in cost is immaterial. The real issue is whether or not there is sufficient evidence in the record to allow the adoption of such a proposal based upon the tests set forth under the terms of Section 9 of Act 312. In my view, no such evidence was produced by the Union. In fact, the evidence overwhelmingly contraindicated the reduction of hours of work. The evidence introduced by the City indicated that less than 4% of a fireman's time on the job is spent in duties normally associated with either emergency medical services, responding to fire calls or actually putting out fires. The balance of a firefighters day is spent in totally non-productive activities such as sleeping, eating and watching television. It should be kept in mind that while a fireman has historically "worked" 2912 hours per year, those hours are based upon a twenty-four hour shift and, accordingly, a fireman only works nine or ten days per month. Thus, in reality the balance of some twenty-one or twenty-two days per month can be utilized by a fireman as he sees fit in terms of spending time with his family or obtaining additional employment, which in fact is the case with the overwhelming majority of firemen. The ultimate result of the panel's decision will be to either force upon the City additional staffing by virtue of a decrease of 4% in the hours of work or, in the alternative, added costs in recognition of additional overtime to be worked by the firemen over and above the 54 hour week as opposed to the prior 56 hour week. In my view, it is insufficient to simply state that "we want more time off" without realistically reviewing the amount of work performed by the individuals and the accumulated amount of time off that the individual receives. In the instant case, it is clear that the firemen receive far more time off than they actually require. One need only review the exhibits with respect to accumulated vacation time which amply demonstrate the fact that the firemen historically have had sufficient time off by virtue of their decision to accumulate rather


than utilize vacation leave days. Accordingly, I believe that the majority of the panel have granted a benefit for which there is no basis in fact nor law.

I further wish to have my dissent recorded to a majority of the panel's decision to grant the firemens last best offer on wages. The firemen sought and received 8% per year for two years. The City had offered 6% in the first year and 7% in the second year. Every unit within the City including the police command and police patrol units as well as units represented by the Teamsters and the American Federation of State, County and Municipal Employees had bargained for and received the same percentage increases as were offered by the City to the firemen. In addition, some seventeen comparable cities in the tri-county area with but a handful of exceptions, had negotiated the same or lesser wage increases for the two years in question. In my experience as an attorney for both unions and governmental entities, as well as a panel representative for both employers and unions, the greatest emphasis has always been placed upon comparables within the governmental entity and comparables with similar governmental entities. In my opinion, the panel by a majority vote has totally ignored those factors. The panel decision ignores the so-called concept of "parity" and chooses to place the firemen's salary at a level of approximately \$800.00 higher than that received by the police units. While parity per se may never have formally been negotiated in the City, nevertheless it is obvious that the wages of the policemen and firemen insofar as increases are concerned have always been relatively equal. The only time that one could discern any major difference would be in the past where one unit or the other has chosen to place greater emphasis on some other area. As for example, where the firemen in the past have chosen to take a greater pension benefit than that received by the policemen and accordingly took a pro rata lesser wage increase.

The City has apparently been penalized because of the passing of time, although it is undisputed that the City's offer to the firemen was made contemporaneously with the City's offer to other units. The fact that the firemen chose to engage in exorbitant demands of 12% per year, and did not at any time reduce those demands until the last day of the arbitration proceedings, has been all but ignored by the panel. The passage of time should never be utilized as a factor in the granting or denying of a benefit. In the instant case, the City is no more at fault than are the firemen with respect to the fact that the entire two year period for which the award is being made has already passed. In fact, the greatest delay in terms of the proceedings and award was solely attributable to a wait of eight or nine months for the transcripts. Nevertheless, the City is now being told that the firemen's demands are reasonable in light of the fact that other city employees received the wage increase in 1979 and 1980 while the firemen will receive them on a retroactive basis in 1981. I do not perceive this to be a basis nor a rationale for the granting of exorbitant demands. Reference is made by the panel to the fact that the City did not plead poverty. The City did plead fiscal responsibility and sooner or later the various 312 panels within this state must either bring a degree of sanity to these proceedings and awards or, in the alternative, all of the cities will be brought to their knees much in the same manner as have those cities such as Hamtramck, Highland Park and Detroit, for whom no relief was granted until such time as they were on the verge of bankruptcy. The simple fact of the matter is that any amounts granted to the firemen beyond those offered by the City exceeded the budgetary limitations for the fiscal years in question. There is no proof that there were any contingency funds nor surpluses available for the payment of these moneys. Accordingly, it is my view that the panel, by granting the firemen's requests, has rendered a disservice to both the firemen and the City. If in fact the City is to be saddled with wages and fringe

benefits in excess of its capacity to pay while at the same time having the hours of work reduced which further exacerbates the cost, then the ultimate result in the absence of the receipt of additional funds will be that the City will have to resort to layoffs which in turn will be harmful to the residents of the City since there will be less firemen available in case of emergencies and also will be harmful to the Union in terms of reduced membership as well as the most obvious impact with respect to those firemen who have the least seniority and will have to be laid off. I believe that it is a rather cavalier attitude to indicate within the opinion that the City would have to resort to belt tightening and cutbacks which would reduce the levels of expectation and efficiency and then grant the benefits while stating "the necessary adjusting of priorities and service levels is a decision which must be left to the City management." It is by virtue of the impact of this award that such adjustments have been rendered necessary. If cutbacks and belt-tightening are not factors to be considered by a panel when determining a last best offer in an area of a vital service such as is the case with a firefighting department, then I must have a totally distorted view of the duties and responsibilities of an Act 312 panel.

Accordingly, while I believe that my fellow panel members rendered their decision in good faith, I nevertheless must dissent most specifically with regard to the items hereabove mentioned.


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Dated: July 23, 1981