

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration
between:

CITY OF MADISON HEIGHTS

and

MADISON HEIGHTS FIRE FIGHTERS
ASSOCIATION

MERC Act 312
Case No. D88 D-1276

OPINION AND AWARD
OF ARBITRATION PANEL

Appearances:

For the City:

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For the Union:

George H. Kruszewski, Esq.
Sachs, Nunn, Kates, Kadushin,
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1000 Farmer Street
Detroit, MI 48226

Panel Members:

Raymond A. Shemke, Chairman
Aubrey Greene, City Designee
John Joyce, Union Designee

BACKGROUND

The Petition for Arbitration in this matter was filed on January 10, 1989 by Madison Heights Fire Fighters Association (hereafter referred to as Union) which represents all uniformed employees of the Madison Heights Fire Department, excluding the Chief. At the present time the unit members which provide the fire fighting service hold the rank of Fire Fighter, Sergeant, or Lieutenant. Two other unit members perform fire inspection work.

The issues in this matter deal with wages, continuation of health insurance for the spouse of a retiree following the death of the employee; the right of employees to accumulate vacation days from year to year, or of the City to purchase such vacation time; and the right of employees to accumulate holiday

time, or of the City to purchase such holiday time.

The last best offers of the parties are set forth verbatim as follows:

LAST BEST OFFER OF THE CITY OF MADISON HEIGHTS

UNION ISSUE NO. 1

WAGES

The last best offer of the City of Madison Heights is a wage increase of 4.0 percent commencing July 1, 1988, an additional 4.5 percent commencing on July 1, 1989, and an additional 4.0 percent commencing on July 1, 1990, plus an equity increase for Sergeant and Lieutenant (including Fire Inspector and Fire Marshall) of \$1,409.00 in the first year of the contract after the 4.0 percent increase is added.

EXACT CONTRACT LANGUAGE

ARTICLE XVIII, Section 1, of the contract shall read as follows:

ARTICLE XVIII - WAGES

SECTION 1. THE FOLLOWING WAGE RATES SHALL APPLY DURING THE TERM OF THIS AGREEMENT:

JULY 1, 1988 TO JUNE 30, 1989

EMPLOYEES HIRED AFTER SEPTEMBER 22, 1986

	<u>START</u>	<u>12 MONTHS</u>	<u>24 MONTHS</u>	<u>36 MONTHS</u>
FIREFIGHTER	\$22,632.00	\$25,336.00	\$28,040.00	\$32,640.40

EMPLOYEES HIRED PRIOR TO SEPTEMBER 22, 1986

	<u>START</u>	<u>12 MONTHS</u>	<u>24 MONTHS</u>	<u>36 MONTHS</u>
FIREFIGHTER	\$26,673.92	\$28,664.48	\$30,657.12	\$32,640.40

	<u>START</u>	<u>6 MONTHS</u>
FIRE INSPECTOR	\$36,132.52	\$37,313.96
SERGEANT	\$36,132.52	\$37,313.96
FIRE MARSHALL	\$39,604.04	\$40,904.04
LIEUTENANT	\$39,604.04	\$40,904.04

JULY 1, 1989 TO JUNE 30, 1990

EMPLOYEES HIRED AFTER SEPTEMBER 22, 1986

	<u>START</u>	<u>12 MONTHS</u>	<u>24 MONTHS</u>	<u>36 MONTHS</u>
FIREFIGHTER	\$23,605.44	\$26,476.12	\$29,301.80	\$34,109.22

EMPLOYEES HIRED PRIOR TO SEPTEMBER 22, 1986

	<u>START</u>	<u>12 MONTHS</u>	<u>24 MONTHS</u>	<u>36 MONTHS</u>
FIREFIGHTER	\$27,874.25	\$29,954.38	\$32,036.69	\$34,109.22

	<u>START</u>	<u>6 MONTHS</u>
FIRE INSPECTOR	\$37,758.48	\$38,993.09
SERGEANT	\$37,758.48	\$38,993.09
FIRE MARSHALL	\$41,386.22	\$42,744.72
LIEUTENANT	\$41,386.22	\$42,744.72

JULY 1, 1990 TO JUNE 30, 1991

EMPLOYEES HIRED AFTER SEPTEMBER 22, 1986

	<u>START</u>	<u>12 MONTHS</u>	<u>24 MONTHS</u>	<u>36 MONTHS</u>
FIREFIGHTER	\$24,596.46	\$27,535.16	\$30,473.87	\$35,473.59

EMPLOYEES HIRED PRIOR TO SEPTEMBER 22, 1986

	<u>START</u>	<u>12 MONTHS</u>	<u>24 MONTHS</u>	<u>36 MONTHS</u>
FIREFIGHTER	\$28,989.22	\$31,152.56	\$33,318.16	\$35,473.59

	<u>START</u>	<u>6 MONTHS</u>
FIRE INSPECTOR	\$39,268.82	\$40,552.81
SERGEANT	\$39,268.82	\$40,552.81
FIRE MARSHALL	\$43,041.67	\$44,454.51
LIEUTENANT	\$43,041.67	\$44,454.51

UNION ISSUE NO. 2

HOSPITALIZATION INSURANCE

Whether the City of Madison Heights shall be required to pay for the continuation of hospitalization insurance for the spouse of a retiree after the death of the retiree.

The last best offer of the City of Madison Heights is to maintain the status quo.

EXACT CONTRACT LANGUAGE

Article III, Section 5, subparagraph (A), shall remain unchanged as follows:

"(A) Upon the death of the retiree, the City's obligation to provide hospitalization insurance to the spouse shall cease."

CITY ISSUE NO. 1

VACATIONS

Whether the City of Madison Heights may reduce the maximum number of vacation hours which can be banked and carried forward into succeeding fiscal years in an effort to reduce the City's long-term debt to employees for accrued vacation time which is presently an unfunded liability to the City.

The last best offer of the City of Madison Heights is:

24-Hour Employee - To reduce the current maximum of 216 hours (9 working days at 24 hours per day) vacation bank carryover to 156 hours (6-1/2 working days) of vacation bank carryover by June 30, 1992 (one year beyond the end of the contract term) through the employee's use of the vacation time or, in the alternative, the City's purchase, at the employee's option, of up to ninety (90) hours of vacation in fiscal 1989/1990.

8-Hour Employee - To reduce the current maximum of 280 hours (7 weeks at 40 hours per week) vacation bank carryover to 200 hours (5 weeks at 40 hours per week) of vacation bank carryover by June 30, 1992 (one year beyond the end of the contract term) through the employee's use of the vacation time or, in the alternative, the City's purchase, at the employee's option, of up to one hundred twenty (120) hours of vacation in fiscal 1989/1990.

For 24-Hour and 8-Hour employees, the City may, at the City's option, purchase additional vacation time in excess of that which is specified above during fiscal 1990-1991.

The reduction in accumulated vacation time shall not adversely affect an employee's final average compensation for the reason that an employee may, at the employee's option, after completion of twenty-three (23) years of service, accumulate up to 216 hours for a 24-Hour employee and 280 hours for an 8-Hour employee. This option shall apply only to those employees hired prior to January 1, 1986.

EXACT CONTRACT LANGUAGE

ARTICLE VII, SECTION 6, of the contract shall read as follows:

SECTION 6. Vacations shall be accumulative not to exceed 216 hours for the Firefighter assigned to the 24-hour day schedule and not to exceed 280 hours for the Firefighter assigned to the 8-hour day schedule; provided, however, that on June 30, 1992, the maximum accumulation of vacation time shall be 156 hours for the Firefighter assigned to the 24-hour day schedule and 200 hours for the Firefighter assigned to the 8-hour day schedule.

It shall be the obligation of the employee to reduce his/her accumulated vacation time to the maximums provided herein by June 30, 1992.

To facilitate reduction of accumulated vacation time, the City offers to purchase, at the employee's option, vacation time as provided below:

24-hour Employee. The City offers to purchase up to 90 hours in fiscal year 1989/90.

8-hour Employee. The City offers to purchase up to 120 hours in fiscal year 1989/90.

The City may, at its option, offer to purchase additional vacation time at any time up to June 30, 1991.

In order that the aforesaid reduction in accumulated vacation time shall not adversely affect the employee's final average compensation, those employees whose date of employment is prior to January 1, 1986, may, at their option, accumulate vacation time up to 216 hours for the Firefighter assigned to the 24-hour day schedule and up to 280 hours for the Firefighter assigned to the 8-hour day schedule after having completed twenty three (23) years of service. Members whose date of employment is subsequent to January 1, 1986 shall be excluded from this option.

CITY ISSUE NO. 2

HOLIDAYS

Whether the City of Madison Heights can purchase annually from 24-Hour employees up to eighty (80) hours of holiday time, rather than credit the eighty (80) hours to the employee's vacation bank in an effort to reduce the City's long-term debt to employees for accrued vacation time which is presently an unfunded liability to the City.

The last best offer of the City of Madison Heights is:

Effective July 1, 1989, the City of Madison Heights shall purchase on an annual basis from 24-Hour employees with ten (10) or more years of service all eighty (80) hours of holiday time; a minimum of forty eight (48) hours of holiday time from employees with five (5) or more years but less than ten (10) years of service; and a minimum of forty (40) hours for employees with less than five (5) years of service.

Those employees with less than ten (10) years of service, shall notify the City, in writing, at least thirty (30) days prior to the employee's anniversary date, that the employee desires to have the City purchase any hours in excess of those specified herein.

EXACT CONTRACT LANGUAGE

Add to Article VIII, Section 2, the following paragraphs:

Effective July 1, 1989, the eighty (80) hours of holiday time which prior thereto were partial compensation for holidays shall be purchased by the City on the employee's anniversary date, at the employee's straight time hourly rate, rather than credited to the employee's vacation bank as further set forth herein:

A. EMPLOYEES WITH TEN OR MORE YEARS OF SERVICE.

The City shall purchase all eighty (80) hours annually on the employee's anniversary date.

B. EMPLOYEES WITH FIVE OR MORE YEARS OF SERVICE BUT LESS THAN TEN YEARS.

The City shall purchase a minimum of forty eight (48) hours. At the employee's option, the City will purchase all or any part of the remaining thirty two (32) hours. Each year, at least thirty (30) days prior to the employee's anniversary date, he/she must notify the City in writing if he/she wishes to have the City purchase any hours in excess of the forty eight (48) hours as provided herein.

C. EMPLOYEE WITH LESS THAN FIVE YEARS OF SERVICE.

The City shall purchase a minimum of forty (40) hours. At the employee's option, the City will purchase all or any part of the remaining forty (40) hours. Each year, at least thirty (30) days prior to the employee's anniversary date, he/she must notify the City in writing if he/she wishes to have the City purchase any hours in excess of the forty (40) hours as provided herein.

1988-1991

UNION'S LAST OFFERS OF SETTLEMENT

Section 8 of Act 312, Public Acts of 1969, as amended by Act 127, Public Acts of 1972 (MCLA 423.238; MSA 17.455(30)) provides in pertinent part that:

At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit within such time limit as the panel shall prescribe to the arbitration panel and to each other its last offer of settlement on economic issue . . . 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 factors prescribed in Section 9.

Pursuant to said statutory provision, Madison Heights Fire Fighters Association, hereinafter referred to as the Union, submits to the arbitration panel convened pursuant to Act 312, as amended, its last offers of settlement of the economic issues in dispute between the parties. 1/

1/ The Union's last offers of settlement of the economic issues in dispute provide for certain modifications of the recently expired collective bargaining agreement between the parties (Joint Exhibit 1) and/or seek to preserve without change other portions of the prior collective bargaining agreement. Modifications in and/or additions to the language of said collective bargaining agreement are underscored in the Union's last offer of settlement herein.

I

WAGES

Effective July 1, 1988 to June 30, 1991

Pursuant to Section 8 of Act 312, as amended, the Union hereby submits its last offer of settlement on the economic issue of wages. The Union's last offer of settlement is to modify Article XVIII, "Wages", Section 1, as contained at page 22 of the recently expired collective bargaining agreement to provide an annual salary increase of six percent (6.0%) across the board for all steps and ranks, effective July 1, 1988; an annual salary increase of five percent (5.0%) across the board for all steps and ranks, effective July 1, 1989; and an annual salary increase of five percent (5.0%) across the board for all steps and ranks, effective July 1, 1990.

II

HEALTH INSURANCE CONTINUATION FOR SPOUSE OF RETIREE

Pursuant to Section 8, of Act 312, as amended, the Union hereby submits its last offer of settlement on the economic issue of health insurance continuation for spouse of retiree. The Union's last offer of settlement is to modify Article III, "Health Insurance" Section 5(A), as contained at page 5 of the recently expired collective bargaining agreement to provide as follows:

(A) Upon the death of a retiree, retiring on or prior to December 31, 1989, the City's obligation to provide hospitalization insurance to the spouse shall cease. The City shall continue to provide hospitalization insurance to the spouse, upon the death of a retiree retiring on or after January 1, 1990, unless the spouse shall remarry. If the spouse of a retiree, entitled to continued hospitalization insurance coverage under this subsection upon the retiree's death, obtains employment elsewhere following the retiree's death, said spouse shall have the option of obtaining hospitalization insurance with the subsequent employer or retaining the coverage enumerated above. In no event will the spouse be allowed to retain two or more separate hospitalization insurance plans. In the event the Spouse obtains, at the spouse's option, hospitalization insurance elsewhere, there shall be no liability with the City. Upon termination of subsequent employment the spouse, after giving notice to the City, may resume with the City, retiree hospitalization insurance as was in effect at the time of the retiree's retirement.

III

VACATION ACCUMULATION

Pursuant to Section 8 of Act 312, as amended, the Union hereby submits its last offer of settlement on the economic issue of Vacation Accumulation. The Union's last offer of settlement is to maintain the status quo set forth in Article VII, "Vacations", Section 6, as contained at page 10 of the recently expired agreement.

IV

HOLIDAYS

Pursuant to Section 8 of Act 312, as amended, the Union hereby submits its last offer of settlement on the economic issue of Holidays. The Union's last offer of settlement is to maintain the status quo, set forth in Article VIII, "Holidays", as contained at page 11 of the recently expired collective bargaining agreement.

The pre-hearing conference in this matter was held on March 30, 1989. The hearing dates were August 7, 8, and 9, 1989. The last best offers of the parties were submitted on August 23, and the briefs were submitted on October 31, 1989.

The parties agreed that all the issues were economic issues within the meaning of the Act. The parties also agreed that, for the purposes of this proceeding, the following communities are comparable to the City of Madison Heights within the meaning of Section 9(d) of the Act: Allen Park, Birmingham, East Detroit, Ferndale, Garden City, Hazel Park, Lincoln Park, Royal Oak, Sterling Heights, Warren, and Wyandotte; at least as subject to testimony to be presented at the hearing. The Panel concludes that the cities named above are, indeed, comparable communities within the meaning of the Act.

While the City explicitly denies making a claim of inability to pay what the Union demands, it did base much of its position on the cost of the Union's demand and the need for the City to be fiscally responsible with available revenues so as not to end up in financial straits. The Panel concludes that the City is able, at this time, to assent to the demands of the Union; but this is not the only factor to be considered in making a determination with respect to the issues in this matter. Hence, in the discussion of the various issues below, the matter of inability to pay will not be considered as being involved.

FINDINGS OF FACT

Wages

There is no question that the City has the authority to grant the demands of the Union and that it has the ability to meet the costs. There is no showing in the record that the cost of

living for the members of the unit of employees involved herein is substantially different from that of similarly employed employees in the comparable communities. A careful review of the exhibits of both parties received by the Panel establishes that there is no category with respect to wages in which the proposals of the City would place this unit of employees last among comparable communities. As a matter of fact, in almost every comparison made, this unit was either near the middle or in the upper half of the comparables, if the City's proposals were adopted.

While it is true that none of the other City employees have the same conditions of employment or perform similar services for the community, it is of some significance that all other units of employees, including the police have accepted the City's offer with respect to wages which has been offered to the employees herein.

According to the exhibits submitted by the Union, The total cash compensation for a ten-year fire fighter ranges from a high of \$36,954 in Sterling Heights to a low of \$32,341 in East Detroit. The average without including Madison Heights is \$34,833. This was for the 1988-1989 year. The Union's proposal would place the City in 7th place with \$78 or .2% less than the average. City's proposal would put it in 9th place with \$705 or 2% less than the average. With the difference between the City's offer and the average of the comparables being so small, and especially in view of the fact that there were three other comparables below the City's offer, it does not appear to the Panel that the 9th place standing is sufficient to warrant finding for the Union.

According to the transcript of the hearing, Union Exhibit No. 13 is for the same ten-year fire fighter for the 1989-1990 period. According to this exhibit, the average total compensation is \$35,453. The Union's proposal would put the City in 4th place among the comparables with \$1098 more than the average, while the City's proposal would put it in 7th place with \$142 more than the average. Again, the Panel finds that these figures do not warrant a finding for the Union.

Vacation

Unit members have been allowed to accumulate vacation

time rather than use it all as earned. According to Joint Exhibit #1, which is a copy of the Master Agreement between the City and The Madison Heights Fire Fighters Association for the period from July 1, 1986 thru June 30, 1988, the provisions of which are being observed at the present time, a full time fire fighter with 15 years service assigned to a 24-hour day schedule could on leaving the city service have accumulated 216 hours vacation plus the 288 hours which he would have earned during his last year of employment. All of these hours would be paid for by the City "at the authorized regular rate of pay being earned at the time the vacation is taken". In other words, each year that the accumulated vacation time remains unused, if the master agreement calls for a pay increase, the City must increase the amount of money held in reserve to pay for the outstanding vacation. The City wishes to reduce this outstanding liability by reducing the amount of allowable accumulation to 156 hours by June 30, 1992. To assist in this reduction, the City offers to buy back up to 90 hours in fiscal year 1989-1990.

While the figures are different, the City offers a similar plan for the reduction of accumulated vacation for unit members assigned to an 8-hour day schedule.

In the case of employees who were hired before January 1, 1986, and who are retiring after completing 23 years of service reaccumulation of the currently allowable hours would be permitted so as not to affect the retiree's final average compensation.

City's Exhibit #C1 shows City to be 9th among comparables in maximum vacation accumulation; and 5th or 6th in the amount of vacation paid off at retirement. Adoption of the City's proposal would put the City in 10th place in maximum vacation accumulation. For employees hired before January 1, 1986 there would be no change in the City's position on vacation payable on retirement. For those employees hired after January 1, 1986, the City's position among comparables would drop to 10th.

Holidays

Among the comparables, only Madison Heights and Royal Oak give compensatory time for holidays worked. If the compensatory time is not used it is added to the employee's vacation

bank, and, therefore, the holiday time becomes subject to the same use restrictions as other vacation time. However, since the other comparables do not grant compensatory time for holidays worked, only Madison Heights and Royal Oak face the problem of paying for such accumulated holiday time.

Hospitalization Insurance

Currently the City provides no health insurance for survivors of retirees from any unit of its employees. On the other hand, all the comparable communities provide such coverage to their retirees' surviving spouses except for Madison Heights and Garden City. Those which do, except for Allen Park and Wyandotte, do not require that the retiree must have selected a lesser pension option.

Seven of the comparables require that the employee select a lesser pension option in order for the surviving spouse to receive a pension. Madison Heights, being an Act 345 city, does not require such an option, and the surviving spouse receives a pension equal to 60% of that which the retiree was receiving. The City takes the position that because of this provision for a 60% pension, the surviving spouse should be well able to provide his/her own hospitalization insurance. The City states that providing such insurance for the surviving spouse would be very expensive and would probably become even more so as time goes by because of various factors which keep pushing costs up.

According to the City's witnesses and its exhibits, the cost of providing Blue Cross insurance is currently \$1984.08 per annum. Its cost to give surviving spouses such coverage for 1989-1990 would be \$22,016,67. Its actuaries have assumed that there would be an average increase in premiums of 5.5% per annum. The actuaries further estimated that the total cost for the coverage for the surviving spouses of the current unit employees would be \$347,200. They assumed that (1) all firemen are male, married, and would work 25 years, (2) that the spouse survives the union member by 5 years, and (3) that the cost of insurance increases at the same rate at which the City can invest funds. It appears, and the Panel finds, that no assumption was made as to whether or not spouses would remarry or obtain employment which would make them eligible for other insurance

plans in which they might enroll.

CONCLUSIONS

The Panel concludes that, although the parties have made their proposal on wages in the form of a three-year progression, each of the three years must be treated as separate issue periods.

Wages for July 1, 1988 to June 30, 1989

Applying the applicable factors of Section 9 to the proposals of the parties, the Panel concludes that the proposal of the City more nearly complies with such factors. The additional equity increase for Sergeants, Lieutenants, including Fire Inspector and Fire Marshall, does make the differential between these ranks and the Fire Fighters greater, but the Panel concludes that it is in the interest of the public to provide incentive for rank and file fire fighters to give their very best in loyal service so that they might enjoy the greater benefits of being promoted to higher rank.

Wages for July 1, 1989 to June 30, 1990

The Panel concludes that it is not contrary to the interests and welfare of the public for the City to compensate Police Officers at a higher level than Fire Fighters. While it is true that Fire Fighters and Police both face danger of serious injury and even death in their work, and Fire Fighters put in more hours on the job, it is clear that the situations faced by Police pose a much greater danger because of the criminal element with which they have to deal. While Fire Fighters occasionally have to contend with the crime of arson, they scarcely have the same danger of facing armed criminals who would not be averse to using their firearms against the Police. Accordingly, considering the factors set forth in Section 9, the Panel concludes that they are more nearly complied with by the City's proposal.

Wages for July 1, 1990 to June 30, 1991

For the reasons set forth in the preceding paragraph,

as well as in the section on Wages under Findings of Fact above, the Panel concludes that the proposal of the City on this issue more nearly complies with the applicable factors of Section 9.

Vacation

The City's brief states that at least one of the reasons why it wishes to purchase vacation time from its employees is to help reduce the growing financial burden of funding retirees health insurance. The Panel concludes that this is insufficient reason to disturb the status quo in which the City's Fire Fighters are already near the bottom of the comparables. The City's proposal would drop its Fire Fighters even lower. The Panel concludes that with respect to the proposed buyback of vacation the Union's proposal more nearly complies with the Section 9 factors.

Holidays

With respect to holiday time, there is one significant difference. Only Madison Heights and Royal Oak give employees compensatory time off for holidays worked. Accordingly, it would not be out of line to permit the City to buy back holiday time in its effort to reduce the financial burden of funding retirees health insurance. The Panel concludes that the City's proposal with respect to the issue of the buyback of holiday compensatory time more nearly complies with the Section 9 factors.

Health Insurance for Surviving Spouse

The Panel concludes that the interests and welfare of the public requires that the City abandon its position as the only one of the comparables which provides no health insurance for survivors of its deceased retirees. The City argues that by Act 345 the surviving spouse receives 60% of the retiree's pension, and that this should be enough to enable the spouse to buy her own health insurance. However, it is not clear that the living expenses of the surviving spouse are no more than 60% of those of the couple before the retiree's death. It is common knowledge that health care and health insurance costs continue to increase yearly at a rate faster than most if not all other living expenses. Accordingly, it is the conclusion


of the Panel that with respect to health insurance for the spouses of deceased retirees, the proposal of the Union more nearly complies with the Section 9 factors.


THE AWARD

The Panel adopts the City's proposals with respect to wages for each of the three years of the contract, and with respect to the buyback of holiday accumulation.

The Panel adopts the Union's proposals with respect to the buyback of vacation accumulation; and with respect to continuing health insurance for the spouse of a deceased retiree.

Dated and signed this 21st day of December, 1989.


Raymond A. Shemke, Panel Chairman


Aubrey Greene, City Designee


John Joyce, Union Designee

THE CITY DISSENTS WITH RESPECT
TO THE PANEL RULING ON
HOSPITALIZATION INSURANCE.
A Y