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In the Matter of Statutory Arbitration
(Act 312, Public Acts of 1969, as Amended)
Between:

THE CITY OF MANISTEE, MICHIGAN

and

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 645

OPINION AND FINDINGS
OF THE ARBITRATION PANEL

3-15-80

Samuel S. Shaw, Chairman
Darryl R. Cochrane, For the Union
Thomas L. Drenth, For the City

Hearing Held

City Hall, Manistee, Michigan
July 24, 1979

Appearances

For the City

Thomas L. Drenth, Esq.

For the Union

Darryl R. Cochrane, Esq.

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Background

The City of Manistee is located in the northwest portion of Michigan's lower peninsula, on Lake Michigan. According to the 1970 census, the City's population was approximately 8,000 and it is the seat of Manistee County. The City's industrial base, although relatively small, is solid and the area, due in part to its lake-side location, is known for its recreational facilities, particularly boating and fishing.

Local 645 of the International Association of Fire Fighters, hereinafter referred to as the Union, is the exclusive representative for the City's fire fighters below the rank of Chief.

The Parties' prior collective bargaining agreement expired on June 30, 1978. Extensive negotiations, followed by mediation, failed to produce an acceptable new agreement; therefore, pursuant to the State's Compulsory Arbitration Act (Public Act 312, as Amended), the matter was referred to the Michigan Employment Relations Commission for binding arbitration.

With the agreement of the Parties, the Commission appointed Samuel S. Shaw as Chairman of the Arbitration Panel, the Union

appointed Darryl R. Cochrane as its Panel Member, and the City appointed Thomas L. Drenth.

On April 13, 1979, a pre-hearing meeting of the Panel and the Parties' Counsels was held in the Grand Rapids Office of the Commission. All outstanding unresolved issues were reviewed, and those economic and non-economic so designated.

The official Hearing was held in the City Hall, Manistee, Michigan on July 25, 1979. Both Parties were represented by Counsel and all pertinent oral and documentary evidence and supportive arguments were received.

At the opening of the Hearing, the Panel was advised that subsequent to the pre-hearing meeting of April 13th, two of the outstanding economic issues had been resolved by the Parties. Specifically, the City had agreed that upon the execution of the results of this Hearing, the City would provide major medical hospitalization insurance with a prescription rider. In addition, the "comp time" resulting from this additional holiday would have to be taken before December 31, 1979, or be lost.

At this point, the Union advised the Panel that in view of the City's agreement on the hospitalization and holiday issues, the Union's demands for a dry cleaning allowance and additional vacation was being withdrawn.

The Panel then received evidence and heard arguments on the length of contract, the non-economic issues, and Wages and COLA, the two remaining economic issues.

The Union opened its presentation on the COLA issue by introducing a petition for intervention by the Police Officers Association of Michigan, and its local Union the Manistee Police Officers Association. It was the contention of the Union that the Police Officers Association had a substantial interest in proceedings and could offer evidence "that would not otherwise be available to the Panel in the issue of COLA."

This proposed intervention was objected to by the City, who contended any such intervention might prejudice the positions of the City and/or the Police Association in their coming collective bargaining negotiations.

After due consideration of the arguments, the request for intervention was denied. The Union was, however, granted

permission to introduce the data in question through a witness.

At the close of the Hearing the Parties mutually agreed to mail their last best offers on the economic issues to the Chairman, postmarked no later than July 27th. These offers were received, properly postmarked, and the Hearing officially closed upon their receipt.

On September 24, 1979, the Arbitration Panel met to consider the arguments and evidence in the non-economic issues, and the last best offers in the economic issues. After a thorough review of the last best offers, the Chairman observed the selection of either offer would produce an unrealistic result; therefore, it might be appropriate for the Parties to re-evaluate their positions. This suggestion was mutually accepted by the Parties' Counsels, with the understanding that should this re-evaluation result in no position changes, a determination would be made based upon the then available evidence and offers.

On December 1, 1979, the Parties advised the Chairman that as a result of their review, all economic issues had been resolved; however, it was requested these settlements be included in the Panel's award.

Discussion

The following conclusions covering the non-economic issues are those of the Chairman as expressed at the post-hearing meeting of September 24, 1979. Therefore, at the end of each Opinion, space is provided for each Panel Member to indicate their concurrence or dissent.

Moreover, no attempt has been made to provide final contractual language. As agreed upon at the post-hearing meeting of the Panel, the final language would be developed by the Parties' Counsels, both of whom are experienced attorneys in the labor-management field. Therefore, no difficulty should be experienced in developing language that properly expresses the intent of these awards.

ISSUE NO. 1 - RESIDENCY

The prior Agreement provided that:

"All employees shall have the right to reside outside the City of Manistee but at a location not greater than five (5) miles from the City limits."

It was the position of the City that all members of the Fire Department should be required to live within the City limits. The City presented two arguments in support of its position.

First, that only by living within the City limits could the response time be kept to a minimum, and second, inasmuch as they were being paid by the City they had an obligation to support the City by the payment of property taxes.

Insofar as response time is concerned, the need for a prompt response in the event of a major fire cannot be discounted. However, no evidence was introduced this had ever been a problem in Manistee. Traffic congestion is not a problem in the area, and traffic tie-ups are practically unheard of. The Chairman does not believe that even in the winter, a fireman living within five miles of the City limits would be unable to report with sufficient promptness.

Insofar as the property tax question is concerned, the Chairman is sympathetic to the City's need to generate as much tax revenue as possible. He believes, however, that to require people now living outside the City to move, as a condition of keeping their job, would be most unfair. Property is not that readily available within the City, and values are higher than those on the outskirts. Therefore, such a requirement would not only be a hardship, but could create an economic loss to the employee if he was now required to purchase property within the City.

However, as the Chairman noted, tax revenue is a problem to all municipalities; and after considering the situation he does feel that a residency requirement for new hires would not be unfair or unrealistic.

Therefore, it is the opinion of the Chairman that Section 56 should be amended to read:

Present employees shall have the right to reside outside the City of Manistee but at a location not greater than five (5) miles from the City limits. New hires, however, must reside within the City limits.

Samuel S. Shaw
Samuel S. Shaw, Chairman

Thomas L. Drenth
Thomas L. Drenth, City's Designee

Darryl R. Cochrane
Darryl R. Cochrane, Union's Designee

ISSUE NO. 2 - JOB ADVANCEMENT

From the arguments presented by the Union, it is the Chairman's understanding that Section 25, Job Advancement, was not intended to require the City to maintain a specific or fixed overall Departmental employee level. Rather, it applied only to men already members of the Department and required that in the event there was a vacancy in a higher classification the vacancy would be filled by advancing the most senior qualified employee.

It was the position of the Union that this provision provided the only means available to the employees for advancement, and to eliminate it would remove any incentive to improve. Moreover, this provision had been a part of several Agreements and had never created any problems.

The City contended Section 25 denied Management its prerogative to determine staffing requirements. Furthermore, there were no basic differences between job requirements in the various classifications, and the provision was simply an artificial method of unnecessarily raising rates.

Primarily, this dispute centered around the advancement of

Junior Drivers to Senior Drivers, although also included was the advancement of Fireman to the classification of Junior Driver.

To remove this provision could result in the City's elimination of one classification, either that of Junior or Senior Driver which, according to the City were one and the same jobs. Whether or not this is a valid argument can only be determined by an evaluation of the job requirements. However, this question was a matter of disagreement, and no job descriptions were available to resolve the dispute.

Therefore, it is the opinion of the Chairman that Section 25, Job Advancement should be retained in the new Agreement. However, in the interim, the Director of Public Safety, in conjunction with a member of the Union, should develop job descriptions. These Descriptions are to be completed before the expiration of the new Agreement and be used as a basis for resolving the question at the next negotiations.

It is agreed, however, that to prevent inexperienced men from being advanced to positions requiring experience, in the new Agreement, Section 25 shall be amended to provide that Firemen, to be eligible for advancement must have reached the Fifth

Step, or in other words, the Five-Year salary level.

The Chairman's conclusions on this issue were fully discussed in the post-hearing meeting of September 24th, and the Parties should have no trouble in framing an amendment that reflects this conclusion. Whether the amendment should include a provision covering the development of the job descriptions is a matter for the Parties to decide.

Samuel S. Shaw
Samuel S. Shaw, Chairman

Thomas L. Drenth
Thomas L. Drenth, City's Designee

Darryl R. Cochrane
Darryl R. Cochrane, Union's Designee

ISSUE NO. 3. WORKWEEK AND DUTY SHIFTS

The City proposed a sentence be added to this provision stating: " The City reserves the right to change work schedules should operating conditions warrant such change."

The City stated this proposal was prompted by two considerations, either of which could have an impact on the duty hours. First, the application of the new 54-hour law, and second, the possibility the City might merge the Fire and Police Departments into a Department of Public Safety.

There is no question that situations change, and the Chairman agrees that if and when they occur the City should not be bound to a contractually untenable position. He is not, however, persuaded the reasonable resolution of such changes rests entirely upon the elimination of Section 38, particularly when at this time, no one is able to forecast how or when such changes might become effective.

The definition of shift and workweek hours has been included in the Parties' collective bargaining agreement for a number of years, and as such has become an established contractual condition. Therefore, the Chairman believes that should a future

situation develop that warrants a change in working hours, the matter is of sufficient importance to justify it be resolved through mutual acceptance, rather than unilateral imposition.

After reviewing the positions of the Parties, the Chairman is of the opinion that under the circumstances it would not be inappropriate if a provision was added to Section 38 stating in effect that in the event conditions change which the City believes warrant a change in the workweek or duty schedule, it will negotiate such changes with the Union before implementation. The Chairman is fully aware that a requirement to negotiate does not guarantee a resolution; however, by including such a provision in the Agreement, should an impasse be reached the problem can be referred to the grievance procedure for determination.

It is the finding of the Chairman that acceptable language reflecting the above provision be developed by the Parties' Counsel and included as an addition to Section 38.

Samuel S. Shaw
Samuel S. Shaw, Chairman

Thomas L. Drenth
Thomas L. Drenth, City's Designee

Darryl R. Cochrane
Darryl R. Cochrane, Union's Designee

ISSUE NO. 4. MAINTENANCE OF CONDITIONS


It was the position of the City that this provision was in conflict with the waiver clause of Section 60 and, therefore, should be eliminated. Moreover, the mandatory maintenance of any condition should be only that condition spelled out in the Agreement.

The Union contended this Maintenance of Conditions provision was the only provision that enabled the Union "to keep what it had." Therefore, as its elimination would give the City the unlimited right to implement changes, its removal would only create a potential for future disputes. The Union voiced particular concern over the City's stated consideration of a possible merger of the Fire and Police Departments, claiming such a merger could raise any number of problems in the maintenance of existing conditions.

After reviewing the language of Sections 59 and 60, the Chairman has to agree with the City that these two provisions appear to present a conflict in intent. Without any specifics, Section 59 provides that all existing conditions are to be maintained. On the other hand, Section 60 provides in effect that there is no agreement on any condition except those specifically

covered in the Agreement.

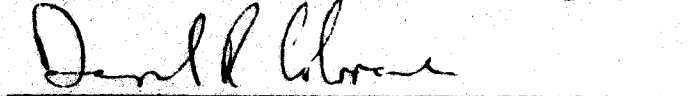
Therefore, to remove any question as to which provision should be controlling, it is the Chairman's conclusion that both Section 59 and Section 60 should be removed from the new Agreement.



Samuel S. Shaw, Chairman



Thomas L. Drenth, City's Designee



Darryl R. Cochrane, Union's Designee

ECONOMIC ISSUES

As noted earlier in this Opinion, the Parties were finally able to resolve all economic issues. However, it was requested by both Parties that the disposition or final settlement of each of the originally submitted economic issues be included in this Award.

Inasmuch as the following are the settlements, the Arbitration Panel Member's acceptance needs to appear only once at the end of this Section.

Although the length of the new Agreement was not specifically presented as an outstanding unresolved issue, the matter was the subject of some discussion. As a result it is agreed the effective dates of the Agreement will be from:

July 1, 1978 to June 30, 1982.

ISSUE NO. 1. HOLIDAYS

Effective July 1, 1978, Veterans Day will be added as a holiday.

Effective July 1, 1980, the Day after Thanksgiving will be added as a holiday.

ISSUE NO. 2 - VACATIONS

The Union's demand for improvement in the vacation schedule was withdrawn

ISSUE NO. 3. - CLEANING ALLOWANCE

The Union's demand for an additional cleaning allowance was withdrawn.

ISSUE NO. 4. - HOSPITALIZATION INSURANCE

a. Effective upon the resolution of the economic issues, or December 1, 1979, the City will provide major medical insurance with a prescription rider.

b. Effective July 1, 1981, a 50:50 Dental rider will be provided.

ISSUE NO. 5.- WAGES

a. "The fireman starting salary will be frozen and rates through the three-year fireman will be reworked to an agreeable rate."

b. "Individuals in lower classifications will receive specific increases as follows:

Agreed Rate

	<u>Dates Effective</u>					
	<u>3-26-79</u>	<u>7-1-79</u>	<u>9-26-79</u>	<u>3-26-80</u>	<u>7-1-80</u>	<u>7-1-81</u>
LaPoint	\$11,600	\$ 12,625	\$13,150	\$13,550	\$14,650	\$15,650
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	<u>7-1-78</u>	<u>10-5-78</u>	<u>7-1-79</u>	<u>7-1-80</u>	<u>10-5-80</u>	<u>7-1-81</u>
LaFleur	\$12.050	\$12,450	\$13,550	\$14,650	\$15,450	\$16,525

ECONOMIC ISSUES. ISSUE NO. 5 - WAGES (CONT.)

c. Effective Dates

	<u>7-1-78</u>	<u>7-1-79</u>	<u>7-1-80</u>	<u>7-1-81</u>
Fireman- 5 Year	\$13,800	\$15,050	\$16,300	\$17,500
Junior Driver	14,200	15,475	16,700	17,875
Senior Driver	14,625	15,975	17,250	18,450
Captain	15,350	16,800	18,175	19,425
Assistant Chief	16,400	17,875	19,300	20,650

ISSUE NO. 6 - COLA

The Union's demand for a continuation of a cost of living allowance was withdrawn, the above rate increases being all inclusive.

Samuel S. Shaw,
Samuel S. Shaw, Chairman

Thomas L. Drenth,
Thomas L. Drenth, City's Designee

Darryl R. Cochrane,
Darryl R. Cochrane, Union's Designee