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Melvindale, City of

IN THE MATTER OF ARBITRATION

between

THE MELVINDALE FIREFIGHTERS ASSOCIATION

and

THE CITY OF MELVINDALE

ARBITRATION PANEL

J. B. Coyle ---- Chairman
J. Archibald --- City Delegate
K. Johnson ----- Association Delegate

APPEARANCES

For the City:

R. G. James ---------- Attorney, - Allen, James, Snow, & Filiatrault, P.C.

J. Archibald ---------- Member, - City Bargaining Committee

G. Dragos ---------- Melvindale Chief of Police & Fire Marshall

For the Association:

R. R. Helveston -------- Attorney, - Rothe, Marston, Mazey, Sachs, O'Connell, Nunn, & Fried, P.C.

K. Johnson ---------- President, Local 1728 - International Association of Firefighters

F. Eagle ---------- Lieutenant, - Melvindale Fire Department

Coyle, J. B

BACKGROUND

The City of Melvindale is a Community in Southeastern Michigan with an estimated population of 16,000. It covers an area of 2-1/2 square miles and property therein is approximately 60% Residential and 40% Industrial and Commercial.

The Police and Fire Departments of Melvindale are under the general direction of a single executive, specifically, a Chief of Police & Fire Marshall. The current manpower strength of the Fire Department (excluding the Chief of Police & Fire Marshall) includes two Captains, two Lieutenants, two Sergeants, and nine Firefighters.

The previous Contract between the City and Local 1728 of the International Association of Firefighters expired on December 31, 1972. Prior to that date the Parties entered into negotiations but did not reach agreement on a new Contract.

On December 26, 1972 the Association gave written notice to the City (with a copy to the Michigan Employment Relations Commission) of its decision to initiate Arbitration proceedings pursuant to Act No. 312, Public Acts of 1969. The Parties did not reach agreement on the selection of an Arbitrator and on February 6, 1973 the Association filed a request with the Michigan Employment Relations Commission for the Appointment of an Arbitrator.

In response thereto, on March 1, 1973, the Chairman of the Commission appointed John B. Coyle as Impartial Chairman of an Arbitration Panel. Kenneth Johnson, President of the Melvindale Firefighters Association, was designated as the Association Delegate. James Archibald, a member of the City Negotiating Committee, was designated as the City Delegate.

By mutual agreement of the Parties the first Hearing was held on March 21, 1973. A second Hearing was held on March 28, 1973.

During the formal Hearings both parties were afforded full opportunity for the presentation of evidence and arguments and for the examination of witnesses. A transcript covering 189 pages of testimony was made and copies were ordered for the Panel, for the Association, and for the City. The Association submitted a total of fifty-seven exhibits into evidence and the City submitted three. Post hearing Briefs were filed by both Parties on May 17, 1973.

By mutual agreement between the Parties the thirty day statutory limit for timely filing of an Award by the Panel was extended to June 17, 1973.

The Panel was called into Executive Session on May 31, 1973. Unfortunately, a death occurred in the family of the City Delegate at this time, and at his request the Chairman postponed the first Executive Session for one week. Executive Sessions were then held on June 7th. and June 8th., and 11th..

Prior to the commencement of their deliberations in Executive Session the Panel Members reviewed the Michigan Statute governing their function and their authority in the resolution of this dispute, particularly the following provisions which are instructive to any Arbitration Panel appointed under the Statute.

> Section 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (a) The lawful authority of the employer.
> (b) Stipulations of the parties.
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (d) Comparison of the wages, hours and conditions of the employees involved in the arbitration proceeding with the wates, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.
(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.
(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 10. A majority decision of the arbitration panel, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel under section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this act, the foregoing limitation shall be inapplicable, and such awarded increases may be retroactive to the commencement of such fiscal year any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulations, may amend or modify an award of arbitration.

Mindful of these statutory admonishments the Panel carefully reviewed each Exhibit submitted, as well as the Transcript and the Briefs that had been filed, and addressed themselves to the following issues which, by mutual stipulation of the Parties were the issues raised and unresolved during their negotiations.

1. Parity of Wages and Benefits as between Fire Department and Police Department Employees.

2. Reduction of average weekly hours.

3. Increase in minimum call in time.

4. Increase in minimum manpower.

In the balance of this Opinion and Award these issued will be discussed and decided separately and in the order listed above. The language contained herein, along with the observations made and arguments presented in support of the decisions rendered are solely the responsibility of the Chairmen. The decisions, however, are made by at least two members of the Panel, constituting the majority required by Statute.

THE PARITY ISSUE

The dispute over this issue involves both a specific number of dollars in salary and a principle. The Union is demanding salaries that represent a continuation of the same dollar relationship to Police Department salaries that is in the previous Contract, and also, inclusion of the same language that exists in the previous Contract reflecting an agreement on parity in principle. Specifically, the annual salaries demanded by the Association are as follows:

JOB CLASSIFICATION	SALARY
Captain	$ 14,805
Lieutenant	$ 14,405
Sergeant	$ 14,155
Firefighter	$ 13,305
Firefighter 3-4 years	$ 13,105
Firefighter 2-3 years	$ 12,905
Firefighter 1-2 years	$ 12,705
Firefighter 0-1 years	$ 12,505

The language of the previous Contract which the Union insists shall be continued in the new Contract is contained in Articles XXVIII and XXIX. Specifically they provide as follows:

ARTICLE XXVIII - PARITY OF COMPENSATION

MEMBERS OF THE POLICE AND FIRE DEPARTMENTS HAVING CORRESPONDING CLASSIFICATIONS AS HEREINAFTER ENUMERATED, AND PERIODS OF SERVICE SHALL RECEIVE EQUAL ANNUAL COMPENSATION, INCLUDING EQUAL ANNUAL WAGES:

FIRE FIGHTER	PATROLMAN
FIRE FIGHTER SERGEANT	POLICE SERGEANT
FIRE FIGHTER LIEUTENANT	POLICE DETECTIVE-SERGEANT
FIRE FIGHTER CAPTAIN	LIEUTENANT

NO DISPARITY IN SUCH ANNUAL COMPENSATION OR WAGES SHALL OCCUR OR BE JUSTIFIED ON ACCOUNT OF DIFFERENCES BETWEEN POLICEMEN AND FIREMEN AS TO AVERAGE, NORMAL, REGULAR OR CUSTOMARY HOURS OF WORK OR DUTY, OR AS TO FURLOUGHS, LEAVES OR LEAVE DAYS, OR VACATIONS; NOR ON ACCOUNT OF THE HAZARDS OR CHARACTER OF SUCH WORK OR DUTY; NOR ON ACCOUNT OF CHANGES IN THE TITLES OF CLASSIFICATIONS, AS HEREINABOVE ENUMERATED; NOR INDIRECTLY TO AVOID THE INTENT OF THIS SECTION, WHICH IS TO ASSURE PARITY OF COMPENSATION AND WAGES TO POLICEMEN AND FIRE FIGHTERS.

ARTICLE XXIX - CONTINGENT PARITY

IN THE EVENT THAT THERE IS ESTABLISHED FOR FISCAL YEAR 1972 BY ARBITRATION OR NEGOTIATION OR OTHERWISE DIFFERENT COMPENSATION OR CASH BENEFITS FOR NON-CIVILIAN EMPLOYEES OR OFFICERS OF THE MELVINDALE POLICE DEPARTMENT THAN ARE HEREIN PROVIDED, THE COMPENSATION PROVIDED HEREIN SHALL BE ADJUSTED TO CONFORM THERETO SO AS TO MAINTAIN A PARITY RELATIONSHIP FOR ALL CORRESPONDING RANKS IN THE POLICE AND FIRE DEPARTMENTS.

The City is unwilling to agree to either the principle of parity or to the dollars of salary demanded by the Association.

The City proposes to discontinue the principle of parity by eliminating the parity language from the Contract, and offers the following salaries:

JOB CLASSIFICATION	SALARY
Captain	$ 14,762.00
Lieutenant	$ 14,340.00
Sergeant	$ 14,077.00
Firefighter	$ 13,285.00
Firefighter 3-4 years	$ 13,074.00
Firefighter 2-3 years	$ 12,863.00
Firefighter 1-2 years	$ 12,652.00
Firefighter 0-1 years	$ 12,441.00

The difference in dollars between the Association Demand and the City offer may be illustrated as follows:

CLASSIFICATION	ASSOC. DEMAND	CITY OFFER	DIFFERENCE
Captain	$ 14,805.00	$ 14,762.00	$ 43.00
Lieutenant	$ 14,405.00	$ 14,340.00	$ 65.00
Sergeant	$ 14,155.00	$ 14,077.00	$ 78.00
Firefighter	$ 13,305.00	$ 13,285.00	$ 20.00
Firefighter	$ 13,105.00	$ 13,074.00	$ 31.00
Firefighter	$ 12,905.00	$ 12,863.00	$ 42.00
Firefighter	$ 12,705.00	$ 12,652.00	$ 53.00
Firefighter	$ 12,505.00	$ 12,441.00	$ 64.00

The dollars of salary offered by the City were the result of the application of a formula which the City describes as five and one half percent (5-1/2%) of "direct annual compensation". The City defines "direct annual compensation" as the total of (1) current Fire Department Salaries, plus (2) current Fire Department Uniform Allowances ($200.00), plus (3) current Fire Department Food Allowance ($325.00), plus (4) Longevity Pay at a ten year average ($200.00). Accordingly, the formula used provides for the addition of $725.00 to the Fire Department Annual Salaries to reach a figure which the City defines as "total direct annual compensation", and then the application of a 5-1/2% factor to arrive at dollars of Salary increase.

The City contends that its offer to the Fire Department is the same as it has offered to the Police Department and to members of the only other Bargaining Unit in Melvindale. The City testified "It was our intention to grant to the Firefighters the same percentage salary increase that we gave to the other bargaining units in the City of Melvindale, that being 5.5 percent". Again in its Brief the City states "The City has offered the Firefighters a wage increase of 5.5% of total direct annual compensation, which is the exact increase given to members of the Police Department for the year 1973 and is in line with the increase granted to members of the City's third bargaining unit".

In the development of its salary demand the Association simply took note of the new salaries granted to the Police Department and specified the number of dollars that would be required to continue the same dollar relationship to Police Department salaries that existed in the 1972 Contract. In the Association's view nothing more or less would constitute a continuation of salary parity.

In fact, therefore, the difference in dollars that exists between the demand of the Association and the offer of the City is more a result of starting with different premises and using different methods than it is a dispute over a minimal difference in dollars of annual salary. Indeed at no time has the City advanced a position that it could not afford the salaries demanded by the Association, and if the dollars of salary offered to the Police Department had been less the Association would have accepted that lesser amount.

The major issue in parity, therefore, is more one of principle than dollars and hinges principally on the continuation or elimination of the parity language in the contract.

In support of its proposal to eliminate the language of parity the City contends that there is "no historical or logical basis for inclusion (of the parity provisions) in a new Agreement...."

With respect to a historical basis of parity the City observes that for five years immediately preceding the 1972 Contract parity did not exist. It argues that even though parity does exist in the 1972 Contract the City really never agreed with the principle, but was in a position where it had no practical alternative other than to trade one issue for another to avoid serious economic consequences for the City. Specifically it agreed to pay the salaries to Policemen and Firefighters of Corresponding rank to secure an agreement from the Association to calculate the pay off of accumulated sick leave days at Retirement on the same basis that is used for Policemen (i.e., on the basis of an eight-hour day rather than a 24 hour day.) It contends also that the parity clauses were included on a one year only basis as far as the City was concerned, and that the Union was put on notice at the time of their inclusion that the City would vigorously oppose their inclusion in the future Agreements.

Additionally it argues that the inclusion of parity in the 1972 Contract does not in and of itself make parity a fact of life in Melvindale, particularly in view of the fact that it was made abundantly clear at the time of the inclusion that the continuation of parity would be strenuously resisted in future negotiations. In summary the City observes that a recent history of parity in Melvindale does not exist, and rejects any argument that parity must automatically continue because it was in the Contract for one year.

With respect to a "logical" basis for parity between the Policemen and Firefighters in Melvindale, the City contends that a logical basis does not exist because there is no connection between a Melvindale Firefighter and a Melvindale Policeman as far as their duties are concerned, and that substantial dissimilarities between these two occupations exists generally. For an insight into the City's view of this matter it refers the Panel to the following excerpt from one of the Fact Finders Reports submitted in evidence by the Association.

> "The simple fact of the matter is that notwithstanding the uniformed nature of the occupations and the traditional image by which police and fire functions are often thought of together, they have been and are performing separate functions with a great multitude of dissimilarity in content and impact. Technological change, for instance, is present and is affecting the Firemen's work. Smoke detection devices and automatice fire control applicance, even in residential use, impinge on his services as a fire fighter. On the other hand, a new social awareness and affirmation of recognized rights of the accused make the work of a policeman more demanding than in the past. The essential difference is that of working with things versus working with people. In the latter connection the increased sensitivities and sophistication of police work certainly create numerous points of comparison by which it can be distinguished from that of the fire fighter."

In support of its arguments to continue parity the Association also points to the history of parity in Melvindale, but observes that there is a history of both parity and disparity. It emphasizes however, that the period of

parity extended over a period of seventeen years (1949 through 1965) whereas disparity extended over a period of only five years (1966 through 1971). It argues that the history in Melvindale is, therefore, far more one of parity than disparity.

As the City has done in the presentation of its case, the Association likewise emphasizes the negotiations which led to parity in the 1972 Contract, but lays major stress on the sacrifices the Association made to secure parity in salaries, specifically, that it gave up a substantial economic benefit when it agreed to have accumulated sick leave days at retirement computed on the basis of 8 hours per day rather than 24, and when it agreed to have overtime premium computed on the basis of 2912 hours per year rather than 2080 (resulting in a lower hourly rate for purpose of computing overtime premium).

The Association also argues the "logic" of parity in a recitement of similarities in the work performed by Policemen and Firefighters. In its Brief the Association observes that in Melvindale the Policemen and Firefighters are "twin arms" of public safety; that both are protecting lives and property; that both are exposed to common risks, tensions, and hazards; that they are the only uniformed City employees, that they work under supervision of the same individual; and that their functions are both integrated and overlapping in that they may both be called upon to handle medical and household emergencies. Additionally, the Association observes that they both receive special treatment under the Michigan Workmans Compensation Statute which provides for certain assumptions applicable only to occupational injuries and diseases of Policemen and Firefighters, and that they are both under special City Charter provisions applicable only to Policemen and Firemen such as the Police and Firefighter Retirement System.

Along with these similarities in the work performed the Association points to the fact that the Melvindale Civil Service Commission has established common hiring standards for both, and have provided fringe benefits (such as holidays, medical care, life insurance, and longevity pay) which are substantially the same for both groups.

On the basis of these similarities in work performed, common treatment under State Statute and City Charter Provisions, and the same Civil Service hiring standards and fringe benefits, the Association concludes that "they both incur substantially equivalent duties, risks and responsibilities, and accordingly deserve equivalent compensation".

Along with a historical and logical basis for the continuation of parity the Association also contends that a departure from parity now would be severly damaging to the morale and attitude of the Firefighters because it would reflect a value structure in which the Firefighters are regarded as relatively less important than Policemen to the Community of Melvindale. It argues that this depression of morale would inevitably manifest itself in less cooperation between Firefighters and the Police Department and a generally less effective fire service operation to the detrement of the Community.

The Panel has taken notice of these arguments as well as all of the evidence, and testimony submitted during the hearing, and after due consideration a majority holds that the language of Articles XXVIII and XXIX shall be continued in the 1973 Contract, and that the dollars of salary proposed by the Association shall be put into effect retroactive to January 1, 1973.

In reaching this conclusion the Chairman has based his decision primarily on a well established principle in law and a commonly accepted practice in collective bargaining. In law the moving party bears the heaviest burden

in seeking any judgement. Applied to collective bargaining this principle requires the party seeking change to provide a weight of evidence and a strength of argument sufficient to justify the change. Also, in collective bargaining, when parties reach an agreement to include a benefit in a Contract the prevailing spirit in such an agreement is to regard the inclusion as one of indefinite duration. Agreements reached with the intent of subsequent revocation by either party is not only rare, but indeed, almost foreign to the collective bargaining process. Therefore, notwithstanding the testimony given by the City to the effect that it intended the grant of salary parity as a benefit limited to a duration of one year, and made this intention clear to the Association during previous negotiations, parity became a fact of life in Melvindale in 1972.

Indeed, the parties to the 1972 Agreement, for their separate reasons, took three steps together toward an implementation of the principle of parity. They agreed that Firefighters should be paid the same dollars of salary as Policemen (less an offset of $95.00 for a gun allowance inapplicable to Firefighters). They agreed that the computation of accumulated sick leave at retirement should be made on the same basis for Firefighters and Policemen. They agreed that the calculation of an hourly rate for overtime purposes should be made on the same basis for Policemen and Firefighters, specifically, through dividing annual hours by annual salary.

The City now proposes to retain all of the elements of parity included in the 1972 Agreement except the parity of salaries, and eliminate the principle of parity. In the opinion of the Chairman the City has not presented a persuasive case for its proposal. The history of disparity immediately prior to 1972 does not require a discontinuance in 1973. The financial circumstance of the City does not require it. Prevailing practices in the general area of Melvindale do not require it. The principle of parity is not uncommon nationally. In summary, the Chairman finds that there are

no historical, logical, or economic reasons for departure from this principle in 1973. The delegate from the Association joins the Chairman in this decision. The delegate from the City dissents.

THE REDUCTION IN WORK WEEK ISSUE

The Melvindale Firefighters are currently employed on the basis of a work week averaging 56 hours per week over an annual period for a total annual schedule of 2912 hours per year. (56 X 52)

Scheduling is done on the basis of 24 hour periods running from 7:00 a.m. on one day through 7:00 a.m. on the following day. These 24 hour periods are generally referred to as "duty days" and there are 121-1/3 duty days in a schedule of 2912 annual duty hours.

The Association has proposed a reduction in duty hours from an average of 56 to an average of 50.4 per week. Converted to an annual basis, the proposal reduces the annual duty hours to 2620.8 (50.4 X 52) and the annual duty days to 109-1/3 (2680.8 divided by 24). It also increases the hourly base for the purpose of computing overtime premium. (Annual salary divided by 2620.8 rather than 2912).

The City has rejected this proposal and insists on retaining an average of 56 hours per week.

In support of its proposal the Association points to a national trend toward a shorter work week for Firefighters, and offers in evidence several exhibits which show an average work week of 48.5 for Firefighters nationally, and 50.9 in a selection of thirteen large cities, and 50.4 in two communities adjacent to Melvindale (Detroit and Ann Arbor).

In rejecting this proposal the City contends that the 56 hour work week is still prevalent throughout Michigan, and that the Cities of Ann Arbor and Detroit which were cited by the Association as having a work week of 50.4 hours are not communities which can be regarded as comparable to the community of Melvindale.

The City also observes that to implement a reduction in the work week to 50.4 hours an additional one hundred and ninety-five 24 hours days would have to be given off to members of the Fire Department (collectively) and to do this would require either the hiring of additional personnel or a reduction in the manpower available on each shift.

In their consideration of this issue the Panel takes note of the fact that while evidence was submitted showing a progressive shortening of the average work week for Firefighters generally and nationally, the demand of the Association is to move promptly and directly to an average work week of 50.4 hours. No evidence was submitted to establish the prevalance of an average work week of 50.4 hours either in comparable communities nationally, or in Michigan, or in the geographical area of Melvindale. If the Association had simply proposed some shortening of the work week in Melvindale the Panel may or may not have supported this proposition. But it did not. The issue before the Panel, therefore, is whether a reduction of the work week promptly and directly to 50.4 hours, is justified on the basis of the evidence, testimony, and arguments offered by the Association.

In the opinion of the Chairman a reduction in the average work week to 50.4 hours in the 1973 Contract year is not warranted by the evidence and arguments presented. The City Delegate joins the Chairman in this decision. The Association Delegate dissents.

THE MINIMUM CALL-IN ISSUE

Under the previous Contract, Fire Department Employees who are called in to assist on a normal scheduled day off are guaranteed a minimum of two hours pay at time and one half the applicable hourly rate. The Association proposes that this minimum be increased to four (4) hours. The City has rejected this proposal and insists that the current minimum of two hours be continued.

In support of this proposal the Association observes that all other bargaining unit employees in Melvindale are receiving a guarantee of four hours call-in pay at time and one half, and that a majority of seven other surrounding communities in the immediate area of Melvindale provide four hours or more of call-in pay for Firefighters. It contends that these communities are comparable to Melvindale and that Melvindale should therefore be required to conform to both the prevailing practice within Melvindale, and prevailing practices in the general area.

The Association further contends that the nature of the work usually required on emergency call-in warrants the additional hours guarantee. It claims that a call-in almost always means that there is a fire raging for which additional manpower is needed and that the time expended by Firefighters called-in involves all of the risks and the physical effort in exertion which accompanies the fighting of fires.

In its Brief the City argues that "the comparison of only one benefit in collective bargaining agreements encompassing eight (8) different municipalities does not afford much of a basis for determining that because one municipality is below average in that one benefit it should, therefore, be brought up to the average indicated. If this type of comparision is permitted it could very easily result in a whipsawing technique by the Union among all the affected communities".

The City also points out that in the collective bargaining process priorities are established by both parties concerning their various demands and proposals, and that during the course of negotiations it is almost always necessary to give up or compromise on some of the demands. It observes that "perhaps those groups that now have at least four hour minimum call-in time attached a higher priority to that demand than did the Melvindale Fire Fighters Association. It is impossible to know at this time which of their various demands during prior negotiations the Melvindale Firefighters considered to be of a higher priority than their demand for a four hour minimum call-in time".

In reaching a decision on this issue the chairman must reject the rationale of the City objecting to a comparison of this benefit in Melvindale and other adjacent communities, and must regard its discussion of previous negotiations and possible attitudes of other Fire Fighter Associations as speculative.

This panel is directed by the Statute to make comparisons of wages and benefits in comparable communities among public and private Employers and to make its decision on the basis of the evidence and testimony on the whole record before it. There is no evidence or testimony on the record to support a suggestion that the Melvindale Firefighters have other benefits in their contract to offset the four or more hours of call-in time which is prevalent in the Melvindale area. There is evidence and testimony on the record, undisputed by the City, that the Firefighters in Melvindale receive a minimum call-in guarantee which is fifty percent less than most firefighters in the general area of Melvindale.

Primarily for the reasons set forth above the Chairman holds that the 1973 Contract shall include an increase in the minimum call-in pay to four (4) hours.

With respect to an effective date for putting this increase into effect, in the opinion of the Chairman the Statute under which this Arbitration is required intends no more sacrifice than is necessary to the parties who are restricted by its provisions and delayed by its procedures in settling a dispute between them in a manner which has been determined to be in the public interest. Not all issues in dispute lend themselves to retroactivity, of course, but some do. In the opinion of the Chairman this one does, and the Award is therefore made retroactive to January 1, 1973.

The Delegate from the Association joins the Chairman in these decisions. The Delegate from the City dissents.

THE MINIMUM MANPOWER ISSUE

The previous Contract between the parties contains an agreement that each shift will be manned by a minimum of four (4) men. The Association proposes an increase to a minimum of five. The City rejects this proposal and insists that the present minimum be continued.

In the presentation of its case the Association contends that a minimum crew of four men is not adequate to meet the demands of fire fighting in Melvindale which, along with the usual responsibilities involved in the fighting of fires also includes emergency ambulance and medical services. Particular emphasis is placed by the Association on situations in which there are simultaneous demands on the Fire Department for ambulance service and a fire call, and sometimes more than one fire call, with no more than four men on duty. The Association observes that when there is an ambulance call two men are dispatched with the ambulance, leaving only two men in the station, and if there is then a fire call these two men cannot adequately safely, and effectively provide the firefighting service which may be required. On the other hand, if there is a fire call, all four are dis-

patched with the firefighting equipment, leaving no one in the Station to handle an ambulance run or a second fire call.

Evidence was submitted by the Association showing that on 72% of the days in 1972 only a crew of four was on duty, and witnesses testified to the effect that the situations described actually occurred on some of these days.

The Association contends that an increase in minimum manpower "will provide the flexibility needed and will greatly increase the effectiveness of the City's response to the multitude of emergencies with which it is faced".

The City disagrees. It claims that a minimum of four is adequate to handle the usual and ordinary fires occurring in Melvindale, and that its on-call staff and call-in procedures are adequate to meet demands for unusual or extraordinary service.

To support this contention the City introduced in evidence an annual report of services rendered and financial losses attributable to fires in Melvindale during 1972. It argues that the total loss of only $21,661.51 shown in this Report for the entire year is exceedingly low and establishes the fact that the minimum shift as presently constituted can handle any of the usual fire hazards in Melvindale.

In the presentation of its arguments the City lays heavy stress on the concept of a minimum shift, and contends that a minimum is "not designed to handle major holocausts", but rather, is designed to handle the "usual and ordinary fires in a Community".

This issue involves a judgement. In deliberating over the evidence, testimony and arguments presented the Panel has been concerned with both the public interest and the safety of Melvindale Firefighters. There is no doubt in our minds that both could be jeopardized if the number of Firefighters available were not sufficient to meet the demands placed upon them by simultaneous ambulance and fire calls.

There is also general agreement among the Panel Members that the minimum required at any one moment could run all the way from two men to handle an ambulance run to the entire department plus assistance from other Mutual Aid Communities to handle multiple fire calls.

In the opinion of the Chairman this judgement must be left with those who are responsible to the Citizens of Melvindale for a well managed and efficiently operated Fire Department. This is not to say that the safety of Firefighters is not a bargainable matter. Indeed it is. But safety cannot be secured by a "number" called minimum manpower per shift. Safety is secured by furnishing firefighters with the training, equipment, assistance, and leadership required, and the measure of adequacy in each of these essentials is not found in a number.

The burden of this responsibility is a heavy one, and while the majority of the Panel is unwilling to change a number that appears in the existing Contract from four to five, this in no way represents our concurrence that a crew of four firefighters is always adequate to properly secure the safety of Firefighters and effectively protect the lives and property of Melvindale Citizens. Indeed, from time to time, the minimum required may be more than the five proposed by the Association, and we call upon the City Administration and the Public Safety Commission to insure the real minimum required at all times, whatever that minimum may be, in their responsible judgement.

The Delegate from the City joins the Chairman in this decision. The Delegate from the Association dissents.

SUMMARY OF AWARDS

In summary, the Award of the Panel is as follows:

1. The salaries proposed by the Association shall be put into effect retroactive to January 1, 1973.
2. The minimum call-in guarantee shall be increased from two hours to four hours retroactive to January 1, 1973.
3. The average work week of 56 hours shall be continued in the 1973 Contract.
4. The minimum manpower provision of the 1972 Agreement shall be continued in the 1973 Contract.

As a matter of note, the decisions relative to parity of salaries, and call-in time were made by majority decision of the Chairman and the Delegate from the Association. The decisions relative to average work week and minimum manpower were made by majority decision of the Chairman and the Delegate from the City.

Chairman

City Delegate

Association Delegate

Dated July 3, 1973
Detroit, Michigan

DISSENT

I hereby dissent from the Arbitration Panel's Order that current minimum manpower levels be continued in 1973. However, I do agree with the panel's statement "we call upon the City Administration and the Public Safety Commission to insure the real minimum required at all times, whatever that minimum may be, in their responsible judgment." (Emphasis supplied.)

Currently, all fire fighter shifts must be staffed by four employees, but this minimum is clearly insufficient to protect fire fighters in carrying out their responsibilities and duties including combatting fires. For example, at the scene of a fire, one man must remain with the engine (pumper) and at least two men are required to control the charged lines. As a result, fire fighters are severely hampered in their ability to react quickly to the shifting dangers of a working fire.

Furthermore, the life and property of Melvindale inhabitants are not adequately protected by an understaffed fire department. The fire department provides emergency medical and ambulance service which frequently results in only two fire fighters available to respond to fire calls. If two fires occur simultaneously, one fire must be left unattended while supplemental help is called in. The delays occasioned by calling off duty fire fighters are a serious problem because the most critical time in most fires is the first two or three minutes. In order for fire fighters to respond in time to combat a fire during that critical period, the fire fighter must be on duty at the station and prepared to go.

For all of the above stated reasons, I respectfully dissent from the arbitration panel's order on current minimum manpower.

Kenneth Johnson

In the Matter of:

CITY OF MELVINDALE, MICHIGAN

and

MELVINDALE FIRE FIGHTERS ASSOCIATION, LOCAL 1728, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Pursuant to Act 312, Public Acts of 1969, as amended

DISSENTING OPINION

I must dissent from the majority opinion on two issues covered by this arbitration panel: the Parity Issue and the Minimum Call-In Time Issue.

THE PARITY ISSUE

There is no doubt that the point of contention in this issue is one of principle, not money.

As is stated in the first sentence of the majority opinion on this question, "The dispute over this issue involves both a specific number of dollars in salary and a principle." And, as is stated later in the Opinion, "In fact, therefore, the difference in dollars that exists between the demands of the Association and the offer of the City is more a result of starting with different premises and using different methods than it is a dispute over a minimal difference in dollars of annual salary."

The demand of the Association and the offer of the City is substantially the same in the matter of annual salaries. The question is whether or not the two parity clauses are going to be continued in the 1973 Agreement. In order to better understand the City's position in this matter it is necessary to understand how parity came to be included in the 1972 contract.

Parity existed between the police and fire departments from at least 1949 until 1966. In 1966 the police department was granted a greater wage increase than the fire department and this

disparity in compensation continued until execution of the 1972 contract between the City and the Fire Fighters, which contract contained both a parity and a maintenance of parity clause. The two parity clauses were included in the contract as the result of a compromise, the effect of which was to negate an Arbitration Award concerning pay-off at retirement for accumulated sick leave days.

Prior to the first collective bargaining agreement between the City and the Fire Fighters Association the pay-off for accumulated sick leave days at retirement was computed on the basis of an eight-hour day with a maximum accumulation for pay-off of 120 days. A sick leave day for a fire fighter at that time was also recognized to be a twenty-four hour duty day.

Both of these factors were recognized in the first collective bargaining agreement between the parties, and in subsequent agreements; thus we have the following language in the 1970-71 agreement, in Article XII, Sick Leave: "(a) A sick leave day for the purpose of this Article shall mean a twenty-four hour duty day; (b) Employees will accumulate sick time at the rate of one day per month with no limitation on the number of accumulated days. At retirement or termination of employment the employee will be paid for the number of accumulated sick days up to and including the maximum of 120 days. Said payment may be made in a lump sum or said employee may credit said accumulation to early retirement at the option of the employee."

Subsequent to the negotiation of the collective bargaining agreement a Captain Arthur Long retired and a dispute arose as to the method of computing the amount due him for his accumulated sick leave days. It was the City's contention that the amount due him should be based on an eight-hour day, which had been the practice, and that Captain Long was owed $4,885.87 for his accumulated sick days. The Union contended that under the language of the contract Captain Long should be paid 109-1/3 duty days at twenty-four hours per day, and that the City owed him $10,440.24.

The dispute was submitted to arbitration and the arbitrator upheld the position of the Union. The award was subsequently upheld by Judge Baum of the Wayne County Circuit Court. The City appealed his decision to the Court of Appeals.

During the appellate court proceedings negotiations were under-way for the 1972 contract. As a result of these negotiations the appeal to the Court of Appeals was dropped, as part of the compromise previously referred to. The Union agreed to contract language that provided for future payoff of accumulated sick leave days substantially in conformity with the City's position, and the two parity clauses were written into the contract.

At the time the parity clauses were written into the contract the City made its position very clear: that parity was a one-year proposition and that any continuation of parity would be strenuously resisted in future negotiations.

The heat generated by the dispute between the City and the Fire Fighters is due, in large measure, to the City's belief that pay-off for accumulated sick leave at retirement on the basis of a 24 hour duty day was never negotiated into the Agreement between the parties but is based on someone's interpretation, after the fact, that that is what the language of the contract meant. Even the City Attorney, who was the City's chief negotiator in the negotiations which led to the inclusion of the disputed language and who is now deceased, directed the Fire Marshal to pay Captain Long on the basis of an 8 hour day for the number of days he had accumulated prior to retirement.

It can easily be seen what an economic impact the continued interpretation of Article XII (a) along the lines suggested by the Arbitrator would have on a City the size of Melvindale. The Arbitrator's decision increased the pay-off to Captain Long from $4,885.87 to $10,440.24, more than doubling it. According to testimony taken during the present arbitration hearing, out of a total complement of fifteen (15) fire fighters at least seven (7) of them have completed the twenty (20) years necessary to apply for retire-

ment. The potential economic impact on the City over the next three (3) to four (4) years, if the clause as interpreted by the Arbitrator were to remain in the contract, is apparent.

From the City's point of view, it was inconceivable that the negotiation of contract language that would accomplish the foregoing result would not have been remembered by the then City Attorney when he directed the Fire Marshal to pay Captain Long on the basis of 8-hour days for his accumulated sick leave at retirement. It was also inconceivable that the then City Attorney would not have informed the Fire Marshal, the man most intimately associated with the day-to-day administration of the contract, and the Mayor and Common Council, to whom he had to go for ratification of the contract, that there had been negotiated into the Agreement a major and costly change in the method of pay-off of accumulated sick leave days at retirement.

Parity between the police and fire departments, then, is something that did not exist in the City of Melvindale between 1966 and 1972. The parity clauses were inserted in the 1972 Agreement with the Fire Fighters because the City could not accept the economic consequences of the future application of the Arbitrator's award, which it felt were unjust and not in accordance with the Agreement between the parties. Even though the parity clauses were included in the Agreement, they were included on a one-year basis only and the Union was put on notice at the time of their inclusion that the City would vigorously oppose their inclusion in future Agreements between the parties.

Let us now look at two other conclusions the majority of the panel has reached. First, that "The City now proposes to retain all the elements of parity included in the 1972 Agreement except the parity of salaries, and eliminate the principle of parity." This statement does not square with the statement of the majority previously quoted in this dissent that "the difference in dollars that exists between the demand of the Association and the offer of the City is more a result of starting with different

premises and using different methods than it is a dispute over minimal differences in dollars of annual salary." It was, in fact, the stated intention of the City to grant fire fighters salary increases equal to those given policemen. It was, likewise, the stated intention of the City to eliminate the two parity clauses.

Second, let us look at the statement that "parity became a fact of life in Melvindale in 1972." Assuming for the point of argument that at this point in time policemen and fire fighters are entitled to the same total direct annual compensation, does this mean that this will be ever so? If circumstances and conditions change from year to year so that both departments should not be compensated on the same basis, can the City no longer argue this point successfully? If this is the case, then I submit that this is wrong. Just as it is wrong to insist that because parity existed until 1966 it must forever continue, no matter how conditions and circumstances change in relation to the two departments.

It is my opinion that there is neither a logical nor historical basis for continuation of the parity clauses and that they should not be included in the 1973 Agreement.

MINIMUM CALL-IN TIME ISSUE

In the 1972 Agreement fire fighters were given parity with policemen. In that Agreement their minimum call-in time was two (2) hours. If they are now to be given four (4) hours call-in time, haven't they improved their position beyond parity? They have improved a benefit and there has been no similar gain by policemen. It appears to me that the Association feels that it has now achieved parity in total direct annual compensation and it is now open season on any area of the contract that does not relate to that, such as minimum call-in time and reduction of the work week, both of which issues it raised in this year's negotiations.

GENERAL OBSERVATIONS

I believe the whole notion of basing fire fighters' salaries on the salaries of policemen in the same community is improper and unfair. Their duties and responsibilities are not the same, despite the fact that they are under the jurisdiction of the same Public Safety Commission, the physical requirements for hiring are the same and that there are some other superficial similarities. I believe that each department should be compensated on the basis of its own merits and what it does, not on the basis of what someone else in the City is receiving.

Dated: July 2, 1973

James Archibald
Panel Member