5/27/83
ARB

STATE OF MICHIGAN

Department of Labor

Bureau of Employment Relations

STATUTORY LABOR ARBITRATION PANEL

(Pursuant to Act 312, P.A. 1969, as amended)

In the Matter of Arbitration between:

CITY OF MIDLAND, MICHIGAN

-and-

MIDLAND FIRE FIGHTERS #1315

MERC 312 Arbitration L82 C-236

Midland, City of

PANEL MEMBERS: HARVEY A. SHAPIRO, Neutral Chairman
CLIFFORD R. MILES, City Delegate
EARLE D. DEGUISE, Union Delegate

REPRESENTING CITY: John J. Rae, Esq. (P-19188)

REPRESENTING UNION: Richard E. Craven, Esq. (P-12323)

Prehearing Conferences: December 6 and 22, 1982

Hearing Dates: February 9, 10, and 11, 1983

Panel Executive Session: May 24, 1983

Opinion and Award Issued: May 27, 1983

BACKGROUND OF THE CASE:

This matter came before a Panel of Arbitrators appointed pursuant to the terms of Act 312 (Public Acts of 1969, as amended) after submission of a Petition for Arbitration dated September 29, 1982, executed by the Midland Fire Fighters #1315 (hereinafter referred to as the Union). In its letter dated November 15, 1982, the Michigan Employment Relations Bureau appointed Harvey A. Shapiro to serve as the neutral chairman of a Panel of Arbitrators to resolve the dispute. The City of Midland (hereinafter referred to as the City) designated Mr. Clifford R. Miles as its delegate to the Panel and the Union selected Mr. Earle D. DeGuise as its representative. So constituted, the Panel met with the parties in a prehearing conference on December 6, 1982. A second prehearing conference was held on December 22, 1982. The Panel tried, unsuccessfully, to mediate some of the issues that the parties planned to arbitrate which were nine (9) in number. When no progress was achieved during this Panel mediation, a hearing schedule was determined to include the following dates: February 9, 10, and 11, 1983. Admitted into the record there were one Joint exhibit, 25 City exhibits, and 18 Union exhibits. At the close of the hearing, it was agreed that the Last Best Offers of Settlement would be submitted to the Panel Chairman with a postmark no later than February 21, 1983. Further, it was agreed that each party would submit an original and a copy so that the Panel Chairman could send the copy to the other party after receipt of the submissions of both parties. The parties desired to submit Post-hearing Briefs to the Panel after receipt of the hearing record. It was agreed that the Panel Chairman would select a date approximately 30 days after the transcripts were received in full and relate

the deadline for the briefs to the parties. This deadline was set as April 18, 1983, as the last transcript was postmarked March 19, 1983. The parties met in the absence of the Panel and extended this deadline to April 26, 1983. Again, the parties submitted two copies to the Panel Chairman so that a simultaneous transfer between the parties could be assured. In the letter of transmittal for the Post-hearing Briefs, an expected decision date was set as May 27, 1983, in compliance with the thirty day requirement of Public Act 312.

STIPULATED INSTRUCTIONS TO THE PANEL:

The parties jointly stipulated that they waived any time limits under Act 312 that had been passed up to the date of the Hearing. They further stipulated that the duration of the contract would be two years, starting July 1, 1982, and expiring on June 30, 1984. The parties agreed that the Hearing would be limited to the unresolved issues which were enumerated as follows:

Issue 1: Wages, a joint economic issue.

Issue 2: Longevity, a joint economic issue.

Issue 3: Cleaning Allowance, a union economic issue.

Issue 4: Retirement, a union economic issue.

Issue 5: Proration of Sick Leave, a union economic issue.

Issue 6: Health Insurance, a city economic issue.

Issue 7: Deputy Chief Position, a city non-economic issue.

Issue 8: Open Competition, a city non-economic issue.

Issue 9: Act 604 Implementation, a city economic issue.

The parties agreed and stated on the record that all other issues have been satisfactorily adjusted, settled, compromised, or waived.

Another stipulation, by the parties, involved a decision rendered in a grievance arbitration which would change the rate of employee contribution into the retirement plan. While this is not an issue before this Act 312 tribunal, the parties agreed that the date selected by this Panel for the first wage increase under Issue 1, Wages, would also serve as the starting date for the new employee contribution rate. Other facets of the grievance award did not impact on this proceeding, but can be found in the record (February 9, pp. 5-7).

During the course of the proceedings, the parties met and agreed to a resolution of Issues 5 and 8, thereby eliminating the need for an arbitrated award on these issues by this Panel. (To be consistent with the Hearing record, this document will refer to the issue numbers shown above.)

BASIS OF THE FINDINGS:

Section 9 of Public Act 312 specifies a set of eight factors which shall be used by the Panel in making its award on each issue to be decided: " . . .

(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 employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employmnet 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 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."

No testimony was offered by either party concerning subparagraphs (a), (b) or (g). Instead, the majority of the testimony involved subparagraphs (c), (d), (f) and (h); a short mention was made about the cost of living, subparagraph (e). Therefore, the testimony and proofs received on these five factors will be the basis of the Panel's findings, opinions, and order.

The City, in its Post-hearing Brief, appropriately points out that the words "as applicable" appear in Act 312 to mean that the Panel is free to decide the amount of weight it shall attach to each of the factors in rendering its award. This is particularly important in this proceeding because the parties have submitted Last Best Offers of Settlement which are very similar on a number of issues. While forcing the parties to frame their offers this closely was one of the original goals of the construction of Act 312, it tends to render much of the testimony offered to the Panel as moot. Specifically, wage comparisons made with other employee groups under subparagraph (d) have very little meaning when the Panel considers wage offers which differ by only one percent over the two year duration of the award; selecting either party's offer would have no significant effect on the relationship between this employee group vis-a-vis any "comparable" group, irrespective of whose "comparables" the Panel chose as more relevant. This is

definitely not meant to say to the parties that all comparisons offered as proof were considered irrelevant, but to help explain how the Panel weighed the various factors in the manner which will be presented when individual issues are discussed later.

Because both parties expended so much effort in the area of making comparisons, the Panel wishes to make some general observations about the concept of "comparability" as it applies to this proceeding. The Union presented testimony on employee groups which they deemed as comparable because they "share several institutions commonly like Tri-City Airport, Delta College, Saginaw Valley State College, Midland-Saginaw water system, the CETA programs. They are all part of the tri-city area. They are joint ventures." (February 9, pp. 12-13). Further, the Union introduced the notion of Midland being "the northern outpost of an industrial corridor of the east side of the State of Michigan." (February 9, p. 14).

The City, on the other hand, based its determination of the comparable employee organizations on a group of demographic factors which were meant to show that certain cities were similar to Midland because of the number of these demographic factors that fell within a prescribed range around Midland.

The Panel agrees with the City's approach to defining comparable communities but also concurs with the Union objections that the selection of criteria and the application of these criteria were arbitrary. For example, it seems to the Panel that the City's use of Census data as both a unique factor (I) and then as a component used to compute density, a sub-factor (IV-a), appears to give it more weight than, say, department size (V). The objection here is not necessarily that this was done but that no explanation was offered as to why it was done. To similarly illustrate this point, why

was community S.E.V. (IV-e) chosen as a sub-factor instead of a full-fledged factor like 1981 fire property loss (VIII)?

The Panel believes that it is imperative that any scientific analysis of comparables, like the one undertaken by the City, provide lucid explanations as to why specific variables were included and why specific weights were attached to them. Anything less leads to the accusation of arbitrariness, with justification. The Panel applauds the analysis prepared by the City for this proceeding and would hope that it could be improved upon for future use based on the objections which have been raised here.

The Union's approach to selection of comparables was also questioned by the Panel because it was similarly thought to contain fallacious assumptions. Firstly, while geographic proximity is certainly relevant, it is difficult to construct an entire case, or a major portion of one, on this factor alone. It is hard to accept the argument that two cities like Pontiac and Rochester are comparable even though they are in the same county, share the resources of Oakland University and are, in fact, probably closer (in mileage) than Midland and Saginaw; something else must be necessary. Secondly, to point to an award in a prior Act 312 proceeding which supports the Union position on the comparable communities cannot possibly be accepted as applicable evidence by this Panel. The prior award was based on testimony which was not presented to this Panel; only if the hearing record was the same could it be expected that the opinions would agree. The fact is that unless the entire record from the prior proceeding was introduced as evidence in this hearing (something which this Panel Chairman would certainly not permit), accepting the prior award as evidence would be an irresponsible action on the part of this Panel.

Lastly, as the City points out in its Post-hearing Brief, the Union determination of its comparables was based, at least in part, on the fact that these same comparables have been used in the past. This seems a rather weak argument.

These comments about comparables have not been intended to criticize the presentations of the parties but rather to help them in understanding the Panel's reasoning in making its awards on specific issues as well as to assist (hopefully) in the preparation of evidence and testimony for future Act 312 proceedings.

FINDINGS, OPINIONS AND ORDER:

Public Act 312 provides for an award on each individual issue based on the testimony presented on that issue. For that reason, each issue will be discussed below separately and the Panel will render a decision within each of these sections.

An exception will be the first three issues: Wages, Longevity and Cleaning Allowance. The testimony and the Last Best Offers of Settlement clearly demonstrate to the Panel the intent of the parties to have both the Longevity schedule increase and the Cleaning Allowance increase in the new contract at the same percentage increase, in each year, as the Wage increase. Therefore, to preserve the integrity of the positions of the parties, an opinion will be rendered which will select the offer of one party on Issues 1, 2 and 3 together.

WAGES, LONGEVITY AND CLEANING ALLOWANCE (Issues 1, 2 and 3):

These three issues exemplify the previous Panel comments in regard to the closeness of the Last Best Offers of Settlement in this matter. The City position is that the award on these three issues should be as follows:

(a) A 4% increase effective January 3, 1983.

(b) A 4% increase effective July 1, 1983.

The Union position is:

(a) A 5% increase effective July 1, 1982.

(b) A 4% increase effective July 1, 1983.

It is clear that the parties agree completely on the amount and effective date of the increase for 1983-84. However, the disparity in the first year offers is magnified by the difference in the starting date. While the salary bases which the parties propose would result in only a one percent (1%) difference in the salary tables for 1982-83, the difference in implementation dates would mean that the effect on the employee's earnings for the contract year would differ by more than this percentage. In fact, the City's offer would yield an earned increase of 2% over the prior year's earnings while the Union's offer would yield 5%. This disparity between the stated contract amounts and the actually earned amounts does not apply to the issues of Longevity and Cleaning Allowance because these benefits are paid to the employees as a specified amount which is not related to actual earnings.

In the City's presentation on wages, the emphasis was on the general economic conditions in the Midland area and the wage settlements that have been achieved with the other City bargaining units. The Union's case was argued mostly as rebuttal to the City's presentation, and to justify their offer, they stated that it was "very modest."

The Panel believes that its determination of Issues 1, 2 and 3 must take into account all of the people who will be impacted by the decision, in accordance with factors (c) and (h) of Section 9 of Act 312, and that the testimony on these factors must be weighted heavily. Through a series of credible witnesses, the City provided a great deal of testimony on the economic climate of Midland. The consensus, which was not disputed by the Union, was that economic times have been bad although there were differing opinions about the outlook for the future. With specific regard to factor (c), the interests and welfare of the public, testimony was provided that the City was trying to "hold the line" on the budget even if additional millage was raised. It was deemed impressive by the Panel that this "belt-tightening" was achieved without depriving anyone of employment (February 11 [B], pp. 171-2). Equally impressive was the information provided to the Panel via City Exhibit 2 and related testimony (February 10, pp. 68-75) that 203 of the other 316 city employees have contracts which provide, essentially, the same wage increase for 1982-83 as is being offered to the Fire Fighters.

In Union Exhibit 13, the Union points out that an analysis of City Exhibit 7 indicates that the 1982-83 wage increases for the City's "comparable" communities ranged from 5.0% to 16.2%. It was important for the Panel to recognize, however, that the wage increases in these other communities were just a part of a compensation increase, the remainder of which was unknown. The City offered a witness whose undisputed testimony was that there would be a 2.9% cost increase for the retirement plan change, no matter whose position was selected by the Panel. Also, there will be increases in Longevity and Cleaning Allowances. Should these costs be added to the wage increase to make a useful comparison? The point here is that all of these cost components must be used in arriving at a decision, as per factor (f) of Act 312.

From the information provided to the Panel, it appears that offering a mid-year wage increase to provide a short-term financial saving to the City is a reasonable proposal. Further, it is the opinion of the Panel that the percentage increases offered by the City are appropriate in view of the economy of the City and surrounding area. It is, therefore, the order of this Panel that the Last Best Offer of the City be implemented on the issues of Wages, Longevity and Cleaning Allowance.

RETIREMENT (Issue 4):

The position of both the City and the Union is that the retirement plan of the Fire Fighters should be improved. The amount of the improvement is, likewise, not in dispute as both parties agree that the Final Average Compensation should be based on the employee's highest 3 (three) years out of the last 10 (ten) instead of the current program which averages the best 5 (five) years. In dispute is the implementation date of the new program; the Union desires a July 1, 1982, starting date and the City would like July 1, 1983.

As mentioned before, the City provided testimony that the cost of implementing this additional retirement benefit is 2.9% of payroll. In fact, on City Exhibit 13, the City has added this new cost to their current contribution for the purpose of comparing the City's retirement cost to its chosen comparables. If this new contribution rate is compared to the information shown on Union Exhibit 6, it can be seen that Midland will rank between Bay City (at 23.0%) and Saginaw (at 27.9%), the Union comparable cities. While the pension benefit computation for Bay City and Saginaw is unknown, the City presented evidence, again on City Exhibit 13, that Monroe

already affords its employees the highest 3 of 10 while the remainder of the City's comparable communities have some variation of 5 out of 10. A comparison to the information from private industry is not possible on this issue.

The opinion of the Panel is that there is no reason why the employees should not get the benefit of this retirement improvement on the effective date which the Union has requested. Both parties agree that a more favorable formula should be implemented and it is the experience of the Panel members that, over the long-term, the total cost of this improvement should not be significantly affected by the starting date, whereas a delay could preclude employees who where planning to retire prior to July 1, 1983, from receiving the improvement. It is, therefore, the order of this Panel that the Last Best Offer of the Union be implemented on the issue of Retirement.

HEALTH INSURANCE (Issue 6):

The City proposal would impose a limitation on the amount the City would pay for health insurance. If the insurance rate was set by the vendor at an amount that exceeded this limit, the additional cost would be borne by the employees. The Union position is that the current plan, which does not limit the City's payment, should be continued.

The testimony on this issue demonstrated to the Panel that the employees do have a good health insurance plan. The only problem which was pointed out is that of unknown future costs. In fact, a City witness testified that the rates were increased by 41% in one year (February 11 [B], P. 84). While increases of this magnitude are difficult for the City to cope with, it is the feeling of the Panel that the employees would also have difficulty paying the

overage. Further, it is clear from the record, that no organization cited by either party as "comparable" has implemented such a cap as the City has proposed.

It is, therefore, the order of this Panel that the Last Best Offer of the Union be accepted and no cap be implemented in the health insurance.

DEPUTY CHIEF POSITION (Issue 7):

The City has decided to add a new position of Deputy Chief of the Fire Department. The City feels tht the new Deputy Chief position should be excluded from the bargaining unit, while the Union does not agree with this exclusion. Both parties have cited Section 13 of Public Act 336 (1947, as amended) in their attempt to pursuade the Panel of the appropriateness of their proposals on this non-economic issue.

No exhibits were presented on this issue which would have given guidance to that Panel as to how other municipalities handle their Deputy Chiefs. Instead, the testimony of the Fire Chief (February 11 [B], pp. 108-120) provided the information concerning the duties and responsibilities of the Deputy Chief as well as some information about the Fire Department in Lansing, where the Chief was employed prior to his appointment in Midland. Testimony was also provided by a Fire employee in regard to the chain of command in the absence of the Chief (February 11 [B], pp. 111-2).

There is no question that it is a common occurrence in a Fire Department to have supervisory personnel in the same bargaining unit as the rest of the employees. Further, it is clear from the Chief's testimony that there has never been a breach of the confidence he has placed in a particular bargaining unit member who has acted as his office helper for over ten years. The City's

argument, citing Act 336, about excluding supervisory personnel from the bargaining unit seems unproven by fact.

It is, therefore, the order of this Panel that the new position of Deputy Chief of the Fire Department be in the bargaining unit. Article 1, Paragraph 1 in Joint Exhibit 1, the expired Agreement, now includes all employees except the Fire Chief and it is the intent of the Panel that this language not be changed.

ACT 604 IMPLEMENTATION (Issue 9):

Act 604 was an amendment to the Michigan minimum wage and hour law, and it specified a basic workweek for Fire Fighters which conflicted with the scheduling practices of most municipalities. In its attempt to comply with this amendment, the City implemented a program whereby each employee received 57 hours of pay for 56 hours of work (Union Exhibit 18, Attachment "A"). The Union position is that this practice should continue. The City, however, argues that it has since learned that other communities use a different formulation for compliance with Act 604 which results in a much lower cost than Midland is experiencing (February 11 [B], pp. 137-8 and p. 149). They further argue that City Exhibit 3 demonstrates that the lower cost formulation is used in cities that the Union has cited as comparable. The Union offered no comparisons to dispute this information.

It is the opinion of the Panel that the additional costs incurred by the City to implement Act 604 were not bargained, but were realized solely in their attempt to comply with a change in the law. Further, there has been no evidence placed in the record to indicate that the proposal the City wishes to implement would be in conflict with the amended Michigan wage and hour law.

Therefore, it is the order of this Panel that the City's Last Best Offer of Settlement be accepted. Testimony provided to the Panel indicated that the above-mentioned letter which outlined the old method of Act 604 compliance was included in the contract although it does not seem to appear in Joint Exhibit 1. If it is contained in the expired Agreement, it shall be stricken in the new one. Further, this order does not seem to conflict with Article 11 of the expired Agreement and, therefore, requires no amendment to implement this order.

CONCLUSION:

The Panel commends the parties on their comprehensive presentations and professional behavior throughout the hearing. The spirit of cooperation between the parties was exemplary and the Panel hopes that this spirit can prevail as the parties embark upon implementing this arbitrated Agreement.

Harvey A. Shapiro
Panel Chairman

Clifford R. Miles
City Delegate

Earle D. DeGuise
Union Delegate

SUMMARY OF AWARD

MERC 312 Arbitration L82 C-236

| Issue | Position Awarded | City | | Union | |
|---|---|---|---|---|---|
| | | Concur | Dissent | Concur | Dissent |
| #1 - Wages | City | C.R.M. | | | |
| #2 - Longevity | City | C.R.M. | | | |
| #3 - Cleaning Allowance | City | C.R.M. | | | |
| #4 - Retirement | Union | | C.R.M. | | |
| #6 - Health Insurance | Union | | C.R.M. | | |
| #7 - Deputy Chief | Union | | C.R.M. | | |
| #9 - Act 604 Implementation | City | C.R.M. | | | |