State of Michigan

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The Clemens, City of

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| Compulsory Arbitration between<br>City of Mt. Clemens, Michigan<br>-and-<br>Mt. Clemens Fire Fighters Association Local 838, I.A.F.F. | Arbitration pursuant to Act 312, Public Acts of 1969, as amended |

3/26/76

## Preliminary Statement

This arbitration proceeding has been conducted pursuant to Act No. 312, Michigan Public Acts of 1969, as amended, and by agreement of the parties.

In the negotiations leading to the current collective bargaining agreement (July 1, 1975 to June 30, 1976), the parties were unable to resolve the question of residency. The parties agreed to submit this question to compulsory arbitration under Act 312. This agreement is set forth under Article XXV, B of the collective bargaining agreement and reads:

> "The parties further acknowledge, however, that the issue of residency ("Residency" shall be defined as that location which is the center of the employee's domestic life) has not been resolved by this contract and further acknowledge that said issue shall be presented to compulsory arbitration under Act 312, Public Acts of 1969, and when decided, shall be added to this agreement."

On August 26, 1975, Mr. Robert G. Howlett, Chairman of the Michigan Employment Relations Commission, designated Dallas L. Jones to serve as the Impartial Chairman in this matter. The other members of the Arbitration Panel were Mr. Clifford Fanning (Union Delegate) and Mr. Charles Beer (City Delegate).



Hearings were held in this matter on November 6, 1975, December 2, 1975, and December 22, 1975. On November 6, 1975 the Impartial Chairman was given a guided tour of the City of

Jones, Dallas L.

Mount Clemens. A verbatum transcript of the proceedings was made. Ms. Eileen Nowikowski of the firm of Marston, Sachs, Nunn, Kates, Kadushin and O'Hare appeared for the Union. Mr. Kenneth E. Scherer of the firm of Daner, Freeman, McKenzie and Matthews appeared for the City. The Arbitration Panel also held executive sessions on March 3 and March 24, 1976.

The record in this matter, in addition to the verbatum transcript, consists of one Joint Exhibit, 38 Union Exhibits, and 18 City Exhibits. The parties also submitted post hearing briefs.

The Union urged at the hearing on November 6, 1975 that the question of residency was an economic issue. At the conclusion of the hearing on December 22, 1975, the Arbitration Panel unanimously concluded that the issue was non-economic and, therefore, not subject to the last best offer under Section 8 of Act 312.

This Opinion has been written by the Chairman of the Arbitration Panel. Concurrence by either member of the Panel in the Award does not necessarily indicate agreement with everything stated in this Opinion.

## Opinion

### Background Facts:

The City has had a residency requirement for at least 26 years. The present personnel rule, adopted by the City Council in 1956, reads:

> "Employees in a competitive service need not be residents of the City of Mount Clemens at the time of appointment, but shall establish residence within the City within one year after appointment and shall maintain such residence during employment by the City. Employees in the competitive

service not residing within the City at the time of adoption of these rules shall establish residence within six months and shall maintain such residence during employment by the City. The City Commission may make exceptions to the residence requirements for good and sufficient reason."

Thus, Fire Fighters are not required to be residents of the City as a condition of employment at the time they are hired, but they are required to establish residency within the City within one year from the date they are employed.

The City's Fire Department consists of 23 men, including the Chief, who man the City's one fire station. The collective bargaining agreement requires that there will be a minimum of five men on duty at the fire station at all times. If the number of men on duty falls below five as a result of vacations, illness, etc., additional men are called to work in accordance with Article XV, Section 3. This section reads:

"Section 3. Overtime Pay. Whenever an employee works in excess of his regularly assigned work week or work schedule as provided for in Article VII, Section 1, he shall receive pay in the sum of one and one-half (1-½) times his regular hourly rate for each hour or portion thereof worked.

"3a. When a firefighting unit is depleted below five (5) men on duty, overtime fill-in will be equalized between the off-duty men. Such equalization shall occur between officers and firefighters separately. Officers are considered to be Captains, Lieutenants and Sergeants. Fill-in men shall work no more than twelve (12) hour shifts. As each man accepts overtime fill-in, he will be credited in the overtime roster for the time worked; the form of such roster is attached and marked Exhibit "C".

"Any man called to fill-in overtime who fails to show for any reason shall be immediately credited with twelve (12) hours overtime provided the employees then on sick leave or vacation shall not be considered failure to be available. The equalization set forth above shall be undertaken starting on July 1, 1971. So long as the equalization herein occurs within reasonable limits there shall be no violation of this section."

When an alarm is sounded, one or two trucks are dispatched to the scene of the fire depending upon the nature of the alarm; usually, one truck is dispatched unless the information received indicates that a serious fire is in progress or has the potential to become one. When the officer in charge of the truck arrives at the scene of the fire, he determines whether or not the equipment and men can respond to another fire if it occurs. If the officer in charge determines that this cannot be done, he notifies the fire station that his equipment is out of service and a "still alarm" is activated. If at this point the manpower at the fire station has fallen below five men, off-duty firemen are called back to increase the compliment to the minimum required. Such call backs are made by telephone. Call backs for this purpose are provided for in Section 4 of the Agreement. This section reads:

"Section 4. Call Back.

"a. Upon arrival of one fire company at the scene of a fire, or immediately upon dispatching two (2) fire companies, the Officer-in-Charge will be responsible for initiating of procedures to maintain the five-man shift complement. Those called back will be compensated at one and one-half (1-½) times the regular hourly rate of pay for a minimum of two and one-half (2-½) hours.

"b. When additional men are needed, all regular paid Fire Department men will be called before other manpower is called."

When a general alarm is sounded, an alarm which requires at least a two-truck response, off-duty professional firemen, as well as volunteer firemen, are called in by means of a Plectron system. In this instance, all firemen report to the scene of the fire unless notified by an off-duty captain to report to

the fire station. Prior to 1967, only volunteer firemen were used for general alarms.

Off-duty firemen are not required to be at home to respond to call backs for either still alarms or general alarms. While there is some dispute as to whether a fire fighter must respond to a call back if he is contacted at home, the Union contends that it is not mandatory for a fireman to respond. However, firemen feel a personal obligation to respond when they are able to do so.

The Mount Clemens Fire Department is a member of a mutual aid pact, which includes the fire departments of surrounding townships and cities. The purpose of such a pact is to enable a particular fire department to call upon other fire departments when the capability of that fire department is inadequate to deal with the situation. Thus, the Mount Clemens Fire Department can call other fire departments for assistance and the Mount Clemens Fire Department must respond to calls for assistance from other fire departments when it is able to do so.

Position of the Parties:

The Union's position is that the residency rule should be abolished or relaxed. Thus, the Union urges that there should be open residency with restrictions on call backs which would give fire fighters living within the city limits of Mount Clemens first opportunity to respond to call backs and to over-time fill-in requests. Alternatively, the residency requirement should be relaxed to permit firefighters to reside within a 15 to 20 mile radius of the center of Mount Clemens and/or within 30 minutes driving time from the center of Mount Clemens.

In support of its position, the Union advances the following arguments:

1. There is a lack of housing within the city which meets the needs and desires of fire fighters at prices they can afford. The city encompasses only 2.2 square miles and much of the desirable housing within the city limits is at least 25 years old. Moreover, within the price range of a newly hired fire fighter ($25,000 - $35,000), there are very few brick ranch houses with three bedrooms, no lake front or canal front lots or homes, and no housing or lots which would permit the raising of animals. The Union points to the testimony of two fire fighters in regard to the difficulties they encountered in locating desirable housing. On the other hand, there is an ample supply of suitable housing within a 15 to 20 mile radius of Mount Clemens.

2. The rate of serious crimes in Mount Clemens is higher than in the City of Detroit. At least one-third of the bargaining unit members were the victims of criminal activity within the past three years. A fire fighter who has to be away from home for extended periods should not be forced to place his family in needless jeopardy by restricting his residency to Mount Clemens.

3. The City is bisected and is in close proximity to several major thoroughfares. Proximity to major thoroughfares is often more important in terms of travel time to work than actual residence in the city. Thus, a fire fighter living near I-94 may have less difficulty traveling to work during a snow storm than one who lives on a residential street which has low priority for snow removal.

4. The residency rule has not been consistently enforced. The Union points out that at the time of the hearings in this matter, 13 City employees lived outside the city limits. Currently, all fire fighters live within the city limits. It is discriminatory, if not unconstitutional, to require a residency rule for some but not all City employees unless a rational basis for such distinction can be shown. The Union urges that evidence for such a distinction has not been demonstrated.

5. Abolishment or relaxation of the residency rule would not affect the efficient operation of the fire department. The Union notes, first, that the City has produced no evidence to indicate that those fire fighters who lived outside the city in the past were unable to effectively perform their tasks both in regard to regular duty and call backs. Second, there is no minimum response time in which a fire fighter must respond to either a general alarm or a call back. Moreover, the parties agree that the most important time in dealing with a fire is during the first few minutes after arrival at the fire scene. Third, a fire fighter's decision to respond to a call back is a voluntary decision and not a mandatory one. Indeed, a mandatory system of call backs, except in certain specified situations, would be in violation of Public Act 125 as amended. Fourth, the City can rely upon mutual aid assistance if needed.

6. Many comparable cities in the tri-county area have abolished or relaxed their residency rules without any ill-effects upon the operation of their fire departments.

7. The center of many bargaining unit members' social, economic and recreational activities are outside the city. Bargaining unit members attend church outside the city, they

shop outside the city, and their children attend school outside the city. Therefore, when it cannot be demonstrated that abolishment or relaxation of the residency rule will adversely affect the operation of the fire department, fire fighters should be given freedom to live where they choose.

8. The Mount Clemens Fire Department has responsibilities which are in effect county wide. Therefore, it is unfair to restrict their residence to one city within the county.

In support of its arguments, the Union cites several arbitration and court decisions.

The City's position is that "the Union has not produced such competent material and substantial evidence as is necessary to support its contention that a continuation of the residency requirement is unjustified;" instead, the evidence presented fully justifies the continuation of that rule. In support of its position, the City advances the following arguments:

1. The evidence indicates that there is an adequate supply of housing within the City. Moreover, this housing is of a type and nature suitable to meet the needs of fire fighters.

2. The residency rule is a long standing rule which has been uniformly enforced against all employees except during the period of time when the legality of the rule was being contested in the Macomb County Circuit Court and while this arbitration proceeding was pending.

3. Fire fighters had full knowledge of the residency rule at the time they were hired and voluntarily accepted it as a condition of employment.

4. The right of fire fighters to live where and as they please must be subordinated to the City's needs to protect life

and property. The City urges that the residency requirement is necessary for the effective operation of the fire department. The City notes that there are a large number of old buildings and other structures within the City of Mount Clemens which increase the probability of general alarms - a situation which the City urges is unique to Mount Clemens within Macomb County. If fire fighters are required to live within the city, the time required to respond to a general alarm - as well as a still alarm- is lessened. The City points to the fact that from December 1974 through October 1975, 289 off-duty firemen were called back to the scene of a fire (general alarm) or to the fire station (still alarm).

5. Fire fighters have received through collective bargaining "advantages of a miniumum call-back rule and mandatory rotation of overtime among full-time employees and the concurrent right of responding to all still and general alarms." The City urges that a corresponding obligation is to be available to fight fires in the shortest possible time. A residency rule insures that this duty will be met.

6. A residency rule promotes the interest of employees in city affairs.

In support of its position, the City has cited certain arbitration and court cases.

Discussion:

I

In reaching a decision in this matter, the Panel has been guided by, and has taken its authority from, the applicable paragraphs of Section 9 of Act 312. The applicable paragraphs are: (a), (c), (d), (f), and (h).

It should be emphasized that this is an "interest" arbitration and not a "rights" arbitration. There is a significant difference between them; the former is a substitute for collective bargaining. The Panel, as noted above, must be guided by the applicable criteria set forth in Section 9. Moreover, while the Act specifically states that "technical rules of evidence shall not apply," the Act does require that a decision be based upon "competent, material and substantial evidence on the whole record." The Chairman believes that two of the important points to be gleaned from this language are: (1) the decision must rest solely upon the basis of evidence contained in the record; and (2) the moving party bears the burden of persuading (as distinguished from a burden of proof) the Panel that the objective sought is justified in terms of the evidence presented.

Finally, it should be noted that the Panel has authority to decide only one issue - that of residency. Inasmuch as the Panel ruled that this is a non-economic issue, the Panel does have some discretion in the fashioning of an Award. However, it is clear that in reaching a decision in this matter, the Panel cannot nullify or modify the existing terms of the collective bargaining agreement.

II

Some of the arguments advanced by the parties to support their respective positions do not carry great weight. The fact, for example, that the City has had a residency rule for many years and that employees were fully aware of it when they were hired, does not in itself provide a compelling reason for the continuance of that rule. Until recent years employees had only

limited grounds upon which to challenge such a rule. Similarly, the facts that Mount Clemens is the county seat of Macomb County, that county buildings are located in Mount Clemens, and that the Mount Clemens Fire Department is a member of a mutual aid pact which embraces much (if not all) of the county do not lead to a finding that the duties of Mount Clemens fire fighters are county wide.

It would seem that a decision in this matter must turn upon the following: (1) the availability of housing suitable to meet the needs of firefighters; (2) the effect of abolishing or relaxing the residency rule upon the efficient operation of the fire department; and (3) the alleged discriminatory impact of the residency rule upon fire fighters.

While the questions of adequacy of housing and efficient operation of the fire department are separate items, they are, nevertheless, often intertwined. This statement is supported by a reading of the arbitration cases cited by the parties. In each case in which the arbitrator found there was inadequate housing, the arbitrator also found that relaxation of the residency rule would not affect the efficient operation of the department. [Edwards, City of Inkster and Inkster Police Officers' Association; and Herman, City of Bay City and Bay City Fire Fighters' Union] Indeed, Arbitrator Edwards in the Inkster case and Arbitrator Roumell in City of Harper Woods and Teamsters State, County and Municipal Workers, Local 214 found that relaxation of the residency rule would increase efficiency. On the other hand, where efficiency of the department is at stake, there appears to be more reluctance to give the concept of

suitable available housing the scope accorded to it when this consideration is not present. [See and compare Edwards, City of Warren and Warren Fire Fighters Association, Local 1383 with the same arbitrator's decision in the Inkster case.]

This does not mean, however, that the question of adequate suitable housing cannot be separated from the question of efficiency. If the housing situation is such that adequate housing cannot be reasonably obtained at prices employees can afford, then it would seem there would be good reason to hold on this basis alone that the residency requirement should be relaxed.

III

(1) The evidence is clear that within the City of Mount Clemens there is not the variety and supply of housing that can be found within a 20 mile radius from the center of the City. Within this 20 mile radius there is seemingly housing which would satisfy the differing personal preferences of all employees, including such preferences as lake front housing, large enough lots to raise horses, etc. at prices which fire fighters can afford. There is also no doubt that there is within this area a greater number of houses at prices which fire fighters can afford than can be found within the city limits. It does not follow, however, that because there is greater availability and variety of houses outside the city, there is a lack of "suitable housing" within the city.

What is "suitable housing" will, of course, differ with individuals. It is doubtful that many cities can provide within their boundaries the variety of housing that will satisfy the individual preferences of all employees, if such preferences

include lake front houses and enough land to raise animals. It seems to the Chairman that the concept of "suitable housing" must be given a more narrow scope. Clearly, however, the concept must include a reasonable variety and quantity of houses in good condition and at prices which fire fighters can afford. There must also be a reasonable number of such houses.

The testimony concerning the availability of housing within the City was provided by two witnesses who are in the real estate business: Ms. Miriam Carroll for the Union and Mr. Francis D'Luge for the City. Their testimony was based largely upon the same source - the Multi-Photo List for Macomb County, published by the Macomb County Board of Realtors. Their testimony was that between October 9, 1975 and November 4, 1975, twenty-one homes were listed for sale within the boundaries of Mount Clemens in the $25,000 to $35,000 range.[1/] Eleven of these homes were less than 25 years old; some of the remaining homes were more than 40 years old.

The above testimony does not take into account the full stock of available houses. An estimated five percent of real estate companies do not subscribe to the multi-list. Nor does the list include houses for sale by the owner.

While it is impossible to determine the exact number of houses which were available in this time period, some help is provided by City Exhibit 10. This exhibit consisted of photographs of some 120 homes, taken just prior to the hearings,

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1. The testimony indicates that the asking price in the $25,000 to $35,000 range averages about four per cent above the actual selling price. Thus, realistically, houses with a list price of $37,000 may be within the price range of fire fighters.

which were visibly displaying "for sale" signs. Although a great many of these homes were clearly "unsuitable" for a variety of reasons, it does indicate that perhaps as few as 50 per cent of the available homes on the market are contained in the multi-list. Moreover, there was considerable variation in the types of houses which were for sale.

Certainly, as the Union contends, the crime rate is also a factor to be considered within the concept of suitable housing. If one uses the statistics provided in the Michigan Uniform Crime Report for 1974 (Union Exhibit #24), Mount Clemens has a higher crime rate in the category of indexed crimes than does the City of Detroit. Some townships adjacent to Mount Clemens also have a lower crime rate than Mount Clemens. The City contends, however, that these statistics can be misleading because of the manner in which they are computed. Thus, the City points to its Exhibit #2. This exhibit indicates that in the months of January through November 1975, Clinton Township, with a population of 48,865, had a total of 827 cases of burglary and breaking and entering. Mount Clemens, with a population of 20,476, had a total of 363. The crime rate ratio for Clinton Township was 2.04 and for Mount Clemens 4.88. While the crime rate for Mount Clemens is more than twice that of Clinton Township when computed under the standards established for the Uniform Crime Report, the crime rate is approximately the same when computed in terms of actual population.

Therefore, these data are open to varying interpretations. On the other hand, the testimony indicates that 8 of the 23 fire fighters have been the victims of some type of criminal

activity in the past three years - a very high number. Yet, in spite of this, there is no indication on the record that the crime rate is an important factor in the fire fighters demand for a relaxation of the residency rule. The testimony indicates, in fact, that only a small number of men would move out of the city if given the opportunity to do so - perhaps two or three. Indeed, it can be argued that because such a small number of men desire to locate outside the City, there is no widespread dissatisfaction with the residency rule.

It seems to the Chairman that the evidence indicates that at the present time the availability of suitable housing for fire fighters is adequate, but marginally so. In other words, while there may be some difficulty in locating suitable housing, it can be accomplished. Obviously, at any given time the supply of a particular type of house may be limited; however, this does not mean that "suitable housing" is unavailable. It should also be noted that fire fighters are given a considerable period of time in which to locate suitable housing after their employment. Standing alone, therefore, it cannot be said that the housing situation in Mount Clemens justifies relaxation of the residency rule at the present time. The Chairman emphasizes the term, present time, because this is subject to change.

(2) The next question is whether abolishment of relaxation of the residency rule will affect the efficient operation of the fire department. This question involves several considerations.

A relaxed residency rule would not cause any great problems

when fire fighters are called for fill-in purposes under Article XV, Section 3(a); that is, for sick leave, vacations, etc. Absences for these purposes are generally known in advance and arrangements for replacing absent fire fighters can also be made in advance. While unexpected absences will certainly occur and replacements will have to be made at the last moment, the Chairman does not view this as an insurmountable problem. Clearly, a fill-in situation is not an emergency. The reasoning assumes, of course, that fire fighters will still be required to live within a reasonable distance of the City.

Call backs which are instituted as a result of still or general alarms represent a much more difficult problem. Given the manner in which the Mount Clemens Fire Department is staffed, response time for call backs becomes an important consideration when a fire occurs. The City has to depend upon call backs in order to insure that life and property will be protected in the event of another fire.

The Union urges that employees living outside the City may in fact be able to respond more quickly to a call back than employees living within the City. This may be true in certain instances, particularly in the event of a general alarm and when the fireman lives outside the City near the scene of the fire. However, as a general proposition, the Chairman finds this contention of doubtful validity.

The testimony of Charles Seehase indicates that the maximum amount of time required to drive from any point in the City to the fire station is five to seven minutes. As City Exhibits 4(a) through (j) indicate, a fireman living only 6 to 8 miles from the city may require 15 to 17 minutes to reach the fire

station. While this may seem like a small tine difference, this difference is important. If a still alarm is sounded at a time when only five men are on duty, the deparment may not be able to respond to another fire until those firmen called back arrive at the fire station. The parties agree that it is essential to respond to an alarm as soon as possible and that the first few minutes after arrival at the scene of the fire are crucial in effectively dealing with it.

The Union also urges that because responding to a call back is voluntary and not mandatory, there is no guarantee that fire fighters will be at home when called, and there is no minimum time in which a fire fighter must respond to a call back, the place of residence is not critical. Clearly, there is no requirement that fire fighters must remain at home when they are off-duty. But if they are at home and are able to respond, they are expected to do so. The testimony indicates that fire fighters also feel a personal obligation to respond under these circumstances. This is as it should be in view of the fact that fire fighters have obtained the contractual right to be called back. Even though there may be no established minimum response time, one would expect that time to be minimal if the fire fighter were at home and able to respond because they understand the necessity of immediate response. While the Union has cited a few instances when fire fighters (seemingly volunteers) did not appear at a general alarm fire until it was extinguished and, nevertheless, were paid for responding, it is not clear whether this was acceptable to the department or was simply a failure of the officer in charge to report the incident.

Moreover, there was no testimony as to the amount of time actually involved in extinguishing the fire.

The Union further claims that during those times when fire fighters have lived outside the city, the department was able to function efficiently. There is no reason to question this testimony even though it was very general in nature. Seemingly, however, at no time did more than two men live outside the city, and their residences were only a short distance outside the city.

It does not follow, however, that because one or two men can live outside the city without undue harm to the operation of the fire department, the same result would be obtained if there were a general relaxation or abolishment of the residency requirement. The Chairman is of the firm belief that response time is important and response time can be minimized by the residency requirement. Although the testimony indicates that at the present time only a few men might actually move outside the City if the residency rule were relaxed, there is no guarantee of this and especially is there no guarantee of what might occur in the future.

It may be feasible, of course, to relax the residency rule and allow fire fighters to live outside the city with restrictions (or elimination) of call back opportunities. Although the Panel has the authority to relax the residency rule, it is questionable whether the Panel has the authority to place restrictions upon call backs without modifying the existing terms of the Agreement.

Mr. Seehase's testimony in regard to call backs for still alarms contains no indication that call backs have to be made

so as to equalize overtime; however, there is no indication that this does not have to be done. Chief Edward Mandel testified, on the other hand, that the agreement requires overtime equalization for call backs. This testimony was not refuted on the record. It is also the position taken by the City in its post-hearing brief.

If the Agreement does require equalization of overtime, then clearly the Panel cannot tamper with that contractual right. A reading of Section 4 does not fully indicate that this is so; nevertheless, the Panel is bound by the evidence in the record. However, Section 4 clearly requires that all regular fire fighters be called before other manpower is used. This means that the Panel cannot remove the right to call backs. Even if one assumes that the Panel has the authority to place restrictions upon that right, it must be kept in mind that the force consists of 22 firefighters, excluding the chief. Of these 22 men, five to seven are on duty. Thus, there are 15 to 17 men who are potentially available for call backs. When one takes into account that some may be on sick leave, some on vacation, some cannot be contacted, and some cannot respond when contacted, the pool of available men can be minimal. Inevitably, it will be necessary to call men who live outside the city with the attendant problems set forth above.

The Chairman has also given careful attention to the comparative data advanced by the parties. The quality of this evidence leaves something to be desired. The number of townships or cities which have eliminated or relaxed their residency rules is not of critical importance. What is important is

whether comparable cities with comparable fire departments operating under similar rules and restraints have eliminated or modified their residency requirements and whether this has affected the efficient operation of the fire departments in those cities.

This point is illustrated by the testimony of Frank Heeney, a fire fighter from Clinton Township. Clinton Township does not have a residency rule. However, the Clinton Township Fire Department consists of some forty men. There are three stations with a minimum of nine men on duty. Thus, there is always back up support when a fire occurs and call backs are infrequently required. Roughly the same situation prevails in Roseville; there are two stations and 40 men.

In view of the above, a majority of the Panel concludes that it cannot abolish or relax the residency requirement and be absolutely certain that the efficient operation of the fire department will not be adversely affected.

(3) The most disturbing aspect of this case is the charge that the residency requirement has been enforced against fire fighters and not against other employees. The Chairman believes that this is the single most important reason underlying the fire fighters discontent with the residency requirement. Certainly, this discontent is understandable.

The evidence indicates that prior to 1971 there was lax enforcement of the residency rule. Some employees failed to move into the city even though they agreed to do so, and still others indicated that they would not move into the city and were employed. While there are reasonable explanations why exceptions

were made in one or two cases, there are not for others. The City admits, for example, that there is no reason why the superintendent of the waste water treatment plant should not have been required to move into the city.

In 1971, the City did initiate steps to require these employees to comply with the residency requirement. Before this action could be completed, a suit was filed in the Macomb County Circuit Court seeking a permanent order restraining the City from prohibiting certain unionized employees from living outside the city. On September 19, 1975 the suit was dismissed following the Michigan Supreme Court's ruling in Detroit Police Officers Association v. the City of Detroit.

The City claims that it suspended attempts to enforce the residency requirement while the suit was pending in the Macomb County Circuit Court. By the time this case was dismissed, the instant arbitration proceeding was pending. The City urges that it is waiting for a decision in this matter before determining its future course of action.

Implicit in the City's contention is that the City will require all employees to live within the city if the residency requirement for fire fighters is upheld. If the Chairman held any doubts that the City did not intend to follow this course of action, his decision here would be different. It would be unfair, and perhaps unconstitutional, to take any other course of action.

The Chairman is also frank to say that if the City does not totally enforce its broad residency requirement and this matter were to come before him again, he would hold for a limited

relaxation of the residency requirement. He believes other arbitrators would take the same course of action.

IV

The majority of the Panel concludes, therefore, that: (1) there is an adequate supply of housing suitable to meet the needs of fire fighters within the boundaries of Mount Clemens at the present time; (2) the residency rule contributes to the efficient operation of the fire department; (3) the data in regard to comparable cities does not provide clear guidance in this matter; and (4) the residency rule will be applied in a non-discriminatory manner. For these reasons, it is the judgment of a majority of the Panel that the existing residency rule covering fire fighters should continue for the remaining term of the current agreement between the City and the Mount Clemens Fire Fighters Union.

Mr. Beer concurs in this Award and Mr. Fanning dissents; however, Mr. Fanning has agreed to sign the Award.

Award

The existing residency rule covering fire fighters shall continue for the remaining term of the current agreement between the City and the Mount Clemens Fire Fighters Union.

Dallas L. Jones
Impartial Chairman

Clifford Fanning
Union Delegate

Charles Beer
City Delegate

Dated: March 26, 1976