

12/8/77  
TRB

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

*Muskegon City of*

In the Matter of Statutory Arbitration between  
City of Muskegon  
-and-

Muskegon Firefighters Association  
Local No. 370

Findings of Fact, Opinion and Award  
Pursuant to Act 312, Public Acts of  
1969 as Amended

Arbitration Panel

S. Eugene Bychinsky, Impartial Chairman  
Darryl R. Cochrane, Esq. Union Appointed  
Member  
Michael M. Knowlton, Esq. City Appointed  
Member

Issued:  
December 8, 1977

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LABOR AND INDUSTRIAL  
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This is a summary of proceedings in Arbitration, pursuant to Act 312 of Public Acts of 1969 as amended. On March 28, 1977, the Michigan Employment Relations Commission appointed S. Eugene Bychinsky as Arbitrator to serve as chairman of a panel of arbitrators in a dispute involving contract negotiations in the above matter. Subsequently, Darryl R. Cochrane, Esq. was appointed by the Union to serve on the Arbitration Panel, and Michael M. Knowlton, Esq. was appointed by the City to serve on the Arbitration Panel.

With the concurrence of all panel members, a hearing date was set for Monday, May 16, 1977. Subsequent to the setting of this date, the City and the Union undertook the renewal of negotiations with the hope of reaching an agreement on the terms of the contract that were in dispute, so, in accordance with Act 312, the hearing was postponed, and the matter remanded back to the parties. After two such 30 day periods in which the parties, in good faith, undertook to negotiate a settlement, on July 11, 1977, the parties advised the panel that those further negotiations did not result in a contract, and requested that a date for an Arbitration Hearing be set. The earliest date that was available to all parties being September 1, 1977, the hearing was scheduled for that date. Just prior to that date, the City and the Union jointly requested a postponement of the hearing and a new date of September 30, 1977, was set.

At the pre-hearing conference, a Joint Submission Agreement was prepared and was submitted to the Arbitration Panel. That Joint Submission Agreement is as follows:

"IN THE MATTER OF THE ARBITRATION  
BETWEEN THE CITY OF MUSKEGON  
AND  
MUSKEGON FIREFIGHTERS LOCAL #370  
Dr. S. Eugene Bychinsky, Arbitrator

JOINT SUBMISSION AGREEMENT

The parties hereto, the City of Muskegon, a Michigan Municipal Corporation, and Muskegon Firefighters Association Local #370, affiliated with the Michigan State Firefighters Association and the International Firefighters Association, herewith submit this statement of the present positions of the respective parties to the Arbitrator, Dr. S. Eugene Bychinsky.

The parties have agreed upon the following:

1. Article XIV - Sick Leave. Paragraph 3 - additional language.

Fifty percent (50%) of any unused accumulated sick leave in excess of 129.8 working days shall be paid by the City to the employee on an annual basis with payments to be made on January 31 of the calendar year next succeeding the accrual.

2. Paragraph 4 - amend as follows:

A day of sick leave shall be cancelled, as used, at the rate of 2.55 days for each day of absence from duty and portion thereof on a strict hourly apportionment basis at the rate of .106 hours for every hour an employee is absent.

3. Paragraph 7 - (second paragraph shall be amended as follows):

Any injury or illness to the employee's spouse, child, stepchild, mother, father, mother-in-law or father-in-law which requires the hospitalization or emergency medical treatment of that individual.

4. New Article - Residency.

Both the City of Muskegon and the Firefighters submitted proposals with regard to residency requirements. The City of Muskegon proposed that all personnel of the Muskegon Fire Department should be required to reside within twelve (12) driving miles of the Central Fire Station.

The Firefighters proposed that there should be no change in residency requirements for present employees, there currently being no residency requirements.

Following negotiations impasse was reached and each side withdrew its residency proposal.

The following are items or areas where negotiations have proceeded, without agreement, to impasse:

1. Wages
2. Cost of Living
3. Life Insurance
4. Hours of Employment
5. Vacation
6. Food Allowance
7. Holiday
8. Pension
9. Clothing Allowance
10. Change of Contract Language
11. Overtime List
12. Bereavement Leave.

The above items are herewith submitted for arbitration before Dr. S. Eugene Bychinsky.

Dated: 8-4-77

Darryl R. Cochrane/s  
Darryl R. Cochrane

Dated: 9-30-77

Michael M. Knowlton/s  
Michael M. Knowlton

On September 30, 1977, a hearing was held and testimony taken. A verbatim record of the proceedings was made, but by agreement of the parties a transcript was not made. Testimony on behalf of the Firefighters, was presented

by Thomas A. Oostring, Secretary of the Firefighters Association, and William J. Rowson, President of the Firefighters Association. The City's testimony was presented by Paul F. Frederick, City Manager, and W. K. Gleason, Assistant City Manager. Full opportunity for examination, cross examination and redirect examination was afforded both parties. Four exhibits were offered as joint exhibits, the Union presented ten exhibits, and the City presented 10 exhibits. By mutual agreement, both parties submitted Post Hearing briefs, which were due to be postmarked not later than October 31, 1977, and were received in accordance with that agreement. There were no reply briefs.

There were no procedural, nor arbitrability issues raised by either party, and all time limits that were extended were in conformance with the restrictions of the statutes.

The exhibits that were submitted were as follows:

Joint Exhibits:

- J-1 Pre-Hearing Brief for the City
- J-2 Pre-Hearing Brief for the Association
- J-3 Contract between the parties entered into effective January 28, 1975.
- J-4 The Joint Submission Agreement dated 9-30-77

Association Exhibits:

- U-1 Schedule of Wages - 1976-77 (stipulated as being factually accurate)
- U-2 Schedule of wage comparisons to the Muskegon Police Department.

- U-3 Firefighters wage summaries for 8 cities.
- U-4 Contract Summary and Contract, Midland Firefighters
- U-5 City of Lansing - Firefighters Contract
- U-6 Contract summary and Contract, City of Flint
- U-7 Contract summary and Contract, City of East Lansing
- U-8 Contract Summary and Contract, City of Bay City
- U-9 City of Kalamazoo - Firefighters Contract
- U-10 Grand Rapids - Firefighters Contract

City Exhibits:

- C-1 1977 Budget - City of Muskegon
- C-2 1978 Budget - City of Muskegon
- C-3 Correspondence - July 23, 1976, City Manager to City Commission
- C-4 Correspondence - July 26, 1977
- C-5 Graph - City of Muskegon General Fund, Revenue and Expenses
- C-6 Graph - Fire Department Budget
- C-7 Graph - Average Cost of Firefighters
- C-8 Graph - Average cost of a secretary, (stipulated as referring to a non-Union person)
- C-9 Chart indicating 9 City comparable data
- C-10 Correspondence - 9-22-77 - Fire Chief Tripp to City Manager

In resolving these individual issues that are identified above, the Arbitration Panel was mindful of the following provisions of Public Act 312. ---

"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 employment of the employees involved in the arbitration proceeding with the wages, 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 hospital 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, or otherwise between the parties, in the public service or in private employment."

There being a proper jurisdiction established for this Arbitration Panel to make a final and binding Award on the issues that were identified in the joint submission agreement dated 9-30-77, the following is that determination.

*City* 1. Wages.

	Current	Last Best City Offer (% inc.)	Last Best Union Offer (%)
Firefighters	13,593	15,000 (10.4%)	15,350 (12.9%)
Lieutenants	15,196	16,800 (10.6%) <i>112</i>	17,080 (12.4)
Captains	16,693	18,300 (9.6%) <i>12</i>	18,788 (12.6%)
Battalion Chiefs	18,009	19,500 (8.3%) <i>130</i>	20,291 (12.7%)
Assistant Chief	18,543	19,950 (7.6%) <i>133</i>	21,305 (14.9%)

The issue with respect to wages is not based on a city position of inability to pay. While the testimony of the City Manager was to the effect that the City budget did not provide for any increase in the firefighters annual wage, he

acknowledged that a "hold back" on a portion of all other City departments expenditures had been ordered, to provide for the outcome of this panel's determination.

Reviewing the data supplied as evidence during the hearing, the following is of significance

To July 1, 1977:

	<u>Full Pay Firefighters</u>	<u>Lieutenant</u>	<u>Captain</u>
Midland	14,670	15,800	16,865
Lansing	15,699	17,063	18,514
Flint	16,340	18,552	21,613
East Lansing	14,884	16,265	17,596
Bay City	15,616	16,499	16,860

The above salaries taken from Union Exhibits U-4, U-6, U-7, and U-8, are not necessarily the precise current salary as it is not unique to provide for quarterly wage adjustments in some proportion to increases in cost of living. It should be noted that both parties have submitted lists of Firefighters salaries for various cities and have, by stipulation, agreed as to the accuracy of the data set forth herein and considered by this panel.

From City Exhibit C-9, is the following data:

(please note the following page for this data)



CITY	ASS'T. CHIEF	CAPT.	LT.	FIRE FIGHTER	ALARM ROOM OPERATOR	C.O.L.A.
Battle Creek*	19,237*	14,452*	13,600*	12,648*	Sep. Class + \$872	No
Bay City*	17,475	16,511	16,120	15,267	No	
E. Lansing *	20,470	17,596	16,265	14,887	Cent. Disp. No	Yes No
Holland	16,074	13,988	12,923	12,326	No	No
Jackson**	24,342	21,069	--	16,365	Sep. Class + 10%	1Yr2Yr3Yr No Yes No
Midland*	18,812 6.46 Hr.	16,598 5.70 Hr.	15,521 5.33 Hr.	14,414 4.95 Hr.	No	No
Muskegon*	18,514	16,664	15,167	13,564	No	Yes
Portage(Med.)	14,666	13,624	--	12,621	Ceta Dispatch	Yes
Port Huron	19,218	17,471	15,883	14,439	No	No

\* In Arbitration

\*\* In Court

A study of this data indicates that the Muskegon Firefighters have maintained a reasonable relationship to other comparably sized cities.

It is particularly noted that the percentage increase that comprises the last best offer of the City is, for the Firefighters, in excess of a 10% increase. It is acknowledged that the resultant amount of the City offer, of \$15,000 per year, still may leave the firefighters slightly under the wages for the police department, but that wage in and of itself can not be considered without consideration of other benefits and differences that exist in the police and firefighters total package. It is for these reasons that the City's last best offer is acknowledged as being the offer that best represents that which will be adopted by this panel.

*Union*  
Cost of Living:

City Last Best Offer

Remove any cost of living provision in the contract.

Union Last Best Offer

Increase the cap from \$.08 to \$.10 per hour

If the salary granted to the Firefighters is to have any real meaning, the changes in the cost of living must be recognized. As the City proposal is to delete the cost of living provisions of the Contract, this panel accepts the Union position, retaining the language as explained in the past Contract, but altering the Cap to become \$.10 per hour more.

*City*  
Alarm Room Operators

It is the basic duty of an alarm room operator to answer the telephone and to dispatch the fire trucks. In each 24 hour shift, 3 men will serve as an alarm room operator, each man taking a shift. The shifts are from 7:00 a.m. until noon; noon till 5:00 p.m. and 5:00 p.m. until 11:00 p.m. The first man will again come on duty at 11:00 p.m. and work until 3:00 a.m. when the second man will take over and work until 7:00 a.m. etc. The shifts are rotated on a 3-day cycle.

It is the duty of the dispatcher to determine what kind of a fire is reported, and then to dispatch the appropriate type of equipment as the circumstances indicate.

However, in determining whether the alarm room operators extra compensation as proposed by the Union, the following factors must be considered.

1. The alarm room operator does not go to fires, he stays in the alarm room.
2. After one year's services, the assignment is given to low seniority employees.
3. While in the alarm room he must stay awake.

No compelling reason for awarding this responsibility extra compensation is recognized. As a matter of fact the awarding of the duty to low seniority members of the department indicates that the duty, while of great importance, does not require the skill that is required of a Firefighter responding to calls. The City position is accepted by this panel.

Life Insurance

City Last Best Offer

Life insurance in amount of \$15,000, or annual wage, whichever is greater.

Union Last Best Offer

Same as City plus \$2,000 paid up life insurance for retirees upon retirement.

The only dispute in this issue relates to the provision of the Union demand for \$2,000 paid up life insurance for retirees. That issue was not presented at the hearing and no comparable data was provided by either side. Accordingly, the demand of the Union must be rejected and the City offer accepted.

Hours of Employment

City Position

New shift for 56 hours per week - 24 on, 48 off  
24 on, 48 off, etc. plus trading within classification.

Union Proposal

Retain old system - 24 on, 24 off, 24 on, 24 off,  
24 on, 96 off.

This issue is not seen as an economic issue as no differences in cost is involved. Further no basis for making the change was forwarded. Nor can the needs of the City be seen to be better served by the City's requested change. The panel can see no justification for effecting the change that the City seeks. The union position is sustained.

Vacation

City Proposal

Limit vacations to 2 men per shift.

Union Position

Maintain current 3 men per 24 hour shift limit.

In this instance, and with reduced personnel, the City's claim of better manning is substantiated. While it is recognized that it may happen that less desirable vacation periods are attainable by the 2 man limitation, proper manning is an important concern for both the City and the Union and the City's position is supported by this panel.

Food Allowance

City's Last Best Offer

Maintain current \$125 per year

Union's Last Best Offer

Increase food allowance to \$200 per year.

Food allowances are a generally recognized item that is pretty universally accorded to firefighters. Despite the fact that it is recognized that if they weren't on a 24 hour duty shift, they would have to eat somewhere, it is also recognized that the costs of eating anywhere other than at home are generally higher than at home. A study of other City allowances, indicates that the \$125 allowance of Muskegon is among the lowest allowance of all cities which provide any allowance. The Union demand is reasonable and is therefore sustained by this panel.

Holiday

City Last Best Offer

Maintain current Holiday schedule

Union Last Best Offer

Add one additional holiday per year.

Firefighters, under the last contract, have nine paid holidays per year. This represents about the average for large Fire Departments in Michigan.

The position of the City is sustained.

Pension

City Last Best Offer

Maintain language of prior Contract

Union Last Best Offer

- (a) Change from 1/60th to 1/50th of final average comp, with 25 year maximum
- (b) Earlier Retirement - to age 50 after 25 years of service.

"By arbitration in 1976 this Panel increased the pension benefits of a Muskegon Firefighter both through disability pension and retirement pension. The pensions enjoyed by the Fire Department are by far the most liberal of any Department within the City of Muskegon. Presently, both the Police Department employees and Public Works employees are substantially behind the Fire Department in terms of pension level of benefits and vesting provisions.

Mr. Eric Schmertz, a permanent umpire for the New York City Fire Department and its Uniformed Firefighters Association, has recently made a comment that applies directly to this issue. He stated that arbitrators charged with determining basic contract terms in the public sector between management and its municipal employees who have come to an impasse have "a new and vast responsibility." He commented that the arbitrator's responsibility is such that he must

"take account of the impact of his decision on the entire City Budget. If he is deciding a fireman's case, for instance, he can't put on the blinders that will relieve him from taking a look at how his ruling will affect the bargaining of other unions in other sectors of the city government. . . he must be concerned constantly with a view to the ruboff, the precedent setting aspects of his decision for the other unions involved." Bureau of National Affairs, Inc., GERR No. 658, 5/14/76.

The quoted City position is supported.  
Clothing Allowance

City's Last Best Offer

- a) Maintain current shoe allowance of \$32.00.
- b) Limit clothing allowance to \$150 per year as in prior contract.

Union Last Best Offer

- a) Shoe allowance - increase to \$40.00 from \$32.00  
per year.
- b) New winter coats for each firefighter at \$45.00  
per coat.

This panel is convinced that the increase in costs of shoes justifies the increase in the shoe allowance to \$40.00 per year.

The evidence introduced at the hearing fully supported this Union position and it is therefore adopted by this panel.

With respect to the winter coat, or jacket proposal, it is noted as being a one time cost, and the limit on the annual cost of clothing will not therefore be increased. Consequently, this panel supports the position of the Union with respect to the one time purchase of winter jackets.

*Union*  
Change of Contract Language - Re. Equalization of Overtime Hours and Posting of Overtime Lists:

City Position

Maintain existing language

Union Position

"Sec. 4.

A roster of all regular employees will be set up by classification. Overtime will be equalized to the fullest extent possible. The shift that doesn't have to work the day following such overtime shall be called first. After a man has worked or refused to work, he goes to the bottom of the list. An up-to-date list will be furnished to the Union after anyone works overtime. Overtime shall be performed on the basis of classification: Chiefs, officers, mechanics and firefighters are to be called in for the position to be filled on the basis of his rank."

Basically, the proposed language changes would require the City to pay for call-in regardless if the situation involved a false alarm or not. Further, the posting of a roster for equalization of overtime is a prevalent practice that tends to

dispel the effect of misinformation in this regard.

The position of the Union is supported by this panel.

Change of Contract Language - Re. Maintenance Duties (Article VII, Sec. 3 and Article VII Sec. 4.

City Position

Maintain current practices and language

Union Position

Alter language to provide the following:

"Article VII, Sec. 4

The building and grounds that are not used by the Fire Department shall not be maintained by Fire Department personnel.

New buildings and grounds shall be completed by the contractors, not by Fire Department personnel. (This shall include new construction on existing buildings.)

Any snow that accumulates to excess along City streets by fire stations and hinders vision shall be removed by City yards equipment and personnel.

The Fire Department trucks shall be greased and oiled by Fire Department mechanics.

Because of the reduction of personnel at Central Station, the automobiles assigned to the Fire Department shall be included in the car wash contract of the Police units."

The argument of the City to the effect that the management rights clause, coupled with a contract procedure that permits work on a project to stop, pending the settling of a grievance, (which in itself is unique) provides for ample protection to the Firefighters from unreasonable assignments. Accordingly, with respect to this demand, the City's position is supported.



Bereavement

City Position

City  
Include Stepmother and Stepfather in Bereavement leave provision, plus 8 hour limit for attendance at non-designated funerals.

Union Position

Same as City, but no change in current language which allows one day pay for non-designated funerals.

The position of the City is supported. The attendance of a firefighter at a funeral of a non-designated person can be accomplished within the 8 hour limit proposed by the City.

Respectfully Submitted

S. Eugene Bychinsky  
S. Eugene Bychinsky

Darryl R. Cochrane, Esq.

Michael M. Knowlton, Esq.