

Arb. 1/7/98

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STATE OF MICHIGAN  
ARBITRATION UNDER ACT 312  
PUBLIC ACTS OF 1969, AS AMENDED  
PETER D. JASON, CHAIRMAN

IN THE MATTER OF THE ARBITRATION BETWEEN:

CITY OF MUSKEGON

-and-

Case No. L96 F-7014

MUSKEGON FIRE FIGHTERS ASSOCIATION  
IAFF LOCAL 370

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COMPULSORY ARBITRATION

Pursuant to Act 312, Michigan Public

Act of 1969, as amended.

OPINION AND AWARD

Arbitration Panel

Peter D. Jason  
Arbitrator

John C. Schrier  
City Delegate

Randall D. Fielstra  
Union Delegate

*Muskegon, City*

## INTRODUCTION

These proceedings were commenced pursuant to Act 312 of Public Acts of 1969 as amended. The arbitration panel is comprised of the chairman Peter D. Jason; City Delegate John C. Schrier, and Union Delegate Randall D. Fielstra.

A prehearing conference was held on December 19, 1996, and the hearing was scheduled for September 3, 1997. This hearing was adjourned to September 17, 1997. The City of Muskegon was represented by John C. Schrier of Parmenter O'Toole. The Firefighters were represented by Randall D. Fielstra. The hearing was concluded on September 17, 1997 and last best offers were submitted on September 29, 1997. The parties then submitted written briefs on November 14, 1997. In all, the record consisted of 148 pages of recorded testimony and 24 exhibits. The panel then met in executive session on December 8, 1997, at the Grand Rapids Bar Association office in Grand Rapids, Michigan.

The parties have agreed that they have settled all their outstanding issues except the three involved in these proceedings. It was also agreed that the three remaining issues are economic and that the award will cover three years beginning January 1, 1996.

Section 8 of Act 312 provides that each economic issue must be decided by selecting the last best offer submitted by one of the parties. The relevant factors to be considered are set forth in Section 9 of the Act as follows:

### 423.239. Basis for findings, opinions, and orders

Sec. 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 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 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.

## **BACKGROUND**

The City of Muskegon is located on the eastern shore of Lake Michigan, and is the County seat for Muskegon County. Its population is approximately 41,000. The Muskegon Firefighters Association is the recognized exclusive bargaining representative for the Firefighters in Muskegon and the Union represents 43 bargaining Union members including the ranks of Firefighter, Fire Lieutenant, Fire Captain, Battalion Chief, Fire Inspector, Fire Marshall, and Fire Mechanic. Most of the bargaining unit members work a 24 hour schedule that averages 54 hours per week. The City has a total of three fire stations, one of which is new. Firefighters are not only engaged in fire suppression and prevention duties, but also respond to medical emergencies. Nineteen of the forty-three bargaining Union members are licensed emergency medical technicians (EMIT), and since 1993 all newly hired Firefighters are required to obtain and maintain an EMT license.

## **COMPARABLE COMMUNITIES**

The parties agreed on the following as comparable: Battle Creek, Bay City, Holland, Jackson, Muskegon Heights, and Norton Shores. In addition, the Union proposed Grand Rapids and Saginaw and the City proposed Kentwood and Wyoming. The chairman has accepted Grand Rapids and Saginaw as comparables and has rejected Kentwood and Wyoming. The reason I have accepted the comparables proposed by the Union is because they have been used as comparable in past arbitration proceedings by agreement of the parties. Absent evidence that these cities have substantially changed, the chairman believes it is important to use consistent comparisons. Also, Kentwood and Wyoming are essentially suburban communities and are not very comparable to Muskegon. Finally, by using the same comparisons it is easier to gage whether a community has lagged behind in wages and benefits. If the comparable communities are changed every time the parties have a dispute, comparisons are less meaningful.

## **ISSUES**

There are three outstanding issues to be resolved by the panel, and they will be decided in the order of their importance.

The panel considered all the factors mentioned in the statute. However, in this case the cost of living was not especially relevant and the parties chose not to submit evidence on this subject. Also, no attempt was made to compare total compensation of firefighters either externally or internally. However, there were extensive comparisons made both internally and externally on the issues involved but in the interest of brevity only the controlling findings were mentioned.

The first issue concerns the pension multiplier.

**UNION'S POSITION:**

**PENSION.** The Union proposes that Article 25 Section 25.3 of the Collective Bargaining Agreement - entitled Retirement Benefits, be modified adding thereto in the text of said section under the pension entitlement the following:

<u>Retirement Date</u>	<u>Factor</u>	<u>Maximum Years of Credited Service</u>	<u>Maximum Pension Amount</u>
Before 07/01/85	2.0%	25 years	70% of Budgeted Firefighter Comp.
Between 07/01/85 and 12/31/89	2.0%	25 years	70% of Budgeted Firefighter Comp.
Between 01/01/87 and 12/31/89	2.0%	35 years	75% of Budgeted Firefighter Comp.
On or after and 01/01/90	2.3%	35 years	75% of Budgeted Firefighter Comp.
On or after and 01/01/93	2.3%	35 years	75% of Member's Final Average Compensation
On or after <u>and 01/01/96</u>	<u>2.5%</u>	<u>32 years</u>	<u>80% of Member's Final Average Compensation</u>

[Underlined portions contain proposed modifications. In all other respects the Union proposes that Article 25 be unchanged.]

**CITY'S POSITION:**

**PENSION MULTIPLIER.** The City of Muskegon proposes no change in the multiplier and adds the following to Section 25.3:

Effective [date of signing of the contract], the City agrees to match employee contributions to the Internal Revenue Code Section 457 (Deferred Compensation) retirement plan on a dollar for dollar basis to a maximum of Five Hundred (\$500) Dollars per employee per year.

The Chairman has selected the union's Last Best Offer on this issue.

This was the crucial issue that separated the parties and both had good reasons for their point of view. Generally, a firefighter's pension is funded by a 6% employee contribution and an employer contribution into an investment vehicle sufficient to pay benefits as they become due. The employer's contribution is calculated by actuaries using an assumption about the performance of the investment. If the investment does well, the employer contributes less and if the investment does poorly, the employer pays more. Union Exhibit I indicates that the City's contributions have steadily declined from rates in excess of 20% of payroll in the mid-1980's, to an estimated 4.03% in fiscal year 1998.

The union argued that in the comparable communities, all provided a 2.5 or more multiplier except Norton Shores and that Muskegon has a lower contribution rate than all comparables but one. With respect to internal comparisons with non-uniform employees, the union pointed out that firefighters do not receive social security benefits and the City is not obligated to pay the social security taxes on their behalf. The union argued that its proposal was justified for these reasons.

The City pointed out that no other City employee has the 2.5% multiplier. In addition, the police command unit recently received an Act 312 award in which their demand for a 2.4 multiplier was denied. The City also argued that most of the external comparables that have a 2.5 multiplier or more also have a higher employee contribution rate. The City admitted that its contribution rate has declined in recent years but noted this was due to the performance of the stock market and cannot be expected to continue indefinitely. Finally, the City noted that this union demand is expensive (3.14% of payroll) and argued that only seven employees would be eligible to benefit during the duration of the agreement. For this reason the City urged the panel to adopt its proposal

to provide for a defined contribution plan which requires the City to match dollar for dollar to a maximum of \$500 per year of employee contributions into an investment that the employee would select. The City argued that this would benefit all employees who chose to contribute.

The Chairman decided to vote for the union's Last Best Offer on this issue because the external comparables are in the union's favor and because the City's alternative was not an equivalent benefit. I was not impressed by the City's argument that its plan was better because it would benefit all employees not just the seven who will be eligible to retire during the term of the contract. Pensions are a form of deferred compensation so it is accurate to find that all bargaining unit employees are immediately benefitted by the union's proposal because they will be relieved of the need to provide this retirement income some other way. This is why it is a relatively expensive proposal. On the other hand, the City's alternative may not benefit everyone because all may not contribute. For this reason and because there is a CAP of \$500, the City's proposal costs less than 1% of payroll. However, the Chairman is sympathetic to the City's philosophy, if not its Last Best Offer. It is eye-opening to review the history of the City's contribution rates. It would seem prudent to adopt a defined contribution rate plan rather than improve one that fluctuates with the vagaries of the stock market. For the long term stability of firefighters and the citizens of Muskegon, the Chairman hopes that the parties will be able to negotiate a plan that will better accommodate both their interests. In the short run, however, this benefit should be improved to the level of that in the comparable communities until a supplemental plan can be worked out.

The next issue concerns EMT pay.

**UNION'S POSITION:**

**EMT COMPENSATION.** The union proposes that Article 8 Section 8.7 of the Collective Bargaining Agreement be modified as follows:

**SECTION 8.7      Emergency Medical Training.** Commencing January 1, 1996, each firefighter who receives and/or maintains Emergency Medical Training licensure will receive as of December 1st of each year, an annual payment of 1% of the salary of a full paid 4 year firefighter provided in the salary schedules hereto attached, for that year. The licensure referred to above must be obtained and/or maintained by July 1st of each year in order to receive payment on December 1st of each year.

All employees hired after January 1, 1992, will be required to obtain an Emergency Medical Technician License by the conclusion of probation and maintain such as a condition of employment. Employees required to be a Emergency Medical Technician licensed shall be entitled to release time to obtain and release time or training pay to maintain such. City shall provide information on times and location of relevant classes and pay for such classes.

[Underlined portions are the proposed modifications to the Collective Bargaining Agreement].

**CITY'S POSITION:**

**EMERGENCY MEDICAL TRAINING PAY.** The City proposes the following contract language:

**SECTION 8.7 EMERGENCY MEDICAL TRAINING.** Each firefighter who receives and/or maintains Emergency Medical Training certification will receive as



of December 1 of each year an annual payment of Two Hundred (\$200) Dollars. Effective January 1, 1996, each firefighter who receives and/or maintains Emergency Medical Training certification will receive, as of December 1 of each year, an annual payment of Three Hundred (\$300) Dollars. The certification referred to above must be obtained and/or maintained by July 1 of each year in order to receive payment on December 1 of each year.

All employees hired after January 1, 1993, will be required to obtain an Emergency Medical Technician license by the conclusion of probation and maintain such as a condition of employment. Employees required to be Emergency Medical Technician licensed shall be entitled to release time to obtain and release time or training pay to maintain such. City shall provide information on times and location of relevant classes and pay for such classes.

The Chairman has selected the City's Last Best Offer on this issue.

The parties Last Best Offers on this issue are virtually identical except that the union offer is expressed as a percentage of the firefighters rate of pay and the City offer is expressed as a dollar amount. This is a traditional benefit granted by the City and historically it has been expressed in dollars not a percentage.

The Chairman has selected the City's Last Best Offer because there has been no compelling evidence that supports a change. Further, the union's proposal would make subsequent adjustments automatic which may not be in either party's best interest if they would rather use those dollars for other purposes.

The last issue concerns the starting pay for new firefighters.

**UNION'S POSITION:**

**STARTING PAY.** The Union proposes that Article 8 - Wages and Exhibit A be modified as follows:

**SECTION 8.1 GENERAL.** The salary schedule for calendar years 1996, 1997, and 1998 is attached hereto as Exhibit A. Exhibit A generally reflects a 4.25% increase in 1996, a 4.0% increase in 1997 and a 4.0% in 1998.

The starting rate of pay for 1996 shall be \$23,452. All salary changes shall be effective on the first full pay period following satisfaction of the condition of the pay increase.

[Actual percentage pay increases for the three years of the contract are not in dispute. Only starting pay is in dispute with respect to wages. The \$23,452 starting pay offer of the Union reflects a 4.25% wage increase added to the scheduled (Exhibit A) starting pay for employees hired after 01/01/93. Underlined portion is Union's last offer.]

**CITY'S POSITION:**

**START RATE.** The City proposes the Salary Schedule reflected in Exhibit A. Section 8.1 will also include the following:

The starting rate of pay for 1996, 1997, and 1998 shall be Twenty-one Thousand (\$21,000) Dollars. Any employee hired after January 1, 1996, and prior to the execution of the 1996-1998 contract, shall not receive a cut in pay, but rather shall be "red circled" until such time as the salary schedule pay rate is equal to or greater

than the amount actually received by the employee.

The Chairman has selected the City's Last Best Offer on this issue primarily for cost reasons. The wages and benefits agreed to by the parties and added to by the panel provide for significant increases. Due to the mechanics of last best offer arbitration, the Chairman has limited flexibility for fine tuning. However, even though I believe this City proposal is ill advised, I will vote for it as a way to defray the cost of other benefits already granted. I believe this proposal is ill advised because firefighters like other employees should be paid on the basis of skill, effort and responsibility. Firefighters hiring into the City of Muskegon arrive with significant education and training which ought to entitle them to wages and benefits closer to those of more experienced firefighters. However, here cost considerations are overriding.

#### **SUMMARY**

**The Chairman's decisions on the issues are as follows:**

#### **PENSION MULTIPLIER**

The Chairman has selected the union's Last Best Offer on this issue.

<b>CITY</b>	<input type="checkbox"/> <b>AGREE</b>	<input type="checkbox"/> <b>DISAGREE</b>
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<b>UNION</b>	<input checked="" type="checkbox"/> <b>AGREE</b>	<input type="checkbox"/> <b>DISAGREE</b>
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CITY	<input type="checkbox"/> AGREE	<input checked="" type="checkbox"/> DISAGREE
UNION	<input type="checkbox"/> AGREE	<input type="checkbox"/> DISAGREE

### EMT TRAINING PAY

The Chairman has selected the City's Last Best Offer on this issue.

CITY ☐ AGREE ☐ DISAGREE

UNION ☐ AGREE ☒ DISAGREE

### START RATE

The Chairman has selected the City's Last Best Offer on this issue.

CITY ☐ AGREE ☐ DISAGREE

UNION ☐ AGREE ☒ DISAGREE

  
Peter D. Jason  
Arbitrator Chairman

John C. Schrier  
City Delegate

  
Randall D. Fielstra  
Union Delegate

DATED: 

**EMT TRAINING PAY**

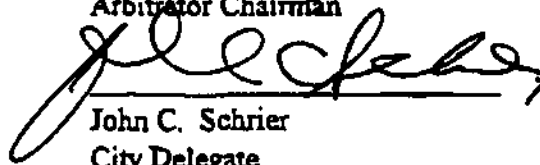
The Chairman has selected the City's Last Best Offer on this issue.

**CITY**☒ **AGREE** ☐ **DISAGREE****UNION**☐ **AGREE** ☐ **DISAGREE****START RATE**

The Chairman has selected the City's Last Best Offer on this issue.

**CITY**☒ **AGREE** ☐ **DISAGREE****UNION**☐ **AGREE** ☐ **DISAGREE**

Peter D. Jason  
Arbitrator Chairman



John C. Schrier  
City Delegate

\_\_\_\_\_  
Randall D. Fielstra  
Union Delegate

**DATED:**1/7/98