

Arb.

9/19/79

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
(MERC Case No. G78 E815)

In the Matter of Statutory Arbitration
Between:

CITY OF MUSKEGON HEIGHTS

and

MUSKEGON HEIGHTS FIREFIGHTERS
ASSOCIATION, LOCAL 615

Muskegon Heights, City of

FINDINGS OF FACT, OPINION AND AWARD

PURSUANT TO ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE
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Arbitration Panel:

Douglas W. Hillman, Chairman
Robert E. Baker, Union Appointed Member
Pompia L. Durrill, City Appointed Member

Issued: September 19, 1979.

On June 30, 1978, the Collective Bargaining Agreement between the City of Muskegon Heights (hereinafter referred to as the "City") and the International Association of Firefighters, Local 615 (hereinafter referred to as the "Union") expired. Negotiations between the parties continued thereafter, but without success. Subsequently, an arbitrator was called in and, although two issues were resolved, the parties were unable to agree on the balance of the contract and, as a result, the Union invoked the jurisdiction of an arbitration panel pursuant to Act 312.

On January 23, 1979, the Michigan Employment Relations Commission appointed Douglas W. Hillman as Arbitrator to serve as Chairman of a panel of arbitrators. Subsequently, Robert E. Baker was appointed by the Union to serve on the panel and Pompia L. Durrill was appointed to the panel by the City.

Initially, the hearing was delayed due to the fact that the City was still in the process of preparing its current budget. However, a pre-hearing conference was held on March 14, 1979; the hearing itself was commenced on June 1 and then adjourned until July 9, at which time the parties rested. Post-hearing briefs were prepared and filed by both parties late in July and the panel itself held a lengthy closed meeting on August 23, 1979.

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

JOINT SUBMISSION AGREEMENT

The parties hereto, the City of Muskegon Heights, a Michigan Municipal Corporation, and Muskegon Heights Fire-Fighters Association, Local No. 615, affiliated with MSFFA and IFFA, herewith submit the following statement of the present position of the parties to be incorporated in the award:

1. The parties have agreed to the language of the 7/1/76 - 6/30/78 contract except as modified by any award on the issues hereafter submitted and as modified by the series of agreements arrived at during mediation and negotiation which are attached hereto.
2. The parties have agreed that the annual food allowance for the term of the contract to be imposed by the arbitration award shall be \$175.00.
3. The following items are submitted for arbitration:
 - a) wages
 - b) cost of living
 - c) longevity
 - d) hospitalization insurance for retirees
 - e) overtime pay
 - f) holiday pay
 - g) sick leave and bereavement leave
 - h) residency
 - i) duration of contract
 - j) retroactivity

At the hearing on June 1, 1979, testimony was received from Steven Hutchison, President of Local 615, Chief Dwayne Wilson of the Muskegon Heights Fire Department, Captain John R. Thompson of the Muskegon Heights Police Department. At the continuation of the hearing on Monday, July 9, 1979, sworn testimony was also taken from John Street, Director of Finance for the City of Muskegon Heights.

During the two-day hearing, 31 exhibits were offered and received and are summarized as follows:

EXHIBIT NO.DESCRIPTION

1	Comparative data - Muskegon Heights Police & Fire Fighters (Graph)
2	Comparative data - Muskegon Heights Police & Fire Fighters (Chart)
3	Comparative data - Norton Fire Fighter & Muskegon Heights Fire Fighter (Graph)
4	Comparative data - Norton Patrolmen & Fire Fighter (Chart)
5	Comparative data - Muskegon Fire Fighter & Muskegon Heights Fire Fighter (Graph)
6	Comparative data - Muskegon Patrolmen & Fire Fighter (Chart)
7	Hourly wages - all city employees
8	Wages for local industry
9(a) & (b)	Fire Fighter wages - Michigan communities
10	Consumer Price Index - 1978, 1979
11	Arbitration Opinion - City of Muskegon
12	Newspaper clipping re gasoline prices
13	Breakdown of 1978 assessment roll
14	Budget data
15	1977 Annual Death and Injury Survey
16	Unresolved issues
17	Arbitration Opinion - Muskegon Heights Police Department
18	Circuit Court Opinion
19	Fruitport contract
20	Fire Fighter roster
21	Settlement summary

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
22	Grand Haven Fire Fighters contract
23	Norton Shores Fire Fighters contract
24	Consumer Price Index - 1977, 1978, 1979
25	Joint Submission Agreement
26	1978 activity summary (Norton Shores)
27	Muskegon Heights Ordinance No. 359
28	Proposed annual budget - City of Muskegon Heights - 1979-80
29	Statement of changes in fund balance - 6/30/76
30	Handwritten computation reflecting cost in dollars
31	Amendment to Joint Mutual Assistance Agreement

In resolving the issues that were presented, 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, the following is that determination:

I.

WAGES

The following chart summarizes the last best offer submitted by the parties as well as the current base wage.

<u>Effective Date</u>	<u>Current Wages</u>	<u>Last Best City Offer</u>	<u>Last Best Union Offer</u>
July 1, 1977	13,640		
July 1, 1978		14,595	15,140
January 1, 1979		15,617	--
July 1, 1979		--	16,390
July 1, 1980		16,866	17,640

It is apparent from the record that the parties were considerably closer on the issue of wages in their "Last Best Offers" than at the bargaining table. The City claims it is currently faced with a serious economic crisis which limits its maneuverability, whereas, the Union points to a newly-created "Municipal Garage Fund" as a source of additional funds. The panel has reviewed carefully the comparable communities evidenced by the exhibits. The City urges as comparables, Grand Haven and suburbs surrounding Muskegon (Norton Shores, Muskegon Township and Fruitport Township). The Union, on the other hand, points to the City of Muskegon as well as Norton Shores. In addition, there was much testimony and discussion in the briefs about the wage disparity between the City's firefighters and the policemen. Without getting into the reasons (if there are any), it appears, historically at least, in the various communities studied that firefighters have traditionally been paid a wage somewhat lower than policemen. Likewise, comparables are not absolute guides since, in fact, no two communities are totally comparable. City of Muskegon, for example, due to its size, number of fire stations, the size of its force, etc., is obviously not a "comparable", despite the fact the expenses for firemen living in each community are undoubtedly comparable. Both parties point to Norton Shores, yet the City's last offer is slightly below the wage scale of Norton Shores and the Union's last offer is slightly higher. (It is the opinion of the panel chairman that had

the City shown the flexibility at the bargaining table that it demonstrated in arbitration, the delay and expense of arbitration might have been avoided.) In any event, based upon the sworn testimony and the exhibits, it appears the City's last best offer amounts to a 7% wage increase retroactive to July 1, 1978; a 7% wage increase effective January 1, 1979; and an 8% wage increase effective July 1, 1980. This keeps the firefighters in the same general historical relationship to that paid Norton Shores firefighters; it is within the ability of the City to pay and it is roughly comparable to other labor settlements in the area. For these reasons, the City's last best offer is acknowledged as being the offer that best represents that which is adopted by this panel.

II.

COST-OF-LIVING ALLOWANCE

The expired contract contained no cost-of-living agreement. Proofs did not establish that such a provision is usual or customary in contracts of other comparable municipal employees. No question increases in the cost of living are a fact of life and of concern to everyone. However, to provide relief in this form to a small number of employees without addressing the problem to the remaining employees of the same employer could create havoc. This is a proper and legitimate area for collective bargaining, which should be consistent with all employees. Based upon the proofs submitted, the panel denies the Union's request for a cost-of-living clause.

III.

DURATION OF CONTRACT AND RETROACTIVITY

Little was said on this issue during the hearing, although from the briefs, it appears the Union is seeking a two-year contract, whereas the City offers a three-year contract. Statutory guidelines are of little help on this issue. Traditionally, on this particular issue, the uncertainty of the economic facts of life must be weighed against the desirability of labor stability and intelligent financial planning by the City. In this case, since the last contract expired July 1, 1978, the parties are already into their second year. It is, therefore, the position of the panel that the contract should be for a term of three years, retroactive, however, to July 1, 1978. However, it is further the opinion of the panel that termination with respect to wages should, likewise, be retroactive to the same date. All other economic changes shall be effective on the date hereof.

IV.

RESIDENCY

This is an obvious non-economic issue. The position of the City is governed by the City of Muskegon Heights Ordinance No. 359. The Circuit Court, Muskegon County, has heretofore ruled that the arbitration panel is not bound by that ordinance. Proof submitted by the Union convinced the panel that a five-mile radius rule would not in any way jeopardize the safety of the Muskegon Heights residents. In addition, the proofs are persuasive that the Union's position

should be sustained on this issue. Consequently, it is the panel's award that all firefighters presently employed by the City of Muskegon Heights (1) may continue to live in their present abode, wherever that may be; (2) that should they move during the term of this contract, they shall live within a radius of five miles of the closest city limit; and (3) new employees in the department shall be bound by the provisions of the City of Muskegon Heights residency ordinance.

V.

LONGEVITY

This was not a contested issue at the time of hearing, nor was it briefed by the Union. The City's proposal has no effect on any current employed firefighters. In view of anticipated future salary increases, the City's proposal is reasonable and the following amendment to the Collective Bargaining Agreement is ordered:

"With respect to employees hired after July 1, 1979, the maximum salary upon which longevity shall be computed shall be \$10,000 per year."

VI.

HOSPITALIZATION

Present contract language obligates the City to pay full premium of firefighters who retire at the age of 65. The program supplements Medicaid insurance to which the employee is entitled at

that age. The Union argues that retirement at age 65 is no longer realistic. Yet, employees who wish to retire at 55 would more than likely seek other employment and more than likely become insured by such other employer. Comparables fail to support the Union's position. The panel denies the Union's request on this issue.

VII.

HOLIDAY PAY

At present, the contract provides for time and one-half for holidays worked. The City's final offer is that the present contract be continued. Firefighters request double-time. Based on all of the data submitted, the panel adopts the Union's position effective July 1, 1979.

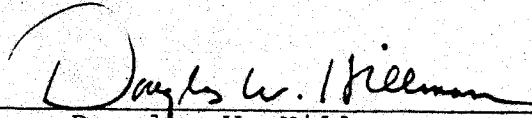
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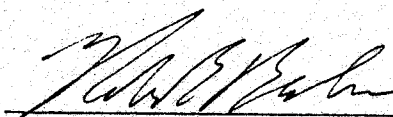
OVERTIME AND CALL BACK PAY

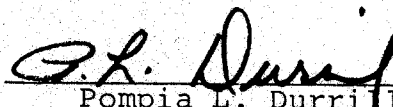
Again, the parties are in disagreement between time and one-half and double-time. On this issue, the panel concurs with the City's final offer that it pay time and one-half for all hours worked by firefighters in excess of 216 hours in a work period of 28 consecutive days. Based on proofs submitted, including exhibits, comparables and sworn testimony, the panel finds the City's proposal consistent with statutory and business policy.

The foregoing Panel Arbitration Findings, Opinions and Awards was written entirely by the panel chairman and represents his personal analysis of the merits of the respective arguments of the parties and his evaluation of the weight of the evidence presented by each of the parties and its witnesses. It is understood that one or the other of the panel members generally disagreed with the chairman and supports the position of his party. Therefore, although the panel's total report bears the signature of all three panel members, and while each order was supported by a majority of the panel members, the total award is not unanimous.

Respectfully submitted,


Douglas W. Hillman

 *Disseents Items*
1-II-III-V-VI-VIII
Robert E. Baker

 *Disseent*
IV, V
Pompia L. Durrill

Dated: September 19, 1979.