

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
ARBITRATION UNDER ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS
COMMISSION
52 JUL 14 PM 3 26

In The Matter of the Arbitration Between

MUSKEGON HEIGHTS FIRE FIGHTERS
ASSOCIATION, LOCAL 615
Union,

-and-

CITY OF MUSKEGON HEIGHTS
Employer.

MERC No. G90 B0103
Opinion and Award

APPEARANCES

FOR THE CITY:

Theodore N. Williams Jr., Esq.

FOR THE UNION:

Darryl R. Cochrane, Esq.

PANEL

Martin L. Kotch
Joseph S. Charlton
Darryl R. Cochrane

Chairperson of Arbitration Panel
City Delegate
Union Delegate

I. INTRODUCTION

This matter comes before this Panel pursuant to Act 312, Public Acts of 1969, as amended, for the purposes of hearing and deciding unresolved issues in the contract dispute between the parties. The preceding collective bargaining agreement expired on June 30, 1991. A petition for arbitration was filed by the Union on April 5, 1990. The petition contained nine unresolved issues. Since that time, one issue, Command Pay, has been withdrawn by the Union. The remaining issues to be resolved through the Act 312 process are:

1. Wages
2. Pension
3. Holidays
4. Bereavement time
5. Vacation time
6. Court time
7. Minimum shift manning
8. Job descriptions

A pre-hearing conference was held in Muskegon Heights on August 13, 1990. At this conference, the parties stipulated to the waiver of all statutory time requirements. The parties agreed that all issues but issue #8, Job Descriptions, were economic issues, and that the duration of the contract to be arrived at was three years. An evidentiary hearing on the matter was held in Muskegon Heights on March 28, 1991, and the Panel met in Muskegon Heights on October 29, 1991.

II. COMPARABLE COMMUNITIES

The City of Muskegon Heights has a population of approximately 13,000. Its fire department currently contains 14 members. The parties have agreed upon the appropriateness of four cities to be used as comparable communities. These are Grand Haven, Cadillac, Coldwater and St. Joseph. The Union has proposed four additional communities to be used as comparables: Norton Shores, Muskegon, Roosevelt Park and Fruitport Township. All of these communities are contiguous, or in close proximity, to Muskegon Heights. All are within the County of Muskegon. Other than contiguity or proximity however, there does not appear to be sufficient similarity in these communities to render them serviceable as comparables. With one exception, and that the much smaller Roosevelt Park, the SEV for these proposed comparables is substantially greater than that of Muskegon Heights, with differences ranging from six to two times greater. Proximity alone cannot outweigh the more critical factor of economic base, and as to that, there is little similarity demonstrated here. As a result, it is determined that the comparable communities relevant to this 312 Arbitration will be those stipulated to by the parties.

III. ISSUES

1. WAGES (APPENDIX "A" - COMPENSATION PLAN)

The parties have entered into a stipulation with respect to wages, as follows:

Year one of the contract:	A wage increase of 2.5%
Year two of the contract:	A wage increase of 3.5%
Year three of the contract:	A wage increase of 3.75%

2. PENSIONS (ARTICLE XXI - RETIREMENT)

The parties have entered into a stipulation with respect to pensions, as follows:

The Final Average Compensation (FAC) for purposes of calculation of pension benefits under the MERS plan currently in effect will move from FAC 5 to FAC 3, effective July 1, 1992.

3. HOLIDAYS (ARTICLE XIII)

Columbus Day is one of the 13 holidays provided for in the last collective bargaining agreement. The City proposes to drop Columbus Day as a holiday, and in its stead make Martin Luther King Jr.'s birthday a holiday. The Union's position is that the King birthday holiday be added, with no commensurate deletion. The City points out that such an exchange has been made with most of the other major city unions, and with some others a tentative agreement to make the switch has been arrived at.

The City has made out a case for the switch in terms of uniformity of municipal holidays. As pertinent is the demographic makeup of the community, and the recognition of Dr. King's birthday by the State of Michigan, all reflecting the public interest in making this exchange. The Union presents no reasons whatsoever for contesting the exchange. The City's position with respect to holidays is adopted.

4. BEREAVEMENT (ARTICLE XV - SICK LEAVE)

The Union proposes that current contract language remain unchanged. That language in essence provides that sick leave may be taken for attendance at the funeral of a close friend or relative. Leave taken for the death of an immediate family member will not, for the first three days, be charged as sick leave. The City proposes no change in the number of days permitted for bereavement leave, but asks that such leave be charged against the accumulated sick leave of the employee.

The Union argues that the City has proffered no reason on the record for making such a change. There is no claim, and no proof of abuse by employees, nor of financial burden placed on the City because of this provision. To the contrary, the impact would be more greatly felt by employees, argues the Union, since they would lose buy back capability for unused sick time. Some City unions do have bereavement time charged against sick leave, others do not. The record is likewise mixed with respect to comparable communities, some charging, others not. In light of the foregoing, there is almost nothing on the record

to support the City's position seeking change, and the position of the Union is hereby adopted.

5. VACATION LEAVE (ARTICLE XIV)

The Union proposes a change in the existing language of the contract. It calls for a removal of one vacation day for lower seniority employees, i.e. with one year or less, and one more vacation day for those with 15 years or more. The result of such a change would be to reduce vacation time for the junior employee to six days, and increase that of the senior employee to 11 days. The present makeup of the unit is such that no junior employee would be affected. The Union argues that in comparison to other City unions, particularly the patrolmen, it is significantly behind in aggregate vacation days.

The City argues that its number of vacation days exceeds that of the comparable communities. This is so, although the disparity between junior and senior employees is greater in the comparable communities than in Muskegon Heights. In view of this substantially equal balance of differences, it falls to the proponent of change in the language of the collective bargaining agreement to carry the burden of persuasion, and the Union has failed to do this. After 15 years of service, the City is still ahead of all the comparable cities in absolute vacation days. Moreover, the present members of the unit have already benefitted from the generous beginning vacation allotment in the present contract.

In view of the foregoing, the position of the City is adopted.

6. COURT TIME

The Union submits a new provision for the collective bargaining agreement relating to payment for court appearances. The proposal may be stated as follows: "An employee shall receive compensation for off-duty court time, paid at a rate of time and one-half, based on a 40 hour week, with a minimum of 2 hours pay. In order to be eligible to receive such compensation, the employee must have appeared in court in response to a subpoena."

The Union points out that as was agreed by the parties at the hearing on this matter, the occasion for such compensation will be rare. Nonetheless, such testimony, argues the Union, is a natural outgrowth of the job, and as such should be compensated. The City concedes that comparable communities grant such compensation, but opposes the proposal because of its economic needs. In light of comparable practice and the rarity with which the City will be faced with this outlay, the position of the Union is adopted.

7. MINIMUM SHIFT MANNING

The Union submits a new provision for the collective bargaining agreement relating to a requirement for minimum manning on each shift. The Union would have the contract require that four employees be on duty at any time. The chief could count toward that four only during his regular day shift hours. An employee could not count toward the four if he were on call.

Union witnesses testified that the fourth person would make a difference in speed and

efficiency with which fires could be addressed; i.e., with a fourth person on the run, there would be no delays waiting for an on call firefighter. Comparable communities do have minimum staffing language in their contracts.

Extended discussion at the hearing, both on and off the record, indicated a good faith concern on the part of both Union and City to provide efficient and safe conditions when responding to a call. It is clear, however, that the unit could be expanded far beyond its present number, and well beyond any reasonable number, in terms of realistic need and the City's ability to pay, and the manning requirement, as the Union has proposed in its Last Best Offer, would often be unable to be met. The effect of this is to make the Union proposal unworkable and entirely cost prohibitive. (Both parties agreed that the anticipated hiring of another firefighter would go far to alleviate the Union's concerns.)

In view of the foregoing, the position of the City, that no new language concerning manning requirement be added to the contract is adopted.

8. JOB DESCRIPTIONS

This is the only non-economic issue presented to the Panel. The parties have stipulated that a Letter of Understanding is to be included as part of the collective bargaining agreement in an Appendix, in the following form:

It is understood and agreed between the parties that job descriptions will not be part of the collective bargaining agreement. The Parties agree that the City, pursuant to Article VI, Management Rights, has the authority to imple-

ment new job descriptions. This will only be done after good faith consultation with the Chief of the Department and with representatives of the bargaining unit.

In the event that after such consultations agreement as to job descriptions cannot be reached between the City and the Union, the City may then implement its own job descriptions. It is understood and agreed that those descriptions will be derived from the descriptions currently in use in the collective bargaining agreements of between the cities of Grand Haven, Cadillac, Coldwater, and St. Joseph and their respective firefighter unions.

ORDER

1. WAGES (APPENDIX "A" - COMPENSATION PLAN)

Year one of the contract:	A wage increase of 2.5%
Year two of the contract:	A wage increase of 3.5%
Year three of the contract:	A wage increase of 3.75%

Darryl R. Cochrane - Union Delegate Concur X

Joseph S. Charlton - City Delegate Concur X

2. PENSIONS (ARTICLE XXI - RETIREMENT)

The Final Average Compensation (FAC) for purposes of calculation of pension benefits under the MERS plan currently in effect will move from FAC 5 to FAC 3, effective July 1, 1992.

Darryl R. Cochrane - Union Delegate Concur X

Joseph S. Charlton - City Delegate Concur X

3. HOLIDAYS (ARTICLE XIII)

The position of the City is adopted.

Darryl R. Cochrane - Union Delegate Concur _____ Dissent X

Joseph S. Charlton - City Delegate Concur X Dissent _____

4. BEREAVEMENT (ARTICLE XV - SICK LEAVE)

The position of the Union is adopted.

Darryl R. Cochrane - Union Delegate Concur X Dissent _____

Joseph S. Charlton - City Delegate Concur _____ Dissent X

5. VACATION LEAVE (ARTICLE XIV)

The position of the City is adopted.

Darryl R. Cochrane - Union Delegate Concur _____ Dissent X

Joseph S. Charlton - City Delegate Concur X Dissent _____

6. COURT TIME

The position of the Union is adopted.

Darryl R. Cochrane - Union Delegate Concur X Dissent _____

Joseph S. Charlton - City Delegate Concur _____ Dissent X

7. MINIMUM SHIFT MANNING

The position of the City is adopted.

Darryl R. Cochrane - Union Delegate Concur _____ Dissent X

Joseph S. Charlton - City Delegate Concur X Dissent _____

8. JOB DESCRIPTIONS

The parties have stipulated that a Letter of Understanding is to be included as part of the collective bargaining agreement in an Appendix, in the following form:

It is understood and agreed between the parties that job descriptions will not be part of the collective bargaining agreement. The Parties agree that the City, pursuant to Article VI, Management Rights, has the authority to implement new job descriptions. This will only be done after good faith consultation with the Chief of the Department and with representatives of the bargaining unit.

In the event that after such consultations agreement as to job descriptions cannot be reached between the City and the Union, the City may then implement its own job descriptions. It is understood and agreed that those descriptions will be derived from the descriptions currently in use in the collective bargaining agreements of between the cities of Grand Haven, Cadillac, Coldwater, and St. Joseph and their respective firefighter unions.

Darryl R. Cochrane - Union Delegate Concur X

Joseph S. Charlton - City Delegate Concur X

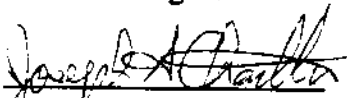
In addition to the foregoing, the parties have requested that items previously agreed upon be included in this Award and made part of the Panel's Order.

- a. The Agreement shall be retroactive to July 1, 1989.
- b. The Agreement shall be for a term of three years, with an expiration date of June 30, 1992.
- c. Food allowance will be increased from \$175 to \$225.
- d. Clothing allowance will be increased. The increase will be \$300 the first year, \$325 the second year and \$350 the third year.
- e. Life insurance will now be \$20,000 per employee.
- f. New hires may be brought in at a lesser amount than current entry wage level, but they must be brought to scale within 48 months.
- g. A new tuition plan has been adopted.
- h. City will extend dental and optical coverage to the Union, coverage to be the same as other units who have this coverage.
- i. Firefighters will be eligible for free hepatitis inoculations, with the manner of delivery to be determined by the City.

December 9, 1991

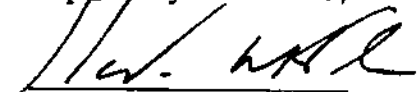
 2-7-92

Darryl R. Cochrane
Union Delegate



Joseph S. Charlton
City Delegate

Respectfully Submitted,



Martin L. Kotch
Panel Chairperson