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STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the matter of:

NORTON SHORES PART-TIME
FIRE FIGHTERS ASSOCIATION,

Association,

and

CITY OF NORTON SHORES,

Employer.

MERC Case No. G91 B0736

Arising pursuant to Act
312, Public Acts of 1969,
as amended.

FINDINGS, OPINION, AWARD AND
ORDER OF THE COMPULSORY
ARBITRATION PANEL:

APPEARANCES

For the Compulsory Arbitration Panel

Robert F. Browning, Chairperson and Impartial Arbitrator
Darryl R. Cochrane, Union Delegate
Donald J. Veldman, Employer Delegate

Representing the Union: Darryl R. Cochrane, Attorney

Representing the City: Donald J. Veldman, Attorney

ALSO PRESENT:

Randy W. Bowman, Part-Time Firefighters Association
Harold P. Wheeler, Fire Chief
Lyle Smith, City of Norton Shores

I.

INTRODUCTION

A Pre-Hearing Conference was held on May 13, 1992, at the
Norton Shores City Hall. A hearing was scheduled and held on

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August 4, 1992, at the City of Norton Shores City Hall, 4814 Henry Street, Norton Shores, Michigan. The hearing was recorded by a court reporter in compliance with Act 312.

Last Best Offer of Settlement was received by the Chairman from the Union and City and exchanged with the parties via mailing by the Panel Chairman on August 21, 1992.

Subsequently, post-hearing briefs were received by the Chairman from the parties and exchanged by mail with the Association and Employer Counsel on September 10, 1992.

The witness for the Association was Randall W. Bowman, part-time firefighter for the City of Norton Shores.

The witness for the City was Lyle Smith, Director of Administrative Services.

Also present, but not testifying, was Harold P. Wheeler, Fire Chief.

The City submitted two exhibits to the Panel. The Union submitted three exhibits. In addition there were four joint exhibits submitted by the parties.

The final order of the Panel was subscribed to be a majority of the Arbitration Panel on November 30, 1992.

II.

HEARING

The parties at the hearing on August 4, 1992, recognized that this Panel has jurisdiction and is properly constituted. The Chairperson was sworn and took the oath of office. The parties mutually waived all the time limits set forth in Act 312.

III.

ISSUE

Commencing as of January 1, 1992, shall the fire fighter who works on a designated holiday be paid at the rate of time and one-half the applicable straight time rate for the actual hours worked during the twenty-four (24) hour holiday period?

Designated holidays are:

New Year's Day	Thanksgiving Day
Good Friday	Day after Thanksgiving
Memorial Day	Day before Christmas
Independence Day	Christmas Day
Labor Day	Day before New Years

The Panel and the parties agreed that this is an economic issue resulting from a proposal made by the Union.

The Union says, "Yes" for its last offer of settlement on this issue.

The Employer says, "No" for its last offer of settlement on this issue.

Pursuant to Section 8 of Act 312, PA 1969, as amended, it states that:

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9.

Those factors set forth in Section 9 (MCL 423.239) are:

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.

IV.

BACKGROUND OF THE CASE

This is an unusual Act 312 case in that there is only one open issue for the Impartial Arbitrator and a majority of the Panel to

decide. Namely, whether the part-time firefighters employees for the City of Norton Shores are to be paid straight time or time and one-half straight time for the actual hours a part-time firefighter works on a designated holiday.

The Union's bargaining demand is that the part-time firefighters should be paid time and one-half their straight time rate for all hours they actually work during a twenty-four (24) hour holiday period. The City maintains that has existed, the part-time firefighters should be paid straight time for holiday hours worked.

The City of Norton Shores, the "Employer" employs both full-time and part-time firefighters.

Union Exhibit 1 sets forth the description of the Norton Shores Fire Department. The Chief, Fire Marshall, and two Battalion Chiefs are full-time employees. In addition, the City has five (5) full-time firefighters who are in a different Union.

The part-time firefighters, the subject matter of these proceedings, are 37 in number and are in a bargaining unit represented by the Norton Shores Part-Time Firefighters Association. There is a Deputy Chief who is a part-time employee.

The Employer has three (3) fire stations in the City and each of them are manned 24 hours a day, 365 days a year. During the day Monday through Friday from 6:00 a.m. to 6:00 p.m. Each station has a full-time firefighter on duty. From 6:00 p.m. to 6:00 a.m., 7 nights a week and on weekends, the 3 stations are manned by part-time firefighters, one at each station.

On a holiday, the same arrangement applies. If the holiday falls during the week, part-time firefighters will cover for the holiday from midnights until 6:00 a.m. of the holiday. During the day a full-time firefighter covers, and then starting at 6:00 p.m. a part-time firefighter will cover from 6:00 p.m until midnights. Therefore, the part-time firefighters will cover 12 hours and the full-time firefighters will cover 12 hours. If the holiday falls during a weekend, it is fully covered by part-time firefighters.

The Union is asking to be paid at time and one-half the applicable straight time rate for work on a holiday. The Employer maintains it wants to continue the status quo of paying straight time to a part-time firefighter who works on a holiday.

The part-time firefighters, while at the station on duty, must respond to a fire call, while those not on duty (who carry a pager) have the option to respond or not. Part-time firefighter Randy Bowman testified (Page 24, Transcript) that there has not been a problem with insufficient response by part-time firefighters, who are not on duty at the station, in responding to a fire alarm.

V.

COMPARABLES

The City introduced as its "comparable" the collective bargaining agreement by and between the Township of Muskegon and the volunteer and part-time paid fire department employees. That Agreement does not provide for the payment of any overtime compensation for working a holiday. It is to be noted the part-

time firefighters are not scheduled for station duty as they are in Norton Shores and that Muskegon Township has full-time personnel on duty 24 hours a day even on holidays.

The Union introduced as a "comparable" information with respect to how this issue is handled by the City of Wyoming, which is in Kent County. There is a City policy (not a Collective Bargaining Agreement) to pay its part-time fighters as follows:

a flat weekly rate for being on call that week; (they do not pull station duty as in Norton Shores); if the week in which a part-time firefighter is on call contains on the specified holidays, then the sum of \$30 or \$40 is also paid.

With regard to other employee groups employed by the City of Norton Shores, City Witness, Lyle Smith testified that this bargaining unit, the Part-Time Firefighters receive a 4% increase for each of three years, retroactive to January 1, 1992. Mr. Smith testified that most of the other City contracts with the several groups are three or 3.4 or 3.5 percent. (Transcript p. 38)

The full time firefighters contract for four years on wages is 3.5, 3.8, 4, and 4.25%.

VI.

STIPULATIONS

The stipulated issue was Joint Exhibit 4 as submitted by the parties.

Shall the firefighter who works on a designated holiday be paid at the rate of time and one-half the applicable straight time rate for the actual hours worked during the 24 hour holiday period.

The Union Argues "Yes".

The City argues "No".

The designated holidays are New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, Day before Christmas, Christmas Day, Day before New Year's.

The parties agreed that the issue contains the question of retroactivity as well (Transcript, p.18).

In addition, the parties agreed (Mr. Cochrane and Mr. Veldman) that the award when issued should encompass and make part of it the expired contract and the summary which modifies the expired contract, and the issue to be resolved. (Transcript p.6).

The City of Norton Shores is not making any claim of inability to pay the cost attributed to the Unions' proposal. The City believes, however, that they have already granted enough to the part-time fighters in the tentative agreement and oppose the Union's request for premium pay for time worked on ten holidays.

VII.

DISCUSSION, OPINION AND AWARD

At the hearing, the witness for the Union, part-time firefighter Randy Bowman was asked by Union Counsel Darryl Cochrane as follows:

- Q. Randy, the last area really I ant to talk to you about just briefly is why the part-time firefighters want to be paid time-and-a-half for holidays?
- A. I think it's just a real simple reason. They have to be away from their families just like our full-time personnel. They perform the same duties and have the same obligations. Our full-time personnel are getting double time, double time-and-a-half if they work. Al we're asking for is time-and-a-half of our rate, not even their rate, just our rate at \$5.20 an hour. I don't think that's too much to ask, and that's what our membership would like. (Transcript p. 27-28)

Subsequently, the witness for the Employer, Lyle Smith, Director of Administrative Services, was asked by City Counsel Donald J. Veldman, what the City's reasons are for rejecting the Union Proposal.

Q. Now you hear Mr. Bowman testify as to the reason or reasons for the proposal and issue that's on the table relating to time-and-a-half for hours worked on certain specified holidays, and what are the City's reasons for rejecting that proposal?

A. We feel that the tentative agreement that we have was a very fair agreement. That in that agreement, many benefits were added to the unit, and we felt that we had met or exceeded, really, what our parameters were during those negotiations.

Union Argument

The Union is asking to be paid at time and one-half the applicable straight time hourly rate for work on designated holidays.

The part-time firefighters presently receive only their hourly rate for work on a holiday.

Full-time firefighters for the City of Norton Shores who work on the holiday are paid double-time-and-a-half for the actual hours they work on the holiday (Transcript p. 16). Full-time firefighters who do not work on the holiday, are paid double time their straight time rate for the holiday (Transcript p. 17).

The straight time rate of pay for a full-time firefighter is \$11.87, whereas the straight time rate of pay for a part-time firefighter is \$5.20. (Transcript 19 & 26).

The full-time firefighter who works on the holiday will be paid at the rate of \$29.67 for each hour of work while a part-time

firefighter who works on the same holiday doing the exact same work will be paid \$5.20. Furthermore, a full time firefighter who does not work on the holiday will be paid \$23.74 an hour for the holiday. The part-time firefighters submit that fairness dictates they be paid more than \$5.20 an hour and ask for time and one-half their straight time rate for hours worked on a designated holiday.

The Union argues that the cost of the Union proposal if adopted is minimal, an additional \$2.60 an hour. The Union calculates that in 1992, with the ten holidays, the total increase in cost to the City (including only scheduled station time and excluding any call in time) would be \$1,029.70.

The Union points out that the full time fire fighting job and the part-time fire fighting job are similar. The employees go through the same schooling and training. When working, they do the same work that the full time firefighters do.

The Union requests that the Last Best Offer of the Union be accepted by the Panel and further requests that the Panel make the proposal retroactive.

Employer Argument

The Employer Argues that the condition of no premium pay for work on a holiday has existed and been accepted for a number of years. The Employer states that 95% of the part-time firefighters have full time employment elsewhere and that over 50% of that number are already receiving compensation from their other employers for the holiday.

On the basis of comparables, the Employer believes the one

from Muskegon is more relevant.

The Employer maintains that a comparison of the city's recent wage rate settlements with other employees groups employed by this Employer supports the argument that the part-time firefighters have received a larger wage rate settlement than the other groups and should be recognized as an offset to any perceived shortfall in other economic items, such as in this case a lack of premium pay for work performed on a holiday.

The Summary of the Tentative Agreement for this bargaining unit (Joint Exhibit 3), the Employer argues was equitable and received new in such tentative agreement (a) binding arbitration; (b) seniority system; (c) a cap of maximum duty shifts; (d) ceiling on manpower; (e) pay for Departmental drills and training; (f) increase in pay for employees on station duty for runs; (g) increase in pay for time spent filling in for full-time firefighters; (h) time and one-half for hours worked at special events; (i) work uniform at no cost to employee effective January 1, 1993; (j) maximum hours without a rest period; (k) restrictions on use of non-bargaining unit personnel and 4% wage increase for each of three years commencing January 1, 1992.

For these reasons the Employer asks that the Arbitrator render an award in favor of the Employer's Last Offer of Settlement.

The Arbitration Panel bases its findings, opinion and order upon the Section 9 factors as applicable.

The Panel and the parties recognize the lawful authority of the employer and the stipulations of the parties contained in this

record and exhibits. The Employer on the record is not making any claim of inability to pay the cost attributed to the Union's proposal.

The record sets forth a comparison of the full-time firefighters wages and holiday pay for those employed by the City of Norton Shores and for the part-time firefighters, who are seeking holiday pay.

The wage percentage increases for the City's internal comparables are a part of this record. There are two external comparables in the record for part-time firefighters, one submitted by the Union, City of Wyoming, Kent County and by the Employer, Muskegon Township.

Because of the nature of the bargaining unit (part-time firefighters) and the one unresolved demand of holiday pay, neither party introduced such items as other fringe benefits. This was not relevant for this one issue proceeding.

The Panel Chairman is most impressed by the record and evidence that shows that the City of Norton Shores full time firefighters and part-time firefighters have the same training and duties and responsibilities while responding to a fire or medical emergency and in manning the fire stations while on duty.

The comparables do not resolve the issue. The Union offered comparable is the City of Wyoming in Kent County where there is a City policy to pay part-time firefighters the sum of \$40.00 for working on a holiday. The City's comparable, the Muskegon Township Volunteer and Part-Paid Fire Department are not paid a premium rate

for working on a holiday (however these part-time station people are not scheduled for station duty, the part-time firefighters in Norton Shores are scheduled for station duty as fully set forth earlier in this opinion.

The Panel Chairman is basically confronted with the City's position and argument that the City's tentative agreement was a fair agreement, that many benefits were added (Joint Exhibit 3) and that the City had met or exceeded what the parameters were during the negotiations.

The City argues that the three year 4% increase wage proposals granted to this Association was more generous than with the other employee groups. The Chairman recognizes this is true, but does not have any evidence before it of other fringe or working conditions in the other contracts, with the exception of the full time firefighters agreement. While the Employer granted a number of items in the recent negotiations to the Association (Summary Joint Exhibit 3), the Chairman is convinced that the Last Best Offer of the Union for holiday pay for time worked should be granted based on the fact that the full-time firefighter receives premium pay for holidays (2 1/2 times for hours worked; double time for hours not worked). The part-time firefighter performs the same work and assumes the same responsibility on a holiday. The Chairman and a majority of the Panel is convinced that upon the record the Last Best Offer of the Union is adopted by the Panel and further that it be made retroactive to January 1, 1992.

Accepts _____
Dissents ✓
Donald J. Veldman
City Delegate
Accepts ✓
Dissents _____
Robert F. Browning
Panel Chairman

Accepts ✓
Dissents _____
Darryl R. Cochrane
Union Delegate

AWARD

A majority of the Panel accepts the Union's Last Best Offer:

All part-time firefighters shall be paid at the rate of time and one-half the applicable straight time rate for their actual hours worked during the 24 hour holiday period for the following holidays: New Years Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Day Before Christmas; Christmas Day; Day before New Years.

A majority of the Panel determines that the Last Best Offer of the Union shall be retroactive to January 1, 1992.

As agreed by the parties in addition this Award shall include the expired contract by and between the City of Norton Shores, Michigan and the Norton Shores Part-Time Firefighters Association (Joint Exhibit 2) and the Summary of Tentative Agreement between the parties dated March 13, 1992 (Joint Exhibit 3).

Dated: November 30, 1992

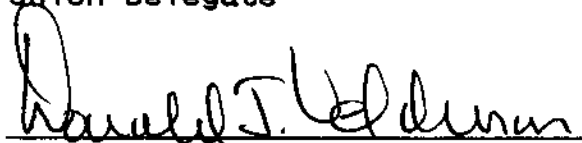
PANEL OF ARBITRATORS



Robert F. Browning
Impartial Arbitrator and
Chairperson



Darryl R. Cochrane
Union Delegate



Donald J. Veldman
City Delegate

STATE OF MICHIGAN
BEFORE ARBITRATOR ROBERT F. BROWNING

NORTON SHORES PART-TIME
FIREFIGHTERS ASSOCIATION

AND

MERC CASE NO.: G91 B0736

THE CITY OF NORTON SHORES
_____ /

UNION'S LAST-BEST OFFER

For its last best offer, the Union proposes the following resolution:

All part-time firefighters shall be paid at the rate of time and one-half the applicable straight time rate for their actual hours worked during the 24 hour holiday period for the following holidays: New Years Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Day Before Christmas; Christmas Day; Day Before New Years.

Respectfully submitted,

MCCROSKEY, FELDMAN, COCHRANE & BROCK

By


DARRYL R. COCHRANE

Attorney for the Union

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Dated: August 18, 1992

WARNER, NORCROSS & JUDD

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August 17, 1992

Mr. Robert F. Browning
Attorney at Law
2400 Lake Lansing Road, Suite C
Lansing, Michigan 48912

Re: City of Norton Shores and Norton Shores
Part-Time Firefighters Association
MERC Case No. G91 B0736
Our File No. 22777.41044

Dear Mr. Browning:

Pursuant to the agreement made by the parties at the hearing held August 4, 1992, and to Section 8, Public Act 312, 1969, as amended, the Employer, City of Norton Shores, hereby submits its LAST OFFER OF SETTLEMENT on the following economic issue:

Shall the firefighter who works on a designated holiday be paid at the rate of time and one-half the applicable straight time rate for the actual hours worked during the twenty-four (24) hour holiday period?

Designated Holidays are:

New Year's Day
Good Friday
Memorial Day
Independence Day
Labor Day

Thanksgiving Day
Day after Thanksgiving
Day before Christmas
Christmas Day
Day before New Years

Mr. Robert F. Browning
August 17, 1992
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The Employer's Last Offer of Settlement is to respond in the negative to that issue.

An extra copy of this Last Offer of Settlement is included for simultaneous mailing to Darryl Cochrane, as counsel for the part-time Firefighters Association.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Donald J. Veldman". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Donald J. Veldman

sd
Enclosure
cc: City of Norton Shores