

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

CITY OF PONTIAC

and

MERC Case No. D90 E-0857

PONTIAC FIRE FIGHTERS
UNION, LOCAL 345

Panel of Arbitrators

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FINDINGS, OPINION AND AWARD

July 1, 1990 - June 30, 1993 Collective Bargaining Agreement

Date: November 12, 1993

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INTRODUCTION

A pre-hearing conference was conducted in Pontiac, Michigan on March 24, 1992. Hearings were held in Pontiac, Michigan on sixteen days between October 8, 1992 and June 11, 1993. The arbitration panel met in conference on October 26, 1993 in Pontiac, Michigan.

The parties' have stipulated that the new contract over which this Panel has jurisdiction is for the period beginning July 1, 1990 and ending June 30, 1993. The parties have resolved all issues for this contract except the issues before the Panel.

The parties have presented 19 outstanding issues to the Panel. Most of these issues are economic. Under the law, the Panel is required to accept the last offer of settlement made by one or the other party for each economic issue. In deciding which offers to accept, the Panel has considered the applicable factors set forth in Section 9 of Act 312 PA 1969. Section 9 reads:

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 on the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.

(c) The interest 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 in 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.

COMPARABILITY

The threshold issue in this case is to identify the comparable communities which the Panel will use. Both the Union and the City agree that the following 11 communities are comparable to Pontiac: Dearborn, Dearborn Heights, Lincoln Park, Livonia, Roseville, Royal Oak, St. Clair Shores, Southfield, Sterling Heights, Taylor and Westland. The Panel accepts this stipulation. The parties differ on additional comparable communities.

Act 312 does not define comparability. However, experience has given rise to various factors which are often considered. These include proximity, population, community type and size, department type and size, income, tax base and rates, number of fires, and comparable communities used in past Act 312 arbitrations.

The additional communities proposed by the City are the following: Bloomfield Township, Canton Township, Clinton Township, Redford Township, Shelby Township, Waterford Township and West Bloomfield Township. The Union proposes the following additional comparable cities: Detroit, Ann Arbor and Warren.

The 11 communities which the parties agree are comparable are located in the Metropolitan Detroit tri-county area of Oakland, Macomb and Wayne Counties, and have 24 hour, full-time fire personnel. These communities have wide ranges of relevant data,

including the following:

- Population (1990): 41,832 (Lincoln Park) - 117,810 (Livonia);
- Square miles: 5.8 (Lincoln Park) - 36.6 (Sterling Heights);
- Per capita income (1989):
\$12,955 (Taylor) - \$21,098 (Southfield);
- Housing units: 16,763 (Lincoln Park) - 42,317 (Sterling Hts.);
- Fires (1991): 198 (Dearborn Heights) - 553 (Dearborn);
- Fires per authorized position (1991):
2.13 (Southfield) - 12.60 (Taylor);
- Size of dept: 35 (Lincoln Park) - 116 (Dearborn);
- Total tax base (1992 SEV):
\$422,914,670 (Lincoln Park) - \$2,795,384,550 (Livonia);

The City argues that the 11 stipulated communities and its proposed 7 additional communities have four primary characteristics: first, they are all located in the tri-county area; second, they all have populations one-half to twice the population of Pontiac; third, they all have 24 hour, full-time fire personnel; and fourth, they have been used in previous Pontiac Act 312 arbitrations.

The additional communities proposed by the City are comparable with Pontiac in some respects and distinguishable in other respects. The primary difference appears to be that Pontiac has a lower ratio of residential real property to commercial and

industrial real property. However, some of the stipulated communities (including Dearborn Heights and St. Clair Shores) resemble the City's proposed communities in their high ratio of residential real property to commercial and industrial property. Pontiac also has the lowest indicia of certain aspects of wealth. However, as it is not suggested that there is a negative correlation between wealth and public employee compensation, using communities with higher wealth would not be prejudicial to the City's fire personnel.

The City has applied neutral principles to its arrival at comparable communities and its proposed comparables are more or less congruent with the stipulated communities. Therefore, the Panel will use the City's additional communities.

The Union has proposed three additional comparable communities: Ann Arbor, Detroit, and Warren. Ann Arbor lies outside the tri-county area of all other comparables and for that reason will not be used. Detroit is not comparable in population (1,027,974) or square mileage (138.7) or housing units (410,027) and for these reasons will not be used. As I understand the City's rationale, the Union's third proposed community, the City of Warren (which is in the tri-county area), would have been proposed if its population had been slightly less. The City's population cutoff for comparable communities was 142,332 (twice Pontiac's 1990 population). Warren's 1990 population was 144,864. If Warren's 1990 population had been 1.7% (or 2,532 people) less, it would have survived the City's proposed cutoff. The City also argues that Warren has a

high SEV; but so do the stipulated communities of Livonia, Dearborn, Sterling Heights and Southfield.

In these circumstances, the Panel will consider all the proposed communities of the City and the Union except for the proposed communities of Detroit and Ann Arbor.

UNION ISSUE 1: WAGES

Union's Final Offer: The Union proposes to amend Article VIII, Section 2 as follows:

- a. Effective July 1, 1990 - 3 percent (3%) across the board. Retroactivity shall apply to base salary only.
- b. Effective July 1, 1991 - 2 percent (2%) across the board. Retroactivity shall apply to base salary only.
- c. Effective January 1, 1992 - 2 percent (2%) across the board. Retroactivity shall apply to base salary only.
- d. Effective July 1, 1992 - 4 ~~percent~~ (4%) across the board. Wage and benefit adjustments shall be retroactive to July 1, 1992.

Any amounts awarded retroactively shall be paid within thirty (30) days of the issuance of the Act 312 Award and, further, shall be remitted separately from the sums due and owing under the contract.

City's Final Offer: The City proposes the following:

1st Year July 1, 1990 - June 30, 1991

Members of the bargaining unit will receive a one-time lump sum payment equal to one and one-half (1.5%) percent of the employee's base salary earnings in the period July 1, 1990 through June 30, 1991. The lump sum payment shall not be added to, or become part of, the employee's annual base salary.

2nd Year July 1, 1991 - June 30, 1992

Members of the bargaining unit will receive a one-time lump sum payment equal to one and one-half (1.5%) percent of the employee's base salary earnings in the period July 1, 1991 through June 30, 1992. The lump sum payment shall not be added to, or become part of, the employee's annual base salary.

3rd Year July 1, 1992 - June 30, 1993

Effective June 30, 1993, increase the salary schedule by three (3) percent across the board.

FINDINGS AND OPINION

The Panel is treating each of the three contract years separately for the purpose of adopting final offers. The Panel's findings here are applicable to the parties' other economic offers.

Under section 9(c) of Act 312, the Panel is to consider "[t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs."

Those who live or work in Pontiac have an obvious interest in fire protection. The Pontiac fire department has a long history of serving the interest and welfare of the public. In addition to its highly skilled fire fighting personnel, the department operates the City's Emergency Medical Services (EMS) program. The department's EMS work is a model of excellence.

Providing these important public services is labor intensive and costly. For the fiscal year ending June 30, 1991, the City's fire department expenditures were almost \$10,000,000. This was a per capita expense of \$135 for each resident of the City, the highest among the comparable communities (City Ex. 67). It represented 21% of the City's general fund expenditures, which placed it at the upper end among the comparable communities (City Ex. 69). In reviewing the costs of serving the interest and

welfare of the public, the Panel is required to consider the City's financial ability to meet those costs.

A thorough record was made on the City's overall financial condition. Numerous studies and reports were admitted into evidence. Two experts testified on the City's overall financial condition: Wayne Belback and John Axe. Mr. Belback is the City's finance director; he testified in behalf of the City. John Axe is an expert in municipal finance; he testified in behalf of the Union. Both agreed that the City's financial condition is very poor.

The latest comprehensive statement of the City's financial condition is the Comprehensive Annual Financial Report for the Year ending June 30, 1992. It contains the opinion of the outside auditor that the Report presents fairly, in all material respects, the financial position of the City as of June 30, 1992. This Report contains bad news: As of June 30, 1992, the City's actual expenditures exceeded its budget by more than \$4,000,000, and the City had a total fund deficit of \$2,385,482. Mr. Axe explained that if the status quo continued the City would risk receivership; he also opined that the City could issue a judgment bond to cover the expense of this Act 312 Award. The Panel thinks that both prospects are undesirable.

The Union made a detailed review of the City's expenditures. The Union argues that the City's financial condition has been caused by mismanagement and unnecessary spending. Examples cited by the Union are: Unnecessary and excessive spending by the

executive and legislative offices, including the provision of automobiles and cellular telephones to City officials; excessive use of outside contractors; failure to sell non-essential City assets, including its golf course, stadium, hospital and cemeteries; failure to collect delinquent taxes; and loss of interest income by failing to collect accounts receivable and delinquent loans. The Union adds that fire personnel should not be made to bear the consequences of City excess, especially in light of a City Charter amendment supporting the fire department.

The Union also argues that the City is experiencing a rebirth. In support, the Union states that the General Motors Corporation plans to build a new Tech Center in the City, which will add 5,000 jobs in the City and plans to add about 200 jobs at its Plant 14 in the City. These will generate additional tax revenues for the City. The Union adds that the City is seeking to diversify and attract new business into the City.

The City states that its largest expenses are employee compensation and that its discretion is circumscribed by City employee collective bargaining agreements. The City adds that it has taken steps to reduce expenditures including reducing its work force in the last 6 years from 1,000 to 760 with a goal of 700, eliminating recreation and cemetery service, and making available for sale various non-essential assets such as the Pontiac General Hospital and the Silverdome. As to possible future sales of City assets, the City states that such one-time infusions will not change long-term trends and would be used to reduce the deficit and

to pay for current services, whereas the parties' differences in the present case relate to additional payments for past services. By the same token, the prospect of future business development in the City is not a source of revenue today for past services. The City concludes that fire personnel should not be excluded from the sacrifices that the City's other employees are being called on to make.

The City also explains that its ability to pay must be viewed in light of its ability to raise additional revenues and its demographics. City residents and non-residents who work in the City are taxed higher than those in comparable communities. The City's income tax and millage rate are at the limit allowed by law. Between 1980 and 1990, the City's population declined 7.23% to 71,166. The City's median home value is \$36,300, the lowest among all the comparable communities. Its per capita SEV is the lowest among the comparable communities and its per capita debt is the highest. The City's total liabilities (which are between 2 and 4 times greater than all comparable communities) are 31.2% of the City's total SEV (far higher than any comparable community). The City's most recent bond rating is baa, a low investment grade which makes borrowing more expensive. The City received the baa rating in 1990, before the City's current deficit.

Based on a full review of the record, the City's financial ability to pay substantial retroactive increases in compensation for three years is severely limited. If the City is to reduce its deficit, it has no choice but to moderate its expenditures. The

City has been taking steps to do so. I agree with the Union that the City can do more, and that if it does its ability to pay may be enhanced in the future. However, the Panel is called on to provide contract terms for the past. In this vein, any future enhancement of the City's tax base would not increase its present ability to pay for past services.

It is in this light that the parties' final offers on wages must be viewed. If the Union's final offers were adopted, the City would be required to pay almost \$900,000 in retroactive raises for the three years ending June 30, 1993, together with a roll-up for the third year. Under the Union's final offers, base salary effective July 1, 1993 would be about 11.5% higher than on June 30, 1990. In turn, the higher base pay would set the floor from which the parties' negotiations for a new contract, retroactive to July 1, 1993, would proceed. The City can ill afford to pay all of the Union's final offers on wages.

For the first two years of the contract (July 1, 1990 - July 1, 1992), the City offers lump sum payments of 1.5% of base salary per year (with no change in base salary and no roll-up). For the first two years, the Union seeks three increases in base pay in the sum of 7% with no roll-up over this same two year period. Under the Union's final offers only the base salary increases would be retroactive, so that pension contributions, for example, would be unaffected. The Union's offers for the first two years would cost

the City about \$475,000. The City's offer for the first two years would cost at least \$120,000.

Section 9(d) of Act 312 directs the Panel to compare the wages, hours and working conditions of the City's fire personnel with employees performing similar services in comparable communities. City Exhibits 106-108 show the salaries as of July 1, 1990 (and annualized for the period July 1, 1989 to June 30, 1990) of fire fighters, engineers and lieutenants in comparable communities and in Pontiac. These figures show that in annual and annualized wages, Pontiac's fire fighters were the second lowest, its engineers were in the middle, and its lieutenants were the fifth lowest.

Pontiac's fire fighters have a 50.4 hour work week which is shorter than most comparable communities. City Exhibit 109 shows the annualized hourly wage rate (for the period July 1, 1989 to June 30, 1990) of fire fighters, engineers and lieutenants in comparable communities and in Pontiac. These figures show that the hourly wage rate of Pontiac's fire fighters and lieutenants were in the middle, and its engineers near the top.

In all except four of the comparable communities, fire personnel make pension contributions. Pontiac employee contributions are between four and eight times lower than employee contributions in comparable communities. City Exhibit 133 shows the annualized hourly wage rate less employee pension contributions (for the period July 1, 1989 to June 30, 1990) of fire fighters, engineers and lieutenants in comparable communities and in Pontiac.

These figures show that this net hourly wage rate of Pontiac's fire fighters and lieutenants was near the top.

Pontiac pays the highest pension contributions among the comparable communities, and like all comparable communities it provides various fringe benefits such as paid holidays. City Exhibits 121, 122, and 123 show total salary (annualized for the period July 1, 1989 to June 30, 1990) and benefits, total net annual compensation and total net hourly compensation (i.e., total compensation less employee and employer pension contributions) of fire fighters, engineers and lieutenants in comparable communities and in Pontiac. (The figures in these exhibits do not include medical coverage and overtime.) Because of Pontiac's high pension contributions and low employee pension contributions, the total out-of-pocket expense to the City of Pontiac as of July 1990 for each fire fighter, engineer and lieutenant was at or near the top among comparable communities. This high out-of-pocket expense is relevant because of Pontiac's financial condition.

As to internal comparables, the City's last best offer of 1.5% lump sum payments to police supervisors for the first two years of their contract was recently adopted by the Act 312 panel in PPSA -and- City of Pontiac, MERC Case No. D90 J-1469 (J. Kiefer, August 25, 1993).

Under section 9(e) of Act 312, the Panel is to consider "average consumer prices for goods and services, commonly known as the cost of living." This would be the effect of inflation on the compensation of fire personnel. The Consumer Price Index (CPI)

measures the change over time in the cost of buying a "market basket" of goods and services. Inflation can be computed by comparing the CPI from one date to another. This comparison shows that from July 1990 to July 1991, the CPI rate of inflation was 4.5%, and from July 1991 to July 1992 it was 3.2%. The CPI inflation rate over this two year period is 7.7%. The Union's proposal for these two years is commensurate with increases in average consumer prices for these two years. The City's offer of 3% is less than half of CPI inflation rate. However, because the City also pays for health care, the CPI inflation rate would have to be reduced to apply more accurately to the fire personnel.

Both parties have compared changes in fire fighter wages with increases in the CPI. In doing so, the City uses the starting point of July, 1967 (when the CPI was 100) whereas the Union uses a starting point of July 1987. Under the City's longer base period, increases in the base pay of positions in the bargaining unit exceeded increases in the CPI for the period July 1967 through July 1992 even with no additional compensation for the period July 1, 1990 to July 1992. Under the Union's shorter base period, the Union's final offers on wages, even if adopted, would not cause base pay to keep pace with CPI inflation.

The CPI shows that increases in bargaining unit base pay have exceeded inflation in the long run but not in the short run. In accepting employment, fire fighters would not expect their subsequent wage (adjusted for inflation) to be less than their wage at the time of hire. In this sense it may be said that current

raises which are less than the current rate of inflation are more adverse to newer employees than to employees approaching retirement whose earlier raises surpassed inflation.

Upon review of the application of the section 9 factors to the information disclosed in the present case, the Panel believes that the City's final offer of 1.5% lump sum payments for the first two years of the contract has more merit.

For the third year, the Union proposes a 4% increase in base pay effective July 1, 1992. The City proposes a 3% increase in base pay effective June 30, 1993, the last day of the contract. Both proposals include roll-up.

The City's offer would constitute a wage freeze for the third year of the contract with a 3% increase in the wage base as of the last day of the third contract year. Its offer provides one year less of roll-up than the Union's proposal. In the PPSA case, the City's 3% offer (which the panel accepted) took effect half-way through the third year of the contract.

Under section 9(f) of Act 312, the Panel is to consider employees' overall compensation. The City has pointed out that the fire personnel make low pension contributions, and that command officers work a lot of overtime. Minimum manning bears on overtime. Later in this Opinion and Award, the Panel is adopting the City's final offers that employee pension contributions be increased from 1% to 2.5% and that minimum manning be reduced from 31 to 29. These two changes will have an adverse effect on the overall compensation of fire personnel, and will reduce the City's

expenses significantly. Further, in granting the City's lump sum payments for the first two years, the Panel believes that a freeze in base pay for all but the final day of the third contract year would be severe and would be longer than the PPSA's 6 month wage freeze in the third year of its contract. Finally, a 4% increase in base wages rather than a 3% increase would narrow the gap in base pay between Pontiac fire fighters and those in comparable communities.

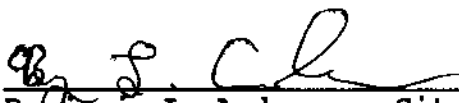
As wages for the third year is an economic issue, the Panel must choose one or the other final offer. On balance, the Union's offer has more merit for the third year.

For the above reasons, the Panel adopts the City's final offer on wages for the first two years of the contract and adopts the Union's final offer on wages for the third year of the contract.

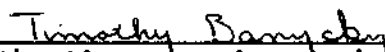
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs on first two years and
Dissents on third year

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents on first two years and
Concurs on third year

UNION ISSUE 2: PENSION PLAN (FINAL AVERAGE COMPENSATION)

Union's Final Offer: Amend the definition of final average salary in Article VII, Section 1 Pension C. to include "all" overtime in place of "Act 604 overtime," to be retroactive to January 1, 1992.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

Under existing contract language, "final average salary" is composed of several components in addition to base pay, including Act 604 overtime. The Union's final offer is that all overtime be included in final average compensation.

Gerald Sonnenschein is an actuary for the pension fund. He prepared a set of actuarial valuations to measure the change in the required City contribution rate for proposed retirement benefit changes for City of Pontiac Fire Fighters. His valuation estimates that the Union's proposal would create an unfunded liability of \$778,278 with an additional first year City pension contribution of \$127,993 (City Ex. 145). The additional cost would increase in the future if wages increased.

Eight of the comparable communities do not include all overtime as a component of final average compensation. Among internal comparables, Union Exhibit 50 shows that the police and

police supervisors bargaining unit contracts do not include overtime in final average compensation, while other bargaining units do.


Fire personnel pension benefits are adequate in comparison with comparable communities and are significantly higher than the pension benefits of the City's civilian bargaining units.

Among the comparable communities, the City bears the highest pension funding obligation.

By reason of the City's ability to pay, its current pension funding and the adequacy of the current definition of final average salary in comparison to comparables, the Panel thinks that the City's position has more merit.

For the above reasons, the Panel adopts the City's final offer.

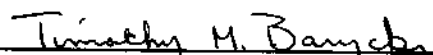
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents

UNION ISSUE 3: Pension (Open Window)

Union's Final Offer: Add the following new section to Article VII, effective January 1, 1992:

Any fire fighter who would become eligible to retire by June 30, of any year if he had not more than three (3) years of additional service credit, may at his/her option receive such additional service credit not to exceed three (3) years upon retirement on or before June 30, of that year. The additional credit granted will be the least credit required to make the fire fighter eligible to retire as of the effective date of his retirement. The additional service credit shall be used in computing the fire fighter's retirement allowance.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

Under the previous contract, the Union's proposal of a 3 years service credit was included but it expired on December 30, 1989. The Union seeks its renewal.

Actuary Gerald Sonnenschein's valuation shows that the Union's proposal would create an unfunded liability of \$697,049 with an additional first year City pension contribution of \$28,883 if eligible employees exercised the option (City Ex. 145). Mr. Sonnenschein explained that if an employee exercised the option, the City would have to pay for an additional three years of pension benefits which the employee would not otherwise receive.

The Union argues that the City would be able to replace higher paid command officers with lower paid fire fighters if the former elected to retire early, and so would save money. The City disagrees, in part because of the large cost to it of pension contributions. The Union also argues that by encouraging early retirement more people would be given the opportunity to serve in the Pontiac fire department.

City Exhibit 172 shows that none of the comparable communities offers an unearned service credit for their fire personnel. City Exhibit 173 shows that no City bargaining units have an unearned service credit in their pension agreements. The fact that some City employees received "windows" in previous contracts is not controlling. Under current external and internal comparables, the Panel thinks that the City's position has more merit.

For the above reasons, the Panel adopts the City's final offer.

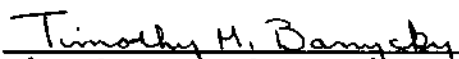
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents

UNION ISSUE 4: HOLIDAYS

Union's Final Offer: Add Lincoln's Birthday as a paid holiday, effective January 1, 1993.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

The Union proposes that Lincoln's Birthday be added as a paid holiday. Union Exhibit 24 shows that the Pontiac Fire Fighters Union is the only City union which does not honor Lincoln's Birthday. The Union argues that it is discriminatory not to extend Lincoln's Birthday to the fire personnel.

The City argues that the fire personnel currently have 12 1/2 paid holidays each year,- the 12 listed holidays plus election day every other year. City Exhibit 174 shows that Pontiac's paid holidays compare adequately with the holidays of comparable communities, and that in only three comparable communities do fire personnel receive extra pay for working on the holiday, as occurs in Pontiac.


The City estimates that its cost to fund an extra holiday for the fire personnel would be more than \$17,000 in wages plus more than \$8,000 in its ensuing pension contributions. The additional paid holiday would cost it about \$200 per employee, and more than

\$25,000 a year. This cost would recur in succeeding contract years.

Under external and internal comparables, the Panel thinks that the City's position has more merit. Union Exhibit 24 shows that the other City bargaining units have the same number of paid holidays as the Fire Department. The difference is that the other units have Lincoln's Birthday as a paid holiday instead of Martin Luther King Day. Only fire personnel have Martin Luther King Day as a paid holiday.

For the above reasons, the Panel adopts the City's final offer.

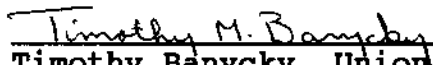
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Concurs

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Timothy Banycky, Union Del.
Dissents

UNION ISSUE 5: FOOD ALLOWANCE

Union's Final Offer: Effective December 10 of 1990, 1991 and 1992 each uniformed Fire Department employee shall receive a food allowance reimbursement of \$750.00.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

The parties agree that most comparable communities have a food allowance. The food allowance requested by the Union is higher than all but one of the comparable communities. Further, internal bargaining units of the City do not have a food allowance.

The Union's request of \$750 is for each of the three years of the contract, which has already expired. If adopted, each uniformed Fire Department employee would be paid \$2,250 retroactively, or a total of more than \$290,000. For a fire fighter, overall compensation would be increased by about 2.4% per year for the three years of the contract. Because of the City's financial condition, retroactive payment of this large sum would be a hardship.

The Union argues that money to pay for the food allowance would be available if the City stopped leasing automobiles for its officials (See Union Ex. 69). However, such a reallocation could only apply to future food allowances.

In a sense, fire personnel are already receiving a food allowance, although it is in the guise of higher base pay. City Exhibit 182-A is a copy of the parties' Act 312 Award for the years July 1, 1984 to June 30, 1987. Prior to the Award, the City paid a "food allowance reimbursement" of "\$550.00 per year per man, payable on or before December 10, of each calendar year." The Union's final offer in that proceeding was that "\$550.00 will be rolled into the base salary, [and] the food allowance shall be discontinued." The Act 312 panel adopted the "the Union's food allowance proposal."


As this is an economic issue, the Panel must choose one or the other final offer. The City's offer has more merit.

For the above reasons, the Panel adopts the City's final offer.

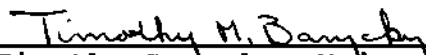
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents

UNION ISSUE 6: DENTAL INSURANCE

Union's Final Offer: Add the following Orthodontics coverage to Article VI, Section 18, Insurance, Subsection C:

orthodontic benefits of fifty percent (50%) of all treatment costs with a life time maximum of \$1,800.00 for each covered individual.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION


Most comparable communities provide orthodontic coverage, usually with a 50% employee co-pay. The Union's proposed \$1,800 life-time maximum is well above the \$1,000 maximum provided by most comparable communities which have orthodontic coverage.

Internally, three of the four civilian bargaining unit have a 30% employee co-pay for orthodontic coverage with a \$1,000 life-time maximum. Recently, in the PPSA case, the Act 312 Panel adopted the PPSA's final offer of orthodontic coverage with a 50% employee co-pay and a life-time maximum of \$1,000.

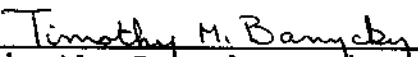
By reason of the external and internal comparables, the Union's final offer (despite its high life-time maximum) is preferable to the City's final offer of no orthodontic coverage at all.

For the above reasons, the Panel adopts the Union's final offer on dental insurance.

Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Timothy Bahycky, Union Del.
Concurs

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Dissents

UNION ISSUE 7: PROMOTION TO CHIEF

Union's Final Offer: Amend Article V, Section 6. Promotions to include the Fire Chief in examinations and promotions in accordance with the provisions of Act 78 of Public Acts of 1935, as amended, and delete the language that the Fire Chief shall be an appointment of the Mayor.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

This is a non-economic issue. Therefore, the Panel is not limited to a choice between the parties' last best offers.

The parties' previous Act 312 award adopted the City's request that the position of fire chief become a mayoral appointment. This was a departure from the past procedure by which the fire chief was promoted from the ranks of the City's fire department.

There are two schools of thought on whether a fire chief always should be promoted from within the ranks of a fire department or whether the chief executive of a governmental body should have the authority to appoint the fire chief (from inside or outside the ranks of the fire department). They have been ably argued by counsel for the parties. However, the Panel is disinclined to change the parties' most recent Act 312 award on this issue absent a showing of abuse. No such showing can be made at

this time. Mayoral appointee Chief Lamson appears to be highly qualified and was formerly the fire chief when the position was subject to examinations and promotions in accordance with the provisions of Act 78 of Public Acts of 1935, as amended. Chief Lamson initially was appointed fire chief from the ranks of the Pontiac fire department.

For the above reasons, the Panel adopts the City's final offer on this issue.

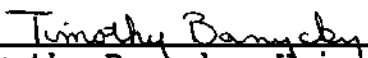
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents

UNION ISSUE 8: Affirmative Action

Union's Final Offer: Delete from the contract Article V - Seniority, Section 4. - Earning Tenure, Subsection D. 1, and Section 6 - Promotions - Subsection C.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

This is a non-economic issue. Therefore, the Panel is not limited to a choice between the parties' last best offers.

In 1984, the parties agreed to amend their contract to add an affirmative action program pertaining to new hires and promotions in the fire department. The program states that at least one minority person will be hired in every three hires and will be promoted in every three promotions. For this purpose, dual test lists are used. The Civil Service Commission oversees the testing procedures for hiring and promoting fire personnel.

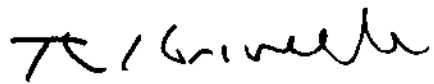
City Exhibit 192 shows that as of October 15, 1992, there was a 2:1 ratio (32%) of white males to minorities in the Pontiac fire department. Minorities comprise 37% of the non-commissioned officers. However, they comprise only 14% of the command officers (battalion chiefs, captains, and lieutenants).

Most of the comparable communities are subject to some form of affirmative action program, as are five of the other six bargaining units in the City of Pontiac.

The parties' definition of the term "minorities" includes women. Minorities would appear to be about 75% of the City's population. For applicants from this large group to receive a preference for (at most) one of every three new hires does not seem to be oppressive to Pontiac's white male applicants. Continuing the program will assure that minorities will not fall below 1/3 of new hires, and will assure a higher percentage of minorities among the fire department's command offices.

For the above reasons, the Panel adopts the City's final offer.


Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents

UNION ISSUE 9: PENSION (EMPLOYEE CONTRIBUTIONS)

Union's Final Offer: Amend the first sentence of Article VII, Section 5. Contribution as follows:

Effective July 1, 1990, employees in the bargaining unit shall no longer be required to make contributions to the pensions plan.

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

Among the 19 comparable communities, only 4 have no employee pension contribution. For those that do, three (Bloomfield Township, Shelby Township and Warren) have a 1% employee contribution. The highest employee contribution is Lincoln Park's 7.55%. The average employee pension contribution among all 19 comparable communities (including those with no employee contribution) is 3.5%.

The City of Pontiac's pension contribution is 47.85%, which is the highest employer contribution among all the comparable communities, which range from 10% (Canton Township) to 33.95% (Livonia). The average employer contribution among the 19 comparable communities is 21%.

Internally, both the Pontiac Police Officers Association contract and the Pontiac Police Supervisors Association contract require the police to pay pension contribution of 2.5%. The City's contribution is 38.12% for the PPOA and 58.10% for the PPSA. The

four civilian bargaining units in the City do not make employee contributions. The City's contribution for them is 20.41%. But unlike police and fire, both the civilian employees and the City each pay the social security tax of 7.65%.

The City has made a final offer in this case to increase pension contributions by fire personnel to 2.5%. The City's final offer is addressed later in this opinion, under City Issues.

The employee contributions of comparable communities and of the City's police personnel, the City's heavy burden of pension contributions for fire personnel (even if discounted by its temporary overfunding), the increase in overall compensation of the fire personnel by reason of the Panel's adopting the Union's wage proposal for the third year, and the City's financial difficulties lead the Panel to conclude that it would be inappropriate to eliminate the pension contributions by fire personnel.

For the above reasons, the Panel rejects the Union's final offer.

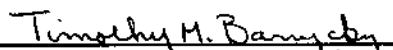
Dated: November 12 , 1993


Thomas L. Gravelle, Chairman

Dated: November 12 , 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12 , 1993


Timothy Banycky, Union Del.
Dissents

UNION ISSUE 10: PENSION (ESCALATOR)

Union's Final Offer: Add the following to Article VII, Section 2. Pension Adjustment, retroactive to July 1, 1992:

Employees retiring on or after July 1, 1990 shall receive an annual two and one-half percent (2.5%) of their base retirement cumulative for twenty (20) years for a maximum of fifty percent (50%).

[N.B. Retired fire fighters would receive a 13th check equal to 2.5% of the year's pension payments for each year retired. The maximum would remain 50%.]

City's Final Offer: Retain current contract language and add no additional contractual provisions on this issue.

FINDINGS AND OPINION

The Union is seeking to increase the post-retirement escalator from 2%, cumulative for 25 years, to 2.5%, cumulative for 20 years. Its reason for doing so is because its retirees, unlike other City employees, do not pay into or receive social security.

In Union Exhibits 51 and 52, it is estimated that a Pontiac fire retiree is currently able to replace 95% of his salary with pension benefits; if the escalator were increased the retiree could replace 101.82%, which is still less than the 118% salary replacement of other Pontiac employees when their pension benefit is combined with social security benefits.

Actuary Gerald Sonnenschein's valuation shows that the Union's proposal would create an unfunded liability of \$412,343 with an

additional first year City pension contribution of \$67,710 if eligible employees exercised the option (City Ex. 145).

City Exhibit 193 shows that half the comparable communities have no escalator and that the City's present escalator and ceiling is at or near the top among the comparable communities. City Exhibit 195 shows that the fire escalator is at the top among all the City's bargaining units. The Union's argument regarding social security benefits would have more appeal if the City's contributions for fire pensions were not already so high. By reason of comparability and the City's high pension contributions, the Panel thinks that the City's position has more merit.

For the above reasons, the Panel adopts the City's final offer.

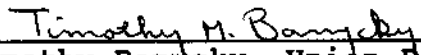
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents

CITY ISSUE 1: SENIORITY (CLASSIFICATIONS)

City's Final Offer: Effective the date of the Arbitration Award, delete from contract Article V - Seniority, Section 3. Maintaining Appropriate Classifications.

Union's Final Offer: Maintain status quo.

FINDINGS AND OPINION

Article V - Seniority, Section 3, states:

- A. Positions or responsibility calling for a certain rank and/or grade of pay will be filled by that rank and/or grade of pay on every normal duty day.
- B. Positions and rank or grade of pay as follows:
 - 1. Shift Supervisor - Battalion Chief
 - 2. Station of District Officer - Captain
 - 3. Supporting Company Officer - Lieutenant
(ladder, pumper, rescue)
 - 4. Apparatus Driver - Engineer

Article V, Section 3 requires the City to cover absences with individuals who hold at least the rank and/or grade of the absent employees. For example, if a battalion chief is absent, another

battalion chief is to fill in for him. The City argues that this requirement is unnecessary because some individuals of lower rank have the capability to fill in for those of higher rank, and would gain valuable experience. The City adds that Article V, Section 3 results in the unequal and costly distribution of overtime: In 1992, battalion chiefs earned average overtime compensation of \$13,743.11, while fire fighters earned average overtime compensation of only \$1,773.31.

City Exhibit 207 shows that all but three of the comparable communities have a minimum required complement of command officers who must be on duty each day. The City explains that under Article V, Section 3 it is required to have 11 officers present each day. This is higher than any comparable community. (The highest is 9 in Sterling Heights and 5 in Southfield and Westland.) City Exhibit 210 shows that 14 of the comparable communities do not require that each apparatus have an officer assigned to it each day. City Exhibit 208 shows that no internal Pontiac bargaining unit has a required rank structure.

The Union argues that Article V, Section 3 has been effective for many years to the benefit of the department and the public, and should not be repealed. Captain Zawlocki testified that in-classification replacements are preferable because they know the job whereas the use of out-of-classification personnel would be detrimental to operations. The Union argues that if more equal overtime distribution is the City's object, its proposal is too extreme: It is using "a cannon to kill a mouse."

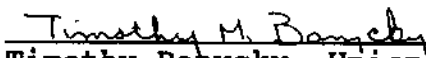
As this is an economic issue, the Panel must choose one or the other final offer. On balance, the Union's offer has more merit.

For this reason, the Panel adopts the Union's final offer.

Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Timothy Bahycky, Union Del.
Concurs

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Dissents

CITY ISSUE 2: SENIORITY (OUT-OF-CLASSIFICATION ASSIGNMENTS)

City's Final Offer: Effective the date of the Arbitration Award, delete from contract Article V - Seniority, Section 8. Out-of-Classification Assignments.

Union's Final Offer: Maintain status quo except reduce, under "Total per shift," 4 Lieutenant & 1 Relief Lieutenant to 3 Lieutenant & 1 Relief Lieutenant, and 10 Engineer and 1 Relief Engineer to 9 Engineer and 1 Relief Engineer.

FINDINGS AND OPINION

This issue is similar to City Issue 1 and also is related to City Issue 9. Article V, Section 8 deals with staffing and manning. It states that the fire department will schedule three platoons, one per shift, and sets forth the platoons. Chief Lamson testified that under Article V, Section 8 there are times when lieutenants perform the duties of a fire fighter and ride the back of a fire truck: The reason is that there are more required lieutenants and engineers than pieces of equipment.

Union Exhibit 217 shows that four of the comparable communities share Pontiac's requirement that call-ins cover daily absences rank-for-rank. In none of Pontiac's other bargaining units is the City required to fill every rank or grade of pay every normal work day.

The Union's final offer reduces "Totals per shift" by one lieutenant and one engineer. The Union argues that if Article V, Section 8 were repealed, an entry-level fire fighter could be

placed in charge of the station house or a piece of apparatus for the day, which would be unreasonable. The Union adds that all but two of the comparable communities have a contractually mandated rank structure, and that an arbitrator has upheld the manning required by Article V, Section 8.

The Panel does not believe it would be appropriate to eliminate the fire department's rank structure.

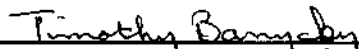
As this is an economic issue, the Panel must choose one or the other final offer. On balance, the Union's offer has more merit.

For the above reasons, the Panel adopts the Union's final offer.

Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Timothy Banycky, Union Del.
Concurs

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Dissents

CITY ISSUE 3: DISABILITY ANNUITY

City's Final Offer: Effective the date of the Arbitration Award, add the following new section to Article VI - Working Conditions, Section 7, Disability Annuity:

E. In the event an employee receives any cash payment in lieu of life insurance coverage, the benefits set forth in this Section shall be correspondingly reduced.

Union's Final Offer: Maintain status quo.

FINDINGS AND OPINION

Under the parties' contract, a unit member is entitled to the cash payout over 60 months on his \$40,000 life insurance policy if he receives a duty disability pension.

The City argues that only two comparable communities provide this benefit. For this reason and because of its poor financial condition, the City seeks to add a new subsection which would provide for the coordination of the life insurance disability payments with the disability annuity payments. The City has made this same proposal in current negotiations with other bargaining units.

The Union argues that the current practice has been the subject of three arbitrations and one judicial review, and has always been sustained. The Union adds that the dual payment

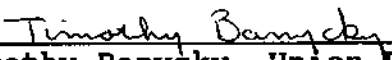
provides important economic seniority to fire fighters who are forced to retire because of a duty disability injury.

The Panel believes the Union's position has more merit. The Panel adopts the Union's final offer.


Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Timothy Banycky, Union Del.
Concurs

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Dissents

CITY ISSUE 4: VACATIONS (NOTICE)

City's Final Offer: Effective the date of the Arbitration Award, add the following new subsection to Article VI - Working Conditions, Section 10, (Vacations):

D. Employees must request vacation leave forty-eight (48) hours in advance in writing to their Battalion Chief.

Battalion Chiefs may waive the forty-eight (48) hour advance notice requirement in an emergency when he/she believes circumstances so warrant.

Said emergency must be documented in writing when the employee returns to work.

Union's Final Offer: The Union will agree to the City's proposal regarding a 48 hour notification if the phrase "in writing" is deleted.

FINDINGS AND OPINION

The Union agrees with the City's proposal except that it argues that the notice requirement need not ever be in writing. The issue that divides the party is non-economic and so the Panel has decided to treat it as a non-economic issue.

The Panel believes a requirement that non-emergency 48 hour notice always be in writing is overly rigid. There may be times when a battalion chief would have no problem accepting oral notice. For example, if a fire fighter wanted to request vacation leave while he was far from the City of Pontiac, he would have to rely on

the mail (or try to find a fax machine) in order to get timely written notice to the Battalion Chief. Here, the Battalion Chief might be content to receive oral notice by telephone. The Panel has modified the City's final offer to reflect this discretion.

Effective the date of the Arbitration Award, the Panel adopts the following new subsection to Article VI - Working Conditions, Section 10, (Vacations):

D. Employees must request vacation leave forty-eight (48) hours in advance to their Battalion Chief. This notice must be given in writing unless the Battalion Chief chooses to accept oral notice.

Battalion Chiefs may waive the forty-eight (48) hour advance notice requirement in an emergency when he/she believes circumstances so warrant.

Said emergency must be documented in writing when the employee returns to work.

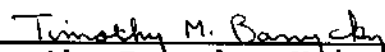
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
~~Concurs/Dissents~~

Dated: November 12, 1993


Timothy Banycky, Union Del.
~~Concurs/Dissents~~

CITY ISSUE 5: HEALTH INSURANCE PREMIUMS

City's Final Offer: Effective the date of the Arbitration Award, add the following new section to Article VI - Working Conditions, Section 18, (Insurance), Subsection A:

If a premium increase is required on the anniversary dates of the plan in the judgment of the City (over and above those in effect on June 30, 1998), the city employees and retirees covered by this agreement will each pay twenty-five percent (25%) of the amount determined to be necessary by the City to maintain benefits. (Based upon COBRA rates.)

Union's Final Offer: Maintain status quo.

FINDINGS AND OPINION

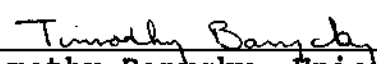
The City seeks this change because of its poor financial condition and skyrocketing health insurance premiums. The City made the same offer in the recent PPSA Act 312 case. The PPSA panel rejected it. No Pontiac bargaining unit shares premium increases with the City. The proposal would erode fire personnel overall compensation in comparison with comparable communities and other Pontiac employees.

For the above reasons, the Panel adopts the Union's final offer.

Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Timothy Banycky, Union Del.
Concurs

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Dissents

CITY ISSUE 6: PENSIONS (COORDINATION OF BENEFITS)

City's Final Offer: Effective the date of the Arbitration Award, revise Article VII, Section 1, Pension, Subsection A as follows:

Section 1. Pension

A. Effective January 1, 1984, any member having at least twenty-five (25) years of credited service may retire on a service retirement annuity, at the member's option.

Workers' Compensation and the employee's pension benefits will be fully coordinated. The maximum benefit will be the higher of the two.

Union's Final Offer: Maintain status quo.

FINDINGS AND OPINION

The City proposes that Workers' Compensation benefits be fully coordinated with pension disability payments. At the present time, there is partial coordination of these benefits to the effect that an individual is entitled to receive combined benefits from the two sources equaling no more than 100% of salary. If the City's proposal were adopted, an affected individual would receive 66 2/3% of his final average earnings.

Among the comparable communities, most have coordination of workers' compensation and pension benefits; five (like Pontiac) have coordination yielding a maximum benefit of 100%; the average maximum benefit among the comparable communities appears to be

about 75%. The City's other bargaining units have coordination of benefits. The maximum benefit for the PPSA and the PPOA is 100%.

The Union argues that previous Act 312 awards between the parties support its position.

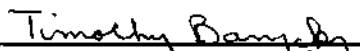
Later in this Opinion the Panel is adopting the City's final offer to raise employee pension contributions from 1% to 2.5%. For this reason and because internal police comparables as well as some external comparables support the Union, the Panel believes the Union's position has more merit.

For the above reasons, the Panel adopts the Union's final offer.


Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Timothy Banycky, Union Del.
Concurs

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Dissents

CITY ISSUE 7: PENSIONS (VESTING)

City's Final Offer: Effective the date of the Arbitration Award, revise Article VII, Section 1, Pension, Subsection B as follows:

Section 1. Pension

B. Effective January 1, 1984, vesting will be ten (10) years of service payable at age 50, or after twenty-five (25) years of service. Upon retirement from service, a member shall receive an annuity calculated in the following manner: for the first twenty-five (25) years of service, two and one-quarter (2.25%) percent of final average salary for each year of service. For the next five (5) years of service, one (1%) percent of final average salary for each year of service. Subject to a maximum of sixty (60%) percent of final average salary. A fractional period of service of less than a full year shall be considered in the calculation of the annuity.

Union's Final Offer: Maintain status quo.

FINDINGS AND OPINION

The City's proposal has the effect of reducing the maximum benefit level from 75% to 60%. City Exhibit 156 shows that 75% is the highest maximum benefit level (shared with Livonia) among comparable communities, but that 60% would place Pontiac at or near the bottom among the comparable communities.

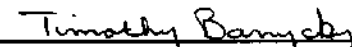
The current maximum benefit level is the same as for Pontiac's two police bargaining units. Further, in the recent PPSA Act 312 case, the City made a final offer similar to the offer here. The panel rejected it.

For these reasons and because the Panel later in the Opinion is adopting the City's final offer that employee pension contributions be increased to 2.5%, the Panel adopts the Union's final offer.

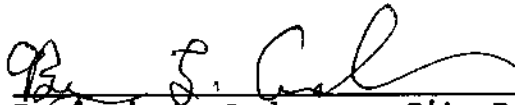
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Timothy Banycky, Union Del.
Concurs

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Dissents

CITY ISSUE 8: PENSIONS (EMPLOYEE CONTRIBUTIONS)

City's Final Offer: Effective June 30, 1993, add the following new Section 7 to Article VII - Pension Plan:

Effective June 30, 1993, employees in the bargaining unit shall contribute two and one-half (2.5%) percent on all salary and benefit payments included in final average salary (on the same basis as the City's contributions.

Union's Final Offer: Maintain status quo.

FINDINGS AND OPINION

Among the 19 comparable communities, only 4 have no employee pension contribution. For those that do, three (Bloomfield Township, Shelby Township and Warren) have a 1% employee contribution. The highest employee contribution is Lincoln Park's 7.55%. The average employee pension contribution among all 19 comparable communities (including those with no employee contribution) is 3.5%.

The City of Pontiac's pension contribution is 47.85%, which is the highest employer contribution among all the comparable communities, which range from 10% (Canton Township) to 33.95% (Livonia). The average employer contribution among the 19 comparable communities is 21%.

Internally, both the Pontiac Police Officers Association contract and the Pontiac Police Supervisors Association contract require the police to pay pension contributions of 2.5%. The City's proposal would bring its fire personnel in line with its police on this issue. The City's contribution is 38.12% for the PPOA and 58.10% for the PPSA. The four civilian bargaining units

in the City do not make employee contributions. The City's contribution for them is 20.41%. In addition, unlike police and fire, both the civilian employees and the City each pay the social security tax of 7.65%.

The Union argues that the City has over-contributed what is required for the retirement fund to be actuarially sound, with the result that it can pay a lower rate, and also that the fire fighters should have the same pension contributions as the City's civilian employees.

The employee contributions of comparable communities and of the City's police personnel, the City's heavy burden of pension contributions for fire personnel (even if discounted by its temporary overfunding), the increase in overall compensation of the fire personnel by reason of the Panel's adopting the Union's wage proposal for the third year, and the City's financial condition lead the Panel to conclude that the City's final offer has merit.

For the above reasons, the Panel adopts the City's final offer.

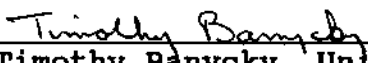
Dated: November 12, 1993


Thomas L. Gravelle, Chairman

Dated: November 12, 1993


Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993


Timothy Banycky, Union Del.
Dissents

CITY ISSUE 9: MINIMUM MANNING

City's Final Offer: Effective the date of the Arbitration Award, reduce minimum manning from 31 to 29 in Article IX - General Provisions, Section 7 (Maintenance of Conditions), Subsection D, Manning.

Union's Final Offer: Maintain status quo.

FINDINGS AND OPINION

In 1982, Pontiac voters amended the City Charter to require minimum manning in the Fire Department and an emergency medical service (EMS). The amendment provides that there be one fire fighter for every 2,000 residents of the City. The amendment was supported by a millage increase. Under this amendment, the parties initially settled on minimum manning of 38 fire personnel on actual duty on a daily basis. Over the next several years, the parties negotiated the minimum manning to its current level of 31 by agreeing who would count toward fire personnel "on duty."

The City has the highest minimum manning requirement among all the comparable communities. The highest after Pontiac is either Sterling Heights' minimum manning of 23 or Southfield's minimum manning of 24. (Compare Union Ex. 62 and City Ex. 226.) The parties agree that five comparable communities (Dearborn, Royal Oak, Waterford Township, Westland and West Bloomfield Township)

have no minimum manning. Further, no other collective bargaining unit in the City has a minimum manning requirement.

The City has financial problems and anticipates saving \$360,000 a year if its offer is adopted. Fire Chief Lamson testified that because of the 31 employee requirement the City is forced to use supervisory personnel excessively and inefficiently for overtime to fill fire fighter or AEMT positions. In 1992, average bargaining unit overtime payments were \$3,319, with the 40 fire fighters averaging \$1,773.31 and the 3 battalion chiefs averaging \$13,743.11.

Based on a review of external and internal comparables, the overtime compensation resulting from the present minimum manning level, and the City's need to reduce expenses, the City's offer has merit even though (depending on how fire fighters are counted) the offer might be in conflict with the City Charter. Under the law, any conflict with the City Charter would be resolved in favor of this award. See City of Lathrup Village -and- FOP, 1990 MERC Lab Op 105, 111 and cases cited therein.

For the above reasons, the Panel adopts the City's final offer.

The Panel is aware that there is some interplay between Article IX, Section 7 on the one hand and Article V, Sections 3 and 8 on the other. The Panel has decided not to repeal the latter. However, Article IX, Section 7 is to take precedence if there is a conflict between the reduced minimum manning under Article IX, Section 7 and the application of Section 3 or 8 of Article V. The

Panel hopes that the parties can resolve voluntarily and in good faith any possible conflict.

Dated: November 12, 1993

TL Gravelle
Thomas L. Gravelle, Chairman

Dated: November 12, 1993

B. L. Anderson
Benjamin L. Anderson, City Del.
Concurs

Dated: November 12, 1993

Timothy M. Banycky
Timothy Banycky, Union Del.
Dissents

CITY ISSUE 10: DRUG POLICY Withdrawn

Respectfully submitted,

TL Gravelle

Thomas L. Gravelle
Chairman

PONTIAC FIRE FIGHTERS UNION, LOCAL 376

UNION'S DISSENT

The Union respectfully dissents from the Award on Article IX, General Provisions, Section 7, Subsection D - Manning, which reduces manning to 29 line personnel. It is patently inappropriate, unwise and undemocratic. The City Charter mandates that there shall be one fire fighter for every 2000 residents. The City Charter amendment authorizing minimum manning is supported by a millage increase. Both were passed by a majority of the residents of Pontiac. A majority of the Panel, however, ignores the clear democratic voice of the residents and imposes its own mandate. The change in manning is a contradiction of the City Charter, and the democratic process.

It is noted that some Panel members were quite concerned with the democratic process when Mr. Axe testified regarding prioritizing expenditures. It is unfortunate that the Panel majority is now not concerned with how its own actions impact on democracy as it substitutes its priority and judgment for that of the citizens of Pontiac.

There have been no prior changes in this Charter Amendment. Changes that have taken place, by mutual agreement, have affected who counts towards a fire fighter being on duty, but not in the number required to be on duty.

A safety practice is a condition of employment. NLRB v., Gulf Power Co., 384 F.2d 822 (5th Cir. 1967) and Fibreboard Paper

Products Corp. v. NLRB, 379 U.S. 203 (1964). Minimum manning requirements for fire fighters have been held to be mandatory subjects of bargaining if the minimum manning requirement is related to the safety of the fire fighters. Hillsdale v. Michigan State Fire Fighters Union, Local 961, 164 Mich. App. 627 (1987); Alpena v. Alpena Fire Fighters Association, 56 Mich. App. 568 (1974). Ample evidence was introduced by the Union demonstrating how manpower impacts health and safety. It is evident that a reduction in manpower can result in an already dangerous occupation being made even more so.

A paramount statutory factor and public policy consideration is "The interests and welfare of the public" (M.C.L.A. §423.239(c)). Those interests and that welfare is not served by an Award which reduces mandated manning. The Award on this issue is not supported by competent, material or substantial evidence on the whole record. And no justification can be found in the City's alleged inability to pay. The health, safety and welfare of citizens and fire fighters alike must not be compromised because City administrators cannot manage. The citizens voted for minimum manning in the fire service. They established a priority which should not be emasculated by this Panel.

DATED: NOVEMBER 12, 1993

Timothy Banycky
TIM BANYCKY
UNION DELEGATE
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT

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