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Royal Oak, City of

IN THE MATTER OF ARBITRATION

between

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 431
and THE CITY OF ROYAL OAK, MICHIGAN

Under Act No. 312

Michigan Public Acts of 1969

Arbitration Panel:

William Haber, Chairman

Michael E. Lesko, Delegate representing
The City of Royal Oak

Howard Hoban, Delegate representing
International Association of
Fire Fighters, Local 431

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August 6, 1971

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- between -
International Association of Fire Fighters,
Local 431
- and -
City of Royal Oak, Michigan

I. Background

This is an arbitration pursuant to Act No. 312, Michigan Public Acts of 1969, between the International Association of Fire Fighters, Local 431, and the City of Royal Oak, Michigan.

The Union submitted a list of proposals for changes in the collective bargaining contract between the International Association of Fire Fighters, and the City of Royal Oak. This was addressed to Bruce W. Love, City Manager, dated March 1, 1971, (Union Exhibit No. 1). The "requests" from Local 431 for the fiscal year 1971-72 consisted of the following - as submitted by the Association:

1. Agency Shop
2. Base Salary of \$13,500 for Firefighter.
3. Adjustment in Officers salary to ten (10%) percent between ranks.
4. Adjust Alarm Operators salary to ten (10%) percent below Firefighters.
5. Pay for Education.
6. Out of Classification pay.
7. Pension update.
8. Vacations. After 1 year 2 weeks
 After 5 years 3 weeks
 After 10 years 4 weeks
 After 15 years 5 weeks
 After 20 years 6 weeks
 After 25 years 7 weeks

9. Life Insurance of \$25,000, paid up at retirement.
10. Change in Sick Leave concerning Bereavement Leave.
11. One Half ($\frac{1}{2}$) paid Sick Leave at Retirement.
12. Updating determination of Sick Control Plan and Accumulated Sick Leave.
13. Mutual Aid Pact Clause.

Two additional items, one involving longevity pay and the second requesting changes in the Michigan Blue Cross-Blue Shield contract from MVF-1 to MVF-2, plus the addition of the prescription drug and dental benefits to the Blue Cross contract, were included in the Union's request as contained in the Exhibit No. 1. These were removed either before the Hearing or during the presentation of the Union's case.

The City and the Association, according to the testimony of the Association's counsel, met "no more than 4 hours in collective bargaining.... one hour of which was with a mediator from the Labor Mediation Service." The parties joined in requesting the Employment Relations Commission of the State Department of Labor to designate an Impartial Chairman of a panel of arbitrators. The Chairman of this Arbitration Panel received his appointment in a letter signed by Robert G. Howlett, Chairman of Employment Relations Commission, dated May 13, 1971, and indicated that "there has been both collective bargaining and mediation which, under the statute, are conditions precedent to arbitration." Michael Lesko, Personnel Director of the City, was designated as its delegate on the panel. Howard Hoban was designated as delegate for Local 431, International Association of Fire Fighters.

This opinion has been written by the Chairman of the Panel. The Chairman is grateful to the other two members for their

participation, not only in the Hearing, but particularly for their vigorous presentation and defense of their respective points of view during the several executive sessions of the Panel in Ann Arbor. Differences of opinion concerning the merit of this or that bit of evidence were freely stated. The opinion of the Chairman has been refined and sharpened by the views of his colleagues. The consensus of one or both of the other members of the Panel should not be taken as indicating that they necessarily agree with the detailed formulation of this opinion, although at least one Panel member does indicate agreement in general with the disposition of the issues under submission.

The Chairman is aware of the fact that neither of the two other members of the Panel are entirely pleased with this opinion and award. The representative of the Firefighters urged a more generous settlement with respect to the basic wage as well as the other elements submitted to arbitration. The representative of the City thought that in view of the generous advance in the Firefighter's pay in recent years and the difficult financial position of the City, the award seriously stretched the City's resources and will compel a careful appraisal of its manpower allocation requiring many economies.

Public Act 312 states that in view of the fact that the right to strike in public police and fire departments is prohibited, it is necessary to afford an alternative procedure for the resolution of disputes in order to protect the high morale of such employees and the efficient operation of such departments. It states further that the provisions of the Act providing for

compulsory arbitration "shall be liberally construed." The arbitrator shall act as Chairman of the Panel, arrange for Hearings, receive oral or documentary evidence, and arrange for a verbatim record of proceedings. It provides that "the proceedings shall be informal;" that "technical rules of evidence shall not apply."

Of special significance is Section 9, which provides that "the Arbitration Panel shall base it's findings, opinions and order on the following factors as applicable:"

"Sec. 9. Where there is no agreement between the parties or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinion 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 proceedings 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."

Section 10 provides "A majority decision of the Arbitration Panel, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties."

II. Hearings and Appearances

A Hearing was held in the Police Department Building in the City of Royal Oak, on the morning of June 2, 1971.

The Association was represented by Brian K. Millington, Attorney; William H. Bailey, President of Local 431; and Thomas Campbell.

Mr. Millington presented the case for the Association. Mr. Campbell appeared as a witness.

The City was represented by Allan G. Hertler, City Attorney.

Mr. Hertler presented the case for the City. No witnesses were called by the City.

An official transcript of 144 pages was received by the Chairman on June 17, 1971. In addition, the City submitted a "Position Statement" of 11 pages at the Hearing. The City's brief together with an attachment addressed to the Mayor and City Commission

by the City Manager dated June 25, 1971 and several printed pages from the Bureau of National Affairs, concerning percent changes in output, compensation, and real compensation per man hour in the private sector of the economy - 1947-70, were received by the Chairman of the Arbitration Panel on June 30, 1971.

The Union brief signed by the Counsel for Local 431, reached the Chairman approximately the same time. It contains an attachment consisting of a letter from George L. Rickey, Director of Personnel, City of Birmingham, Michigan, to William Gardner, President Birmingham Firefighters Association dated June 16, 1971.

The Agreement between the parties for the fiscal year ended June 1, 1971, was submitted as a joint exhibit.

Seventeen supporting exhibits were submitted by the City.

These were:

1. Firefighter Salary and Direct Cash Benefits 1970-1971-
Prepared by the Personnel Department of the City
2. Comparison of Royal Oak Firefighters Wage Escalation
as related to cost of living for the period of June 1,
1966 through April 30, 1971
3. Firefighter Fringe Benefits 1970-1971
4. Financial Implications of the Request for a Base Salary
of \$13,500 for Firefighter
5. Consumer Price Index, Detroit, Chicago and United States
6. Annual Budget, City of Royal Oak, 1971-1972
7. Request for Adjustments in Officers' Salary to 10%
between ranks
8. Fire Department salaries in 28 Detroit area cities with
population of 25,000 and over
9. Adjustment in the Fire Alarm Operator's salary to 10%
below Firefighter

10. Comparison of current vacation schedule with vacation request of Union
11. Life Insurance of \$25,000 paid up at retirement
12. Change in sick leave concerning bereavement leave
13. One Half paid sick leave at retirement
14. Longevity Update
15. Annual cost of Blue Cross-Blue Shield for city employees
16. Letter from Allan G. Hertler, City Attorney, to Brian K. Millington, dated April 22, 1971, concerning demands of the City
17. Current method of staffing the four regional fire stations

Fourteen exhibits were submitted by the Union as follows:

1. Letter from William H. Bailey, President Local 431, to Bruce W. Love, City Manager, dated March 1, 1971, concerning the Association's requests
2. Income and Expenses for 1970 of Local Union 431
3. Comparison of Firefighter's base salary and fringe benefits for cities in the Royal Oak area
4. Job description of Fire Alarm Operator
5. Procedure for Alarm Operators, revised January 7, 1968
6. Salary trends for Royal Oak Fire Alarm Operators
7. Letter from Maurice P. Roche to Thomas Campbell, dated May 5, 1971, concerning the pay scale of Fire Dispatchers, City of Detroit
8. City of Pontiac, fire alarm statistics, Alarm Division
9. Request for Premium Pay for Associate Degree in fire science
10. Pay for Duty performed Out of Classification
11. Letter from David O. Eyre to William Bailey, dated May 28, 1971, regarding premiums for group life insurance
12. Change in sick leave concerning Bereavement Leave

*25 worth
Premium paid up*

13. One half paid Sick Leave at Retirement
14. Determination of Sick Leave Control Plan and Accumulated Sick Leave

One of the City exhibits is the Budget for 1971-72, dated April 30, 1971, covering all the departments of the City administration. The other exhibits are more directly related to the specific issues listed in the Association's requests of provisions to be included in the new Agreement.

Five of the Association exhibits are concerned with only one issue, namely, a change in the Fire Alarm Operators salary. Another exhibit (No.3) compares the basic pay and related benefits in the so called Royal Oak area including Berkley, Birmingham, Ferndale, Hazel Park, Madison Heights, Pontiac, Royal Oak, Southfield and in addition River Rouge. Reference in this exhibit is to base pay, difference in pay between ranks, food allowance, clothing allowance, longevity, holiday pay, vacation, life insurance, Blue Cross, and "personal day". The data is for contract year, 1970-71, except for Pontiac, which is for calendar 1971 and River Rouge which while not adjacent to Royal Oak as are the other cities, happens to be a suburban city which at the time of the Hearing in this case had already concluded its wage settlement for 1971-72.

City Exhibit No. 8, referred to the relative pay for Firefighters in 28 municipalities including some but not all of those in Union Exhibit No. 3. However, it refers only to basic pay of the Firefighters in the 28 communities and the differential for the officers, that is Sergeant, Lieutenant and Captain. The Union exhibit on the other hand (No. 3), for the smaller more comparable cities, refers

to base pay as well as to fringe benefits. The City has other exhibits for fringe benefits, but they do not compare Royal Oak with other municipalities.

The Arbitration Panel met in Ann Arbor, Michigan, on three occasions, July 22, 1971, July 27, 1971 and August 5, 1971

III. Issues before the Arbitration Panel

The issues submitted for Arbitration consist of 13 requests by the Association and one by the City of Royal Oak. The Association requests are as follows:

1. "Agency shop." The Association requests that the Arbitration Panel approve an agency shop type of employment contract. At the present time there prevails a "maintenance of membership" type of shop under which the City, upon individual authorization, deducts the dues and assessments of all employees who are members of the Association. Those who are not members have no obligation under the present procedure to contribute to the support of the Association. Under the agency shop plan the City would be required to deduct dues and other appropriate assessments from all employees of the Fire Department who are eligible to be members of the bargaining unit, even from those who are not members of the Association.

2. The base salary issue. The present salary for a Firefighter, reached after 30 months, is \$11,420. The Association requests that this should be raised to \$13,500. The City indicates that in addition to the base pay of \$11,420, the Panel should take into account an additional \$180 that is paid each year to each man. The Association objects to that added sum being considered since it is for "extra" work, namely for showing up 15 minutes earlier than the starting time each working day for roll call or other purposes.

3. Adjustment in officers salary to ten percent above Firefighter and between ranks. The present contract provides for a 7.5% differential between the ranks of Firefighter, Sergeant, Lieutenant and Captain. The Association requests that this differential be increased to 10%.

4. Adjust Alarm Operators salary to ten percent below that of the Firefighter. At the present time the maximum salary for Alarm Operators is \$8,680, which is 24% below the Firefighter's present maximum.

5. Extra pay for firemen with special education. The Association proposes an additional \$520 per year to be paid to an employee who has received an associate degree of fire science. This amount to be added to his regular compensation as a monetary recognition for educational investment.

6. Pay for working out of classification. The request of the Association is that when an employee performs the work of an officer for a full tour of duty, he should be paid the prevailing rate of that officer for the entire period he is required to perform said officer's work.

7. Pensions. The Association request in the March 1 list of items refers to "Pension Update." Neither the Association brief nor the transcript provides adequate clarification as to the nature of the Associations proposal. It is clear that the pension plan for the Firefighters is not separate from that of other employees of the City of Royal Oak. The Association would like to have the pension plan for Firefighter's and Police separate and seeks an opportunity to review the matter of separation and improvement with the City. It recognizes that this Arbitration Panel can not do much about it and requests that it should retain jurisdiction over this issue should it develop that a satisfactory agreement on this matter could not be worked out with the City.

8. Vacations. The present vacation schedule and that proposed by the Association are as follows:

| | <u>Present</u> | <u>Proposed by Association</u> |
|------------------------------------|----------------|--------------------------------|
| After one year of service | 2 weeks | 2 weeks |
| After five years of service | 3 weeks | 3 weeks |
| After ten years of service | 4 weeks | 4 weeks |
| After fifteen years of service | 4 weeks | 5 weeks |
| After twenty years of service | 5 weeks | 6 weeks |
| After twenty-five years of service | 5 weeks | 7 weeks |

9. Life insurance. Employees are presently covered for \$10,000 of group term life insurance. The City pays 40% of the premium. The Association proposes that this be increased to \$25,000, with the City continuing to pay 40% of the total premium cost and that the \$25,000 policy should be paid up at retirement.

10. Change in bereavement leave. At the present time if an employee experiences a death in his immediate family, he is entitled to a bereavement leave of 12 hours. If he utilizes more than that, (and unless the death occurred in Royal Oak and the funeral was there more than 12 hours would be required) the additional time is chargeable to the employees "sick leave control plan." The Association proposes a bereavement leave of absence with pay for a period not to exceed 24 hours and if more time is utilized for bereavement leave, that is to be charged not to the "sick leave control plan", that is the current years sick leave allowance, but to the accumulated sick leave bank which refers to sick leave credit of previous years.

11. Sick leave. The Association requests that at retirement a Firefighter shall receive cash payment for 1/2 of his accumulated sick leave. No such payment is made at the present time.

12. Sick leave control plan and accumulated sick leave.

Under present practice, a Firefighter earns one 12 hour sick day a month for a total of six work days per year. Unused sick leave is placed in his "bank". Once an employee has accumulated sixty 12 hour days the "sick leave control plan" begins to operate. That is, if an employee does not use sick leave during the fiscal year, the full six days will be compensated as follows: Three of the six days are added to his Sick Leave Bank and the balance of the three days is paid for at his prevailing rate.

There are three different types of leave chargeable to sick leave.

1. Normal sick leave which is charged to his current accumulation (sick leave control plan).
2. Emergency leave which is charged to his current accumulation (sick leave control plan).
3. Bereavement Leave: Currently, the first twelve hours of bereavement leave are not charged to the employee at all; the second and third twelve hour periods are charged to his current accumulation.

The Union desires that the first 24 hours of bereavement leave not be chargeable to anything (See Item 10 of the Association requests) and that an additional 24 hours of bereavement leave and emergency leave should be charged not to the employee's current accumulation, but rather to his "Sick Leave Control Bank".

13. Mutual aid pact clause. Under the present arrangement, several cities including Royal Oak, have undertaken to respond to a call from any community which is a member of the Mutual Aid Pact - the so called Oakway Plan - in case of need due to a fire which tests the manpower, resources and facilities of the community in which a fire exists. The Firefighters Association requests that the new contract contain the following clause: "No Employee shall be required to respond to any fire alarm or otherwise to another community under any 'mutual aid pact', or like agreement, between this municipality and such other community if such alarm or requested response is related to a labor dispute in such other community or to the failure of such other community to maintain adequate normal fire protection services."

The City's request, the only one submitted to the Panel, is that Firefighters should be required to perform certain types of non-firefighting functions. The City demands a contract provision enabling it to require the performance of such duties which can be done in the Fire Halls without impairing their ability to respond to fire calls. Among these are such items as: the repair of parking meters, water meters, playground equipment and lawn mowers; the painting of signs,

the painting and renovating of park benches, tables and similar jobs.

IV. The Financial Position of the City: It's Implications for the Base Salary Request

Public Act 312 (1969) which provides for compulsory arbitration of labor disputes in municipal police and fire departments, requires that the Arbitration Panel shall take into account among other things the "financial ability of the unit of government." The City's position was outlined at the Hearing in a position paper presented at that time, and particularly in a post hearing brief submitted to the Arbitration Panel. The City offered no increase in wages, it merely proposed to continue the present base salary of \$11,420 for another year.

In support of it's position against any increase in salary, the City calls attention to the substantial improvements which have been made in the employees salary scale during the past 5 years. Wage increases to Firefighters between June 1, 1966 and May 31, 1971, according to the testimony by the City, amounted to \$4,387, a sum representing an increase of 62.4% "over the wage in effect on May 31, 1966."

The City calls attention to the fact that the increase in the cost of living in the Detroit area, in the same period, amounted to 24.4%. Thus, a real improvement in the purchasing power of the Firefighter's wage had taken place. The City concedes that Firefighters have had "some catching up to do", but that they have "substantially caught up." Similar improvements have taken place in fringe benefits, which according to the City's estimate, amount to about \$4,878.58 per year for an average Firefighter, equivalent to 42.72% of a Firefighter's base annual wage.

Quite apart from whatever equities there might be in the Association's request for an increase in the base salary to \$13,500 - an 18.21% raise - the position of the City is that it is absolutely impossible to provide any increase in view of its near bankrupt financial situation. It is already levying the maximum property tax millage permitted by law; eleven mills for general operating purposes and two mills under separate statutory authorization for garbage disposal. It recounted its prospects for additional "new money", its anticipated fixed cost increases over which it has no control, and its failure in 1966 to secure public approval for municipal income tax. It also questioned the likelihood for any public support for an increase in the millage or for a successful resubmission of an income tax proposal. To proceed on the basis that one or another or both of such proposals, if submitted to the voters, would be approved, is in its view, quite unrealistic. The City has no reserves!

Consequently, any increase to Firefighters could be financed, according to the City's argument, only by laying off some employees, either in this classification or in other classifications. There are fewer than 480 employees serving all municipal functions. The City considers it quite inconceivable to reduce personnel when the ratio of municipal employees to population is already quite low. Consequently, the panel is urged not to "shrug aside" the financial circumstances of the City. There are situations, the City's attorney emphasizes, under which employees in the private sector have now and then had to forego a wage increase because of the employer's inability to provide it. Such, according to its testimony, is the position of Royal Oak as far as wage increases for 1971-72 is concerned.

The Association for its part has not provided much testimony or evidence in support of its request for an increase from the present base pay (after 30 months) of \$11,420 to \$13,500, a steep increase of 18%. The Association did concede that this was "our initial demand" and recognizes that the question as to whether it is "appropriate or inappropriate" was not determined. It was in fact not discussed. (Tr. p.32) Such an increase in the Arbitration Panel's view would not be justified nor is it called for by the comparative situation, even if the City of Royal Oak were financially able to meet it.

The evidence provided to the Panel (City Exhibit No. 8 and Association Exhibit No. 3), of competitive salary scales for comparable communities are substantially below the Association's conception of what the wage ought to be, and not very much different from the present base salary of Firefighters in Royal Oak. For example, of 28 municipalities of 25,000 population or over in the Detroit area, listed in City Exhibit No. 8, twenty-two have a salary scale of less than that of Royal Oak, as of April 2, 1971, (the date of the exhibit). Only Detroit and Highland Park, hardly comparable communities, have \$12,000. Southfield and Southgate are slightly above the wage paid in Royal Oak. (No wage data is not shown for one of the 28 communities.) The median salary scale is \$11,100 and the mean \$10,894.

In Association Exhibit No. 3, Birmingham, Hazel Park, Madison Heights and Ferndale, all provide for a base scale of less than \$11,420. Only Berkley is slightly above at \$11,500 and Southfield at \$11,750.

With respect to the communities involved in the mutual assistance pact, the so called Oakway plan, only Pontiac provides for a base pay of substantially more than that prevailing under the 1970-71

contract for Royal Oak. The Pontiac figure incidentally is for a calendar year and, therefore, includes the second half of 1971. Thus, for example, under the current contract - 1970-71 - base pay of Berkley is \$11,500; in Birmingham \$11,328; in Hazel Park \$11,225; in Madison Heights \$11,300; in Ferndale \$11,415; in Southfield \$11,750. In all of these instances, except Southfield, the amount is not substantially different than Royal Oak. In one or two instances the base pay is lower, in several others it is higher. Only in Pontiac, an Oakway city, is the amount considerably above, at \$12,210. The Pontiac figure includes the 2nd half of 1971 since the arrangement is for the calendar rather than the fiscal year.

The Panel has no final data as to any changes which have taken place in these other communities, many of which are quite comparable to Royal Oak, since July 1, 1971, except that information was provided concerning a settlement in Birmingham for a salary base of \$12,600, or an increase of about 11%. Negotiations in Ferndale, the Panel has been informed, have gone to arbitration. The River Rouge settlement, on the basis of information supplied to the Panel, effective June 30, 1971 for one year is \$12,454, a substantial boost of 10% above the \$11,314 in the preceding year.

In the light of this comparative examination of the prevailing base salary in more than two dozen communities, many of which are quite similar to Royal Oak, it is clear that the salary base for Firefighters in Royal Oak during the fiscal year 1970-71 does not compare unfavorably. Whether this is "good" or "bad" from the Association's point of view, as the Arbitration Panel sees it, the

Royal Oak Firefighters are not "out of line" as far as the comparably salary is concerned as of June 1, 1971. Consequently, there is certainly no basis for seriously considering the Association's proposal for a \$13,500 base salary (after 30 months) a whopping 18% increase. This must be clearly rejected.

Is there any basis for some improvement in the salary scale of the Royal Oak Firefighter?

The City's plea of poverty can not readily be set aside.

The Panel would not hesitate to make an award even in the face of such a plea if it had been established that the Firefighters in Royal Oak were at a substantial disadvantage when compared to other communities. The amount of relief that could have been provided would of course have been rather nominal. In a larger community, such as Detroit, for example, where the very size of the budget and the number of employees and alternative income sources provide some flexibility, an arbitration panel may find some justification for a salary increase to a group of employees, even after it has been established that the City's financial position is critical. Under such circumstances, the City must determine where its highest priorities are, and what services are less precious for its effective functioning as a "going concern" than others. This is less practicable in a small community. The very size of the total personnel in this instance, 479, precludes the sort of flexibility which is possible for a personnel group four or five times that size would provide.

The Panel is therefore bound to give far more serious weight to the financial position of the unit of a government when that unit is small than if it were substantial or very large.

Having rejected the Association's proposal, the panel can not avoid the question whether the situation is so rigid so as to preclude any improvement at all. The effect of such a conclusion would not only be a "stand still", but would in effect provide for an erosion of the salary - a wage reduction. It is not subject to dispute that \$11,420 in June of 1971, does not have the purchasing power that it had in June of 1970. The Panel is equally certain that its purchasing power next December, for example, and by May 31 of 1972, will in all probability also be lower than it is now. Even the City Attorney, writing with vehemence about the "extortionate" request of the Association, concludes that awarding "no increase in wages" would be unrealistic and that he realizes that "the panel may feel it must award an increase in basic wage." In such an event, he urges that the panel limit it's award to the increase in the cost of living that has taken place between June 1, 1970, and June 1, 1971. He observes that that would be equal to a 3% increase or \$342.60, "the very most that should be awarded." He calls attention to the fact that the actual increase in living costs for many items other than the cost of health care has in fact been less than 3%.

Such an award, according to the City, would mean that the Firefighters economic position would neither improve nor deteriorate. It would be "staying even." It would certainly provide no reward for the so called "improvement factor"; in fact the City doubts that there has been any and contends that the concept is a myth, at least as far as municipal services are concerned. In any event, for the country as a whole, citing the Bureau of National Affairs, the productivity increase - that is output per man hour - the improvement factor-increased less than 1% in the private economy in 1970. There is

no way of measuring what that increase would be, if any, for service employees in a community like Royal Oak.

There are no simple and clear cut arithmetic rules. The cost of living index is one of the most helpful concepts which have been developed to help management and labor appraise the purchasing power of the wage or salary dollar. Even so, however, it is a magical figure - an average is not necessarily an accurate statement of the actual situation in a particular family or a particular community. It is a "bread basket" figure and much depends as to what is put into the basket. Three percent would hardly represent the extra cost of the basket if it contained more fruits and vegetables, rent, fuel, utilities, transportation, especially public transportation and recreation, all of which have gone up much more rapidly than other items.

The Panel has struggled with this problem and reached the conclusion, that while the basic salary of Firefighters in Royal Oak as of May 31, 1971, did not compare unfavorably with payment for similar work in most comparable communities; that failure to provide some additional increment would lead to an actual erosion or decrease in the annual wage. Moreover, the Panel can not in good conscience disregard what, to some extent, is taking place in comparable communities. Two such communities are Pontiac and Birmingham. In the former city the present contract which does not expire until the end of December 1971, provides for \$12,210 and in Birmingham the settlement which was recently concluded provides for \$12,600. Other communities, reasonably comparable, have considered wage settlements involving 10%

or 11%. These have not been concluded and, in fact, may be under consideration by other arbitration panels, such as this one. The Panel has not studied the financial position of these other cities nor is it its responsibility to do so. It is sufficient for it to conclude that a 10% or 11% increase in the basic wage of Firefighters, substantially in excess of the cost of living, can not at this time be justified in view of the City's critical financial situation.

Accordingly, it is the Panel's Finding and Award that the basic wage of the Firefighter should be increased from \$11,420 to \$12,276.50 effective June 1, 1971. This should be adequate to absorb the increase in the cost of living which has already taken place and permit the Firefighters wage to be reasonably similar to that likely to prevail in many or most comparable communities in the Detroit area. Any adjustment larger than this proposed increase of 7.5% effective June 1, 1971, could not, in the judgment of the Arbitration Panel, be justified under the provisions which guide the Arbitration Panel as outlined in Act 312.

It is the Finding and Award of the Arbitration Panel that effective June 1, 1971, the base pay of the Royal Oak Firefighter should be changed from \$11,420 to \$12,276.50.

In making this award the Arbitration Panel is conscious of the fact that the salary increase that has the support of the Board is considerably below some settlements already made in comparable cities and several others which are likely to be made or awarded during the next several months. The Panel's relatively conservative award is a one year settlement. The crisis that the City faces will

be repeated again in June and July of 1972. While we are concerned in this arbitration only with the Firefighters, we are fully conscious of the implication of our action for many other City employees.

The Panel can not see a viable solution for the next year and subsequent years without some affirmative exploration of the present limitation on millage for general operating purposes. We recognize that this is not a subject before us. Action on this matter must represent the solid expression of a democratic community. We think it appropriate, however, to call the City's attention to our common conviction that the present difficult problems in financing City services will become more complicated and less soluable unless the millage issue is looked at realistically or, unless other resources from the State become available.

V. Other Issues

Having determined that the City's financial capacity must be uppermost in the mind of the Panel, all other issues submitted for arbitration will be judged on their merits and disapproved if their cost implications are more than nominal.

1. The Agency Shop

The present contract provides a maintenance of membership clause under which the City agrees to deduct Association dues from the wages of members of the bargaining unit who authorize such a deduction in writing. Once executed the authorization is irrevocable during the life of the contract. The City is opposed to the Agency Shop provision. It contends that the Association does not need it because all but two members of the bargaining unit are already members

of the Association and have authorized the deduction of Association dues from their pay. While the Association may resent these two "free riders", the fact is of little practical importance to the Association. Moreover, the City considers an Agency Shop highly undesirable. It implies the "levying of tribute" upon a person for the privilege of seeking public employment. Failure to authorize the deduction of dues may require the employer to discharge an employee who refuse to do so. There is some question whether this would be legal under the civil service act; in other words, as to whether failure to authorize dues deduction is "proper cause" for discharge under that Act. (Act. 78, P.A.1935)

The Association, on the other hand, resents firemen "who obtain the benefits of the Collective Bargaining process, but are not paying their fair share of costs incurred" in the administration of the collective bargaining agreements. Its views are not affected by the fact that there are only two such individuals. Collective bargaining is not inexpensive and to be successful, it must be properly financed. All who benefit from the process should participate in meeting its costs.

This is a delicate issue and is not new to "industrial jurisprudence" in American management-labor relations. Some employers having "crossed the Rubicon" and recognized the Union have chosen to go the whole way and agree to a closed shop contract. This requires every employee after a certain period to become a member of the union. Other employers, sensitive to the views of some of their more individualistic employees, have resisted the closed shop or the union shop. The Agency Shop, in a sense, provides a nominal sort of compromise.

It does not require union membership. At the same time it does not permit employees to refuse to meet their proportional share of collective bargaining costs, that is, the cost of negotiations, grievance settlement, arbitration, and in general, the administration of the joint agreement.

The Panel is of the view that every employee who benefits from the agreement and its administration, should be required to participate in its financing. It is, nevertheless, disinclined to impose upon these two, or in fact any number of independently minded persons who are already employees, the requirement that they authorize deductions from their pay to support the Association or face discharge. It concludes, therefore, that the new agreement shall contain a provision for the Agency Shop. It shall be applicable, however, only to new employees. No present employee not already a member of the Association can be required to become a member or to support its financing. New employees, however, will know that such support is a condition of employment, no different than any other rule or requirement which the City may impose.

It is the Finding and Award of the Arbitration Panel that the new agreement effective as of June 1, 1971, shall contain an Agency Shop provision applicable to present members of the Association and to new employees, provided, however, that such an Agency Shop is not held to be illegal by Michigan Courts, which now may be considering this issue.

2. Mutual aid pact clause.

The Association proposes that language should be inserted in the new Agreement which forbids the City from requiring

an employee to respond to any fire alarm or otherwise to another community under a so called "mutual aid pact" between Royal Oak and another community "if such a response is related to a labor dispute in such other community or to the failure of such other community to maintain normal fire protection services."

The Panel fully understands the concern and motives of the Firefighters Association in making this proposal. To begin with, should another community, according to the Association, have a breakdown in its collective bargaining relationship and as a result a strike takes place, it would be intolerable, from the Association's point of view, to respond to an alarm from such a community and in effect act as strike breakers. "We don't want to be ordered into some other city to fight a fire or take care of a response that that city cannot meet because of a labor dispute." Moreover, if the City fails to provide "adequate normal" fire services, the Royal Oak Firefighters Association requests that it should not be required to "shore up" and replace such inadequate services under a mutual assistance pact.

The Panel after careful consideration has declined to approve the inclusion of such a provision in the new collective bargaining agreement. To begin with, a strike is illegal under present legislation. The law provides for binding arbitration. The Panel declines to provide language to deal with a hypothetical situation concerning the appropriate action for members of the Royal Oak Firefighters Association, when firefighters in another community, which is part of the Oakway pact, violate the no strike provision of Act 312.

Moreover, the request that the Agreement should not require members of the Royal Oak Department to respond to communities whose firefighting forces are undermanned, while understandable, can not be accepted. The Arbitration Panel is aware of the fact that the very existence of the mutual assistance pact may lead to undermanning in one community or another. Some way must be found to deal with that problem. It would be improper for one particular association, such as that in Royal Oak, to say that this or that community is not adequately manned and consequently its members should not be required to respond to an alarm.

It is the Finding and Award of the Arbitration Panel that the Association's request that such a clause be inserted in its new contract with the City is not approved.

3. City proposal that Firefighters be required to perform non-firefighting work

It is proposed by the City that firefighters should be required to work outside of their classification, in other words, to accept work assignments of a character quite unrelated to their duties as firefighters. Thus, it is suggested that the proper City official should be in a position to require Firefighters to do tasks such as the following.

1. Repair parking meters.
2. Repair water meters.
3. Perform sign painting functions.
4. Perform lawn mower repairs and overhauls.
5. Paint and renovate park benches and tables.
6. Repair playground equipment.
7. Paint and repair City refuse containers.
8. Repair miscellaneous small tools for Department of Public Works, Parks and Recreation, and Water.
9. Make street barricades, saw horses, etc.
10. Wash venetian blinds.
11. Set barricades for DPW and Water Department.
12. Paint and maintain traffic signals and control boxes.
13. Perform other such work as assigned.

The City observed that it has not been determined whether all, most or many, of these tasks would be so assigned. It suggested, however, that a firefighter has much idle time when he is not engaged in activities directly related to his firefighting responsibilities. It was observed that in view of the City's financial stringency, it is quite in order to require firemen to be usefully occupied in the sort of tasks listed above and thus ease the financial burden upon the City.

The Association both rejects and resents these suggestions. While not fully expressed, it considered many of these activities "unprofessional", quite foreign to the firefighters training, perhaps even undignified. It expressed the view that firefighters were like a standing army in peacetime, "kept in readiness". should a development materialize which needed them at their highest skill. The Firefighter is already involved in many tasks around the fire station related to maintenance, renovation, painting, plumbing and similar activities. These are related to the appearance and efficiency of the fire house and while only indirectly related to firefighting have customarily been performed by the Firefighter.

On the other hand, the City calls the Panel's attention to the fact that Policemen are often required to perform tasks not directly related to their police functions. Aiding school children at street crossings, issuing tickets for parking violations, picking up dead or injured animals - such tasks, it was observed can be performed by persons with lower skills and much lower pay. At the same time members of the police force have been asked to do such tasks and have done so. In the Panel's view, however, many of these allegedly unrelated tasks do have a law enforcement or public safety relationship.

The Arbitration Panel understands and sympathizes with the City's point of view. Common observation suggests that there is a vast amount of unutilized time and perhaps wasted effort and this is unfortunate since there is much useful work which can be done. At the same time, the Panel hesitates to recast what is already an established job description of the Firefighters function, to "clutter up" the station house with equipment, meters, benches, traffic signals and similar equipment to be repaired during "stand-by time". Such a development would in a sense seriously affect the Firefighters morale and perhaps even the public's conception of the Firefighters job. In any event, the City did not make clear exactly what it wishes the Firefighters to do. It's long list of possible activities confused rather than clarified the issue.

In the Panel's judgment, agreement on this issue can best be reached by negotiation. There may in fact be a basis for a financial arrangement between the Association and the City concerning the amount and type of work to be performed and with some financial return to the Firefighters. Such a step if mutually accepted could be made economically advantageous not only to the City but to the employees as well.

The Panel is aware of the fact that the collective bargaining agreement gives the City the authority to assign "work to be performed by members of the bargaining unit." This is clearly within the City's management rights. "The City pays the members of the Association... and has the clear right to determine the functions to be performed for that pay." While the language of the Agreement is clear, it is

equally clear that neither party in signing the Agreement could have had in mind that Firefighters would be required to perform a whole series of activities which are not at all directly related to the accepted functions of the Firefighter. It would be torturing the language to conclude that the City, having the right to assign work, could assign any kind of work to Fire Department employees.

Consequently, it is the Panel's Opinion and Award that the City's request to assign non-firefighting functions to Firefighters is denied.

4. Adjustment in Officer's salary to 10% between ranks.

The Association requests that the differential between Firefighters and the Officers should be increased from 7.5% to 10%. The Panel has examined the comparable differentials in all the Michigan communities which are included in the City's Exhibit No. 8. While the mean differential is somewhat higher than that prevailing in Royal Oak for the first two ranks, it is lower than Royal Oak for the higher Officer ranks. In view of the financial implications of any change in payroll costs other than that already provided for in the salary increase, the Panel finds no strong basis for changing the present differential.

It is its Opinion and Award that the differential between Officers and Firefighters remain at 7.5%, the same as under the present agreement.

5. Adjust Alarm Operator's salary to 10% below Firefighters.

The Union seeks an adjustment in the Alarm Operators' wage to bring it up to a level that is 10% below that paid to a Firefighter. The Union submitted exhibits and testimony showing that the percentage spread has increased since 1961. The City answered that "there is no justification for such an adjustment

and that the existing differential should be left undisturbed."

The evidence submitted to the Panel indicates that there has been considerable decrease in the differential between the Alarm Operator's annual pay of \$8,680 and that of the Firefighters since 1961. However, the Panel has not been persuaded that the two jobs are really comparable and that there is any genuine justification to maintain a close relationship. The Alarm Operator has important responsibilities accurately described by his title. However, generally these do not involve responsibility for dispatching fire equipment except under the command, implied or direct, of an Officer. The Alarm Operator is not exposed to the strenuous requirements nor to the risks which face every Firefighter. The Panel wishes to avoid any action which creates an inference that the Alarm Operators annual salary is related to that of the Firefighter and that it should be set at a level which is 10% or any other percentage below the Firefighters. Nonetheless, the Panel believes that the Alarm Operator's salary is too low in relation to his responsibilities, and that he should receive a somewhat larger percentage increase in his wage to slightly improve his position.

Accordingly, it is the Finding and Award of the Panel that the Fire Alarm Operator's salary shall be increased by 10 % (7.5% plus an additional 2.5%) effective June 1, 1971.

6. Extra pay for firemen with special education.

The Association seeks \$520 per year extra pay for personnel holding an associate degree in fire science. No one on the Fire Department staff presently holds such a degree. The Association's contention is that premium pay of this sort would provide

an incentive for further education on the part of Firefighters. In addition, it cites the prevailing practice of salary differentials in the public school system under which teachers with masters or other advanced degrees are provided differential pay above that provided those who have only bachelor degrees.

In the Panel's opinion, the analogy is not impressive. Post graduate training with advanced degrees in the education field can result in assignment of teaching duties at a higher level. The Firefighter with an associate degree would be doing identical work as any other Firefighter, exposed to no higher risks or different professional demands. At the same time, he would be receiving a substantial amount of premium pay. The panel is not persuaded that an adequate case for this proposal has been made.

It is its Opinion and Award that the request be denied.

7. Pay for working out of classification.

The Association requests that a Firefighter who performs the work of an Officer for a full tour of duty be paid the Officer's rate for the job performed. It requests that when an employee is required to "assume the responsibilities of a higher position, he should be compensated" at the rate of that position.

Quite apart from the cost implication of such a change, the City indicates that the Royal Oak Fire Department has a higher ratio of Officers to Firefighters than comparable cities. The proposal might be more persuasive if it were not related to one 24 hour of duty but involved a period of time in excess of 24 hours when the Firefighter assumes continuing responsibility of an executive character. The issue was not sufficiently developed either at the

Hearing or in the briefs or in the executive sessions of the panel to justify a change at this time.

It is the Finding and Award of the Panel to deny this request.

8. Pensions.

Under the title of "Pension Update" as described in the Association's March 1, 1971 letter, the Arbitration Panel is not required to render a decision concerning pensions. The Association calls attention to the fact that the Police and Fire Department pension plan is coupled with all other city employees. The Firefighters undoubtedly desire to create a separate plan applicable only to police and firemen. The Panel is requested to retain jurisdiction and to direct the parties to bargain collectively on this matter and "if in that joint negotiation the problems can not be resolved, a hearing should be held by the Panel on the issues still in dispute."

The response of the City, as outlined in it's position statement, is that it does not understand the Association's demand with regard to pensions.

The Panel is not inclined to retain jurisdiction in an area which has not been fully developed for its consideration and which it does not understand. It is its Opinion and Award to decline this request.

9. Vacations.

The Association proposes that the present vacation entitlement should be changed. The current schedule provides for two weeks vacation (that is 5 working days in the Firefighter's schedule) after one year of service. This increases to a maximum of five weeks (11 working days) after 20 years of service.

The Association requests that after 15 years of service five weeks vacation should be provided; six weeks after 20 years and seven weeks after 25 years. The Association calls the Panel's

attention to what it believes to be a national trend which recognizes more leisure time and is of the view that the proposal submitted is not out of line with the trend in industry and other employment.

The City objects to the proposal and contends that the current schedule is generous. Moreover, to adopt the new schedule the City observes that it would need to employ more fire personnel or that fire protection will suffer if an additional 57 man-weeks of fire protection is lost. If this loss were to be replaced, the City estimates that about \$16,000 would be required under the current pay scales.

The Panel finds no evidence that the proposal accurately reflects what is already taking place in industry or other employment. It might well be the long term trend. Six weeks vacation, however, even after 20 years and seven weeks after 25 years is quite uncommon, except in highly special situations. The Panel finds no justification for directing the requested change in the vacation schedule. It is its Finding and Award that the request be denied.

10. Increased life insurance.

The Association proposes to change the present provisions for group life insurance from \$10,000 to \$25,000 and that the policy be paid up at retirement. Under the present plan the employee and the City share the premium cost with the City paying 40% and the employee 60%. The Association proposes the same distribution of costs of the higher amount.

Such data as was submitted in the exhibits indicated that the group life insurance for Firefighters in Royal Oak did not differ substantially from such comparable cities as were included in the

exhibit (Union No.3). Nevertheless, the \$10,000 limit appears low when compared to the trend in many areas of employment.

The Panel is aware that the Association proposal does have cost implications. These are not overwhelming. The Panel looks with favor upon a substantial improvement, however, not quite as high as that proposed by the Association.

Its Opinion and Award is that the group life insurance plan be revised effective January 1, 1972, from \$10,000 to \$20,000, with the same distribution of premium costs as currently prevails.

11. Change in bereavement leave.

The Association seeks a change in the bereavement leave policy designed to provide for more than 12 hours bereavement leave, and to charge any excess to the sick leave bank rather than to the sick leave control plan. It points out that an employee is unfairly penalized under the present program especially when the death or funeral is out of town.

The City does not believe the proposal "is deserving of the attention of the Arbitration Panel." It points out that an employee is permitted to take more than 12 hours leave, if necessary and to use part of his vacation time or sick leave.

The Panel has reflected on this matter and is of the view that 12 hours is not a sufficient period of leave at the time of a death in an employee's immediate family. He should have at least one full working day. That period plus his normal time off should be sufficient in most instances. In those cases where more time off is necessary, the present policy should prevail.

Accordingly, it is the Finding and Award of the Panel that bereavement leave shall consist of one 24 hour shift (two normal work days in the case of the employees in the Fire Marshall's, Training and Alarm Division), and if the employee elects he may take an additional 24 hour period with pay, but such time shall be charged to the employee's current sick leave or vacation credits.

12. Payment of one-half of accumulated sick leave at retirement.

The Association seeks payment in cash for one-half of any sick leave credits that an employee has in his "bank" when he retires. It looks on sick leave as additional compensation "which an employee earns", but is lost to him at retirement.

The City points out that the current Sick Leave Control payment plan makes annual payments to employees for a portion of unused sick days. It does not see any justification for making payment at retirement in addition to the annual payments.

The Panel believes that the current plan is generous and provides an adequate arrangement for employees to receive cash payment for a portion of their unused sick leave.

Consequently, it is the Finding and Award of the Panel that the request for payment of one-half of accrued sick leave at retirement be denied.

13. Updating sick control plan.

The changes that the Association requests, as outlined earlier in this decision, are related in part to the request for an increase in bereavement leave. The Panel does not find any

justification for a change at this time. The present plan is generous and costly. It provides for payment up to one-half of unused sick leave each year. The Panel does not believe any additional cost should be imposed to the City.

Accordingly, it is the Finding and Award of the Panel that no change be made in the sick leave plan except as noted above under bereavement leave.

August 6, 1971


William Haber, Chairman


Michael E. Lesko, Delegate of the City


Howard Hoban, Delegate of the Association

VI. Summary of the Arbitration Panel's Finding and Award

The following represents the Arbitration Panel's Finding and Award. The effective date is June 1, 1971.

1. Wages

The basic wage of the Firefighter should be increased by 7.5%. This increases the Firefighter classification from \$11,420 to \$12,276.50 per year.

2. Agency Shop

The Agency Shop is approved for present members of the Association and for all new employees after June 1, 1971.

3. Mutual aid pact clause.

The request for a change in the present contract as sought by the Association is not approved.

4. City proposal that Firefighters be required to perform non-firefighting work.

This request is denied.

5. Adjustment in Officers salary to 10% between ranks.

The differential is to remain at 7.5% between ranks.

6. Adjust Alarm Operator's salary to 10% below Firefighters.

The Alarm Operator is to receive an increase of 10% above his present scale.

7. Extra pay for firemen with special education.

This request is denied.

8. Pay for working out of classification.

This request is denied.

9. Pensions.

The Panel declines to retain jurisdiction.

10. Vacations.

The request for an increase in the present schedule is not approved.

11. Increase life insurance.

Group life insurance is increased from \$10,000 per employee to \$20,000 per employee effective January 1, 1972. The cost will continue to be shared 40% by the City and 60% by the employee.

12. Change in bereavement leave.

Bereavement leave shall consist of one 24 hour shift

(two normal work days in the case of the employees in the Fire Marshall's, Training and Alarm Division) and if the employee elects he may take an additional 24 hour period with pay, but such time shall be charged to his current sick leave or vacation credits.

13. One half paid sick leave at retirement.

This request is denied.

14. Updating sick control plan.

No change is to be made in the sick leave plan except as noted under bereavement leave.