

71

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

ACT 312 ARBITRATION

MSU
8/13/96
96 OCT 18 AM 10:48
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

CITY OF BIG RAPIDS, MICHIGAN

Employer

-and-

Opinion and Award
Of The Arbitration Panel
In No. G94 B-1020
August 13, 1996

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1776

Union

ARBITRATION PANEL:

Donald F. Sugerman, Neutral and Chair

Jack R. Clary, Esq., Replaced by John H. Gretzinger, Esq. for the Employer
Randall D. Fielstra, Esq. for the Union

APPEARANCES:

For the Employer:

Jack R. Clary, Esq. and Peter H. Peterson, Esq. of Clary, Nantz, Wood, Hoffius & Cooper;
Replaced by John H. Gretzinger, Esq. of Law Weathers & Richardson

For the Union:

Randall D. Fielstra, Esq.

Big Rapids, City of

OPINION

Introduction

This case arises under Act 312 (MCLA 423.239) of the Public Employment Relations Act. It was initiated by a petition filed by the International Association of Firefighters, Local 1776 ("IAFF" or "Union"). An answer to the petition was filed by the City of Big Rapids ("Employer" or "City"). These documents identified the issues over which the parties were unable to reach agreement for a new collective bargaining contract to replace the one that had expired on June 30, 1994. The issues in dispute are:

1. Vacation entitlement (Section 14.1)
2. Dental/Optical (15.5)
3. Sick leave (21.1)
4. Wages (Appendix A)
5. Acting assignment pay
6. Minimum Manning
7. Retiree Health Insurance
8. Promotional Procedure (9.3)
9. Health Insurance Premium/Co-pay
10. Sick Leave For Illness/Immediate Family (21.8)
11. Family Medical Leave Act Language

Each of these subjects will be discussed below.

Criteria for Determination

Section 9 of Act 312 sets forth the factors upon which this Panel is required (and has in fact) based its decision. They are:

- (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 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 dependency 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.

The Comparable Communities

Section 9(d)(i) is one of the important factors upon which Act 312 decisions are based. This case is no exception. The parties agreed that the communities of Cadillac and Traverse City were comparable to the Employer for the purpose of analyzing the issues of wages, hours and conditions of employment to be included in their new Agreement. In dispute were the Employer nominated communities of Coldwater and Menominee and the Union nominated communities of Holland, Mt. Pleasant, Muskegon Heights and Norton Shores. Needless to say, the City objected to the Union nominees and the Union objected to those proposed by the City.

The Panel Chair considered the following factors in determining which of the cities were comparable to Big Rapids: Population, SEV, Budget, Income, Land Area, Density, Fire Service, presence of a college or university.

- a. **Population.** Big Rapids has a population of 12,603. Cadillac and Traverse City, jointly selected by the parties, have populations of 10,104 and 15,155, respectively. Although Coldwater and Menominee are smaller (9,607 and 9,398) they are only slightly smaller than Cadillac. The populations of Muskegon Heights (13,176) is also comparable to the agreed upon nominees and to Big Rapids. But those of Holland (30,745), Mt. Pleasant (23,285) and Norton Shores (21,755) are substantially larger.
- b. **SEV (in Millions of Dollars).** The SEV of Coldwater (122), Menominee (99) and Muskegon Heights (93) closely parallels that of Big Rapids (103). Holland (647) and Norton Shores (383) are too much greater than Big Rapids to be considered. Mt. Pleasant at 218 shows a greater value than Big Rapids but it is within the range of Cadillac (145) and Traverse City (342).
- c. **City Budgets.** The budgets of Big Rapids (\$4,082,000), Cold Water (\$4,388,641), Menominee (\$3,394,798), Mt. Pleasant (\$5,302,420), Muskegon Heights (\$4,504,144) and Norton Shores (\$4,958,754) are comparable. Holland at \$14,572,031 places it well beyond the budget of Traverse City at \$9,400,900.
- d. **Median Family Income.** The median family income for Big Rapids is \$26,383. Cadillac is on a par (\$27,081) and Traverse City is slightly greater (\$34,287). Coldwater (\$27,813), Menominee (\$27,075) and Mt. Pleasant (\$29,357) are comparable. This factor for Muskegon Heights (\$16,038) is below range and that of Holland (\$37,122) and Norton Shores (\$38,473) are beyond the range.
- e. **Land Area.** The land area in square miles of Big Rapids is 5.9, Cadillac 6.7, Traverse City 8.2. Of the nominees Coldwater (6.8), Menominee (5.0) and Mt. Pleasant (7.2) look most like the city and the joint selection of the parties. Holland (14.2) and Norton Shores (23.2) are too large. Muskegon Heights with 3.2 square miles is smaller, but not too much smaller than Big Rapids.

Determining comparable communities is never an easy task. There are too many variations to be able to say with any certainty that one community is the mirror image of another. The statute, however, does not require perfect symmetry. The factors above convince me that Coldwater, Menominee, Mt. Pleasant and Muskegon Heights bear sufficient resemblance to Big Rapids that they should be considered comparable communities for the purposes of this proceeding. On the other hand, Holland and Norton Shores do not have enough indicia of similarity to be considered. The parties were advised of this disposition prior to the submission of Last Offers of Settlement and Briefs and utilized only the communities deemed comparable in their exhibits and in their arguments.

The Substantive Issues

The issues remaining in dispute will be considered utilizing the criteria of Section 9.¹

1. Vacations (14.1). Under the current arrangement firefighters receive the following vacations:

Two weeks after one year
Three weeks after seven years
Four weeks after fourteen years

The Union seeks to add as the last tier, five weeks after twenty years. The Employer opposes this increase.

Coldwater has the same system as Big Rapids with the last step being four weeks after fourteen years. Muskegon Heights does not have a progression. Of the remaining comparable communities each has a five year vacation factor, albeit with different qualifying

¹All provisions of the expired contract not changed by agreement between the parties and by this award shall continue in effect and shall become a part of their new contract.

dates: Menominee after 25 years, Mt. Pleasant after 21 years, Traverse City and Cadillac after 17 years. Internally the police and AFSCME units provide four weeks after 20 years while unrepresented employees receive four weeks after 20 years plus one day for each year to a maximum of 30 days. Four of the external comparables and one of the internal units support the Union's position. Accordingly, the Union proposal will be adopted.

2. Dental/Optical (15.5). Although it appears there is a fundamental agreement on this issue, the City contends that the language proposed by the Union presents some uncertainty and ambiguity in application. To avoid this from becoming a problem, the Employer's language--which is similar or identical to that in the POLC and AFSCME contracts--will be adopted.

3. Sick Leave (21.1 and Letter of Understanding, p. 29). Per the current arrangement, an employee must have 30 days accumulated to receive 50 percent of sick leave at the time of leaving employment. The City would remove the minimum accumulation. The Union proposes to improve accumulated leave during employment. Currently an employee can accumulate 72 days and the Union would increase this to 102.

The Union states there is no abuse in view of the requirement of this section that a leave requires management approval and 21.4 that requires a doctor's statement. It is noted that payout on separation remains unchanged. The only issue is whether to increase accumulation for the purpose of taking leave while employed.

An examination of the comparable communities shows: Coldwater permits unlimited accumulation; Muskegon Heights 160 days; Cadillac 72 days; Menominee 75 days; Traverse

City no accumulation, but sick leave compensation; and Mt. Pleasant 100 (equivalent 50% up to 75). Of the internal units POLC has 100 at 50 percent. The unrepresented employees 150 at 50 percent and AFSCME 180. Seventy-two days appears to be at the low end of the spectrum and for this reason the Union proposal will be adopted.

4. Wages (Appendix A). The Employer's last best offer is four percent, four percent, and four percent for each of the three years of the Agreement. The Union's offer is seven percent, five percent, and four percent. Pursuant to the agreement made at the hearing, the Panel is required to adopt either the proposal of the Employer or that of the Union. It may not, for example, adopt the Union's proposal for the first year and the Employer's proposals for the second and third years.

The baseline wage in the comparable communities is:

Menominee	26237
Cadillac	27136
[Big Rapids	27318]
Muskegon Heights	27568
Coldwater	28139
Traverse City	28596
Mt. Pleasant	32277

For the first year of the contract, the comparables negotiated or were awarded wage increases of 3.5, 3.0, 3.3, 0, 3.0, and 3.0, respectively. The average among the comparables is 2.63 percent. Eliminating Traverse City in which no increase was granted results in an average among the remaining comparables of 3.16 percent. This compares favorably with the internal units in which AFSCME received an increase of three percent and unrepresented employees were given four percent (that was tied to a cap on health insurance premiums).

The Union disdains the use of percentage increases, but this is the fairest method to evaluate the situation and it is one commonly used by Act 312 panels. Of course, it is true that where the use of percentage disadvantages one party it opts for the use of actual salary and vice versa.

The Consumer Price Index (all urban consumers) for 1994 increased 2.7 percent. For 1995 it increased 2.5 percent and for the first three months of 1996 it is increasing at an annualized rate of 2.9 percent (the difference between the CPI for January, February and March 1996 and the corresponding CPI for those months in 1995).

Given the great variable between the respective offers for the first year of the Agreement (4 percent verses 7 percent) the Employer's offer on wages must be adopted as being most closely aligned to the comparables, internal units, and CPI. The City's offer will be adopted.

5. Acting Assignment Pay. Currently there is no change in rate when a firefighter performs as a captain. The Union proposes that an employee receive the higher rate after working in the assignment for 24 hours. The Employer proposes that an employee work 20 consecutive work days and receive the higher rate on the 21st day.

Menominee and Muskegon Heights have no acting assignment pay. Coldwater pays after 30 days (presumably calendar days). There is some uncertainty as to whether Cadillac pays after 30 calendar days as claimed by the Employer or immediately as claimed by the Union. Mt. Pleasant pays the higher rate immediately. Among the internal units POLC pays after 15 consecutive days, AFSCME after 30 work days and the unrepresented employees after 20 work days.

Twenty consecutive work days does not comport with the comparables and is greater than the internal units. While there is some advantage to an employee working in a higher classification and receiving training in that position that may ultimately lead to a promotion, there are presumably greater responsibilities--especially in the fire service--to warrant payment before an employee has worked in the higher rated job for twenty consecutive days. Payment should be commensurate with the responsibilities. While the Chair would prefer something between one day and twenty days, the choice must be made between the opposing offers. This being the case, the Union's offer more closely approaches that of the comparables that pay the higher rate and, for this reason, the Union's proposal will be adopted.

6. Minimum Manning. There is no current language dealing with the subject of minimum manning. The Union proposes that effective July 1, 1996 three full-time unit employees will be scheduled on duty for each of the three 24-hour shifts. The Employer contends this is an economic proposal. The Union did not address this issue. The impact on payroll for placing this proposal into effect--whether satisfied by overtime or by hiring new employees--is substantial. A Panel majority concludes that the Union's proposal directly affects wages and is therefore economic.

None of the comparable communities have such a manning provision.

The criteria of Section 9 do not specifically address the standard to be utilized in evaluating this type of proposal. The closest would be sub-paragraph (h) under which the Panel may properly consider the safety of employees in performing their jobs. That is precisely the argument of the Union. The NFPA Standards provide that employees not

make an interior attack on a structure fire without four personnel on the fire ground. The Union argues from that that three full-time unit employees be on duty at all times. This is akin to the syllogism propounded by Woody Allen: "All men are mortal. Socrates is a man. Therefore all men are Socrates." How three full-time employees on each shift translates to four on the fire ground is unclear.

An alarm would provide at least three employees at the fire ground at the same time, but a fourth would still be needed. The Department is comprised of full-time and part-time firefighters. According to the Employer there has never been a problem in having sufficient manpower at the scene of a fire. Thus, the three employees per shift seems like an arbitrary figure. Moreover, the NFPA Standards do not address the issue of minimum manning.

While a hotly contested issue in the fire service, it is uncertain that minimum manning by platoon directly impacts on the safety of firefighters. It is much more likely that manning of equipment relates to safety of personnel. Three full-time firefighters on each shift might bear upon the time a unit could respond to a fire. But it would not, in itself provide the manpower necessary to permit an interior attack. If, however, there was a second separate fire alarm on the heels of the first one, three persons on the shift would not improve the safety of those required to respond to the second alarm (or to the first alarm). Safety is dependent upon activities on the fire ground.

A change of such radical proportions should not be made absent clear and convincing evidence that such is mandated by practice or by regulation. Neither of those factors is present here. Accordingly, the Employer's proposal will be adopted.

7. **Retiree Health Insurance.** There is no provision in the Agreement for this benefit. Currently, retirees are allowed to purchase insurance at group rates. The Union proposal would provide full payment of this benefit for retirees and dependents from age 55 to 65 or the date of Medicare entitlement. Further, if the retiree dies before age 65, the proposal would continue health insurance for the surviving spouse until age 65 or the date of Medicare entitlement.

Of the comparables, Coldwater, Menominee and Mt. Pleasant provide no benefit at all. Of the remaining cities, their benefits all provide some limitations. For example Cadillac does not cover retirees on disability retirement; Muskegon caps the premiums for the retiree's spouse and dependents at the rate in effect on July 1, 1992, and; Traverse City conditions the benefit on lack of equal coverage under another plan and caps the obligation to premiums in effect on July 1, 1995.

Among the internal units there is no health benefit for retirees. None of the comparables have a plan as generous as that proposed by the Union. The goal of the Panel is to put into place provisions that the parties would have agreed upon had their negotiations borne fruit. The proposal of the Union is so costly it cannot be said that the Employer might have agreed to it. Accordingly, the Employer's offer will be adopted.

8. **Promotion Procedures (9.3).** Currently four factors are used for promotion purposes: Written exam, experience, performance rating, oral exam. The Employer proposes that it be given the option of using either the current procedure or that of an assessment center. The Union, on the other hand, would require the use of an assessment center.

Cadillac bases promotions on three factors and does not use an assessment center. Coldwater and Traverse City have no limitations on the factors that may be considered or an assessment center. Menominee uses seniority exclusively. Mt. Pleasant bases promotions on seniority, qualifications, written, oral or practical examinations. Muskegon Heights uses six factors and no assessment center.

Assessment centers have become popular in assessing candidates for promotion because they are essentially a neutral operation. The stability in labor relations requires the use of one forum or another. In other words, it would be improper to permit the use assessment center to fill one vacancy, the current arrangement to fill the next and so on and so forth. The Employer's offer on this non-economic benefit will be adopted with the proviso that if it elects to use an assessment center it must continue to use that process until the matter is modified by agreement or Act 312 award.

9. Health Insurance Premium Co-Pay. The Employer proposes that up to a ten percent increase in the premium over that in effect on June 30, 1994 would be borne by the City and anything in excess thereof would be shared 50/50 between the City and the employees. The Union objects to this co-pay plan.

Four of the comparable communities pay the full cost of insurance for their firefighters. In Coldwater, employees pay full cost of any premium that increases in excess of five percent. In Traverse City employees pay 50 percent over scheduled rates. Of the internal units, AFSCME has agreed to the Employer's proposal. And the City has imposed this condition on its unrepresented employees.

The Employer's rationale for the co-pay is that it will help control costs. Inasmuch as employees generally are unequipped to challenge tests, consultations, or procedures "recommended" by their physicians, it is doubtful they can meaningfully control the costs that they incur. Thus, the primary effect cost of the Employer's proposal is to simply pass part of the cost on to the employees.

The comparable communities do not support the Employer's proposal. Four of them have no co-pay. Of the internal units there is some support, but no co-pay is in place for the police unit, the one usually considered *pari passu* with firefighters. For these reasons, the Union's proposal will be adopted.

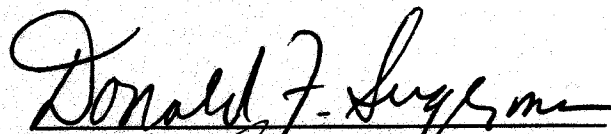
10. Sick Leave for Illness/Immediate Family (21.8). Currently this sick leave provision is not restricted. The Employer proposes that it be limited to one day per incident. While four of the comparable communities have some limitation, none of them support a limitation as narrow as that proposed by the Employer. No showing was made that this provision had been abused or that the current implementation of the provision has caused a problem. Accordingly, the Union proposal will be adopted.

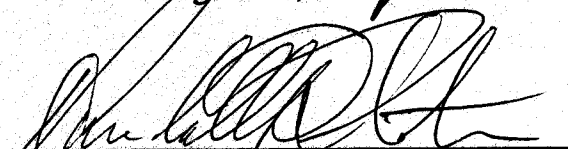
11. Family & Medical Leave Act. The Employer proposes language integrating provisions of the Agreement with those of the Family & Medical Leave Act ("FMLA"). The Union opposes this change. The agreements of the comparable communities do not support the Employer's proposal. Of the internal units, AFSCME has agreed to FMLA language and it has been imposed on unrepresented employees. The Employer urges adoption of its proposal based upon symmetry among all city employees. Consistency is

important but not controlling. As the comparable communities do not support the Employer's position, the Union's proposal will be adopted.

A W A R D

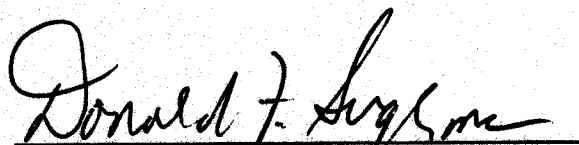
1. Vacation Entitlement (14.1) - The Union's final offer of settlement is adopted.



Donald F. Sugerman, Neutral and Chair


Randall D. Fielstra, Esq. for the Union

John H. Gretzinger, Esq. for the City

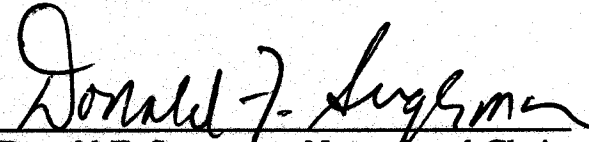
2. Dental/Optical (15.5) - The Employer's final offer of settlement is adopted

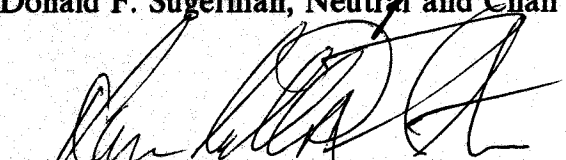

Donald F. Sugerman, Neutral and Chair


John H. Gretzinger, Esq. for the City

Randall D. Fielstra, Esq. for the Union

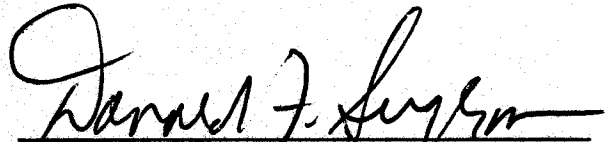
3. Sick Leave (21.1/Letter of Understanding, p. 29) - The Union's final offer of settlement is adopted.

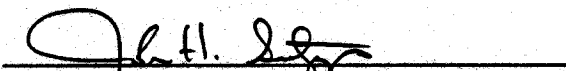

Donald F. Sugerman, Neutral and Chair


Randall D. Fielstra, Esq. for the Union

John H. Gretzinger, Esq. for the City

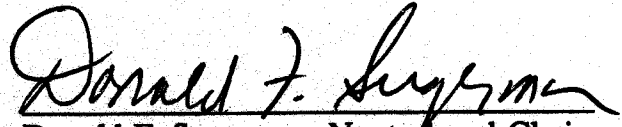
4. Wages (Appendix A) - The Employer's final offer of settlement is adopted.

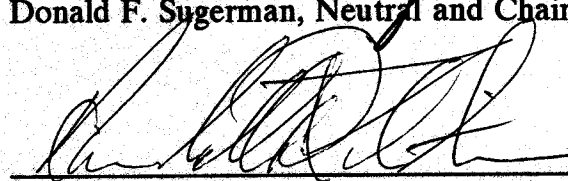

Donald F. Sugerman, Neutral and Chair


John H. Gretzinger, Esq. for the City

Randall D. Fielstra, Esq. for the Union

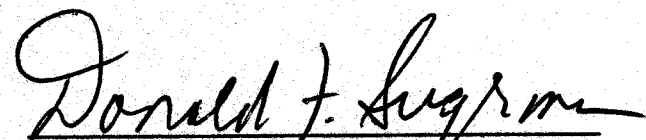
5. Acting Assignment Pay - The Union's final offer of settlement is adopted.

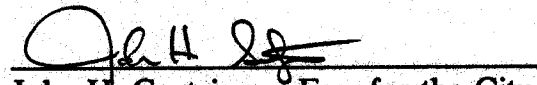

Donald F. Sugerman, Neutral and Chair


Randall D. Fielstra, Esq. for the Union

John H. Gretzinger, Esq. for the City

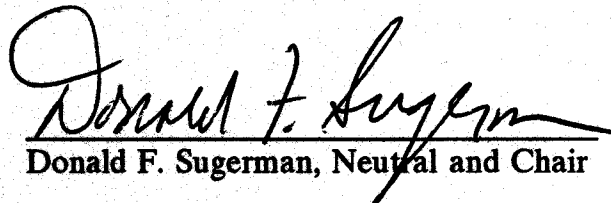
6. Minimum Manning - The Employer's final offer of settlement is adopted.

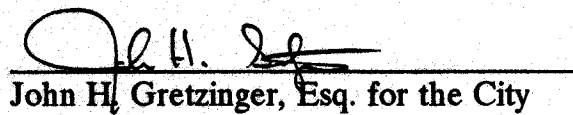

Donald F. Sugerman, Neutral and Chair


John H. Gretzinger, Esq. for the City

Randall D. Fielstra, Esq. for the Union

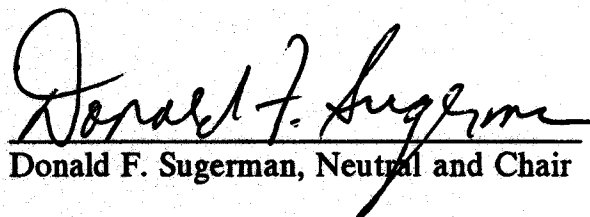
7. Retiree Health Insurance - The Employer's final offer of settlement is adopted.


Donald F. Sugerman, Neutral and Chair


John H. Gretzinger, Esq. for the City

Randall D. Fielstra, Esq. for the Union

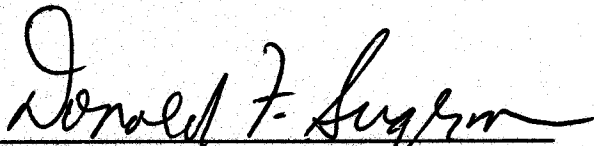
8. Promotion Procedures (9.3) - The Employer's final offer of settlement is adopted with the proviso that if an assessment center is adopted it must be used until changed by agreement or award.

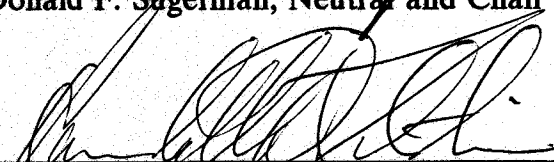

Donald F. Sugerman, Neutral and Chair


John H. Gretzinger, Esq. for the City

Randall D. Fielstra, Esq. for the Union

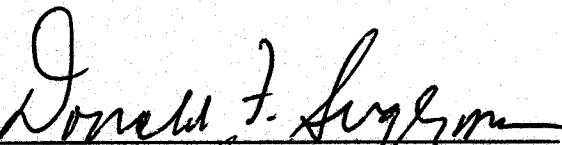
9. Health Insurance Premium Co-Pay - The Union's final offer of settlement is adopted.

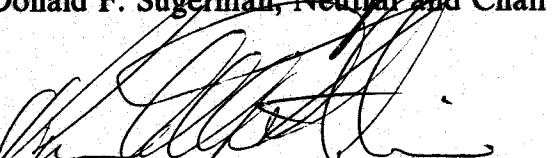

Donald F. Sugerman, Neutral and Chair


Randall D. Fielstra, Esq. for the Union

John H. Gretzinger, Esq. for the City

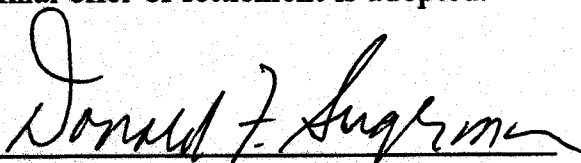
10. Sick Leave for Illness/Immediate Family (21.8) - The Union's final offer of settlement is adopted.

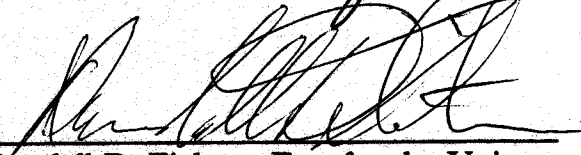

Donald F. Sugerman, Neutral and Chair


Randall D. Fielstra, Esq. for the Union

John H. Gretzinger, Esq. for the City

11. Family & Medical Leave Act - The Union's final offer of settlement is adopted.

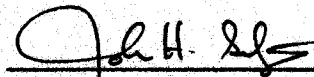

Donald F. Sugerman, Neutral and Chair


Randall D. Fielstra, Esq. for the Union

John H. Gretzinger, Esq. for the City

As the City's delegate to the Act 312 arbitration panel, I sign the Award indicating I assent to the Opinion and Award as to Issue 2 (Dental/Optical); Issue 4, Wages; Issue 6, Minimum Manning; Issue 7, Retiree Health Insurance; and Issue 8, Promotion Procedures.

I hereby dissent to the Opinion and Award on Issue 1, Vacation Entitlement; Issue 3, Sick Leave; Issue 5, Acting Assignment Pay; Issue 9, Health Insurance Premium Co-Pay; Issue 10, Sick Leave for Illness/Immediate Family; and Issue 11, Family and Medical Leave Act.



John H. Gretzinger