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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF STATUTORY  
ARBITRATION BETWEEN:

CITY OF SAGINAW

ARBITRATION AWARD AND  
OPINION

-and-

SAGINAW FIRE FIGHTERS ASSOCIATION  
LOCAL 102, IAFF, AFL-CIO

MERC CASE NO. L85 D-376  
ACT 312 PUBLIC ACTS 1969 AS AMENDED

ARBITRATION PANEL

JOSEPH P. GIROLAMO, CHAIRMAN

JAMES R. KOROM  
EMPLOYER DELEGATE

EARL DEGUISE  
UNION DELEGATE

EMPLOYER REPRESENTATION

Steven B. Rynecki, Attorney

UNION REPRESENTATION

Ronald R. Helveston, Attorney

ARBITRATION HEARINGS:

Dates: February 12, 13, 14; March 7, 12, 13 & 14, 1986  
Place: Florentine Inn, Saginaw, Michigan

*Joseph P. Girolamo*  
JOSEPH P. GIROLAMO  
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Dated: September 3, 1986

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OPINION AND AWARD OF ARBITRATION PANEL

INTRODUCTION

The parties herein (The City of Saginaw) and Saginaw Firefighters Association Local 102 (Fighters/Union) were unable to resolve their differences concerning numerous outstanding issues at the expiration of their Collective Bargaining Agreement on June 30, 1985. Utilization of Mediation Services provided by the Michigan Employment Relations Commission (MERC) did not result in a negotiated agreement. The Union petitioned for Arbitration pursuant to Act 312 Public Acts of 1969, as amended in July, 1985. The Commission, by letter dated October 25, 1985, appointed the undersigned Chairman of the Arbitration Panel. The

following delegates were named to the panel by the respective parties:

James R. Korom (City)

Earl DeGuise (Union)

A pre-hearing conference was convened on November 26, 1985. Hearings on this matter were held on February 12, 13, 14, March 7, 12, 13, and 14, 1986, at which time the Chairman took the statutory oath of office and the parties stipulated as to the Panel's jurisdiction of the issues in dispute.

### ISSUES

The following issues were placed before the Panel for resolution with stipulated identification except as otherwise noted:

- |                                |                |
|--------------------------------|----------------|
| (1) Wages                      | (Economic)     |
| (2) COLA                       | (Economic)     |
| (3) Food Allowance/Amount      | (Economic)     |
| (4) Food Allowance/Taxability) | (No Agreement) |
| (5) Holiday Pay                | (Economic)     |
| (6) Personal Leave             | (No Agreement) |
| (7) Dental Benefits            | (Economic)     |

(8)	Hours of Work	(Economic)
(9)	Longevity	(Economic)
(10)	Education Incentive	(Economic)
(11)	Rank Differential	(Economic)
(12)	Sick Leave	(Economic)
(13)	Health Insurance Co Pay	(Economic)
(14)	Dental Insurance Co Pay	(Economic)
(15)	Affirmative Action	(No Agreement)
(16)	FLSA	(Economic)
(17)	Out-of-Class Pay	(Economic)

Issues one through eleven were raised by the Union (Union Issues) and the remainder were raised by the City (City Issues).

#### COMPARABLES

The parties disagree on the comparable communities which the Panel should utilize for purposes of evaluating their respective positions on the issues in dispute.

The Union has proposed a "Southwestern Michigan Industrial Crescent" list of comparables. The primary reason advanced as justification for the Union proposed list of comparables is that

"all of the Union's comparables fall within this Industrial Crescent and share the impact of the automotive industry's ups and downs, as does Saginaw". The Crescent to which reference is made is that along Interstate 75 and 94. The City proposed a list of six comparable communities selected after "the City examined several factors, including changes in major general fund revenue sources, relative tax effort of citizens, changes in population, growth or decline in the number of available housing units in the community, per capita income growth, changes in property values as reflected in the state equalized valuation, per capita income, and unemployment figures".

Despite the substantial disagreement on methodology for selection, the City and Union have included the following in their respective list of comparables: "Bay City, Flint and Pontiac". The Union has in addition designated the following communities as comparables: "Ann Arbor, Dearborn, East Lansing, Grand Rapids, Lansing, Livonia, Royal Oak, Southfield, Sterling Heights and Warren". The City has selected "Battle Creek, Jackson and Muskegon" as its additional comparables.

The statutory framework directs adherence to communities with comparable and not identical characteristics. The City objects to inclusion of many municipalities within the Union list on the basis that some are "bedroom communities to the City of Detroit" while others such as Ann Arbor and Lansing are

education and government centers without primary dependence on the automobile industry.

The City list of comparables is challenged by the Union because they were "determined on the basis of self-serving factors it designated as economic health indicators." The Union contends that many of the factors are "redundant" and also with the fact that "the relative growth concept the City relies upon is highly subjective and inappropriate for determining comparability". In the Union's view "the bottom line in this proceeding is the actual revenues themselves: those dollars which are available here and now".

At the outset the Panel includes in the list of applicable comparables those communities included by the Union and City in their respective lists: Bay City, Flint and Pontiac. In addition the Panel includes the City comparable of Muskegon whose per capita SEV is slightly above that of Saginaw and, while having a substantially smaller population, has economic characteristics similar to those of Saginaw. The Panel also includes the Union selection of Lansing, which certainly does have a governmental and educational presence, but is nevertheless a community with a large industrial economic segment as well as other characteristics in line with those of Saginaw.

The Panel has therefore determined that it will pay primary attention to the following list of comparable communities: Bay City, Flint, Lansing, Muskegon and Pontiac. However, as the City has aptly noted "for certain limited purposes other communities might be looked at as an additional guide when the so called primary comparables do not provide adequate guidance".

#### DISCUSSION AND FINDINGS

##### (1) WAGES

##### UNION'S LAST OFFER:

(A) Wages: 7-1-85 through 6-30-86.

Effective July 1, 1985 the salary rates in effect on June 30, 1985 shall be increased five per cent (5%) across the board for all ranks and classifications.

(B) Wages: 7-1-86 through 6-30-87.

Effective July 1, 1986 the salary rates in effect on June 30, 1986 shall be increased three per cent (3%), and effective January 1, 1987 the salary rates in effect on December 31, 1986 shall be increased three per cent (3%) across the board for all ranks and classifications.

(C) Wages: 7-1-87 through 6-30-88.

Effective July 1, 1987 the salary rates in effect on June 30, 1987 shall be increased five per cent (5%) across the board for all ranks and classifications.

CITY'S LAST OFFER:

(1) Wages: first year of contract.

7-1-85 through 6-30-86.

The pay plan in effect on June 30, 1985, will be increased by three per cent (3%). The pay plan in effect on January 1, 1986 will be increased by two (2%).

(2) Wages: second year of contract.

7-1-86 through 6-30-87.

The pay plan in effect on June 30, 1986 will be increased by three per cent (3%).

(3) Wages: third year of contract.

7-1-87 through 6-30-88.

The parties will reopen the contract for the purpose of negotiating wages for this period.

The main argument of the City is that it simply does not have the ability to grant the Union those wage increases it has demanded. While the City readily concedes that it is not "a dead community" it does stress that it has undergone a substantial decline in economic activity and only recently has exhibited signs of recovery. The City Manager characterized Saginaw as a "company town" which is highly dependent on the automobile industry and the economic fortunes of General Motors Corporation in particular. Finally, the issue in the City's view is not whether a wage increase is to be granted, but its size, so as to permit the City to make expenditures for capital improvements and other items which have been neglected.

The Union characterizing its proposals as "modest" contends "the City is preoccupied with the past-a recession from which it has long since recovered". The Union is especially suspicious of the City's presentation of "budgeted figures" as opposed to "actual figures" in relation to the ability to pay argument since in most recent years the actual has out-performed the budgeted.

The parties emphasize and attempt to focus the Panel's attention on opposite ends of the spectrum. The Union, citing a General Fund projection of \$24.6 million, asks:

"Can it be said that out of that vast amount, even after allowance for restricted or mandated items, that the City 'can't afford' to meet the Union's proposals in this case?"

The City admonishes that:

"Items like street lighting, a civil defense system, resurfacing the city hall parking lot, road paving and signal control computers have all been forgone because the city cannot afford them."

The Panel does not view these competing interests as diabolical attempts to sway its attention from invalid concerns. Ability to pay does not require that the Employer expend all its resources on any one particular group and, by the same token, it does not require that one group must sacrifice itself to the extent of subsidizing the public good. The Panel is aware of these competing considerations and is confident this Award will strike a reasonable balance.

The Panel cannot ignore the fact the parties are "not very far apart" on the matter of wages for the first year of the contract. While the City's offer would result in a higher rate of pay at the end of the first year the cost of its offer would be less than that of the Union's because it is implemented in two stages. The Panel adopts the Union's offer on wages for the first year of the contract commencing on July 1, 1985.

For the second year the Union has proposed a three per cent (3%) raise effective July 1, 1986 and a three per cent (3%) raise effective January 1, 1987. The City has proposed a

three per cent (3%) increase for July 1, 1986 through June 30, 1987. The Panel in view of its third year decision on wages adopts the City proposal for the second year of the contract.

In reference to the third year the City has proposed a reopener which the Union vigorously opposes. It is the sense of this Panel that a reopener would not be conducive to improvement of the labor relations climate among the parties. It cannot be ignored that the parties have undergone a rather strenuous period culminating in this award. It is also to be noted that the parties have apparently, to a significant extent, relied on the Act 312 process in prior negotiation endeavors. Moreover, the parties did agree to a three year contract and a "reopener" is not, strictly speaking, in accordance with that agreement. Finally, the Panel deems the final year proposal by the Union to be within a reasonable range.

Joseph P. Girolamo  
JOSEPH P. GIROLAMO, Chairman

James R. Korom (Discont. year 1+3)  
JAMES R. KOROM, City Delegate

Earl D. DeGuise  
EARL DEGUISE, Union Delegate

(2) COLA

UNION'S FINAL OFFER:

The Union's last offer is that the terms and conditions of Article X, Section 2, of the 1979-82 Collective Bargaining Agreement shall remain in full force and effect (unless modified in future negotiations or by Act 312 Arbitration) and shall be set forth in full in the new written agreement between the parties, except the employer shall hold in abeyance any payment of COLA under the provisions of Article X, Section 2, from July 1, 1985 through December 31, 1987. During this time, no CPI points will accrue nor will any monetary payments be due or accrue, and no retroactive liability whatsoever shall exist or be created. Thereafter, however, the employer shall continue the cost of living program based upon a one cent (\$.01) per hour increase for each .4 increase in the U. S. Department of Labor's Bureau of Labor of Statistics, Revised Urban Wage Earners and Clerical Workers Consumers Price Index (all cities, all items, 1967 equal 100). The new base for computation shall be the January, 1988 Index (as released in February, 1988). Cost of living adjustments, upward or downward for the final quarter are to be made to each employee's rate of pay effective the first full pay period in June, 1988, based upon the change in the Revised Urban Wage Earners and Clerical Workers Consumer Price Index from January, 1988 to April, 1988.

EMPLOYER'S FINAL OFFER:

No COLA clause contained in collective bargaining agreement.

The City stressed that Arbitrator Reisig adopted the City's final offer as follows: "The City proposed that after expiration of the collective bargaining agreement, further COLA adjustments must only be paid if the parties so agree, or COLA payments are required by an Arbitrator under Act 312." In the City's view COLA is no longer a part of the agreement and therefore it is incumbent on the Union to establish the necessity for reinstatement of that benefit.


The Union contends that it is retaining the status quo since it requests that the Reisig award provision allowing for a "moratorium on COLA payments until the last quarter of the contract" should continue with the appropriate date modifications for payment and the Consumer Price Index. The Union notes that COLA was first negotiated between the parties in the 1979-82 contract.

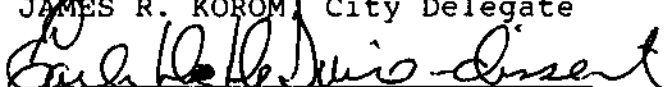
The Panel agrees with the City on the issue of COLA in that Arbitrator Reisig "determined the COLA must only be made if the parties agree or this Arbitrator decides the Union has carried it's burden of showing COLA ought to be included in the agreement after considering all the statutory factors under Act 312".

Aside from the matter of status quo it is evident that many jurisdictions - including Bay City and Pontiac - have deleted COLA. Lansing does not have COLA and in Muskegon it is frozen. Among the internal comparables the two SEIU units have a moratorium on COLA while the police command, police patrol and management groups have each eliminated the COLA provisions.

The Panel is persuaded that the City's position on COLA conforms with the criteria set forth in Section 9 of Act 312.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

(3) FOOD ALLOWANCE

UNION'S LAST OFFER:




The Union's last offer on food allowance is to amend Article XVII of the collective bargaining to provide: Effective July 1, 1986, each 24 hour fire fighter who is required to eat his meals at his place of work is allowed a food allowance of Five Hundred Dollars (\$500.00) payable semi-annually on or before December 31, and on or before June 30. Each 24 hour fire fighter is entitled to his full food allowance and the City may not prorate such food allowance.

CITY'S FINAL OFFER:

The City's final offer is to maintain the status quo of three hundred fifty dollars (\$350.00) payable semi-annually.

The City contends that the Union is attempting to "leap frog" with its demand for a five hundred dollar (\$500) food allowance benefit. The Union notes that "even if the total shifts are reduced by two weeks for vacation and make no adjustment for overtime worked is made, the average fire fighter who is eating two meals per shift at \$3.00 per meal, is paying \$870.00 per year."

The Panel, after considering that fire fighters must consume their meals on the employer premises, determines that a \$3.00 per meal estimate is not unreasonable and, therefore, adopts the Union proposal on the matter of food allowance. Moreover, adoption of the Union's Offer will place Saginaw behind Flint and marginally above Lansing and Bay City.

  
JOSEPH P. GIROLAMO, Chairman  
  
JAMES R. KOROM, City Delegate  
  
EARL DEGUISE, Union Delegate

(4) FOOD ALLOWANCE - TAXABILITY

UNION'S LAST OFFER:

The Union's last offer on Food Allowance - Tax Status - is to amend Article XVII of the Collective Bargaining Agreement by adding the following provision:

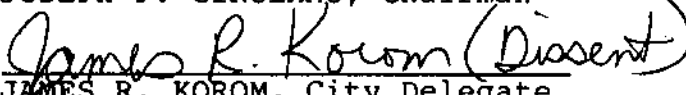
"Effective January 1, 1986, employees are required by the City to contribute financially to congregate meals in the Fire House at a charge equal to the value of the meals, irrespective of whether the employee chooses to eat the meal."

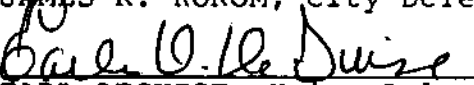
EMPLOYER'S FINAL OFFER:

No new language purporting to modify the taxability of the Firefighters' Food Allowance (Status Quo).

The primary purpose of the Union's demand is to permit Firefighters to deduct, from their income as ordinary and necessary business expense under Section 162(A) of the Internal Revenue Code, the amounts they currently contribute for the purchase of food consumed at the Fire Stations. Despite concerns expressed by the Employer in its Post-Hearing Brief, it is the Panel's determination that the proposal is reasonable and therefore the Union's proposal is adopted.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

(5) HOLIDAY PAY

UNION'S LAST OFFER:

The Union's last offer is to amend Article XIX of the Collective Bargaining Agreement to provide as follows:

"Effective July 1, 1985 all 56 hour Firefighters shall receive pay for all holidays payable in the pay period in which the holiday falls. The rate shall be One Hundred Dollars (\$100.00) per holiday, payable in the pay period in which the holiday falls. All holidays worked shall be credited or paid at straight time rates. An employee failing to work the scheduled work day before and the scheduled work day after a holiday, or failing to work on a scheduled work holiday without satisfactory excuse, shall not receive pay for that holiday. Forty-hour employees shall be granted the same holidays off with pay.

The Holiday shall be:


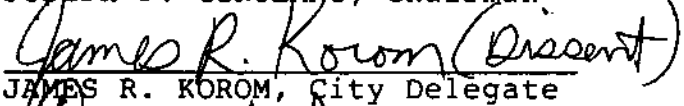

- (1) New Year's Day
- (2) Good Friday
- (3) Memorial Day
- (4) July 4th
- (5) Labor Day
- (6) Veteran's Day
- (7) Thanksgiving Day
- (8) Christmas Day
- (9) Employee's Own Birthday

EMPLOYER'S LAST OFFER:

The Employer's last offer is to retain the Status Quo, which is \$68.75 for each Holiday.

The City is correct in observing: "There is a large variety among the proposed comparables in their treatment of Holiday pay."

The Panel determines that the Union proposal has merit. Among the primary comparables adopted by the Panel, the Union's proposal will place the Department within a reasonable range from the primary comparables.

  
JOSEPH P. GIROLAMO, Chairman  
  
JAMES R. KOROM, City Delegate  
  
EARL DEGUISE, Union Delegate

(6) PERSONAL LEAVE

UNION'S LAST OFFER:

The Union's last offer is to add the following new article to the Collective Bargaining Agreement:

"PERSONAL LEAVE.

"Effective July 1, 1986, all 24 hour Firefighters shall be entitled to two (2) personal leave days per contract year for personal business. Personal leave is to be taken in increments of not less


than 12 hours and charged to the employee's sick or vacation bank as determined by the employee. Reasonable advance notice of a request for personal leave will be given to the Department Head or his designee. Requests for personal leave shall not be unreasonably denied. Personal leave charged to sick leave shall not be considered a sick incident."


EMPLOYER'S FINAL OFFER:

No use of sick or vacation time for personal leave purposes (Status Quo).

The Panel was particularly impressed with the testimony of Chief Hoffman to the effect that adoption of the Personal Leave proposal would create scheduling problems as well as a need for additional fire personnel. It is the Panel's assessment that the proposal is not necessary given the Department's liberal policy toward allowing members assigned to Fire Suppression to trade days. The Panel adopts the Employer Proposal.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

(7) DENTAL

UNION'S LAST OFFER:

The Union's last offer is to amend Article XIII of the Collective Bargaining Agreement by adding the following provision:

"Effective July 1, 1987 the Employer shall provide to employees covered by this Agreement, and their families, the DELTA Plan, 70/30 Class III Benefits, with a One Thousand Dollar (\$1,000.00) lifetime maximum per family member."

EMPLOYER'S LAST OFFER:

The Employer's last offer is Status Quo, which does not include the Class III Benefit.

The Employer stressed that among the internal comparables, this particular proposal should be denied, since only the Management Group has some Class III Benefits. Needless to say, the City is especially concerned that adoption of the Benefit for this Unit will result in other Units demanding the same benefits:

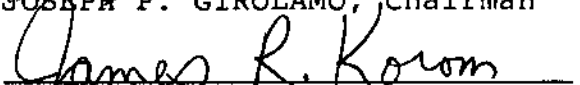
"The City of Saginaw strenuously urges the Arbitrator to block this attempt; the Act 312 process was not meant to be used by one party to lead the way to new benefits, but only to adjust those benefits in a particular City which seriously lags behind those in other communities."

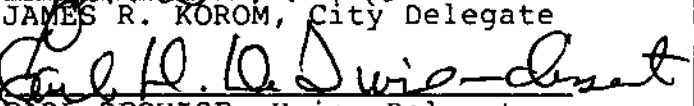
The Union maintains that the trend is toward providing employees with the coverage it seeks in its proposal, and in that vein notes that one observer has stated: "While it is obviously difficult to assign a specific rationale to a complex award, the predominance of comparability was so overwhelming that it is too difficult to believe it is not decisive."

Final Offer Arbitration Awards in Michigan, 1973 through 1977, page 44, Institute of Labor & Industrial Relations, University of Michigan - Wayne State University, 1978.

The Panel cannot overlook the fact the cost of insurance is a steadily rising drain on the Employer resources. Among the primary comparables, three do not have Orthodontics coverage and the remaining two have Programs less generous than proposed by the Union. Given the Panel's wage adoption and other benefit improvements incorporated herein, the Panel selects the position of the Employer on the matter of Dental Benefits.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

(8) HOURS OF WORK

UNION'S LAST OFFER:

The Union's last offer on hours of work is to amend Article XIII, Section 1, as follows:

"54 Hour Employees.

Effective July 1, 1987 the work schedule of employees required to work an average of a 56 hour work week shall be changed to an average of a 54 hour work week."

The Union further proposes that:

"There shall be no reduction in annual salary or benefits as a result of implementation of the 54 hour schedule."

EMPLOYER'S LAST OFFER:

The Employer proposes retention of the 56 hour work week (Status Quo).

Once again, the Panel is impressed with the testimony of Chief Hoffman wherein he testified that a reduction in the hours of work would necessitate the addition of more personnel in order to achieve the minimum coverage he deems necessary to protect the citizens of the City of Saginaw.

The Union stressed the fact that a Firefighter assigned to a 56 hour work week works 2,912 hours in a one year period, compared with a 40 hour employee who works 2,080 hours. It is urged that with the 54 hour week, a Firefighter will still work 8 3/4 years more over a 25 year period than a 40 hour employee.

The City contends: "It is unfair to compare an employee who has punched in for 56 hours per week, but is permitted to sleep on the job and otherwise engage in purely personal pursuits during the evening and night time hours (subject only to fire or medical emergency calls) to an employee who is required to be 100% productive from the time he punches in until the time he punches out."


The City also urges that the external comparables do not support the Union's demand.

Finally, the Employer suggests that the logistics surrounding implementation of a 54 hour work week requires that the parties negotiate the implementation of such a benefit.

The Panel finds the position of the City persuasive and declines to implement a 54 hour work week.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

(9) LONGEVITY PAY

UNION'S LAST OFFER:

The Union's last offer is to amend Article X, Section 6, of the Collective Bargaining Agreement to increase to Eighteen Thousand Dollars (\$18,000.00) per annum, the amount of the base rate to be used in computation of Longevity Payments, effective upon issuance of the Panel's Award.

EMPLOYER'S LAST OFFER:


The Employer's last offer is to retain the Nine Thousand Dollar (\$9,000.00) limit (Status Quo).

The City cautions: "Given the City's ability to pay, this Arbitrator should not be eager to be a trend-setter in changing the Longevity System." The City is fearful of the domino effect which will cause other unions to request the same benefit. In reference to external comparables, the City characterizes the Union's proposal as an attempt to "leap-frog" which it urges is inappropriate under Act 312.

While the Union's last offer does amount to some "leap-frogging" it is not so extravagant as to be rejected by this Panel. On review of external comparables, the Panel observes that an increase is justified. The Panel is mindful of the

Employer's concern that other Units will demand the same benefit. It is to be noted the Fire Fighters are required to be on duty an average of 56 hours per week. This Unit is distinguishable from the others and it does not necessarily follow that the same benefit must be accorded to all other employees. Under the circumstances, the Union proposal is adopted.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

(10) EDUCATIONAL INCENTIVE

UNION'S LAST BEST OFFER:

Effective 7/1/87, the program will further provide for the following annual premium payment:

"Five percent (5%) of the employee's base salary for an Associate Arts Degree in Fire Science, Fire Administration or Fire Related Major. Ten percent (10%) of employee's base salary for a Bachelor of Arts or Bachelor of Science Degree in Fire Science, Fire Administration or Fire Related Major. This educational incentive pay plan shall be incorporated into the pay plan in a manner most convenient to the City."

EMPLOYER'S LAST OFFER:



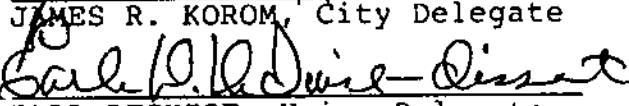
Status Quo.

The Union, in support of its demand, primarily points to the Educational Incentive payment made to members of the Command Officers and Police Officers Bargaining Units. The Union further argues:

"Adoption of the Union's final offer will undoubtedly motivate more employees to receive higher education and would invariably result in a more professional, knowledgeable skilled Fire Department which will better serve the interests and welfare of the public (Section 9(C))."

The City maintains that it presently has an education program in the Fire Department. The City also maintains that it does have an Educational Incentive Program in that it does provide a Seven Hundred Fifty Dollar (\$750.00) annual lump sum bonus to any employee licensed as an EMT and a One Thousand Five Hundred Dollar (\$1,500.00) annual bonus built into the employee's annual salary for those employees licensed in Advanced Life Support. The City, after reviewing various courses, offered at the Mott Community College, Associates Degree Program, contends that not all of the course offerings are of value to every member within the Department. Insofar as additional compensation is concerned, the City maintains that no comparable has a bonus approaching the demand of the Union herein.

The Panel is persuaded that the City's recognition of EMT and ALS constitutes an Education Bonus Program and is not convinced that education in related areas are of such benefit as to warrant additional pay by the City. The Panel adopts the position of the City on Educational Incentive.

  
JOSEPH P. GIROLAMO, Chairman  
  
JAMES R. KOROM, City Delegate  
  
EARL DEGUISE, Union Delegate

(11) RANK DIFFERENTIAL

UNION'S LAST OFFER:

The Union's last offer is as follows:

"Effective January 1, 1988, the annual base salary schedule of all ranks above Firefighter 1 (F-1) shall be computed as follows:

(a) The F-2 (Chauffer) Annual Base Salary Schedule is 105% of the F-1 Step F (Senior Firefighter) Annual Base Salary;

(b) The F-3 (Dispatch/Mechanic/Inspector) Annual Base Salary Schedule is 107.5% of the F-1 Step F (Senior Firefighter) Annual Base Salary;

(c) The F-4 (Lieutenant) Annual Base Salary Schedule is 110% of the F-1 Step F (Senior Firefighter) Annual Base Salary;

(d) The F-5 (Lieutenant Inspector) Annual Base Salary Schedule is 115% of the F-1 Step F (Senior Firefighter) Annual Base Salary;

(e) The F-6 (Captain/Captain Inspector) Annual Base Salary Schedule is 120% of the F-1 Step F (Senior Firefighter) Annual Base Salary;

(f) The F-7 (Apparatus Supervisor) Annual Base Salary Schedule is 125% of the F-1 Step F (Senior Firefighter) Annual Base Salary;

(g) The F-8 (Assistant Chief) Annual Base Salary Schedule is 130% of the F-1 Step F (Senior Firefighter) Annual Base Salary.

Said percentages will be the basis for computing the highest paid step for each of the ranks specified.

EMPLOYER'S LAST OFFER:

The City proposes the Status Quo.

The Union argues that there has been a deterioration in the relative pay levels for the higher ranking officers within the Department. In support of this contention the Union points to the Police wage structure as an internal comparable. With reference to external comparables, the Union maintains that "utilizing the rates of only the City's selection of comparables, the reasonableness of the Union's proposal is again substantiated."


The City contends that the primary reason for the flattening of differentials is the "flat dollar increases to all ranks across the board." The City also stresses that it is the Union's proposal to insert in the Collective Bargaining Agreement a provision which guarantees a percentage relationship be maintained between each of the various ranks rather than a simple demand to raise the wages of Command Officers. The City stresses that "not one single City has any contract language which guarantees any percentage relationship which may have existed in the past or which may exist in the future must be maintained for all time." The City denies any trend among comparables which supports the Union's demand. Finally, the City distinguishes the Union's proposal from a simple "one time bump".

The Panel is not persuaded that the demand for rank differentials has merit. It does not appear that any other jurisdiction has any such provision in its collective bargaining agreement. The Panel believes it has made ample provision for employees throughout the Department. If certain inequities remain, they should be addressed in the bargaining arena.

The City's last offer is selected.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

## CITY ISSUES

### 1. Sick Leave.

#### CITY'S LAST OFFER:

The City proposes the following modification of Article 16:

##### "A. Sick Leave:

Each permanent full time employee may accumulate sick leave at the rate of six 24 hour working days per year to be credited at the rate of 12 hours of sick leave for each month of service."


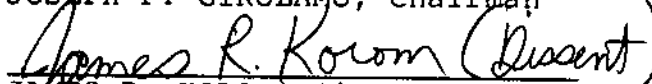
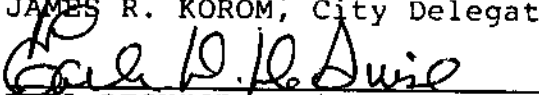
#### UNION'S LAST OFFER:

The Union's last offer is to retain the Status Quo.

The City contends its proposal on Sick Leave - reduction in the number of hours of sick leave per year from eight 24 hour days (for an annual total of 192 hours) to six 24 hour days (for an annual total of 144 hours) - is warranted. The City maintains that the present program exceeds the reasonable needs of Saginaw's Firefighters. Many members in the Department are able to accrue the maximum sick leave payout prior to retirement, which then places them in the position of "using or losing the available leave." The Employer perceives that employees in that position have a strong incentive to abuse sick leave.

The Union notes that the "sick leave bank is the only protection a Firefighter has during times of serious illness or injury which are not duty related." It vigorously protests the decrease in the Firefighters' protection.

The Panel is not persuaded that any change in sick leave is required at the present time. Although the City alleged that the potential for abuse exists, it was not demonstrated that such an occurrence has been experienced by the City of Saginaw. The position of the Union is selected.

  
JOSEPH P. GIROLAMO, Chairman  
  
JAMES R. KOROM, City Delegate  
  
EARL DEGUISE, Union Delegate

## 2. HEALTH INSURANCE CO-PAY

### CITY'S FINAL OFFER:

The City's final offer is to amend Article 12:

"The City and the employee will share the cost of this insurance, with the employee paying \$10.00 per month and the City paying the remainder of any premium due."

UNION'S FINAL OFFER:

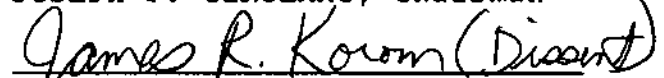
The Union proposes retention of the Status Quo.


The City urges that it has experienced a substantial increase in costs for health insurance provided to employees and it proposes that employees contribute a "modest amount of \$10.00 per month" to defray increasing costs. With respect to the factor of comparability, "the City admits this proposal is not supported by the statutory factor of comparability."

The Union opposes any change in the Status Quo.

The Panel rejects the Employer's proposal as unsupported by the criteria set forth in Section 9 of Act 312.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

3. EMPLOYEE CONTRIBUTION TO DENTAL INSURANCE PREMIUM

CITY'S LAST OFFER:

The City's last offer is to amend Article 13 as follows:

"The employee shall pay \$5.00 per month towards this benefit. The City shall pay the remaining costs."

UNION'S FINAL OFFER:

The Union's final offer is to retain the Status Quo.

The City readily concedes: "As with the health insurance issue, the City admits the factor of comparability does not support this change since communities in Michigan generally pay 100% of the dental insurance premium." Again, the City urges that the increase in insurance premiums necessitate that employees begin contributing something toward dental insurance.

The Union opposes any change in present practice, stressing that "no community considered comparable either by the City or the Union require Firefighters to absorb any portion of health or dental insurance costs."

The Panel rejects the City proposal, again on the basis that it is not supported by the criteria set forth in Section 9 of Act 312.

Joseph P. Girolamo  
JOSEPH P. GIROLAMO, Chairman  
James R. Korom (Dissent)  
JAMES R. KOROM, City Delegate  
Earl D. DeGuise  
EARL DEGUISE, Union Delegate

#### 4. FAIR LABOR STANDARDS ACT

##### CITY'S FINAL OFFER:

The City's final offer provides:

"The Employer reserves the right to compute hours of work under FLSA which minimizes overtime payments due; including, but not limited to, deducting all meal periods and sleep time."

##### UNION'S FINAL OFFER:

The Union's final offer is retention of the Status Quo.

The City argues that "because of the recent passage of the Federal Labor Standards Act, as amended for State and Local Governments, as a result of the Garcia decision, the City of

Saginaw recently became subject to federal minimum wage and overtime laws." The City, citing the applicable Department of Labor Regulation, notes that: "An employer operating a fire department can take advantage of what is termed the 'Section 7(K)' exemption which permits employers to use a work cycle of up to 28 days for calculating total hours of work and further mandating overtime payments for only those hours in excess of 53 in a seven day work period or 212 in a twenty eight day period. When calculating 'hours worked' however to determine whether this 53 hour standard is met, sleep and meal time may be excluded from the calculation 'if there is an express or implied agreement between the employer and the employee to exclude such time.'" The City admits that a review of comparables reveals a "dearth of language." The City attributes this situation to the fact that the Garcia decision was only recently issued.

The Union maintains that the City has abandoned the FLSA issue. However, even if the Panel were to consider the City's proposal, the Employer has not met its burden of proof on the issue. The Union further characterizes the City's offer as "contrary to law."

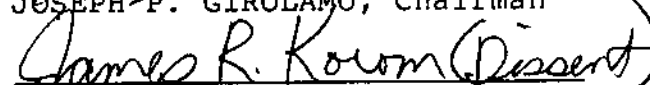
It appears from Union Exhibit 93 - Public Sector Overtime Pay: The Impact Of Garcia On State And Local Governments; BNA Special Report, June 10, 1985, that the so-called 7(K) exemption


is applicable only to employees who are on duty for more than 24 hours. In the instant case Firefighters are scheduled for 24 hour shifts and, therefore, it appears that the Union position concerning legality is meritorious.

It may be appropriate to revisit this issue if applicable regulations are amended to the extent that the City could benefit from the proposal made here.

The Panel selects the Union proposal.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

## 5. AFFIRMATIVE ACTION

### CITY'S LAST OFFER:

The City's last offer is as follows:

"Section 1. The Personnel Director or his/her designee will meet with the Union prior to establishing each promotional examination, it being agreed that the promotional selection procedure adopted by the City shall be job related and shall satisfy the Uniform Guidelines on Employee Selection Procedures, 29 CFR, Section 1608, et seq.

Section 2. Future selection procedures will be constructed to minimize or eliminate adverse racial impact.

Section 3. For promotions to the rank of Sergeant, Lieutenant, Captain, Battalion Chief, Assistant Chief and Fire Marshal, (or any other promotional rank in the department where there are two or more employees in the position), the City shall have the right to implement an affirmative action certification procedure to promote minority employees to ranks that have not achieved a representative balance of a 40/60 ratio between minority and non-minority employees. Minority employees are those as defined by Federal law (i.e., Black, Hispanic, American Indian and Asian).

A. All eligibility employees attaining a passing score on the promotional examination shall have added to their examination score one (1) point for each year of service in the Saginaw Fire Department, as of the filing deadline for applying to take said examination up to a maximum of ten (10) points. For periods of employment for fractions of a year, one-half (1/2) point shall be added for less than six (6) months of service and one (1) point for six months or more of service.

B. In choosing which employee to be promoted, the City shall have the right to pick from among any of the three top employees (i.e., highest point total) on the list in question or, as set forth in this Article, the combined selection pool set forth below.

Affirmative action certification may be used and the minorities added to the selection pool, if minority employees are not ranked in the top three.

Affirmative action certification will occur by ranking the employees of the underrepresented class in order of their point total. If no employee of the underrepresented class is in the top three, the appointing authority shall have certified and included within the selection pool the top three names from the promotional list and the top three (or fewer) minority individuals on the eligibility list resulting from the affirmative action certification. This list of up to 6 employees shall constitute the combined selection pool.

The appointing authority shall make the appointment from among any of the employees in the combined selection pool.

After there has been an appointment from the affirmative action certification, the next appointment shall be an employee of the non-under-represented class made from a regular promotional list for that rank.

C. The City shall utilize affirmative action certification for any of the above referenced ranks that has not achieved a representative balance, i.e., 40/60 ratio between minority and non-minority.

Section 5. The parties wish to assure that the obligation of providing for equality of opportunity for all members of the Bargaining Unit is satisfied. Consistent with the provision of the Uniform Guidelines on Employee Selection Procedures, future selection procedures shall be constructed to minimize or eliminate adverse racial impact.

Section 6. This Article shall be in effect for the period June 30, 1985 through July 1, 1989, and shall continue thereafter for successive periods of one (1) year unless either party shall, at least ninety (90) days prior to July 1, 1989 serve written notice on the other party of a desire to terminate, modify, alter, renegotiate, change or amend this Agreement."

UNION'S LAST OFFER:

The Union's last offer is to retain the Status Quo.

The City, noting that its racial composition is akin to that of Flint, urges the Panel to adopt its affirmative action proposal which is identical to language adopted by a an Act 312

Arbitration Panel involving the City of Flint and the International Association of Firefighters. The City notes that it has entered into a Consent Decree in regard to department hiring practices and urges that the proposal now before the Panel would address the need for minority representation in classes above those at the entry level. It is argued that those circumstances which gave rise to entry of a Consent Decree also are relevant to the matter of remedial relief in the area of promotions. The City maintains that the present promotional procedure is not strictly one based on merit in that seniority -- separate and apart from experience -- is recognized and with this proposal, an additional criteria minority status is also given recognition. Finally, the proposal is non-economic according to the Employer and, therefore, the Panel does have authority to redraft or modify the proposal.

The Union disputes the submission of the City proposal to the Panel because "the PERA obligation to bargain in good faith extends through the Act 312 Arbitration process and the City's lack of candor early on about the true nature of its promotion proposal certainly was not entirely consistent with that obligation." In the Union's view, the City proposal is economic since "the opportunity for promotion constitutes the single most significant way in which the Fire Department employees can prove their economic position." The Union further admonishes "that

the Panel recognize that no employer, public or private, is compelled by federal or state law to voluntarily adopt an affirmative action plan; there is absolutely no liability for failure to adopt an affirmative action plan nor does adoption of such a plan shield an employer from liability for prior discriminatory acts." The Union contends the Employer's Affirmative Action proposal is not entitled to adoption pursuant to applicable factors as set forth in Section 9 of the Statute. The Union brings to the attention of the Panel two recent decisions concerning affirmative action programs by public employers. In Wygant v. Jackson Board of Education, - U.S.; 40 FEP 1321 (1986), the court "struck down an affirmative action layoff plan as violative of the equal protection clause because it was designed merely to alleviate the effects of societal discrimination and to provide role models for the minority students." Local Number 93, IAFF v. City of Cleveland, upheld a consent decree providing for race conscious affirmative action, however, the District Court had found a "demonstrated history of racial discrimination in promotions."

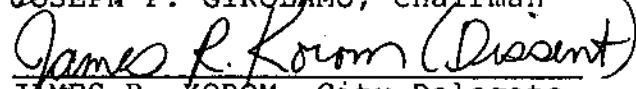
The Panel agrees with the City that the issue of Affirmative Action is a non-economic issue. Unquestionably, promotional opportunity is a concern to members of the Bargaining Unit, however, it is the economic consequence to the Employer and the Unit as a whole which is determinative of whether an issue is


economic or non-economic. On the matter of Affirmative Action it is apparent that some Unit members would be affected but, for the Unit as a whole, the issue does not increase or decrease the amount of economic benefit. Similarly,, it is not a "cost" item for the Employer because the number of promotions are neither increased nor decreased by virtue of Affirmative Action.

The Panel, sympathetic with the City's declared purpose to achieve minority representation at upper levels of the Fire Department work force, does not believe that an affirmative action program is warranted at this time. The Consent Decree concerning the hiring of minority members will result in the promotion of minority persons in the years to come. With reference to the City of Flint, it does not appear that a Consent Decree was in effect when the Panel adopted the Affirmative Action provision. The two Supreme Court cases cited by the Union were decided after adoption of the affirmative action proposal in the City of Flint and Firefighter Act 312 proceeding.

The proposal of the Union is selected.

  
JOSEPH P. GIROLAMO, Chairman

  
JAMES R. KOROM, City Delegate

  
EARL DEGUISE, Union Delegate

6. OUT OF CLASS PAY

EMPLOYER'S FINAL OFFER:

The Employer's final offer is to delete Section 3 of Article 10 in the expired Agreement and replaces the following:

"Out of Class Pay shall be paid to:

(a) Firefighters when they are acting Chauffer for 24 hours;

(b) Chauffers when they are acting Lieutenants for 24 hours;

(c) Captains when they are acting as Assistant Chiefs for 24 hours;

(d) Lieutenants when they are in charge of the central fire station for 24 hours."

UNION'S FINAL OFFER:

The Union proposes that the Status Quo be maintained as expressed in Article 10, Section 3 and the past practice between the parties.

The City is apparently concerned that a past practice may have developed wherein the definition of a "full shift" is a 12 hour period of time. It points to external comparables in support of its proposal that many jurisdictions require a time in excess of 12 hours for the acting out of class pay benefit to become effective.

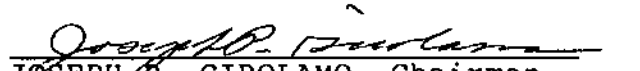
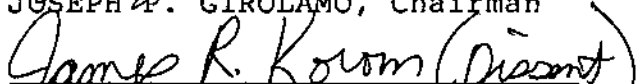

The Union notes that the City proposal would change the Status Quo in three respects:

- (1) Change the 12 hour qualifying requirement to 24 hours.
- (2) Prohibit out-of-class pay for Lieutenants acting as Captains at stations other than central.
- (3) Provide for payment based upon acting no more than one classification above the position actually held.

In the Union's view, the City presented no evidence warranting any change in the current practice and hence, its last offer should be rejected.

The Panel is unconvinced that a reduction in the qualifying requirement is warranted by virtue of external comparables. The Panel is also unpersuaded that only a Lieutenant acting as a Captain at central station should receive the benefit of out-of-class pay. Finally, the proposal limits out-of-class pay to one classification above the position actually held even though a particular individual may be called upon to undertake responsibilities in a greater amount.

The Panel selects the last offer of the Union.

  
JOSEPH P. GIROLAMO, Chairman  
  
JAMES R. KOROM, City Delegate  
  
EARL DEGUISE, Union Delegate

Dated: September 3, 1986.