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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION BETWEEN:

The City of Birmingham

-and-

Birmingham Fire Fighters Association

MICHIGAN STATE UNIVERSITY
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

OPINION AND AWARD

Appearances:

For the City: Ronald J. Santo, Attorney at Law
35th Floor, 400 Renaissance Center
Detroit, Michigan 48243

For the Union: George H. Kruszewski, Attorney at Law
1000 Farmer Street
Detroit, Michigan 48226

Chairman of Arbitration Panel: Kenneth P. Frankland

City's Delegate: Ronald J. Santo

Fire Fighters Delegate: George H. Kruszewski

Birmingham, City of

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DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

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I. Introduction

This matter came on for hearing before a panel of arbitrators appointed pursuant to the terms of Act 312, Public Acts of 1969 as amended, for the purposes of hearing and deciding unresolved issues in a new contract dispute between the parties.

Petition for arbitration was initiated by the Birmingham Fire Fighters Association filed on November 2, 1981 by George H. Kruszewski, its attorney. The statutory conditions proceeded to arbitration, namely, collective bargaining and mediation were fulfilled. On December 22, 1981, pursuant to the statute, Kenneth P. Frankland was appointed by the Michigan Employment Relations Commission to serve as chairman of the arbitration panel. The City designated Ronald J. Santo as its delegate to the panel and the Fire Fighters designated George H. Kruszewski as its delegate to the panel.

The panel conducted prehearing conferences on January 13 and January 20, 1982, and formal hearings were subsequently conducted on March 24, March 25, March 31, April, 2, April 14, April 26, May 19, May 20, and May 21. On June 8, 1982, the parties exchanged last best offers of settlements and on September 13, 1982, they exchanged briefs. Prior to the exchange of briefs, the panel had an executive session on August 11 at which time the panel made a determination as to comparable communities. An executive session was conducted on September 23 and the opinion herein is prepared by the chairman and when subscribed to by the appropriate consenting panel member, constitutes the award of the panel.

During the hearing, testimony was taken from several witnesses and numerous exhibits were presented by the parties as documentary evidence. At the beginning of the hearing the parties stipulated

and the panel agreed that the time limit set forth under the Act was waived. The parties further stipulated and agreed that the contract should be of three years duration and last best offers were submitted upon that basis. Also, the parties stipulated to incorporation of agreed upon issues in the new contract. (J. Exhibit 1.) The parties stipulated that the following issues are the remaining contract issues between the parties and further stipulated to whether or not they were economic or non-economic. There are 17 specific issues and although slightly differentiated by the parties, they are as follows:

1. Wages--Economic
2. Pension--Annuity Withdrawal--Economic
3. Pension--Benefits--Economic
4. Pension--Computation of Final Average Compensation--
Economic
5. Food Allowance--Economic
6. Uniform Allowance--Economic
7. Administration of Uniform Allowance Account--
Non-economic
8. Hours of Work--Economic
9. Vacation--Amount--Economic
10. Vacation--Splitting of Vacation Days--Economic
11. Vacation--Conversion of Vacation Days to Floating
Days and Carry Forward--Economic and Non-economic
12. Illness Allowance--Use of Illness and Allowance
for Compensable Injuries--Economic
13. Rank Differential--Years to Full Pay--Economic
14. Residency--Non-economic

15. Use of Volunteers--Non-economic

16. Right to Change Insurance Carriers--Non-economic
and Economic

17. Computation of Hours Worked for Overtime Purposes

It should be understood that the panel members representing the City and the Fire Fighters disagreed with certain of the findings and award set forth herein. Each generally supported the last best offers of the party by whom he was appointed by the panel. Accordingly, the signature of either of the partisan panel members does not represent a concurrence in each and every element of the final award, but does constitute a recognition that there exists a majority vote in support of each item contained in the final award.

II. Last Best Offer

The following are the last best offers of the parties:

ISSUE #1

WAGES

Current: Fire Fighter - \$22,464.00.¹

City Offer: 1st year - \$24,149.00 plus COLA agreed to by City and Union

2nd year - \$26,107.00 effective first payroll period after July 1, 1982 (includes rolled in COLA from contract year 1982-83 plus COLA agreed to by City and Union

3rd year - 6% (effective first payroll period after July 1, 1983)

1% (effective first payroll period after January 1, 1984).

¹All salary figures are maximum.

Union Offer:

Effective July 1, 1981, all employees shall receive a 7.5% salary increase. (\$24,149.00) (same as City)

Effective July 1, 1982, those employees holding the classification of fire fighter shall receive a 6.5% salary increase. Employees in classifications above fire fighter shall receive a salary increase sufficient to maintain the contractually required salary differentials. (\$26,107.00) (same as City)

Effective July 1, 1983, those employees holding the classification of fire fighter shall receive a 7% salary increase. Employees in classifications above fire fighter shall receive a salary increase sufficient to maintain the contractually required salary differentials.

ISSUE #2

PENSION: ANNUITY WITHDRAWAL

Current: No provision for annuity withdrawal.

City Offer:

Effective as of the date they commence receipt of such benefits, members of the retirement system who are eligible to receive pension benefits may withdraw their contribution to the pension system, provided that in such event, the amount of their pension benefit shall be based only on the City contributions, and therefore, the benefit provided for such employee shall be proportionately reduced to reflect withdrawal of the employee's contribution, and be reduced actuarially by the interest assumption published by the Pension Benefit Guaranty Corp. for the purchase of annuities.

Union Offer:

Any employee retiring after July 1, 1982, may elect prior to his effective date of retirement, but not thereafter, to be paid his accumulated contributions, including regular interest thereon, standing to his credit in the annuity savings fund. Upon such election the retiring member's monthly pension shall be reduced by an amount which is the actuarial equivalent of the accumulated contributions paid. Such actuarial equivalent amount shall be determined on the basis of an annual rate of interest of 6%, compounded annually, and the mortality table adopted by the Board for other actuarial calculations.

ISSUE #3

PENSION: BENEFIT FACTOR

Current: 2% of Final Average Compensation.

City Offer: No change.

Union Offer:

Effective January 1, 1983, a retirement allowance payable under Section 16.1 of the retirement system shall consist of the following:

(1) An annuity which shall be the actuarial equivalent of an employee's accumulated contributions standing to his credit in the annuity savings fund at the time of his retirement; and

(2) A pension which when added to his annuity will provide a retirement pension equal to 2.25 percent of his final average compensation multiplied by the number of years of service, and fraction of a year of his credited service.

Employees may continue to elect to receive a reduced retirement allowance pursuant to the Options set forth in this agreement and the employee retirement system.

ISSUE #4

PENSION: FINAL AVERAGE COMPENSATION

Current: Five out of ten years.

City Offer: Three out of ten years.

Final average compensation means the highest average annual compensation received by a member during a period of three (3) consecutive years of service contained within his last ten (10) years of service immediately preceding his retirement. If he has less than three (3) years of credited service, his final average compensation shall be the average of his annual compensations received during his total years of credited service.

Union Offer: No change.

ISSUE #5

FOOD ALLOWANCE

Current: Unit personnel receive \$112.50 twice a year, for a total of \$225.00. (Section 72)

City Offer: Unit personnel receive food allowance as follows:

Effective 7/1/81 - \$275.00 (paid in 2 installments)

Effective 7/1/82 - \$325.00 (paid in 2 installments)

Effective 7/1/83 - \$350.00 (paid in 2 installments)

Unit men shall be entitled to a food allowance which shall be paid in the following manner: Effective July 1, 1981, \$137.50 effective as of the first Thursday following the first Monday of July, 1981; \$137.50 effective as of the first Thursday following the first Monday of January, 1982; \$162.50 effective as of the first Thursday following the first Monday of July, 1982; \$162.50 on the first Thursday following the first Monday of January, 1983;

\$175.00 on the first Thursday following the first Monday of July, 1983; \$175.00 on the first Thursday following the first Monday of January, 1984. Food allowance shall not be added to nor considered to be part of the annual wage or regular rates of any employee covered by this Agreement. In the event an employee's service with the City is terminated after he receives a food allowance payment and before payment of the next food allowance, he shall reimburse the City a pro-rata amount of such food allowance payment based on the ratio between the number of days worked and the number of regularly scheduled work days during such period.

Union Offer:

Unit men shall be entitled to a food allowance which shall be paid in the following manner: \$150.00 effective as of the first Thursday of July, 1981, which is not a regular pay day; \$150.00 effective as of the first Thursday of January, 1982, which is not a regular pay day; \$175.00 effective as of the first Thursday of July, 1982, which is not a regular pay day; \$175.00 effective as of the first Thursday of January, 1983, which is not a regular pay day; \$200.00 effective as of the first Thursday of July, 1983, which is not a regular pay day; and \$200.00 effective as of the first Thursday of January, 1984, which is not a regular pay day. Food allowance shall not be added to nor considered to be part of the annual wage or regular rates of any employee covered by this Agreement. In the event an employee's service with the City is terminated after he receives a food allowance payment and before payment of the next food allowance, he shall reimburse the City a pro-rata amount of such food allowance payment based on the ratio between the number of days worked and the number of regularly scheduled work days during such period.

ISSUE #6 and #7

UNIFORM ALLOWANCE AND ADMINISTRATION OF ACCOUNT

Current: City pays \$140 per year into an individual uniform account.

(Section 65)

City Offer: City to provide required uniforms in accordance with proposal below.

1. Effective July 1, 1983, the City shall provide the following clothing items to all members of the bargaining unit

(except Inspectors), if the employee on that date does not have

such items: Dress Uniforms--
1 - polyester trousers
1 - tie
1 - name plate
1 - shirt (long sleeve, light blue)
1 - dress cap

Effective July 1, 1983, the City shall provide the following clothing items to all Fire Inspectors covered by this

contract: Dress Uniforms--
2 - polyester trousers
2 - ties
3 - shirts (short sleeve, light blue)
3 - shirts (long sleeve, light blue)
2 - name plate
1 - dress cap

Effective July 1, 1983, the City shall provide to all members of the bargaining unit the following items, subject to the provisions below:

Work Uniforms--
1 - pair work shoes (one pair per year)
3 - fatigue uniforms (3 sets per year)
1 - fatigue jacket (light-weight) (The general guideline is one every four years, subject to department approval.)
1 - fatigue jacket (heavy-weight) (The general guideline is one every four years, subject to department approval.)
1 - fatigue cap

Except for the three sets of fatigues, one pair of shoes and one fatigue cap which are provided annually for all members of the bargaining unit, and except for the two trousers, two ties, three long-sleeve and three short-sleeve shirts which are provided annually for the Fire Inspectors, members of the bargaining unit must demonstrate to the satisfaction of the Chief, or his designee, the need to replace the items listed. With respect to the three sets of fatigues, one pair of shoes and one fatigue cap

for members of the bargaining unit and the two trousers, two ties, three long-sleeve and three short-sleeve shirts for Fire Inspectors, the City shall issue such items on or about July 1st of each year and shall replace such items during the year if it is demonstrated to the Fire Chief, or his designee, the need for replacement prior to the following July 1st.

Effective July 1, 1983, fire fighters shall not be required to wear name tags on their work uniform.

2. New employees shall be provided work uniforms upon commencement of employment, and dress uniforms upon completion of the probationary period.

3. Effective July 1, 1983, any amount of an employee's uniform bank formerly maintained by the City shall be frozen and paid to the employee upon normal or disability retirement or death, provided, that an employee who has an account may use any portion of that account to purchase one pair of night pants. If an employee has an account with a negative balance, the employee shall not be responsible for repaying such amount to the City.

4. For contract years 1981-82 and 1982-83, the City shall pay \$140 to the uniform account of each fire fighter and \$155 to the uniform account of each Fire Inspector, and for current employees who do not have seniority, shall provide the items listed above which the employee currently does not have. Employees hired during contract year 1982-83 shall receive the uniforms as provided in paragraph 2 above.

Union Offer:

I. Effective July 1, 1981 and July 1, 1982,

(a) A yearly allowance of \$140.00 shall be provided by the

City. This allowance shall be credited to the employee's account in the Uniform Fund. The Uniform Fund shall be administered by the Chief of Fire Department or a staff officer designated by him.

(b) The employee shall be responsible for maintaining his uniform to the standards established by the Department.

(i) When uniform clothing is needed, the employee shall obtain a 'request to purchase' the desired article from the designated Company Officer.

(ii) After purchase, the approved request, the article, and proof of charges shall be submitted to the designated officer for approval and payment.

(iii) A check shall be issued from the Uniform Fund to the employee for the amount of the purchase, and this amount will then be deducted from the employee's account.

(c) No checks will be issued for an amount greater than the balance in an employee's account.

(d) The balance remaining at the end of the fiscal year shall remain in the employee's account.

(e) The yearly Uniform Allowance is prorated over the entire fiscal year. If a man resigns, he must leave the unearned portion of his allowance in the Uniform Fund. If he has expended more funds than he has earned at the date of termination, he will be required to pay to the City the deficient amount.

(f) Upon retirement, the retiree is entitled to receive payment for any earned allowances remaining in his Uniform Fund account.

(g) Upon death, the beneficiary of the deceased employee is entitled to receive payment of any allowance remaining in the deceased's Uniform Fund Account.

(h) This account is for the sole use of the employee for purchasing required uniforms and may not be used for other purposes.

(i) New employees, in addition to receiving the prorated annual allowance, shall receive \$125.00 for the initial purchase of required uniforms. \$75.00 shall be granted at employment and \$50.00 upon completion of the probationary period.

(j) Unit employees holding the duty assignment of Fire Inspectors as of July 1 shall receive an additional uniform allowance of \$15.00 for the fiscal year.

(k) Unit employees, upon entering officer rank (i.e., promoted to Lieutenant), shall receive an additional ('one time only') uniform allowance of \$75.00 for uniform change required by officers.

II. Effective July 1, 1983,

(a) The City shall pay each employee \$250.00 annually as a uniform allowance. The uniform allowance payment shall be made in a separate check effective as of the first Thursday of July, which is not a regular pay day.

(b) The employee shall be responsible for maintaining his uniform to the standards established by the Department.

(c) New employees, in addition to receiving the prorated annual allowance, shall receive a \$125.00 payment for the initial purchase of required uniforms. \$75.00 shall be paid at employment and \$50.00 upon completion of the probationary period.

(d) Unit employees holding the duty assignment of Fire Inspectors as of July 1, shall receive an additional uniform allowance payment of \$15.00 for the fiscal year.

(e) Unit employees, upon entering officer rank (i.e., promoted to Lieutenant) shall receive an additional ('one time only') uniform allowance payment of \$150.00 for uniform change required by officers.

On the issue of Administration of Uniform Allowance Account, the Association's last offer is to maintain the current contractual provisions found in Section 65 of the 1979-81 agreement except to the extent that Section 65 might be modified by acceptance of the Association's last offer on the economic issue of Uniform Allowance.

ISSUE #8

HOURS OF WORK

Current: Unit employees work an average work week of 56 hours, but receive one paid day off per calendar quarter (Milliken day) in lieu of paying overtime for hours in excess of 216 hours in a 28-day cycle. (Section 36(a))

City Offer. Unit employees work an average work week of 56 hours, and the City shall pay overtime for hours worked in excess of 216 hours in a 28-day cycle, time granted for vacation and personal leave days shall be counted as time worked for overtime purposes.

Union Offer: No change in current contract as modified by agreement of parties.

ISSUE #9

AMOUNT OF VACATION

Current:

<u>Unit Personnel</u>		<u>Day Personnel</u>	
1 through 2 years	- 5 duty days	1 through 7 years	- 10 work days
3 through 4 years	- 6 duty days	8 through 14 years	- 15 work days
5 through 9 years	- 7 duty days	15 years and over	- 20 work days
10 through 14 years	- 8 duty days		
15 through 19 years	- 9 duty days		
20 years and over	- 10 duty days		(Schedule A, III)

City Offer: For day personnel the City offers the same as Union; that the period of time needed to gain additional vacation be shortened and that an additional step be added at 25 years.

For Union personnel, the City proposes no change.

Union Offer: No change in first 2 years. Effective July 1, 1983, each unit employee should receive one (1) additional duty day of vacation beyond the current schedule.

ISSUE #10

SPLITTING OF VACATION

Current: All employees may split their vacation twice, and thereby get three vacation periods. (Section 41(d))

City Offer: Unit men shall continue as currently provided in the labor agreement. Day men may split their vacation in eight (8) hour increments.

Union Offer: Day men may split vacation four times, effective July 1, 1982. Vacations shall not be taken in advance of earned time.

Employees eligible to receive more than six days vacation are permitted to take six (6) duty days (Unit men) or two (2) weeks (Day men) at one time and the balance at a different time. However, if the Fire Chief approves, an employee may take the entire period at one time. Vacations may be split twice. All members shall pick the first time by seniority, and the second time by seniority and the third time by seniority. The division of splitting shall be subject to the approval of the Chief of the Fire Department and the Personnel Director. Effective with the contract year beginning July 1, 1982, a Day man may split his vacation four times.

ISSUE #11

CONVERSION OF TWO VACATION DAYS TO FLOATING DAYS

Current: Available periods for vacation shall be picked, approved and posted the December 1st prior to the vacation year. (Section 41(d) and (f))

City Offer: No change.

Union Offer:

(f) Vacation schedules shall be set by the Chief so as to permit the continued operation of all Department functions without interruptions. Vacation period of one employee shall not overlap the vacation period of another employee on the same unit. Employees will be given preference according to the seniority to select available vacation periods. Available periods shall be picked, approved, and posted the December 1st prior to the vacation year.

Effective with the contract year beginning July 1, 1982, Unit men may carry two (2) vacation days and Day men may carry five (5) vacation days as floating days. These floating days need not be picked as vacation days by December 1st prior to the vacation year and may be utilized by the employee at any time throughout the vacation year, provided that floating days can only be scheduled upon 48 hours notice and with the Chief's approval, which shall not be unreasonably denied. A Unit man cannot schedule a floating vacation day when another man on the unit is already scheduled off on vacation. A floating vacation day will be granted to the first individual requesting it. If two Unit men on the same unit request to use a floating day on the same day, the individual requesting it first shall receive the vacation day. If two Unit men on the same unit request at the same time the same floating vacation day, the day shall go to the individual with the most seniority. A floating day not used by the end of the vacation year shall be carried over to be used the next vacation year provided that a Unit man shall not have more than two (2) floating vacation days, and a Day man shall not have more than five (5) floating vacation days to his credit at any one time.

(b) Except for the exceptions contained herein, any employee who has not taken his vacation by December 31st shall forfeit all rights to such vacation time.

(a) Vacation leave cannot be carried over from year to year without written approval of the City Manager or except as provided herein. If an employee is unable to take his vacation as scheduled because of departmental workload which prevents taking it in the current year or if he is called in and works on a scheduled

vacation, he shall be paid time and one-half (1-1/2) his rate in addition to his regular pay, for work required to be performed on such day. An employee shall not be entitled to compensation for a floating vacation day not scheduled in the vacation year. Amounts paid under this section shall be computed on this basis of the wage rate in effect on the employee's vacation day which was cancelled.

Effective July 1, 1983, a Unit man may carry over up to two (2) vacation days and a Day man up to five (5) vacation days from year to year without written approval of the City Manager. Notwithstanding his right to carry over vacation days, an employee shall not be entitled to his regular pay for any unused portion of his earned vacation as of the date of his separation, pursuant to paragraph (n) below, for earned vacation in an amount greater than his maximum yearly accrual.

ISSUE #12

ILLNESS ALLOWANCE

Current: Time lost for compensable injury is chargeable to the employee's accrued sick leave. (Sections 46(a) and (d); Supplement C, III)

City Position: The current short-term and long-term insurance provisions will be modified to provide that an employee on a compensable injury shall receive 70% of his average weekly earnings. The maximum amount of benefits payable will be increased so that such cap equals 70% of current earnings.

(a) Maximum weekly sickness and accident benefits for non-duty connected disability will be sixty (60%) percent of

average weekly earnings, not to exceed \$ _____ per week, beginning on the 31st calendar day of disability and continuing for a maximum period of one year from date of disability.

(b) Maximum weekly sickness and accident benefits for service-connected disability shall not exceed an aggregate figure of seventy (70%) percent of average weekly earnings, not to exceed \$ _____ per week, beginning on the 31st calendar day of disability and continuing for a maximum period of one year from date of disability.

(c) Monthly long-term disability benefit provides for an aggregate income of seventy (70%) percent of monthly base pay up to a maximum of \$ _____ per month, beginning one (1) year from date of disability and continuing to the age of 65, if qualified.

Union Offer: Union offer is to modify Section 46(i) and Section 49 of the 1979-81 agreement to read as follows:

Section 46

(i) Except as provided in Section 49 herein for those employees covered by the City's group insurance plan, accumulated illness allowance will be used to cover absences occurring on normal work days during the first thirty (30) calendar days of any continuous illness; any remaining illness allowance will be used, with the group insurance benefit allowed, to provide the regular rate of pay until all the illness allowance credit has been used. After that time, the disability income allowance will be the only monies received. Further disability income beyond that described in this paragraph will be paid in accordance with terms of the Long-Term Disability Benefits described in the group insurance certificate.

Section 49

(a) The employer agrees to cooperate toward the prompt settlement of the employee's on-the-job injury and illness claims when such claims are due and owing.

I. Effective July 1, 1981 through June 30, 1982

(a) When an employee sustains a job-incurred injury attributable to City employment, accumulated illness allowance or vacation (in that order) will be used to provide the regular compensation received for his scheduled work week as long as there are credits in the illness allowance or vacation.

(b) If the disability or illness continues for sufficient time so that Workers' Compensation payments are made, these payments will be turned over to the City and the employee will receive credit in his illness allowance bank for an equivalent amount of time. This requirement to turn over Worker's Compensation payments will be discontinued once the employee exhausts his illness allowance bank.

(c) If the disability or illness continues for more than 30 calendar days and the employee is enrolled in the City's group insurance plan, then any group insurance payments received will be turned over to the City and the employee will receive credit in his illness allowance account for an equivalent amount of time. This requirement to turn over payments will be discontinued once the employee exhausts his illness allowance bank.

(d) An employee injured on other gainful employment outside the City employment shall not be eligible for Worker's Compensation benefits from the City.

(e) When the attending physician states that a man is able to return to work, his Worker's Compensation payments will cease.

II. Effective July 1, 1982

(a) When an employee sustains a job-incurred disability attributable to City employment, the City shall pay him the regular compensation he would otherwise receive for his scheduled work week without charge to his illness allowance for a one year period. During this period, the employee shall turn over to the City any Worker's Compensation payments received as a result of the disability and any group insurance payments received as a result of the disability under the City's group insurance program.

(b) After this one year period the employee may use his accumulated illness allowance or vacation (in that order) to provide the regular compensation he would otherwise receive for his scheduled work week as long as there are credits in the illness allowance or vacation.

1. If during this period, the employee is in receipt of Worker's Compensation payments as a result of the disability, these payments will be turned over to the City and the employee will receive credit in his illness allowance bank for an equivalent amount of time. This requirement to turn over Worker's Compensation payments will be discontinued once the employee exhausts his illness allowance bank.

2. If during this period, the employee is enrolled in the City's group insurance plan, then any group insurance payments received will be turned over to the City and the employee will receive credit in his illness allowance account for an equivalent amount of time. This requirement to turn over payments will be discontinued once the employee exhausts his illness allowance bank.

(c) An employee injured on other gainful employment outside of City employment shall not be eligible for Worker's Compensation benefits from the City.

(d) When the attending physician states that a man is able to return to work, his Worker's Compensation payments will cease.

ISSUE #13

RANK DIFFERENTIAL

NUMBER OF YEARS TO REACH MAXIMUM SALARY

Current:

Sergeant	- 18 months
Lieutenant	- 30 months
Fire Apparatus Sup.	- 36 months
Captain	- 42 months,

provided that an employee upon promotion is placed in the salary step which is immediately higher than the salary the employee was receiving at the time of his promotion; the employee shall then progress based on the salary step in which he is initially placed.

City Offer: No change.

Union Offer: Add to Section 66, "Wage Rates", of the 1979-81 agreement:

Effective July 1, 1982, upon promotion to a higher classification, an employee shall receive half of the salary differential between his current salary and the salary in the classification to which he is being promoted on the effective date of such promotion and shall receive the remainder of the differential upon the successful completion of the year's probation in that classification.

ISSUE #14

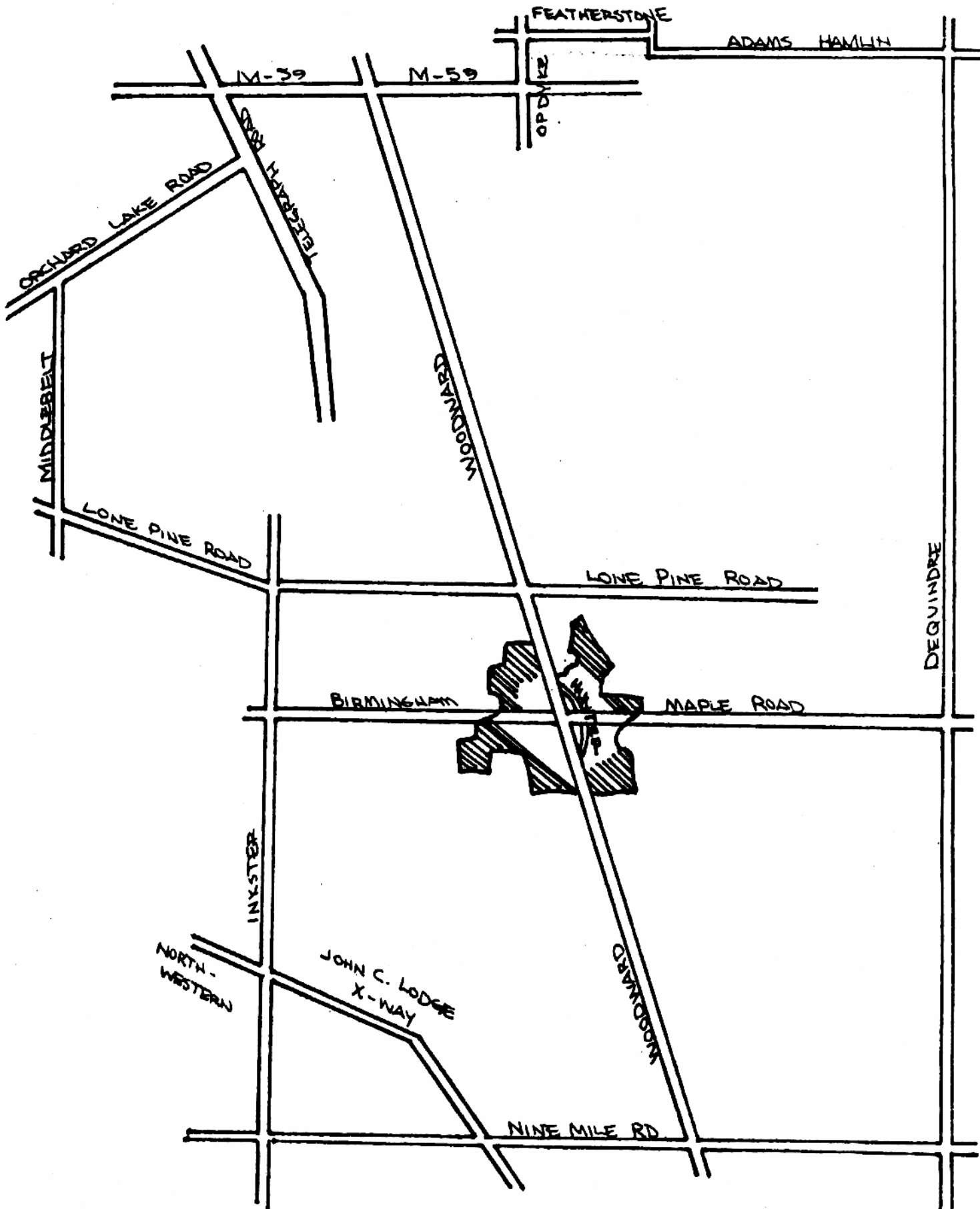
RESIDENCY

City Offer: The boundaries within which employees must reside will continue as provided in the current contract. However, for ease of administration and because the map contained in Supplement D of the 1978-81 labor agreement is inaccurate, that map will be modified to "square off" both the northwest corner and the southwest corner of the current boundaries by modifying the map to provide that: Nine Mile will be the southern boundary; the western boundary will be Inkster Road commencing at Nine Mile and north to Lone Pine Road, and Lone Pine Road west to Middlebelt Road, Middlebelt Road north to Orchard Lake Road, Orchard Lake Road north to Telegraph, and Telegraph north to M-59; the northern boundary will be M-59 to Opdyke Road, north to Featherstone Road, east to Adams Road, east to Hamlin Road and Hamlin Road east to Dequindre.

Language: Attached is a copy of the map to be attached to the contract as Supplement D. The current practice of requiring the employee to live on the "Birmingham side" of these boundaries will be continued. Section 18(b) shall be changed to read as follows:

SUPPLEMENT D

BIRMINGHAM FIRE FIGHTERS RESIDENCE BOUNDARIES



Residency Limits: A probationary employee shall not be required to meet the residency requirements until after six (6) months following completion of his probationary period. An employee's permanent residence must be within the area bounded by the perimeter streets indicated on Supplement D.

Union Offer: Pursuant to Section 8 of Act 312, as amended, the Association hereby submits its last offer of settlement on the non-economic issue of Residency. The Association's last offer of settlement is to modify Section 18(d) and Supplement D of 1979-81 agreement to provide the Residency Boundaries contained within the circled portion of Union Exhibit 119 in these Act 312 proceedings.

ISSUE #15

VOLUNTEERS

Current: Paid employees shall be called first when there is a need for manpower which is less than a full response. Simultaneous callback of paid employees and volunteers shall be observed only for a full response. (Section 37(e))

City Offer: City may use volunteers subject to proposed language:

The City may use volunteer fire fighters to augment the paid fire fighters as it determines, provided that: (1) no fire fighters are on layoff, and (2) provided further that if there are fire fighters on layoff, then the City may use volunteers on a simultaneous call-back when all fire fighters actively employed are called back.

Union Offer: No change.

ISSUE #16

SUBSTITUTE OF INSURANCE CARRIER

Current: No provision for substitution of health insurance carrier.

City Offer: The City may change health insurance carriers subject to the language set forth below (which the City proposes be added to the Health Insurance Article of the contract):

The City reserves the right to provide the health insurance provided herein through an insurance carrier other than Blue Cross/Blue Shield, provided that: (1) the benefits provided through such carrier are equal to or better than the benefits provided under Blue Cross/Blue Shield; (2) the Union is notified at least thirty (30) days in advance of such change; and (3) if there is a disagreement between the City and Union as to whether the benefits to be provided by a different carrier are equal to or better than the benefits provided under Blue Cross/Blue Shield, the parties shall submit the matter to arbitration under Section ___, Step ___, and the insurance through a new carrier shall not be implemented until after a decision is rendered by the arbitrator.

Union Offer: No change, that is, do not permit the City to change insurance carriers during term of new agreement.

ISSUE #17

COMPUTATION OF HOURS WORKED FOR OVERTIME PURPOSES

Current: For purposes of computing hours worked for overtime purposes, all compensated hours are included. (Section 37(b))

City Offer: For purposes of computing hours worked for overtime purposes and consistent with Act 604, only actual hours worked and hours of vacation and personal leave day shall be counted as hours worked. Paragraph 2 of the Letter Agreement attached to the parties' 1978-81 agreement shall be deleted.

(b) Effective with the first day of the first work cycle after January 1, 1983, time granted for vacation and personal days during the duty day under consideration for overtime pay, shall be included as time worked in the computation of hours worked. For the period from the date of the Arbitration Award to the effective date of this provision, the provision set forth in Section 37(b) of the parties 1978-81 agreement shall apply.

Union Offer: The Union's offer is to add the following language to Section 37 of the 1979-81 agreement, while retaining the rest of Section 37:

If during the term of this agreement, the normal work week for unit employees is increased from the current average of fifty-four (54) hours per week, each unit employee shall be entitled to compensation at the rate of one-and-one-half (1-1/2) times his regular hourly rate for all hours worked in excess of the previously scheduled normal work week of fifty-four (54) hours per week as set forth in Section 36(a) of the 1979-81 agreement between the parties. Any time off for which the employee receives compensation directly from the City, included but not limited to illness allowance, vacation pay, emergency leave, and personal leave, shall be included as time worked in the computation of hours worked for the purpose of computing overtime under this paragraph.

For the purposes of computing overtime, it is specifically understood that the salary schedule set forth for unit employees in this agreement is payable for an average normal week of fifty-four (54) hours per week, which means that a unit employee shall be entitled to compensation in addition to the salary set forth in that schedule for all hours worked in excess of a normal work week of fifty-four (54) hours per week.

III. Findings and Conclusions on Comparability

The following opinions and awards have taken into consideration each of the factors enumerated in Section 9 of Act 312. The City has suggested to the panel that comparable communities is not the exclusive criteria and in fact that all items in Section 9 need to be considered. This panel, has in fact, carefully considered each of the factors in its deliberations. For example, the lawful authority of the employer is not a significant consideration in this case, the union's demands do not appear to exceed the authority of the City to grant. Section 9(c) speaks of the financial ability of the unit of government to meet additional costs. The ability of the City of Birmingham to pay the demands of the fire fighters is not a basic factor in this dispute in that the City could meet these various demands without being put in a deficit position at this time. There, of course, is the question of proper governmental priorities, and the City obviously may exercise its discretion to expend certain sums on areas other than the personnel costs for fire fighters and this bargaining unit. The fact that there is no deficit or that the City is conservative in its tax policies does not provide impetus to disburse large sums to employees. The panel need only to determine that the City has the ability to pay. That issue was not seriously entertained and therefore that factor need not play a further role in these considerations.

The Act does require that the panel consider a comparison of the employees involved in this case with the wages, hours and conditions of employment of other employees performing similar services

and with other employees generally in public employment in comparable communities and in private employment in comparable communities. The issue of comparable communities of course has split the sides. In an effort to facilitate the briefing of this matter, the panel met at an executive session and determined that the following communities are deemed comparable to the City of Birmingham: Bloomfield Township; East Detroit; Ferndale; Harper Woods; Hazel Park; Madison Heights; Mt. Clemens; Roseville; Royal Oak; and West Bloomfield.

Collectively the parties suggested 26 communities as being comparable. The City divided their list into two segments: exhibit 25(b) and the other identified as North Woodward communities in exhibit 26(c). The City also provided in exhibit 25(a) seven factors which they believed were significant in determining comparable cities. Those factors included location, land use, full-time fire department, square mileage, number of personnel, population, and tax base. They suggested a comparable community must meet 5 of the 7 criteria.

The Union had 14 principle comparable communities identified in Exhibits U-18 and U-19. Additionally they identified the Oakway Mutual Aid Pack Members in u-26 and in view of the fact that the City had proposed certain downriver communities, the Union proposed additional downriver communities as also possible comparable communities. The panel believes that the appropriate criteria for determining comparability would include geographic size, population, tax base as measured by state equalized value, the number of full-time employees, the number of hazardous alarms responded to, land use (that is percentage of residential use as opposed to commercial or other use), proximity to each other.

Interestingly enough, of all 26 communities suggested there was only mutuality of agreement on two cities, namely East Detroit and Ferndale. East Detroit of course is in Macomb County and Ferndale is in Oakland County. Each has a full-time fire department; East Detroit is 5.1 miles and Ferndale, 4.2 miles. East Detroit has 27 personnel and Ferndale has 47. East Detroit has a population of 32,280, Ferndale, 26,227. East Detroit has a SEV of \$286. million; Ferndale has a SEV of \$192. million. East Detroit is 85% residential and Ferndale is 87% residential. By comparison, Birmingham has two fire stations, 43 full-time employees, 5.1 square miles, 21,689 people, a SEV of \$400. million, and residential percentage of 74.

The panel is persuaded that Birmingham is predominately a residential community with limited amount of commercial land use. It does not have high rises in any great degree and it does not have any large industrial complexes which might be potential fire hazards. Thus cities like Southfield with numerous high rises, with the population of almost three times as many persons and alarms responded to of almost four times would not seem to be a comparable community. The following chart, which is an aggregate from the various exhibits, depicts most of the criteria for those communities which have been selected as comparable functions.

There is obviously no exact science in determining comparability, but we can only compare and contrast the various factors and the voluminous information that is provided by the parties. This panel is impressed with the primary characteristics of Birmingham being predominately residential, relatively compact geography,

	<u>Population</u> (1980)	<u>Personnel</u>	<u>Stations</u>	<u>Square Miles</u>	<u>Alarms</u> (1981)	<u>S.E.V.</u> (Million) (1981)	<u>Location</u> County	<u>Residential</u> ¹ Percent of S.E.V.
Birmingham	21,689	43	2	5.1	1120	\$400.	Oakland	74.1
Bloomfield Township	42,876	70	4	25.5	1641	\$963.	Oakland	87.2
East Detroit	38,280	26	1	4.7	1616	\$299.	Macomb	85.4
Ferndale	26,227	44	2	3.91	1642	\$192.	Oakland	62.5
Harper Woods	16,361	23	2	2.6		\$183.	Wayne	70.00
Hazel Park	20,914	23	1	2.8	1338	\$129.	Oakland	46.15
Madison Heights	35,375	37	2	7.25	1901	\$383.	Oakland	46.15
Mt. Clemens	18,806	20	1	3.9	456	\$159.	Macomb	56.03
Roseville	54,311	37	2	9.5	1897	\$434.	Macomb	62.48
Royal Oak	79,600	37	3	11.89	2855	\$680.	Oakland	70.9
West Bloomfield	41,934	43	5	36.0	1321	\$746.	Oakland	91.08

¹When based upon percent of land use, the residential characteristics actually increase for several communities, e.g. Ferndale, Hazel Park, Mt. Clemens.

with a middle to upper middle class social structure. Although there is a significant number of alarms, when the medical runs are taken out, it is clear that there have not been many major critical fires and that the potential for major conflagrations or significant hazards to fire are not nearly as great as in areas such as Warren, Trenton, Wyandotte, or River Rouge for example.

Location is also important and the panel believes that the downriver communities, because of distance and because of dissimilar socio-economic characteristics, would not be comparable communities.

Applying these factors to some of the cities that were excluded suggests the following: Pontiac is three and a half times as large, both in population and in square mileage, and has 103 persons in the department. Furthermore, it only has 37% residential and would seem not to be comparable. As stated previously, Southfield with 75,000 people, 27 square miles, 101 fire fighters and five stations, along with numerous high rises and relatively heavy commercialization does not fit into the majority criteria. Warren, likewise, with a population of 161,000, 34.5 square miles, six stations and 189 personnel is much too large in comparison to Birmingham. St. Clair Shores, with 76,000, 11.6 square miles, three stations and 61 departmental personnel, seems not to be comparable. The City of Sterling Heights, with 108,000 people, 36.8 square miles, four stations and 84 personnel, would have a population that is five times as large as Birmingham and square mileage of at least seven times. This city, likewise should be excluded. The Cities of Allen Park, Taylor, Ecorse, Lincoln Park, River Rouge, Southgate, Trenton and Wyandotte are all considered downriver communities and

they would seem to have special geographical qualities as well as socio-economic characteristics which would set them apart from Birmingham. They are not "North of 8 Mile", the actual boundary that separates Oakland and Macomb Counties from Wayne and also the "imaginery" socio-economic boundary. Each of those downriver communities are in Wayne County, and with the exception of Harper Woods, none of the other comparable communities is within Wayne County. Garden City is located in western Wayne County and although it would appear to compare favorably as far as square mileage, personnel, population, and residential characteristics, its location in Wayne County and its perceived socio-economic mixture, leads the panel to conclude that it is not comparable.

Although both Bloomfield Township and West Bloomfield have larger populations than Birmingham and have much larger square mileage, their residential composition, their geographical proximity and perceived socio-economic situations as well as number of alarms responded to and size of personnel, would justify their inclusion as comparables.

One final comment, this panel would recommend that any future Act 312 proceedings not proceed with presentations of proofs until comparable communities have been agreed upon by the parties. The enormous number of exhibits and gathering of statistical data for 26 communities tremendously expanded the exhibits, the research time, and the hearing time required for this matter. Chairman of panels should encourage agreement on comparable communities by the parties. To the extent that they cannot agree, then take proofs as to a limited number of communities that might be comparable.

Hindsight is always 20/20, but it is clear that such an approach in this matter might have reduced the number of hearing days as well as the preparation time of the parties.

IV. Discussion of Specific Issues

ISSUE #1

WAGES

Rather than repeat the offers of the parties, reference on all issues will be to the last best offers as stated above. With respect to current salaries, fire fighters are being paid \$22,464.00 for 1980-81 and since the Union has agreed to the City's offer as to the first two years, fire fighters will be paid \$24,149.00 in 1981-82 and \$26,107 for 1982-83. These figures include rolled in COLA in 1982-93 from the '81-'82 base and each year there will be a COLA increase because the parties have agreed to such an arrangement which is equivalent to \$393.12 per year, an increase of 1.63% for fiscal year 1981-82, 1.627% for fiscal year 1982-83 and 1.5% for fiscal year 1983-84. Thus, fire fighters will receive \$1,151.28 in wages above anything that is awarded in this arbitration.

Clearly, the only issue that we have before us is the amount of wages for the third year. The City offers to pay 6% effective on the first payroll period after 7/1/83 and 1% effective the first payroll period after 1/1/84. The Union offers 7% effective the first payroll period after 7/1/83. All we are talking about is the difference between 7% for a full year and 6% for a half a year and 1% increase for the balance of the half year.

It is almost incredulous that after such a prolonged hearing process that generally the most important economic issue finds the parties relatively minuscule dollars apart.

As a further preface to the discussion on wages, the panel has observed that the fire fighters perform a vital service to the community requiring individuals with high degrees of skill, and the ability to cope with responsibility for the protection of people and property. However, it has also been demonstrated on this record that the working conditions of the fire fighters in the City of Birmingham is difficult but hardly overly dangerous. Of the 1981 responses, only 2.2% actually involve "structural fires". The minimal industrial development within the community, the relatively well maintained homes and the lack of a significant petrochemical industry impresses upon the panel the fact that the working conditions of the Birmingham fire fighters fair very favorably with any other comparable communities. These factors should play a significant role in determining compensation and is a part of the intangible, if not tangible, process. The City has often stated it bargained in good faith, that it attempted to structure an agreement which was consistent with that which it offered and received acceptance from other city unions. The panel is also mindful of the total economic significance of this arbitration and it is difficult to isolate any one particular economic issue without looking at the impact on other issues. It is also noted that the Birmingham Police Officers Association will receive less COLA than will fire fighters and it is also noted that the City's third year offer to the fire fighters is identical to the settlement with the BPOA. With respect to the Birmingham Command Officers Association, the City's offer to the fire fighters for the third year is identical. Since the BCOA's cost of living is the same as the police officers, the fire fighters will receive more per fire fighter than

the police command as far as COLA is concerned. Historically, there has always been a salary differential between the police and fire fighters, whether there is a valid reason for that is not important here. The fact remains that there has been a differential in base salaries.

Per the Union brief, the total dollar difference between the two proposals and the third year of the contract would be \$121.50 per fire fighter. Thus the dollars are not terribly significant and since the issue of ability to pay is removed, the determination of which offer to accept is based on other considerations.

As cited by briefs of both parties, Birmingham's 7/1/81 base wages of \$24,149 places it fifth on the table of comparables. Above Birmingham's \$24,149 would be Madison Heights at \$24,312, Royal Oak at \$24,504, West Bloomfield at \$24,651 and Bloomfield Township at \$24,882. Therefore, during the first year of the contract, six communities will be receiving less as a base wage with East Detroit being at the bottom at \$21,981.

For 1982-83 with COLA rolled in, the Birmingham wage will be \$26,500. Based upon exhibits in this case, the next highest communities with agreements would be West Bloomfield at \$25,742, Royal Oak at \$25,484, Hazel Park at \$25,331, Harper Woods at \$25,030 and Roseville at \$24,474. For the same time period, without COLA, Birmingham would be at \$26,107, West Bloomfield, \$25,742, Royal Oak, \$25,484, Hazel Park, \$24,496, Harper Woods, \$24,530 and Roseville, \$23,574. Accordingly, the Birmingham salary for '82-'83 exceeds the average of the comparable communities which have agreements for that year. If communities which have not reached agreements on salary are included, the Birmingham salary with COLA is \$1,977

above the average that is acutally paid. Obviously some of those communities may reach agreements which will increase the average salary and therefore decrease the variance between average and Birmingham. The panel is pursuaded that the better way of measuring comparablity is to take that which is in existance rather than speculate on what might happen.

As to the third year of the agreement, there are only two communities with contracts: Harper Woods and Hazel Park. Using the City's offer in the third year, effective 7/1/83, the fire fighter would be paid \$28,090. On 1/1/84, they would receive \$28,371 and \$28,764 with COLA. In contrast, Harper Woods with COLA will be \$26,493 and Hazel Park, \$26,671.

In order to make an award on this issue, a discussion of comparable hours worked with other communities does not seem dispositive nor does the Union's argument with respect to cost of living. Given the relatively high starting position of Birmingham on 7/1/81 with only a gross difference of \$633.00 between their base wages without COLA and the highest of Bloomfield Township, and conversely the difference between Birmingham and the lowest of East Detroit being \$2,168, the fire fighters of Birmingham appear to be pacesetters. Their first and second year wages suggest they will be near the top, at least until other agreements are signed. The city's desire to have comparable agreements with all its unions seems highly persuasive and justifies a change to step increases rather than one increase in the third year.

Accordingly, when taking all of the factors of Section 9 into consideration and particularly comparable wages paid to fire fighters, comparable wages paid to other public employees in the City of

Birmingham, the stipulation of the parties with respect to cost of living increases and the position that Birmingham will be in with respect to fire fighter wages of the comparable communities for 1982-83 and 1983-84, the panel is persuaded that the City's last best offer should be accepted.

Award: The City's last best offer on wages is adopted.

Kruszewski: Concurs _____

Dissents *E. Kruszewski*

Santo: Concurs *[Signature]*

Dissents _____

ISSUE #2

PENSION--ANNUITY WITHDRAWAL

The fire fighters contribute five percent to the City pension system to partially fund their retirement. Upon retirement, the employee receives a monthly benefit, a portion of which is funded by the employees contribution and a portion of which is funded by the City's contribution. The benefit is first drawn from the employee's portion and once exhausted, is drawn from the City's contribution. Both parties have proposed that the employee, when he retires, may be allowed to withdraw the amount of his contribution with accumulated interest. As a result of such withdrawal, the employee's pension benefit will be actuarially reduced by the amount of such withdrawal. The union proposes that the reduction should be based upon an actuarial computation on the basis of an annual rate of interest at six percent compounded annually, whereas the City proposes that the reduction be computed based upon interest rate at the time of election which is published by the Pension Benefit Guarantee Corporation (PBGC).

As further background, it should be noted that none of the comparable communities in this proceeding provide an annuity withdrawal option of any kind. There are nine communities statewide who do provide this option. Three of whom, Lincoln Park Police and Fire, Grosse Pointe Woods and Flint, use the rates published by PBGC. Of the other six, five use the current actuarial valuation interest assumption and one community, Livonia, uses the annual rate of interest of six percent. (See Ex. U-112 for reference to Livonia and Ex. C-70 for other data.)

A fair reading and review of the testimony by the actuarial experts suggests that if annuity withdrawals take place, there most likely will be an increase cost to the City. Mr. O'Keefe, the City's expert, indicated that if the PBGC rate were used, there should be no detrimental impact upon the system as contrasted to the six percent assumption suggested by the union. If one used a six percent assumption figure, there would be an impact but the testimony is ambiguous as to exactly what the impact would be. Mr. O'Keefe clearly so stated. (Tr. Vol. III, p. 206)

It would appear that viewed in the light of the absence of any comparable community having a like provision, this would be a pioneering step. Both parties obviously wish to allow annuity withdrawals and the City's suggestion of prudence being the greater virtue on this issue seems valid. It seems clear that there will be some kind of an impact, but the testimony is obviously unclear as to what it will be. The safest and most prudent posture, at least for the duration of this contract, would be to permit the withdrawals and to discount them based upon the rate certified by PBGC at the time the election is made. The fact that only one

community, Livonia, seems to utilize the flat rate, and this assertion may be rebutted by the City, suggests that the concept of prudence is warranted. An individual can withdraw and if there is a possibility of a detrimental impact, the safer approach is to use a rate that would appear to float and equate with market value rather than a fixed rate. If during the duration of this contract there are substantial withdrawals, experience at that time will obviously be a benefit to the parties and could well dictate the practical application of the offers suggested herein.

For the foregoing reasons, using the criteria of section 9, the City's proposal should be adopted.

Award: The City's last best offer is adopted.

Kruszewski: Concurs

Dissents

S. Kruszewski

Santo:

Concurs

Dissents

ISSUES #3 and #4

BENEFITS--COMPUTATION OF FINAL AVERAGE COMPENSATION

Both of these issues will be discussed together because of their similarity. Given the complexity of this issue and the amount of pages devoted to this issue in the briefs, it is clear to the panel that this is one of the most important issues to be decided.

Currently a fire fighter may not retire until he has obtained the age of 55 and has had a minimum of 10 years of service. He must retire at the age of 60. Upon retirement he is entitled to a pension based upon his final average compensation, currently computed

on the best five consecutive years out of his last 10 years of service. He then receives a pension of 2.0% of his final average compensation multiplied by his years of service.

The City has proposed that there be no change in the benefit factor, but that the pension benefits be computed on the basis of the highest three years of compensation out of the last ten years of service. The union's last best offer proposes to increase the annuity factor to 2.25% but in doing so apparently had withdrawn its demand for computing the final average compensation on the basis of the three highest years rather than five out of the last 10.

Good old Mr. Mudge, who was often referred to in the hearing, was used by both parties as an example of how the system would operate because Mr. Mudge will be eligible to retire during the new contract. (See U-71. Also see exhibits 1 and 2 of City's brief and Table 4 of the Union brief.) Unfortunately, the parties have chosen to illustrate their case by using different years and different salaries. The union, for example, has used years of service 1977-81 whereas the City has used 1980-84. In doing so, the '82, '83 and '84 salaries are projected earnings. However, notwithstanding the discrepancies on methods of computation, the exhibits are helpful at least in describing how the system works and to give a real life example of what the new factor and three or five year average really means. The panel is also very cognizant of the fact that since the pension benefit is based upon compensation received, and as a result of the agreement in the first two years plus the award of the third year, the salary base upon which computations will be figured have been substantially increased. Obviously, as

salary adjustments increase then even at a 2.0 factor, the pension is increased. Quite frankly the discussion with respect to the potential cost to the City as a result of a .25% increase in the factor does not seem to be dispositive. Rather, it would seem that comparison with other communities and comparison with the existing pension system of the City for other bargaining units within the City would be of major significance.

The panel is obviously aware that fire fighters enjoy a pension benefit which is slightly better than the benefit for the general city employees. They can retire with full benefits at age 55 while other employees retire, at age 60. (C-69) The panel has also been made aware of section 9(d) with respect to comparing private employment in comparable communities. City exhibit 69 demonstrates that the Birmingham fire fighters pension benefits appears to be greater than benefits provided by employers in the private sector in comparable communities.

Birmingham's 2% benefit factor is less than five of the comparable communities: East Detroit, Ferndale, Mt. Clemens, Roseville, and Royal Oak. However, East Detroit uses a 6% employee contribution, Mt. Clemens a 6.4%, Roseville a 7.5% and Royal Oak a 6% employee contribution factor. Additionally, East Detroit uses five out of 10 years, Roseville uses five out of 10 years. It is interesting to note that Madison Heights and Bloomfield Township, which have 5% employee contributions, also have 2% annuity factors. While the parties have exhaustively compared and contrasted each of the pensions in the comparable communities, and have argued persuasively for their respective positions, the chairman is persuaded that on balance the Birmingham existing pension system compares

very favorably with the other comparable communities. For example, East Detroit has a 2.25 benefit factor, it has such a factor to age 62, has 1.8% at age 62 with a 65% maximum. Their employees contribute 6% and they have a final average compensation of five out of 10 years. However, the crucial factor here is that East Detroit, for example, is starting off at a significantly lower wage base. I am sure that the Birmingham fire fighters would not want to accept the East Detroit package as being comparable.

On the surface, the Royal Oak situation seems most favorable to the union's cause. They have a 2.5 factor for the first 28 years and 1.0 thereafter for a 75% maximum. They have an employee contribution of 6% and a final average compensation of three out of 10. The Royal Oak agreement, however, provides that there is a moratorium until 1986 on any negotiation regarding pensions. More importantly, for fiscal year 1981-82, the employee contribution for Royal Oak was 7% and it continues at 6% at least until 1986. They are contributing more percentage wise than Birmingham and their wage base is significantly lower than Birmingham's.

Given the employees' lower contribution level, plus the additional sweetener of using three out of 10 rather than five out of 10, the Birmingham fire fighter, juxtaposed against the comparable communities, appears to be no worse and arguably much better off.

Another extremely important factor that cannot be overlooked on this issue is that each of the City's other bargaining units have accepted the three out of 10 concept as the only change in their pension systems during the 1981-84 contract period. This panel is not cognizant of whether the annuity factor was an issue

in bargaining because no testimony was presented. Be that as it may, the City's argument for consistency within its pension programs should be given great weight. The City has proposed no factor change, but has agreed to the three out of 10, which would be uniform throughout their pension system for all City employees.

Reviewing all of the information, the panel is persuaded that the City's position more closely conforms to the criteria of section 9 than does the union proposal. Again, the fact that other City employees do not have such a benefit and uniformity of pension programs within the City should be encouraged is persuasive. The existing pension benefits, particularly when considered in light of the significant salary adjustments in the first two years which have been agreed to, and the third year award suggests that the substantial additional base upon which the existing 2.0 factor will be applied outweighs any equitable consideration there might be for also achieving a 2.25 factor. Finally, the City's three out of 10 offer plus the opportunity to have an annuity withdrawal which has been agreed to by the parties suggests that the pension benefit need not also be increased by an additional annuity factor.

Award: The City's last best offer with respect to no change in the annuity factor, but a change from five to three out of 10 years is adopted.

Kruszewski: Concurs

Dissents *E. Kruszewski*

Santo:

Concurs

Dissents _____

ISSUE #5

FOOD ALLOWANCE

Both the City and the union propose increases in food allowance. The issue before the panel therefore is the appropriateness of the increase. The City's last offer effective 7/1/81 was \$275; effective 7/1/82 was \$325; effective 7/1/83 was \$350, each being paid in two installments. The union's last offer was effective 7/1/81, \$300; effective 7/1/82, \$350; and effective 7/1/83, \$400, each paid in two installments. Thus the difference is \$25 per man in the first year, \$25 in the second year, \$50 in the third year.

Presently, fire fighters receive a food allowance of \$225 which has been in effect since July 1, 1976. The food allowance is provided presumably because of the requirement that the fire fighter work a 24 hour day and that he is required to eat his meals at the station. The cost of the meals are borne by the individual fire fighters. They contribute to a cook fund from which foods are purchased and meals are prepared by each of the individual units. Each group decides how much to pay into its fund. Currently five of the six groups of employees pays \$5.00 per day, the remaining unit pays \$4.50 per day.

The department keeps careful records of the actual amounts expended on food by the fire fighters each year. (Union exhibit 85) The average spent was \$526.06 in 1981. Thus at the \$225 per year allowance, each fire fighter paid roughly \$300 out of his own pocket which is approximately 57% of his total food cost. If the union's offer is accepted, and if the \$525 figure for 1981 is used, in the first year the fire fighter would pay 43% of his food cost

in the second year 33% and in the third year 24%. Obviously, however, food costs will go up and these percentages will be greater. If the City's offer is accepted, the fire fighter would pay 47% of his food cost the first year, 38% the second year, 33% in the third year. Although the City argues that the fire fighter has a choice of how much food to spend, this does not seem to be a persuasive argument given the fact that he really has no choice in where to go for his meals. The fact that the fire fighters apparently did not ask for an increase in food allowance in the last agreement ought not to be held against them in this proceeding. The issue is really whether the request of the fire fighter is reasonable given inflation, cost of living and the comparable community payments.

The analysis of comparable communities suggests that Birmingham has the lowest allowance except for Roseville and Bloomfield Township who pay none. The suggestion by the City that the food allowance proposed by them is comparable to the average food allowances paid by the comparable communities just does not bear up to close scrutiny. If the union's last best offer is accepted the Birmingham fire fighter will still be 32% below the average of comparable communities for 1981.

As in previous issues, the cost of this item to the City ought not to be a deterrent to accepting the union's proposal all other things being equal. Since the union proposes an increase of \$25 in the first year over that proposed by the City, when multiplied by personnel, that comes to \$975 per year. Likewise in the second year, since there is a difference of \$25 being offered per man, that would also be \$975. Since there is a \$50 spread in the third

year, the cost would be \$1,950 between the City's offer and the union's offer. That is a total of \$3,900 over the three year contract. It is doubtful that the City is suggesting that the gross amount is inordinate, but rather that the equities are in their favor that the amount should be less. However, as expressed above, it would appear that the union's argument is more persuasive especially in the clear light of the data for the comparable communities. There were no other competing factors in section 9 which would overshadow the food allowances in comparable communities and therefore the union's proposal should be adopted.

Award: The last best offer of \$300.00 effective 7/1/81; \$350.00 effective 7/1/82; and \$400.00 effective 7/1/83 shall be adopted.

Kruszewski: Concurs *E. Kruszewski* Dissents

Santo: Concurs Dissents *T. Santo*

ISSUE #6 and #7

UNIFORM ALLOWANCE AND ADMINISTRATION OF UNIFORM ALLOWANCE ACCOUNT

Because of the interrelationship of the administration and the actual amount of uniform allowance, these issues will be discussed together. At the present time, each member of the bargaining unit receives \$140 per year for uniform allowance. It is credited to an account and when he needs new uniforms, shoes, jackets, caps, etc. he purchases the same, submits the bill to his unit captain who approves the purchase and then the chief or assistant chief signs a reimbursement check. The allowance has been at \$140 since the early 1970's and the administration had been the same over the same period of time.

The City proposes no changes in the first two years, but in the third year would determine the number and type of uniforms required, purchase them for the fire fighters and distribute them. As the uniforms are damaged and need replacement, the City would replace them. There would be no uniform allowance, existing balances would be frozen and be paid upon retirement. Conversely, the union's last offer is for status quo for the first two years, but in the third year to increase the amount paid for uniform allowance to \$250 and that the amount be paid directly to the employee by check effective the first Thursday in July which is not a regular pay day. The employee would use these funds at his discretion to purchase required uniform articles and would be responsible for maintaining the standards established by the department. Since administration is a non-economic issue, the panel would not be bound to the last best offer and if the present account system is retained, then the union's position on the actual amount being the only economic issue on the table would have to be accepted.

Of the comparable communities only Ferndale and West Bloomfield administer their uniform accounts similar to that proposed by the City. The balance of the comparables make yearly direct payments to the members of their bargaining units instead of maintaining a uniform account. This issue is really quite subtle in that if there is a reason to change the administration of the accounts, why would the City wait to the third year to do so? Conversely, the union feels that the allowance is inadequate, why continue an inadequate amount for two more years and wait until the third year for an increase? The answer can only be in the trade-offs that

occur during negotiations and the real issue is the test of wills between the parties. How much further can the management team invade the lives of the fire fighters by telling them when their uniforms are okay and when they need to be replaced? Conversely, the unions are saying, "just give us the money, we'll take care of our uniforms and if we can do it cheaper we'll pocket the difference."

The panel is persuaded that there has been no demonstrated evidence of abuse of existing administration of the accounts. Fire fighters are not trying to hoard their money to have it available for retirements. The City was also not able to demonstrate that fire fighters have neglected to live up to the standards required of the City with respect to maintenance of uniforms. They have been unable to demonstrate that taking over this function by the City will save the City any money and the fact that only two other communities appear to have done it this way it is not persuasive. The union has not demonstrated that the system, as presently operated, is so unjust that they should be given a blank check. The City is entitled to some check and balance and the present system of a purchase, submission of a receipt and reimbursement should allay the City's fears that the money would not be wisely spent, but is really a salary supplement. For the above reasons, the panel believes that the status quo with respect to administration should be retained during all three years of the contract.

As to the dollar amount of the allowance, a \$250 allowance proposed by the union in the third year appears to correspond almost exactly to the actual cost incurred each year by the fire fighter purchasing and taking care of his uniforms. Since there has not been an increase since the early 1970's and admittedly

clothing prices have gone up, the present amount is inadequate. (Ex. U-76) Each year a fire fighter purchases an average of four sets of fatigues and a pair of shoes. Every two years most purchase a new coat. In the absence of an offer by the City that a lesser allowance should be awarded, the panel is compelled to accept the union's third year proposal as to the increased allowance of \$250.

Award: Administration of the uniform allowance shall remain the same; that is, the money shall be paid into an account and as purchases are made, the employee shall be reimbursed. In the third year of the contract, the allowance shall be increased to \$250.

Kruszewski: Concurs *B. Kruszewski* Dissents

Santo: Concurs Dissents *P. Santo*

ISSUES #8 and #17

HOURS OF WORK AND COMPUTATION OF OVERTIME HOURS

The City currently has a 54 hour work week. The 39 members are divided into three units. Each unit has one captain, two lieutenants and ten fire fighters assigned to it. Ten of the 39 fire fighters are advanced emergency medical technicians. Four of them work on one shift and three each on the other two.

Each of the units work the California system. That is, the fire fighter has four days off, works one day, has the next day off, works the next day, has the next day off, works the next day and then has the next four days off. This cycle is repeated to average 56 hours over a 28 day cycle.

In the last negotiations, the parties agreed to reduce the actual work week to an average of 54 hours, but maintain the California system. To do so, the parties agreed that each fire fighter is given one 24 hour day off per quarter, called a "Milliken Day". With these additional 96 hours off per year, the average week is reduced to 54 hours. 1978 PA 604 requires the payment of overtime to fire fighters for any hours worked in excess of an average 54 hour work week in a 28 day cycle. Since Act 604 became effective January 4, 1979, it was the predicate for the City and the union to agree to the average work week of 54 hours in lieu of the payment of overtime. The union by separate letter agreement has agreed to indemnify the City in the event that an individual fire fighter should claim compensation as the result of a claim under Act 604. Under the current system, all compensated hours, whether worked or not are counted for overtime purposes. The City proposes that only actual hours worked and hours of vacation, personal leave days would be hours worked for purposes of computing overtime. The union proposes that the fire fighter continue to receive overtime compensation for all hours worked, or compensated for, in excess of the previously scheduled normal work week of 54 hours. As to the issue of hours worked, the City proposes the elimination of the Milliken Days and an average 56 hour work week; whereas the union proposes no change in the present system.

The principle argument advanced by the City for the elimination of the Milliken Days is because of the manpower shortage within the department. Exhibit C-116 proports to demonstrate that there are 156 days during the year in which an employee must be off on a Milliken Day to accommodate the 54 hour work week. The Chief's

testimony was to the effect that 43% of the time the fire fighter force is reduced by one person because of Milliken Days. The City contended that only because of Milliken Days was there an excessive use of overtime.

The City also contends that six out of the 10 comparable cities have a 56 hour work week and do not provide Milliken Days. Conversely, the union says that Hazel Park, Ferndale, Madison Heights, Royal Oak and Birmingham work a 54 hour average work week and the trend is to reduce the fire fighters average work week and that the City would now be seeking to reverse that trend.

Currently a Birmingham fire fighter works a 54 hour average work week and receives the salary of \$24,149. Hours in excess are at time and a half. If he works 56 hours in one week, he would then receive three hours pay. If the City's offer is accepted, the fire fighter would still make the same amount of money, but for a 56 hour work week. He would receive some overtime compensation but only based upon actual time worked, vacation days and personal leave days and then only for time worked in excess of 56 hours and not the previous 54 hours. Under the City's proposal, the fire fighter would work an additional 96 hours per year for which he would receive at the maximum 52 hours in overtime compensation.

With respect to Act 604, it would seem that the panel ought not to be persuaded that the current system is inapposite to the legislative standard because the average work week throughout the year by receipt of the four Milliken Days is reduced to 54 hours which presumably would be in compliance with the spirit of Act 604.

The panel is also persuaded that the City's allegation that there has been substantial increase in overtime costs as the result

of Milliken Days does not bear up under close scrutiny of all the exhibits. The panel is impressed with the statistical analysis of the union and its brief on pages 24-27. The introduction of the paramedic program in 1979 and the requirement that two paramedics be assigned to a unit each day obviously increased the overtime in 1980 because not every unit had three paramedics assigned to it. When 1981 overtime is compared to 1980 with three paramedics on each unit and with a fourth on one of the units, there were only 23 days on which a fire fighter had to be called in for 24 hours as a replacement as compared to the 85 days in 1980. Of those 23 days in 1981, a fire fighter was scheduled on a Milliken Day on only 14 of them. The panel is impressed with the statistical fact that deletion of the Milliken Days would have saved 10 days of overtime or a total of 240 hours in 1981, a substantial decrease from the 1,056 hours claimed by the City in 1980 in Exhibit C-120. This 240 hours represents only about one-third of the total overtime of 697 hours caused by manpower shortages within the department in 1981 and is only 11% of the total overtime hours of 2,107 within the department as a whole in 1981. (Ex. C-95, U-134)

Although the elimination of the Milliken Days would provide greater flexibility in management's scheduling capacity, the facts do not bear out that there would be a substantial saving in dollars as suggested by the City.

The arbitration process ought not to be used to impact an actual increase of working hours. If the City proposal would be adopted, then the fire fighters would actually work two more hours per week by elimination of the Milliken Days. Should such a

situation occur, it should be by agreement of the parties and the give and take at the bargaining table should dictate whether or not the fire fighters would agree to the additional days of work. The comparable communities do not really lend much basis for deciding this issue. Although more seem to be using the 56 hour work week, it is not dispositive because none of those cities had a 54 hour work week and then went to 56. In the absence of an overwhelming record that demonstrated either an economic saving or an undeniable need for efficiency of administration by elimination of the Milliken Days, this panel should leave to the parties and further negotiation sessions the question of whether the hours will be increased. Accordingly, the union's proposal for status quo relative to an annualized average of 54 hour work week by utilization of one Milliken Day per quarter is adopted.

Since the panel has opted for an acceptance of the union's proposal on hours of work, then it is apropos that status quo should also be maintained with respect to computation of overtime. Since the fire fighters normal work schedule is not going to be changed, the fire fighter should receive actual overtime compensation for hours worked and/or compensated for. (Tr. Vol. V, p. 401) Acceptance of the union's proposal on overtime computation seems to be warranted since it will work no change in the status quo. Having opted for status quo as to the hours of work, we should opt for the overtime provision that appears to maintain that status quo.

Award: Hours of work, the union's proposal is adopted. Computation of overtime, the union proposal is adopted.

Kruszewski: Concurs *J. Kruszewski*

Dissents _____

Santo: Concurs _____

Dissents *PS-eb*

ISSUES #9 and #10

VACATION--AMOUNT AND SPLITTING OF VACATION DAYS

Currently all 24 hour unit and 8 hour day fire fighters receive vacation days based upon years of service. For unit men it varies from five to 10 days with persons with less than three years to up to the maximum of 20 or more years. Day men receive two, three or four weeks vacation.

Both the City and the union agree to amend their contract for the day people so that vacation is the same as other 40 hour employees in the City. As to unit men, the union requests no change in the first two years, but effective July 1, 1983, they propose that each unit man receive one additional vacation day. The City proposes no change in the vacation for unit men.

It must be recalled that the fire fighter currently reports for work on an average of 110 days per year, those of course are 24 hour days, a significant portion of which are in non-work related functions. By comparison, other city employees, police officers, teamster employees, AFSCME employees and other city employees are actually scheduled to work 247 days a year. (Ex. C-95) The City therefore alleges that based upon other City employees, the fire fighter has a liberal work schedule, already have an excellent vacation program and therefore should have no further increases.

Conversely, the union alleges that the vacation program for fire fighters is lagging behind that of other comparable fire fighters. Exhibit 3 attached to the City's brief and Table 1 of the fire fighters brief evidences that the Birmingham vacation schedule is lower than the schedule provided for fire fighters in comparable communities. The City has correctly pointed out however that the impact of the City's four Milliken Days materially improves the City's posture when it relates to vacation days. If one considers the Milliken Days in conjunction with scheduled vacation days, the City is comparable with most communities and better off than Bloomfield Township, Harper Woods, Mt. Clemens, and West Bloomfield. As to Ferndale and East Detroit, their salary structure is decidedly lower than Birmingham's and therefore disparity in vacation could well be predicated upon that variance and could well be a negotiated fringe benefit in lieu of a salary increase in those communities.


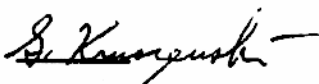

The City suggests that there is an additional cost because additional vacation would require more overtime. Obviously the fire fighter does not receive increased compensation if he receives additional time off, the cost only comes if in fact there has to be overtime paid for call-ins. Since the issue of overtime is speculative, whether there will in fact be a need for call-ins, the additional cost to the City is also speculative.

A more persuasive argument is the greater efficiency of manpower if there is one less vacation day. Or stated another way, retain the existing system as opposed to adding one more vacation day. If one more vacation day must be fit into the schedule, it will make it much more difficult to effectively assign fire fighters given the manner in which vacations are selected.

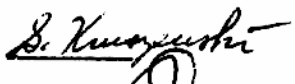
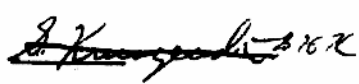

It is difficult to examine this issue in the abstract without commenting upon the hours of work issue. This panel having adopted the union's position on hours of work, it would be inequitable on this record to also add one vacation day. Had the panel adopted the City's request on hours of work, there may have been a greater justification for an additional vacation day.

Accordingly, on the basis of the prior award on hours of work, the effect of the Milliken Days, the comparability of the fire fighters with other City employees, it is the panel's view that the City's position on vacation should be adopted.

Award: No change in vacation.

Kruszewski:	Concurs		Dissents	
Santo:	Concurs		Dissents	_____

As to the splitting of vacation days, the union has accepted the last best offer of the City. Accordingly, the City offer that day men will be able to select vacation in eight hour increments is adopted.

Kruszewski:	Concurs		Dissents	
Santo:	Concurs		Dissents	_____

ISSUE #11

VACATION--CONVERSION OF VACATION DAYS TO
FLOATING DAYS AND CARRY FORWARD

At the present time, the Birmingham fire fighter picks all of his earned vacation time by December 1st of the year preceding a vacation year. The individual with the most seniority in a unit

picks a maximum of six vacation days in a row until each of the employees in the unit makes a selection based upon seniority. Thereafter the list is recirculated for picking of the balance of the vacation days. Only one person is allowed off per unit at any one time. The union proposes that effective July 1, 1983, a unit man can carry over up to two vacation days and they further propose that each unit fire fighter be allowed the option not to schedule two of his vacation days and to take those days whenever he wishes to. If he fails to take two floating days during the year, he could carry them forward to the following year. The City counters by proposing no changes in the scheduling of vacation days either as to carrying forward or as to floating days. Because of the similarity of these issues, they will be discussed jointly.

Currently, if an employee's vacation is cancelled due to department work loads, he will receive premium of time and a half for hours worked on a previously scheduled vacation day. There is some dispute in the record and amongst the parties whether the fire fighter can exchange vacation days with another member in his unit. The City contends that the fire fighters can trade vacation days and with the approval of the City manager, to carry forward limited vacation days. The City suggested that any change in the existing system, which they claim to be very flexible, could increase cost because of resulting overtime and would destroy the scheduling efficiency because they would never know with floating days except upon 48 hours notice, when a person might be off. The fixed allocation, the inability to float and the lack of an appreciable carry forward, the City believes has worked well in the past and that it would damage the delicate chemistry within the department to make major alterations now.

Conversely, the union suggests that the current system is inflexible. It does not allow for individual changes after once selecting vacation days if there are personal or familial reasons to change. The union suggests that there would be no increased cost and no disruption in the efficiency of the department. The union has not pursued these issues with much vigor in their brief whereas the City has expended considerable energy in refuting the union proposal.

The City makes a telling point when they suggest vacation is to be used annually rather than carry forward because vacation is to get away from the rigors of the work environment. Further the City has amply demonstrated that there could well be creation of administrative difficulties by the union proposal. They suggest that if each fire fighter deferred two days in 1983 until 1984 for example, and then took those days in that year, the department would be forced to accommodate 80 vacation days in 1984 in addition to regular vacation. While admittedly not all of those individuals would do that, without an appreciable demonstration that the present system is intolerable, the City ought not have to be faced with that potential administrative problem.

As to the carry forward issue, the comparable communities vary substantially. Four communities provide no carry forward and one provides that only one day can be carried forward. It would seem therefore the lack of a consensus does not shed much light on this issue. The most telling point that leads the chairman to prefer the City approach is the fact that utilization of the California scheduling system allows tremendous flexibility and individuals with high seniority are able to group their initial vacation choice

so that they can block out several work days and be off as much as 15 calender days.

On the issue of floating days, the argument of the City is quite compelling; there could be administrative burdens unnecessarily placed upon the City if the union proposal is accepted. Although 48 hours is now the norm for notice for personal leave days, the uncertainty created by only 48 hours notice for the potentiality of two floating days per man would place upon the City a significant administrative burden which they ought not to shoulder unless there is some compelling reason that the existing system is intolerable.

City exhibit 94 amply demonstrates the flexibility of existing scheduling of vacations. A fire fighter who has a maximum of ten days and splits them into three periods can get two periods of thirteen calender days and one period of fifteen calander days or a total of 41 calender days off per year. The fire fighter also currently receives a personal leave day which he can take with 48 hours notice. Plus it would seem that the existing structure is quite flexible and should accommodate most of the fire fighters needs. Of the comparable communities, six do not permit floating days, two permit floating days each on supervisors approval and one allows floating days only on two weeks notice to the City. At least on the issue of floating days, the trend in the comparable communities is not to favor such a concept or to restrict it severely.

The panel is persuaded in the absence of compelling evidence that the existing policy is burdensome and intolerable or out of sync with a significant number of comparable communities, there appears to be little reason to alter the status quo. The panel

perceives that on issues that have both economic and non-economic implications but really are tests of willpower between the competing forces, major changes should come about only at the bargaining table and not by the artifice of arbitration. Such changes in the status quo by arbitration have the tendency to exacerbate the situation, engender bad will and to erode confidence and working relationships between the parties. Accordingly, the panel adopts the City's offer on these issues and recommends no change in the existing policy for vacations.

Award: On both, carry forward and floating days, the City's proposal for no change in the existing agreement is adopted.

Kruszewski: Concurs _____

Dissents *S. Kruszewski*

Santo:

Concurs *[Signature]*

Dissents _____

ISSUE #12

ILLNESS ALLOWANCE--USE OF ILLNESS AND ALLOWANCE
FOR COMPENSABLE INJURIES

At the present time fire fighters accumulate sick leave by unit men at the rate of 132 hours per year. If unused, the hours may be accumulated, but once reaching 660 hours, the accumulation in a year is cut in half to 66 hours. Upon retirement, the fire fighters are entitled to pay out for all unused sick leave time in excess of 660 hours. (Joint exhibit 3, section 46) Day men accumulate 96 hours of sick leave per year to a maximum of 480 when the yearly accumulation is cut in half. Upon retirement, they are also entitled to to pay out for all unused hours in excess of 480.

For the fire fighter hurt on the job, he would receive in the first 30 days, full pay from a combination of workers' compensation plus a City supplement. The individual's illness account would be charged for this pay supplement paid by the City. After 30 days, if the City's short-term disability insurance program is applicable, he would receive workers' compensation plus insurance which would bring him to 70% of his average weekly earnings with a cap of \$250. He could then use his illness allowance to make up the difference between insurance payments and full pay. After one year, a long term disability program is operative. The fire fighter would receive workers' compensation and insurance equal to 70% of his monthly base pay to a maximum of \$1,500 per month. He could then utilize sick leave to provide the remainder of his regular compensation.

The City proposes to maintain the current contract provision regarding sick leave except that the current cap on the payment of long and short-term disability insurance be eliminated so that the employee is eligible for 70% of his average weekly earnings. The union proposes to change the sick leave provision to provide that the City will pay an employee 100% of compensation for the first 12 months of a compensable injury without deduction from sick leave. Thereafter sick leave is to be charged based on the current contract provision.

The union contends that if injured on the job, an individual should not be forced to use sick leave; it is inherently inequitable to miss time because of an injury on the job and to be forced to use his sick leave. Conversely, the City claims that the union position is unjustified based upon current utilization of sick

time. They claim the current sick leave program is adequate for both compensable and noncompensable injuries and that the motivation for the change is to insulate the sick leave bank for maximum payout at the time of retirement.

City exhibit 102 suggests that there is no need for a change because each fire fighter currently has accumulated sick leave time. The average number of hours is 685 and there are 22 fire fighters who have accumulated more than 660 hours and nine with more than 1000 hours. Under the City's proposal, if the offer is adopted, an employee will be charged for short term job related disabilities only for 30% after the first 30 days of illness and based upon the 1981-82 salaries, about 51% of their salaries after the first 30 calendar days for non-job related injuries. The City further claims that if they do not charge the sick leave bank for duty related injuries, there would be no incentive for the fire fighter to return to duty. They interposed witness Wangler's comments that if a fire fighter was being paid 100% of his pay and not required to work, he has no urgency to return to work. (Tr, Vol. V--III, p. 320-321)

The City further suggests that this union proposal would be inconsistent with the contract provisions of all other city agreements. They suggest that the other unionized employees suffer more work related injuries than do the fire fighters but yet their contracts require set-off of sick leaves.

Both parties used Mr. Parker as an example of an employee who has had a significant amount of sick leave because of duty related injury. (See Union Exhibit 117) He was off for 576 hours of

scheduled time; 321 of those hours were reimbursed, either by workers' compensation or the insurance carrier; 255 hours were charged to his sick leave. The union claims that it is inequitable to force this fire fighter to use his accumulated sick leave when the injury was sustained in the course of performing his duties for the City. He still had 61 hours remaining in his sick leave bank and had not used any vacation time or personal leave days to insure a full pay check and he continued to accumulate additional sick leave at the rate of 132 hours per year. The City suggests that if its proposal and the removal of the cap were in effect, the sick leave account would have been reimbursed for 403 hours not 321 (576 hours X 70% = 403)

Of the comparable communities, it would appear that all of them guarantee some period of time for full pay in the case of duty related injury and Madison Heights appears to charge its employees sick time for such pay. The City suggests that of the comparables, with the exception of Royal Oak, none of the cities pay the difference between workers' compensation and sick leave for as long a period as demanded by the union; that is, up to one year. They also point out that except for Hazel Park, none of the cities provide short term disability for duty related injuries as does Birmingham.

After reviewing all of the factors, the panel is persuaded that there is no clearly demonstrated need for a change such as the union is recommending. Other than Mr. Parker's three month disability, there appears to no injury of long standing duration which would suggest that the present system was inflexible, intolerable

and unable to cope with numerous injuries such that a significant change should be made. Another salient point is that the City provides short-term and long-term disability which does not appear on this record to be provided in the other comparable communities.

The union cites to the City of Southfield arbitration award, but in view of the fact that Southfield is not one of the comparables and a review of that award suggests that the Southfield situation is unique with respect to its regular and reserve sick leave banks; the award in the Southfield case is not dispositive of this issue. Likewise, the chair of this panel does not subscribe 100% to the philosophy of the author of the Southfield opinion that comparability is the single most critical factor. Often times it may be one of the more critical factors, but there are other criteria in section 9 which often times need to be brought into perspective and given proper balance. The panel is not persuaded that the existing system is so unequitable that the fire fighter would be forced to utilize all of his sick time in order not to be fully compensated for work related injury. Between workers' compensation, short-term and long-term disability, the accumulation of sick leave and the fact that the average fire fighter has a substantial leave bank, there is no proof that a radical departure from the present system is appropriate at this time.

Accordingly, the City's offer should be accepted.

Award: The current contract provision regarding sick leave shall be maintained except that the current cap provided on the payment of long and short-term disability be eliminated so that the employee is eligible for 70% of his average weekly earnings.

Kruszewski: Concurs _____

Dissents *E. Kruszewski*

Santo:

Concurs

DM Santo

Dissents _____

ISSUE #13

RANK DIFFERENTIAL--YEARS TO FULL PAY

The City on this issue proposes to have the current arrangement retained whereby the promoted employee is paid the salary immediately higher than the salary he was receiving at the time of his promotion and then progresses therefrom under the current salary schedule. The union offers that on promotion, employee would receive 50% of the difference between his current salary and the maximum salary for the position that he is promoted to and then receives the maximum at the end of 12 months.

In addition to the rank of fire fighter, Birmingham has a paramedic sergeant, a fire apparatus supervisor, lieutenant, and captain. The parties have already agreed on the appropriate wage differentials between the various ranks. (Exhibit A, par. 7) The issue then is the time period within which an individual promoted to one of these ranks will achieve top pay. Because certain individuals who have received step increases would upon promotion receive a lesser pay if he had to start at the first step of the next highest level, the parties have recognized the incongruity of the situation and agreed that upon promotion, an individual would start at the next salary step which is immediately higher than the salary he was receiving at the time of promotion.

Union exhibit 39 demonstrates that it has taken between 12 and 24 months for a lieutenant to reach top pay as a captain and it has taken 24 and 30 months to reach top pay as a lieutenant. The union's argument that a system of pay progression should be the same for all individuals and that it should not take one individual longer upon promotion to reach top pay than another has merit.

The City acknowledges that its position on this issue is out of step with the comparable communities. In five of the comparables there are no wage progression steps and the officer starts at the top pay for the rank. (Union exhibit 41, 62) In Bloomfield Township and Mt. Clemens it takes only 12 months to reach full pay. The City suggests that the rationale for their proposal is that a person should be exposed to the position and thereafter fully qualified to be eligible to receive the maximum rate. This rationale does not hold up since all individuals serve a one year probationary period when they enter a new position and once you pass your probationary period, you have status in the position. The City should not confuse valid probationary and work evaluation standards with pay schedules. The pay schedule should be reasonable. If a person is entitled to a promotion, earns it, and is not demoted during his probationary period, he should receive the full pay that is established for the position. This rationale should apply notwithstanding the City's argument that this issue is geared toward only one individual within the bargaining unit who also happens to be on the bargaining team.

The City's reliance upon the Western Reserve study and exhibits 54, 59 and 60 is misplaced given the trend in comparable communities, the fact that the study is almost 16 years old, and not all of the studies recommendations are in effect at the present time.

For the reasons stated, it would seem that the union's proposal more closely approximates the criteria of section 9 and particularly given no other compelling factors to relate to, the comparability factor is significant.

Award: On promotion, the employee will receive 50% of the difference between his current salary and the maximum salary for the position he is promoted to and then shall receive the maximum at the end of 12 months assuming that the individual is retained in the position after the 12th month.

Kruszewski: Concurs *J. Kruszewski* Dissents _____

Santo: Concurs _____ Dissents *[Signature]*

ISSUE #14

RESIDENCY

The City proposes to maintain basically the same residency, but to make changes in the map contained in Supplement D of the current contract which is inaccurate. The union proposes to modify the agreement in section 18(D) and Supplement D of the 1979-81 agreement to provide residency boundaries contained within the circled portion of Union Exhibit 119. Basically that means an expansion of the residential boundaries so that the area would now be a circle with the mid-point being City Hall and the radius being 10 miles. Ten miles is presently the furthestst point of the current boundary. By expanding the boundaries to a 10 mile radius, fire fighters would be able to live in a larger area; presumably it would give them more options relative to less expensive housing or better housing.

Presumably the rationale for a residency requirement is response capability. The union suggest that, given the existing residency, firemen still cannot arrive on time for a "knock down" fire since four minutes is the acceptable norm for additional man power to

arrive on the scene to make a material difference. They also suggested there has not been a department-wide call back except on three occasions over the last several years. They therefore suggest that there is no fire related necessity for a limited boundary. City counters by saying five of the 10 comparable communities have residency boundaries; four cities have no residency restriction; one community, Hazel Park, has no residency restriction but requires a fire fighter to reside within a specific limit to be eligible for recall. (Bloomfield Township, East Detroit, Mt. Clemens, Roseville and West Bloomfield have some kind of residency requirement.) The union proposal would increase present boundaries from 130 square miles to 275 square miles. If one accepts the City's timed runs from each of the furthest points, it would generally increase the driving time by 42%. Since the union is proposing the change in residency, it would seem that they should have the burden of propounding the evidence to support it. Mr. Wangler testified that the union did not seem to have any problem at all with the current boundaries and he could not point to any particular problem in the fire fighters finding adequate residency within the existing boundary. (Tr., V, p. 299, 323-329)

Of significant importance is the fact that Birmingham is not having problems with applicants for vacant positions being concerned with the boundary restrictions. What few vacancies existed, have been filled with abundant applicants and without any questions regarding boundary. It would seem that if the existing boundary was restrictive, there might be a problem recruiting individuals; the record at least does not demonstrate that such is the case.

Based upon all of the above information and the lack of evidence in this record to support a change in the boundary, and for the same philosophical reasons as expressed in the prior issue, this panel believes that the union's proposal should be rejected and that the City's position should be sustained.

Award: No change in the boundary except as to the City's offer to modify Supplement D to clear up inaccuracies on the map.

Kruszewski: Concurs _____

Dissents *A. Kruszewski*

Santo: Concurs *[Signature]*

Dissents _____

ISSUE #15

VOLUNTEERS

The City has maintained a group of 12 to 15 volunteers to augment its paid full-time fire fighter force for some 20 years. They can only be used when there is a need for a full response of both paid employees and volunteers. There would be a simultaneous call-back of both paid employees and volunteers. (Joint exhibit 3, section 37(E)) Volunteers are either residents or persons with businesses in the City. They have training twice a month and they complete 66 hours of basic training for fire fighters required by the State Fire Fighter Training Council. Thereafter, they work towards completion of a 244 hour course and certification. The City has used its volunteer force only twice in the last 2 1/2 years. (October, 1979 at Joy Cleaners and in January, 1980 at Peabody's Restaurant.)

The City proposes to change the current contractual restrictions and to authorize volunteers as long as no fire fighters are on layoff.

The union contends there is no need to change the existing contract because there has only been three call-backs since January 1, 1981 and those were not for Birmingham fires, but to respond to mutual aid calls (Union exhibit 126). The union claims that in the absence of demonstrated need for volunteers that the City wants to be able to use volunteers to supplement its paid fire fighters. The union perceives this issue as one of an infringement of its right to have the work of the bargaining unit performed by members of the unit and not by persons outside the unit. The City perceives it as a way of encouraging citizen participation and whether Birmingham should use volunteer fire fighters to the extent that they may impact fire insurance rates for example, is a political decision for the City Commission to make.

Apart from these philosophical distinctions, the real issue is whether volunteers can be used only when there has been a call-back of all paid fire fighters or whether the City can use the volunteers as needs arise provided that no fire fighters are on layoff.

The union perceives that the City theoretically could allow the size of the paid department to decrease through attrition and count upon volunteers to supplement the paid force in emergencies.

Of the comparable communities, only East Detroit, West Bloomfield and Mt. Clemens maintain a volunteer program of any kind. (Union exhibit 136, 136)

East Detroit uses volunteers on all structure fires and there are 20 such volunteers who are called in simultaneously with paid personnel. In Mt. Clemens there are 28 volunteers who are called in on all alarms. In West Bloomfield almost all of the volunteers are also full paid fire fighters and 12 full paid fire fighters are on duty at all times. (Tr., Vol. V, p. 438, City exhibit 135)

As stated previously by the chairman in other issues in this matter, particularly on an issue which is non-economic, arbitration ought not to be used as a process to alter the status quo. If such changes are to be made, they should be accomplished at the bargaining table where there is plenty of give and take and if one party wants something badly enough, they will give on something else. Here the union perceives any further utilization of volunteer as an effort to attack the integrity of the bargaining unit. The City of course professes not to have any such ambitions and I think both parties honestly perceive that their position is well justified. Given the clear trend in the comparable communities that have full-time departments, the volunteers are to be used as an augmentation and not, even hypothetically, as replacements for full-time employees. In the absence of willingness of both parties to change the contractual agreement, the City should not be able, through arbitration, to reach a position whereby they would be able to utilize their volunteers other than for emergencies where full call-backs of all paid employees are in effect. This may have a deleterious effect upon the ability to maintain and/or recruit volunteers, but that is outside the province of these arbitration proceedings.

Award: The union's last offer to maintain the current contractual language regarding the use of volunteers is adopted.

Kruszewski: Concurs *A. Kruszewski*

Dissents _____

Santo: Concurs _____

Dissents *[Signature]*

ISSUE #16

CHANGE IN INSURANCE CARRIERS

At the present time all of the members of the bargaining unit currently receive health insurance coverage through Blue Cross/Blue Shield. Over the union's objection at the time of hearing, the City raised an issue concerning the right of the City to change health insurance carriers. The City proposes that a clause be inserted in the contract which would allow the City to change insurance carriers from Blue Cross/Blue Shield as long as the new carrier provided equal or better coverage; if there is a disagreement between the City and the union concerning the equivalency of coverage, the dispute would be submitted to arbitration. The union has proposed no change in the current language.

There is a threshold question of whether or not this issue is properly before the panel. Public policy of Act 312 is to establish a procedure that is expeditious, effective and binding for the resolution of disputes. Section 9 of the Act states, "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,. . ." Thus one of the predicates for jurisdiction for arbitration is that an item is in dispute.

To trigger Act 312, either party under section 3 may initiate arbitration by prompt request to the other party with copies to the Employment Relations Commission. Such was done on this case by counsel for the union on November 2, 1981. Contained therein is a statement of 14 items or issues remaining in dispute between the parties.

Nowhere contained therein is a statement regarding substitution of carriers. The appointment letter received by the chairman from the Employment Relations Commission on page 2 suggests that at the commencement of the hearing it should be clear and definate, by way of joint stipulation, that except for the issues that are contained in the petition all other issues have been satisfactorily adjusted and settled by compromise or waived by the parties.

At the time of hearing, the union objected to the introduction of this issue by the City and evidence was taken on the issue but subject to the union's objection. The City suggests that this matter was raised in negotiations and that Steven Schwartz recalled it was discussed at a meeting of the parties in January of 1982. He had no notes to support such a discussion. However, as the union has pointed out, the discussion that Mr. Schwartz referred to was in conjunction with both counsel at which time counsel were attempting to stipulate to the issues before the panel as had been recommended by the chairman and agreed to by the parties in a prehearing conference. (Tr., Vol. V, p. 396 and 398) Testimony suggests there really were no negotiations on this issue and Mr. Schwartz testified that all of the items that ultimately were stipulated to, were in fact items that were exchanged in negotiations in written form.

The City argues that Act 312 is an extension of the bargaining process and the parties may raise in those proceedings issues in the same manner that they can raise them in negotiations which have reached an impasse.

To the extent that Act 312 is an extension of the bargaining process, the chairman, under section 7(A), may before rendering an

award, remand a dispute to the parties for further collective bargaining. Such is not the case here where the issue of extension of the bargaining process could not be applied if there was not a dispute in the first instance. The record developed is substantial that all disputed items were discussed openly, fully and completely at the bargaining table with written offers, counter-offers and other proposals being exchanged freely. There is no evidence that such was the case with this issue. The absence of any evidence of prior dialogue, no exchange of written information, the absence of inclusion on the petition and the union's disinclination to stipulate to add it to the panel's consideration, leaves this panel little choice but to conclude that it does not have jurisdiction and should not entertain the issue at this time. Accordingly, the status quo regarding the contractual language should apply and there should be no additional language giving the City the opportunity to change insurance carriers during the term of the contract.

Kruszewski:	Concurs <u><i>[Signature]</i></u>	Dissents <u> </u>
Santo:	Concurs <u> </u>	Dissents <u><i>[Signature]</i></u>

AWARD

The contract between the parties for the period July 1, 1981 through June 30, 1984 shall contain the items agreed to between the City of Birmingham and IAFF, Local 1248 (Joint exhibit 1) as amendments to the existing contract and the new contract shall also contain the City's last best offer on Issue #1, Wages; Issue #2, Pension-Annuity Withdrawal; Issue #3, Pension--Benefits; Issue #4, Pension--Computation of Final Average Compensation; Issue #7, Administration of Uniform Allowance Account; Issue #9, Vacation--Amount;

Issue #10, Vacation-Splitting of Vacation Days; Issue #11, Vacation--Conversion of Vacation Days to Floating Days and Carry Forward; Issue #12, Illness Allowance; and shall contain the fire fighters last best offer on Issue #5, Food Allowance; Issue #6, Uniform Allowance--Amounts; Issue #8, Hours of Work; Issue #13, Rank Differential--Years to Full Pay; Issue #14, Residency; Issue #15, Volunteers; Issue #16, Change in Insurance Carriers; and Issue #17, Computation of Overtime.

PANEL OF ARBITRATORS:

Dated:

October 21, 1982


Kenneth P. Frankland, Chairman

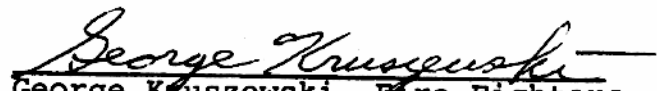
Dated:

October 26, 1982


Ron Santo, City's Delegate

Dated:

October 26, 1982

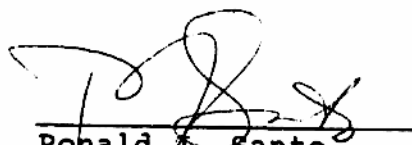

George Kruszewski, Fire Fighters
Delegate

DISSENTING OPINION BY THE REPRESENTATIVE
CITY OF BIRMINGHAM

In addition to the dissents which I have signed in this Panel's award, I wish to specify my dissent on two matters.

With respect to Issue 8, Hours of Work, I disagree with the panel majority's opinion. As set out in the City's brief, state law specifically prohibits the type of overtime arrangement currently in effect for firefighters. This Panel has no authority to require the City to continue such arrangement.

Secondly, the Panel's decision to include Royal Oak as a comparable community is wrong and distorts the comparability data. Royal Oak has more than three times the population of Birmingham, and is more than twice as large in terms of square miles than Birmingham. Royal Oak's department responds to more than two and one-half times the number of responses as does the Birmingham department and has clearly more of a commercial and industrial base than does Birmingham. If credibility is to be accorded the factors evaluated by the Panel in determining comparability, the Panel clearly should have excluded Royal Oak. Specifically, Royal Oak does not meet those criteria used by the Panel to determine comparability.


Ronald J. Santo
Panel Member for City of Birmingham

Birmingham, City of