

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

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IN THE MATTER OF ARBITRATION BETWEEN:

The City of Birmingham

-and-

Birmingham Fire Fighters Association

OPINION AND AWARD

SUPPLEMENTAL PROCEEDINGS

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*

### Introduction

The panel herein issued its opinion and award on October 26, 1982. At that time the contract between the parties for the period July 1, 1981 through June 30, 1984 incorporated items jointly agreed to by the parties as amendments to the existing contract and the 17 specific items which were subject of arbitration. Subsequently, the parties have been unable to agree upon specific language to implement an item of the award and requested that supplementary proceedings be held so the panel could further clarify its award and/or make an award as to the disputed issue.

The panel convened on June 7, 1983 and the city and the union delegates waived their right to participation in the panel deliberations and requested that the chairman of the panel issue an award on behalf of the panel.

### Issue

For purposes of determining the annual salary as expressed in an hourly rate, shall the annual salary be based on 2,808 or 2,816 hours as the average annual hours worked by a fire fighter?

### City's Position

The city contends that the annual salary should be divided by the average number of straight time hours to be worked by a fire fighter in the applicable fiscal year; namely, 2,816. This is determined by multiplying 52 weeks times 54 hours (the average work week for a fire fighter) which equals 2,808 hours and in addition thereto adding 8 hours on the basis that there is one additional

day in each year and those 24 hours should be divided by three since there are three units in the department and the contract is a three year contract.

The city argues that 52 weeks times 7 days a week only equals 364 days. Since a year has 365 days, the extra day in a regular calendar year and two extra days in a leap year, needs to be included in order to arrive at the proper hourly rate.

#### Union's Position

The union argues that there are 52 weeks in a year and since the panel accepted the union's last best offer as to a 54 hour work week, that means 52 weeks times 54 hours equals 2,808 and not 2,816. The union also argues that the last contract was computed on the basis of 2,808 hours, that the cost of living factor was based upon 2,808 hours during negotiations and that the issue of determining the hourly rate on either 2,808 or 2,816 was never raised in any of the negotiations.

#### Discussion

The panel has reviewed the opinion and award, particularly those sections pertaining to wages and hours of work. As to wages, there was no dispute between the parties as to the wages in the first two years and the dispute was over the third year. The panel accepted the last best offer of the city. The highest base wage effective July 1, 1981 was \$24,149. As of July 1, 1982, the figure was \$26,107, including rolled in COLA. Effective July 1, 1983 the wage would be \$27,715. By calculating the hourly rate according to the union's position, the hourly rate for 1981-82 would be

\$8.60, for 1982-83 it would be \$9.30 and for 1983-84 it would be \$9.87. Using the city's calculations; the hourly rate for 1981-82 would be \$8.58, for 1982-83 it would be \$9.28 and for 1983-84 \$9.85. Thus, there is a two cent per hour difference in the way the parties would compute the hourly rate. This has economic significance because of retroactive pay, computation of overtime and other fringe benefits which are computed on an hourly basis. Mr. Wangler opined at the hearing that the retroactive pay would be approximately \$80.00 for him and that his situation was typical of most of the fire fighters.

It is also instructive to recall the award on hours of work. It is recalled that the last best offer of the union was accepted; that is that there would be a 54 hour work week. That is, using the California system, the average amount of hours worked over a 28 day cycle would be 54 hours per week. For this 54 hour work week the fire fighter is to receive an annualized salary. Hours in excess of 54 are computed at time and a half. Had the city's offer been accepted, the fire fighter would still have received the same salary but would have worked 56 hours per week on the average. In order to properly consider this new issue we must accept that the annualized average is 54 hours of work per week per the award.

Although the city's mathematical computations with respect to 364, 365 and 366 days in a year are arithmetically valid, the panel is not persuaded that the city's position on computation is correct. The parties both agreed that neither 2,808 nor 2,816 was ever raised in negotiations. That being the case, it is instructive to see how the hourly rate was determined under the prior contract.

The evidence suggests that after June 30, 1979 when the work week was reduced from 56 to 54 hours, the city unilaterally used 2,808 hours for computation of the hourly rate. The city argues that was unilateral and therefore it ought not to be held against them as a precedent. In the absence of negotiations, they contend they can compute on a different basis. The city argues that for the first year of the old contract, under the 56 hour provision, 2,920 hours was used and computed as the city presently computes the 2,816 hours. However, having gone from 56 hours to 54 hours, whether the city unilaterally adopted a different computation or not, the fact of the matter is they did use a different computation based on 2,808. Furthermore, neither party raised the issue during negotiations, and therefore, each of the parties must have been lulled into a sense of security that it was not a major issue and would be computed as the city had done since June 30, 1979.

In further support of the above statement, the city, during its proofs on its last best offer, offered exhibits as to the salary structure for all grades and for each year of the contract. Those salary schedules are broken down on an hourly basis and using 1981 for illustration, using the annualized salary of \$24,149, the hourly rate is \$8.60. Using the salary schedule effective July 1, 1982 and using a proposed base of \$26,114, the hourly rate is \$9.30. On the bottom of each exhibit is the notation "2,808 hours--108 hours biweekly." The schedules purport to have the initials SHS and the panel can assume that the exhibit was prepared by Mr. Schwartz, who testified very eloquently in both the main and this supplementary proceeding.

The union further suggests that the parties negotiated the 54 hour work week effective June 30, 1979 and that after negotiations on the 54 hour work week, the city computed the rate based on 2,808 hours. They are suggesting that there was at least an implied agreement because, had it been computed other than 2,808, the union would have objected either at the time compensation was being paid on that hourly rate, or during negotiations.

When the panel considered the wages and considered the hours of work, it looked at an annualized salary based upon a 54 hour work week. The panel was not aware of any other considerations regarding how to reduce that to an hourly rate. It is ironic that the city, using its hourly rate of \$8.58 but multiplying it times 2,816, would actually give the fire fighter a slightly larger annualized salary than that awarded by the panel. That is on the premise that the fire fighter actually works an average of 2,816 straight hours rather than 2,808 on an annualized basis.

In summary, based upon the actual post June 30, 1979 computations of the city when they reverted to the 54 hour work week, plus the schedules submitted by the city with their last best offer on wages, the panel concludes that the union's position in the supplementary proceedings should be adopted. That is, the hourly rate should be based on 2,808 hours, being an average 54 hour week times 52 weeks per year. If there is to be a different calculation based upon the arithmetical formula of the city, that is something that should be freely and openly discussed at the bargaining table for a full exchange of the merits and the inevitable compromises and tradeoffs with other items that are a part of collective bargaining.

Award

For purposes of determining the hourly rate of persons within the bargaining unit, it shall be computed using 2,808 hours, being a 54 hour average work week, times 52 weeks.

  
Kenneth P. Frankland, Chairman

Dated: June 29, 1983

Kruszewski:                      Concurs \_\_\_\_\_                      Dissents \_\_\_\_\_

Santo:                              Concurs \_\_\_\_\_                      Dissents \_\_\_\_\_

Dated: \_\_\_\_\_  
Ronald J. Santo, City's Delegate

Dated: \_\_\_\_\_  
George Kruszewski, Fire Fighters  
Delegate