

STATE OF MICHIGAN DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

RE: Township of Shelby
and
International Association of Fire
Fighters, Local No. 1338

8/70
This arbitration arose under Act 312, Public Acts of 1969, providing for compulsory arbitration of labor dispute in municipal police and fire departments. By letter dated July 30, 1970, Mr. Robert G. Howlett appointed Fr. Joseph R. Dempsey, S. J. as arbitrator to serve as Chairman of a panel of arbitrators in a dispute involving contract negotiations between the Township of Shelby and the International Association of Fire Fighters, Local No. 1338.

To complete the panel of arbitrators, Mr. Ray Shields was appointed by the International Association of Fire Fighters. The Township of Shelby designated Mr. Russ Zielesch.

In a letter dated July 31, 1970, the Chairman called a meeting between the parties for August 10, 1970, at 10:00 a.m. Representatives of both parties were present before the panel of arbitrators on that day and presented the issues as they saw them.

THE UNION

The Union's position was based on Article XIX (Duration) Sec. 2 (Future Negotiations) of the Contract effective July 1, 1968, and running to June 30, 1971. Section 2 A of this Article reads:

"The parties agree that commencing not later than May 1, 1970, they undertake negotiations for the purpose of fringe benefits for the years 1970-1971."

In accordance with the reopening provision, the Union demands covered nine separate items under the following headings that cover the general area of fringe benefits as the union conceived it.

LABOR AND INDUSTRIAL
RELATIONS LIBRARY
Michigan State University

JUL 27 1976

Dempsey, Fr. Joseph S.J.

- 1) Clothing: The present contract (Art. 13, sec. 2 A) calls for \$150 clothing allowance for firemen and \$200 for the Fire Marshall. The union asked that these figures be increased to \$200 and \$250 respectively. The total amount of increase coming to \$100.
- 2) Holidays: The present contract (Art. 8, sec. 2) calls for 3 days at 10% of the bi-weekly pay. The Union asked that the number of holidays be increased to 6, based on a 24-hour pay period. The cost of this item was estimated to be \$7,399,894.
- 3) Personal Days: The present contract (Art. 4 sec. 3 d) calls for 1. The union demanded no increase.
- 4) Sick Days: The present contract (Art. 11, sec. a) calls for 12 per year. The union asked for no increase.
- 5) Funeral: The present contract (Art. 11, (d)) calls for two days. The union asked for no increase.
- 6) Life Insurance: The present contract (Art. 12, Sec. 1) calls for a \$10,000 death benefit if "death occurs in the line of duty." The union asked that this limitation be removed. The cost was undetermined but felt to be small.
- 7) Food Allowance: The present contract does not call for any food allowance. But the union asked for \$240 per man per year with the total cost being \$4,080.
- 8) Point System: The present contract (Art. 6, Sec. 3 b) calls for "off days" to be paid for at the regular rate of pay. Other overtime work is paid according to a "point system" from a fund of \$5,000 specially set aside to be divided up among these earning points. The union asked that this fund be increased to \$10,000.
- 9) 5th Man: The present contract calls for 4 men as a minimum to be on duty at all times. The union asked that this number be raised to 5.

THE TOWNSHIP

The Township did not contest any of these demands in any way except to say that it was unable to pay any increases at this time. Through its representative, Fire Chief Schmidt, it simply said, "No Money."

THE PANEL OF ARBITRATORS

In reaching a decision on the issues presented, the Chairman of the panel of Arbitrators felt that there were certain parameters in the case (some of which were unique) that gave definite direction to its judgment.

First of all, the arbitration panel has the Act 312 as the basis of its authority to act. The pertinent section reads as follows:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Secondly, this dispute arose under Article 19, Section 2 A of the present contract, which refers to rejoining the contract; and therefore, must be condoned to the terms of that section already quoted in this document.

Thirdly, the record created by the parties to the dispute is the basis for decision of the panel of arbitrators. This principle seems to be clearly stated in the law section 10, which reads:

"A majority decision of the arbitration panel if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties."

Faced with these parameters the Arbitration panel first had to decide which of the union demands fell under the definition of "fringe benefit," since only items fitting that description were open for discussion. It seemed clear that any definition would exclude the concept of wages on the one hand and maning policies on the other. The obvious intent of the contract was to limit the reopening of the contract to fringe benefits, i.e., something in the ordinary sense of being beyond wages, but still involving the payment of money. On the other hand it seemed that in the context of the contract that since payment of money would be involved that anything like maning poli@ies would be excluded, since this would include the concept of management prerogatives.

With this definition in mind, the panel then examined the union demands. Personal days, sick days, and funeral leave were eliminated as demands capable of being included under this definition of "fringe benefit"; hence, arbitration, since they were not a cost directly to the Township and involved no direct payment of money. Moreover, the demand for the use of the so-called "5th man" cannot be regarded as a fringe benefit, since it does not affect the payment of money except indirectly.

The "point system" in the contract is listed under the Article 6 entitled wages and in Section 3 entitled "overtime pay." Both of these words give indication that the point system was not intended to be included in the concept of fringe benefit as understood in the contract.

The concept of "food allowance" is not included in the present contract. Hence, it is the opinion of the Arbitration panel majority that it cannot be a subject for arbitration under the terms of the contract existing at this time. Additions to the contract, it seems, should be made at the time of general negotiations and not under any provisions to reopen the contract during its term. This is especially true, since additions may involve principles that require lengthy discussion and may be very costly in the long run.

This leaves three items which the majority of the panel considers as fringe benefits and coming under the existing contract, i.e., Clothing allowance, holiday pay, and life insurance. The chief argument advanced by the union for these items was comparability with other neighboring communities. The Arbitration panel sees great merit in the union's exhibits with respect to the clothing allowance and the life insurance protection. Hence, it awards the union its demands in these areas.

With respect to holiday pay, the Arbitration panel believes that the thrust of the union demand is for comparability in terms of total money devoted to holiday pay. Rather than changing the method of computing holiday payments, which in actual fact seems to be payment in lieu of being free from holiday work. It is the judgment of the Arbitration panel majority that the method of payment remain the same but that the number of holidays be increased to 10. This would bring holiday pay to the average for the neighboring communities. This would meet the criterion of comparability that the union suggested and the laws demand.

The Arbitration panel majority selected comparability with the holiday pay for firemen rather than policemen because it seems that this is more in line with the sources of financing available.

These awards will cause the Township to incur additional costs and expenditures. The panel does not take lightly the claim of inability to pay on the part of the township. The law itself requires it to consider "the interest and welfare of the public and financial ability of the unit of government to meet these costs."

However, the legislation does not make ability to pay the sole factor to be considered. In fact, it points out that the interest and welfare of the public must be considered; and this panel feels it has done thus.

Act 312, Section 1 states that:

Sec. 1. It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective, and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

It is inconceivable to the panel that the legislature would pass such an act and at the same time mean that it gave the panel no authority to make a finding with respect to the issues before it, unless its finding completely agreed with the Township's offer as it conceived its ability to pay.

There are moreover several conceivable ways that the equities of the union could be met. The priorities of the budget could be rearranged or additional millage could be asked for. The Township has already taken from the General fund in the past to meet its obligations to the firefighters. The panel, however, has neither the authority nor the responsibility to suggest to the city how it should meet its obligation to finance an essential service such as fire protection. All the panel can say is that the Township does have the obligation to meet the equities recommended by the panel in any appropriate way.

AWARD:

Clothing Allowance

\$200 for firemen
\$250 for fire marshall

Holidays

11 holidays at 10% of
bi-weekly pay

Life Insurance

off-duty exception should
be omitted

Other Demands Denied

J. R. Dempsey SJ
 J. R. DEMPSEY, S. J.

Raymond K. Shields

RAY SHIELDS

dissenting with copy of dissent-
 ing opinion attached and incor-
 porated herein

Russ Zielesch

RUSS ZIELESCH

concurring with Chairman
 except for funding--dissent
 attached

OPINION OF RAYMOND K. SHIELDS PERTAINING TO THE AWARDS
GRANTED BY ARBITRATION IN THE DISPUTE BETWEEN
LOCAL # 1338 - I.A.F.F.
AND
SHELBY TWP. BOARD

FOR THE BENEFIT OF THE READER HERE ARE LISTED CHRONOLOGICALLY, THE SERIES OF EVENTS RELATIVE AND PURSUANT TO ARBITRATION AMONG THE PARTIES INVOLVED.

ON MAY 11, 1970, LOCAL # 1338 MAILED TO THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION A LETTER REQUESTING MEDIATION DUE TO AN IMPASSE IN NEGOTIATIONS.

ON MAY 13, 1970, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, IN REPLY TO THE UNION'S REQUEST, APPOINTED MR. STANLEY DOBRY AS MEDIATOR IN THE DISPUTE.

ON JUNE 22, 1970, AFTER MEDIATION FAILED TO BRING A SETTLEMENT, MR. KIRBY HOLMES, TWP. SUPERVISOR, WAS NOTIFIED BY THE UNION THAT PROCEEDINGS WERE BEING INITIATED TO BRING THE MATTER UNDER THE JURISDICTION OF ACT 312, COMPULSARY ARBITRATION. THE UNION NOTIFIED MR. HOLMES THAT RAYMOND SHIELDS HAD BEEN APPOINTED AS THEIR REPRESENTATIVE ON THE PANEL OF ARBITRATORS. IT WAS REQUESTED THAT THE TOWNSHIP DESIGNATE A REPRESENTATIVE SO AS THE TWO MAY PROCEED TO ELECT A CHAIRMAN.

AS THE RESPECTIVE REPRESENTATIVES FAILED TO AGREE, THE STATE APPOINTED FATHER JOSEPH R. DEMPSEY AS CHAIRMAN BY LETTER DATED JULY 20, 1970.

FATHER DEMPSEY NOTIFIED UNION SPOKESMAN BARRY P. WALDMAN AND FIRE CHIEF CLYDE SCHMIDT, TOWNSHIP SPOKESMAN, THE HEARING HAS BEEN SCHEDULED FOR AUGUST 13, 1970 AT 10:00 A.M.

PRIOR TO THE HEARING, I STUDIED CAREFULLY THE PURPOSE, OBJECTIVES AND PROCEEDURES OF THE ARBITRATION ACT. I CONCLUDED THAT THE PURPOSE OF THE ACT WAS TO OFFER AN EFFECTIVE ALTERNATIVE TO WALK-OUTS AND STRIKES BY MEMBERS OF THE FIRE AND POLICE SERVICES. I ALSO CONCLUDED THE OBJECTIVES OF THE PANEL WERE TO GRANT OR DENY AWARDS BASED UPON THE ISSUES PRESENTED TO IT AND THE RECORD MADE BEFORE IT.

ON AUGUST 13, 1970 AT 10:00 A.M., THE HEARING BEGAN AS SCHEDULED. THE UNION PRESENTED TWENTY-TWO EXHIBITS RELEVANT TO THEIR DEMANDS IN HOLIDAY PAY, CLOTHING ALLOWANCE, FOOD ALLOWANCE, LIFE INSURANCE, "POINT" PAY SYSTEM AND "FIFTH" MAN.

THESE EXHIBITS WERE PRESENTED BY MR. WALDMAN, UNION SPOKESMAN, WITH COPIES TO EACH PANEL MEMBER AND TOWNSHIP SPOKESMAN SCHMIDT. EACH EXHIBIT WAS EXPLAINED BY EITHER MR. RUBEN GOMEZ OR MR. THOMAS SLOVEY UPON QUESTIONS ASKED BY MR. WALDMAN. AFTER THOROUGH EXPLANATION ON EACH ITEM, MR WALDMAN ASKED THE TOWNSHIP SPOKESMAN AND PANEL MEMBERS IF THEY HAD ANY QUESTIONS.

UPON COMPLETION OF THE UNION'S PRESENTATION, TOWNSHIP SPOKESMAN SCHMIDT INTRODUCED, IN THE FORM OF THREE EXHIBITS, EVIDENCE THAT THE TWO AND ONE-HALF MILLS WAS INSUFFICIENT TO MEET UNION DEMANDS AND THAT GENERAL FUND MONIES HAD ALREADY BEEN EARMARKED FOR OTHER PURPOSES.

CHIEF SCHMIDT STATED THAT HE WAS UNFAMILIAR WITH MOST OF WHAT WENT ON IN NEGOTIATIONS AND WAS PRESENT TODAY ONLY BY ORDER OF THE TOWNSHIP BOARD. THE PRESENTATION WAS BRIEF AND BASED SOLEY ON AN "INABILITY TO PAY" POSITION.

THE UNION THEN AFFERED A REBUTTLE THROUGH EXHIBITS TWENTY-SIX AND TWENTY-SEVEN. EXHIBIT TWENTY-SIX BEING A COPY OF HOUSE BILL 4025, WHICH BY EXPLANATION OF MR. WALDMAN, DELETES COMPLETELY THE TWO AND ONE-HALF LIMITATION ON TOWNSHIPS AND ALSO PROVIDES FOR THE TRANSFER OR LOAN OF GENERAL FUND MONIES TO TOWNSHIP FIRE DEPARTMENTS.

EXHIBIT TWENTY-SEVEN WAS A COPY OF THE 1969 FACT FINDING PROCEEDINGS BETWEEN THE TOWNSHIP AND LOCAL # 1338. IT WAS NOTED THAT MR. LEON HERMAN, FACTFINDER, HAD RECOMMENDED USE OF THE GENERAL FUND AT THAT TIME FOR WAGE DEMANDS. TESTIMONY RELATIVE TO THIS EXHIBIT REVEALED THE TOWNSHIP HAD FOLLOWED MR. HERMANS RECOMMENDATION AND USED GENERAL FUND MONEY. THE UNION CONTENDED THIS WAS A PRECEDENT TO BE CONSIDERED.

THE TOWNSHIP OFFERED NO REBUTTLE TO HOUSE BILL 4025 NOR THE PRECEDENT OF PRIOR USE OF THE GENERAL FUND. CHAIRMAN DEMPSEY ASKED TOWNSHIP SPOKESMAN SCHMIDT IF HE FELT THE UNION WAS JUST IN THEIR DEMANDS. THE TWP. SPOKESMAN REPLIED, "YES, I THINK THEY HAVE POINTED THAT OUT".

THE HEARING CLOSED WITH NO FURTHER HEARINGS SCHEDULED.

IT IS THE OPINION OF THE WRITER THAT THE TOWNSHIP HAD PRESENTED A MINIMUM OF EVIDENCE WITH A MINIMUM OF EFFORT. IT APPEARS AS IF THE TOWNSHIP'S CHOICE OF A SPOKESMAN WAS POLITICAL RATHER THAN PRACTICAL. ON A GENERAL APPRAISAL OF THE TOWNSHIPS POSITION, I SURMISE THEIR LACK OF VIGOR IS IN DIRECT PROPORTION TO THEIR LACK OF RESPECT FOR THE COMPULSARY ARBRITATION LAW. HENCE, THEIR LEGEL CHALLENGE TO THE AWARDS GIVEN THEIR POLICE DEPARTMENT IN A PRIOR ARBITRATION HEARING. THIS CHALLENGE OF THE LAW EXPLAINS, IN MY OPINION, MUCH OF THE LAXITY IN THEIR PRESENTATION. IT WOULD BE FOR THE TOWNSHIP, INCONSISTENT TO CHALLENGE THE LAW IN JUNE AND THEN PRESENT A BRILLIANT CASE IN AUGUST TO BENEFIT BY THAT VERY SAME LAW THEY CHALLENGE.

UNFORTUNATELY HOWEVER, THEIR LACK OF EXHIBITS, TESTIMONY AND REBUTTLE AT THE HEARINGS HAS LEFT THE CHAIRMAN IN A QUANDARY. CHAIRMAN DEMPSEY REALIZES THAT NO ARBITRATOR CAN MAKE AWARDS THAT ARE COMPLETELY ONE SIDED, THERFORE HE IS FORCED TO PRESENT REASONS FOR A BALANGED DECISION WHICH EVEN THE TOWNSHIP COULD NOT OR WOULD NOT PRESENT.

I CONSIDER IT THE DUTY OF THE PARTIES INVOLVED TO PRESENT THEIR CASE AS BEST THEY CAN. SECTION EIGHT OF THE ARBITRATION ACT STATES THE PANEL "SHALL MAKE WRITTEN FINDINGS OF THE FACT AND PROMULGATE A WRITTEN OPINION AND ORDER UPON THE ISSUES PRESENTED TO IT AND UPON THE RECORD MADE BEFORE IT". ON THAT BASIS, THE UNION COULD HAVE EXPECTED ALMOST COMPLETE REALIZATION OF THEIR DEMANDS. THE COMMENT FROM THE TOWNSHIP WAS NON-EXISTENT. EVEN THE TOWNSHIPS REPRESENTATIVE, MR R. ZEILESCH, APPEARS UNCERTAIN AT THIS TIME AS TO THE EFFICACY OF THE TOWNSHIPS ABILITY TO PAY POSITION. YET THE AWARDS APPEAR SLIM WHEN CONSIDERING THAT LESS THAN HALF OF THE ANTICIPATED COSTS OF THE DEMANDS WERE GRANTED. I FEEL THE CRITERIA FOR DECISIONS WERE OTHER THAN THOSE SPECIFIED IN THE ACT. A FEAR OF A CIRCUIT COURT REVIEW SEEMED TO IMPAIR THE JUDGEMENT AND OBJECTIVITY OF THE PANEL MEMBERS.

THE CHAIRMAN ASSUMES HE CAN JUSTIFY HIS OPINIONS BY POINTING TO EXHIBITS PRESENTED BY THE UNION. FOOD ALLOWANCE WAS DISSALLOWED BECAUSE THE UNION EXHIBIT INDICATES FIVE OF THE NINE FULL TIME DEPARTMENTS IN MACOMB COUNTY DID NOT, AT THE TIME OF THE HEARING HAVE A FOOD ALLOWANCE. HOWEVER, THREE DEPARTMENTS AT THAT TIME WERE NEGOTIATING A FOOD ALLOWANCE AS INDICATED BY THE UNIONS EXHIBIT. THE CHAIRMAN FELT HE COULD NOT CONSIDER THE POSSIBILITY AND PROBABILITY THAT AT LEAST ONE OF THE THREE DEPARTMENTS WOULD GAIN A FOOD ALLOWANCE, THUS REVERSING THE "COMPARABILITY" ASPECT IN THE UNIONS FAVOR. I POINT OUT THAT SECTION NINE OF THE ACT, WHICH LISTS THE FACTORS TO CONSIDER IN MAKING AN AWARD, STATES IN PART (G) "CHANGES IN THE FOREGOING CIRCUMSTANCES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS". MY INTERPRETATION OF THE STATEMENT IS, IF A FACTOR PRESENTED IN THE HEARING IS SUBJECT TO CHANGE, THAT CHANGE MUST BE CONSIDERED.

AS STATED ABOVE, CHAIRMAN DEMPSEY FELT SAFE IN BASING HIS DECISIONS ON A STRICT, TECHNICAL ANALYSIS OF THE PARTICULAR EXHIBITS. THIS HOWEVER, WAS NOT THE CASE IN OTHER AREAS. IN CLOTHING ALLOWANCE, BY EXAMPLE, THE CHAIRMAN AWARDED ALL THE UNION HAD ASKED, WHEN IN FACT, THERE WAS NO CLOTHING EXHIBIT PRESENTED. THE LOGIC EMPLOYED FOR DECISION MAKING WAS INCONSISTENT AND VARIED FROM ITEM TO ITEM.

DURING THE ARBITRATION SESSIONS THERE WAS NO COMPARITIVE ANALYSIS OF EVIDENCE BECAUSE THE TOWNSHIP PRESENTED SO LITTLE. THIS CAUSED THE PANEL TO GO BEYOND THE "ISSUE PRESENTED TO IT AND THE RECORD MADE BEFORE IT". THE PANEL FABRICATED ARGUMENTS THE TOWNSHIP SHOULD HAVE ARGUED, BUT IN FACT, DID NOT.

THE UNION, AT THE TIME OF THE ARBITRATION WAS IN THE SECOND YEAR OF A THREE YEAR COLLECTIVE BARGAINING AGREEMENT. UNDER THIS AGREEMENT, FRINGE BENEFITS WERE LEFT OPEN TO NEGOTIATIONS. THE UNION CONTENDED THAT ALL IT'S DEMANDS WERE FRINGE BENEFITS. THE TERM FRINGE BENEFITS ARE NOWHERE DEFINED IN THE EXISTING CONTRACT, NOR IS THE OPENER CLAUSE IN THE CONTRACT RESTRICTIVE ONLY TO EXISTING FRINGE BENEFITS.

● CLOTHING - A FIFTY DOLLAR INCREASE WAS ASKED FOR DUE TO THE RISING COSTS IN CLOTHING AND LAUNDERING. THE REQUEST WAS GRANTED IN IT'S ENTIRETY.

HOLIDAY PAY - THE UNION DEMANDED THAT HOLIDAY PAY BE RAISED FROM THE PRESENT FIGURE OF \$117.69 TO THE AMOUNT OF \$504.00. THE UNION JUSTIFIED THEIR REQUEST FOR THE FOLLOWING REASONS:

1. THE AVERAGE HOLIDAY PAY FOR THE PAID DEPARTMENTS IN THE COUNTY IS \$417.00
2. THE SHELBY TOWNSHIP POLICE DEPARTMENT WITH WHOM THE UNION HAS HAD A HISTORY OF PARODY IN ALL OTHER AREAS HAS MOVED AHEAD IN THE PAST THREE YEARS, WHILE THE FIREFIGHTERS HAVE REMAINED AS IS SINCE 1967. THE POLICE DEPARTMENT PRESENTLY RECEIVES \$431.00 IN HOLIDAY PAY AS GRANTED BY ARBITRATION THIS YEAR. THE UNION DEMANDS OF \$504.00 IS AN ATTEMPT TO CATCH-UP IN LOST HOLIDAY PAY. THE PARITY FIGURE OF \$431.00 WAS GRANTED.

LIFE INSURANCE - THE UNION DEMAND OF EQUAL ON OR OFF DUTY COVERAGE WAS GRANTED.

FOOD ALLOWANCE - THE UNION DEMANDED A FOOD ALLOWANCE OF \$240.00 PER YEAR PER FIREFIGHTER. UNDER EXISTING LAWS THE FIREFIGHTER WORKS AT LEAST ONE HUNDRED, TWENTY-FOUR HOUR DAYS DURING A CALENDAR YEAR, WHICH NECESSITATES THE MAINTENANCE OF A COMPLETE KITCHEN AT HIS PLACE OF EMPLOYMENT. THE FIGURE OF \$240.00 DIVIDED BY ONE HUNDRED ON DUTY DAYS WOULD PROVIDE A MEAGER \$2.40 PER DAY PER FIREFIGHTER.

THE CHAIRMANS DECISION TO DENY ANY FOOD ALLOWANCE IS BASED ON HIS FEAR OF GRANTING A FRINGE BENEFIT NOT MENTIONED IN THE EXISTING CONTRACT. IT IS MY CONTENTION THAT THE PANEL HAS THE AUTHORITY TO GRANT A FOOD ALLOWANCE FOR THE FOLLOWING REASONS:

1. THE ITEM WAS DISCUSSED IN NEGOTIATIONS PRIOR TO ARBITRATION AND AT NO TIME DID THE TOWNSHIP QUESTION THE UNION'S RIGHT TO DISCUSS THIS ITEM AS A NEW TOPIC OF BARGAINING UNDER THE EXISTING AGREEMENT.

2. AT NO TIME IN THE ARBITRATION HEARING DID THE TOWNSHIP REPRESENTATIVE OBJECT TO THIS DEMAND AS GOING BEYOND THE SCOPE OF BARGAINING AS PROVIDED BY THE FRINGE BENEFIT RE-OPENER CLAUSE IN THE CONTRACT.

3. THE RE-OPENER PROVISION IN THE CONTRACT PROVIDES THAT FRINGE BENEFITS CAN BE NEGOTIATED. HOWEVER, NOWHERE IN THE CONTRACT ARE FRINGE BENEFITS DEFINED OR LIMITED TO EXISTING FRINGE BENEFITS.

4. THE UNION EXHIBIT REFLECTED FOUR OUT OF THE NINE PAID DEPARTMENTS IN MACOMB COUNTY HAVE A FOOD ALLOWANCE. THREE OF THE REMAINING DEPARTMENTS ARE PRESENTLY NEGOTIATING THIS ITEM. EXHIBIT EIGHTEEN REFLECTS THAT MANY DEPARTMENTS OUTSIDE OF MACOMB COUNTY HAVE FOOD ALLOWANCE BENEFITS. IT SHOULD BE NOTED THAT MANY DEPARTMENTS THROUGHOUT THE STATE ARE PRESENTLY NEGOTIATING FOR FOOD ALLOWANCE.

FOR ALL THE AFOREMENTIONED REASONS, I FEEL THE UNION HAS JUSTIFIED THIS DEMAND

POINT SYSTEM & FIFTH MAN- THE ARBITRATORS DECISION TO DENY AWARDS IN THE AREAS OF POINT SYSTEM AND FIFTH MAN MAY BE VALID IN THAT THESE DEMANDS POSSIBLY EXTEND BEYOND THE SCOPE OF THE PRESENT CONTRACT. ALTHOUGH I CONTEND THAT SINCE NO OBJECTION WAS RAISED AT THE HEARING, IT'S DEMANDS IN THESE AREAS SHOULD HAVE BEEN GRANTED.

Raymond K. Shields

Statement of Position of R. R. Zielesch in the matter of the arbitration between
Shelby Township
and
International Association of Fire Fighters
Local 1338

Act 312, Public Acts of 1969, provides for compulsory arbitration of labor disputes in municipal police and fire departments. By letter dated June 22, 1970, the International Association of Fire Fighters, Local 1338 initiated arbitration proceedings. By letter of July 22, 1970, from the Employment Relations Commission of the State of Michigan, Father Joseph R. Dempsey, S.J., was appointed Chairman of the Panel of Arbitrators, Mr. Ray Shields and Mr. Russell R. Zielesch were designated members of the Panel representing the International Association of Fire Fighters, Local 1338 and Shelby Township respectively.

I obtained and carefully studied Act 312, Public Acts of 1969 in order to ascertain the rules and guidelines that govern the duties and actions of the Arbitration Panel. From my evaluation of the Act, I concluded that the following broad rules must govern the deliberation of the Panel and all decisions must be matched to these broad rules in the following order:

- A. First, the interest and welfare of the public is paramount.
- B. Secondly, then the next consideration is the ability of the community to finance the benefits so awarded by the Panel.
- C. Thirdly, if the above conditions are met, consideration should be given to rates of pay, fringe benefits, general working conditions, etc.

Considerations by which the Panel should be guided are: a) standards and conditions of employment prevailing in the community as to public service and private employment; b) conditions and standards of related employment in surrounding communities.

After listening to all the testimony, and carefully considering all exhibits presented by both the International Association of Fire Fighters, Local 1338 and Shelby Township, I feel that I am unable to agree with all the conclusions reached by the majority opinion and order.

The presentation of Local 1338 was thorough and made several comparisons with surrounding communities to show that the fringe benefits received by the Fire Fighters of Shelby Township were not excessive. It would appear on the basis of this presentation that some adjustments would be warranted, the availability of funds notwithstanding. However, I noted that the Fire Fighters did not refute the Township Representative's (Chief Schmidt) statement that the Department is undermanned. Local 1338 did not present evidence to show that the Fire Fighters could adequately serve the Township with the present force; in fact, on the contrary, they admit to the personnel shortage.

The presentation before the Panel by the Township's Representative was concerned primarily with the problems created by the Township's limited financial resources with respect to the Fire Department's needs. Testimony did bring out, however, that the two-and-one-half mills of assessed valuation voted by the taxpayers of the Township, is the major source of Fire Department revenue. This millage was the maximum allowable under state law until House Bill 4025 was enacted. Other testimony indicated that due to the limited taxing authority of the Township, there are no additional funds available. It would appear from the Township Representative's testimony that the Township Board has attempted to balance the needs and safety of the general public by maximizing the size of the Department against the monetary needs of the individual Fire Fighters to the extent allowable under available revenues. The Township Board does not believe that its Fire Department should be compared with those more fortunate communities having adequate financial resources.

The majority members of the Arbitration Panel have concluded that funds to finance the award are available under either House Bill 4025 or the General Fund. If the majority members of the panel had confined the financing of the award to those revenues that are available under House Bill 4025, this member of the panel would concur with their findings. However, the majority members of the panel have ignored the constitutional requirements. The General Fund of the Township must have sufficient available unappropriated funds with which to finance the award. It is the contention of the majority members of the Panel that because the General Fund has been used to finance a portion of Fire Department operations, ipso facto, funds are therefore available from the same source to finance the costs of additional fringe benefits arising from their award.

It is noted that the Panel made a careful evaluation of the propriety of the demands of the Fire Fighters. However, they failed to apply the same high standards in their determination of the ability of the Township to finance the costs of the related award. I believe the award as proposed by the majority of the Arbitration Panel is within the scope of the power of the Panel as defined in Act 312, Public Acts of 1969, however, the Panel has failed to meet its responsibility insofar as the means of financing same.

Russell R. Zielesch
Russell R. Zielesch, Panel Member