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BATTLE CREEK FIRE FIGHTERS, LOCAL 335

-and-

CITY OF BATTLE CREEK

**2006 Act 312 Arbitration
MERC Case No: L04 G-4005**

Wolkinson Panel

Benjamin W. Wolkinson, Neutral Chair

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

CITY OF BATTLE CREEK,

CASE NO. L04 G-4055

EMPLOYER,

AND

ACT 312

IAFF, LOCAL 335,

UNION.

APPEARANCES:

For the Employer: John Patrick White, Varnum, Riddering, Schmidt & Howlett LLP

For the Union: Ronald R. Helveston, Helveston & Helveston, P.C.

Also present for all or part of the proceedings: Charles Asher, Scott Barnes, Stan Chubinski, Russell Claggett, Larry Hausman, Stuart Olsen, James Ritsema, Agnes Spitzer, Gordon Vogt II.

ARBITRATION PANEL'S FINDINGS, CONCLUSIONS AND ORDER

BACKGROUND

By petition dated March 31, 2006, the Union gave notice that there was a dispute concerning the wages, hours, and working conditions of the firefighters in the City of Battle Creek. The Union listed five issues as being in dispute:

Wages

Retiree health care,

Overtime pay

Pension-multiplier

Pension-COLA.

The Employer submitted its list of open issues as follows:

Wages

Manpower/minimum manning

Sick leave

Education incentive / tuition reimbursement

Retiree Health

By letter dated June 16, 2006, the Employment Relations Commission appointed the undersigned Neutral Arbitrator as Chair of a panel to be convened to take evidence and to resolve the labor dispute. Both the Union and the City appointed their counsel as delegates to the panel, Ronald Helveston and Patrick White, respectively.

A pre-hearing conference was held by telephone, on July 11, 2006. At the pre-hearing conference, the parties set forth the order of the proceeding and arrangements for exchanging of positions on the open issues and exchange of exhibits and witness lists. The parties also stipulated that they waived compliance with Section 6 of MCL 423.236 which requires a hearing to begin within fifteen (15) days of the appointment of the neutral arbitrator.

Hearings were held at the Kendall Center in Battle Creek, on January 18, January 19 and January 30, 2006. Exhibits were admitted and testimony taken regarding the open issues.

Either at or prior to the hearing, the parties have stipulated to several issues. First, all tentative agreements reached by the parties during negotiations leading to this Act 312 proceeding will be made part of the parties' final contract. Second, all portions of the parties' collective bargaining agreement not modified or eliminated as a result of the tentative agreements or the final Award in this Act 312 proceeding will remain unchanged.

Some further changes occurred prior to the convening of the panel to determine this Award. The parties stipulated that the duration of the bargaining agreement would be for four (4) years from July 1, 2004, through June 30, 2008. As part of the stipulation to add an additional year to the

duration of the Award, the parties agreed that wages would be considered as a single issue, rather than on a year-by-year single year basis. The parties further stipulated that the issue of retiree health insurance would be split into two issues between current employees and future hires. Finally, the parties stipulated that all of the open issues are economic and, therefore, the panel is restricted to selecting the Last Best Offer of one of the parties.

The Union, in its Last Best Offer, withdrew its issue, Pension - COLA. Therefore, the issues remaining for resolution are:

Wages - 2004-2008

Pension - Multiplier

Retiree Health Care

Current Employees

Future Hires

Overtime

Manpower/Minimum Manning

Sick Leave

Education Incentive/Tuition Reimbursement

The parties submitted their Last Best Offers on or about April 23, 2004. The Last Best Offers are appended to this Findings and Order. For brevity, the parties' offers are summarized in this document for discussion. The awarded language, however, will be that provided in the respective Offer. Further, to expedite the issuance of the Award in this matter, the parties agreed to waive the submission of briefs and rely on their delegates to argue their positions during the panel discussions.

COMPARABLE COMMUNITIES

The statutory factor 9(d)(i) allows the Panel to look to the terms and conditions of

employment of similarly situated employees in comparable communities. The Union and the Employer stipulated prior to the hearing to five communities that would be used as comparables. These are Bay City, Jackson, Muskegon, Port Huron, and Saginaw.

WAGES

Based on the stipulation of the parties, the wages for all four years of the agreement, July 1, 2004, through June 30, 2008, will be considered as a single economic issue.

The Proposals

The Employer's Last Best Offer on the issue of wages is as follows:

7/01/04	0%
7/01/05	2.75% - retroactive
7/01/06	2% - retroactive
7/01/07	2%

The Union's Last Best Offer on wages is:

7/01/04	0%
7/01/05	3.5%
7/01/06	3.5%
7/01/07	3.5%

The Evidence

The Employer offered exhibits and testimony showing the consistency of its offer with the City's other bargaining units. Although none of the other units had settled for the 2007 year by the close of the record in this matter, the City's proposal to the firefighters tracks with the negotiated settlements as reflected in City Exhibit 29. The City also provided an exhibit relative to the external comparables. City Exh. 30.

The City submitted testimony from the Finance Director, Mr. James Ritsema, as well as a number of supporting exhibits regarding the City's financial condition and ability to pay. The gist of his presentation was not that the City has a total inability to pay. Rather, the City of Battle Creek has made significant cuts in the past several years to improve its fund balance, including the closing of a fire station, and there are few areas left to cut without significant impact to the services provided to

the citizens. Further, the current economic conditions in the State of Michigan are having a significant impact on the City's projected revenues. While the City conceded that it could make modest compensation adjustments, it argued that the total compensation package must remain reasonable in order to avoid additional significant reductions in services.

The Union also presented evidence in the form of exhibits and testimony. Union Exhibit 57 provided a comparison of the external comparables' firefighter base wage. The Union, through this exhibit, pointed out that its proposals would maintain the City of Battle Creek at or above the average-base wage for the comparables, whereas the City's proposal would have the effect of dropping the firefighters slightly below the average of the comparables.

The Union presentation also provided significant rebuttal regarding the seriousness of the City's budget condition and its ability to pay. The Union raised the size of the City's current fund balance. The Union also raised issues as to the priority of spending within the City budget, and focused on capital improvement fund transfers and expenditures.

Analysis and Conclusions

I recognize that the City's "inability to pay" argument is really a restricted ability to pay argument. Although the City is not in desperate financial crisis, I do find that the current economic climate in Michigan is having a detrimental impact on the City's revenues. I also find that the City has taken significant measures and made cuts to improve its fund balance position.

I'm also mindful of the overall economic costs associated with the total Award in making my decision. The Union has asked for several other improvements which have economic costs associated with them. They are discussed elsewhere in this Award. I believe the Union's comparables are stronger on some of those issues, and have therefore awarded other improvements with financial impacts.

Therefore, I conclude that the evidence, as a whole, supports the conclusion that the interests and welfare of the public and the financial ability of the Employer support the Employer's Last Best

Offer. The Employer delegate concurs with the Neutral Chair's findings and conclusions; the Union delegate dissents.

PENSION MULTIPLIER: ARTICLE 17

The Proposals

The Union proposes amending Article 17 to provide for an increased pension multiplier for service years in excess of twenty-five (25) but not more than thirty (30) years at 1% per year, with the maximum benefit not to exceed 80%.

The City proposes to allow the enhancement, provided the Union pays for the actuarial cost of the benefit.

The Evidence

The Union proposes the addition of a one percent (1%) multiplier, or annuity factor, for service years twenty-five (25) through thirty (30) for all members of the bargaining unit. Originally the Union had presented two pension issues to the panel - - a post retirement cost-of-living adjustment or "COLA" and the above mentioned pension multiplier issue. The Union later withdrew its pension COLA proposal in favor of receiving the annuity factor enjoyed by all of the other participants in the Battle Creek Police and Fire Retirement System. In addition, the Union points out that the majority of the agreed upon comparable communities provide for a potential maximum pension benefit in excess of Battle Creek's current seventy-five (75%) maximum. The Union's Last Best Offer proposes this increased benefit be provided to members of this bargaining unit at no additional cost.

The Employer has submitted a Last Best Offer which does not oppose the increased benefit, however, it advocates the cost be borne by the bargaining unit members through an increase in the member's pension contribution as actuarially determined. The City presented evidence that the other units that have the benefit either paid for full cost or made other

concessions to receive the benefit.

Analysis and Conclusion

Since the parties are in agreement that it is not inappropriate for members of this bargaining unit to receive the enhanced pension benefit, little discussion is required with regard to the merits of awarding, or not awarding, the improved pension multiplier. Indeed, the only issue is who will be responsible for paying for the increased benefit. The City maintains the cost should be borne by the bargaining unit members whereas the Union maintains the benefit should be provided at no additional cost to its members.

A review of Union Exhibit 74 illustrates the pension benefits, in summary form, received by the other bargaining units that are participating members of the Police and Fire Pension System. All of the bargaining units receive the same pension benefit at issue in this proceeding, that is to say employees have the ability to earn additional pension credit, up to a maximum of eighty percent (80%), if they choose to work beyond twenty-five (25) years. Final Average Compensation (FAC) varies from one unit to the next, as does age and years of service eligibility requirements as well as the employee pension contribution. The employee pension contributions range from seven and one-half percent (7.5%) to ten percent (10.0%).

Without being privy to the history of the negotiations with these various bargaining units, it is impossible for the Neutral Chair to ascertain the reasons for the discrepancies. In any event, as stated earlier, the issue is not *whether* the firefighters will receive this benefit, but rather *who* will pay for the benefit. It has been determined elsewhere in this Award that the firefighters will begin contributing three percent (3%) of their compensation to apply toward the cost of retiree health insurance funding. With that in mind, it is clear members of this bargaining unit will be paying ten and one-half percent (10.5%) of their compensation for retiree benefits. That amount

is more than any of the other bargaining units within the City as well as all but one of the external comparables.

The Panel therefore awards the Union's Last Best Offer with regard to the pension multiplier. The Union delegate concurs with the Neutral Chair's findings and conclusions; the Employer delegate dissents.

RETIREE HEALTH INSURANCE - (CURRENT EMPLOYEES)
ARTICLE 12, SEC. 12.1(d)

Both the Union and the City have presented retiree health care issues in the arbitration proceeding as a matter to be resolved by the panel. The City has proposed two sub-issues within the general issue of retiree health care - - namely different levels of funding of the benefit for current employees in contrast to prospective or "new hire" employees. The Union's retiree health care last best offer is proposed to replace current contract language with what it argues is clearer and more precise language.

In an effort to assist the panel in addressing these assorted proposals, the parties have agreed to parse the issue[s] into two separate and distinct proposals. Consequently, two separate last best offers have been submitted by the parties regarding retiree health insurance. One last best offer will address employees currently in the bargaining unit and a separate last best offer has been offered on the subject of future members of the bargaining unit.

Proposals

The City has proposed replacing the contract language which provides for City supplement to cover retiree health premiums as needed, with a set payment of two hundred dollars per month for eligible retirees.

The Union has proposed a much more elaborate scheme, with current employees, and those who retire after July 1, 2004, to pay 3% on a pre-tax basis to a fund used exclusively to

help pay the cost of retiree health insurance. The City would then be responsible for the remainder of any premiums costs for the retiree and spouse.

The Evidence

The Union maintains its Last Best Offer on retiree health insurance for current employees is warranted based on the 1) the agreement of the Union to accept a percentage of the premium cost for the benefit and 2) the criteria mandated by Act 312, specifically, Section 9(d) as outlined below:

(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.

Of the five mutually agreed upon comparables in the proceeding, four of the communities - - Saginaw, Port Huron, Muskegon and Jackson - - provide the option of 100% employer funded health care to its fire fighter employees upon retirement. Only Bay City requires a fire fighter retiree to contribute toward the cost of health care. The amount required of a Bay City retiree is currently just over \$800 per year (for two-person coverage) and will increase to just over \$900 per year by 2008.

The Union points out its Last Best Offer will require employees to contribute three percent (3%) of their total compensation while an employee of the Battle Creek Fire Department and continue to contribute three percent (3%) of their pension benefit once retired into a retiree health care fund. This amount is a radical departure from what is currently required of any of the external comparables or the internal 312 comparables as of the date of the close of the record in

this hearing.

The City maintains it requires a fixed dollar amount that it is responsible for contributing to the premium cost for retiree health care. The cost for this benefit has been increasing at an alarming rate and therefore, the City argues it must have solid parameters in place for budgetary purposes. In addition, it points out that six of the nine remaining bargaining units in the City - - all of the non-312 bargaining units - - have agreed to the same maximum payment proposed by the Employer of \$200 per month or \$2,400 per year toward the health insurance premium cost. Retirees from those bargaining units are responsible for all costs in excess of \$200 per month or \$2,400 per year.

Analysis and Conclusions

Members of the bargaining unit have had Employer provided health insurance upon retirement for themselves and their spouses. The City is currently self-funded for health insurance and utilizes Blue Cross Blue Shield as the third party administrator. Pursuant to Section 12.1(d) of the collective bargaining agreement, the cost required for the firefighter retirees had been paid from the pension fund, if available, with the City obligated to provide whatever amount the pension fund was unable to provide. In addition, effective January 2006, retirees contribute \$12.00 per month. Arbitrator James White, however, found that Section 12.1(d) expired as of June 30, 2004, and the parties are, therefore, proposing replacement language to cover retiree health insurance.

City exhibits assert that the cost for firefighter retiree health care, based on two-person coverage, ranges from approximately \$750 per month to approximately \$850 per month in 2006. With the \$12.00 per month payment contributed by current retirees, it is clear the Police and Fire Pension Board and/or City has been responsible for the vast majority of the "premium" cost.

Under the Employer's Last Best Offer, if the Police and Fire Pension Fund have funds to contribute, it may at its discretion still do so, however, the City's obligation would be capped regardless of any payments provided by the pension fund. The City's last offer of a maximum payment of \$200 per month leave the retiree responsible for approximately 75% of the health insurance cost. Of course, these percentages are based on the 2006 rates. None of the other cities utilized as comparable in this proceeding have similar employer/employee premium sharing co-pay amounts. Furthermore, the other 312 units within the City of Battle Creek are not currently required to assume this degree of premium co-pay liability, although I note that their contracts do not contain language similar to Section 12.1.d and that the police contracts were still in negotiations at the time of the hearings.

While the panel is mindful of the Employer's situation in the current health insurance climate and the spiraling cost of providing this benefit to its employees - -and that increasing obligation will be addressed in subsequent portions of this Award - - nevertheless, it is too much to shift this burden to the extent the City has proposed to employees currently employed by the City. While some of the current employees have many years to go until they are eligible for retirement, many others are either already eligible or are close to retirement eligibility. Current employees may have assumed they would be beneficiaries of employer provided health care during their retirement years. Indeed, the Pension Board has provided this benefit for a number of years and the collective bargaining agreements over the last decade have had City assurance to cover any excess premium costs. Employees on the cusp of retirement or even midway through their careers have not had the benefit of planning alternative and/or supplemental provisions for their health care costs during their retirement.

The comparables do not currently support the City's Last Best Offer as required under

Section 9(d) and therefore the panel awards the Union's Last Best Offer with regard to retiree health insurance for current members of the bargaining unit. The Union delegate concurs with the Neutral Chair's findings and conclusions; the Employer delegate dissents.

RETIREE HEALTH INSURANCE - FUTURE HIRES

The Proposals

Pursuant to stipulation of the parties, retirees hired on or after the effective date of the Award are to be considered separately by the Panel on the issue of health insurance benefits available upon retirement. The parties have designated this as an economic issue, thus requiring selection of either the Employer's or the Union's Last Best Offer.

The City's proposal is that the health insurance for the future hires be the same as for those retirees who retire after July 1, 2004, including any contributions required of those employees and/or retirees. However, the City's contribution towards the premium of the retiree health insurance for the future hires would be capped at \$200 per month.

The Union's proposal is that future hires be treated exactly the same as current employees upon retirement. To briefly recap the Union's proposal for current employees, this would require a 3% payment by both active employees and retired employees to a fund to help offset the cost of retiree health premiums. Premium costs in excess of the monies available from the fund would be fully paid by the City.

The Evidence

The Employer relied upon its exhibits and testimony regarding its ability to pay and evidence regarding the significant cost of providing retiree health insurance. The Employer further noted the crisis in health care funding for the current retirees, both as an impact on its financial ability to pay, as well as an indicator of the significant cost of guaranteeing the benefit to all future retirees. The

Employer also pointed to the internal comparables which have the \$200 City-paid supplement towards retiree health insurance. City Exh. 15.

The Union countered with significant evidence regarding external comparables. Union Exh. 78. The Union pointed out that all of the external comparables provide a contractual guarantee of retiree health insurance and that all but one (Bay City) provides the potential for the employee to receive fully paid retiree health insurance.

Analysis and Conclusions

The issue has been discussed at length in the Analysis and Conclusion section for Retiree Health Insurance - Current Employees. The Union position was awarded for current employees, which has employees assuming part of the cost of their retiree health care. I am mindful, however, of the significant and escalating cost of providing retiree health insurance to employees. I recognize that future hires will continue to contribute 3% toward the fund to help pay for retiree health insurance.

In this instance, I find it reasonable to differentiate future hires from current employees, who arguably began employment with the expectation of having City-funded health insurance benefits available. Future hires will know exactly what to expect in terms of City support for their retiree health insurance from the time they hire in. Therefore, these new firefighters will be able to plan for the anticipated future expense for retiree health insurance.

In saying this, I am mindful of the fact that the first retiree affected by this Award will not be eligible to retire for at least 25 years. Hopefully, by that time either the parties, the state or federal government will have come up with better solutions for providing cost-effective health care protection for public employment retirees.

I find that the Employer's proposal best reflects the interest and welfare of the public and financial ability of the City to meet these future costs. The Employer delegate concurs with the Neutral Chair's findings and conclusions; the Union delegate dissents.

OVERTIME PAY: ARTICLE 9, SECTION 9.

The Proposals

The Union submitted its last best offer to add a two hour guarantee at time and one half whenever an employee is held over or called in. In addition, any employee passed over improperly for an overtime assignment would receive two hours of straight time pay.

The City proposed the status quo be maintained.

The Evidence

Union witness President Chuck Asher testified there are basically two types of overtime in the Battle Creek Fire Department. There is what is referred to, informally as *long overtime*, which is defined as a full twenty-four hour day and *short overtime*, defined as less than twenty-fours. Upholding staffing levels mandate the necessity of overtime on occasions. Typically a Battalion Chief determines the need for overtime on any given day based on the need to keep a certain classification and/or rig in service. The Battalion Chief utilizes a rotating list to “hire” people in for overtime. President Asher testified that mistakes in this hiring process results in the bulk of grievances filed by the Union. The Union submitted as exhibits several grievances claiming that an employee has been mistakenly passed over for overtime opportunities. Apparently, an employee inadvertently passed over for overtime may have to wait months for another opportunity to work overtime. The Union’s Last Best Offer proposes that an employee receive two (2) hours pay, at his/her prevailing hourly rate, should that situation occur in the future.

In addition, the Union also wishes to add language to the current overtime provision providing for a minimum of two (2) hours paid, at their prevailing hourly rate or time and one-half, whichever is greater, when an employee is “hired” for overtime. If the employee were to

work just one hour of overtime he/she would receive two hours of straight time pay. In other words, if the employee were “hired” for three hours of overtime, he/she would receive three hours at time and one-half. Currently there is no minimum guarantee of hours for overtime call-in or holdover for which an employee receives overtime. The Union’s Last Best Offer would somewhat alleviate the potential burden an employee would face for disruptions during their off duty schedule to work overtime and are released from duty after a very short amount of time.

The City did present evidence that the overtime situation is not that frequent, and that allowing the affected firefighter the first opportunity to make up the overtime is fair. Requiring the City to pay for time not worked through no intentional fault is an undue burden to the City and a windfall to the employees. Further, the current language provides for overtime for work in excess of the regular schedule, and the nature of the shift scheduling in the fire department does not usually result in overtime of less than two hours.

Analysis and Conclusions

Union exhibits show that a majority of the comparables provide for a minimum guarantee of overtime hours. A review of the collective bargaining agreements of the other employee groups within Battle Creek also show that a minimum number of hours are offered and/or guaranteed to employees called in on overtime. If indeed the call-ins are infrequent and of longer duration, then the Union's proposal should not have significant financial impact.

Section 9 factors support the Union’s Last Best Offer. Accordingly the Panel awards the Union’s Last Best Offer with regard to overtime provisions. The Union delegate concurs with the Neutral Chair's findings and conclusions; the Employer delegate dissents.

MANPOWER/MINIMUM MANNING

The Proposals

Although the Employer's initial proposal was to eliminate this entire section of the contract, its Last Best Offer simply adds language for manning of the Medical Response Unit (MRU) consisting of one firefighter, plus one officer or acting officer. The proposal also limits the use of MRUs to medical emergencies (excluding auto accidents) and non-emergency public service calls or personnel transport to other departmental emergencies. The proposal further provides that if a third MRU is placed in service a captain or acting captain would be assigned where the third MRU is stationed.

The Union has proposed that there be no change to the manpower/minimum manning section.

It should be noted that the City agreed, without waiving its future rights to object, to allow the Arbitrator to issue an Award on this issue. The Employer has maintained that this is a permissive subject of bargaining. The Union has maintained that it is a mandatory subject of bargaining. The parties further stipulated that this would be an economic issue, thus requiring selection of one of their Last Best Offers.

The Evidence

The Employer presented evidence regarding the total lack of minimum manning requirements in the collective bargaining agreements for the comparable communities. City Exh. 4. The Fire Chief, Larry Hausman, also testified at length regarding the need for flexibility in the staffing in order to provide both the best and most cost-efficient service to the community. The City argued that the use of the MRUs is an effective and efficient method of responding to medical emergencies, which comprise a significant percentage of the actual calls handled by the department. Smaller vehicles can get to places that a fire engine may have difficulty accessing. Further, the use of the MRU leaves the fire fighting equipment more readily available to respond to calls which may require fire fighting capabilities.

The Union also submitted significant materials regarding the history of the minimum manpower provisions in the current collective bargaining agreement, an extensive analysis of the current manning of the Department's operations and equipment, as well as the NFPA materials dealing with recommended national standards regarding staffing levels. Union Exhs. 1-A through 1006-A. The Union President, Chuck Asher, also testified at length regarding the current manning system.

Analysis and Conclusions

Although Chief Hausman and President Asher disagreed as to whether any changes should be made in the current contract language, I found significant agreement in how they described the current operations of the department and the staffing for the ladder truck, the fire engines and the MRUs. I conclude that the comparable firefighters' contracts do not contain any similar minimum manning requirements. I would have been reluctant, however, to completely remove language that the parties had previously negotiated, absent significant evidence of the need for such a change.

However, the City's Last Best Offer provides what I believe to be a reasonable addition to the existing language. The City has determined to dress up the baby, rather than throw it out with the bath water.

Based on the factors of the interest and welfare of the public and comparison to comparable communities, I find the evidence supports the Employer's Last Best Offer. The Employer delegate concurs with the Neutral Chair's findings and conclusions; the Union delegate dissents.

PAID SICK LEAVE: ARTICLE 13, SEC. 13.1

The Proposals

The City has proposed changing the sick leave process for all new hires. New hires would be covered by a Sickness and Accident policy, which would provide first day coverage for injury and eighth day coverage for illness, back to the first day. Coverage would be at 70% of base salary, and for up to a maximum of 26 weeks.

The Union has proposed that the current contract language remain the same, essentially providing for a more traditional accumulation of earned sick leave time, with the potential for pay out of unused time.

The Evidence

The City supported its proposed "Sick and Accident Policy" (S&A Policy) for new employees by reference to the internal comparables. Indeed, proofs provided by the City confirm this S & A policy is already in place for all other employee groups within the City with the exception of the supervisors in the fire department and the members of this bargaining unit. The S & A policy in effect for the majority of City employees provides for 70% of an employee's base wage from the first day of injury in the case of injury or from the eighth day in cases of illness. Should an employee be ill for eight or more days, the coverage provides retroactive benefits from the first day. This benefit has a maximum period of twenty-six weeks per injury or illness. The Employer claims in certain instances, this could provide an employee with superior coverage than is currently available under Article 13, as new employees would take some number of years to earn enough days to cover for 26 weeks of sick leave.

The Union opposes both the proposed S & A policy and the creation of a two-tier structure. The Union views this plan as a wholly inferior benefit in every respect and asserts the

proposal is not supported by the evidence. It also maintains the other employee groups that are covered by the S & A policy have been covered by this benefit for an extended period of time, which in some instances is more than thirty years. During this extended period of time there has not been sick leave benefit conformity between the employee groups and the Union claims the Employer failed to demonstrate a need for conformity now.

Analysis and Conclusions

Currently members in this bargaining unit accrue sick leave benefits at the rate of 14 hours per month for twenty-four hour personnel and 9 hours per month for forty hour personnel. This benefit provides a maximum sick bank of 1,950 hours for twenty-four hour personnel and 1,280 hours for forty hour personnel and is paid at 50% upon separation of service. At retirement twenty-four hour personnel receive a maximum payout of 975 hours at their prevailing hourly rate and forty hour personnel receive a maximum of 640 hours paid at their prevailing hourly rate.

While it is true the majority of Battle Creek employees are covered under a Sick and Accident Policy rather than accruing sick leave benefits, it is also true that firefighters in the comparable communities participate in more traditional sick leave accrual programs. Even the one comparable, Saginaw, which the City exhibits allege to provide an S & A policy, also has the benefit of a Personal Time Off (PTO) benefit accrual. Moreover, not a single comparable, either external or internal, was shown to have a two-tier system in place with regard to sick leave benefits. All of the external comparables also receive a payment of their accrued benefit at the time of retirement and several receive an annual payment for sick leave accrued in excess of their contractual maximums.

The Employer's proposal represents a significant change to the current, negotiated system. This would require substantial evidence of the need for such a change if it is to be involuntarily imposed. Accordingly the Panel awards the Union's Last Best Offer of maintaining the status quo. The Union delegate concurs with the Neutral Chair's findings and conclusions; the Employer delegate dissents.

EDUCATION INCENTIVE/TUITION REIMBURSEMENT

The Proposals

The Employer's proposal is to eliminate the tuition reimbursement provisions from Article 15 of the parties' agreement. The City has further proposed to "grandfather" through June 30, 2008, the one current employee who is receiving reimbursement under this section. With elimination of this language, tuition reimbursement would be based on City policy in effect at the time of the employee request.

The Union proposal is to retain the current contract language, which provides full tuition and cost reimbursement for fire service related courses.

The Evidence

The Employer, again, provided exhibits and testimony in support of its proposed elimination of contractual tuition reimbursement, and switching to the City policy, which provides reimbursement on a more limited basis as funds are available. The Employer pointed out that none of the other City bargaining units have contractual tuition reimbursement. City Exh. 11. Further, the City pointed out that of the external comparables, Muskegon has no contractual provision and discontinued all payments due to budget constraints. Port Huron and Bay City have the ability to deny tuition reimbursement based on budgetary constraint. The other two comparables provided caps on reimbursement, unlike the provision in the Battle Creek contract.

The Union relied on the City exhibit (City Exh. 12) to argue that the majority of the external

comparables do provide some type of tuition reimbursement. The Union further asserted the position that there was limited use of this provision by firefighters in the department and, therefore, it was a nominal expense.

Analysis and Conclusions

I am mindful of the fact that the City has not proposed to delete the annual stipend paid to firefighters for advanced education, including payments for earning an Associate's or Bachelor's degree in a fire science related field. I note that of the external comparables only Saginaw provides any similar stipends for higher education achievement.

I am not convinced that the City needs to pay for the classes, as well as pay a stipend once the firefighter has completed various levels of education. Of these two, the stipend over a firefighter's career seems to be a much better benefit.

Therefore, based on comparison to the external comparables and the overall compensation package awarded in this Award, I find the Employer's Last Best Offer to be the most reasonable. The City delegate concurs in this analysis and conclusion; the Union delegate dissents.

ORDER

In summary, the Panel orders the following on the open issues:

Wages - 2004-2008 - City's Last Best Offer

Pension - Multiplier - Union's Last Best Offer

Retiree Health Care

 Current Employees - Union's Last Best Offer

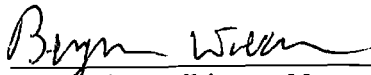
 Future Hires - City's Last Best Offer

Overtime - Union's Last Best Offer

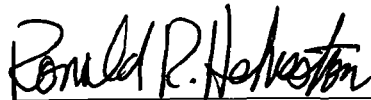
Manpower/Minimum Manning - City's Last Best Offer

Sick Leave - Union's Last Best Offer

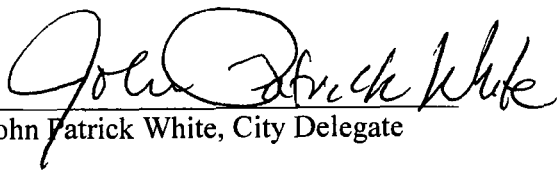
Education Incentive/Tuition Reimbursement - City's Last Best Offer


Benjamin Wolkinson, Neutral Chair

Date: 5-14-07


Ronald R. Helveston, Union Delegate

Date: 5-14-07


John Patrick White, City Delegate

Date: 5/10/07

1396229

BATTLE CREEK FIRE FIGHTERS, LOCAL 335

-and-

CITY OF BATTLE CREEK

**2006 Act 312 Arbitration
MERC Case No: L04 G-4005**

Wolkinson Panel

Union's Last Best Offer

UNION ISSUES

WAGES

RETIREE HEALTH INSURANCE

OVERTIME PAY

PENSION - - MULTIPLIER

EMPLOYER ISSUES

WAGES

MANPOWER/MINIMUM MANNING

SICK LEAVE

EDUCATION INCENTIVE/TUITION REIMBURSEMENT

RETIREE HEALTH INSURANCE - - CURRENT EMPLOYEES

RETIREE HEALTH INSURANCE - - NEW HIRES

WAGES: ARTICLE 9, SEC. 9.1 & APPENDIX "A"

UNION & CITY ISSUE - - ECONOMIC

Note: Pursuant to the direction of Arbitrator Wolkinson, the parties have agreed to add a fourth year - - effective July 1, 2007 - - to the collective bargaining agreement.

Amend as follows:

Section 9.1 - Salary Schedule: For the life of this Agreement, the salary schedule set forth in Appendix "A" attached hereto and by this reference made a part hereof shall remain in full force and effect. **EFFECTIVE JULY 1, 2004 THERE SHALL BE A ZERO PERCENT (0%) INCREASE FOR EACH CLASSIFICATION AND INCREMENTAL STEPS WITHIN EACH CLASSIFICATION. EFFECTIVE JULY 1, 2005 A THREE AND ONE-HALF PERCENT (3.5%) ACROSS-THE-BOARD INCREASE SHALL BE APPLIED TO THE BASE WAGE FOR EACH CLASSIFICATION AND INCREMENTAL STEPS WITHIN EACH CLASSIFICATION. EFFECTIVE JULY 1, 2006 AN ADDITIONAL THREE AND ONE-HALF PERCENT (3.5%) ACROSS-THE-BOARD INCREASE SHALL BE APPLIED TO THE BASE WAGE FOR EACH CLASSIFICATION AND INCREMENTAL STEPS WITHIN EACH CLASSIFICATION. EFFECTIVE JULY 1, 2007 AN ADDITIONAL THREE AND ONE-HALF PERCENT (3.5%) ACROSS-THE-BOARD INCREASE SHALL BE APPLIED TO THE BASE WAGE FOR EACH CLASSIFICATION AND INCREMENTAL STEPS WITHIN EACH CLASSIFICATION.**

Amend "Appendix A" accordingly.

RETIREE HEALTH INSURANCE - - CURRENT EMPLOYEES: ARTICLE 12, SEC. 12.1(d)

UNION & CITY ISSUE - - ECONOMIC

Note: The parties have mutually agreed to divide the retiree health insurance issue with regard to current employees and "new hires" into two components. The panel will consider the issue of retiree health insurance for current employees and future employees as two separate and distinct issues.

Amend as follows:

- d) ~~For the term of this Agreement, the City's Pension Board will pay, from the pension fund, the health insurance premiums for the coverage currently provided, provided such payments do not exceed an amount equal to one half of the interest earned by the reserve fund. Premium payments in excess of this amount will be paid by the City. Effective July 1, 1989, employees' contributions to the pension plan will be increased to 6.25% of their wages. Further, if the cost of health care for retirees maintained by the pension fund reaches or exceeds the maximum allowable amount for health care as provided for in MCLA 38.571; namely, *inter alia*, "1/2 of the interest earned by any reserve fund . . .", the employee pension contribution rate can be increased to an amount not to exceed 6.50%. Said increase in employee pension contribution rate shall take effect the fiscal year following notification and shall revert to the 6.25% in the next fiscal year in which the cost falls below the maximum allowable amount under MCLA 38.571.~~

EMPLOYEES WHO WERE HIRED ON OR BEFORE THE DATE OF THE 2007 ACT 312 AWARD AND WHO RETIRE ON OR AFTER JULY 1, 2004, WITH A PENSION BENEFIT IMMEDIATELY PAYABLE, SHALL RECEIVE THE SAME HEALTH INSURANCE BENEFITS AS AS SET FORTH IN THE COLLECTIVE BARGAINING AGREEMENT FOR CURRENT, ACTIVE EMPLOYEES, EXCLUDING ANY INSURANCE PREMIUM CO-PAY REQUIRED OF ACTIVE EMPLOYEES. COVERAGE WILL CHANGE IN ACCORDANCE WITH ANY CHANGES IN COVERAGE FOR ACTIVE EMPLOYEES. HEALTH INSURANCE COVERAGE SHALL BE PROVIDED TO THE RETIREE AND TO HIS/HER SPOUSE AT THE TIME OF RETIREMENT, IF ANY.

EFFECTIVE [DATE OF AWARD] CURRENT EMPLOYEES AND EMPLOYEES RETIRING ON OR AFTER JULY 1, 2004 SHALL BE REQUIRED TO CONTRIBUTE THREE PERCENT (3%) OF THEIR TOTAL COMPENSATION (ON A PRE-TAX BASIS, IF AVAILABLE) OR THEIR PENSION BENEFIT INTO A RETIREE HEALTH CARE FUND. THE TRUST FUND SHALL BE UTILIZED EXCLUSIVELY FOR FIREFIGHTER RETIREE HEALTH INSURANCE. THE FUND SHALL EXPEND UP TO THE ENTIRE BALANCE OF THE FUND TO PAY THE CURRENT HEALTH INSURANCE PREMIUMS FOR ELIGIBLE RETIREES. THERE WILL NOT BE INDIVIDUAL ACCOUNTS.

IN ADDITION TO THE FUNDS AVAILABLE FROM THE RETIREE HEALTH CARE TRUST FUND, THE CITY MAY CONTINUE TO SUPPLEMENT THE COST OF RETIREE HEALTH INSURANCE PREMIUM PAYMENTS FROM THE PENSION FUND, AS CURRENTLY PROVIDED, IF FUNDS ARE AVAILABLE.

IF HEALTH INSURANCE PREMIUMS FOR ELIGIBLE RETIREES EXCEED THE AMOUNT AVAILABLE FROM THE RETIREE HEALTH CARE TRUST FUND, THE EXCESS PREMIUM COSTS SHALL BE FULLY PAID BY THE CITY.

IN THE EVENT A RETIRED EMPLOYEE HAS COMPARABLE HEALTH INSURANCE AVAILABLE, EITHER THROUGH OTHER EMPLOYMENT OR THROUGH THEIR SPOUSE'S EMPLOYMENT, THE RETIREE SHALL BE REQUIRED TO OPT OUT OF THE CITY PROVIDED HEALTH INSURANCE PLAN[S]. CONSEQUENTLY, IF THE RETIREE IS NOT PARTICIPATING IN A CITY PROVIDED HEALTH CARE PLAN, HE/SHE SHALL NOT BE REQUIRED TO CONTRIBUTE A PERCENTAGE OF THEIR PENSION BENEFIT FOR THE ENTIRE PERIOD THE RETIREE HAS OPTED OUT OF THE CITY PROVIDED HEALTH INSURANCE COVERAGE. SHOULD THE RETIREE NO LONGER BE ELIGIBLE TO PARTICIPATE IN A NON-CITY PROVIDED HEALTH INSURANCE PLAN, HE/SHE SHALL BE PERMITTED TO IMMEDIATELY OPT BACK IN TO A CITY PROVIDED HEALTH INSURANCE PLAN AND WILL BE REQUIRED TO RESUME THE PERCENTAGE CONTRIBUTION AS OUTLINED ABOVE TO THE RETIREE HEALTH CARE FUND.

IN THE EVENT THERE IS A DISPUTE WHETHER HEALTH INSURANCE COVERAGE IS "COMPARABLE" AS STATED ABOVE, A NEUTRAL THIRD PARTY SHALL RESOLVE THE MATTER. IF THE CITY AND THE RETIREE ARE UNABLE TO MUTUALLY AGREE UPON A NEUTRAL THIRD PARTY, THE MATTER SHALL BE SUBMITTED TO THE AMERICAN ARBITRATION ASSOCIATION OR OTHER MUTUALLY AGREED ARBITRATION SERVICE TO APPOINT THE NEUTRAL ARBITRATOR. ANY FEES ASSOCIATED TO THE APPOINTMENT OF A NEUTRAL THIRD PARTY SHALL BE BORNE BY THE CITY. THE UNION SHALL NOT REPRESENT THE RETIREE OR BE A PARTY TO ANY SUCH ARBITRATION.

THE CITY AND THE UNION SHALL DISCUSS THE NATURE OF THE TRUST ((VEBA TRUST OR OTHER DESIGNATED TRUST ACCOUNT AS PERMITTED BY THE IRS CODE). THE TRUST SHALL HAVE UNION AND CITY REPRESENTATION ON ITS BOARD OF TRUSTEES.

IN THE EVENT RETIREE HEALTH INSURANCE IS PROVIDED THROUGH ANY STATE OR FEDERAL PROGRAM WITHOUT PREMIUM COSTS TO THE EMPLOYER, THE 3% CONTRIBUTIONS SHALL BE SUSPENDED, AND THE PARTIES SHALL MEET TO DETERMINE HOW TO DISSOLVE AND DISTRIBUTE ANY ASSETS REMAINING IN THE FUND.

RETIREE HEALTH INSURANCE - - NEW HIRE EMPLOYEES (EMPLOYEES HIRED AFTER THE DATE OF THE 2007 ACT 312 AWARD: ARTICLE 12, SEC. 12.1(d))

CITY ISSUE - - ECONOMIC

Note: The parties have mutually agreed to divide the retiree health insurance issue with regard to current employees and "new hires" into two components. The panel will consider the issue of retiree health insurance for current employees and future employees as two separate and distinct issues.

The Union opposes the implementation of a two tier system with regard to retiree health insurance benefits. Therefore, the Union submits the identical last best offer outlined above for employees hired after the date of the Wolkinson 312 Award.

OVERTIME PAY: ARTICLE 9, SECTION 9.2

UNION ISSUE - - ECONOMIC

Amend as follows:

Section 9.2 - Overtime Pay: All employees shall receive time and one-half (1-1/2) at the employee's regular hourly rate of pay for all work performed in excess of the normal work day or normal work week. Hours compensated under the paid sick leave provisions of this Agreement shall be considered hours worked for the purpose of overtime computation. There shall be no pyramiding of overtime hours. Hold-over at the end of a shift of less than fifteen (15) minutes shall be excluded in calculating overtime pay. **EFFECTIVE [DATE OF 312 AWARD], EMPLOYEES SHALL RECEIVE A MINIMUM OF TWO (2) HOURS PAID AT THEIR PREVAILING HOURLY RATE OR TIME AND ONE-HALF FOR ACTUAL TIME WORKED, WHICHEVER IS GREATER, WHEN "HIRED" FOR OVERTIME. IT IS UNDERSTOOD THAT AN EMPLOYEE IS NORMALLY "HIRED" FOR OVERTIME BY BEING HELD OVER AT THE END OF THEIR WORK SHIFT OR CALLED IN WHILE OFF DUTY.**

EFFECTIVE [DATE OF 312 AWARD], ANY EMPLOYEE THAT IS IMPROPERLY PASSED OVER FOR OVERTIME SHALL RECEIVE TWO (2) HOURS PAID AT THEIR PREVAILING HOURLY RATE.

PENSION / MULTIPLIER: ARTICLE 17

UNION ISSUE - - ECONOMIC

Amend as follows:

Those employees covered by the Firemen and Policemen Pensions Act (P.A. 1937, No. 345) shall have their retirement benefit calculated on the basis of 3.0% of average final compensation multiplied by the first 25 years of service credited up to a maximum benefit equal to 75% of final average compensation.

~~The employee pension contribution shall be 7.0%~~

~~Pursuant to negotiations for the Collective Bargaining Agreement beginning July 1, 1994, changes were made to the benefit and contribution level. Effective July 1, 1995, employees retiring on or after that date may retire with full pension benefits after twenty-five (25) years of service, regardless of age. Also effective July 1, 1995, the employee pension contribution shall be increased from 7.0 percent, to 7.5 percent. The cost of the "25 and out" benefit shall be amortized over a thirty (30) year time period.~~

EMPLOYEES RETIRING ON OR AFTER JUNE 30, 2008 SHALL HAVE THEIR RETIREMENT BENEFIT CALCULATED ON THE BASIS OF 3.0% OF AVERAGE FINAL COMPENSATION MULTIPLIED BY THE FIRST 25 YEARS OF SERVICE AND 1.0% FOR SERVICE YEARS IN EXCESS OF 25, UP TO A MAXIMUM OF 80% OF FINAL AVERAGE COMPENSATION. THE CITY SHALL ASSUME THE COST OF THIS PENSION IMPROVEMENT.

The Union's last best offer proposes the status quo be maintained

**MANPOWER/MINIMUM MANNING
CITY ISSUE**

SICK LEAVE

CITY ISSUE -- ECONOMIC

The Union's last best offer proposes the status quo be maintained.

EDUCATION INCENTIVE / TUITION REIMBURSEMENT

CITY ISSUE - - ECONOMIC

The Union's last best offer proposes the status quo be maintained

**CITY OF BATTLE CREEK
AND
IAFF, LOCAL 335**

**ACT 312 PROCEEDINGS
MERC Case # L04 G-4055**

**THE CITY'S
LAST BEST OFFER**

Duration: The City and the IAFF have stipulated to add an additional year, July 1, 2007 to June 30, 2008, to the duration of the agreement.

As part of the agreement to extend the duration, the parties have agreed 1) that the issue of wages will be dealt with as a single issue/proposal for all four years, and not on a year by year basis, and 2) that the issue of retiree health will be dealt with as two issues, Current Employees and Future Hires (after the date of the Award).

Pension: COLA. Union Issue. Economic

Withdrawn by IAFF.

Pension: Multiplier. Union Issue. Economic.

City's Offer - Amend Article 17 to add following language:

"The Union may increase the level of the current pension benefit to provide for a multiplier of 1% per year for years 26 through 30, for a maximum benefit of 80% of final average compensation. Such enhancement may be made at any time during the duration of the current bargaining agreement, but shall be fully paid by the employees, based on a then current actuarial report to determine cost. Such cost shall be added to the employees' contribution rate."

Wages:

Joint Issue. Economic

Pursuant to the stipulation of the parties, this is a single issue.

City's Offer - Modify Appendix A by the following percentages:

7-1-04	0%
7-1-05	2.75% - retroactive
7-1-06	2.0% - retroactive
7-1-07	2.0%

Retiree Health Insurance - Union Issue - Economic

City's Offer - Current Employees

Replace §12.1(d) with the following language:

"The Police and Fire Pension Board may, at its discretion, provide health insurance for the retiree and spouse, and pay for all or a portion of such premiums provided that the total payments do not exceed the allowable expenditures for such benefit under MCLA 38.571. To be eligible for health insurance through the Police and Fire Pension Board, the employee must retire with a benefit presently payable and not have comparable coverage available from an alternative source. Comparable coverage shall be determined based on both benefits and cost, but need not be identical.

For employees who retire on or after July 1, 2004, the City will contribute \$200 per month towards the cost of such health insurance as the Police and Fire Pension Board may provide for the retiree and/or spouse."

City's Offer - Future Hires

Add to Section 12.1.d.

"Employees hired after the date of the 2007 Act 312 Award finalizing the 2004-2008 Bargaining Agreement between the City and IAFF Local 335, shall have the same terms and conditions regarding retiree health insurance as those retiring on or after July 1, 2004, including any contributions. However, the City's contribution towards the premium for employees hired after the effective date of the Award shall be capped at \$200 per month."

Manpower/Minimum Manning:

City Issue - Economic

City's Offer - Modify Section 8.1 as follows:

"If the manpower falls below the listed requirement to safely operate the Fire Apparatus, the City shall either: (1) take the apparatus out of service and distribute the remaining manpower, or (2) call in sufficient manpower to safely operate the equipment. The manning requirements are as follows:

- a) Engine(s) - three (3) fire fighters plus one (1) officer (or acting), except at multiple company stations. Engine(s) at multiple company stations will be manned by two (2) fire fighters plus one (1) officer (or acting).
- b) Truck(s) - one fire fighters plus one (1) officer (or acting).
- c) HAZ-MAT - two (2) fire fighters plus one (1) officer (or acting). If a hazardous materials incident occurs requiring the fire fighters to utilize their protective apparel, a minimum of four (4) qualified Haz-Mat personnel shall be required on the scene.
- d) Medical Response Unit(s) (MRU) - one (1) firefighter plus one (1) officer (or acting). MRUs shall be used for medical emergencies (excluding auto accidents), non-emergency public service calls or personnel transport to other departmental emergencies. When and if a third MRU is placed in service, a captain or acting captain will be assigned to the station.**

The component of manpower may be reduced by one (1) firefighter on any engine or rescue engine to either operate the Fire Department pick-up truck for official department business, or for a maximum period not-to-exceed three (3) hours for the purposes of that employee engaging in official departmental training on apparatus. At no time will the above apparatus be reduced below three (3), including an officer or an acting officer, for purposes of training under this section.

Sick Leave :

City Issue - Economic

City Offer - Add the following language to Section 13.1:

"Employees hired after the date of the Act 312 Award finalizing the 2004-2008 Bargaining Agreement between the City and IAFF Local 335, shall be covered only by the City's sickness and accident policy.

Sickness and Accident Policy:

In cases of accidental bodily injury which results in total disability of the employee (and employee is being regularly treated by a doctor), employee receives 70% of base salary from the 1st day of injury -- maximum period not to exceed 26 weeks.

In cases of illness or pregnancy which causes the total disability of the employee (and the employee is being regularly treated by a doctor), employee receive 70% of base salary from the 8th day of injury -- maximum period not to exceed 26 weeks.

Total disability is defined to mean 1) complete inability to perform any of the duties of his/her regular occupation or employment and not engaged in any other substantially gainful employment or occupation and 2) complete inability to perform any of the duties of any gainful occupation or employment for which he/she may reasonably be qualified by reason of education, training or experience.

Subject to the Chief and Human Resources Manager, paid emergency leave of absence, not to exceed 1 regularly scheduled duty day at one time, may be granted to an employee for extreme critical illness of a spouse, child or parent. The first two days shall not be charged to the employees comp bank."

Education Incentive/Tuition Reimbursement -

City Issue - Economic -

City's Offer - Eliminate tuition reimbursement from Article 15. Grandfather employee currently receiving reimbursement under this Section for applicable course work until June 30, 2008. For all others, tuition reimbursement would be based on City policy in effect at the time of the employee request.

Continue stipends for completed education, would remain in the bargaining agreement.

ARTICLE 15 - EDUCATIONAL INCENTIVE

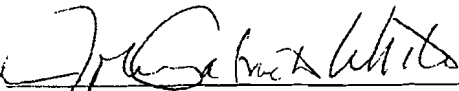
The City will pay on the first pay period following June 1 to permanent employees who have completed accredited courses the amounts set forth below. All courses must be certified by an accredited college or certifying institution before payment is made, and a passing grade for the course ("C" or above) must be received.

E.M.T. - F.S.C.	\$250
Paramedic	\$300
Associate in Fire	\$350
Bachelor	\$400
Bachelor - Fire related degree	\$500
Masters (Pub Admin or Fire)	\$600

Overtime - Union Issue - Economic

City Offer - Maintain current language of Section 9.2.

City of Battle Creek, Michigan

By 
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