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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION ARISING
PURSUANT TO PUBLIC ACT 312 OF 1969, AS AMENDED

BETWEEN

CITY OF NOVI, MICHIGAN

- and -

MICHIGAN ASSOCIATION OF FIRE FIGHTERS (MAFF)

-----/

MERC CASE NO.: D10 B-0157

ARBITRATION PANEL:

Roger N. Cheek, Impartial Arbitrator and Chairperson

Fred Timpner, Business Agent
Michigan Association of Fire Fighters (MAFF)
For Union

Dennis B. DuBay, Attorney
Keller Thoma, A Professional Corporation
For City

APPEARANCES:

Union Advocate: Fred Timpner
City Advocate: Dennis B. DuBay

TESTIFYING FOR UNION:

Henry Winokur, Research Analyst; MAFF
Maria Reisner, POC; Novi; MAFF Member
Ian Patterson, POC; Novi; MAFF Member (B.U. Secretary)
Jerry Holtzman, POC; Novi; MAFF Member (B.U. President)
George Pierson, POC, Captain; Novi; MAFF (B.U. Treasurer)

TESTIFYING FOR CITY:

Jeffery Johnson, Director of EMS and Fire Operations; Novi
Tia Gronlund-Fox, Director of Human Resources; Novi
Debbie Hooper, Paralegal; Keller Thoma, P.C.
Kathy Smith-Roy, Finance Director/Treasurer; Novi
David Molloy, Director of Public Safety and Chief of Police; Novi

INTRODUCTION

This is a report of findings made, opinions reached, and awards rendered in a compulsory binding labor arbitration conducted pursuant to Act 312, Michigan Public Acts of 1969, as Amended.

BACKGROUND

On February 10, 2011, the City petitioned for arbitration. On April 8, 2011, the Michigan Employment Relations Commission issued its Letter of Appointment naming the undersigned, Roger N. Cheek, as the impartial chairperson of a three-person arbitration panel to decide this matter.

SCOPE OF EVIDENTIARY RECORD

On November 14, 15, and 16, 2011, evidentiary sessions were conducted. A verbatim record was made of the sworn testimony, yielding approximately 675 pages of transcript. Also, more than 100 exhibits totaling approximately 1,000 pages of written evidence were introduced into the record.

PRELIMINARY RULING ESTABLISHED CONTRACT DURATION

On December 12, 2011, after the evidentiary hearings concluded, but before the transcripts were received, the advocates contacted me by telephone and explained that because the parties were not able to reach agreement on what should be the duration of the contract, they wanted me to consider each party's position and issue a preliminary award that would establish the contract duration. Having a common duration was necessary in order to permit the parties to develop a wage proposal covering a matching timeframe. I agreed to the request and each advocate then orally presented its party's position and arguments. By written decision dated January 9, 2012, I issued the

award that established the duration of the contract. Said award is the common resolution of City Issue 1 and Union Issue 1 and it will serve as the first sentence of contract Article 25, Termination of Agreement. (See below on page 7.)

STATUTORY REQUIREMENT FOR MAKING AWARDS

In making its decisions, the panel was required by the Act to select as its award, on each economic issue, the last offer of settlement (LOS) that more nearly complies with the following factors set forth in Section 9, Subsections (a) to (h):

“(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, or otherwise between the parties, in the public service or in private employment.”

RULING ON COMPARABLE COMMUNITIES

In order to use Section 9 factor (d) in the decision-making, comparable communities had to be identified. The parties did not agree on what communities should be used as comparables so each submitted its set of proposed comparables with the understanding that I would consider the submissions and issue a ruling on which communities would serve as the comparables.

The City’s proposed set is the following 14 communities: Auburn Hills, Commerce Township, Farmington Hills, Franklin Village/Bingham Farms, Groveland Township, Holly Township, Milford Township, Oakland Township, Oxford Township, Rochester Hills, Springfield Township, Walled Lake, White Lake Township, and Wixom. The Union’s proposed set is the following nine (9) communities: Brighton Area Fire, Flat Rock, Farmington Hills, Macomb Township, Milford, Northfield Township, Northville (City), Van Buren Township, and Wixom. Obviously, both sets include the same three (3) communities of Farmington Hills, Milford, and Wixom.

The parties have been in one previous Act 312 arbitration proceeding and in that case each party had proposed the use of the same sets of comparables they are proposing here. The prior arbitration panel used all 20 of the communities. Union Exhibit 38 is the Opinion and Award rendered in that prior arbitration.

City Exhibits 31-37 entered into the record in conjunction with the testimony of Ms. Debbie Hooper, an employee of Keller Thoma, P.C., makes numerical comparisons of the City’s proposed communities, and assigns ranks 1 to 14 for the following eight (8) community characteristics:

Population, Square Miles, Population Density, Taxable Value, Per Capita Taxable Value, Per Capita Income, Median Household Income, and Median Family Income. The Union, in like fashion, in conjunction with the testimony of Mr. Henry Winokur, an employee of MAFF, entered Union Exhibits 39-45 in which the same comparisons were made and assigned ranks 1 to 9. I determined that the community characteristics used to make those comparisons are among the body of customary characteristics many Act 312 arbitration panels have used throughout the years, and I was comfortable in allowing them to serve as all or some of the determinants for selecting the comparable communities.

In assessing the two sets of rankings, however, I was left to conclude that due to similarities in both the raw numbers and the dispersions from larger to smaller, greater to lesser, higher to lower, and richer to poorer, among the members of the sets, the two sets are found to be too much alike for me to accept one party's complete set and reject the other party's complete set on the basis of those rankings alone. I then considered other characteristics to distinguish between the sets, for example, the form of governance was surveyed, but both sets contained some cities, some townships, and a village. Both sets also had some communities with a high population and some communities with a low population, with the highest in one set being 79,580 and in the other set 70,995. The lowest population in one set was 8,245 and in the other set it was 4,267. Similarly, the population density feature of the different communities within the sets varies significantly, as does the square miles of the communities in each set. In both sets, the highest and lowest figures for total taxable values among the communities are widely dispersed, as is also true for the other two (2) economic characteristics identified above.

The City put significance on the fact that Novi is an Oakland County community and all of its proposed comparables are located within Oakland County while some of the Union's

communities are located in other counties. I acknowledge that this is a distinction, but I do not find that it is sufficient to select the City's complete set over the Union's complete set, or that that fact justifies rejecting the Union's proposed comparables that are not within Oakland County. This is because nothing in the record shows that being in Oakland County means a particular material and relevant condition exists for such a community as compared to the definite absence of that condition in communities that lie within nearby Wayne, Macomb, or Washtenaw counties.

Also, I find that being located in Oakland County does not create a sufficient distinction between the sets based on closeness to Novi. For example, the approximate distances from Novi to the City-proposed communities of Oakland Township, Holly Township, and Groveland Township are about equal to the distances from Novi to the Union-proposed communities of Northville, Van Buren Township, and Northfield Township. [This observation is based on my "eyeballing" of the map of Oakland County which was City Exhibit 30 and my personal knowledge gained from residing in Wayne and Oakland counties all of my life and regularly driving throughout Southeastern Michigan for more than 40 years.] Flat Rock, a Wayne County Community, which is proposed for use by the Union, is probably farther away from Novi than all of the other proposed communities, but it is not so much farther away as to merit rejection on that basis. In the end, I am of the opinion that all of the communities in both sets are geographically close to one another and that the general economic and societal conditions existent throughout the area are similar. The slight differences in closeness to Novi are not sufficient to single out any of the communities for rejection.

In another effort to compare and distinguish the two sets, I loaded the data for all 20 of the communities into eight (8) different Excel files [one for each characteristic] and performed sorting and ranking. The result was that for both the raw numbers and the rankings no particular discernible

City vs. Union pattern was apparent to cause selection of just one of the sets and nothing seemed sufficiently askew to merit rejection of any particular communities.

In light of my analyses, findings, and opinions, plus considering that both parties were obviously aware of the comparables decision made in the previous Act 312 arbitration award issued less than five (5) years ago, I find it is reasonable to allow all 20 of the proposed communities to serve as comparable communities.

ISSUES RESOLVED WITHOUT NEED OF AN AWARD BY THE 3-PERSON PANEL

The following issues that were originally filed for panel resolution in the Act 312 Petition were resolved without requiring the panel to make an award:

City Issue 1 and Union Issue 1: Termination of Agreement

In accordance with my January, 2012 ruling/award, the language to be the first sentence of contract Article 25, with the balance of the article unchanged will read as follows:

"Article 25. Termination of Agreement

"This agreement shall be effective from the 1st day of July, 2009 and shall remain in full force and effective to and including June 30, 2013".

City Issue 9: Alarm Pay

The City LOS and the Union LOS were identical on this issue so the new Article 13, Section 7, will read as follows:

"Article 13. Salaries and Wages, Section 7. Alarm Pay.

"A minimum of one (1) hour shall be paid for responding to an alarm. Additional alarms that are responded to within the first hour are not eligible for a second minimum of one (1) hour of pay. Time responding to an alarm, in excess of one hour shall be calculated in one-quarter (1/4) hour increments."

THE PANEL'S AWARDS ON THE UNRESOLVED ISSUES

All issues are economic and the LOSs were proposed in complete contract language and using a customary "legislative" format. The LOS awarded on each issue was selected by a two-person majority of the three-person panel, as indicated.

City Issue 2: Work Schedules

City LOS

REVISE Article 6. Attendance. Section 3. Call-outs and Responses.

"A. A call-out is a toned-out alert to respond to a *an call all-call emergency* occurring between the hours of 6:00 p.m. and 6:00 a.m. Monday through Friday and 6:00 a.m. Saturday to 6:00 a.m. Monday or in the event of an "all-call" (Response Period) *within a 24-hour period, seven days per week, Sunday through Saturday*. A response is a timely reporting to the appropriate station within fifteen (15) of the time of a *an call all-call tone out emergency* during the "response period". *Schedules consist of two 12-hour shifts, or a combination of 12-hour and/or 6-hour shifts (from 6:00 a.m. to 6:00 p.m. and from 6:00 p.m. to 6:00 a.m.) seven days per week (Sunday through Saturday) as established by the Department.*

"B. An employee who reports to the appropriate station in a timely manner but is released by the Department shall receive credit for the response. A Paid-On-Call employee must respond to a minimum of 40% of the call outs of his/her assigned station that occur when the employee is not "out of service" of each calendar quarter.

"C. Unit two (2) employees who responded to any toned out alert shall receive credit for the run attended.

"D. ~~B. Employees who fail to attain a minimum response standard during a 12-month calendar year may be subject to disciplinary action up to and including termination. *The City shall have the right to schedule employees for work shifts. The Department designated minimum amount of shifts and hours must be worked as a condition of continued employment.*~~"

Union LOS:

REVISE Article 6. Attendance. Section 3. Call-outs and Responses.

"A. A call-out is a toned-out alert *for Paid-on-call Fire Fighters* to respond to a *an emergency* occurring between the hours of 6:00 p.m. and 6:00 a.m. Monday through Friday and 6:00 a.m. Saturday to 6:00 a.m. Monday or in the event of an "all-call" (Response Period). A response is a timely reporting to the appropriate station within fifteen (15) of the time of a call during the "response period" *the tone out. Paid-on-call Fire Fighters' schedules consist of 12-hour shifts 6:00 p.m. to 6:00 a.m. Monday through Thursday and Friday 6:00 p.m. through Monday 6:00 a.m. Auxiliary work schedules consist of two 12-hour shifts (from 6:00 a.m. to 6:00 p.m. and 6:00 p.m. to 6:00 a.m.) seven days per week (Sunday through Saturday)*

“B. An employee who reports to the appropriate station in a timely manner but is released by the Department shall receive credit for a *the* response. ~~Each~~ *A Paid-On-Call* employee must respond to a minimum of 40% of the ~~calls-out~~ *tone outs* of his/her assigned station that occur when the employee is not "out of service" of each calendar quarter. *Paid-On-Call employees working scheduled shifts shall receive credit towards the 40% minimum required tone-outs.*

~~“C. Unit two (2) employees who responded to any toned-out alert shall receive credit for the run attended.~~

~~“D C. Employees who fail to attain the minimum response standard during a 12-month calendar year may be subject to disciplinary action up to and including termination.”~~

The Department provides fire protection, emergency medical services, and hazardous materials operations from four (4) fire stations.

The Department's non-supervisory fire fighting personnel hold one of the following basic job titles: Fire Protection Officer (FPO), Auxiliary Fire Fighter, and Paid On-Call Fire Fighter (POC).

There are 19 FPOs, 10 Auxiliary fire fighters, and 56 POCs. The auxiliary fire fighters and POCs are represented by the MAFF and the FPOs are represented by a different bargaining agent.

FPOs are full-time employees who staff the fire stations during 12-hour daytime shifts from 6:00 a.m. to 6:00 p.m., Monday through Friday.

Auxiliary fire fighters are part-time employees who work scheduled assignments, normally of 12-hour durations. They are assigned to fill daytime slots that are temporarily vacant when FPOs are not available for various reasons, e.g., vacations, sickness, injuries, medical leaves, etc. They also are regularly assigned to staff the several stations that remain open at night between the hours of 6:00 p.m. to 6:00 a.m., Monday-Friday, and on weekends. This is usually referred to as serving as a member of the "duty crew" working out of the station.

POCs are part-time employees who provide on-call services during nighttime hours, Monday to Friday, and on weekends. POCs carry pagers and they go into service after being paged to report to their station because a call for assistance has been received by the City's emergency dispatchers'

office. This is usually referred to as being "toned-out." POCs are required to report to their assigned fire station within 15 minutes of the tone-out. Each POC is assigned to a station located near their home. POCs also get opportunities to work as a member of a duty crew at a fire station during nighttime, Monday to Friday, or on weekends.

Director Jerry Johnson testified that Novi provides excellent training for all of its fire fighters. All employees in the three (3) basic job titles receive the same core training for State-certifications in Fire Fighting I, Fire Fighting II, basic EMT, and HazMat operations. All FPOs, and preferably auxiliary fire fighters, also receive driver's training. In addition, FPOs receive fire inspection certification training because they provide fire inspection services during their daytime, Monday through Friday, work shifts.

Director Johnson testified that the use of POCs started when the City was much smaller. Now that the City is much larger, the City wants to eliminate the current nighttime and weekend tone-out practice and have POCs assigned to work schedules. He said that under the proposed new scheduling practice, the Department would only be using all-call call-outs in the future when massive staff notifications become necessary due to a major emergency.

Director Johnson stated that having people in the fire station will decrease the Department's response time to emergencies and that would benefit Department operations and the public. He testified that the Department is concerned about the number of station closures that are occurring because too few POCs responded to a tone-out. He said that when not enough POCs can be mobilized it is exasperating to try and get them to respond and that waiting for them to get there causes the Department to delay its tactical response to an emergency. He acknowledged that each POC has a labor contract right to declare a period of temporary unavailability for responding to tone-outs, but pointed out that despite this right, the contract still requires each POC to respond to at least

40% of the tone-outs for their station, and still a number of people have not always satisfied that requirement.

As an indication of the Department's concern about low POC responses to tone-outs, Director Johnson referred to City Exhibit 25, a December, 2009 directive, that announced a new reporting policy that POCs were to follow when they were going to be unavailable for any period lasting longer than 12-hours. He said the directive resulted from the resolution of a grievance that the Union had filed in reference to a number of POCs who did not meet their response percentage objectives. He pointed out that the resolution also created a method for management to track when POCs would be out of service. City Exhibit 28 is an example of that tracking method, which Director Johnson referred to as an "outlook calendar," and it covered 2010 and most of 2011.

The City introduced a host of other exhibits in conjunction with this line of testimony by Director Johnson. It was primarily information gathered from data on the Department's operations, mainly from 2010 and 2011, plus some from 2009, and was focused mainly on POC response/non-response data. One of the exhibits reported on station closures the Department experienced in 2010 and most of 2011, showing that there were 76 closures in 2010 and 77 during the first eleven months of 2011.

Mr. David Molloy, Director of Public Safety and Chief of Police, testified that he is a 22-year employee of the City, and that he assumed operational control of the Fire Department in February, 2010. He said that after he became the Director, he served as a member of the City's negotiation team and that from his perspective, the proposal the City is making is necessary. He testified that the paid on-call system had worked for several decades, but that it is not good enough any longer, and it needs to change. He stated that he has every confidence the City's new proposed model will work even better. He said, also that the Department can do much better with a revised schedule with the

full-timers and part-timers working alongside of one another, responding to incidents from a station and not from one's home to the station and then to the scene. He too said that the current system began when Novi was a smaller town but the City is now much larger with service needs increasing daily. He said that by having fire fighters scheduled in the stations, the Department could provide a higher and more effective level of service. He pointed out that the City's population has grown exponentially and that growth had also occurred in commercial and retail establishments.

Director Molloy testified that in the 1980's the City began to provide a new service with respect to emergency medical responses and now a significant amount of the service is for medical emergencies. Moreover, he anticipates there will be additional medical emergency responses to handle in the future, noting that several new senior residential facilities are planned for the community which would result in several hundred new beds.

Director Molloy testified that under the current system, station closures had increased since he's been Director. He opined that management cannot allow subordinates to decide when they will or will not be working. In response to a question on direct examination as to whether the City was demanding that all POCs who have work obligations sign up [for when they would be available to work daytime, Monday to Friday], he said that was not the City's position and that there was still going to be ample opportunities for them to sign up for work on weekends and nights.

On cross-examination Director Molloy denied that the City was intending to convert from a blended department to an all-full-time department or to a public safety department. He agreed, however, that the original intent for employing auxiliary fire fighters was to have them fill-in during the daytime when full-time staff was absent. He also agreed with the cross-examiner's observation that full-time staff gets overtime pay but the auxiliary fire fighters do not earn overtime.

Furthermore, when asked on cross-examination why the City would not just hire more auxiliary fire

fighters and assign them to the day shift hours rather than force the POCs to come in and work the days, Director Molloy said POCs get opportunities to become auxiliary fire fighters and that operating with more auxiliary fire fighters may very well be the trend the City will follow.

Ms. Maria Reisner, a Union witness, testified that she is a POC who will have 15 years of service in January. She described what she does when she receives a tone-out. She explained that by the time she reports to the station, the duty crew will have already responded to the incident location, so she stands by at the station in order to provide additional assistance at the scene if it should be requested, or to back-fill and handle another run that might come in while the duty crew is still out on the call. She said that she has also served as part of a duty crew, and in that role they are first responders who go to the scene immediately after a call comes in.

Ms. Reisner testified that the Department requires structural fire responses to meet the MIOSHA standard of "two in/two out" and that she has never known an instance when the POCs had not fulfilled that obligation. Director Johnson, called by the City as a rebuttal witness on this point, testified during cross-examination, that in his 12 years with the Department he can recall two (2) instances when POCs failed to show up at a structural fire and the Department had to have other responders cover the call, but that in both cases the originally unresponsive crew finally did show up. In one part of his cross-examination he acknowledged that when a run comes in, there is no delay in responding because the duty crews designated to respond head to the scene immediately since they get toned-out at the same time that the POCs are toned-out [from their homes or wherever they may be at the moment].

Ms. Reisner also testified about what she does when she is toned-out for medical runs, saying that medical runs are what most of the tone-outs are for. She explained that while many medical

incidents do not require multiple fire crews, usually a Community EMS unit (a privately-operated EMS service), sometimes police responders, and maybe a supervisor, are present at the scene.

Ms. Reisner testified that she works with and knows about 90% to 95% of the Department's POCs, and that just about all of them have full-time jobs with another employer. (I observe that during one of his cross-examinations, Director Johnson acknowledged that most POCs have daytime jobs with other employers.)

Mr. Jerry Holtzman, a POC with 24 years of service, and also the Union President, testified that his primary employment is as a surgical physician's assistant at the DMC. He said that such employment will not allow him to work a daytime schedule for Novi. He described how the duties of his job has many uncertainties about how long he may need to remain in attendance during a surgery since sometimes those procedures extend beyond the time they are expected to end.

Mr. Holtzman also testified that he is a medical member of a national disaster response team and may be called to respond on short notice. The order to respond comes from the U.S. Department of Health and Human Services and he has 12 hours to meet up with his fellow team members. He said an employer's obligation to accommodate a team member's departure notice is essentially the same as an employer's obligation to release a National Guardsman or military Reservist upon their activation to duty, and he does not always know how long he may have to remain in a location to which he gets sent.

Union Exhibit 68 contains the signatures of 49 POCs who claim they would not be able to work Monday through Friday daytime schedules. Mr. Holtzman, who was one of the signers, testified that he created the signature sheets that make up the exhibit. There is one sheet for each of the four (4) fire stations and the signatures that are on them are of POCs assigned to that station. In response to questioning on cross-examination, he said that he did not conduct any inquiries with the

signers about the nature of their unavailability. He testified that he believed that most POCs have primary daytime employment elsewhere, but he was not claiming that all of the 48 other signatures on the sheets meant that employment obligations were the reasons for their unavailability. He said the reasons they are claiming they are unavailable could be for other obligations such as family, kids, and grandkids.

Mr. Holtzman testified about an initiative that was put before the voters of Novi in 2000, in which they were asked if they would like to switch to an all full-time fire department and eliminate the paid-on-call services. He said the vote was 80% against having a totally full-time Department. He further testified that about three years ago, the City conducted a poll of the citizens about their assessment of various City services, and that the Fire Department received a 97% satisfaction rating, the highest for all City services.

Director Molloy testified that the City had analyzed a lot of data that showed them that quicker turnout times and reduction in response times occur when the staff is actually positioned in the station. Directors Johnson and Molloy testified that they want service improvement, and each left no doubt that they regard the use of the tone-out system as preventing faster responses.

During his testimony, Director Johnson also referred to the Department's redundancy capability. I find that the record shows there has been adequate redundancy in response capability at all times and that this redundancy has been used effectively to assure that an alternative duty crew is promptly dispatched if a first-dispatched unit cannot respond immediately. Simply put, on this point there is absolutely no part of the record that claims or implies that the Department has waited for POCs to arrive at the station before the first responding units could be sent to an emergency scene.

Directors Johnson and Molloy testified that they expect their 12-hour block schedules will relieve the excessive stations' closures dilemma. While the opinions of the Directors are due respect

about what effect the number of closures are having on operations, I find that the most important thing to observe is that the calls are getting answered in a timely manner virtually every time. This is probably because of another duty crew immediately being sent from another fire station due to response redundancy that is great enough to keep the performance standard high despite whatever unexpected station closures occurred. Nothing in the record suggests the station closures situation is expected to get worse.

I observe that City Exhibit 12 is the current collective bargaining agreement between the City of Novi and Novi Fire Fighters Union, Local No. 3232, AFL-CIO, the labor contract covering the FPOs and other full-time fire staff. Director Johnson testified that a provision of that contract will allow the FPOs to switch to a new 42-hour work week schedule that supervisors are already working under, if the POCs and auxiliaries become subject to a similar schedule, i.e., the schedule being proposed in the City's LOS. This point demonstrates that the City is trying to have consistent work scheduling among all of its fire fighters, and this comparison with the work schedules for other Novi fire fighters is one of those Section 9 "other factors" that would be considered relevant during voluntary collective bargaining. This point favors the City's LOS.

The Union's LOS will retain the current tone-out practice for POCs and adds language for 12-hour shifts for auxiliary fire fighters, which is essentially what they usually work now. The Union's LOS does not, however, authorize auxiliary fire fighters to be scheduled to 6-hour shifts like the City's LOS specifically proposes to permit.

The Union strongly objected to the part of the City's LOS that would authorize the Department to assign POCs to a 6-hour schedule. They argue that it is not explained in the record, and the comparison exhibits show that no comparables or other Novi bargaining units use 6-hour schedules.

The Union expressed concern that if management engages in such scheduling, it will result in some part-timers being unable to continue in their employment with Novi.

Director Johnson, when testifying in conjunction with the introduction of City Exhibit 65, which was an example of the proposed scheduling pattern the City would be able to follow if its LOS is awarded, offered a brief explanation of when 6-hour blocks would be used on Saturdays and Sundays from 6:00 p.m. to 12:00 a.m. at Station 2. Also, an apparent reference to those specific 6-hour blocks of time was made by Ms. Reisner when she was testifying about night shifts and weekend coverage at Station 1 and Station 2. The point is, it may well be that 6-hour blocks would only be used at those stations on Saturday and Sunday nights, but because the City LOS gives management the unfettered right to assign them at any time and on any day, this is apparently the main reason the Union so strongly opposes their use. The Union cannot be sure, nor can the panel, that 6-hour scheduling of auxiliary fire fighters will never become a major scheduling problem for the Union membership. In light of the limited explanation provided by the Department, I find that the inclusion of the 6-hour blocks of time weighs heavily against awarding the City LOS.

The lawful authority of the employer is not called into question and no stipulations of the parties apply to this issue. Comparisons of scheduling practices in the comparable communities was done by examining City Exhibit 62, and it shows a sufficiently mixed practice to conclude that the practices do not favor either party's LOS over the other.

I find that the City's proposed change would come at too great a cost in damage to continuity and stability of employment in the work place for too little prospect of achieving improvement in Department operations. I have this opinion because I credit the virtually uncontested testimony of Ms. Reisner, plus Director Johnson's consistent testimony about simultaneous tone-outs of duty crews and POCs, as being representative of what typically happens when the Department is

responding to calls for service. Such leads me to find that I cannot agree with the Directors' conclusions about faster response times and improved services they expect to be realized. This is because, as it currently operates, the Department is already having duty crew emergency first responders from one or more fire stations heading directly to the incident location immediately after a tone-out. The fact that POCs are probably still in the process of responding to their stations at the very time those roll-outs are occurring has absolutely no effect on how quickly those first duty crews arrive at the emergency scene.

No convincing negative allegations have been made about the quality of the emergency services that are performed once the duty crew arrives at the scene. The bottom line is that despite a couple of vague claims made to the contrary, I do not see in this record any convincing evidence to conclude that the Fire Department is likely to experience an improvement in its services merely as a result of assigning POCs to 12-hour schedules. The far superior record is to the contrary. None of these observations are intended to doubt the sincerity of the Directors' aims and beliefs about improving service, but merely disagrees that they would be realized.

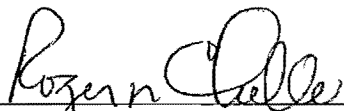
I find that based on the broad scheduling authority management would gain, the possibility exists that some POCs could be scheduled to work when it will prove to be a major problem for them, notwithstanding that Director Johnson testified that the City's proposal will actually open up daytime work opportunities not currently available to POCs based on a potential work schedule that would have 91 work shifts compared to the current 88. Placing the employees and the employer in this potential head-butting posture seems unnecessary when it is almost certain no service improvement will be realized.

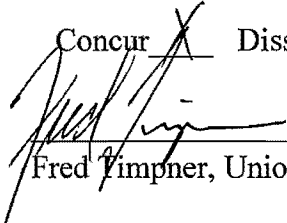
If the POCs were to lose their "only nighttimes and weekends" limitation on work hours, plus the opportunity to temporarily take themselves out-of-service, their future continuation in the

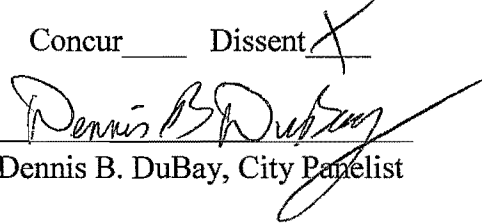
employment relationship would be seriously threatened by the potential of being assigned to a daytime, Monday to Friday, schedule that would conflict with their main employment. Therefore, I find that if the POCs and auxiliary fire fighters are forced under the new management scheduling authority it will cause too great damage to the continuity and stability of employment within the Department.

There is no obvious measurable difference in likely direct costs between the two LOSs presented for this issue and any difference in incidental costs will be minor and therefore the ability to pay factor does not favor one LOS over the other LOS.

In the end, I find that some parts of the record favored the City' LOS and some parts favored the Union's LOS, but overall the Union's LOS more nearly complies with the factors set forth in Section 9 of the Act.

Chairperson  holds: **Union LOS on City Issue 2 is awarded.**
Roger N. Cheek

Concur Dissent

Fred Timpner, Union Panelist

Concur Dissent

Dennis B. DuBay, City Panelist

Union Issue 2: Wages

Union LOS: "Effective July 1, 2009--0%"

City LOS: "Year 1 -- July 1, 2009 to June 30, 2010 -- Status quo (0%)"

DECISION on Union Issue 2: The LOSs agree; no award is required.

Union Issue 3: Wages

Union LOS: "Effective July 1, 2010--0%"

City LOS: "Year 2 -- July 1, 2010 to June 30, 2011 -- Status quo (0%)"

DECISION on Union Issue 3: The LOSs agree; no award is required.

Union Issue 4: Wages

Union LOS: "Effective July 1, 2011--0%"

City LOS: "Year 3 -- July 1, 2011 to June 30, 2012 -- Status quo (0%)"*

DECISION on Union Issue 4: The LOSs agree; no award is required.

Union Issue 5: Wages

Union LOS: "Effective the date of the award: --2%"

City LOS: *"*Year 3 -- July 1, 2011 to June 30, 2012 -- Status quo (0%)*"

Ms. Kathy Smith-Roy, the City's Finance Director/Treasurer testified that the City's revenues come mainly from property taxes. Such collections have generally fallen during the last few years consistent with the well-established nationwide and Metropolitan Detroit reductions in real estate values and general turndown in the economy. Ms. Smith-Roy said, however, that the drops in property values are slowing down and things are expected to level off in 2013-2014. Collections in the current fiscal year are at 2005 levels which are about \$2 million dollars less than last year. The millage rate is capped out, restricted by the Headlee Amendment formula and the Proposal A restriction on tax increases due to changes in assessed values, plus currently the State-equalized value and the City's assessed taxable value are virtually identical. Finally, due to the Headlee Amendment, the property tax rate cannot be increased without a vote of the people.

Ms. Smith-Roy testified that State-shared revenues are another significant part of the City's revenues, and those revenues are also dependent in great part on the same economic factors that have reduced Novi's property tax collections. The amounts received from the State have varied from year to year but have generally decreased since

2001. The amount received in 2010 was down 11% from 2009 but a \$3.7 million dollar increase was received in 2011, which Ms. Smith-Roy attributes to population increase. She explained that potential legislation in Lansing would eliminate the State's personal property tax and create an additional 7% reduction in taxable value problem for the City. She observed, however, that there has been some talk about how to replace that loss.

Ms. Smith-Roy testified that there is a police and fire millage, but it does not cover all of those two Departments' operating costs, and currently about \$11.5 million general fund dollars are required to fill the gap. She also pointed out that about 84.1% of the City's expenditures are for personnel costs, which includes about \$1 million for POCs and auxiliary fire fighters.

The City of Novi has a general fund balance that is used to solve anticipated cash flow challenges that customarily arise during certain times each year, and it also serves as a set-aside of rainy-day funds. Ms. Smith-Roy observed that the Government Finance Officers Association (GFOA) [an association of public officials and finance officers to promote excellence in government finance] recommends keeping a general fund balance to cover two months of expenditures, i.e., about 16.7% of customary total yearly expenditures. She testified that given the economic times, Novi officials believe the general fund balance should be higher, and City Exhibit 53 shows that the City Council adopted a policy on January 8, 2011, to increase the amount of the reserves to the 18% to 22% range, up from Novi's previous 14% to 18% range. Ms. Smith-Roy said the City dipped into the fund balance in 2010 to balance its budget, observing that it was one of the first years the City had to do that. For 2011, the City was able to add to the general fund balance, thereby leaving the current balance about 21.68% above budgeted

expenditures at \$11.4 million. Her testimony was that recent rises in the fund balance have been accomplished more with cuts in expenditures than the modest rise in revenues. She also said there had been cost reductions in most areas in 2010, including some layoffs and other types of terminations.

Ms. Smith-Roy testified that because of the current state of the economy and resulting unpredictable declines in taxable values, other government jurisdictions in Michigan are planning to have fund balances as high as 40% to 50%.

On cross-examination, Ms. Smith Roy said that none of the City's pension costs or OPEB costs are attributable to the POCs and the auxiliary fire fighters. When asked if this group of employees, among all of the organized workers, is the one that has the lowest labor costs, Ms. Smith-Roy testified that, as for benefits, it was absolutely the lowest. (These part-time employees only receive hourly wages and not any traditional benefits, overtime pay, paid off-time, etc.) As for hourly rates, she said she did not know since one [unidentified] group could be lower. She said that a 1% increase in compensation for this unit would cost approximately \$10,000, plus or minus a couple thousand dollars. City Exhibit 97 shows Novi's hourly rate to be \$18.81 and therefore third highest among the comparables, which the City characterizes as very favorable. The bottom line of the City's argument against this raise is that the budget cannot sustain the Union's proposed increases.

The Union brief argues that budgets are merely plans based on a belief in what is likely to happen in the future and thus the estimated revenue originally planned for use in one way could actually be switched to pay wage increases for their membership. Although the Union is, of course, correct that unassigned funds in a budget can be used

for a purpose different than what was originally planned, complying with carefully considered and constructed budget documents helps to avoid such things as later sudden cuts in services, unexpected employee layoffs, hastened new attempts to raise revenues, and numbers of other possible moves designed to balance a government's finances. Almost all such unplanned modifications lead to some stress in the workplace and in the community. I therefore find that avoiding the occurrence of such upheavals in the government's operations and stress in the community is a good thing and in the best interest and welfare of the public.

I find that the City took a reasonable account of recent economic trends, existing financial conditions, and potential financial challenges in developing its budget. The City presented budgetary documents that shows it has used five-year projections to help it have sufficient time to plan for how to deal with what it anticipates is going to occur.

In deciding this wages issue, the budget-formation steps described in the preceding paragraphs has significance when applying the Section 9 factor requiring consideration of the financial ability of the unit of government to meet the cost increases called for in the LOS. The other Section 9 factors to particularly consider when deciding this type of issue, includes the interest and welfare of the public, the requirement to compare the Novi wages with those being paid in the comparable communities, and the requirement to consider overall compensation. All are a necessary part of the panel's decision-making.

The Union argues that the City is financially able to pay their proposed raises. They observe that it's been more than three years since the employees received their last raise, which was a 1% increase, and are now seeking a bit more than 3% in raises (the

approximate total of both this issue and Union Issue 6) which has a total cost of about \$30,000 which is about 0.6% of the Fire Department budget. The Union presented a City payroll document as evidence of bigger raises that were given to some management and supervisory employees in the interim since their last raise. A specific example they focused on was what they said was a 6.8% raise for the HR Director. That director, however, offered rebuttal testimony that the pay record the Union used was inaccurate. The Union also argued that because the part-time fire fighters receive the same basic training as the full-time fire fighters and perform the same duties on emergency runs, then they should get higher wages since currently their wage rate is about 25% less than what the full-time staff receives.¹

I find that these two points are not persuasive. First, without having more facts about the reasons for the differences in wage increase percentages awarded to considerably different categories of employees that cannot reasonably be claimed as “internal comparables”, and which were awarded in different years, those are basically unrelated facts. As for the wide hourly pay gap between the full-time and part-time fire fighters, the record suggests that a sizeable difference has always existed. In other words, there is probably some unidentified historical basis for why it got started, and as such, I do not find that the gap is valid as a reason to go above the budget in these proven tough economic times.

¹ This percentage amount is taken from the Union’s brief but is unexplainable since that would mean a resulting calculated rate of \$23.53 for the full time fire-fighters when the uncontested record created through the testimony of HR Director Gronlund-Fox is that the 2009 rate for full-timers was \$25.11 and the current rate through June 30, 2012, is \$28.696.

Finally, I conducted the required comparison of Novi wages with wages in the comparable communities. Focusing on their respective originally proposed sets of comparables, each party submitted an exhibit listing current hourly rates for part-time fire fighters (Union Exhibit 96 and City Exhibit 97).² I loaded data from both exhibits into an Excel file and compared them in three (3) ways. First, ranking all 21 communities from highest to lowest, Novi was 17th highest paid. Second, computing the simple average of all the hourly rates resulted in \$16.89, compared to \$18.81 now being paid by Novi. Third, in an effort to remove unfair biases, I removed the two outliers, i.e., the abnormally lowest hourly rate and the abnormally highest hourly rate, and recomputed the average, with the result remaining about the same at \$16.91, again as compared to \$18.81 now being paid in Novi. My computation shows this to be about a 10% advantage for the Novi part-timers. This point does not favor the Union's LOS.

In sum, the comparables show the Novi part-time fire fighters, while not the highest paid nor the lowest paid, receive pay that I regard as in the competitive-to-high range compared to the majority of the comparable communities. This is a fact that does not favor awarding a raise in these strained economic times when the interest and welfare of the public strongly favors cost-cutting and funds preservation.

This issue was difficult to decide because the total dollar amount of the raise is quite small and I am not unmindful that the general fund balance was increased in the last budget and now is just 0.32% below the maximum of the City Council's targeted range.

² The Union exhibit included 10 communities, i.e., its six (6) proposed comparables, the three (3) agreed-upon, and Novi. An hourly rate is listed for all of those communities except Northville where "not available" is indicated. The City exhibit included all 21 communities, i.e., its 11 proposed comparables, the three (3) agreed-upon, the nine (9) Union, and Novi. An hourly rate is listed for all of the communities, including Northville. Only one (1) Union comparable rate listed on each exhibit did not match, so the rate the Union listed was used.

Regardless, to pay it requires exceeding the budget and the membership is already receiving a notably higher wage rate than the average wage rate paid in the comparable communities. If they do not get this raise they will continue to be above that comparable community average and will most likely continue to remain above it even if some of the other communities grant raises in the foreseeable future. In the end, I conclude that the City LOS more nearly complies with the factors set forth in Section 9 of the Act.

Chairperson Roger N. Cheek holds: **City LOS on Union Issue 5 is awarded.**
Roger N. Cheek

Concur _____ Dissent X
Fred Timpner
Fred Timpner, Union Panelist

Concur X Dissent _____
Dennis B. DuBay
Dennis B. DuBay, City Panelist

Union Issue 6: Wages

Union LOS: "Effective July 1, 2012--1%"

City LOS: "Year 4 -- July 1, 2012 to June 30, 2013 -- Status quo (0%)"

The part-timers in Novi already have an hourly wage rate above the average paid in the comparable communities. The evidentiary record and my analysis applicable to Union Issue 5 are fully adopted for this issue.

Chairperson Roger N. Cheek holds: **City LOS on Union Issue 6 is awarded.**
Roger N. Cheek

Concur _____ Dissent X
Fred Timpner
Fred Timpner, Union Panelist

Concur X Dissent _____
Dennis B. DuBay
Dennis B. DuBay, City Panelist

City Issue 3: Trading Work Shifts

Article 6. Attendance. 3. Call Outs and Responses

City LOS:

ADD the following language as new provision to Article 6, Section 3.

“E. Subject to department staffing requirements, employees who have a verifiable work obligation shall be permitted to trade previously scheduled and committed shifts (in 12 or 6-hour increments) subject to advance approval (minimum 4 hours prior to the start of the shift) of the Director of Public Safety, or his/her designee.”

Union LOS:

ADD the following language as a new provision to Article 6, Section 3.

“E. Employees who sign up for a shift shall be able to switch shifts with another employee as long as it complies with the department's current established procedure. In the case of an emergency the scheduled employee shall notify the shift supervisor of the unavailability to work.”

At the time the evidentiary record was made, the City was proposing to completely deny part-time fire fighters the permission to switch shifts with another employee. Director Johnson testified that the reason the City was making that proposal was because there had been a number of people who agreed to a switch and then did not report at all as promised or did not report on time. He said a policy was started a few years ago to allow trading by the POCs so long as both persons sign a paper that is then given to the supervisor. He also testified that the full-time fire fighters are permitted to trade shifts, but the Department had not experienced the same type of problems they had with the POCs trading. When asked if this proposal was made in conjunction with the City proposal to go to shifts, he replied that it was.

The City's LOS allows part-timers to trade shifts, but the trade must be subject to department staffing requirements, has to be for a verifiable work obligation reason, and needs to

be approved by the Director of Public Safety a minimum of four (4) hours in advance of the start of the shift. The City's brief said that this proposal, like the proposed move to shifts, is aimed at providing stability to the schedule and assuring that the appropriate resources are available on each shift. I find that the City's interest in putting some conditions on the POCs' practice of trading shifts is a legitimate matter in its goal to improve the Department's operations and benefit the interest and welfare of the public.

The record does not indicate the number of times the employees did not honor their trades or reported to the job late. Regardless, I find that such breaches are serious matters that should be a legitimate subject for the progressive discipline procedure. After all, any fire department's operations are likely to fall apart when staff does not report to work when expected.

City Exhibit 70 shows that a majority of the comparable communities that use paid-on-call employees allow them to trade shifts, although some explanatory limiting comments were sometimes provided by the preparer of the exhibit.

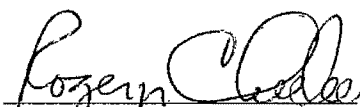
The Union argued that the City's limiting conditions are unfair and create a discriminatory double standard because the full-timers are not subject to them. Instead, the Union proposed that the existing mutually-accepted current practice be retained in the new contract without any of the City's limiting conditions.

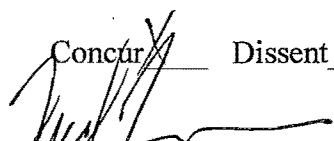
Particularly troubling to the Union was that the City's proposal did not allow for part-timers to get authorized time off to deal with what they termed "life's situations." I find this point to be very persuasive since virtually all reasonable people will agree that sometimes very important things arise in one's life with only a short notice. So it seems most unreasonable to me that an employer should rigidly subject an employee to choosing between possibly losing his or her part-time job or missing out on attending to an important life event that did not arise until

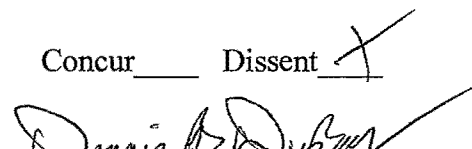
after the employee's work schedule was set. I therefore find that the current practice of allowing the "double-signature and notice to supervisor" trades of shifts is a matter of great value to part-time employees, and to have it eliminated from their conditions of employment and work rules, would substantially negatively impact the continuity and stability of employment in the Department. The outcome of such consideration does not favor the City's LOS to eliminate the current practice.

I find that there is no obvious measurable difference in likely direct costs between the two LOSs presented for this issue and any difference in incidental costs will be minor and therefore the ability to pay factor does not favor one LOS over the other LOS.

Using my best judgment of everything before me, I conclude that the Union's LOS more nearly complies with the factors set forth in Section 9.

Chairperson  holds: **Union LOS on City Issue 3 is awarded.**
Roger N. Check

Concur Dissent

Fred Timpner, Union Panelist

Concur Dissent

Dennis B. DuBay, City Panelist

City Issue 6 Hours of Work

Article 12. Hours of Work. Section 2.

City LOS:

REVISE language of Article 12, Section 2 and ADD a provision as a NEW Section 3, as follows:

"Section 2.

"The Article shall in no way be construed as a guarantee by the City of any amount of *shifts or hours of work* in any period."

"Section 3.

"The work week shall cover a 24 hour period, seven days per week and consist of two 12 hour block shifts, or a combination of 12-hour and/or 6-hour shifts. (6:00 a.m. to 6:00 p.m. and 6:00 p.m. to 6:00 a.m.) Sunday through Saturday. Shift schedule picks will be posted at least three months in advance. All requests for a scheduled shift must be submitted within 30 days. In the event more than one paid-on-call or auxiliary requests the same shift, preference will be given to the most senior person. No employee may work more than three (3) scheduled shifts each week. Time in excess of the regular shift hours shall be calculated in one-quarter (1/4) increments including alarm pay and training."

Union LOS:

REVISE language of Article 12, Section 2 and ADD a provision as a NEW Section 3, as follows:

"Section 2.

"The Article shall in no way be construed as a guarantee by the City of any amount of *shifts or hours of work* in any period of time."

"Section 3.

"Paid-on-Call schedules consist of 12-hour shifts, 6 p.m. to 6 a.m. Monday through Thursday and Friday 6 p.m. through Monday 6 a.m.

"Auxiliary Schedules consist of two 12-hour shifts from 6 a.m. to 6 p.m. and 6 a.m. to 6 p.m. seven days per week (Sunday thru Saturday).

"Shift schedule picks shall be posted at least three months in advance. All requests for a scheduled shift must be submitted within 30 days of the posting. In the event more than one employee requests the same shift, preference shall be given to the employee with the most seniority.

"Time in excess of the regular shift hours shall be calculated in one-quarter (1/4) increments."

Union LOS:

REVISE language of Article 13, Section 9, as follows:

"Departmental training shall be paid at the employee's regular hourly rate. Time shall be calculated in one-quarter (1/4) increments."

The matters under consideration in this issue are virtually identical to those encountered in making the award for City Issue 2. The City wants to end the current POC tone-out practice and

gain the right, based on Departmental needs, to assign POCs to 12-hour work schedules standing-by in fire stations on any day of the week and during either a nighttime 12-hour shift (6:00 p.m. to 6:00 a.m.) or a daytime 12-hour shift (6:00 a.m. to 6:00 p.m.). The City did not get awarded its LOS in City Issue 2.

If the City is to be awarded its LOS on this issue, it requires succeeding in an analysis of the same main considerations that faced the panel in deciding City Issue 2. As with City Issue 2, the City's proposal does not change the basic existing work schedules of auxiliary fire fighters but would subject the POCs to possible changes in the hours and ways they would have to work that 90% of the POCs would not be able to satisfy. Director Johnson testified mightily, and I believe, very sincerely that through the use of advance notifications to the Department of their availability, the opportunity will exist to avoid assigning a POC to a schedule that would conflict with his or her main full-time job. He said he was confident he would be able to avoid unacceptable scheduling conflicts. Yet, under fairly insistent cross-examination, he was simply not able to say that a forced scheduling conflict with an outside employer would never happen. He testified that if the need for additional auxiliary fire fighters or POCs becomes apparent, more could be hired.

Another notable change is that the employee would not be permitted to work more than three (3) scheduled shifts per week.


The Union's LOS provides for the POCs to work only during the same timeframes they have traditionally worked. Importantly, management would not be able to forcibly schedule POCs to work daytime hours, Monday through Friday. On the other hand, the Union LOS includes work schedules for auxiliary fire fighters that would permit them to work in the 12-hour work schedules the City wants to implement.

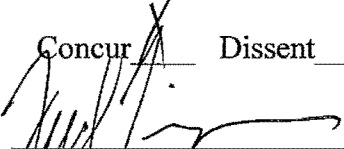
Comparisons of work patterns for part-time employees in the comparable communities shows there is a substantial mix and that no particular pattern sticks out as dominant. I therefore find that this factor does not favor one party's LOS over the other party's LOS.

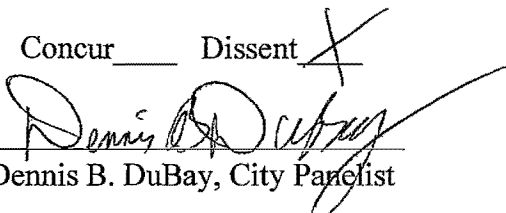
I find that there is no obvious measurable difference in likely direct costs between the two LOSs presented for this issue and any difference in incidental costs will be minor and therefore the ability to pay factor does not favor one LOS over the other LOS.

This issue concerns details about how the City would have administered aspects of the new work scheduling authority it sought in City Issue 2, therefore, much of the analysis and findings applicable to that issue also applies here.

I conclude that the Union's LOS more nearly complies with the factors set forth in Section 9 of the Act.

Chairperson  holds: **Union LOS on City Issue 6 is awarded.**
Roger N. Cheek

Concur Dissent

Fred Timpane, Union Panelist

Concur Dissent

Dennis B. DuBay, City Panelist

City Issue 7: Sleeping

Article 12. Hours of Work.

City LOS:

ADD a new Section 4 to provide as follows:

"Sleeping while on duty is not permitted."

Union LOS:

ADD a new Section 4 to provide as follows:

"The current practice of allowing employees of the bargaining unit appropriate rest periods, including sleep, shall be continued."

Currently, when auxiliary fire fighters and POCs are working they have the right to sleep on duty. The City, through the testimony of Director Johnson, is proposing to prohibit sleeping, saying that the employees should be functioning, working, and being productive.

He explained that since the part-timers will be able to designate their scheduling availability then they should be able to get adequate rest before reporting to work. He observed that the full-time Captains and Lieutenants are already working the same 12-hour shift schedules the part-time employees would work and that these full-time command officers are no longer permitted to sleep while on the schedule. He further stated that when the FPOs go onto the 42-hour work week schedule they too will be prohibited from sleeping on duty.

Director Johnson claimed that the overnight sleeping opportunities the part-time employees now have are typically interrupted 4 to 6 times on average. On that point, Union rebuttal witness Mr. Holtzman testified that he has experienced far less interruptions, specifically noting that the last two (2) times he worked overnight, he was disturbed once on one occasion, and not at all on the other. He said that having more calls was something that occurred on rare occasions.

The Union argued in its brief that to deny them the opportunity to continue having the right to sleep during the night is not only unfair, but is unsafe and hazardous to the health and safety of the fire fighter and the community they serve. They point out that

the record shows that the City knows that 90% of the POCs have regular daytime jobs and that they often go directly to those employments when they get off POC tone-outs or duty-crew assignments.

The Union argued that the City does not offer any testimony that sleeping has caused a problem with the safe operation of the Department and asserted that the last thing that is needed in an emergency is a sleep-deprived EMT attending to a person requiring medical attention.

Union Exhibits 84 and 85 are reports about the effects of interfering with circadian rhythms of fire fighters, and particularly EMTs. One report was dated 2010 from the National Institutes of Health, and the other is dated 2007 from an International Fire Chief's Association-sponsored Pittsburgh, Pennsylvania college and medical center study. Both reports are consistent with the fairly well-known "common science" of circadian rhythms which basically holds that sleeping during the middle of the night is intrinsically important to the human body and when such sleep is missed, the body suffers wear and tear that cannot be easily countered with supposed make-up sleep later in the day since daytime sleep is more fractious and inferior for the purpose of refreshing the body. The conclusions of both reports is that nighttime EMT work creates substantial sleep-deprivation challenges for EMTs, often leaving them less alert, subject to performing their precise tasks less effectively, and likely to make more mistakes.

Of course, to some extent, EMT duties will always have to be performed during the middle of the night so the effects of circadian rhythms will always be a part of the job. Nonetheless, the point seems to have been reasonably made that whenever feasible, EMTs ought to be allowed to sleep during the middle of the night, even if that sleep is

subject to interruptions. And when you add to that, the knowledge that the EMT working at night was likely to have been up and working at another job during the day, concerns about denying him or her potential sleep periods during the middle of the night are multiplied.

Although the City offered the example of the full-time Captains and Lieutenants not being allowed to sleep on duty since January 1, 2011, this was not persuasive to me. This is because I am fairly certain those two (2) ranks have a different set of duties than the fire fighters, with an important difference being that they probably are not expected to be regularly laying hands on patients or victims needing medical attention at a scene, when alertness and attention to details is critical and mistakes could be life-damaging or life-ending. Also, those full-time command officers probably do not have regular full-time jobs with another employer so they are more likely to arrive at work sufficiently well-rested to work through the night without experiencing as many negative effects as the POCs would. The fact that full-time FPOs will also not be able to sleep when they begin working throughout the night, is also not persuasive for the same reasons cited for the full-time Lieutenants and Captains. As a group, full-timers will generally not be reporting to work after either coming from a regularly-recurring daytime job or planning to go to such a job soon after they get off of their 12-hour, no-sleeping, Novi fire fighter job.

I find also that the record does not show that Department services were measurably slower despite whatever sleep the POCs were able to get in the past. Still, the Department is trying to improve service delivery and argues that if its fire fighters did not sleep during times when they are free of emergency calls, then they would be productive.

I find that this is a proper goal for management to have, but the problem is there are substantial negative costs to be paid for pursuing this additional productivity.

First, I anticipate the Department will likely lose the services of veteran POCs who will hold back and not acknowledge their availability for as many tone-out periods or duty crew work opportunities, while other veteran employees may find they must quit all together rather than live with periods of being greatly sleep-deprived. In my estimation, it is clearly not realistic to assume rational POCs will risk their full-time jobs, their health, and their home life, trying to stay awake, probably at least 22 hours or more without sleep, in order to cover both jobs. Quitting the part-time employment is the more likely life-pattern-changing decision they would make.

Secondly, it is feasible that denial of these middle-of-the-night sleeping opportunities could actually result in the opposite result of one of the City's objectives as the quality of service delivery might be worsened because of lesser quality medical attention being delivered from EMTs arriving on the scene with a greater degree of dyssynchronosis from more circadian rhythm interruptions than otherwise would have been the case had they been allowed to sleep when they were not busy on a call.

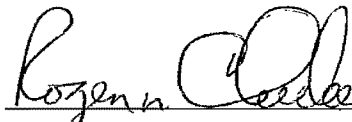
I find that there is no obvious measurable difference in likely direct costs between the two LOSs presented for this issue and any difference in incidental costs will be minor and therefore the ability to pay factor does not favor one LOS over the other LOS.

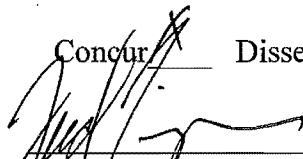
Comparison to other comparable communities does not favor either party as the practices are quite mixed in the various communities.

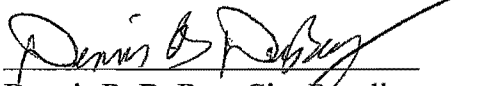
In the end, I find that the interest and welfare of the public is not likely to be benefitted, and actually could be harmed, if the City's LOS was to be awarded. On the

other hand, I find that the Union's LOS will continue a mutually accepted practice that has been in place a long time, has not been shown to harm the Department or the public, nor is it expected to change things for the worse in the future. I also find this to be a crucial work condition of this part-time employment, and its loss will negatively impact continuity and stability in employment in the Department.

In conclude that the Union LOS more nearly complies with the Section 9 factors of the *Act*.

Chairperson  holds: **Union LOS on City Issue 7 is awarded.**
Roger N. Cheek

Concur Dissent

Fred Timmer, Union Panelist

Concur Dissent

Dennis B. DuBay, City Panelist

City Issue 4 Promotions Eligibility and Exams

Article 11. Promotions. Section 1.

City LOS:

REVISE contract provision to read as follows:

“Promotional positions within the bargaining unit shall be posted at the station with the vacancy for a period of seven (7) business days. ***To be eligible to sit for a promotional exam,*** Candidates must have at least four (4) years ***completed a minimum of 8,400 hours of on-the-job experience with the City of Novi*** in the rank just below that being applied for; provided the next lower rank is filled and there are at least three (3) candidates. ~~If there are not at least three (3) candidates, then the next lowest rank shall also be included. If no candidates meet the four (4) years in rank requirement, the requirement may be waived.”~~

Union LOS:

RETAIN current contract provision.

Director Johnson testified that the City wants to have a definitive promotional system for the part-time employees that will require them to have a minimum number of hours worked and pass a competitive written examination. He said that currently promotions of part-time fire fighters are based on being in the Department workforce for a minimum four (4) years and then facing an oral board with the administrative staff of the Department. He stated that a person has to be engaged in their job [not excessively away from actually performing duties] if they are going to be proficient in their work, otherwise they might perform in an unsafe manner. Under the proposal, the employee would have to put in 8,400 hours of actual on-the-job experience which he said could come from being toned-out, including the related stand-by time, while working on a shift, and when participating in training.

City Exhibit 73 shows the promotional process for on-call members in the comparable communities. Nine (9) of them appear to include some form of promotional testing rather than relying strictly on a non-test assessment of qualifications.

On cross-examination, Director Johnson explained that the current oral board procedure ranks the candidates and submits the results to the Director of Public Safety who can then accept or reject the top-ranked person. He said that the new procedure would include using a 33% written exam component, a 33% oral board component, and the balance would include consideration of seniority. He said the procedure contained in the full-timers contract would be a guide. He also said that the full-time and part-time Lieutenants would remain in their separate roles and would not compete for promotions against one another.

In its brief, the Union argues that what the employer is seeking will be almost impossible for a part-timer to achieve. They point out that it will take 13 years to first try for a promotion if one shift is worked per week and 4½ years if the maximum of three (3) shifts are worked per

week. Using what it characterizes as a more likely working pattern of some shifts and tone-out periods, the Union speculates that the 8,400 hours of work would be achieved in about 8 years. The Union also observes that if the Department is concerned that any POC is not staying engaged with his or her work it would be because the POC was not fulfilling the minimum 40% response rule which the Department clearly has the right to deal with through the application of corrective discipline. The Union also observes that full-time fire fighters are scheduled to work about 8,400 hours in four (4) years, just about equal to the part-timers' current promotional qualification minimum period. They point out that the full-timers do not always stay "engaged in their work" during that time due to the various forms of off-time they use, e.g., vacation, sick, personal, etc.

As has been pointed out in other places in this report, the performance of auxiliary fire fighters, POCs, and the part-time command officers, has not been the subject of any credible record of deficiencies or complaints about their service. This is not a case of notable inadequacies in performances by part-time command officers that are calling for changes in order to benefit the public's safety and welfare. Qualifying to take promotional exams after four (4) years, and presumably, in some cases, not having amassed at least 8,400 hours of actual work during that time has nonetheless been capable of giving the Department successful candidates that have performed their new higher duties satisfactorily.

From the perspective of management, it seems to me irrefutable that the interest and welfare of the public is best served by a promotional process that is fair and objective and results in the selection of persons who will best be able to adequately perform all the duties called for in the higher position. Furthermore, I am of the opinion that so long as management's requirements for getting promoted are not so strenuous as to be judged

unreasonable and are practical enough to seem quite capable of identifying persons who are probably the most suited for the higher job, then management's judgment of what it will require of applicants is to be carefully considered.

Of course, on the other hand, from the perspective of the employees, a promotional system should be perceived as fair by the employees who are subject to it. The continuity and stability in employment in the workforce is affected by such perceptions. Employees might give up trying to excel if they feel it is futile to try to get promoted or they may decide to quit working altogether in what they view as a dead-end job. Either of those results would be harmful to the overall quality of performance that will come from the affected workforce and thus could harm the welfare and interest of the public.

Although employees may be disappointed by the likely lengthening of the average amount of time they will need to be on the job before they become eligible to sit for a promotion and may feel that the impact of the change is more harsh on part-timers when compared to the impact the change will have on the full-time fire fighters, I am of the opinion that the change does not rise to the level of being judged unreasonable. I am so convinced, partly by the employment histories of the several POCs who testified on the record, that the likely 8 years the Union estimates will be needed to sit for an exam, seems to be an amount of longevity that many POCs and auxiliary fire fighters exceed in their careers, therefore, it is not so lengthy as to be a practical bar to advancing in rank.

I find that there is no obvious measurable difference in likely direct costs between the two LOSs presented for this issue and any difference in incidental costs will be minor and therefore the ability to pay factor does not favor one LOS over the other LOS.

Considering everything, I conclude that the City's LOS more nearly complies with the Section 9, factors of the Act.

Chairperson Roger N. Cheek holds: **City LOS on City Issue 4 is awarded.**
Roger N. Cheek

Concur _____ Dissent X
Fred Timppner
Fred Timppner, Union Panelist

Concur X Dissent _____
Dennis B. DuBay
Dennis B. DuBay, City Panelist

City Issue 5: Competitive Promotional Process

Article 11. Promotions. Section 1.

City LOS:

ADD following language as new provision to Article 11, Section 1.

"Fire fighters, who currently hold the title of Lieutenant or Captain, as well as future candidates, must successfully pass a competitive promotional process and qualifications including BEMT, Fire Officer I, II and III. If any incumbent should not successfully pass the above described process in total, they shall be reclassified with the rank of Sergeant. Incumbents shall have until June 30, 2012 to meet these requirements. A minimum score of 70% shall be required for passing the written portion of the examination process."

Union LOS:

ADD following language as new provision to Article 11, Section 1.

"Future candidates for the positions of Lieutenant and Captain must successfully pass a competitive promotional exam and pass the qualification of BEMT, Fire Officer I, II and III. A minimum score of 70% shall be required to pass the written portion of the examination process."

"Current members of the bargaining unit filling the positions of Lieutenant and Captain shall be exempt from this provision."

Director Johnson testified that the City did a study of police and fire operations and one of the recommendations was to have consistent written examinations and promotion procedures.

City Exhibit 75, using “yes” and “no” designations, revealed that the vast majority of comparable communities have a competitive promotional process. On direct-examination Director Johnson, acknowledged that a “yes” did not necessarily mean that passing a written exam was part of the comparable’s competitive process. During cross-examination, he also acknowledged that Novi’s current promotional system, although lacking a written component, has been a competitive process.

Director Johnson could not say if the proposed post-promotion testing of Novi’s current part-time Lieutenants and Captains, as called for in the City’s LOS, is happening in the other communities. However, he said that the post-promotion testing of Novi’s part-time command officers would define the Department’s testing process, make it more in line with the rest of the Department, leave no question as to the validity of the testing process, and let everyone know what the testing process is.

Both the City’s LOS and the Union’s LOS adds a written examination component to the promotion process and both require a minimum 70% score to pass. Each proposal also requires the applicant to possess the same State certifications. The big difference in the two proposals is that the City will require the current command officers to take the new test and pass it, subject to those command officers being placed into a new rank of Sergeant if they fail the test. The City’s LOS also provides for the post-promotion testing of the current command officers to be concluded by June 30, 2012. The Union LOS, however, will have the new written test apply only to candidates for future promotions.

The current part-time command officers are ostensibly performing satisfactorily since the arbitration record does not contain any convincing evidence of their deficiencies or any credible complaints about their service. Under such circumstances, I am of the opinion it is most unfair to

require them to now take the new exam at the risk of losing their current rank. The record is clear that some of the command officers have held their rank for many years, with at least one of them who testified having so far served 19 years in the command officer ranks. The situation in Novi is not a case of possible inadequacies on the part of part-time command officers calling for potential correction for the benefit of the public.

The Union's brief points out that the City has not provided details about serving as a Sergeant. I observe also that the record does not speak to the duties of the position and it does not address the rate of pay for a Sergeant. Obviously, there is no way to apply the applicable Section 9 considerations for judging relevant aspects of the proposed Sergeant title. This weighs heavily against awarding the City's LOS.

Finally, I find that the amount of time that would be available to the current command officers to prepare for the post-promotion testing in order to preserve their current ranks is too short to be fair to them. If the City's LOS is awarded, by the time the part-time command officers are likely to learn what they are up against, they would probably only have about 30 days to get ready. I find that is too little time to prepare for something of this importance, and again, for no reason that springs from a demonstrated need to strive for improvements on any identified performance deficiencies that are harming Department services or endangering the public. I find that this point does not favor the Act's Section 9 consideration of continuity and stability of employment nor the welfare and interest of the public.

In the end, I conclude that the likely good result of adding more standardization and structure to the promotional process is essentially equally assured by both LOSs which are similar in great part. However, the harm that would likely befall some unfortunate test-takers who would be put through the proposed post-promotion testing that I believe is unnecessary, would reverberate as

damage throughout the workplace and Department operations, in general, weighs heavily against the City's LOS.

Chairperson Roger N. Cheek holds: **Union LOS on City Issue 5 is awarded.**
Roger N. Cheek

Concur X Dissent _____
Fred Timponer
Fred Timponer, Union Panelist

Concur _____ Dissent X
Dennis B. DuBay
Dennis B. DuBay, City Panelist

City Issue 8. Stipend

"Article 13. Salaries and Wages, Section 6. Certification Stipend.

City LOS:

AMEND Article 13, Section 6, to provide as follows:

"New hires who successfully complete the Novi Fire Department sponsored training, and complete twelve months of full certified service with the Novi Fire Department, for a total of twenty-four (24) months of service from the date of hire, minimum shall receive a \$300 stipend upon successful completion of, and certification for Firefighter I, Firefighter II, and Basic EMT at such time as they are elevated to Firefighter top pay level."

Union LOS:

MAINTAIN the STATUS QUO.

Director Johnson testified that the purpose of the City's proposal is to extend the period of time the Department will have to evaluate the employee's performance after the employee becomes certified and before the employee is paid the \$300 stipend for becoming certified. Currently it takes about 12 months for new hires to receive all of the core certification training, i.e., Fire Fighter I, Fire Fighter II, and basic EMT, and no formal amount of post-certification performance evaluation is required. Director Johnson explained that the City wants the 24-month period before paying the stipend because there have been instances when

people hired on, got the Novi-sponsored training, became certified, received the \$300, and then left the Department for employment elsewhere.

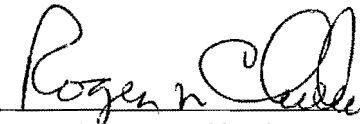
During cross-examination, Director Johnson established that even though the Department was not specifically planning to change from its current requirement of only the three (3) core certifications to receive the stipend, the proposed contract language will allow Novi to add other department-sponsored training courses to qualify for the stipend if they determine the employees need them to be adequately prepared to perform their duties. Hazardous materials training and driver training were identified as examples of other department-sponsored training courses, plus Director Johnson said that if additional department-sponsored training was begun, including any mandated by the State, then they too could be added to the requirement for receiving the stipend.

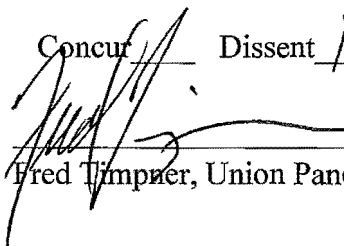
The City proposal does not specifically call for not paying the stipend to a fire fighter who even though certified is deemed to still be in need of more instruction after 24 months of service [presumably the employee would be receiving additional individual attention.] The important point here is that, on its face, the proposal does not eliminate this source of earnings for any new employee who is performing at least well-enough to still be employed after 24 months. It merely delays receipt of the payment.

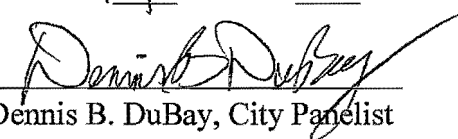
The breadth of the authority the City will gain through the open-ended descriptive phrase “Novi Fire Department sponsored-training” is great and possibly threatening to the Union, however, with absolutely no testimony suggesting employees have experienced any noteworthy chances of not being able to successfully complete any Department-sponsored training offered in the past, and coupled with the provision’s unambiguous requirement to pay the stipend after 24 months of service, I conclude that the City’s LOS contains more potential for positive impact on the interest and welfare of the public than damage in the workplace from slightly toughened rookies’ performance standards.

I find that there is no obvious measurable difference in likely direct costs between the two LOSs presented for this issue and any difference in incidental costs will be minor and therefore the ability to pay factor does not favor one LOS over the other LOS.

I conclude that the City's LOS more closely complies with the Section 9 factors of the Act.

Chairperson  holds: **City LOS on City Issue 8 is awarded.**
Roger N. Cheek

Concur  Dissent X
Fred Timper, Union Panelist

Concur X Dissent

Dennis B. DuBay, City Panelist

City Issue 10: Longevity

Article 20. Longevity.

City LOS:

REVISE Article 20 Longevity to provide as follows:

"Section 1.

~~"Employees hired prior to January 1, 2007 shall be eligible for longevity pay as follows: Annually on or before the first pay in December the City will pay to eligible employees in addition to base rate of compensation, longevity payments. Upon five (5) years of service, the paid-on-call shall receive longevity pay of \$250.00. This amount shall increase by \$50.00 per year up to ten (10) years of service to a maximum of \$500.00.~~

~~"Seniority for each of the above must be obtained prior to December 1 for payment. Employees hired after January 1, 2007 will not be eligible for longevity."~~

"Section 2.

~~"Any employee qualified to receive longevity absent from active participation for six (6) months or more of the qualifying longevity period shall not receive any longevity benefits for that period."~~

Union LOS:

MAINTAIN the STATUS QUO.

Human Resources Director Tia Gronlund-Fox testified on direct examination that the City is making this proposal to end longevity payments because it is a monetary issue. As reflected on City Exhibit 77, she also testified that only two (2) of the City's and one (1) of the Union's proposed communities pays longevity. City Exhibit 78 is a report of internal comparables and it shows that for the City's five (5) other union-represented employee groups, new hires no longer get longevity pay, and as of December, 2010, non-union employees had their longevity payment frozen, added to their base pay, and the longevity program was eliminated.

On cross-examination Ms. Gronlund-Fox testified that the total cost of longevity for the MAFF bargaining unit was between \$12,000 and \$14,000 per year, or a bit more than 1% of the personnel cost for the group.

Union rebuttal witness Mr. Ian Patterson testified that the approximately 28 POCs who are currently eligible to receive longevity pay get an average of \$450 per year. That claim was supported by Union Exhibit 79 which showed that the collective cost of longevity paid to part-time fire fighters was \$12,600, which was consistent with Ms. Gronlund-Fox's testimony. Mr. Patterson said he received \$400 in longevity and believed his total part-time earnings last year was between \$10,000 and \$12,000, inclusive of the longevity. The balance of the Union's exhibit showed the much greater, group by group, collective cost for the other union-represented employees.

The Union brief argues that the economic data entered into the record shows that the cost of this benefit is very small in the total budget of Novi, namely only 5-hundredths of a percent.

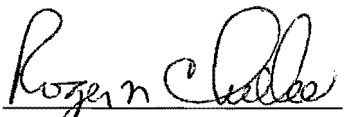
Consideration of external comparables favors the City's goal of eliminating the payments. On the other hand, consideration of the internal comparables is a different matter, since some members of other Novi groups of employees, including full-time fire fighters, will continue to

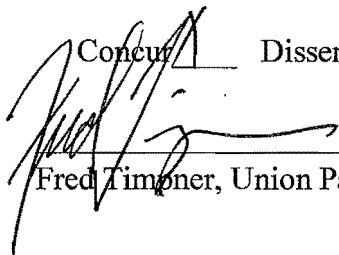
receive some longevity payments in the future, albeit with narrower eligibility and future growth rules. I conclude, therefore, that consideration of internal comparables does not favor the City LOS.

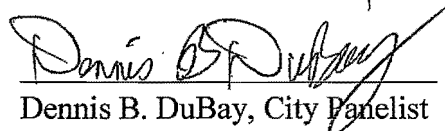
This is a cost-reduction effort by the City for dealing with its well-documented budget concerns discussed primarily in the analysis for Union Issue 5. This is a straightforward wages takeaway issue which I regard as clearly different from merely resisting new costs; it requires a more convincing case. In that regard, no adequately convincing case was made by the City. I find that merely realizing their part-time status as a reason to put them in a “no longevity pay” status because other unidentified Novi part-timers do not receive longevity pay is not sufficient justification to treat these fire fighters differently than full-time fire fighters.

Also, the amount of savings the proposal will generate is relatively small and I find it to be of less importance than the more compelling need to continue spending the money in order to avoid this type of obvious difference in treatment that I am convinced can lead to a virtual “cancer” of discontent in a part of the employer’s workplace. The resulting negative consequences would likely substantially damage continuity and stability of employment in Novi government service and in the long run harm the interest and welfare of the public.

I conclude that although consideration of external comparables favored the City LOS, on balance, the Union’s LOS more nearly complies with others of the applicable Section 9 factors.

Chairperson  holds: **Union LOS on City Issue 10 is awarded.**
Roger N. Cheek

Concur  Dissent _____
Fred Timoner, Union Panelist

Concur _____ Dissent X

Dennis B. DuBay, City Panelist

Union Issue 7: Command Officers' Stipend

Union LOS:

AMEND APPENDIX A as follows:

"Effective date of the Award

"Officer's Annual Stipend (paid in quarterly installments)

"Captain \$~~1200.00~~**1800.00**

"Lieutenant \$ ~~900.00~~**1350.00**

"Mechanic \$ ~~600.00~~**900.00**"

City LOS

MAINTAIN the STATUS QUO.

The Union says that their pay is substantially below what the full-timers receive and the City should not have denied this increase which will bring their pay a little closer. They also point out that part-timers do not create legacy costs, do not add to benefits costs for such things as sick leave, vacation, and pensions, or cost the City overtime pay. The Union also argues that the City has an advantage over other municipalities because it has a separate millage for police and fire, although it acknowledges the millage does not cover all police and fire costs. The Union says the increase should not cost the City very much, the City is financially stable with a sizeable fund balance, and it has the ability to pay this increase.

My prior findings and opinions about the City's decision to not assume new costs at this time and to maintain a sizeable fund balance is most fully set forth in the analysis of Union Issue 5, and it applies here as well. Reduced revenue streams and a couple of potential financial challenges made it prudent, in my opinion, for the City to choose to not agree to pay any new costs that the other Section 9 factors are not strongly signaling ought to be paid despite the

continuing effects of the general economic downturn. When not overridden by a compelling reason, resisting the cost increase has a positive impact on the interest and welfare of the public in economic times such as now.

The City points out that the stipend currently provided by Novi is very high and yet the Union's proposal would increase it by 50%.


Union Exhibit 102 and City Exhibit 103 show stipend payments being made by the comparable communities. Differences in ranks within most organizations are usually based on differences in job duties, e.g., a lieutenant usually does one thing, while a captain does another. The record shows that such a clear division in duties exists in the Novi Fire Department. The difficulty, however, of making good comparisons between the ranks used in different fire departments is that the applicable duties and responsibilities, as well as the actual title of the rank, can be significantly different.

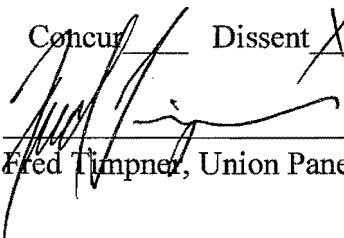
An example of a title/rank and duties comparison difficulty is Novi's designation of "Mechanic" applicable to one of its part-time fire fighters. The Union is proposing to increase the stipend for Mechanic. For comparable comparison purposes, however, apparently this is not a recognized title/rank or designation used in any of the comparable communities. That, however, does not definitely mean none of the other communities have someone performing as a mechanic. Similarly, on the exhibits, the ranks of sergeant and deputy chief are shown to exist in some comparable communities, but they do not exist in Novi. I note that in his testimony, Mr. George Pierson, a part-time Captain, indicated there is supervision [above his level of responsibility] in the fire station, and while he did not identify who that was, it seems possible to me that the rank of deputy chief used in another community may be performing the supervisory duties referred to by Mr. Pierson. The bottom line is that the record made by both parties does

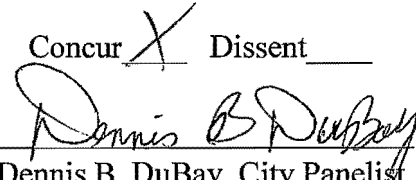
not provide convincing descriptions, explanations, or claims about equivalency of duties and responsibilities distributed to the titles identified in the comparable departments. Each exhibit shows that a notable number of the communities either do not pay stipends for lieutenants and captains or what they may be doing is not reported. Under such circumstances, in making comparisons among the comparables, I feel it is reasonable for me to only use the stipends listed specifically for the titles of "lieutenant" and "captain" and disregard all stipend amounts for other titled ranks. Computing a simple average amount for all comparable communities, the result is \$622 for lieutenant and \$645 for captain, as compared to \$1,200 and \$900 now being paid by Novi. I therefore find that the Section 9 external communities' comparison favors the City LOS.

As has already been reported, the entire MAFF bargaining unit is not being awarded any general wage increase, so I find it reasonable to give relevance to that fact since this Union LOS in this issue would be increasing the compensation of just seven (7) members of the 66-member MAFF bargaining unit. In my opinion, this does not favor the Union's LOS.

I conclude that the City's LOS more nearly complies with the factors set forth in Section 9 of the Act.

Chairperson  holds: **City LOS on Union Issue 7 is awarded.**
Roger N. Cheek

Concur  Dissent X
Fred Timpner, Union Panelist

Concur X Dissent _____

Dennis B. DuBay, City Panelist

Union Issue 8: Seniority

Article 10. Seniority.

Union LOS:

ADD a new Section 5 to provide as follows:

"Members of the bargaining unit shall choose their shifts by seniority. Should the employer find it necessary to fill a vacancy on an open shift, it shall be filled by the most senior available member with the least amount of hours followed by the second most senior available member with the least amount of worked, etc.

"The Employer shall continue to allow members to trade shifts with other members of the bargaining unit as long as the current policy regarding trading shifts is followed.

"The Employer shall not arbitrarily change shift assignments."

City LOS:

MAINTAIN the STATUS QUO.

Mr. Holtzman testified that the Union is seeking the change because currently shift assignments are done arbitrarily. He said people have been taken off shifts they have been on for twenty years and replaced by people who just got off probation. He related his personal situation of having been told a shift he had been asking for a number of years was unavailable because it had been filled three weeks earlier with someone who had just gotten off probation.

The subject is not covered in the current contract and the City proposes it remain that way. Director Johnson explained that Mr. Holtzman's special situation came about because he had not been working a shift for a number of months due to being on medical leave. On his return from the leave, he requested an assignment that would have required bumping another employee, but the Department could not do it until such time as it had an opening. Also, because Mr. Holtzman had been off for about five (5) months Director Johnson said there were some training matters they wanted him to complete. After the training was concluded and a spot

opened up, Mr. Holtzman was moved to an assignment consistent with what he had been requesting.

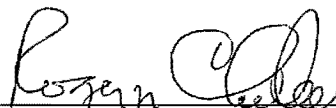
In its brief, the Union argued that seniority is one of the most important subjects to union members, generally, regardless of their profession, and that it makes up the backbone of what is fair and equitable for any union member. The Union also argued that since the record does not contain any testimony that the Department has had a problem with which particular employee is filling what work slot, then why should not this seniority right be allowed.

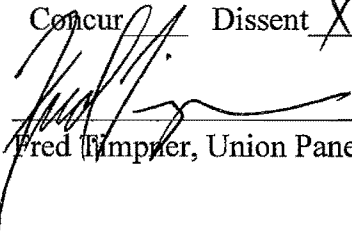
I agree with the Union and it is common knowledge that seniority is very important to union members and they generally want it used in deciding shift assignments between competing employees deemed equally qualified. The problem the Union faces with this request for change is that the arbitration record does not contain convincing evidence that seniority is regularly disregarded by the Department when shift assignment decisions are made. Consider, for example, Mr. Holtzman's situation. In that case, I am of the opinion that Director Johnson's testimony regarding the matter demonstrated appropriate respect for seniority's relevance under the circumstances. The Union may not have agreed with what happened in the interim, but in the end, Mr. Holtzman got what he wanted and the clear implication is that recognition of his lengthy seniority influenced the ultimate outcome.

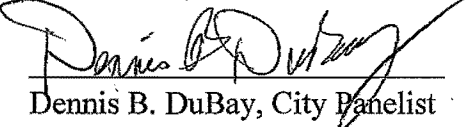
Union Exhibit 105 and City Exhibit 107 reveal that of the 20 comparable communities, two (2) have shift selection by seniority, and Union Exhibit 106 reveals that the Novi full-time fire fighters do not have shift selection by seniority. These comparisons do not favor the Union's LOS.

I find that there is no obvious measurable difference in likely direct costs between the two LOSs presented for this issue and any difference in incidental costs will be minor and therefore the ability to pay factor does not favor one LOS over the other LOS.

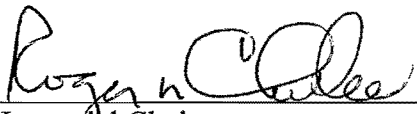
In light of everything, I conclude that the City's LOS more nearly complies with the factors set forth in Section 9 of the Act.

Chairperson  holds: **City LOS on Union Issue 8 is awarded.**
Roger N. Cheek

Concur  Dissent X
Fred Timpner, Union Panelist

Concur X Dissent

Dennis B. DuBay, City Panelist

The Panelists' position on the Award reached for each Issue is evident. The recap of the evidentiary record and the findings and opinions contained in the analysis of each Issue are those of the Impartial Chairperson and he does not intend for such to represent any proof of either Panelist's position on any part of that recapped record, the findings, or the opinions.

 6/7/12
Impartial Chairperson Date