MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:
The City of Dearborn

and

RESPONDING PARTY:
The Dearborn Firefighters Association, Local #412, IAFF

MERC CASE NO. D15E-0451

COMPULSORY ARBITRATION
Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq*]

Arbitration Panel
Chair: Edward F. Hartfield
Employer Delegate: Jeremy Romer, Esq.
Union Delegate: Ronald Helveston, Esq.

Advocates
Employer Advocate: Charles Oxender, Esq.
Union Advocate: Ronald Helveston, Esq.

PETITION(S) FILED: April 20, 2016
PANEL CHAIR APPOINTED: May 6, 2016
SCHEDULING CONFERENCE HELD: May 24, 2016
HEARING DATE(S) HELD: August 9, 11, 29, 31; September 12, 14, 2 6, 28; October 5, 12, 19, 24
AWARD ISSUED: March 28, 2017

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1. INTRODUCTION AND BACKGROUND

Background to this Arbitration

This compulsory arbitration case arises pursuant to a petition filed by the City of Dearborn with the Michigan Employment Relations Commission (MERC) on April 20, 2016, (Joint Ex. 12) under Act 312, PA of 1969, as amended, being MCL 423.231, *et seq.* The Chairman of the Arbitration Panel was appointed by MERC on May 6, 2016. The Employer is represented by Mr. Charles Oxender of Miller Canfield and has appointed Mr. Jeremy Romer, Esq. as its Panel Delegate. The Union is represented by attorney Ronald Helveston who also serves as its Panel Delegate.

During a pre-hearing telephone conference on May 24, 2016, the parties requested June 11 as a date for an evidentiary hearing on the subject of whether the negotiation issues of 1) FLSA work, 2) apparatus staffing, and 3) maintenance of work conditions are permissive, as opposed to mandatory subjects of bargaining. Subsequently, however, the parties jointly submitted a request to cancel that hearing and asked that the Panel Chair consider the issues as part of the overall award after hearing the full presentations and testimony by the parties. Joint Ex. 7, 8.

The parties jointly agreed on the following deadlines---July 8 for: a) the list of issues and positions, b) a list of proposed comparables, and c) a proposed

witness list. They also set July 15 as the date for submission of Last Best Offers. The Panel Chair notes with appreciation the fact that the parties met these deadlines on a timely basis. These agreements, along with a set of hearing dates, were reflected in a Scheduling Order sent to the parties on June 14, 2016.

One issue unresolved at the time of submission of the Petition---duration of the contract---was resolved by the parties' submission of their LBOs, as both parties' LBOs contained proposals for a three-year agreement. The 12 days of hearings began on August 9, 2016, and the last day occurred on October 24, 2016.

During the hearings, the parties withdrew and resolved some of the issues in dispute. On September 26, 2016, the City withdrew its Issue 5 on Secondary Work Assignments. Tr., Vol. 7 at 3. On October 12, 2016, the Parties reached a settlement on Sick Leave Regulation and Sick Leave Accumulation, Union Issues 13 and 14, and City Responses 20 and 21. Joint Ex. 2 at 15-16; Joint Ex. 1 at 13-17. That settlement is embodied in Joint Exhibit 10-A.

On November 2, 2016, the Panel Chair remanded the Parties to additional negotiation for a period not to exceed three weeks. The Parties submitted offers in writing to each other in an attempt to resolve the dispute, but their efforts did not resolve the contract or any issues. The parties submitted their post hearing briefs in a timely fashion on December 19, 2016 and the record was closed on that date.

Background on the City of Dearborn and the Fire Department

The City of Dearborn is a diverse city known worldwide as the headquarters of Ford Motor Company. The population of almost 100,000 residents increases substantially during the day. The City has many industrial sites that hold a variety of hazardous chemicals, as well as a mixture of high rise apartments, hotels, office buildings and single-family homes, Union Ex. 41-44. Dearborn is crossed by some of the busiest roads and freeways in this region, including Interstate 94 and the Southfield Freeway, and the auto accidents that occur on these busy, high-speed roads can be extremely serious, with multiple casualties and even fatalities.

The Dearborn Fire Department

The Dearborn Fire Department is a full service fire suppression, fire prevention and emergency medical department serving the City of Dearborn and the City of Melvindale, with a combined population of 108,868 (*Id.* at 54). The Department began providing services for the City of Melvindale in 2013. The Fire Department has 128 members, based on the City Charter requirement of 1.24 firefighters per one thousand people, and the Melvindale agreement which added 7 additional firefighters. Eleven firefighters are staff officers, including the Fire Chief, Deputy Chief, two Assistant Chiefs, an EMS Coordinator, a

Training Supervisor, a Fire Marshall, Assistant Fire Marshall, Fire Inspector, Apparatus Supervisor and Emergency Manager. These staff officers work a 40-hour schedule.

The remaining firefighters are all in the suppression bureau, who are the firefighters responding to both EMS and fire calls (*Id.* at 61). All of the members of the Department with the exception of the Fire Chief and Deputy Fire Chief are members of the Union.

Chief Murray testified that thirty-nine firefighters are scheduled to be on duty each day. Based on the current 50.4-hour schedule, 4 of those firefighters are automatically off on a "Kelly day" each day, bringing the number of available firefighters down to thirty-five. At thirty-three to thirty-five firefighters, the Department can operate all of its vehicles (*see* City Ex. 12, first column). However, with the current use of leave time, the Department generally runs at about 9.2 firefighters per day less than scheduled (four on Kelly leave and 4.2 on other leave including, sick, vacation, FMLA or other leave, *see* City Ex. 13). On the average day, the Department has about 29-30 firefighters on shift, and is forced to close a ladder company when staffing falls under thirty-three, an engine company at thirty, and both a ladder and an ambulance at twenty-nine (*see* City Ex. 12, first column).

The Dearborn Fire Department is also a medical emergency department. Its firefighters are all trained at the paramedic level, and they not only serve as first responders to medical scenes, but also transport medical patients to area hospitals. As medical first responders, the Dearborn Fire Fighters respond to a broad spectrum of injuries including concussions and broken bones, heart attacks, respiratory emergencies, scenes of crimes and violence involving shootings and stabbings, as well as automobile accidents.

The City currently has five fire stations (*Id.* at 74-76, *see also* City Ex. 70).

- Station One is located at 3750 Greenfield. It houses an engine company and an ambulance and the battalion chief is located at this station. This station also serves as the Fire Department headquarters. The engine company runs with three staff and the ambulance runs with two.

- Station Two is located at 19800 Outer Drive. It houses two engine companies, a ladder truck and an ambulance. With three firefighters on each engine, two firefighters on the ladder truck, and two firefighters on the ambulances. This is the station where an engine or ladder is routinely out of service.

- Station Three is located at 3630 Wyoming Avenue. It houses a quint company staffed with three firefighters and an ambulance staffed with two firefighters. The ambulance at this station will go out of service on days when the staffing is low.

- Station Four is located at 6501 Haggerty. It houses an engine company, a ladder company and an ambulance, with seven firefighters. This is the busiest station.

- Station Five is the Melvindale Station. It is located at 3160 Oakwood Blvd. It houses an engine company and an ambulance, with five firefighters. It also houses the Fire Marshall Bureau.

The City testified that it has plans to potentially open a sixth station depending on the outcome of this arbitration hearing, particularly as it relates to the City's hours of work proposal. Chief Murray testified as to the growing number of calls to the Department. In City Exhibit 5, the chart shows that incident volumes have been trending upward from just over 8,000 in 2002, to over 14,000 in 2016. The vast majority of these calls are EMS related (*see also* City Ex. 8). Stations 1, 2, and 4 respond to the most runs, while station 3 and station 5 respond to fewer (*Id.* at 87-89, see also City Ex. 10).

In a recent survey of the citizens of Dearborn, the Fire Department earned the highest satisfaction rating of any department in the City. Union Ex. 36. In August, the citizens of Dearborn voted to renew a public safety millage that funds fire and police services. Tr., Vol. 1 at 37. And in June of this year, the Insurance Service Office, or ISO, gave the Dearborn Fire Department a rating of 2 out of 10—an extremely high rating that that will have a positive impact on citizen fire insurance premiums. Union Ex. 34.

It is also noteworthy that in 2013, the Department took on emergency responsibility for fire *and* medical emergencies throughout both Dearborn *and* the City of Melvindale. The addition of Melvindale caused a considerable spike in

fire and emergency medical runs that shows no sign of abating. City Ex. 5, Union Ex. 35.

The Panel Chair would like to formally acknowledge his respect and admiration for the men and women who staff the Dearborn/Melvindale Fire Department. During the course of the hearings, I was frequently inspired by the dedication, bravery, and professionalism of the personnel that participated in the hearings and the colleagues whose efforts were often described.

2. STATUTORY CRITERIA

The basis for an Arbitration Panel's Findings, Opinion, and Orders are contained in Section 9 of Act 312, which provides:

(1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(a) The financial ability of the unit of government to pay all of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

(i) The financial impact on the community of any award made by the arbitration panel.

(ii) The interest and welfare of the public.

(iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.

(iv) Any law of this state or any directive issued under the local Government and School District Fiscal Accountability Act., 2011, PA4. MCL 141. 1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulation of the parties.

(d) Comparisons 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 generally in both of the following:

(i) Public employment in comparable communities

(ii) Private employment in comparable communities

(e) Comparisons of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

(f) The average consumer prices for goods and services, commonly known as the cost of living.

(g) The overall compensation presently received by the employees, including direct wage compensation, vacations, holiday and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.

(i) Other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service, or in private employment.

(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent material and substantial evidence.

3. STIPULATIONS and PRELIMINARY RULINGS

The preliminary rulings or stipulations are noted above. The parties jointly submitted a request to cancel the evidentiary hearing originally scheduled

for June 8 on the jurisdiction of several issues. The parties also agreed that I consider those issues as part of the overall decision and award following the parties' testimony and presentations. Finally, the parties also agreed to submit separate last best offers for each year of the agreement, 2015-16, 2016-17, and 2017-18.

4. COMPARABLES

Prior to the commencement of the evidentiary hearings, the Firefighters proposed five communities not on the City's list: Dearborn Heights, Royal Oak, Shelby Township, St. Clair Shores, and West Bloomfield Township. Similarly, the City proposed three communities not on the Firefighters' list: Flint, Grand Rapids, and Waterford Township.

The Panel Chair notes that both parties selected the following 7 comparables:

1) Canton Township
2) Clinton Township
3) The City of Livonia
4) The City of Southfield
5) The City of Sterling Heights
6) The City of Warren
7) The City of Westland

Logic dictates that the most reasonable course of action is to decide in favor of using the seven communities which both sides selected as comparables.

Communities suggested by either side that are outside this list will not be considered by the Panel Chair in this deliberation.

5. ISSUES BEFORE THE PANEL

A. Wages (Economic)

The parties are in agreement on the first two years of the agreement, with both of the LBOs proposing a 2% increase in both years. In the third year of the agreement, 2017-2018, the City is proposing a 1% increase and the Union is proposing a 3% increase. The LBOs for wages are, by agreement of the parties, being submitted as separate proposals.

a. **Wages for 2016:** City's Last Best Offer 2% Union's Last Best Offer 2%

b. **Wages for 2017:** City's Last Best Offer 2% Union's Last Best Offer 2%

c. **Wages for 2018:** City's Last Best Offer 1% Union's Last Best Offer 3%

Discussion:

The City's Ability to Pay

Under Act 312, "the arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence." MCL 423.239(2). Since the Legislature changed the Act 312 criteria to make the ability to pay the most significant factor in 312 cases, arbitrators are required to focus on the financial viability of the municipality over all other factors. While comparables are still included in the list of factors, the City's ability to pay is the most

significant factor for the Panel to consider, and should be the Panel's primary consideration.

The City's over-arching rationale with respect to economic issues is that Dearborn has just recently emerged from the impact of a devastating national and global recession and to not take a cautious approach to future increases would be irresponsible. In its efforts to describe the weaknesses in Dearborn's ability to pay, the City begins by acknowledging that "the balance sheet and the general fund are in decent condition". But the City goes on to identify the following factors as indications that the economic situation is somewhat fragile and vulnerable:

1) That the defined benefit pension plans and the retiree health care costs represent "significant legacy costs".

2) That the City faces a number of challenges that may limit its ability to maintain and potentially increase economic growth.

3) The City has been forced to increase tax abatements in order to retain business within the City.

The Union bases their wage proposal on the following arguments: First, that the City does not make a compelling argument for not having an ability to pay. Second, that the concerns raised by City Treasurer James O'Connor are not substantially different or any worse than the concerns that many municipalities face. Third, that the City does not face significant legacy costs that are relatively

worse than the comparable communities used in this instance. Fourth, that the overall economic health of the City is stronger than the comparable communities used in this instance. Finally, the Union maintains that the evidence submitted by the City does not rise to the standard of, "competent, material and substantial evidence," that it lacks "the financial ability" to pay for the Union's proposals which the City needs in order to prevail on this §9 factor.

The City's brief states that they are unimpressed with the Union's financial expert's testimony and positive assessment of Dearborn's economic health. But the majority of the City's critique of Dr. Reinstein's testimony focuses on attempts to discredit his character or personality as opposed the substantive aspects of his analysis. Dr. Reinstein admittedly made some comments in his witness testimony that were ill advised, but here are a few of the substantive pieces of his work that this Arbitrator finds both persuasive, and largely unrebutted anywhere by the City:

1) Dearborn's undesignated fund balance is more than 30% of its annual general fund expenditures—almost double the gold standard. Moreover, Dearborn has had a fund balance at or above the gold standard for the entire period that Dr. Reinstein reviewed.

2) The overall level of debt for all government services is falling. This declining debt level reduces the City's interest payments, and gives the City more "degrees of freedom" to expand government activities or respond to contingencies.

3) City's revenues for business type activities—like parking, golf courses, etc.--grew at a rate of 34%, while related expenses fell 28%. The value of assets dedicated to these activities is also increasing, and liabilities are decreasing.

4) The City's yearly general fund balances are steadily rising. Total government debt and total debt per capita are falling.

5) The value of government bonds outstanding is dropping steadily, providing more "degrees of freedom" for the City...The total assets and net assets of business-type activities are increasing, liabilities are falling, and there is a healthy gap between revenues and expenses.

6) Dearborn's bond rating by Moody's Investment Service has been rated at "Aa3" in June of 2014 and again in February of 2016. In this most recent rating, Moody's stated that Dearborn is now in a "very good credit position." Union Ex. 128-13 at 1. Moody's stated that Dearborn's "very solid financial position" is in fact "relatively strong when compared with the assigned rating of Aa3." *Id.* In general, Moody's latest bond rating for the City indicates that it is at the upper end of cities with the quite healthy rating of Aa3. Tr., Vol. 4 at 85-87.

7) The citizens of Dearborn have made it very clear that they want well-staffed public safety departments, and are willing to pay for them. As City Treasurer O'Connor himself testified, the fire and police departments have escaped large personnel cuts because the citizens of the City of Dearborn have voted in favor of city charter amendments to lock in the number of firefighters and police officers as a multiple of the City's population. Tr., Vol. 3 at 8-9. Moreover, the citizens of the City of Dearborn have voted for a special 3.5 mill fire and police millage to be used to help fund the public safety departments. On the eve of the arbitration, that millage was renewed by a vote of over 80%.

8) The City's 2017 budget does not show that the City will likely experience a budget deficit in 2016-2017.

The Statute requires the Arbitrator to examine how Dearborn compares with their counterparts in comparable communities. In examining a list of the

comparables that I have decided are appropriate for this case, one finds that five of the eight communities---Canton Twp., Clinton Twp., Sterling Heights, Warren and Westland---pay their firefighters more than Dearborn does. Two of the municipalities---Livonia and Southfield---pay their firefighters less than Dearborn does. (Union Ex. #60)

In reviewing the comparable data for the total annual cash compensation for fully paid firefighters as of 7.1.16, Dearborn again ranks sixth in a list of the eight municipalities. This exhibit---Union Exhibit 64---compares base wage compensation along with the following other compensation factors combined: longevity, holiday pay, uniform allowance, food allowance, EMT/AEMT allowance, and other allowances. Sterling Heights ranks first with a total of $85,239, Warren ranks last with a total compensation package of $60,579, and Dearborn ranks sixth with a package of $70,426. Five of the eight other communities provide a larger total compensation package than does Dearborn.

On reflection, I find that the case made by the City suggesting that it lacks an ability to pay is not borne out in the evidence and presentations that were made. On balance, a review of the City's financial condition as measured against a number of economic indicators suggests that the City has made an excellent recovery from the recession, helped in no small measure by the concessions made by the Firefighters and the other employee unions.

All of these factors notwithstanding, the difference between the parties' LBOs on the issue of wages is a 2% increase in the third year. The Panel Chair is persuaded to adopt the Union's LBO on this issue.

AWARD:

WAGES (Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

Wages for 2016-2017, and 2017-2018: The parties are in agreement with a wage increase of 2% in each of the first two years of this contract.

Wages for 2018: The Arbitration Panel selects the Union's wage offer of a 3% increase for the third year of the agreement.

A majority of the Panel is of the opinion that this dispute should be resolved by 1) treating the three years of the contract as three separate economic issues, 2) noting that the parties' LBOs for the first two years of this Agreement are the same, and 3) accepting the Union's LBO for a 3% increase in Year 3. This includes Section 15.03 which states that "Firefighters shall be paid for all hours worked under this schedule".

EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree

RONALD HELVESTON, UNION DELEGATE — X Agree ___Disagree

JEREMY ROMER, EMPLOYER DELEGATE — ___Agree X Disagree

B. Hours of Work (Economic)

At the outset I should note that there is a strong connection between this issue and the wage issue. This issue revolves around the City's LBO to increase the hours worked per week by the firefighters from 50.4, the status quo, to 54. The City's LBO on hours of work, effective July 1, 2017:

18.01: All fire bargaining unit personnel shall work on a schedule arranged by the Fire Chief and shall average fifty-four (54) hours per week. The Deputy Chief, fire personnel assigned to the maintenance, training or fire marshal divisions and the Emergency Medical Services Coordinator shall work forty (40) hours per week.

18.02: All forty (40) hour per week fire bargaining unit personnel shall work and be paid forty (40) hours per week inclusive of a thirty (30) minute lunch break.

18.03 The following paid time off utilized by employees shall be treated as hours worked for purposes of computation of FLSA overtime pay:

a)	Vacation Days	e)	Funeral Leave
b)	Sick Days	f)	Jury Duty
c)	Training Days	g)	Sick/Duty
d)	Military Leave		

A maximum of four (4) employees per unit may utilize vacation leave at any given time. All unit personnel, except Battalion Chiefs, count toward said maximum. In the Fire Chief's sole and ungrievable discretion, said maximum may be increased from time to time without setting precedent.

18.04: **Fire Station 6:** Absent a legitimate unplanned revenue decrease, the City agrees to hire up to six (6) additional full-time sworn firefighters within one hundred eighty (180) calendar days from the opening date of a sixth fire station, not to be included in the daily minimum staffing.

The City is proposing to increase these hours to the 54 hour per week schedule. The Union's LBO proposes to maintain the existing schedule of 50.4

hours per week. I should also note that the Union's LBO on wages, already adopted herein, further proposes that firefighters be paid for all hours worked.

Discussion:

The rationale for the City's desire to increase the number of hours worked each week from 50.4 to 54 is as follows. The City believes that this increase in hours is justified in order to increase productivity and respond effectively to the rising trend in the number of incidents that the Department responds to, both fire and medical. The Employer points out that at present, on an average work day, 30 firefighters are on duty. They further assert that 33 firefighters are needed to deploy all of the Department equipment/vehicles.

The City points to an increase in the number of firefighters that are on some type of leave---vacation, jury, sick, personal---at any one time as resulting in the frequent need to sideline or remove from active duty key pieces of fire fighting vehicles and equipment because of insufficient manpower. The City also points to the number of firefighters that are off on "Kelly Days" ---essentially one day per month per firefighter---that are designed to keep their scheduled work hours at the contractual amount. The Employer maintains that increasing the hours worked per week to 54 will produce the necessary 33 firefighters needed for full deployment of the fleet.

Historically, the record supports the fact that prior to 2007, the firefighters worked a 56-hour week. The City points out that when the parties agreed to change the workweek to 50.4 to address the amount of overtime that Dearborn was paying, the firefighters enjoyed *a 10% reduction in hours worked per week but no reduction in wages.* This forms the basis of the City's position of asking the firefighters to increase their hours worked to 54 without paying for those extra hours. The Union is quick to point out that the move to the lighter work schedule was made to save the City overtime in the amount of $300,000.

The Union also notes that the City of Dearborn also asked its police to increase their hourly schedule from 80 to 84, but committed in that contract to paying the police for the 4 extra hours worked. The Union sees this as a strategy by the City to ask the firefighters to drop most of their Kelley days and increase the number of hours they work *without* providing the same payment that they have agreed to for the Police. *The Union cites this as the number one reason that this contract is in interest arbitration.*

The Firefighters assert that they worked a 56 hour per week schedule from 2007-2013 without experiencing the need to take equipment out of service. The Union asserts that the City bears the responsibility for the current dilemma---the proposal to ask the firefighters to work additional hours with no payment---by engaging in the following:

1) Allowing Dearborn firefighters to retire without replacing them prior to the 2013 merger with Melvindale.

2) By choosing not to utilize funding from the more than $1 million that the City receives annually from Melvindale to provide fire and rescue services to hire sufficient firefighters.

Conclusion:

I confess that trying to understand the City's argument and position resembles watching a football team come out for the second half without making any adjustments to their strategies based on what they experienced in the first half. Why hasn't the City decided to add more firefighters to their roster? If they are routinely sidelining equipment since the 2013 Melvindale merger due to insufficient manpower, why haven't they taken steps to add firefighters? What is the City waiting for?

Why did the City choose to add the *minimum* number of firefighters required to staff the newly enlarged area after the merger? In their defense, Chief Murray testified that it was important to keep in mind that the City and in fact, the country, were both just coming out of dire financial straits at the time and that while the Dearborn firefighters were protected by the City Charter mandating the number of firefighters per population, he thought it inappropriate to ask for additional positions.

The Chief also goes on to add (T vol. 12, p.31) that an examination of the run volume of Stations 3 and Station 5 didn't equal any of the other three stations, so he felt that he would have more than adequate manpower to handle the new area and responsibilities.

What is missing, however, is an explanation of what the thinking of the Department has been since 2013 in response to frequent, chronic, shortages of firefighters on duty and the corresponding need to sideline equipment. One can appreciate financial caution in 2013 coming out of the 2008-2012 recession. It is easy to understand a "go slow" hiring approach after Dearborn faced serious financial hardships and constraints. But what is the rationale for continuing to staff at the minimum level from 2014 through to the present? At several different points in the hearing, the Union made reference to having warned the City about the inadequacy of the manpower planning that they were doing to cover the Melvindale merger. I cannot, however, find any evidence in the substantial record of said warning or opinions from the Union. Nevertheless, the issue of whether the Union agreed to the merger and the entire staffing package is almost irrelevant: why hasn't the Department increased its staffing since then?

How does the relatively low run volume of two individual stations reconcile with the growing number of runs and calls for Department Services and a chronic inability to fully deploy equipment City wide?

If the City has been receiving an annual payment of more than $1 million dollars each year from Melvindale for services provided, why has it chosen not to invest in more employees? How does the Fire Department justify facing the same staff shortages month after month, year after year and not taking any other meaningful steps to address the issue other than seeking a reversal of the hourly work schedule that it agreed to in the previous contract?

The City states that it is seeking an increase to a 54-hour work schedule in order to increase productivity and remedy the frequent need to sideline equipment. It is very difficult for this Arbitrator to see how productivity can be increased if the current work schedule and staff complement are already stretched to the maximum. While I recognize that the decision as to the size of the workforce is management's to make under the law, it is difficult to discern a justifiable rationale, especially when the City itself has introduced evidence pointing to a steady increase in the demand for its services. In fact, I am concerned that without a more formulaic and quantitative approach to determining their manpower needs, Dearborn may be approaching a situation where their ability to respond safely and effectively will be compromised.

Finally, I can find no explanation proffered by the City of Dearborn in the testimony or evidence presented that explains how they would justify paying the Dearborn Police for the additional hours worked but not make that same offer to

the Firefighters. The only argument relates to the fact that when the Firefighter work schedule was reduced by 10%, the City did not reduce firefighter pay. This is hardly a compelling argument that justifies the disparate pay practice of paying one branch of the uniformed services for extra hours worked and not the other.

Nevertheless, the Statute requires the Arbitrator to examine how Dearborn compares to their counterparts in comparable communities. In examining a list of the seven comparables that I have decided are appropriate for this case (Union Ex. # 148), there is only one other community---Westland---whose hours of work---50.4---resemble those of Dearborn. All of the other communities---Canton Twp., Clinton Twp., Livonia, Southfield, Sterling Heights, and Warren---have hours of work that are greater than the existing schedule for Dearborn. Clearly, the comparables favor adoption of the City's proposed schedule---54 hours---in this instance.

Since the comparables in this instance so strongly support the City's Last Best Offer on Hours of Work, I am therefore, recommending the adoption of the City's Last Best Offer on Hours of Work. However, because the City's LBO is silent on the method of payment under the new 54 hour schedule, I am, compelled to order the adoption of the Union's LBO on Wages, which contains in

Section 15.03, the provisions that the firefighters be paid for all hours worked to resemble the payment for extra hours worked by the City of Dearborn police.

AWARD:

HOURS OF WORK (Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by adopting the City's proposal for a 54- hour work week, and 2) the Union's proposal that the firefighters working under this schedule shall be paid for all hours worked.

A) On the Hours of Work

EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree

RONALD HELVESTON, UNION DELEGATE — ___Agree X Disagree

JEREMY ROMER, EMPLOYER DELEGATE — X Agree ___Disagree

B) On the Payment for all hours worked (As included in the Union's LBO on wages, already adopted on page 19, above.)

EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree

RONALD HELVESTON, UNION DELEGATE — X Agree ___Disagree

JEREMY ROMER, EMPLOYER DELEGATE — ___Agree X Disagree

C. Promotional Model (Non-Economic)

The City is proposing a change to the current promotional model used for selection of several specific positions within the Department to allow for the addition of an assessment center method. Such a method often identifies a number of job related situations to which the candidates have to demonstrate handling and reacting. The City is also proposing to eliminate 9 swing positions which the Union alleges were part of an agreement stemming from the Melvindale merger. The Union alleges that Art. 31.01(G) promises that the swing promotions will survive "as long as the City of Melvindale is serviced by the Dearborn Fire Department." The Union is proposing to maintain the status quo which relies upon a combination of written exams, seniority and oral interviews. The City's LBO is as follows:

31.01: Effective July 1, 2017

A. The promotional examination for the Assistant Fire Chief is approved by the Civil Service Commission as follows:

i. Appointment is at the Fire Chief's discretion from among qualified candidates.

ii. Applications restricted to L412 members who have a minimum of 7.5 years professional firefighting experience in Dearborn. Applicants must possess a bachelor's degree or equivalent comparable experience and must successfully complete the EMU Staff and Command Course or equivalent, within one year of appointment.

B. The promotional examination for the Battalion Fire Chief is approved by the Civil Service Commission as follows:

i. Applications restricted to Fire Captains who have held this classification for at least two (2) years prior to the last date for filing applications.

ii. ***Written Test:*** A candidate must score at least a 70% on the written test to move on to the Assessment Center and Oral Interview.

iii. ***Parts & Weights of the Examination:***

- Written Test: 20%
- Assessment Center: 45%
- Oral Interview: 35%

Service Credits: One-half percent (1/2%) per year up to ten (10) years of service (Maximum 5%).

C. The promotional examinations for the Fire Captain is approved by the Civil Service Commission as follows:

i. Applications restricted to Fire Lieutenants who have held this classification for at least two (2) years prior to the last date for filing applications.

ii. ***Written Test:*** A candidate must score at least a 70% on the written test to move on to the Assessment Center and Oral Interview.

iii. ***Parts & Weights of the Examination:***

- Written Test: 20%
- Assessment Center: 35%
- Oral Interview: 45%

Service Credits: One-half percent (1/2%) per year up to ten (10) years of service (Maximum 5%).

D. The promotional examinations for the Fire Lieutenant is approved by the Civil Service Commission as follows:

i. Applications restricted to Firefighter IIs and Firefighter IIIs who have completed at least five (5) years of service in the City of Dearborn Fire Department prior to the last date for filing applications.

ii. ***Written Test:*** A candidate must score at least a 70% on the written test to move on to the Assessment Center and Oral Interview.

iii. ***Parts & Weights of the Examination:***

- Written Test: 20%
- Assessment Center: 35%

- Oral Interview: 45%

Service Credits: One-half percent (1/2%) per year up to ten (10) years of service (Maximum 5%).

E. The promotional examination for the Firefighter III is approved by the Civil Service Commission as follows:

i. Applications restricted to all Firefighter IIs who have completed at least three (3) years of service in the Fire Department prior to the last date for filing applications.

ii. The following parts and weights are approved: Written test, 100%; applicants who qualify on the written examination with a minimum passing grade of 75% shall be placed on a promotional employment list in order of seniority as Firefighter II, and shall be certified to the Fire Department in seniority order.

F. The promotional examination for the Firefighter II is approved by the Civil Service Commission as follows:

i. Applications restricted to all Firefighter Is who have completed at least three (3) years of service in the Fire Department prior to the last date for filing applications.

ii. The following parts and weights are approved: Written test, 100%; applicants who qualify on the written examination with a minimum passing grade of 75% shall be placed on a promotional employment list in order of seniority as Firefighter I, and shall be certified to the Fire Department in seniority order.

Discussion:

Chief Murray testified that the rationale for proposing the adoption of the Assessment center concept is as follows: First, it provides for an outside independent review of candidates based on research and scientific study (Tran.

Vol. 2 at 7, 10). Second, the assessment centers would be used for promotions to officer positions (Trans. Vol 7 at 12). Third, the model decreases the importance of strict seniority and the oral interview. Fourth, Chief Murray believes the process will help the Department identity firefighters that are prepared for and truly desire supervisory positions.

Dr. Kendra Royer testified about the impact and use of the assessment centers and explained that an assessment center is a "standardized evaluation of behavior with multiple job-related components" (*Id.* at 17). The assessment centers are run by trained assessors; mostly fire chiefs from other fire departments (*Id.* at 18). The assessors are looking for attributes like "leadership qualities, decision making and judgment, interpersonal skills, oral communication skills, and written communication skills (*Id.* at 19). Dr. Royer stated that her company, EMPCO, has conducted assessment centers for the Dearborn Police Department for the past six or seven years, and has a 98% satisfaction rate from the City (*Id.* at 23-24).

A summary of the highlights describing the Union's opposition to the proposed modifications of the promotional model contains the following points:

To begin with, the Parties' contract currently contains a promotional procedure that is typical among the comparables. Union Ex 26, Art. 31 at 20-22. Second, the Union argues that the City's replacement of objective measures like

job knowledge tests and experience, with subjective measures like the assessment center are inconsistent with the procedures used by comparable fire departments. In this regard, the Union argues that the current procedure already gives the Chief and the command staff more room for discretion and subjective assessment that almost any other procedure currently in use among the comparable communities. Third, the Union worries that the City's promotion procedure would replace relevant, objective measures of job performance with more subjective measures.

Fourth, the Union maintains that the City's proposed assessment center model provides a less valid measure of future job performance than the job knowledge tests and experience that the City's current process would disclose. Fifth, the Union points out that the Department has had a bad experience in the past with EMPCO, the company that the Department is proposing administer the assessment center concept has not performed well in previous experience with the Department. Sixth, the Dearborn Police Department administers the assessment center concept for only one position, that of sergeant. Seventh, the Union maintains the City's proposal should be rejected because it would eliminate nine promotional positions for no articulated reason, and in so doing, renege on a promise made to the Firefighters as part of the Melvindale merger.

The proposal would delete Art. 31.01(G) which guarantees so-called "swing promotions." Art 31.01(G) reads as follows:

> A set of "Swing Promotions" to replace the retired Ladder 3 promotional positions will be retained in order to accommodate Kelly and Vacation Days as long as the City of Melvindale is serviced by the Dearborn Fire Department.

Lastly, and perhaps most importantly, the Firefighters maintain that the City has not made a persuasive business case for changing the established promotion model.

Conclusion:

At first blush, the Panel Chair is inclined to reject the City's proposal principally on the grounds that they have not established a business case for changing the current system. The City does not cite any instances of officer promotions that have not worked out, nor any instances of individuals who have been promoted under the old system to officer positions who have been disciplined for poor performance and returned to their previous rank. While the testimony contains implied criticism of a reliance on seniority, there are no indications cited of promotions granted under the existing system that turned out to be poor predictors of officer success.

Nor are there references made to other fire departments who have decided to add the assessment center model and been very pleased with it. The one reference that is cited by the Department refers to the use of the process and

the vendor company by the Dearborn Police Department, but admittedly, that group only uses the process for promotion to one position. The Union notes that a majority of the comparables they submitted base promotions predominantly upon department or rank seniority, typically among candidates who first pass a written test.[1] Cities that use a combination of written and oral tests typically rate the written exam higher.[2] Cities that allow seniority to count as part of a combined score typically have no limit on the number of years of seniority that can be used. Union Ex. 135 (right column).[3]

Nevertheless, this arbitrator is persuaded that a carefully structured expansion of the oral interview, revolving around the opportunity to pose situations faced regularly by officers, would be more beneficial in helping to predict and determine leadership skills and capabilities than a written examination and a typical oral interview alone can accomplish.

Since this issue is non-economic, I am not bound to select one proposal over the other, but free to fashion a compromise. I think that the City's proposal to incorporate an assessment model has merit, but in light of some of the

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[1] / *See* Canton Twp (seniority); Clinton Twp (seniority); Livonia (seniority); Royal Oak (seniority for Lts and Sgts); Shelby Twp (seniority); Sterling Heights (seniority); Warren (seniority); West Bloomfield (seniority). Union Ex. 134.

[2] / *See* Dearborn Heights, Southfield, St. Clair Shores; Westland. Union Ex. 134.

[3] / Westland is the only Fire Department among the comparables that caps the use of seniority points, and its cap is 20 years. Union Ex. 134.

concerns that have been raised by the Union as noted above, I am not inclined to support the proposed percentage weights in the City's proposal, nor their proposed cap on the number of years of seniority and the maximum points that can be assigned. Therefore, I am ordering a modification of the model proposed by the City as follows:

31.01: Effective July 1, 2017

G. The promotional examination for the Assistant Fire Chief is approved by the Civil Service Commission as follows:

iii. Appointment is at the Fire Chief's discretion from among qualified candidates.

iv. Applications restricted to L412 members who have a minimum of 7.5 years professional firefighting experience in Dearborn. Applicants must possess a bachelor's degree or equivalent comparable experience and must successfully complete the EMU Staff and Command Course or equivalent, within one year of appointment.

H. The promotional examination for the Battalion Fire Chief is approved by the Civil Service Commission as follows:

iv. Applications restricted to Fire Captains who have held this classification for at least two (2) years prior to the last date for filing applications.

v. ***Written Test:*** A candidate must score at least a 70% on the written test to move on to the Assessment Center and Oral Interview.

vi. ***Parts & Weights of the Examination:***

- Written Test: 30%
- Assessment Center: 35%
- Oral Interview: 35%

Service Credits: One-half percent (1/2%) per year up to twenty (20) years of service (Maximum 10%).

I. The promotional examinations for the Fire Captain is approved by the Civil Service Commission as follows:

iv. Applications restricted to Fire Lieutenants who have held this classification for at least two (2) years prior to the last date for filing applications.

v. ***Written Test:*** A candidate must score at least a 70% on the written test to move on to the Assessment Center and Oral Interview.

vi. ***Parts & Weights of the Examination:***

- Written Test: 30%
- Assessment Center: 35%
- Oral Interview: 35%

Service Credits: One-half percent (1/2%) per year up to twenty (20) years of service (Maximum 10%).

J. The promotional examinations for the Fire Lieutenant is approved by the Civil Service Commission as follows:

iv. Applications restricted to Firefighter IIs and Firefighter IIIs who have completed at least five (5) years of service in the City of Dearborn Fire Department prior to the last date for filing applications.

v. ***Written Test:*** A candidate must score at least a 70% on the written test to move on to the Assessment Center and Oral Interview.

vi. ***Parts & Weights of the Examination:***

- Written Test: 30%
- Assessment Center: 35%
- Oral Interview: 35%

Service Credits: One-half percent (1/2%) per year up to ten (20) years of service (Maximum 10%).

K. The promotional examination for the Firefighter III is approved by the Civil Service Commission as follows:

ii. Applications restricted to all Firefighter IIs who have completed at least three (3) years of service in the Fire Department prior to the last date for filing applications.

iii. The following parts and weights are approved: Written test, 100%; applicants who qualify on the written examination with a minimum passing grade of 75% shall be placed on a promotional employment list in order of seniority as Firefighter II, and shall be certified to the Fire Department in seniority order.

L. The promotional examination for the Firefighter II is approved by the Civil Service Commission as follows:

ii. Applications restricted to all Firefighter Is who have completed at least three (3) years of service in the Fire Department prior to the last date for filing applications.

iii. The following parts and weights are approved: Written test, 100%; applicants who qualify on the written examination with a minimum passing grade of 75% shall be placed on a promotional employment list in order of seniority as Firefighter I, and shall be certified to the Fire Department in seniority order.

Art 31.01(G):

A set of "Swing Promotions" to replace the retired Ladder 3 promotional positions will be retained in order to accommodate Kelly and Vacation Days as long as the City of Melvindale is serviced by the Dearborn Fire Department.

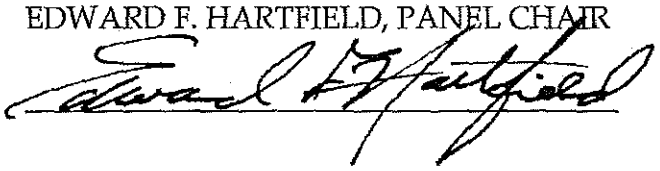
AWARD:

PROMOTIONAL MODEL (Non-Economic)

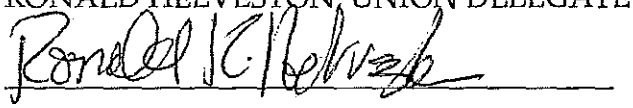
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by 1) adopting a modified version of the City's proposal for the issue of Promotional Model as described on pages 35-37 above.

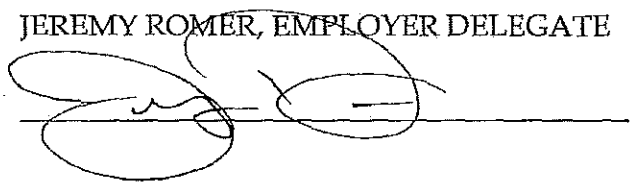
EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE ___Agree _X_ Disagree



JEREMY ROMER, EMPLOYER DELEGATE _X_ Agree ___Disagree



D. Minimum Reporting Time (Economic)

The City is proposing to reduce the current payment for individuals who are called in before or after their shift, or on an off day from a minimum of four hours pay to two hours pay. The City is also proposing to delete the language in the contract which provides for an off-duty officer to be called into work for emergency callback overtime to assume the duties of "house watch". A house watch officer is a firefighter that is called in from being off duty when there is an emergency situation to coordinate the deployment of manpower and equipment from various locations to the emergency. The Union is proposing to maintain the status quo on both sections---the minimum four-hour call in pay and the maintenance of the "house watch" duty officer.

City LBO:

19.01 If an employee reports for work on a scheduled work day, or is called back to work after working a scheduled work day, or is assigned a detail by the chief, (i.e., court, ceremonial, council meeting) after hours or during a non-scheduled workday, then he/she shall be given a minimum credit of ~~four (4)~~ two (2) work hours.

~~If an employee is called to work between two (2) and four (4) hours before the regular starting time, then the employee shall be credited with the minimum four (4) work hours. If the employee is called to work less than two (2) hours before the regular starting time, it shall be considered overtime hours.~~

If an employee is called into work before his/her regular start time, then the employee shall be given a minimum credit of two (2) work hours.

~~19.02 In the event any off duty employees are called into work for emergency callback overtime, an off duty officer will also be called into work for emergency callback overtime to assume "house watch" duties. The callback of such an officer shall be in accordance with the overtime equalization list; in the event no off-duty officer accepts the callback work, then the work shall be offered to all other non officer employees in the accordance with the overtime equalization list. The minimum credit as set forth above under Section 20.1 shall apply.~~

Discussion:

The City asserts that the current minimum reporting compensation of 4 hours is costly and unnecessary and also, that the "house watch" requirement is antiquated. The underlying rationale for the City's proposal is financial. First, the Chief believes that many of the firefighters that are called back to work and paid a minimum of four hours call in are only performing 15-30 minutes of work. Second, he believes that by reducing call in pay so that it more closely resembles the actual time spent performing the work, he will be able to allocate the savings to training. The City underscores the fact that *they are not proposing to eliminate the minimum reporting time,* just to reduce it to reflect a more reasonable payment for the typical amount of work required to be performed on the majority of call-backs.

The Union's position to maintain the current 4-hour call in pay is based on the following:

First, a four-hour call in provision is common practice for many industries and crafts. Second, the services that are performed during these times are important enough for the City to call someone in that they should be compensated appropriately. Third, the Union points to the situation of the Fire Marshall division, a group that is responsible for performing inspections to

emphasize that the situations that they frequently find themselves involved in warrant the higher amount of call in pay, with the following key points:

1) The Fire Marshalls are often exposed to toxic substances, weakened structures, dangerous materials, criminal activities, or other unstable circumstances during their call in assignments.

2) The four-hour call in pay is consistent with the payment offered to their colleagues in comparable communities (Union Ex. 160)

3) If the City's LBO is adopted, then the Dearborn Firefighters compensation will be tied for last among the comparables.

4) There is no provision for being compensated to be on call, so the only extra payment that the fire inspectors receive for being on call is the minimum 4 hours call in pay if they are actually called in.

Concerning the "house watch" requirement, the City asserts that this provision and function is obsolete and should be eliminated. The Department's testimony, offered by Chief Murray, is that the new dispatch center renders the house watch officer unnecessary. The City further maintains that requiring an off duty firefighter to perform the house watch functions removes the Department's ability to utilize the firefighter in a more active role on the scene, should it be necessary. In fact, the City described the Union's position of wanting the City to maintain what is now an obsolete practice given the current dispatch system as "draconian".

The Union's position of maintaining the house watch duties and compensation is based on the following:

1) That the dispatchers are not trained either as firefighters or police officers.

2) House watch officer responsibilities are complex requiring firefighter experience including: overseeing call-backs for larger incidents, tracking which firefighters will be called back, where they are going, the duties to be undertaken, understanding the overtime records to determine who should be called in, coordinating resources for emergencies, etc.

3) House watch officers, unlike dispatchers, are familiar with station locations, rigs and equipment and can direct firefighters to the station where a particular apparatus is stored.

Conclusion:

At the out-set I would note that there are a number of unanswered questions on this issue, questions that neither side has chosen to address:

1) How many call ins per year is customary for a firefighter?

2) What is the average duration of the call ins?

3) What percentage of the time does the firefighter work more or less often than the minimum call in time?

4) How frequent are the Fire Inspectors called in at night, when it is not part of their regular duties?

5) How much money does the Department pay out on minimum call ins?

6) What is the amount of money that the Department believes it will save by making the change?

Testimony elicited from the Chief points out that the position of fire inspector is voluntary: no one is forced to perform these duties. The job

responsibilities and functions are clear from the outset: someone has to be on call every day and every night. Being on call means that you have to be able to respond to a call and be available generally within one hour of the call. While the Chief acknowledges that being on call in general, getting calls at 3am or going to a wedding and not being able to consume alcohol are inconveniences, all fire inspector candidates know about these conditions in advance and volunteer for the job, anyway.

Looking at the practices in comparable communities, Canton Township, Clinton Township, Sterling Heights, and Warren all provide for a minimum of 3 hours pay. Livonia provides for a minimum of 3 hours pay or time and one half, whichever is less.

1) Comparables:

Canton Township	Time and ½ for all hours worked.
Clinton Township	Time and a half minimum of 3 hours
The City of Livonia	Minimum of 3 hours pay or 1 ½ time, whichever is less
The City of Southfield	Minimum of 2 hours at time and a half unless within 2 hours of scheduled start of shift or one hour of scheduled end of shift
The City of Sterling Heights	3 hours
The City of Warren	56 hour employees - 3 hours, 40 hour employees – 2 hours
The City of Westland	No call in pay requirement

Conclusion:

I am persuaded to adopt the City's LBO on this issue because of the following arguments: 1) The position is voluntary and all candidates understand the job requirements before taking the position. 2) While the Union's argument *viz a viz* the Fire Marshall Division of 4 firefighters is compelling, their LBO is framed to impact everyone in the bargaining unit. The arguments advanced by the Firefighters that would warrant the continuation of the 4-hour minimum reporting time to the entire bargaining unit are nowhere near as compelling.

I am also persuaded to accept the City LBO that the duties previously performed by the "House watch" officer can be adequately performed by the new dispatch center in conjunction with the existing command structure of the Department.

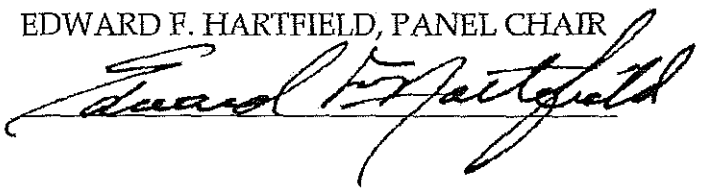
AWARD:

MINIMUM REPORTING TIME (Economic)

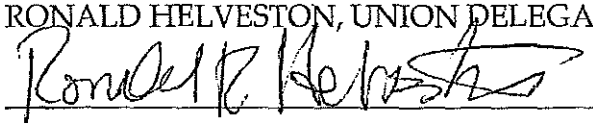
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by adopting the City's proposal for the issue of Minimum Reporting.

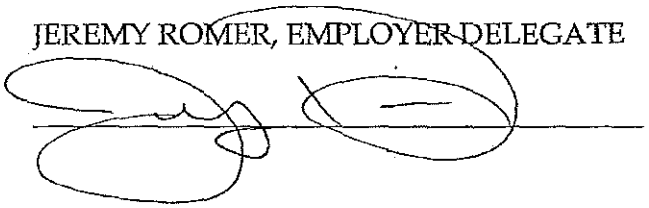
EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE ___Agree _X_ Disagree



JEREMY ROMER, EMPLOYER DELEGATE _X_ Agree ___Disagree



E. Grievance Procedure (Non-Economic)

The City is proposing to make two changes to the language of the Grievance Procedure article. The first is in Step 3, to allow the Fire Chief to advance a grievance to arbitration in the event that he disagrees with the decision of the City's Director of Human Resources. The second proposed change is to shorten the number of days to file for arbitration from 30 in the current contract to 15. The Union's position is to maintain the existing language in the collective bargaining agreement. The City's proposed language changes are underlined below.

City Proposal:

6.01 A "grievance" shall mean a complaint by an employee in the bargaining unit which he believes to be a violation, misinterpretation or inequitable application of the provisions of this Agreement, or an inequitable application of the work rules of the department. The term "employee" shall also mean a group of employees having the same grievance. A group grievance shall be only one in which the fact questions and the provisions of the Agreement alleged to be violated are the same as they relate to each and every employee in the group.

6.02 Most grievances arise from instances of misunderstanding or problems that should be settled promptly and satisfactorily on an informal basis at the work level before they become formal grievances. It is mutually agreed that all grievances, arising under and during the term of this Agreement, shall be settled in accordance with the procedure herein provided.

Step 1 An aggrieved employee may initiate a grievance by submitting such grievance in writing to the Chief of the Department, or his representative, within fifteen (15) days after the occurrence or fifteen (15) days after the matter shall become known to the employee or the Union. The grievance shall be reduced to writing on a form provided by the City, and the form shall set forth: 1) a statement of the grievance and the facts upon which it is based citing the alleged violation(s) of this agreement or the work rules, and (2) the remedy or correction requested. The Chief, or his representative, shall reply in writing within fifteen (15) days thereafter.

Step 2 If the grievance has not been settled in Step 1, the employee may appeal the grievance to the City's Human Resources Administrator within fifteen (15) calendar days following the reply of the Chief, or his representative. Upon receipt of this appeal, and after the Union has designated their representatives, the Human Resources Administrator shall arrange a meeting within fifteen (15) calendar days. The Human Resources Administrator shall render a decision within fifteen (15) calendar days of the date of the last meeting of the Grievance Panel.

Step 3 If the grievance is not settled by the decision of the Human Resources Administrator to the satisfaction of either party, ~~the Union must~~ then either party may, if it desires to arbitrate the grievance, notify the ~~City~~ Human Resources Administrator in writing within ~~thirty~~ fifteen (15) calendar days of the date of the receipt of the Step 2 decision. The parties shall then be obliged to proceed with the arbitration in the manner hereinafter provided. The parties shall attempt to agree upon an impartial arbitrator. If they cannot so agree within ten (10) calendar days of the request for arbitration, the Union shall, within ten (10) calendar days thereafter file the demand for arbitration with the American Arbitration Association in accordance with the then applicable rules of the Association. The expenses of the arbitrator, excepting the parties' own expenses, shall be borne equally by the Union and the City. The arbitrator shall have the authority and jurisdiction to determine the propriety of the interpretation and/or application of the collective bargaining agreement respecting the grievance in question, but he shall not have the power to alter, modify or add to the terms of this Agreement. The decision of the arbitrator shall be final and binding on the parties and affected employees.

6.03 The grievance procedures provided in this Agreement shall be supplementary to, rather than exclusive of, any procedures or remedies afforded to any employee by law, provided, however, that an employee who elects to appeal to Step 2 of this grievance procedure shall be deemed to have waived the use of any alternative procedures provided by the City.

6.04 The Union and Fire Chief shall have exclusive authority to initiate and prosecute arbitration under Step 3 of this grievance procedure.

6.05 The time limits contained in this article may be extended upon the mutual

agreement of the Union and the City.

Discussion:

The rationale advanced by the Department for this proposal is as follows: First, the Department wants to assure that they, along with the Union, have the right to advance a grievance to arbitration in the event that they are dissatisfied with the decision in Step 2 by the City's HR Director. Second, the Chief believes that he already has the right to advance a grievance to arbitration even under the current contract language. The City's brief states that this proposal would "effectively enshrine the current understanding of the ability of the department to advance a grievance to arbitration where the Human Resources Administrator rules against the department."

Note first that there is only one scenario under which the City's proposal would come into play: the HR Administrator would have to render a decision that was satisfactory to the Firefighters, such that they chose not to arbitrate, but the Fire Chief found the decision objectionable, and filed for arbitration. Only then would the Chief's proposed ability to arbitrate be realized.

The Union's rejection of this proposed change is based on the following points. They first raise the question: in the event that the Chief appealed an issue to arbitration because of his disagreement with the HR Director's decision, who would the parties to the arbitration be? If the Firefighters find the decision

of the HR Director at Step 2 to be satisfactory and find therefore, no reason for the Firefighters to be a party, why would the Firefighters be involved?

The Firefighters argue that in those circumstances, they risk having their contract interpreted in a process in which they should not be forced to participate, which they argue is unfair. If they ultimately are required to be dragged into the process, then they are being forced to spend resources that they had chosen not to spend to participate in a dispute that they are not genuinely a part of. And if the HR Administrator chooses to step aside and leave the Step Two answer undefended once the Chief files for arbitration, then what is the point of having a Step Two appeal—an appeal that comes *after* the Chief's step—when the Chief can render it negative by appealing to arbitration?

Throughout my career, this arbitrator has not seen this type of proposal. The scenario being advanced by the City is one that describes a problem for internal negotiations on the City side of the table. The Chief is seeking the right to overturn the decision of a member of his own team---the City of Dearborn management team. This cries out for the need to improve communication and or relationships as they relate to grievance administration on one side of the table rather than enact a change in contract language.

An HR Director that is wise should be communicating with the relevant department heads who will be effected by a decision in advance of making the

final decision at the Step 2 level. Department heads should have a voice or input into those decisions that affect their areas. Best practice in grievance administration almost universally demands that this occur, regardless of whether the Chief is participating in the decision.

In making their case for this change, the City did not cite any instances in which the Chief's scenario has occurred, nor did they call any other witnesses to support their position. The testimony on this issue, short in length and on supporting rationale, leaves the arbitrator with the strong impression that this is not a serious issue. If, however, it is, then the cure for this problem is not to provide the Chief with the contractual authority to overturn the decision of one of his own colleagues, but to instead encourage the City to improve their internal decision making and communication process at the Step 2 level.

The proposal would also reduce the amount of time the parties' have to advance a grievance to arbitration, from 30 to 15 days (Tran. Vol. 5 at 70-71). The only rationale offered for this proposed change was to make this timeline similar to the other timelines for the grievance procedure in the contract. The Union, however, argues that the time limits should *not* be consistent, because the decision to arbitrate takes far more time than other decisions.

The Union makes a compelling argument to view the decision to arbitrate in a different light from the previous steps, in which the costs and consequences

of the decision to arbitrate should warrant the additional time necessary to make such a decision. They argue that the decision to arbitrate a grievance is very different.

> Decisions to arbitrate are expensive. At the very least, legal counsel will have to be engaged. That expense requires that a union do its due diligence to get a professional opinion about the likely costs versus the likelihood of success. To complete that due diligence process, a union will likely solicit a legal opinion from counsel on the likelihood of success before an arbitrator. To render that legal opinion, counsel may have to meet with the grievant and some of the Firefighters' officers, or at least to review documents, do research, and draft a written opinion. That opinion may go to the membership as a whole, and it may take some time to organize a membership meeting, or to wait for the next scheduled one to arrive. None of these steps need occur to process a grievance from Step One to Two, but all of them (and others) may be necessary for a union to process a grievance from Step Two to Three. The deadline for appealing to Step Three is longer than some of the other deadlines in the grievance procedure because it needs to be. (Firefighters brief, p.199.)

Conclusion:

As was the case with the proposed language providing the Chief with the ability to advance an issue to arbitration when he disagrees with his own colleague, the City's case on shortening the timeline from 30 to 15 days is lacking both on rationale and supporting documentation. I can find no testimony regarding harm from the existing deadline and only a brief reference to make all of the deadlines in the grievance procedure consistent.

Since the Union is and will likely continue to be the moving party for the majority of arbitrations, it is not unusual for employers to accept a longer time

period before filing for arbitration becomes necessary since most employers are hoping that:

1) The Union will decide not to spend the money.

2) The Union will evaluate the issue carefully, perhaps with outside assistance, and decide that the risk of losing is great enough that they should not pursue a case.

3) Internal discussions and cooler heads will come up with a settlement proposal that both parties can live with.

In the absence of any substantial evidence that the current grievance procedure requires change, I am not persuaded that the City's proposal has merit. Given the level of excellence of both outside and in house Counsel enjoyed by Dearborn, they should look to these individuals to assist in the resolution of any internal disputes between the Fire Chief and the HR Director.

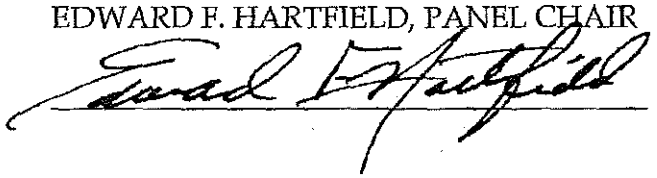
AWARD:

GRIEVANCE PROCEDURE (Non-Economic)

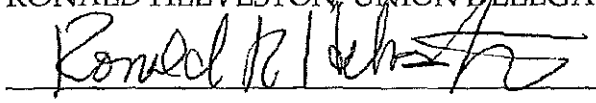
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by rejecting the City's proposed language changes and retaining the existing contract language.

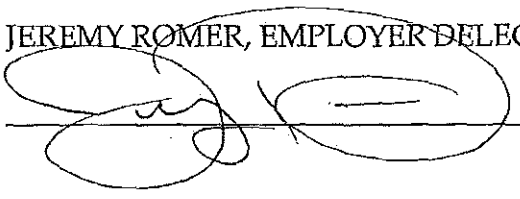
EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE X Agree ___Disagree



JEREMY ROMER, EMPLOYER DELEGATE ___Agree _X_ Disagree



F. Light Duty (Non-Economic)

The City's last best offer changes the provision of the contract Section 40.08 that provides when a 24-hour-shift Firefighter is injured on duty, the Firefighter is offered 24-hour light duty for a period of thirty (30) calendar days. Their proposed language would allow the Chief discretion as to whether injured employees will be permitted to work light duty and, if so, whether they will be assigned a 24-hour or 40-hour schedule. The offer also permits the Chief to determine when an injured Firefighter will be returned to regular duty, regardless of medical clearance. At the end of the 30-day period, the 24-hour shift may continue or be changed to a 40-hour work schedule at the discretion of the Chief. The Union is proposing to maintain the current contract language on both aspects of this article.

City Proposal:

~~40.08 Light Duty~~

~~24 hour shift employees injured on duty shall be offered 24 hour light duty. After thirty (30) days, 24 hour light duty shall be continued or reverted to forty (40) hour light duty at the Fire Chief's discretion. 24 hour shift employees injured off duty shall be offered 24 hour light duty at the Chief's discretion or 40 hour light duty work at the Chief's discretion. An eight (8) hour employee injured on or off duty shall be offered light duty. Employees shall not suffer any losses due to being on light duty. Employees shall be returned to regular duty when medically cleared~~.

40.08: Light Duty:

It is understood that an employee does not have the right to be assigned work in a light duty capacity and assignment of an employee to a temporary light duty assignment because of an injury sustained while on duty remains at the discretion of the Fire Chief. Requests for temporary light duty assignments shall be submitted to the Fire Chief's office and must be accompanied by a statement of medical certification to support the request for light duty.

Discussion:

Chief Murray testified that the current light duty assignment language provides limited opportunities to be able to actually have employees on light duty perform constructive work (Tran. Vol. 5 at 96). He pointed out that since the Department administrative office is only open for 8 hours each day, the majority of light duty work is work performed during the typical day (8-hour) shift, not during the 24-hour shift (*Id.* at 96). The point that the Chief is making on behalf of the City is demonstrated theoretically, by looking at City exhibit 66, where in a given 31-day period, a firefighter is working light duty on a 24-hour shift, they will essentially only be performing productive work for 64 hours, where if they were assigned to a 40-hour shift under the City's proposal, they will be performing 168 hours of productive work (*Id.* at 97-99, City Ex. 66).

The Union responds that Section 40.08 of the current contract provides that when a 24-hour-shift Firefighter is injured on duty, the Firefighter is offered 24-hour light duty for a period of thirty (30) calendar days. Union Ex. 26 at 39. At the end of the 30-day period, the 24-hour shift may continue or be changed to a 40-hour work schedule at the discretion of the Chief. The City's last best offer changes this provision to allow the Chief complete discretion as to whether injured employees will be permitted to work light duty and, if so, whether they will be assigned a 24-hour or 40-hour schedule. The offer also permits the Chief

to determine when an injured Firefighter will be returned to regular duty, regardless of medical clearance.

When injured, a Firefighter is sent to the City's choice of physician. If the physician determines that the Firefighter cannot perform full firefighting, EMS or other patient care duties, the physician may assign the Firefighter to light duty. Tr., Vol. 7 at 115. Pursuant to the current provision, a 24-hour Firefighter would continue to work a 24-hour shift schedule for the first thirty (30) *calendar* days (not work days) of light duty but then may be moved to a 40-hour schedule.

The Union's opposition is based on the following: 1) the language is limited to employees who are injured *on the job, in the line of duty*; providing this 30 calendar day period to re-arrange their lives is a small price to pay for the heroic service of firefighters to the community. 2) a firefighter's job is incredibly dangerous and injuries suffered on the job can include heart attacks, injuries from falls through the roof or floor of a burning structure, knee, ankle, muscular injuries and even hernias. 3) Firefighters are used to working 24-hour shifts, and being transferred to a 40-hour shift disrupts their personal life.

The City's argument appears to be the Chief's desire to control how and when he will permit any injured Firefighter to work light duty and return to regular duty. The Chief's argument is that this will permit him to assign employees as necessary for the workload, including the flexibility to place

firefighters on a 40-hour light duty assignment when the need arises (*Id.* at 102-104).

The Union's objections to the Chief's proposed language changes are as follows: First, in the contract negotiations of 2012, the Chief agreed that thirty (30) days *was* a reasonable transition period for a Firefighter injured in the line of duty to rearrange his or her entire life. Tr., Vol. 7 at 121-22; Tr., Vol. 5 at 103. What has prompted this change of heart? Second, during the course of these negotiations, the Chief did not identify any new circumstances necessitating or justifying a change. Third, the Union believes that it would be unwise to provide the Chief with complete discretion to ignore the City physician's opinion and make his own determination about when or if an injured firefighter can return to regular duty.

Reviewing the transcripts and the evidence, the Panel Chair has the following questions:

1) Why is this a non-economic issue in light of the City's argument that the Chief does not want to pay the 16-hour portion of a FF 24 shift when the offices are closed and the light duty work cannot occur?

2) How frequently have requests for light duty occurred, even in the last 4-5 years?

3) How often has the loss of productivity been a problem? How many actual hours are we talking about, not the theory reflected in City exhibit #66?

4) Why are there no other examples, exhibits, data, etc. on this issue?

This is another problem, akin to that discussed in Apparatus Staffing, that I am confused about the problem-solving techniques used by the Department. Why, for example, does the closing of the Department administrative office necessitate the end of the work shift? If an employee on light duty is filing, why can't he or she continue that work in a station, complete with, for example, a box(es) to place files in appropriate order? Why do we automatically conclude that because an 8-hour day is finished at one location the light duty employee's shift is automatically over? Is this problem really that difficult to resolve?

More troubling to me is that lack of evidence supplied by the City to support its proposed changes in language here. To what extent is this a real problem or is this something that might be a problem, somewhere down the road?

While I must confess that it is equally difficult to understand the Union's argument that a fire suppression fighter's life and that of his family revolve around the 24-hour schedule and it is very difficult for them to re-arrange on short notice, I have not experienced that schedule so I will defer to Mr. Jent's sincere testimony in that regard. I would expect that in the event the firefighter is able to make alternate arrangements in less than 30 days and is able to return, he or she would notify the Department of the same.

As to the Chief's proposal that the Chief be given the discretion to override the determination of a physician, there is no evidence to support this proposal. If the Department, or specifically, its Chief, is unhappy with the performance of its physicians, then they should seek to change the physician group or the clinic with whom they have the discretion to contract. The very requirement that the employee must be medically examined by the City's choice of physician is designed to protect the City's interests in making sure that employees are either fit for duty or truly unable to return to the job except under certain circumstances. I find no evidence to support the desire of the Chief to be able to override the determination of the physician.

Conclusion:

Conventional wisdom dictates that the party desiring to make a change in contract language bears the burden of supporting the need for the change. In my view, the City has not met its burden on this issue and I order the maintenance of the status quo contract language on this issue.

AWARD:

LIGHT DUTY (Non-Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by rejecting the City's proposed language changes and retaining the existing contract language.

EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree

RONALD HELVESTON, UNION DELEGATE — X Agree ___Disagree

JEREMY ROMER, EMPLOYER DELEGATE — ___Agree X Disagree

G. Fire Apparatus Supervisor Assistant ("FASA") Requirement (Non- Economic)

The City's last best offer eliminates the requirement of three FASAs, as well as the restriction that only FASAs may be promoted to Fire Apparatus Supervisor III. The Firefighters request that the status quo be maintained because FASAs are a vital component in keeping Firefighters safe and their equipment operational. Under current practices, FASA is a promotional position subject to both written and oral testing. Tr., Vol. 8 at 150.

City Proposal:

31.04 ~~City to maintain three (3) Fire Apparatus Supervisor Assistants, one on each shift.~~

Those persons holding the rank of Firefighter III shall be eligible for promotion to the position of Fire Apparatus Supervisor Assistant. ~~This shall reduce the complement of Firefighter III's by three (3).~~

~~Those persons who attain the position of Fire Apparatus Supervisor Assistant shall be eligible for promotion to the position of Fire Apparatus Supervisor III.~~

Discussion:

Chief Murray testified that the current scheduling and requirement to have three FASAs actually makes it harder to accomplish the work that the FASAs need to perform. (Tran. Vol. 5 at 108, 110). Further, Chief Murray would like to open the promotional requirements so additional firefighters could be considered for the position of Fire Apparatus Supervisor III (*Id.* at 111). Chief Murray testified that the FASA position used to be a position that members would stay at for a long time, and obtain training to become very efficient in the

position (*Id.*). The past four or five FASAs have come into the position, received a lot of training, and then tested out of the position for advancement to Lieutenant (*Id.*). This ends up costing the City of money to train new candidates, which they then have to turn around and spend again after the FASA is promoted and a new firefighter is promoted to FASA. This also causes problems when the FASAs do not wish to be Fire Apparatus Supervisor IIIs, but wish to be promoted to Lieutenant (*Id.* at 112).

The Chief also believes that their proposed change would help to identify firefighters with leadership skills who will be able to transfer to supervisory positions. Also, Chief Murray confirmed on questioning from Union counsel that he is not proposing to eliminate the positions or functions, *just to eliminate the requirement to have three FASAs, and to open up the promotional opportunities* (*Id.* at 114-115). It is obvious that the Department would still need employees to perform the functions of the FASAs, but granting the City's proposal would provide additional flexibility for the Department to determine the best way to do so.

The Union argues that the City's offer does not provide any idea as to how or how many FASA positions will be filled or who qualifies for Supervisor if there are no FASAs. Instead of providing improvements, the City's offer simply guts the provision with no suggestion as to how the current FASAs extensive

duties will be covered. It leaves only the provision that Firefighter IIIs are eligible for promotion to FASA. In the current contract, Section 31.04 requires the City to have three (3) Fire Apparatus Supervisor Assistants ("FASA"), one on each shift. Union Ex. 26 at 8. FASA is a promotional position subject to both written and oral testing. Tr., Vol. 8 at 150.

The Union bases its opposition to the City's LBO on the following arguments: 1) The FASA position performs critically important and comprehensive duties including, but not limited to:

- Inspection, issuance, and computer inventorying of approximately 1,560 pieces of equipment, including escape devices and harnesses
- Servicing all self-contained breathing apparatus ("SCBA"), including the annual testing and refitting of both the harness and mask.
- Mounting and repairing of equipment on the trucks including extrication equipment, ventilation fans, chainsaws and rescue saws.
- Driving ladder 4 when dispatched on EMS and fire runs. Tr.; Vol. 5 at 163. Setting up outriggers (which stabilize the ladder), deploying the aerial device and handling emergency on-site repairs to ensure firefighter safety at fire scenes.
- Attending major alarm calls to check operation of equipment and to make adjustments" and also may be called out for emergency repairs.

The Union rejects the Chief's arguments against the current three-FASA requirement because:

1) The City, apparently, wants to eliminate the FASA position because the FASA workload has *increased*: a) There is an *increase* in repair, turnout gear and equipment to be managed. *Id.* at 165-66. b) Data entry, and the computerized inventory system, did not even exist prior to the original FASAs' retirements,

and c) all agree that the number of emergency runs have increased significantly. The Union asserts that the extensive workload cannot and does not justify reducing the staff from three (3) employees working almost around-the-clock (over one hundred fifty work hours/week) to, perhaps, two (2) employees working weekdays (eighty (80) hours/week).

The Union also counters the claim by the Chief that two in-station 40-hour employees could accomplish more than three around-the-clock employees. The Firefighters believe that the FASAs' work on-scene is often critical for the safety of Firefighters actually battling a fire. Tr., Vol. 8 at 163-64. And the need for immediate FASA assistance simply does not end at 5:00 p.m. Problems and issues in the fire service arise 24/7 requiring the FASA to be available 24/7.

The Union also disagrees with the Chief's assertion that the FASA position is no longer viewed as a "retirement end-of-career" position but rather, a FASA may opt to return to fire suppression.[4] Tr., Vol. 5 at 111, 120. First, where an employee goes after leaving the FASA position is irrelevant to the operation of the division. In addition, there is no validity to the Chief's position that it is somehow less troublesome to train FASAs who are going to retire than to train

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[4]/ The Chief's noted that the three original FASAs became and remained FASAs at the end of their careers. Tr.; Vol. 8 at 158. That Firefighters with many active years left have chosen to embrace the FASA training and workload requirements certainly cannot be considered a negative. It is no reason to eliminate the position.

those who may return to fire suppression. *Id.* at 114. Further, the Chief's focus on the FAS III's administrative duties completely ignores the extensive "hands on" knowledge and experience necessary to fulfill the job requirements.

The Union points out that the aspect of the City's proposal which provides the most difficulty for them is the fact that under testimony, the Chief acknowledges that he has no specific plan to replace the current FASA requirement that he is proposing to eliminate. When asked, he simply has no idea how he wants to proceed. Tr. Vol. 5 at 118-19, 124-25. Despite preparing alternate proposals for numerous other issues, he claims that no alternative plan can be developed until this Panel issues its award. *Id.* at 128. It is distressing that the Chief wants to eliminate three positions that serve a vital safety purpose, but has nothing to propose in its place.

Conclusion:

As the party proposing the change to the contract language, the City's case on this issue did not impress me either with evidence or the rationale presented to change the provisions of Section 31.04. I also share the Union's concern that in proposing to delete the provisions, the City did not suggest a better plan – or even another plan. This deficiency, in my view, is especially concerning in light of the rather substantial list of duties and services that those currently in the FASA position provide to the mission of the Department. In making their case

on this issue, the Firefighters clearly demonstrated that the current FASA procedures improve departmental operations and effectiveness, and are vital for Firefighter safety. Pursuant to Section 9(i) of the Act, and in the interest of safety, fairness and the public interest, I am persuaded to order the maintenance of the status quo on this article.

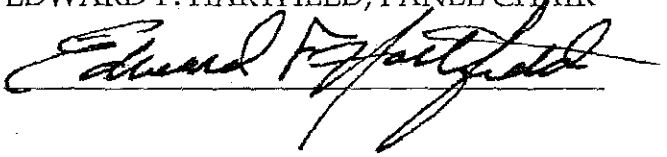
AWARD:

FASA (Non-Economic)

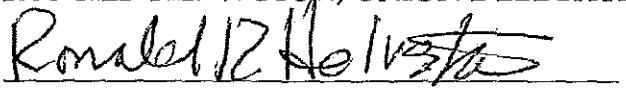
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by rejecting the City's proposed language changes and retaining the existing contract language.

EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE — X Agree ___Disagree



JEREMY ROMER, EMPLOYER DELEGATE — ___Agree X Disagree

H. Paramedic Bonus (Economic)

The Union is proposing to restore the paramedic bonus to the level that it was in 2013 before the parties entered into a concessionary contract: $4000 per firefighter per year. The City is proposing to maintain the level agreed to in the current contract: $2000 per firefighter per year.

The rationale for the Union's proposal to restore the paramedic bonus from its current level to the $4000 per firefighter per year level that existed before the 2013 contract is based primarily on the following arguments:

1) The dire financial conditions that prompted the Firefighters to enter into a concessionary contract with the City in 2013 no longer exists.

2) The Firefighters believe that the current bonus is below that of almost all other comparable communities.

3) The number of paramedic runs handled by the Department firefighters is steadily on the rise. Paramedic runs constitute 80% of the runs performed by the Department and are "generating millions of dollars of revenue" for the City.

4) Dearborn paramedics are highly trained and have to regularly attend a variety of continuing education classes.

5) The current paramedic bonus is next to last among the comparable communities, with the City of Warren being the only city that pays less at one thousand dollars ($1,000.00) per firefighter per year.

6) The Dearborn firefighter paramedics respond to all types of emergencies, and are often required to perform their duties in the middle of dangerous situations.

The City's reasoning for wanting to maintain the status quo bonus of

$2000 per firefighter per year is that restoring the bonus to the 2013 level would negate the gains that have been made by the City in its recovery from the recession. The City believes that restoring the $4000 bonus would amount to a 4% annual wage increase for a firefighter making $50,000 annually.

The Statute requires the Arbitration Panel to consider the compensation offered by comparable communities. Of the remaining communities, three pay between two thousand dollars ($2,000.00) and four thousand dollars ($4,000.00), and nine pay four thousand dollars ($4,000.00) or more. *Id.* The Firefighters' last best offer, reinstating the 2012 bonus of four thousand dollars ($4,000.00), improves the Firefighters' position to "tied for ninth" in the rankings and, at the same time, resolves a no-longer-necessary concession.

The comparables clearly favor the Union's last best offer on this issue.

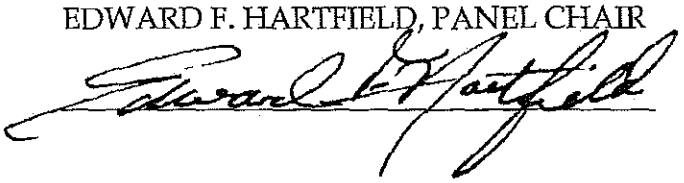
AWARD:

PARAMEDIC BONUS (Economic)

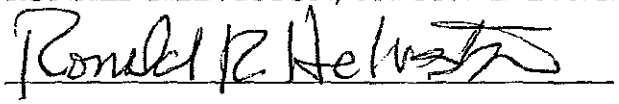
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by adopting the Union's proposed changes---restoring the Paramedic Bonus to its $4000 level.

EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE _X_ Agree ___Disagree



JEREMY ROMER, EMPLOYER DELEGATE ___Agree _X_ Disagree

I. Holiday Pay Provisions (Economic)

The differences in the parties' last best offers on this issue of holiday pay revolve primarily around the rate of pay for holidays. The Firefighters' last best offer would increase the holiday pay rate to two-fifteenths (2/15th) and leave the remainder of the Holiday Provisions unchanged, including the thirteen designated holidays. The City has proposed that the Firefighters receive no increase from the rate in the current contract which provides Holiday Pay at the rate of one-tenth (1/10th) of the Firefighters' bi-weekly salary that is in effect on the holiday.

The Union argues that Dearborn Firefighters receive less holiday pay than firefighters in comparable cities *and* below that of Dearborn's police officers, even though Dearborn's firefighters do the same or equally challenging work. Specifically, the Union argues that Dearborn Firefighters currently earn up to forty-five percent less than firefighters in comparable cities - for the same work on the same (or even fewer) designated holidays. Union Ex. 70. The Firefighters also are paid substantially less than City police officers who receive eight (8) hours of regular pay if they do not work or, if they do work on a designated holiday, time and a half for the hours actually worked *plus* eight (8) additional hours of regular pay. Union Ex. 27 at p. 30, Sec. 33.2 – 33.3.

The Union is requesting that vacation pay go from 10% (1/10) of the member's bi-weekly pay to 13.3% (2/15) of the member's bi-weekly pay for each of the thirteen holidays. The member's annual holiday pay would go from 1.3

times their bi-weekly pay (1/10 x 13 holidays) to 1.7 times their bi-weekly pay (2/15 x 13 holidays) per year. As the Union's exhibit shows, this would increase the pay for a full-paid firefighter from $3,206 to $4,275, a 33% increase of $1,069 dollars annually per full paid firefighter (Union Ex. 70). The Union acknowledges that their proposed new rate reflects an increase of approximately one-third and an increased value to full-paid firefighters of $1,096.00, an increase that moves the Firefighters from the bottom one-third to the middle one-third. Tr., Vol. 10 at 12-13.

Union Ex. 70 compares the Holiday Pay provisions in the contracts of all of the comparable communities. While it is true that the comparables on this issue--- pursuant to § 9(d) (comparable communities) and 9(e) (City employees outside of bargaining unit) of the Act--- support the Union's position, I have not seen a compelling case made for increasing the holiday pay. While it is admirable that the Union is not proposing an increase in the number of holidays, when their LBO on the rate of holiday pay is evaluated in the overall context of the total compensation received by Dearborn firefighters, it is difficult to support the need for an increase in holiday pay, even in the light of the specific comparables.

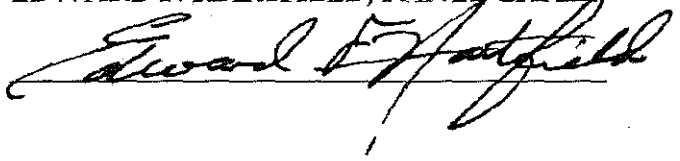
AWARD:

HOLIDAY PAY PROVISIONS (Economic)

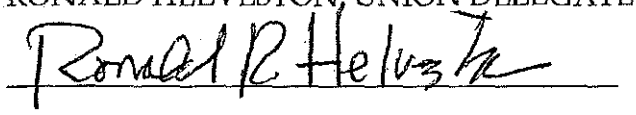
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the City's Last Best Offer as to the rate of holiday pay

A majority of the Panel is of the opinion that this dispute should be resolved by rejecting the Union's proposed language changes and retaining the existing contract language.

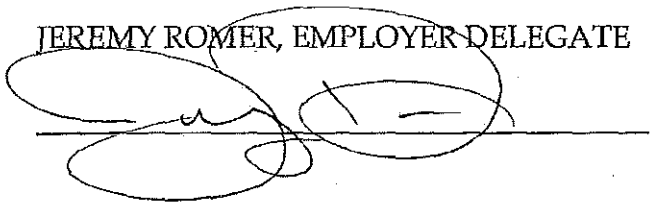
EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE ___Agree _X_ Disagree



JEREMY ROMER, EMPLOYER DELEGATE _X_ Agree ___Disagree



J. Food Allowance (Economic)

This issue is reflected in Article XXII, Section 22.01; both sides are in agreement that an increase in the current food allowance of $650 per year is warranted. The City's LBO on this issue is for an increase of $150 per year to $800. The Union's LBO is for an increase of $260 to an annual total of $910 per year. No other changes to this article are being proposed by the parties.

Discussion:

A review of the comparables that the parties mutually selected shows that with respect to the issue at hand, Dearborn Firefighters rank second to last. Canton Township does not offer a food allowance at this time, but does rank 4th in total compensation, according to Union Exhibit 64. Clinton Township appears to have the highest food allowance at $1517 per year, while the next closest to that offered at present by Dearborn is the City of Southfield @ $750.

The Union points out that the food allowance has not been increased since 1996. If I was deciding this issue alone on the merits, I would rule in favor of adopting the Union's LBO. However, seeing that this is one of a series of economic benefits, I will order the adoption of the City's LBO seeing that they are proposing an increase.

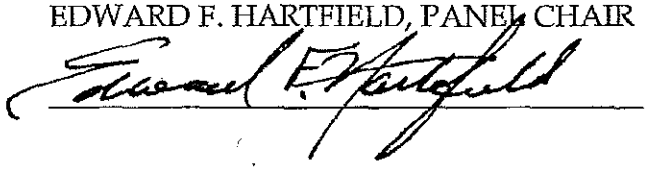
AWARD:

FOOD ALLOWANCE (Economic)

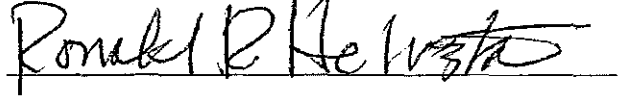
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by the City's proposed language changes.

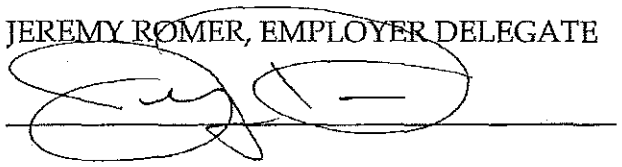
EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE — ___Agree X Disagree



JEREMY ROMER, EMPLOYER DELEGATE — X Agree ___Disagree



K. Clothing and Maintenance Allowance (Economic)

Again in this article, Section 23.01, the Panel Chair has the luxury of deciding an article in which both sides are in agreement. In this case, the City is proposing in its LBO an increase in the current allowance of $450 per firefighter per year to an increase of $850 per year for all 40-hour unit personnel and $750 per year for all other unit personnel. The City's LBO also would vest all decision making responsibility in the hands of the Chief. The Union's LBO calls for a smaller increase to $600 per year but retains the right to help decide the uniforms.

Discussion:

This issue is unusual not only because both parties are proposing increases, but also because the economic amount in the City's LBO is actually greater than that being proposed by the Union. It is curious that neither side is basing their position on a review of the comparables. Such a review as reflected in Union Exhibit 64, reveals that other than the zero amount reflected for Canton Township on this issue, Dearborn currently ranks last among the mutually selected comparables.

The key aspect of this issue is apparently the decision-making process involving the selection of the uniforms. The City is apparently willing to pay a higher amount than that requested by the Union in return for the Chief having the exclusive authority to decide which uniforms will be worn. The City believes that this will eliminate griping and complaining about the uniforms which

allegedly has happened in the past. The City did not present any evidence of this problem.

The Union's opposition to the City's more generous financial proposal is based on several arguments. First, the Union is contesting the language in the City's LBO that gives the Chief sole authority to choose the uniform. It states that "union input is welcome" but does not limit the Chief's authority to make the decision in any way. Second, if as the Union suggests in its brief, that the Department's LBO ends up eliminating the City – not the Firefighters – from the decision-making process, the Union believes that the City's last best offer, at least with regards to authority to choose uniforms, will not accomplish its intended goal: that of resolving disputes over uniforms.

Conclusion:

If I was in a different third party neutral role, that of advising the parties on how to build a collaborative relationship, I would recommend that they retain an opportunity to not just solicit input, but to jointly make an executive leadership team (i.e., joint) MERS recommendation to the Chief. There are two significant points: first, the Chief would probably retain final decision making authority, and second, this is a good example of a morale boosting issue that has the potential of paying a good dividend for the relationship.

However, as these parties are nowhere near a collaborative relationship, at least at the leadership level, there are far too many more important issues that require their collaboration without adding this to the list. I therefore will order the adoption of the City's LBO on this issue.

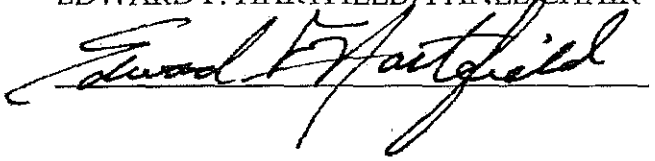
AWARD:

CLOTHING and MAINTENANCE ALLOWANCE (Economic)

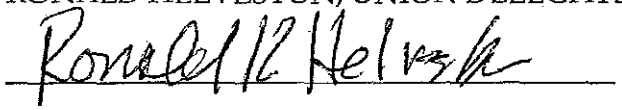
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by adopting the City's LBO.

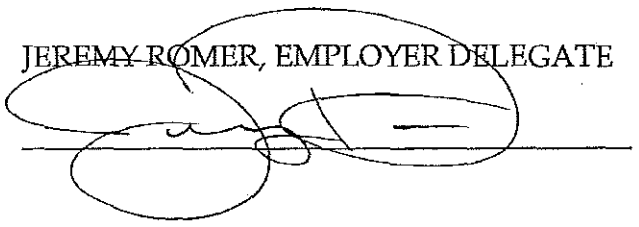
EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE — ___Agree X Disagree



JEREMY ROMER, EMPLOYER DELEGATE — X Agree ___Disagree



L. MERS Defined Benefit Plan (Economic)

The Union is proposing to change the Pension Article XXXIX to equalize the multiplier for participants in the MERS Plan with that for participants in the Chapter 23 Plan. The City is proposing to leave this article alone and stay with the status quo.

Article 39.03 (C) will be amended as follows:

39.03

C) MERS DB Plan Specifications

Benefit Formula:	B-4 (2.5% per year multiplier), 80% Max
Normal Retirement Age:	60 years old (see below for modification)
F50 Retirement Condition:	50 years of age and 25 years of service
Vesting Provision:	10 years of service
FAC Period:	3 years,
Disability:	D-2
Member Contribution:	5% non-refundable

(refundable per MERS conditions with benefit reduction)

Effective on the date of the Act 312 Award, the benefit formula multiplier for all service credit earned under this plan after the date of the Act 312 Award will be calculated as follows:

1) 2.8% per year for his/her first twenty-five (25) years.
2) 2.8% per year for his/her twenty-sixth year.
3) 2.2% per year for his/her twenty-seventh year.
4) 1% per year thereafter through 30 years.
5) No benefit accrual after the 30th year.

An employee cannot receive credit for the same City of Dearborn service time in more than one pension system. This exclusion applies to both DC and DB pension systems. Credit for service time can be applied to one system and cannot be duplicated.

[Remainder of 39.03(C) Unchanged]

Discussion:

The City's argument to reject the Union proposal is based on the following points. First, that the cost of increasing the City's contribution that occurs when the multiplier is augmented should weigh against its adoption. Second, that looking at the cost over a 10-year period really emphasizes that number. Third, that the Union's testimony and questions in cross examination make it obvious that they are trying to steer the parties towards an adoption of a plan that the City and the Union previously closed.

The basis for the Union proposal to equalize the pension multiplier as of the effective date of this arbitration award is based on the following arguments. First, that firefighters working side by side and facing the same dangerous job conditions on a daily basis should receive the same benefit level. Second, the Firefighters' believe that they have carefully crafted their proposal so as to reduce its cost to the City---most importantly, by not adding an unfunded liability---and the MERS actuaries have calculated that the cost of this proposal is indeed modest. The Firefighters point out that since the proposal will equalize the pension multiplier for both plans on a prospective basis only, it minimizes the cost to the City. Thus, there will be no retroactive consideration for service accrued by MERS plan participants at the existing multiplier.

Third, the cost of the pension proposal is relatively small, about $36,000 for the coming year and according to the MERS calculations cited by the Union, about $39,000 in 2025. Fourth, and perhaps most significantly, since the Chapter 23 plan is closed, as members of that plan retire and new firefighters are hired, the City will experience a cost savings. Under the Chapter 23 plan, the City's normal cost—the cost as a percent of payroll that it pays for each firefighter per year to fund that firefighter's pension—is 21.24% of payroll. City Ex. 56 at 1, A-2. Under the MERS plan, the normal cost--even with the Firefighters' proposal included--is only 13.13%. Every time a Chapter 23 firefighter retires and is replaced by a new firefighter in the MERS system, the City saves over 8% of payroll. The cost savings to the City exceeds the cost of the Firefighters' proposal, which is only 1.83%. City Ex. 67 at 7.

Conclusion:

I am persuaded by both the costing evidence and the arguments presented by the Union on this issue. Our labor relations history in both the public and private sectors has demonstrated that providing 2 and 3-tier wage and benefit levels is, indeed, a viable option for relieving financial distress in the short run. But, that same experience has clearly shown that it is not a viable or healthy practice to maintain over a long period of time. Leaving a second tier of benefits in place leads to employee morale issues and occasionally, disrupts the

teamwork that critical operations like fire suppression and emergency medical services so clearly demand. That the Firefighters agreed to this proposal to provide the much needed financial relief to the City is commendable. While the size of the multiplier differential is not substantial, over the career of a 30-year firefighter it would produce a significant, compounded difference in the pension benefit level, the kind of differential that helps both recruitment and retention efforts.

As to the City's assertion that the Firefighters have an ulterior motive---to steer the parties back in the direction of a pension plan that the parties had previously closed, I have to dismiss that assertion as speculative since there is no evidence or testimony in the record to support it.

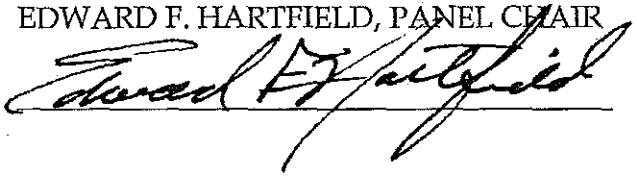
AWARD:

MERS DEFINED BENEFIT PLAN (Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

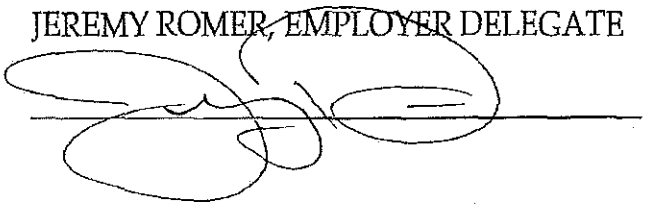
A majority of the Panel is of the opinion that this dispute should be resolved by the Union's LBO which proposes a change to equalize the pension multipliers for both of the Department's pension plans effective the date of this Agreement.

EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE X Agree ___Disagree

JEREMY ROMER, EMPLOYER DELEGATE ___Agree _X_ Disagree



M. Vacation Accumulation (Economic)

The Union is requesting that vacation accumulation increase to provide members with more than 15 years of service an additional 5 days of paid vacation time every year. The Union's LBO also proposes to change the contract language to provide for increases in the rate of vacation accumulation after 8 years instead of 12 years. The City is proposing to maintain the current contract language in this section of the contract.

Discussion:

The Firefighters are proposing an increase in their vacation days, based upon the following arguments: First, Dearborn's firefighters receive fewer days of paid vacation than their peers. Second, the Firefighters accumulate vacation days at a slower pace and often with a lower cap. While Dearborn's firefighters receive more vacation than firefighters in many cities *in their first few years of service,* the Union points out that within a few years, firefighters in other cities surpass them and their vacation days continue to grow. The Firefighters' last best offer provides that both twenty-four and forty-hour firefighters receive their first increase in vacation at eight years instead of twelve, and that they receive another, equal increase at fifteen years./[5]

The City's last best offer is to retain the status quo. They point out that they have submitted undisputed evidence showing its inability to staff all frontline equipment apparatus on a daily basis, and that increasing vacation

[5] / Also, the Firefighters' last best offer would add subsection C, providing that all changes would be prospective from the date of this panel's Act 312 award.

accumulation time will only exacerbate the problems with providing enough daily staffing to operate the frontline fire apparatus.

The Union's counter argument is that by keeping things at the status quo, the rate of vacation accumulation falls moderately to substantially below most comparable cities and should be rejected. The Union argues that Dearborn's single step—at twelve years, adding just 2⅓ days--compares unfavorably to the accumulation schedules in other cities, which have multiple steps, and reach a much higher maximum in later years.

The Union suggests that one way to compare vacation accrual rates among comparables whose contracts employ different rates and time periods is to tabulate the amount of vacation hours that firefighters would accumulate over a thirty-year career in all of the comparable cities. Please note that I have decided to include the chart, as submitted, rather than attempt to modify it to reflect only the comparables being used here. **The following cities should not be considered:** Royal Oak, Shelby Township, Dearborn Heights, St. Clair Shores, and West Bloomfield.

Community	Hours of Vacation over 30 year career	Rank (excluding Dearborn)
Royal Oak	510	1
Clinton Twp.	450	2
Canton Twp.	438	3
Sterling Hts.	425	4
Shelby Twp.	400	5
Dearborn Hts.	398	6
Livonia (1)	394	7
Livonia (2)	392	8
Westland (1)	372	9
Warren (1)	360	10
St Clair Shores	332	11
Westland (2)	310.5	12
Southfield	300.8	13
Warren (2)	295	14
W. Bloomfield	292	15
		Rank including Dearborn
Dearborn (*status quo*)	342	11 out of 16
Dearborn (*proposed*)	386⅓	9 out of 16

Including first and second tiers, there are 15 entries for the 12 comparable communities./[6] Under the current provisions, a twenty-four hour Dearborn firefighter would earn 342 days of vacation over a thirty year career./[7] This career accumulation would rank 11th out of 16 entries, if Dearborn were included

[6] / The table above is compiled from the figures in Union Ex. 108.

[7] / (10 days x 12 years) + (12⅓ days x 18 years) = 342 days.

in the list. Should Dearborn's proposal be granted, it would rank 9th out of 16—below the median, but closer to parity with comparable firefighters./[8]

Conclusion:

The Union states that the City's offer to maintain the *status quo* simply holds the Firefighters at the low to bottom end of the spectrum. I note that the Union has gone out their way to make their LBO on this issue more attractive by:

1) making the effective time of the increased days prospective with the effective date of this arbitration, and not retroactive;

2) adding the days for only those employees with more than 15 years of service;

3) proposing modest improvement in the number of years of service when an increase occurs.

Judging from the position of Dearborn firefighters compared to the 7 mutually selected municipalities, the rate of vacation accumulation places Dearborn firefighters in the lower group, but not last or next to last, as was the case with a number of the other economic benefits being sought by the Union. If I was ruling on the issue of vacation accumulation as the sole economic benefit, I would award it to the Firefighters based on the comparables. But in this case, I

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[8]/ Union Ex. 109 shows the vacation accumulation schedules for forty-hour firefighters. A comparison of Union Ex. 108 (twenty-four hour) and 109 (forty hour) shows a rough parity relationship between these two groups within each city, with step increases at about the same years, and with vacation amounts proportional in ways that reflect a twenty-four hour versus a forty-hour schedule.

have already awarded the Firefighters a number of other economic benefits based on how poorly they compare with comparable municipalities.

While it is fair to say that the Union's proposal to provide Firefighters with 15 or more years of service 5 additional days of vacation is in line with the vacation benefits offered by a number of the comparables, I am erring on the side of balance and fiscal responsibility in ordering the status quo and ruling on this issue in favor of the City. Although I am not convinced that there is an urgent need to look at the City's ability to pay (see my comments above on that matter), I do believe that, despite the significant concessions taken by the Firefighters in the last negotiations, it would not be responsible to grant all of the economic benefits requested by the Union in this set of negotiations.

The City's argument that it has been having difficulty keeping all of its equipment in operation due to all of the leave requested on a regular basis by the Firefighters is not persuasive at all. The Dearborn Fire Department has chosen to make the staff and equipment deployment situation worse by its failure to objectively and analytically hire sufficient firefighters to staff its current stations.

I wish to make it clear that my ruling on this issue in favor of the City has nothing to do with its difficulty staffing stations and crews and deploying all equipment. The solution to that problem is to hire more firefighters, plain and simple. If I could order that as part of these proceedings, I would.

AWARD:

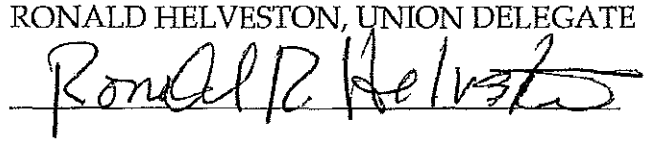
VACATION ACCUMULATION (Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

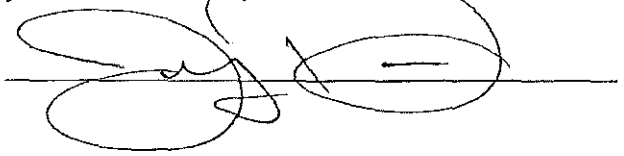
A majority of the Panel is of the opinion that this dispute should be resolved by retaining the existing contract language as proposed by the City.

EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree

RONALD HELVESTON, UNION DELEGATE — ___Agree X Disagree



JEREMY ROMER, EMPLOYER DELEGATE — X Agree ___Disagree



N. Apparatus Staffing (Non-Economic)

Introduction

The Union is proposing a new section, 8.03, be added to the collective bargaining agreement which would require that all fire vehicles be staffed with a minimum of three firefighters per vehicle. Their proposed language reads as follows:

> 8.03 All fire vehicles will be staffed with a minimum of three (3) firefighters per vehicle. For purposes of this section, "fire vehicles" will include but not be limited to ladders, engines, quints, rescue pumpers, squads, any other vehicles that the department may acquire that respond to fire emergencies and carry fire suppression equipment. Ambulances may be staffed with two (2) firefighters.

The City Last Best Offer on this issue revolves around a two-fold assertion: first, that the subject is a permissive, and not a mandatory subject of bargaining, and therefore, is not an appropriate matter for Act 312 arbitration. Second, the City argues that if the Panel decides that it is an appropriate matter for interest arbitration, the Union's proposal does not adequately address the City's staffing situation.

Discussion

This issue is one of several that the parties had originally intended to address at an evidentiary hearing in June 2016 but subsequently withdrew that request and jointly requested that I hear these arguments along with all other open issues to be addressed in the body of the decision. I will first deal with the jurisdictional question---whether the subject is a permissive rather than a mandatory, subject of bargaining and whether it is therefore appropriately before an Act 312 Panel.

City's Jurisdictional Arguments

In asserting that Apparatus Staffing is not a mandatory subject of bargaining, the City cites a number of cases to support its claim that courts have found that "where minimum manpower issues are inextricably intertwined with safety issues, they become mandatory subjects." (*Trenton Fire Fighters Union, Local 2701, etc.*, 166 Mich App 285; 420 NW2d 188 (1988), and *Jackson Fire Fighters Ass'n, Local 1306, IAFF, AFL-CIO v City of Jackson (On Remand)*, 227 Mich App 520, 526-527; 575 NW2d 823 (1998).

In *Trenton Fire Fighters Union, Local 2701, etc.*, 166 Mich App 285; 420 NW2d 188 (1988), the Court held only "where minimum manpower issues are inextricably intertwined with safety issues, they become mandatory subjects." *See also Jackson Fire Fighters Ass'n, Local 1306, IAFF, AFL-CIO v City of Jackson (On Remand)*, 227 Mich App 520, 526-527; 575 NW2d 823 (1998). The City felt that the Jackson case was relevant in part because "the evidence in this case fails to demonstrate a causal nexus between the city's proposed reduction in daily staffing and fire fighter safety". The City also cites the case of *Oak Park Public Safety Officers v City of Oak Park*, 277 Mich App 317 (2007), where the Court held that minimum staffing proposals including a minimum number of police per shift, per platoon, per division and *per vehicle* were not mandatory subjects of bargaining. That Court stated that "issues of manpower or staffing

levels generally have been determined to be managerial decisions that are not subject to mandatory bargaining," (*Id.* at 326). The Court found that "the impact of a staffing decision on working conditions, including safety, must be proven to be significant, not merely to *arguably* exist" (*Id.* at 329-330).

The City further contends that the above cited cases show that the proposal submitted by the Union during mediation and now in its LBO, and the evidence submitted during the Act 312 hearing simply do not establish that the apparatus staffing proposal is "inextricably intertwined" with employee safety. The City goes on to say that the only evidence of any safety issues submitted by the Union was the "general studies conducted in association with NFPA 1710". However, the City also makes the point that the Union never explained how these studies relate to the Dearborn Fire Department, and never made any showing that any of the Dearborn Fire Fighters suffer any safety issues *because of apparatus staffing*.

Union's Jurisdictional Arguments

The Union counters that the City's jurisdictional objection to the Firefighters' proposal on apparatus staffing should be rejected, stating that the Firefighters' proposal on apparatus staffing is a mandatory subject of bargaining over which this Panel has jurisdiction.

The Union argues that Act 312 Panels have jurisdiction over issues involving the "wages, hours, and other terms and conditions of employment" of public safety employees, like the Dearborn Firefighters. Court cases that it cites in support of its position state that "the safety of employees is a "condition of employment", and therefore the Union concludes that safety is considered a mandatory subject of bargaining. (*City of Detroit v. Detroit Fire Fighters' Ass'n*, 204 Mich. App. 541, 551, 517 N.W.2d 240 (1994); *City of Alpena v. Alpena Fire Fighters' Ass'n.*, 56 Mich. App. 568, 575, 224 N.W.2d 672 (1974), *NLRB v. Gulf Power Co.*, 384 F.2d 822 (CA 5, 1967); *NLRB v. Miller Brewing Co.*, 408 F.2d 12 (CA 9, 1969); *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 85 S. Ct. 398, 13 L.Ed.2d 233 (1964).

In its review of the case law in both the public and private sectors, the Union asserts that "it has been the law for over forty years in Michigan that minimum staffing provisions are mandatory subjects of bargaining, within the jurisdiction of Act 312 Panels, so long as the provision "is related to or inextricably intertwined with" the safety of firefighters, or has a "significant effect on" safety. *City of Detroit*, 204 Mich. App. at 553.

Discussion:

As I review the submissions of the parties on this issue, I find myself in the unusual position of being at odds with the positions of both parties as well as

some of the rulings of the courts. A summary of the court holdings on some of the cases that the City cites suggest that the standard for determining whether apparatus staffing is a mandatory subject of bargaining must be actual evidence, and not speculative in nature. I find those rulings sadly lacking. Are those courts suggesting that we have to experience firefighter deaths or serious injuries that are directly tied to inadequate staffing before we can see a connection to the intertwining of apparatus staffing to employee safety? If they state that, then I reject those findings.

On the other hand, a review of the 2001 Wolkinson arbitration award in the Detroit Firefighter cases which references and describes the Richard Kanner arbitration award, suggests that while the Union counsel has previously experienced victories on this issue in Act 312 proceedings, it has chosen not to enforce the apparatus staffing portions of those awards in return for trade-offs involving firefighter job security. If this issue is so important to firefighter safety as the Union suggests, then why did it choose to so easily ignore decisions in its favor? While I do not find the City's argument that the Dearborn Firefighters did not raise the safety issue in mediation as particularly compelling, I must admit that a historical overview of how firefighters in general have handled this issue might make one doubt the sincerity of their position.

After having heard the testimony of Chief William Bryson and having reviewed the record from that segment of the hearing, my overarching impression is that everyone in the room found the testimony and the evidence submitted to be credible. Indeed, the only argument that the City offers in rebuttal to his testimony is the Union's failure to establish the relevance of the study and findings to the City of Dearborn.

My conclusion on the question of whether Apparatus Staffing is a mandatory or permissive subject of bargaining will borrow proudly from some language in the Wolkinson award (Union Ex. 105) which states, "The City [Detroit] attempted to rebuff the [out of state] studies entered into evidence by the Union by stating that they were not comparable, and the Union failed to demonstrate how those studies demonstrate anything about Detroit. Arbitrator Wolkinson's response states,

> "The Panel does not find that these concerns of sufficient weight or merit to justify ignoring the conclusions drawn from these studies. That Austin, Providence, and Dallas were not used as comparables does not detract from their relevance given the absence of any evidence or reason to believe that the dangers and hazards confronting the arriving companies when suppressing a fire were any different in these communities than in Detroit." (pp.70-71).

Therefore, I find that the subject of Apparatus Staffing is a mandatory, and not a permissive subject of bargaining and is properly before this Act 312 Panel.

Discussion on the Merits

The City's brief states that even if the Union can establish that their apparatus staffing proposal is a mandatory subject of bargaining, the Union's proposal should be rejected. The basis for the City's proposal is as follows: First, the Union's chief witness, Chief William Bryson, provided no evidence that the Dearborn Fire Department had ever not met or violated the standard. Second, the City draws from Chief Bryson's testimony in its brief which stated that "if [a department] could determine methodologies that are an equivalent or better way of accomplishing the goal of suppression or EMS delivery or special operations delivery, that it would be acceptable to use those methods" (Tran. Vol. 6 at 61). The clear inference here is that the City meets the standard by the number of fire personnel that it sends to the scene as opposed to the number riding per vehicle.

While I commend the overall firefighter response to fire incidents that the City testified to, it seems to fly in the face of the NIST findings that the number of firefighters riding on each team or vehicle is even more significant than the total assembling on the ground because of the need for adequate personnel to perform each of the specific tasks involved in fire suppression in a particular sequence.

Fourth, the City points out that the recommendations in the NFPA study is for 4 firefighters per rig, and the Union in this case is recommending 3, so that neither the Study nor the Chief's testimony supports the Union's proposal of

three firefighters per piece of firefighting equipment. Fifth, the City points out that the Union failed to present any evidence to dispute City exhibit [sic 82] or Chief Murray's testimony that the Department meets the requirements of NFPA 1710 for personnel on the scene of a fire on every run.

The most compelling argument that the City presents to reject the Union proposal is that the great majority of the Dearborn Fire Department runs are in response to emergency medical situations versus actual fires. The City thus argues that if it has to staff at the level in the Union proposal, it could be harmful to the City's ability to handle the great majority of the EMS/paramedic responses and might require the City to take one or more of those pieces of equipment out of service.

The Union's proposal to staff all firefighting vehicles with 3 firefighters and all ambulances vehicles with two firefighters is based on the following: First, it would appear that it is the *de facto status quo*. The Union has argued that during the hearing, the Chief mentioned giving consideration to reducing the manpower on fire-fighting equipment from 3 to 2 individuals per vehicle, and that has prompted the Union to seek to memorialize the current practice. Second, that the evidence presented demonstrates that that the deployment of three-person versus two-person crews is "related to or inextricably intertwined with" firefighter safety and intertwined with the speed of carrying out vital

firefighting tasks. They cite the conclusion in the NIST study which shows that smaller crews lead to delays. Firefighters on two-person crews will get water on a fire a minute later than firefighters organized into three-person crews, and firefighters in two-person crews will be delayed in beginning their primary search, which exposes them to a hotter fire, more toxic smoke, and the risk of building failure, not to mention increasing the possibility that they will not find potential survivors in time. Firefighters on two-person crews will have to stop and wait for later arriving companies to carry out vital firefighting tasks.

I am moved by the language used by Dr. Lori Moore-Merrill in Union Exhibit 107, when she states,

> Larger crews can carry out crucial tasks in parallel rather than in series and saving time can save occupant lives and prevent firefighter injuries and property damage.

The final argument in the Union's brief on the merits concerns the presence of apparatus staffing provisions in the contracts of other, comparable communities. A review of Union Exhibit 106, the survey of apparatus staffing provisions, shows that four of the seven communities that the parties jointly agreed to as comparables currently have staffing provisions. It is clear that these communities are making a bold statement about the importance of firefighter and public safety. This is a value that I would like to see emulated by the City of Dearborn and its Firefighters.

Conclusion on the Merits:

At the outset I note that this issue is clearly connected to the issue of Hours of Work and the overall staffing level of the Department. As I wrote in discussing the parties' positions in Hours of Work, I feel that the Department has consistently opted to run at the minimum staffing level required by the City's Charter, and in so doing, has created a staffing shortage of its own making. In addition, this decision drives the need to remove equipment from daily operations far more, in my view, than the number of Kelly Days or other leave usage that occurs on a daily basis. The simple truth is that the Dearborn Fire Department is seriously understaffed.

I, therefore, will order adoption of the Union's proposal, which, in effect, memorializes the apparatus staffing practices that are currently being practiced: 3 firefighters on each piece of fire-fighting equipment and 2 firefighters on ambulances. If the Department desires to open a sixth fire station, it will have to be staffed at the same level, which will undoubtedly require the hiring of more firefighters.

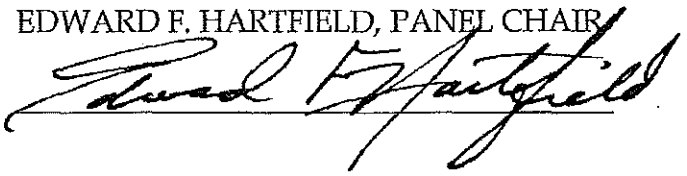
AWARD:

APPARATUS STAFFING (Non-Economic)

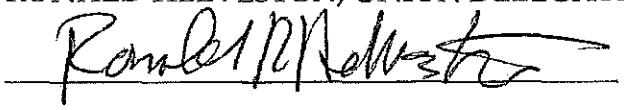
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by the Union's proposed language changes.

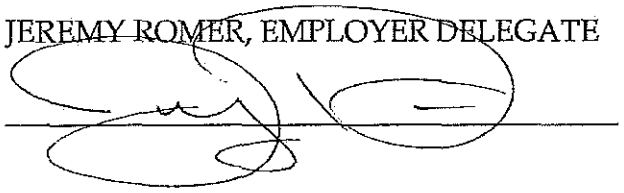
EDWARD F. HARTFIELD, PANEL CHAIR — X Agree ___Disagree



RONALD HELVESTON, UNION DELEGATE — X Agree ___Disagree



JEREMY ROMER, EMPLOYER DELEGATE — ___Agree X Disagree



O. Unit and Station Selection (Non-Economic)

The Firefighters are proposing the addition of a new article 50 in the contract that would govern unit and station selection. Their proposal is that individuals be able to bid on their assignments to a shift and a station when vacancies arise, either because of promotions or retirements. The City opposes this language on the grounds that it would interfere with the Department's ability to transfer folks to address operational needs as they arise.

The underlying rationale for the new article that the Firefighters are proposing to govern unit and station selection[9] revolves around the following arguments as I understand them: First, although existing policy allows employees to fill out a form to express a preference for their unit and station, there is no contractual requirement that these transfer requests be honored. The Firefighters assert that one of the following things may happen to pending transfer requests from employees: a) these requests are often ignored, b) a less senior firefighter may be transferred over a more senior one when there is a vacancy, c) a firefighter who requested a transfer to one assignment in the event of a vacancy may be sent to another assignment instead, d) firefighters may be transferred out of their preferred assignments when there is no vacancy at all—simply moved around the Department, from one place to another, without apparent reason and without explanation.

---

[9] / A "unit" is a shift; the Dearborn Fire Department runs on a three shift, or three platoon system. *See* the discussion of the Firefighters' schedule in the Hours section at pp. 41-69, *supra*.

Second, the Firefighters believe that safety and operational effectiveness depend on teamwork and *espirit de corps.* These critical aspects of their firefighting and emergency medical functions depend to a large extent on their comfort serving with their preferred teammates on their preferred shifts and stations.

Third, the Firefighters argue that the current Department practice of routinely transferring firefighters without explanation undermines morale. The Panel notes, at this junction, that there was little evidence to suggest that this has been a frequent problem. Reference was made to a single incident involving multiple firefighters which the Chief addressed in his testimony.

Fourth, and finally, the Union asserts that there is a potential to use involuntary and unrequested transfers as retaliation. They cite the testimony of Captain Steven Buchholtz who speculated that his unrequested transfer to another station was done in retaliation by the Chief for him bringing safety violations to light.

Fifth, and finally, the Firefighters allege that half of the comparable communities—and the Dearborn Police Department--have contract clauses or practices under which transfers are based upon seniority, and firefighters have some protection from arbitrary removals.

The City of Dearborn's objections are as follows, as I read them: First, the City asserts that both shift and station assignments are management rights that should remain in the discretion of the Fire Chief. Second, the Department (i.e., the City) believes that the Union's proposal "is really going to restrict our ability to move people when we need to move people in the best interest of the Department". Third, the City believes that the common comparables between the parties do not support the Union's proposal.

Comparables:

Canton Township	No CBA provision
Clinton Township	Voluntary changes approved by Chief
The City of Livonia	Chief has discretion to deny
The City of Southfield	No CBA provision
The City of Sterling Heights	No CBA provision
The City of Warren	No CBA provision
The City of Westland	Seniority bidding[10]

Conclusion:

At the outset I take note that this is a non-economic issue that provides the Arbitrator with the option of fashioning his own remedy as opposed to being limited to choosing either party's last best offer. I find that this issue strikes me as being conducive to that approach for the following reasons: First, I am not moved by the Union's attempt to discredit the Chief and attribute nefarious or retaliatory motives to some of the decisions that he has made regarding transfers.

[10] See Union Exhibit 123.

On this issue, their presentation is long on drama and short on evidence. It relies a great deal on the testimony of Captain Buchholtz whose conclusion---that the Chief retaliated against him by involuntarily moving him for bringing up safety concerns--- the Panel Chair finds completely speculative and without evidentiary support.

In addition, the Union's references to "frequent mass transfers" appear to revolve around one incident. What the Union's brief does **not** address is the domino effect that transfers automatically have on remaining personnel. As individual transfer requests are granted or made by a decision maker, there are obvious impacts on remaining personnel which dictate that additional moves have to be made, some of which will certainly not have been requested. The Panel Chair strongly suspects that the Union is very well aware of this fact of life.

Second, I find the Chief's explanation for the reasons that transfers are necessary to be both clear and credible, when he testified that,

> "we transfer people...on a daily basis and [also] we transfer people to different stations pretty much on a daily basis for those reasons as well" (Tran. Vol. 12 at 117-118). Some of the reasons for a member's shift and station transfer include: 1) addressing the needs of a probationary officer; 2) personnel conflicts; 3) moving a burned out or exhausted employee to a station with a lower run call volume; 4) nepotism; and 5) promotion (*Id.* at 119). Chief Murray testified that these decisions are based on the operational need of the Department and for the safety of his members.

Third, I think that the rationale advanced in number 3) above should be amplified on here. A close review of the testimony in Volume 12, pp. 121-123, reveals an interesting paradox in Department staffing. Even though all 128 members of the Fire Department are cross trained in paramedic/EMT work, only about 60 firefighters end up staffing the ambulance runs on a daily basis. Most of these are firefighter I's and II's. Since 80% of the Department runs are ambulance runs, roughly half of the Department is absorbing the lion's share of the runs and is susceptible to burn out. I am persuaded that the Chief needs the operational ability to transfer firefighters on a rotational basis to give the I's and II's a break and a chance to recover.

Fourth, and perhaps most importantly, this is another issue that just screams out the mutual, common interests that the parties have, including: a) employee morale; b) employee health and safety; c) public health and safety; d) teamwork; e) effective operations, just to name a few. When mutual interests on an issue are that strong, best practice suggests that remedies be fashioned that address the overarching interests of both parties.

Fifth, and finally, both parties are claiming that their positions are supported by the comparables. The Union believes that while a majority of the comparable contracts do not contain exact contract provisions to what they are proposing, the language or policies accomplish the same thing. The City believes

that the majority of the common comparables support their position. It is significant to note that members of the Dearborn Police Department may transfer based upon seniority, subject to the right of the Police Chief to transfer officers for cause.

Therefore, I am going to exercise my prerogative on this non-economic issue and order the following language for adoption:

Modified Proposal: Unit and Station Selection (non-economic)

Add the following provision to the Collective Bargaining Agreement as Article XLV:

45.01 Transfer requests for open positions (arising from vacancies, retirements, etc.) shall be honored in order of in-rank seniority.

45.02 All bargaining unit members shall have the right to remain at their assigned shift/station unless moved by the Fire Chief for cause.

45.03 Where more than one individual bids on the same shift and station vacancy, the bid would be determined by seniority.

45.04 Reasons for unrequested transfer include, but are not limited to, the following: 1) addressing the needs of a probationary officer; 2) personnel conflicts; 3) moving a burned out or exhausted employee to a station with a lower run call volume; 4) avoiding nepotism; and 5) promotion.

45.05 Nothing in this Article shall be construed as prohibiting the Chief from making the transfers and assignments that he deems necessary for operational effectiveness. Upon request from an employee, an explanation for the transfer shall be provided.

45.06 In the event that the Union believes that a decision to transfer an employee has been made without cause, that decision will be subject to the grievance procedure.

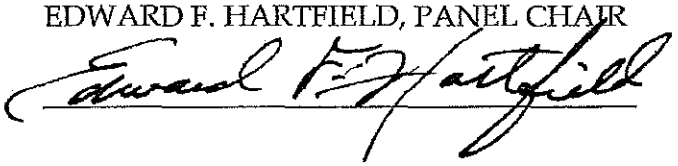
AWARD:

UNIT and STATION SELECTION (Non-Economic)

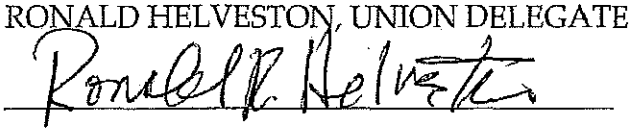
Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by the language proposed by the Panel Chair on page 109 above as a new Article XLV in the Collective Bargaining Agreement.

EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ____Disagree



RONALD HELVESTON, UNION DELEGATE _X_ Agree ____Disagree



JEREMY ROMER, EMPLOYER DELEGATE ____Agree _X_ Disagree

P. Maintenance of Conditions (Non-Economic)

The Firefighters have proposed that the Parties' contract include a Maintenance of Conditions clause in a new article **XLVI.**

46.01 Wages, hours, and condition of employment in effect at the execution of this Agreement shall, except as changed herein, be maintained during the term of this Agreement. No employee shall suffer a reduction in such benefits as a consequence of the execution of this Agreement.

The City's LBO on this issue is for a "zipper clause."

City Response: (NEW LANGUAGE IN RESPONSE TO UNION PROPOSAL)

40.10 It is the intent of the parties hereto that the provisions of this Agreement, which supersedes all prior agreements and understandings, oral or written, express or implied, between such parties shall govern their entire relationship and shall be the sole source of any and all rights or claims which may be asserted in arbitration hereunder, or otherwise. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining. The parties further acknowledge that no such oral understandings or practices will be recognized in the future unless committed to writing and signed by the parties as a supplement to this Agreement.

Discussion:

The parties have proposed bookend proposals on opposite ends of the spectrum: the Union has proposed the Maintenance of Conditions clause, shown above, and the City has countered with a Zipper clause, also shown above. While the parties' collective bargaining agreement has been devoid of either since 1995, the Union has submitted evidence that the clause that they are proposing was included in their contracts with the City of Dearborn from 1971-

1995. The record does not contain any explanation for the factors which resulted in the removal of the clause in contracts since 1995; nor does it contain any explanation for why the Union is proposing to reintroduce the language at this time or why the City believes it is necessary to introduce a zipper clause at this point in time.

The City's arguments for proposing a zipper clause are as follows: First, that their proposed zipper clauses puts a boundary around the agreed upon and in this case, imposed upon, provisions of the collective bargaining agreement. Second, the City maintains that it will have the effect of making the Agreement clear and understandable. Indeed, most of the City's arguments in this area are devoted to rebutting the value of the Union's proposed Maintenance of Conditions language. The proposed zipper clause, verifies, to the City, that the parties have indeed, bargained and agreed to all of the provisions in the collective bargaining agreement, and that there is nothing outside the scope of the agreement that one (or both) of the parties may be unaware of.

The City asserts that inclusion of their zipper clause would have the exact effect the Union claims its proposal would – it would enshrine ***all*** of the parties' agreements in writing, in the collective bargaining agreement for all to see and understand.

The Union's arguments are as follows: First, that their proposed language had been a part of the Agreements between the parties from 1971 to 1995. Second, that their language is limited in scope and focuses on protecting members' rights as they pertain to mandatory subjects of negotiation. Third, the Union has quoted a number of prominent arbitrators contained in universally accepted works like Elkouri and Elkouri and St. Antoine's The Common Law of the Workplace that support the idea of maintenance of conditions clauses, and, in general, favoring them over the notion of zipper clauses. Finally, the Union notes that a number of the comparable communities have language similar to that which the Union is now proposing above.

I am not going to devote time and energy to repeating the parties' arguments in favor of maintenance of condition clauses or zipper clauses. If I was going to rely solely on the standard of comparable contracts, I might note that 5 of the 7 mutually accepted comparable communities---Canton Township, Clinton Township, Livonia, Southfield, and Warren---all have negotiated maintenance of condition clauses in their agreements.

However, the fact that comparable communities have included such language by itself is not a compelling argument. Neither party has seen fit to include any evidence that warrants including their proposed language in this Agreement. The record contains no mention of a set of grievances or, in the

extreme, unfair labor practice charges, that allege that one side has sought to make unilateral changes in the Agreement. I find no evidence that the period from 1971-1995 featured problems one way or the other. Similarly, no one has suggested that the contractual relationship from 1995 to the present has suffered without either of the contract clauses currently being proposed.

It is apparent to the Panel Chair from discussions at several points in the hearing that mutual trust between the parties has suffered damage in this round of negotiations and that the bargaining relationship between the parties is not constructive. Absent any evidence from either side pointing to the need for their respective positions, this Chair suspects that it is the lack of trust that is driving the parties on this issue.

However, in the absence of either side having made a substantial business case for including their proposed language, the Panel Chair is inclined to reject the proposed changes of both sides. I am confident that the parties and their counsel understand that any perceived violation of the Agreement, including its long history of both written and unwritten practices would not be in the best interests of either.

AWARD:

MAINTENANCE OF CONDITIONS (Non-Economic)

Having carefully considered all of the arguments and the evidence presented, I conclude that this dispute shall be resolved on the basis of the following solution:

A majority of the Panel is of the opinion that this dispute should be resolved by rejecting the proposed language changes from both sides.

EDWARD F. HARTFIELD, PANEL CHAIR _X_ Agree ___Disagree

RONALD HELVESTON, UNION DELEGATE ___Agree _X_ Disagree

JEREMY ROMER, EMPLOYER DELEGATE ___Agree _X_ Disagree

6. SUMMARY OF AWARD

ISSUE	AWARD
Wages for 2016	Mutual Agreement of 2%
Wages for 2017	Mutual Agreement of 2%
Wages for 2018	Union's LBO of 3%
Hours of Work	City's LBO of 54 hours per week
Hours of Work	Union's LBO of language paying firefighters for all hours worked
Promotional Model (non-economic)	Modified Language incorporating City's Assessment Center
Minimum Reporting Time	City's LBO of 2 hour call in pay
Grievance Procedure (non-economic)	Union's Proposal of existing contract language
Light Duty (non-economic)	Union's Proposal of existing contract language
Fire Apparatus Supervisor Assistant	Union's Proposal of existing contract language
Paramedic Bonus	Union's LBO to restore bonus to $4000 per year
Holiday Pay	City's LBO
Food Allowance	City's LBO
Clothing & Maintenance Allowance	City's LBO
MERS Defined Benefit Plan	Union's LBO
Vacation Accumulation	City's LBO
Apparatus Staffing (non-economic)	Union's proposal
Unit & Station Selection (non-economic)	(modified proposal) for new article
Maintenance of Conditions Language	Retain Current contract language

7. WITNESS LIST

City of Dearborn

William Koss, Actuary

Joseph Murray, Fire Chief

James O'Connor, City Finance Director & Treasurer

Dr. Kendra Royer, Consultant

Joey Thorington, Deputy Fire Chief

Dearborn Firefighters Association

William Bryson Retired (Miami) Chief

Al Brzys, Police Union

Captain Buchholtz

Darren Fabris

Barbara Hathaway

Jamie Jent

Jeff Lentz

Dr. Alan Reinstein, Wayne State

Negotiation agreement between City of Dearborn and Dearborn Firefighters Association, IAFF L-412 to be submitted to arbitrator as an award.

1. Residency:

   All employees in the bargaining unit shall be required to maintain residence within a reasonable distance from Michigan and Southfield. Reasonable shall be defined as a distance no greater than that which would allow the employee to respond for duty during an emergency.

2. Healthcare Savings Program:

   A. The City shall contribute $1800 annually, broken into $150 monthly.
   B. Bargaining Unit members shall contribute $780, broken into $32.50 a pay for 24 pays. (Two pays no deduction)

3. Vacation Day Sellback:

   Employee may contribute up to the equivalent of 3 additional full vacation days into the City's 457 plan, not to exceed IRS limits. 8 hour employees shall have proportionate benefit using the 24 hour to 8 hour payroll conversion formula.

4. Proportionate benefits (current Vacation Day sell back):

   All 40 hour employee accumulated time shall be converted, accrued and sold proportionately using the payroll equivalency conversion used to convert a 50.4 hour schedule employee to 40 hour schedule (hours x 40/50.4). E.g., a 40 hour employee selling a one (1) 50.4 hour employee vacation day (24 hours) will be sold at the proportionate rate of 19.05 hours.

5. Vacation sell:

   A. The Parties agree Bargaining Unit Members may sell in full day increments up to eight (8) days of vacation time and/or accumulated overtime per contract year, only five (5) days may be converted to cash, to be paid on the first pay period following February 1st and August 1st, so long as the member has the time banked as of the sale date.
   B. The election to sell vacation days and/or accumulated overtime shall be submitted by the 15th of the preceding month. Forms shall be turned in on hard copy by 1700 hours, January 1st-15th and July 1st-15th. If the 15th falls on a weekend day the form must be turned on the preceding Friday.

Negotiation agreement between City of Dearborn and Dearborn Firefighters Association, IAFF L-412 to be submitted to arbitrator as an award.

X

Joseph P. Murray
Chief

X

Jeremy Romer
Assistant Corporate Counsel

X

Jeffrey Lentz
IAFF L-412 President

X

Jamie Jent
IAFF L-412 Secretary

Negotiation agreement between the City of Dearborn and the Dearborn Fire Fighters Association, IAFF Local 412, to be submitted to Arbitrator Hartfield as a 312 award.

35.01 Sick Leave Accumulation

Every regular, full-time employee shall be granted Sick Leave in accordance with the following provisions:

A. Bargaining unit members assigned to eight (8) hour shifts shall be granted Sick Leave on the basis of one hundred and thirty-three and three one hundredth (133.33) hours a year accumulated monthly at eleven and eleven hundredths (11.11) hours per month. The monthly Sick Leave accumulation shall accrue to any bargaining unit member assigned to eight (8) hour shifts after working a minimum of ninety-six (96) hours in a month. Holidays when granted to the employee shall be considered work days.

B. Bargaining unit members assigned to twenty-four (24) hour shifts shall be granted Sick Leave on the basis of one hundred and sixty-eight (168) hours a year accumulated monthly at fourteen (14) hours per month. The monthly Sick Leave accumulation shall accrue to any bargaining unit members assigned to twenty-four (24) hour shifts after working a minimum of one hundred and forty-four (144) hours in a month. Holidays when granted to the employee shall be considered work days.

35.02 Regulations and Uses of Sick Leave

B.

1) A Sick occurrence is one (1) or more consecutive work days and is four (4) hours or more.

3) The Fire Chief may after the use of two (2) or more consecutive sick occurrences require a doctor's note. This is in addition to and does not replace subsections 2 and 4.

C.

1) Employees in the fire bargaining unit working twenty-four (24) hours shifts may not have more than three thousand three hundred and twelve (3,312) hours of accumulated sick leave time to their credit at any one time.

2) Employees in the bargaining unit who work forty (40) hours per week may not have more than two thousand six hundred and twenty-eight (2,628) hours of accumulated sick time to their credit at any one time.

All other provisions of Article 35 remain unchanged

* This agreement resolves Union issues 13 and 14 and City responses 20 and 21 in their respective LBOs.

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:
THE CITY OF DEARBORN

AND

RESPONDING PARTY:
THE DEARBORN FIREFIGHTERS ASSOCIATION, LOCAL #412, IAFF

MERC CASE NO. D15E-0451

COMPULSORY ARBITRATION
Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq]*

ARBITRATION PANEL
Chair: Edward F. Hartfield
Employer Delegate: Jeremy Romer, Esq.
Union Delegate: Ronald Helveston, Esq.

ADVOCATES
Employer Advocate: Charles Oxender, Esq.
Union Advocate: Ronald Helveston, Esq.

DISSENTING OPINION BY EMPLOYER DELEGATE FOR SUBMISSION WITH FINAL OPINION AND AWARD

INTRODUCTION

The basis for this panel delegate's dissent concerns factual inaccuracies as well as the absence of significant facts by the Panel Chair in the award.

Beginning with the introduction and background section of the award, the Panel Chair begins by incorrectly referring to the general operating mileage recently renewed by the citizens of Dearborn as a "public safety millage that funds fire and police services. Tr., Vol. 1 at 37." *City of Dearborn v Dearborn Firefighters Association, Local #412, IAFF,* p. 8 (March 27, 2017). Given the Panel must give the City's financial ability to pay the most weight pursuant to Section 9 of Act 312, this error is particularly egregious and this panel delegate would think that the Panel Chair would rely on more than union counsel's opening statement to support this assertion. The millage is actually a general operating millage supporting much more than just public safety.

THE CITY'S ABILITY TO PAY

It is beyond this panel delegate's understanding how the Panel Chair disregarded, or at a minimum failed to mention, the $163.5 million unfunded accrued liability in relation to the City's Post-Employment Health Care Benefits, the $29.9 million unfunded accrued liability in relation to the City's Chapter 22 Defined Benefit Plan, and the combined $59.4 million [$24.2 million (Fire) and $35.2 million (Police)] unfunded accrued liability in relation to the Chapter 23 Defined Benefit Plan in its analysis concerning the City's ability to pay. *See* Tr., Vol. 3, p. 29, 52-53, 56-57. It is also noteworthy that the unfunded accrued liabilities were again disregarded by the Panel Chair in his analysis on MERS. Once again, this error is particularly egregious given the Legislature changed the Act 312 criteria to make the ability to pay the most significant factor in 312 cases.

Aside from the Panel Chair disregarding the giant elephant in the room (*i.e.* the City's $252.8 million accrued unfunded liability obligation), the Panel Chair once again states that "the citizens of the City of Dearborn have voted for a special 3.5 mill fire and police millage to be used to help fund the public safety departments. On the eve of the arbitration, that millage was renewed by a vote of over 80%." *City of Dearborn v Dearborn Firefighters Association, Local #412, IAFF,* p. 16 (March 27, 2017). The Panel Chair's repeated mischaracterization of the 3.5 mills as a police and fire millage is completely inexcusable, especially since the millage is a general millage for all City services.

GRIEVANCE PROCEDURE

The Panel Chair described the proposal advanced by the City as one where the "Chief is seeking the right to overturn the decision of a member of his own team—the City of Dearborn management team." *Id.* at 50-52. Once again, this is inaccurate and unsupported by the record. The Chief clearly stated during hearing that the Human Resources Administrator is independent from the City. *See* Tr., Vol. 5, p. 73. Pursuant to City Charter, the City Human Resources Administrator is appointed by the Civil

Service Commission. Further, the inconsistent treatment by the Panel Chair concerning issues involving or impacting the City of Dearborn Police labor union is noteworthy. Under the Hours of Work section of the award the Panel Chair states the following:

> I find no explanation proffered by the City of Dearborn in the testimony or evidence presented that explains how they would justify paying the Dearborn Police for the additional hours worked but not make that same offer to the Firefighters. The only argument relates to the fact that when the Firefighters work schedule was reduced by 10%, the City did not reduce firefighter pay. This is hardly a compelling argument that justifies the disparate pay practice of paying one branch of uniformed services for extra hours worked and not the other.

However, the record clearly states the Fire Chief's rationale in relation to the proposed changes in language to the Grievance Procedure:

> Q. Okay. Let me kind of put my head around this. This is very unusual.
>
> A. The police have—the police do the same thing, so it shouldn't be that unusual.
>
> ...
>
> Q. Have you looked at the comparables that you've—you've sent to us and the comparable we've sent to you, does anybody in the comparables have such a provision?
>
> A. The Dearborn Police.

Tr., Vol. 5, p. 73, 81.

It is unreasonable for the Panel Chair to demand parity on issues between the City Police and Fire labor unions, particularly when the Panel Chair criticizes the City for not providing such parity in the Hours of Work, but then censures the City for requesting parity in relation to the Grievance Procedures. Further, to suggest the City needs to improve its internal decision making process at the Step 2 level, even though the record does not cite any instances of internal differences of opinion, is inappropriate.

PARAMEDIC BONUS

It is entirely unclear to this panel delegate how "reinstating the 2012 bonus of four thousand dollars ($4,000.00), improves the Firefighters' position to 'tied for ninth' in the rankings...." *City of Dearborn v Dearborn Firefighters Association, Local #412, IAFF*, p. 70 (March 27, 2017).The Panel Chair selected only seven comparable communities for consideration and emphasized that [c]ommunities suggested by either side that are outside this list will not be considered by the Panel Chair in this deliberation." *Id.* at 12-13. How then would reinstating the 2012 paramedic bonus improve the Firefighters' position to "tied for ninth?" Logic dictates that the Panel Chair actually considered

communities outside of the seven comparable communities when deciding this issue, which is again inappropriate.

MERS DEFINED BENEFIT PLAN

It is beyond this panel delegate's understanding how the Panel Chair was able to determine whether a change in the multipliers to one of the City's open defined benefit plans was appropriate without considering the City's current unfunded accrued liability obligations, which currently total $252.8 million.

The testimony by City witness and MERS actuary, Jim Koss, is instructive on this issue.

> ...The [union's] proposal improves the projected benefit based from—compared with the current plan, and that improvement resulted in increasing costs. You also notice that there was a small increase in the accrued liability.

Tr. Vol. 11, p. 28-29.

Further, Koss stated the following concerning MERS' assumed rate of return and investment performance:

> Q. Okay. Did MERS recently change its assumed rate of return for investments?
>
> A. It did.
>
> Q. Okay. And lowered those; is that right?
>
> A. That was the result of the most recent experience study.
>
> Q. So the experience of the plans was that maybe the assumption for how much assets were going to earn might have been a little too high, and so there was an adjustment downward for that assumption?
>
> A. Yes. When we get to economic assumptions we often tend to look at experts that try to predict things into the future rather than base everything on historical returns.
>
> ...
>
> A. ...But the assumed future investment return was lowered from 8 percent to 7.75 percent effective with the December 31, 2015 valuation.

Tr. Vol. 1, p. 29-30.

Aside from the Panel Chair once again ignoring the City's unfunded accrued liability obligations related to its closed defined benefit plans and OPEB, the Panel Chair omitted from his analysis the resulting increase in accrued liability to the open MERS Defined Benefit Plan based on the Union's proposed changes to the Plan's multipliers

as well as the lowering of the Plan's assumed rate of return from 8% to 7.75% due to poor investment performance. In addition, one of the primary objectives of GASB 68 was to improve the information provided by state and local governments concerning its financial support for its pension plans and to ensure that this information is given proper consideration. The testimony of Union expert Dr. Alan Reinstein is instructive on this topic.

> ...GASB 68 was overdue. It should've been issued 30, 40 years ago...What GASB 68 primarily does, it takes the liabilities that were footnotes and puts them on the balance sheet, which is a very good idea.
>
> ...
>
> *I never for one second would ever do an analysis without considering the pension and OPEB.*

Tr. Vol. 4, p.12-13.

It is this panel delegate's opinion that the Panel Chair's analysis concerning the City's ability to pay and ability to provide for an increase in benefits to one of its open defined benefit plans is unsupported by competent material and substantial evidence without an analysis that accounts for the City's other accrued liabilities concerning its pension systems and OPEB.

APPARATUS STAFFING

The Michigan Court of Appeals has held that only "where minimum manpower issues are inextricably intertwined with safety issues, they become mandatory subjects." *See Trenton Fire Fighters Union, Local 2701, etc.*, 166 Mich App 285; 420 NW2d 188 (1988), and *Jackson Fire Fighters Ass'n, Local 1306, IAFF, AFL-CIO v City of Jackson (On Remand)*, 227 Mich App 520, 526-527; 575 NW2d 823 (1998).

It appears that the Panel Chair ignored the Court of Appeals holding and rejected these rulings, determining that they are "sadly lacking." *City of Dearborn v Dearborn Firefighters Association, Local #412, IAFF*, p. 96 (March 27, 2017). To make matters worse, the Panel Chair concluded that if "the cases that the City cites suggests that the standard for determining whether apparatus staffing is a mandatory subject of bargaining must be actual evidence, and not speculative in nature *[which they do]*...then I reject those findings." *Id.* It is this panel delegate's opinion that the Panel Chair improperly ignored and disregarded the controlling authority cited by the City because he disagreed with these holdings. This is sufficient cause to seriously question the Panel Chair's decision in this matter as unsupported and contrary to law.

Next, the record clearly demonstrates that the Union failed to present any evidence to dispute Chief Murray's testimony that the Department meets the requirement of NFPA 1710 for personnel on the scene of a fire on every run. *Id.* at 99. City Exhibit 82 clearly demonstrates that the NIOSH firefighting crew size study would only apply to ***17 of***

14,884 (.001%) of City of Dearborn Fire Department runs in FY 2016 and that the vast majority of runs are in response to emergency medical situations, rather than actual fires. It is this panel delegate's opinion that this testimony was not given the proper weight it deserved by the Panel Chair.

Lastly, and most disconcerting, is the Panel Chair's failure to understand current department operations in relation to assignments to fire vehicles. The Panel Chair's award states that "[t]he Unions proposal to staff all firefighting vehicles with 3 firefighters and all ambulances vehicles with two firefighters is based on the following: First, it would appear that it is the *de facto status quo*." *Id.* at 99. This is once again inaccurate and unsupported by the record. The current practice utilized by the Department is 2 firefighters per ladder, not three. *See* Tr. Vol. 12, p. 83 ("We staff a ladder truck with two firefighters and an ambulance with two firefighters"). Clearly the Union's LBO does not memorialize the *status quo*, and the Panel Chair's statements are not supported by the record.

CONCLUSION

It is this panel delegate's opinion that the Panel Chair's conclusions, particularly as it relates to the issues of MERS and Apparatus Staffing, are not supported by competent material and substantial evidence and do not comport with the evidence submitted given the factual inaccuracies as well as the absence of significant facts by the Panel Chair in the award.

Respectfully submitted,

JEREMY J. ROMER
(City of Dearborn-Employer Delegate)

kMICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION
ACT 312 ARBITRATION

In the Matter of Statutory Arbitration Between:

Dearborn Firefighters Union
Local 412, I.A.F.F., AFL-CIO
Union (Respondent)

-and-

ARB: EDWARD F. HARTFIELD
MERC Case No.: D15 E90451

City of Dearborn
Employer (Petitioner)
_____/

SUPPLEMENTAL OPINION OF RONALD R. HELVESTON, DELEGATE FOR DEARBORN FIREFIGHTERS' UNION LOCAL 412, IAFF, AFL-CIO

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Introduction

As the Union's Panel Delegate, I write separately from the Arbitrator's Opinion and Award to express my own views. This Supplemental Opinion is prompted by a Dissent to the Arbitrator's Opinion and Award drafted by the City's Panel Delegate, Mr. Jeremy Romer.

The Act 312 proceeding in this case occurred over twelve separate hearing days, captured in 1,332 pages of transcript. In addition to all of that sworn testimony presented by both Parties, the Union submitted over 160 documentary exhibits, and the City submitted over 80 of its own. The Union called two nationally renowned experts to testify on its behalf--one on municipal finance, and the other on firefighter safety. At the conclusion of the hearing, both Parties submitted extensive briefs--the Union's was over 200 pages in length, and the City's was 57 pages--to summarize all of this testimony for the Arbitration Panel. Arbitrator Hartfield reviewed the briefs and the record in this case, and wrote a 116-page opinion explaining his reasoning on every issue submitted for review. Of the 19 issues and their sub-parts presented for decision, the Arbitrator ruled for the Union on eight, for the City on six, found the Parties in substantial agreement on two of the issues, wrote his own modified language for another two of the issues, and rejected both Parties' positions on one issue.

Like Mr. Romer, I would have preferred that the Arbitrator rule on my client's behalf on all of the issues presented for review. I would have preferred that the Arbitrator credit my client's arguments and evidence over that of the City wherever there was a conflict. However, I appreciate Act 312's admonition that an Arbitrator's Award "shall be final and binding upon the parties" where that Award is "supported by competent, material, and substantial evidence on the whole record." MCL 423.240. I am writing this Opinion to make clear that the award more than meets this standard with respect to the issues that Mr. Romer raises in his Dissent.

Contrary to Mr. Romer's complaints, the Arbitrator's Opinion and Award is not undermined by "factual inaccuracies" or "the absence of significant facts." On proper reading, many of Mr. Romer's alleged 'factual inaccuracies' are words or phrases read out of context. Moreover, Mr. Romer's complaints in every case touch upon only one of several rationales that underlie the Arbitrator's Award on an issue. As a result, even if Mr. Romer's complaints had merit--and they do not--the Award would still be "supported by competent, material, and substantial evidence on the whole record." MCL 423.240. In general--with respect to the issues highlighted by Mr. Romer, the Arbitrator duly considered the City's arguments and simply found them outweighed by the arguments and evidence presented by the Union.

The City's Ability to Pay

City Delegate Romer claims--twice--that the Arbitrator incorrectly referred to a 3.5-mill tax renewal as a "public safety millage," and that this reference somehow indicates an "egregious" misunderstanding of the City's ability to pay. *See* Dissent at 2. Delegate Romer is mistaken.

First, the Arbitrator's reference on p. 8 to a "public safety millage" does not occur--as Mr. Romer implies--in his discussion of the City's ability to pay, but in the background section of his Opinion. *Cf.* Opinion at 3-9 ("Background to this Arbitration") and 13-18 ("The City's Ability to Pay"). In context, the point of the Arbitrator's reference is that Dearborn's Fire Department is popular with Dearborn citizens, as evidenced by the fact that the special millage was renewed. The Arbitrator does not claim that the millage is reserved exclusively for Dearborn's public safety departments. Nothing the Arbitrator says in this paragraph relates to the City's ability to pay. Opinion at 8.

Second, with respect to the Arbitrator's conclusion that Dearborn's Fire Department is indeed popular with Dearborn citizens, that conclusion is amply supported by evidence in the record, notably in documents produced by the City. In the first sentence of the paragraph that so exercised Mr. Romer, the Arbitrator cites to Union Exhibit 36, "City of Dearborn Citizen Engagement and Priority Study." That document summarizes the results of a survey conducted by the City

of its own citizens. The survey reveals that the Fire Department received the highest score of all City departments with respect to its performance and contribution to citizen satisfaction with City services, and ranks second in the citizens' minds as a priority for funding. Union Ex. 36 at 11, 16, 26, 30-31. The record amply supports the Arbitrator's conclusion that the citizens of Dearborn hold their Fire Department in high regard and consider it a funding priority.

Mr. Romer is correct that in my Opening Statement on the first day of the Act 312 Arbitration, I referred to the 3.5 mill renewal as a "public safety millage." Vol. 1 at 37. I made that reference because in the public relations campaign leading up to the vote, the millage was defended as a way to maintain staffing in the fire and police departments. When the millage was first passed in 2011, the City Council President connected passage of the millage to "staffing issues in the police and fire departments." Union Ex. 128-6. After using the popularity of its fire and police departments to sell the millage, it is disingenuous for the City now to claim that the citizens' overwhelming support of the millage is not evidence of support for the Fire Department.

Delegate Romer also complains that in his analysis of the City's ability to pay, the Arbitrator "disregarded, or at a minimum failed to mention" the City's pension and retiree health care liabilities. Dissent at 2. (Delegate Romer also finds this purported failure "egregious.") Once again, Mr. Romer is mistaken.

The Arbitrator did consider the City's pension and retiree health care liabilities. In his discussion of the City's ability to pay, the Arbitrator notes that the City claimed "[t]hat the defined benefit pension plans and the retiree health care costs represent 'significant legacy costs'." Opinion at 14. However, the Arbitrator also noted that the Union demonstrated as part of its case that "the City does not face significant legacy costs that are relatively worse than the comparable communities." *Id.* at 14-15. The Arbitrator also credited the testimony of the Union's financial expert, Dr. Alan Reinstein. Opinion at 15-16. Dr. Reinstein holds an endowed chair in the Accounting Department at Wayne State University. His *curriculum vita*--a list of his professional publications, presentations and awards--comprises 135 single-spaced pages. Dr. Reinstein performed an exhaustive analysis of the financial condition of the City of Dearborn, examining the City's own Comprehensive Annual Financial Reports for the preceding five years, the City's bond ratings and the bond ratings of other relevant government units, and a variety of other sources of information about the City's housing values, employment growth and general fiscal health. *See* Union Exs. 124-128. The Arbitrator analyzed and summarized all of this evidence, and properly concluded that the City's financial condition was overall as good or better than that of comparable communities that pay their firefighters more than Dearborn does. *Id.* at 16-17.

In sum, the Arbitrator did not 'disregard or fail to mention' the City's arguments about legacy costs. He mentioned those arguments and considered them, but found them outweighed by the voluminous arguments and evidence presented by the Union. The Arbitrator's conclusions about the City's ability to pay are "supported by competent, material, and substantial evidence on the whole record." MCL 423.240.

Grievance Procedure

The Parties' current grievance procedure provides that first step decisions by the Fire Chief may be appealed to the Human Resources Administrator in the second step. Union Ex. 26 at 3. If the Union is dissatisfied with the second step answer, the Union may appeal it to arbitration. *Id*. The City's LBO on the grievance procedure would have, *inter alia*, allowed the *Fire Chief* to appeal the second step answer. In short--the Fire Chief wanted the right to over-rule the person who the contract provided had the authority to over-rule him!

The Arbitrator properly found that such a procedure would be highly irregular, and would cause a host of difficult administrative problems. *See* Opinion at 49-50.

Mr. Romer complains that in the course of elucidating the various problems such a proposal would cause, the Arbitrator improperly characterized the Fire Chief and the Human Resources Administrator as "members of the Dearborn

management team." Dissent at 2. We are to regard this claim as 'factually inaccurate' because "the Chief clearly stated during the hearing that the Human Resources Administrator is *independent* from the City." *Id.* (emphasis added). In this *tete-a-tete*, it is the Fire Chief--and Mr. Romer--who are factually inaccurate.

The Human Resources Administrator is not "independent from the City." The Administrator is an employee of the City, appointed by a Civil Service Commission some of whose members are appointed by the Mayor. Union Ex. 4 at x. The Administrator is the second step in the Parties' grievance chain. Grievance decisions made by the Fire Chief are appealed to the Administrator. Union Ex. 26 at 3. While the Administrator may not be the Chief's immediate supervisor, the Administrator is plainly not "*independent* of the City." In context, the Arbitrator's statement that the Chief and Administrator are on the same team is meant to contrast them with the members of the *Union*. Opinion at 50. As between the Union and the Fire Chief, the Administrator is on the Chief's 'team.' There is no "factual inaccuracy" here.

Mr. Romer also charges the Arbitrator with inconsistency in his analysis of the Grievance and Hours of Work issues. Dissent at 3. The inconsistency is supposed to be that the Arbitrator credited firefighter comparables over the local police contract in deciding the Grievance issue, but credited the local police

contract over firefighter comparables in deciding that the Firefighters should be paid for all hours worked in the Hours of Work issue. Dissent at 3.

Even if there were an 'inconsistency' here, it would be irrelevant. The Arbitrator rejected the Chief's right to arbitrate grievances for a host of reasons, all spelled out in the Opinion. Arbitrator Hartfield concluded that allowing the Chief to arbitrate his own HR Administrator's step two answer would (1) create confusion about who the Parties to the arbitration would be, (2) would leave the Union no clear role to defend its own contract, (3) might force the Union to spend resources it had chosen not to spend, (4) was so unusual that the experienced arbitrator had never encountered anything similar, (5) was a 'solution in search of a problem,' since the Chief could point to no occasion where he would have made such an appeal, and (6) was inconsistent with the grievance procedures of the other, firefighter comparables. *Id.* at 50-51. All of these reasons were part of the Arbitrator's Award on the issue. Even if the last reason were somehow 'inconsistent'--and it is not--the other reasons would suffice to support the Award on this issue "by competent, material, and substantial evidence on the whole record." MCL 423.240.

But in fact, there is no meaningful contrast here--let alone an inconsistency--with the Arbitrator's conclusion that the Firefighters should be paid for all hours worked. The contracts of other comparable firefighter locals do not favor the

City's position that firefighters should work extra hours for free, so it is false that the Arbitrator credited firefighter comparables on the Grievance issue and disregarded them in Hours of Work. Only one bargaining unit among those held to be comparable had undergone a recent increase in hours, and that unit was the Dearborn police. The Arbitrator properly noted that the City paid the police for their extra hours, and so should pay the Firefighters for theirs. There is no inconsistency.

Paramedic Bonus

Here, Mr. Romer charges the Arbitrator with an immaterial 'slip of the pen.' Throughout the hearing, the Union presented exhibits that summarized provisions from the Union's twelve proposed comparable communities. The Arbitrator decided to pare the list of comparables to the seven communities that the Union and the City agreed upon. Opinion at 12. But Mr. Romer complains that in its discussion of the Paramedic Bonus, the Opinion refers to nine comparables, indicating that some other cities were considered. Dissent at 3-4.

Whatever the meaning of the reference to "nine," it is immaterial. Union Ex. 68 shows the paramedic bonuses paid in all of the Union's proposed comparable cities. If one ignores the cities in this exhibit that are not 'in common,' the Union's LBO of $4,000 leaves the Dearborn Firefighters tied for sixth out of seven--well below the median. The Award on this issue is amply supported whether all of the

Union's comparables are considered, or just those that are 'in common' with the City.

Also--the Arbitrator's award is based on another consideration. The Firefighters' paramedic bonus prior to 2013 was $4,000. It was reduced to $2,000 as a concession to the City during hard economic times. Opinion at 69. The Arbitrator found that the old bonus should be restored now that the City has recovered economically. Opinion at 69-70.

The Arbitrator's Award on this issue is "supported by competent, material, and substantial evidence on the whole record." MCL 423.240.

MERS Defined Benefit Plan

Mr. Romer begins his discussion of this issue by renewing at length his complaint that the Arbitrator failed to consider the City's pension and retiree health insurance liabilities. We have seen above that Mr. Romer is mistaken--the Arbitrator specifically noted this argument from the City, but concluded on the basis of overwhelming contrary evidence that the City's legacy costs were not different from those of other cities that provided better compensation for their firefighters./[1] *See* Opinion at 14-15; *supra* at 4-5.

[1] / For a fuller discussion of this point, *see* the Union's Brief to the Arbitrator at p. 16-40.

Even more importantly, the MERS pension plan at issue *has no unfunded accrued liability*. City Ex. 57 at 7. Its assets exceed its liabilities. And because the Union's LBO on this issue is prospective-only, it does not create any new unfunded liabilities. Even after the Union's LBO on this issue is adopted, the MERS plan will be 108% funded! City Ex. 67 at 7. *See also* Opinion at 82.

Mr. Romer observes that MERS has recently changed its assumed rate of return on investments from 8.00% to 7.75%, but appears to be confused about the relevance of that event. Dissent at 4. Mr. Romer seems to imply that this change will create pension liabilities in addition to the ones he refers to at p. 2 and 4 (top) of his Dissent. But that is mistaken. MERS's new assumed rate of return has been 'priced into' the 12/31/2015 actuarial report that was submitted as an exhibit in this hearing. City Ex. 57. Because Dearborn's MERS plan has no accrued liabilities, the impact of the new rate of return was predictably modest. Under an 8% funding assumption, the MERS plan was funded at 107% (as of 12/31/2015). City Ex. 57 at 7. Under the new rate of 7.75%, the MERS plan was funded at 106% (as of 12/31/2015). *Id.* And as noted just above, by the date of Actuary Jim Koss's testimony, that funding ratio had risen to 108%. City 67 at 7. No amount of hand waving can change the fact that the MERS pension plan at issue here has no accrued liabilities, and the Union's prospective-only LBO keeps it that way.

Apparatus Staffing

Here, Mr. Romer claims that the Arbitrator has applied an improper legal standard in holding that the Union's LBO on this issue is a mandatory subject of bargaining. Mr. Romer reaches this result by quoting the Arbitrator out of context, and artfully omitting words to make it sound as if the Arbitrator is rejecting precedent. Dissent at 5. The Arbitrator did nothing of the sort. Concerning the appropriate *quantum* of evidence necessary to show that a staffing provision is inextricably intertwined with safety, Mr. Hartfield asked rhetorically: "Are those courts suggesting that we have to experience firefighter deaths or serious injuries that are directly tied to inadequate staffing before we can see a connection to the intertwining of apparatus staffing to employee safety? If they state that, then I reject those findings." Opinion at 96. In fact, no decision by a Michigan court suggests that we must await death or grievous bodily harm to find that a staffing provision is mandatory, and so contrary to Mr. Romer's suggestion, the Arbitrator is not "rejecting" Court of Appeals precedent.

What the Arbitrator did was to carefully weigh the evidence before him on the issue of safety, and conclude correctly that the difference between having two vs. three firefighters arrive on a fire scene on a piece of fire apparatus was inextricably intertwined with firefighter safety. Opinion at 97-99.

The twin pillars of the Union's case on Apparatus Staffing were: (1) the testimony of Fire Chief William Bryson, perhaps the nation's most renowned expert on staffing and firefighter safety; and (2) an exhaustive study of the relative safety of two-through-five-person fire crews conducted by the National Institute of Standards and Technology (NIST). *See* Transcript, Vol. 6; Union Exs. 102-105.

The Union presented a day of testimony by Chief William Bryson. Chief Bryson has served as the Fire Chief of the City of Miami, and later, as Fire Chief of Miami Dade Fire Rescue. Union Ex. 101-A; Tr., Vol.6 at 3-7. Since 2005, Chief Bryson has served on the NFPA 1710 Committee. *See* Union Ex. 104 at 1710-3. The NFPA 1710 Committee is an organization comprised of fire chiefs, government officials and professional firefighters who study and set standards for fire suppression operations, emergency medical operations, and other, special operations performed by career fire departments. *Id.*; Tr., Vol. 6 at 8-11. NFPA standards are widely consulted and followed in the firefighting profession. *Id.* Among other things, NFPA 1710 sets standards for the staffing of fire apparatus, response times for initial and later fire company response, and safety standards for fireground operations. Tr., Vol. 6 at 9-11. Since 2008, Chief Bryson has served as the Chair of the NFPA 1710 Committee. Union Ex. 101-A, 104 at 1710-3.

Chief Bryson also served as a technical advisor to the most comprehensive and authoritative study measuring the safety and effectiveness of different

firefighter staffing models—a study by the National Institute of Standards and Technology (NIST) entitled "Report on Residential Fireground Field Experiments." Union Ex 101-A; 102 at 55. He has served as an expert witness in hearings across the nation as an expert on fire department staffing, safety, and best practices. Union Ex. 101-A.

Chief Bryson has been recognized by his peers for the highest awards in his profession. He was named Metropolitan Fire Chief of the Year in 2008, and in 2016 received the Lifetime Achievement Award from the Metropolitan Fire Chiefs Association. In sum—he is a distinguished Fire Chief, and an eminently qualified expert in the field of fire operations, fire safety, and firefighter staffing./[2]

Much of Chief Bryson's testimony concerned the findings of the NIST study in which he served as a technical advisor. The NIST sought to quantify the effect of different firefighting crew sizes on the safety and effectiveness of fire fighting operations. The NIST built two model 2000 square foot residences to mirror the conditions that firefighters encounter in a typical residential structure fire. Union Ex. 102 at 16, 21-23. Chief Bryson and two of his colleagues analyzed the crucial performance objectives required in a typical residential house fire and broke those

[2] / Chief Bryson is also a man of exceptional civic accomplishments. He is one of only two persons to receive the Distinguished Service Award from the City of Miami. Union Ex. 101-A, Tr., Vol. 6 at 17-18.

objectives into 22 discrete tasks. Tr., Vol. 6 at 15-17; Union Ex. 102 at 26. Firefighters in crew sizes ranging from two to five were then recruited to perform all of these tasks, and their performances were timed. The tasks were performed under various scenarios. Fire crews were monitored and timed under conditions of "early arrival" and "later arrival." In the "early arrival" scenario, the first fire company on scene arrived at the fire six-and-one-half minutes after the onset of the fire. In the "later arrival" scenario, the first arriving company was on-scene two minutes later. *See* Union 102 at 31 (Table 3). Each of these scenarios was conducted under the assumptions of "close stagger"—subsequent companies arriving one minute apart—and "far stagger"—each later company arriving two minutes apart. Union Ex. 102 at 24; Tr., Vol. 6 at 22-24. This variety in arrival times and stagger times was designed to mirror the real world contingencies of fire department operations. Tr., Vol. 6 at 24.

The NIST study was performed using fire crews in sizes from two to five, because departments use all of these different crew sizes. *Id.* at 15-16. The published study contains a large amount of information about the relative safety and effectiveness of two versus three person crews. *Id.* at 20-21. The NIST study demonstrated in graphic detail that (1) the delays caused by two vs. three person crews dramatically slowed a fire response, allowing a fire to grow hotter, deadlier and more unpredictable, all of which lead to grave dangers to responding

firefighters; and (2) members of a two person crew experienced elevated stress and heart-rate compared to a three person crew, and maintained these rates of stress for a longer time, leading to real danger of heart attack, the number one fire ground killer.

I will not summarize the evidence provided by the Union, and credited by the Arbitrator in this case. *See* Union's Brief at 84-114; Opinion at 97-99 ("After having heard the testimony of Chief William Bryson and having reviewed the record from that segment of the hearing, my overarching impression is that everyone in the room found the testimony and the evidence submitted to be credible."). Suffice it to say that the record fully supports the Arbitrator's Award in this case.

Mr. Romer complains that the Arbitrator overlooked two pieces of evidence that the City submitted in response to the Union's case: (1) that the City of Dearborn does send an appropriate complement of firefighters to a fire scene, albeit in smaller crews and over a longer time horizon than recommended by national safety standards, and (2) that in Dearborn, a relatively small percentage of emergency runs are full-scale structure fires. Dissent at 5-6.

However, contrary to Mr. Romer's complaints, the Arbitrator specifically considered both of these arguments by the City. *See* Opinion at 98-99. The

Arbitrator simply concluded that this evidence was outweighed by the case presented by the Union.

Mr. Romer also complains that the Arbitrator misapprehended the current practice of the fire department in staffing fire engines vs. ladders. Dissent at 6. But as with the other issues raised in the Dissent, the Arbitrator's brief discussion of the Department's current practice is but one rationale of many for his Award on this issue. If the other rationales are unassailable, the Award is supported on the record as a whole.

Finally, on the last page of his Dissent, Mr. Romer made a comment that reveals what the City's Dissent is really about: "It is this panel delegate's opinion that [the City's] testimony was not given the proper weight it deserved by the Panel Chair." Dissent at 6. And this, I submit, is the *gravamen* of the City Delegate's dissent. The problem is not that the City's arguments were ignored, or that the Arbitrator made 'egregious' factual mistakes. The problem, from the City's perspective, is that the Arbitrator credited the Union's case on these issues and not the City's. But deciding which case to credit is what Arbitrators are supposed to do.

Conclusion

For all of the reasons set forth above, the Arbitrator's Award, on the issues discussed in the City Delegate's dissent, is "supported by competent, material, and substantial evidence on the whole record." MCL 423.240.

Ronald R. Helveston (P14860)
Delegate for the Dearborn
FireFighters' Union, Local 412, IAFF

April 5, 2017