MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

ANN ARBOR FIRE FIGHTERS, IAFF, Local 693:
(Union)

and

CITY OF ANN ARBOR:
(Employer)

MERC CASE NO.: D16 H-0684

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

Arbitration Panel
Chair: Charles Ammeson
Employer Delegate: Howard Lazarus
Union Delegate: Ronald R. Helveston

Advocates
Employer Advocate: Nancy Niemela
Union Advocate: Ronald R. Helveston & Michael McFerren

PETITION(S) FILED:	December 29, 2016
PANEL CHAIR APPOINTED:	January 12, 2017
SCHEDULING CONFERENCES HELD:	January 24, 2017; February 23, 2017
HEARING DATE(S) HELD:	May 10, 2017, June 14, 2017 and
June 30, 2017.	

AWARD ISSUED: August 25, 2017

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WITNESS LIST

1. Mike Roberts
2. Christopher Nielsen
3. Barbara Hathaway
4. Larry Collins
5. Thomas Crawford
6. Robin Wilkerson
7. Alan Reinstein

1. INTRODUCTION AND BACKGROUND

The parties are signatories to a Collective Bargaining Agreement ("CBA") (City Exhibit 1) effective July 1, 2014 through December 31, 2016. The subject unit is comprised of all Fire Department Personnel less the Fire Chief, the Assistant Chief(s), the chief's secretary and other office clerical employees. The Employer provides essential fire protection services for the City of Ann Arbor, Michigan, including basic life support services with medical technician certification, but not transport services for medical issues. As such, this Act 312 arbitration process concerns 83 employees in ranked positions of firefighter, driver operator, lieutenant, captain and battalion chief, per a petition filed by the Union on December 29, 2016. Initial wages are set forth in Article 39 of the CBA, which provides for a reopening of wage rates in January of 2016 for employees hired after July 1, 2012.

It is historically significant that the parties implemented a new hire pay scale for all employees hired after July 1, 2012 as part of their July 1, 2010-June 30, 2014 Collective Bargaining Agreement ("2010 CBA") (City Exhibit 2). As such, the parties have a what is commonly termed a "two-tier" compensation arrangement. The Union suggests the "two-tier" arrangement was adopted at the time because of current economic stresses in 2010 for the purpose of ameliorating layoffs and station closings. Now that the economic stressors have lessened, the Union asserts that the "two-tier" differential is too harsh and unnecessary. The Employer posits that the "two-tier" arrangement was designed to provide greater promotion incentives between ranks, eliminate separate pay

scales for new hires based on educational attainment, and to provide long-range cost savings to the Employer, and need not be adjusted because the Employer has had no difficulty recruiting new hires at lower tier rates.

The petition in this matter was filed December 29, 2016. The single issue before the Panel is the 2016 wage rate in all ranks for employees hired after July 1, 2012 for the final year of the CBA.

The parties held pre-hearing phone conferences on January 24, 2017 and February 23, 2017, after which the Chairperson issued a Pre-Hearing Conference Report (amended), setting forth a schedule for the exchange of witnesses, exhibits and last best offers, and noticing hearing dates. Because the parties could not agree on comparable communities, evidence was presented as to comparable communities submitted by both parties: Livonia, Sterling Heights, Westland, Taylor, Dearborn, Lansing Southfield and Canton Township; the parties agreeing that the Chairperson will determine the appropriate comparables after post-hearing briefing, during the deliberation and writing of the award.

The pre-hearing exchanges occurred in a cooperative manner, and last best offers were received by May 13, 2017. Hearings were held at the Employer's offices on May 10, 2017, June 14, 2017 and June 30, 2017.

2. STATUTORY CRITERIA

Public Act 312 of 1969 provides for compulsory arbitration of labor disputes in municipal police and fire departments. Section 8 of the Act provides that the Arbitration Panel shall adopt the last offer of settlement on each economic issue, which most nearly

complies with the nine factors upon which the panel's decision must rest. Those nine factors include:

> (1) Financial ability of the unit of government to pay;
>
> (2) The lawful authority of the employer;
>
> (3) Stipulations of the parties;
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally: (i) in public employment in comparable communities and (ii) in private employment in comparable communities;
>
> (5) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question;
>
> (6) Average consumer prices for goods and services, commonly known as the cost of living;
>
> (7) Overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;
>
> (8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and
>
> (9) Such other factors, not confined to the foregoing, which as 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."

[MCLA 423.239]. Adherence to the factors is mandated, as outlined by the Michigan Supreme Court in City of Detroit v. Detroit Police Officers Association, 498 Mich 410 (1980):

> [A]ny finding, opinion or order of the panel on any issue must emanate from a consideration of the eight listed Section 9 factors, as applicable.

This Chairperson is fully mindful that since the above observation by the Court, the Legislature has clarified that the Panel shall give the financial ability of the unit of government the most significance. See MCL 423.239(2). The Chairperson is also well aware of the requirement that it must consider the interest and welfare of the public as a whole. Those interests require a proper balance of adequate fire protection, which is reasonably and comparably affordable for the community.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties were fully cooperative and able to stipulate as to procedural matters before, during and after the hearing. Because of the clarity of the singular issue and limited application to the last year of the CBA for Post-2012 hires only, no substantive stipulations were offered or necessary. Although the parties were unable to stipulate as to comparables, given the limited issue involved, the resulting effect on the hearing and determination process was minimal.

4. COMPARABLES

The parties both offered the following comparable communities:

1. Livonia
2. Sterling Heights

3. Westland

The Union additionally offered:

1. Dearborn
2. Lansing
3. Southfield
4. Canton

The Employer respectively offered:

1. Taylor

The Chairperson has reviewed the basic community demographics and financial aspects of the comparable communities, and determines that Taylor is an outlier in almost all respects, and fails to serve as near as valuable a comparable as the other communities offered. Taylor has less than ½ the population of Ann Arbor; 60% the average population of the shared comparables; and less than 2/3s the average population of all offered comparables. Similarly, it has less than 1/4 the State Equalized Value of Ann Arbor; less than 1/3 the average of the State Equalized Value of shared comparables; and less than 1/2 the average State Equalized Value of all offered comparables. Taylor has less than 1/2 the number of firefighters of Ann Arbor and each and every other mentioned comparable.

Regarding the remaining comparables, the Chairperson determines that none of them are outliers and is comfortable with 7 comparables limited to the singular issue. For the reasons above, the Panel shall utilize the following comparables:

1. Livonia;
2. Sterling Heights;
3. Westland;
4. Dearborn;
5. Lansing;
6. Southfield;
7. Canton.

5. ISSUE BEFORE THE PANEL

ISSUE

The extent the "two-tier" compensation arrangement implemented by the parties in the 2010 CBA should be adjusted to reduce the differential between the two tiers, pursuant to the parties' agreement to reopen wages under Article 39 of the CBA in January 2016 for employees hired after July 1, 2012. Because this issue pertains to wages, it is an economic issue, to be determined by last best offers.

LAST BEST OFFERS ON ISSUE:

Union

The Union's Last Best Offer is attached as Exhibit A. Summarized, it provides for elimination of "two-tier" compensation after 7 years of employment, on an individual basis for each employee hired after July 1, 2012, now and in the future. The elimination is gradual, commencing with no differential reduction for new hires, with the reduction being reduced after 1 year of service by 4.75 percent for firefighters and 5.75 percent for driver/operators, the reduction being further reduced by increasing percentages for all ranks by percentages ranging from 7.5% to 33% over a seven year period, until the differential for any individual employee is eliminated completely by the 7th year of and individual's employment, thereby equalizing pay for firefighters hired after July 1, 2012 with the pay of non-degreed firefighters hired before July 1, 2012 upon attainment of 7 years' service.

In brief, the Union's argument is that the current two-tier differential is grossly unfair; incomparable to any differential in any other community or internally, providing far greater differentials than other two-tier arrangements; and produces a severely negative morale impact not only among tiers, but resulting in lower tier firefighters hired since 2012 being paid at far lesser rates than firefighters in comparable communities and being paid disproportionately less than internal comparisons. The Union posits, since the economic concerns that precipitated the two-tier system have largely been resolved, the two-tier system should be gradually eliminated.

Employer

The Employer's Last Best Offer is attached as Exhibit B. Summarized, it provides several changes to the wage scale for firefighters hired on or after July 1, 2012. Because the changes are not effective until January 1, 2017 they would not affect pay under the CBA, but would decrease the pay differential between the upper tier and lower tier of the "two-tier" arrangement. In essence, the rates of pay for hires and 1-year firefighters would essentially stay the same. The differential for driver/operators would be decreased at year one by about 20%. From year 2 through 10 the differentials would all be decreased by double-digit percentages. The 12-year step would be moved to 10 years and the 18-year step would be moved to 12 years, although rates would still stay substantially below the rates for firefighters hired before July 1, 2012. The Employer's Last Best Offer eliminates existing differentials based on education attainment for firefighters hired on or after July 1, 2017, but includes a lump sum annual payment for attainment of a bachelor's degree.

In brief, the Employer's argument is that the agreed upon two-tier system was intended to be a long-term arrangement; that elimination of the pay discrepancies were, by

the nature of a two-tier system, to be eliminated by attrition of senior employees and passage of time; and that if adjustments are necessary to address morale, competitive hiring and comparability issues, they should be addressed as they arise, but not by wholesale elimination of the two-tier system altogether over time, which elimination also eliminates the long-term cost-savings.

DISCUSSION AND ANALYSIS

As indicated, the Panel is mandated to comport its analysis and render its determination as to which last best offer to award within the statutorily designated factors for consideration. As in most cases, certain factors simply do not pertain to the situation or the issue. Addressing those factors first, the Panel observes that neither party suggested (as to three factors) that the issue at hand is not within the authority of the Employer to address. The Panel also agrees that the parties were fully cooperative and able to stipulate as to procedural matters before, during and after the hearing, and no substantive stipulations were offered or necessary. The Panel finally observes that no significant changes occurred during the pendency of the arbitration proceedings which have affected the circumstances upon which the parties submitted and presented their last best offers, proofs or argument.

Regarding the sixth factor, the impact of cost of living, it is the Chairperson's observation that both last best offers exceed any applicable or arguable cost of living indices. Little evidence was presented in this regard. As such, analysis and discussion of cost of living parameters would serve no beneficial purpose, cost of living considerations not offering no significant support for consideration of one last best offer over the other,

the bases of the last best offer intended to address the two-tier differential rather than cost of living concerns.

Turning to the first factor that the legislature mandates the Panel allow priority significance, Ability to Pay, it is the Chairperson's observation that the evidence was succinct. The Employer is financially sound, the strongest of all comparable communities. It enjoys a large and stable tax base, the largest of any city in the State of Michigan. It has established sizeable fund balances. Objectively, it deserves and has established an impressive AA+ Standards & Poor bond rating. Moreover, although the Chairperson recognizes that under certain circumstances pay increases for a small segment of an organization can ripple throughout an organization causing broader financial difficulties, over longer periods of time, the last best offers affect a small number of employees. In the present case, the issue concerns only 17 employees, and the costlier last best offer represents less than 2% of the Employer's Fire Department annual budget. Although 2% of budget for 17 employees would be extraordinary, the evidence does establish that, if other factors compelled a finding in favor of either last best offer, the City has the ability to implement either last best offer without a burdensome impact on the Employer's ability to serve the community as to other services; to maintain its positive financial stature; and to provide adequate fire protection, which is reasonably and comparably affordable for the community.

Reviewing the Comparability and Overall Compensation factors, the evidence clearly demonstrates that Employer firefighters hired after July 1, 2012 are paid on the order of 20+% less than comparable established firefighters in other communities at all years after hire or 1 year of service. In contrast, Employer firefighters hired before July1,

2012 are somewhat wage leaders in contrast to other communities, being paid equal to some larger department comparables at times, but generally more than the average of all comparables, within single-digit percentage range above the average.

Given the certainty of the evidence that Employer firefighters hired after July 1, 2012 fall significantly below external comparables, combined with the complexity of analyzing detailed comparability because of the numerous longevity and other associated wage factors particularized to each comparable collective bargaining agreement, the Chairperson is not compelled to provide a more detailed analysis. From an external (emphasis added by Chairperson) comparability perspective, this factor weighs significantly in favor of adjusting the wages of the Employer firefighters hired after July 1, 2012, across the board.

Reviewing internal comparability, as would be expected, the evidence clearly demonstrates that there are internal comparability issues. Obviously, there is a significant, but negotiated, comparability issue between the two tiers of firefighters. The most comparable other internal unit are police officers. Employer firefighters hired before July 1, 2012 begin their employment 8 to 10% above police officers, but move to parity within several years. Employer firefighters hired after July 1, 2012 begin their employment 5 to 10% below police officers, and advance to over 20% below police officers pay within several years. All evidence was that pre-2012 and post-2012 hired firefighters, classified in the same positions, perform the same functions. As such, the evidence is indisputable that there are internal comparability concerns establishing either that Employer firefighters hired after July 1, 2012 are internally underpaid or Employer firefighters hired before July 1, 2012 internally overpaid. Although there was little direct evidence regarding whether

police officers are generally compensated higher than or equal to firefighters, the evidence did establish that historically police officers were annually paid (the Chairperson prefers to compare annual compensation because of the different nature of the type and number of hours firefighters work compared to police officers) on an approximately equal basis, until the two-tier system was implemented. No evidence was offered to justify the 20+ percent lower pay differential for Employer firefighters hired after July 1, 2012 than police officers hired after July 1, 2012, other than cost-savings. It is this chairperson's experience that police officers and firefighters are generally paid on a more equal annualized basis than the 20% differential established by the two-tier arrangement. As such, from an internal comparability perspective, the internal comparability factor weighs significantly in favor of adjusting the wages of the Employer firefighters hired after July 1, 2012, across the board.

Regarding overall compensation, there was less clarity of evidence regarding total comparable compensation packages. Although some of the comparable communities have implemented defined contribution plans for recent hires, while Employer firefighters hired by the Employer after July 1, 2012 still enjoy a defined benefit plan, the evidence does indicate that most of the comparable communities retain defined benefit plans recent hires, although perhaps without as strong a multiplier as provided by the Employer to all its firefighters. All in all, there was insufficient evidence to suggest that overall compensation differences comparably afforded require additional consideration or analysis which would significantly impact the direct wage compensation observed above. As such, this factor does not compel consideration of either last best offer over the other.

The final factor mandated to be assessed is the catch-all consideration paraphrased as "other factors which are normally or traditionally taken into consideration between the parties." It is the Chairperson's observation that consideration of the bargaining history and relationship of the parties has long been a traditional consideration in matters of interest arbitration.

In 1970, when Hurley Hospital and its union had experienced impasse in negotiations, resulting in a 4-week strike, the parties voluntarily engaged binding arbitration under the guise of binding Fact Finding. The final and binding award of the fact finder, George Roumell, Jr., who in fact utilized Act 312 of Michigan Public Acts of 1969 standards, was largely premised on the such factor. Predominant in that early interest arbitration was consideration of the past collective bargaining history of the parties. See Hurley *Hospital,* 56 LA 209 (Roumell, Jr., 1971). In fact, *Hurley Hospital* is cited for the proposition that an interest arbitrator may and should consider what the parties have agreed upon in their past collective bargaining, as affected by intervening economic events. See Elkouri & Elkouri, How Arbitration Works, Seventh Edition, (2012), Chapter 22.10.K. As utilized by Roumell in *Hurley*, past history not only reveals the intent of the parties, but serves to support the judgment of the arbitrator of what the parties would have compromised in negotiations, putting the issue to rest "...for the time being although there is recognition that this may be a factor in the next negotiation, and the parties should look forward to resolving it, with more finality than this report." See *Hurley* at page 39.

In the present case, there was significant evidence as to what the parties had negotiated and why -- namely the fact that the parties jointly and mutually implemented

the two-tier arrangement in question. As such, it is equally important, along with all factors, that this Chairperson fully consider and assess the parties' intent and their relationship, not only in arriving at the two-tier arrangement, but by continuing it in 2014, with a re-opener in 2016 for wages limited to singular consideration and adjustment of pay for Employer firefighters hired after July 1, 2012.

Reviewing the 2-tier agreement language within the 4-corners of the document, there is no evidence that the parties intended the arrangement to be temporary. In fact, the language of Article 57 of the CBA (City Exhibit 1) succinctly provides "...all new employees will be subject to a new wages scale (See Appendices D and E) which will be applicable throughout their employment with the City, subject to any negotiated changes." As such, although negotiated changes were anticipated (which is a common expectation with the passage of time), the language gives no indication that the two-tier arrangement was expected to "sunset" or was anticipated to be eliminated. To the contrary. Moreover, Appendix A to the CBA projects wages out 18 years, clearly evidencing that the two-tier arrangement was intended to last from CBA to CBA, unless negotiated otherwise.

Of course, the parties must have accepted the morale impact that they were creating by adoption of the two-tier arrangement. Such an impact is obvious, being the essential nature of the arrangement. Another essential element of a two-tier arrangement, such as the one negotiated, is that the 2-tiers self-eliminate through attrition and the passage of time.

However, it is noted that even though the 2014-2016 CBA contains the same language, it also allows for a change in differentials for employees hired before July 1,

2012 as to positions above firefighter (City Exhibit 1), as well as a reopener in January 2016 for employees hired after July 1, 2012. As such, even though the evidence does suggest an intention that the 2-tier system was a long-lasting arrangement, there is also evidence that the parties intended to address the magnitude of the differentials by adjusting rates, and not just be attrition and the passage of time.

Such intention is also consistent with the facts. It is clear that the two-tier differential negotiated in 2011 and continued in 2014 is unusual as to the magnitude of the differential, there being no comparable two-tier system with a differential magnitude approach the broad differential of the subject two-tier system. The additional fact that both parties propose a modification of the differential with the last best offers is also consistent with the conclusion that the differential would be addressed through bargaining.

As such, it is the objective observation of this Chairperson that there are several methods to address the unusual differential magnitude of the two-tier arrangement: 1) through attrition of higher paid offers by the passage of time; 2) higher pay for the new hires in future agreements; 3) lower pay for hires before 2012 in the upper tier; and 4) lessening the differential through the wage scale over time so that the differential disappears as firefighters obtain longevity with the Employer.[1] It is clear to this Chairperson that the first 2 enumerated methods were anticipated by the parties. It is also clear that the parties intended to engage the second method by re-opening negotiations in 2016 for the hires after July 1, 2012. The first method was already in place, given the nature of a two-tier system. However, there is no evidence that the parties intended to

[1] The fact that the parties did not initially negotiate a decreasing differential to the point of no differential with length of service suggests that the parties intended the 2-tier arrangement to be other than temporary.

foreclose the first, third and fourth methods by re-opening the negotiations in 2016 for the hires after July 1, 2012. In all fairness, true and legitimate negotiation of wholesale elimination of the two-tier arrangement would require consideration of the third and fourth methods, including negotiation of wages for hires before July 1, 2012, which was foreclosed by limiting the re-opener to wages for the hires after July 1, 2012.

The evidence also preponderates that the parties' have a rich bargaining history which enables them to negotiate resolution without resorting to third-party determination. Although the Union asserts that it was the victim of duress and untoward strategies in the negotiations pre-dating 2014, agreement was still reached which benefitted the parties at the table at the time. The victims, if any, are the new hires subsequent to the negotiations, most who were not represented at the negotiations.

Given that the parties have been able to avoid impasse in the past; given the addition of 17 new post 2012 hires in the bargaining unit; and given the fact that the Employer had over 400 applications for employment at the new hire rate (TR. V2, at 207 and 208), interviewed 80 of those applicants (TR. V1, at 80), and none of the new hires have left employment (TR. V2, at 208), it is not clear to this Chairperson that the only reasonable method to address the unusual wage differential is by increasing new hire pay. Although comparability seems to suggest this may be the most warranted method, it may be that there is sufficient market supply of firefighters that wage comparison is not the driving factor in setting wages. The market may be adjusting, or it may not. All in all, there was insufficient evidence for such a conclusion in this proceeding, and the Panel need not make that determination, other than to observe that there was no evidence that

the negotiated wage rates, in the near past, affected the competitive ability of the Employer to recruit new hires.

Given all the factors, this Chairperson finds the comparability and bargaining history/relationship factors to be the most pertinent to proper resolution of this proceeding. Although by comparison the new hires are considerably underpaid externally and internally, the fact remains that both the Union and the Employer negotiated such a situation. It was acceptable to both for a period, and the evidence preponderates that the parties' intended to adjust the differential over time. The evidence also preponderates that the arrangement has not seriously impacted the Employer in recruiting firefighters nor in providing the community reasonable fire protection as of yet. Although a greater lessening of the differential than that offered by the Employer's last best offer may be warranted and within the economic means of the Employer, the Chairperson determines that implementing the Union's last best offer, which would essentially eliminate the two-tier arrangement, would effectuate a resolution that would not have been a natural outcome of bargained negotiations. The natural outcome was foreclosed in the 2014 negotiations, limiting the re-opener to new adjustment of new hire wages only, thus disallowing true negotiation to the differential discrepancy by all available methods. Adopting the Employer's last best offer is more consistent with what the parties have bargained for in the past; addresses the differential discrepancy, albeit not as aggressively as may be warranted; reasonably protects the interest of the community in maintaining reasonable fire protection, there being no evidence that the community is unable to effectively recruit firefighters; and puts the two-tier differential to rest until the next negotiation when all methods of addressing the differential are

available to the parties to negotiate a resolution to more finality, the parties having effectively demonstrated their ability to avoid impasse in the past.

All in all, it is the determination of this Panel that the Employer's last best offer, set forth on Exhibit B hereto, is in the best interest of the parties and welfare of the public, as between the two alternative proposals, and is more is most consistent with what the employees have bargained for in the past or would have obtained through negotiations.

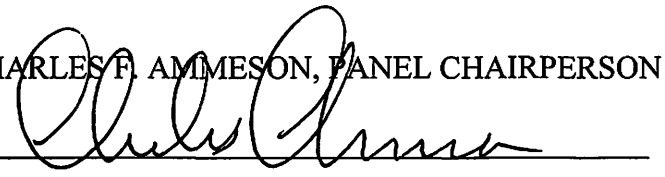
AWARD

Having carefully considered all the arguments and the evidence presented, we conclude that this matter shall be resolved on the basis of the Employer's Last Best Offer as set forth on Exhibit B hereto.

6. SUMMARY OF AWARD

ISSUE	AWARD
Wages	Employer's Last Best Offer as set forth on Exhibit B hereto.

CHARLES F. AMMESON, PANEL CHAIRPERSON — X Agree __Disagree



Dated: August ___, 2017

RONALD HELVESTON, UNION DELEGATE — __Agree X Disagree

_____

Dated: August ___, 2017

HOWARD LAZARUS, EMLOYER DELEGATE — X Agree __Disagree

_____

Dated: August ___, 2017

6. SUMMARY OF AWARD

ISSUE	AWARD
Wages	Employer's Last Best Offer as set forth on Exhibit B hereto.

CHARLES F. AMMESON, PANEL CHAIRPERSON — X Agree __Disagree

Dated: August ___, 2017

RONALD HELVESTON, UNION DELEGATE — __Agree X Disagree

Ronald Helveston

Dated: August 25, 2017

HOWARD LAZARUS, EMLOYER DELEGATE — X Agree __Disagree

Dated: August ___, 2017

6. SUMMARY OF AWARD

ISSUE	AWARD
Wages	Employer's Last Best Offer as set forth on Exhibit B hereto.

CHARLES F. AMMESON, PANEL CHAIRPERSON — X Agree __Disagree

Dated: August ___, 2017

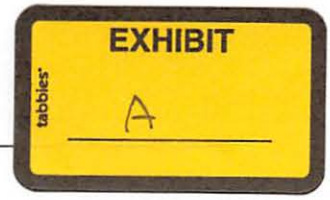
RONALD HELVESTON, UNION DELEGATE — __Agree X Disagree

Dated: August ___, 2017

HOWARD LAZARUS, EMPLOYER DELEGATE — X Agree __Disagree

Dated: August 24, 2017

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



City of Ann Arbor,

Employer (Respondent),

Arbitrator Charles Ammeson
MERC Case No. D16 H-0684

-and-

Ann Arbor Fire Fighters, IAFF, Local 693

Union (Petitioner).

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ANN ARBOR FIRE FIGHTERS ASSOCIATION, LOCAL 693
LAST BEST OFFER

The Ann Arbor Fire Fighters Association, Local 693, by and though its attorneys, Helveston & Helveston, P.C. submits its LAST BEST OFFER for the Act 312 Arbitration proceedings as follows:

UNION ISSUE: SALARY SCHEDULE, ARTICLE 39 AND APPENDIX A: WAGE SCHEDULES
(Economic)

Amend the second full paragraph of Article 39, as follows:

All employees hired on or after July 1, 2012, ~~will be subject to a new wage scale which will be applicable throughout their employment with the City, subject to any negotiated changes. Pursuant to this pay schedule, employees with~~ **who have** bachelor's degrees, ~~who are hired on or after July 1, 2012,~~ will receive an annual educational bonus of $600 paid in the first pay of each calendar year.

Amend Article 39 by adding the following paragraph to the end of the current Article 39:

Effective upon the date of the signing of the Act 312 Award in MERC Case No. D16 H-0684, employees hired on or after July 1, 2012 will be subject to a new wage scale, as reflected in the wage schedule attached herein as Appendix A, and by this reference made a part of this contract. As a result of this new wage scale, employees hired on or after July 1, 2012 shall, upon completion of seven (7) years of service and every year thereafter, receive the same base wage as employees hired before July 1, 2012.

Respectfully submitted,

HELVESTON & HELVESTON, P.C.

/s/ Ronald R. Helveston

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Dated: 05/05/2017

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

LABOR RELATIONS DIVISION

CITY OF ANN ARBOR

Employer (Respondent)

Arbitrator Charles Ammeson
MERC Case No.: D16 H-0684

and

ANN ARBOR FIRE FIGHTERS, IAFF, Local 693,

Union (Petitioner).

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CITY OF ANN ARBOR
LAST BEST OFFER

The City of Ann Arbor submits it Last Best Offer in the above-referenced matter. Article 39 of the Collective Bargaining Agreement is amended as proposed below. Deletions and additions are marked in redline. All other language remains the same.

The City's proposal includes a new wage schedule for employees hired on or after July 1, 2012, which is effective retroactively to January 1, 2017. The new proposed wage

schedule for firefighters hired on or after July 1, 2012 is attached as Appendix A.

39. SALARY SCHEDULE (REFERENCE APPENDIX A)

- *Effective January 1, 2015, each currently employed, active member, who was hired before July 1, 2012 will receive a 2.75% wage increase.*
- *Effective January 1, 2016, each currently employed, active member who was hired before July 1, 2012 will receive a 2.5% wage increase.*
- *Effective January 1, 2015, each employee hired on or after July 1, 2012 will receive a 3% wage increase.*
- *Effective January 1, 2016, each employee hired on or after July 1, 2012 will receive a 3% wage increase.*
- ~~*The City and Union agree to a wage reopener in January, 2016 for employees hired after July 1, 2012*~~
- *Effective January 1, 2017, employees hired on or after July 1, 2012 will be subject to the Wage Scale attached as Appendix A. This wage scale will be applicable throughout their employment with the City, subject to any negotiated changes.*

~~*All employees hired on or after July 1, 2012, will be subject to a new wage scale which will be applicable throughout their employment with the City, subject to any negotiated changes.*~~ *Pursuant to this pay schedule, employees with bachelor's degrees, who are hired on or after July 1, 2012, will receive an annual educational bonus of $600 paid in the first pay of each calendar year.*

Effective January 1, 2015, employees hired before July 1, 2012, will be subject to a new wage schedule which includes increased differentials for positions above firefighter. Effective January 1, 2016, employees hired before July 1, 2012 will be subject to a new wage schedule which includes increased differentials for positions above firefighter.

The following progressive and differentials chart shall apply;

Employees Hired before 7/1/12	*1/1/2015*	*1/1/2016*
Increase (Across)	*2.75%*	*2.50%*
Education Differential	*1.50%*	*1.50%*
FF/DO Differential	*5.50%*	*6.00%*
DO/LT Differential	*6.25%*	*7.50%*
LT/CPT Differential	*6.25%*	*7.50%*
CPT/BC Differential	*6.25%*	*7.50%*

**Current differential between ranks is approximately 5%, with some differentials more and some less depending on specific step.*

Respectfully Submitted,
CITY ATTORNEYS OFFICE

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APPENDIX A

Current Wage Scale

New Hires - FIREFIGHTERS HIRED ON OR AFTER 7/1/12 (3.00% Wage Increase) Salary Schedule January 1, 2016

Suppression	Grade	Position	Hours	Start	1 Year	2 Years	3 Years	4 Years	5 Years	7 Years	12 Years	18 Years
Firefighter	312-000		54	$15.86	$16.26	$16.67	$17.08	$17.51	$17.95	$18.40	$18.86	$19.33
Driver/Operator	313-000		54		$17.07	$17.50	$17.94	$18.39	$18.84	$19.32	$19.80	$20.29
Lieutenant	314-000		54				$19.37	$19.86	$20.35	$20.86	$21.38	$21.92
Captain	315-000		54				$20.92	$21.44	$21.98	$22.53	$23.09	$23.67
Battalion Chief	316-000		54								$25.40	$26.04
Admin												
Inspector	305-000		40				$28.24	$28.95	$29.67	$30.42	$31.18	$31.96
Asst Training Officer	305-000		40				$28.24	$28.95	$29.67	$30.42	$31.18	$31.96
Master Mechanic	306-000		40								$34.29	$35.15
Training Officer	306-000		40								$34.29	$35.15
Fire Marshal	306-000		40								$34.29	$35.15
Light Duty												
Firefighter	312-040		40	$21.42	$21.95	$22.50	$23.06	$23.64	$24.23	$24.84	$25.46	$26.09
Driver/Operator	313-000		40		$23.05	$23.62	$24.21	$24.82	$25.44	$26.08	$26.73	$27.40
Lieutenant	314-000		40				$26.15	$26.81	$27.48	$28.16	$28.87	$29.59
Captain	305-000		40				$28.24	$28.95	$29.67	$30.42	$31.18	$31.96
Battalion Chief	306-000		40								$34.29	$35.15

**$600 lump sum per year for Bachelor's Degree*

City Proposed Wage Scale

New Hires - FIREFIGHTERS HIRED ON OR AFTER 7/1/12 Salary Schedule January 1, 2017

Suppression	Grade	Position	Hours	Start	1 Year	2 Years	3 Years	4 Years	5 Years	7 Years	10 Years	12 Years
Firefighter	312-000		54	$15.86	$16.30	$18.02	$19.29	$21.24	$21.63	$21.63	$21.63	$21.63
Driver/Operator	313-000		54		$20.35	$21.20	$21.74	$21.97	$22.66	$22.66	$22.66	$22.66
Lieutenant	314-000		54				$22.82	$23.61	$23.61	$23.61	$23.61	$23.61
Captain	315-000		54				$25.02	$25.63	$25.63	$25.63	$25.63	$25.63
Battalion Chief	316-000		54								$28.13	$28.72
Admin												
Inspector	305-000		40				$33.78	$34.60	$34.60	$34.60	$34.60	$34.60
Asst Training Officer	305-000		40				$33.78	$34.60	$34.60	$34.60	$34.60	$34.60
Master Mechanic	306-000		40				$37.98	$38.77	$38.77	$38.77	$38.77	$38.77
Training Officer	306-000		40				$37.98	$38.77	$38.77	$38.77	$38.77	$38.77
Fire Marshal	306-000		40				$37.98	$38.77	$38.77	$38.77	$38.77	$38.77
Light Duty												
Firefighter	312-040		40	$21.42	$22.01	$24.33	$26.04	$28.67	$29.20	$29.20	$29.20	$29.20
Driver/Operator	313-000		40		$27.47	$28.62	$29.35	$29.66	$30.59	$30.59	$30.59	$30.59
Lieutenant	314-000		40				$30.81	$31.87	$31.87	$31.87	$31.87	$31.87
Captain	305-000		40				$33.78	$34.60	$34.60	$34.60	$34.60	$34.60
Battalion Chief	306-000		40								$37.98	$38.77

**$600 lump sum per year for Bachelor's Degree*

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

City of Ann Arbor,

Employer (Respondent),

Arbitrator Charles Ammeson
MERC Case No. D16 H-0684

-and-

Ann Arbor Fire Fighters, IAFF, Local 693

Union (Petitioner).

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Dissent of the Firefighters' Delegate to the Opinion and Award

Dissent of the Firefighters' Delegate

I dissent from the Panel's Opinion and Award. In my opinion, the record in this matter plainly establishes that the last best offer of the Union "more nearly complies" with the statutory criteria of Act 312, and therefore should be adopted. The Panel reaches the opposite conclusion by an analysis that disregards longstanding Act 312 practice, and by imposing an unreasonable burden on the Union that is not supported by the statute. Specifically, the Panel acknowledges (as it must, on this record) that the Union's last best offer is better supported by the pay and benefit packages received by firefighters in comparable communities, and by the nearest comparable employees--police officers--in Ann Arbor. Award at 12-13. However, the Panel disregards the import of this finding by relying on a 'factor' that does not even merit mention in the statute--a cramped reading of the Parties' "bargaining history." Award at 14. Support for the idea that 'bargaining history' is more important than internal and external comparability rests on a non-Act 312 case from 1970(!). Suffice it to say that this startling conclusion defies my almost 50 years of experience litigating cases under this statute, and I am confident the experience of any other practitioner who reads this Opinion.

The effect of so elevating the Parties' bargaining history--and I emphasize, a rather limited reading of that history--is to create a *status quo* bias so insurmountable as to undermine the "preponderance" standard that the Award claims to honor./[1] Time and again, the Award reiterates that Ann Arbor's post-2012 hires must spend *their entire careers* earning 10-20% less than pre-2012 hires simply because the Parties at one point--under a severe economic duress that no longer exists--agreed to an arrangement of this kind. Award at 15-17. This claim turns the statute's factor analysis and burden of proof on its head.

[1] / For a more complete review of the Parties' bargaining history, *see* Firefighters' Brief at 3-8.

It should go without saying: for almost every issue in every Act 312 proceeding, there is some *status quo* provision in the contract. And almost every such *status quo* provision is in the contract because the Parties' at some time or other bargained over it. That is typically the starting point of an Act 312 analysis, not its terminus. Under standard practice, as supported by the statute, the parties then present evidence of the enumerated statutory factors to demonstrate whether the *status* quo provision at issue is consistent or inconsistent with similar provisions in other communities, or in other bargaining units of the same community. The *status quo* provision is then retained or altered, depending upon a preponderance of the evidence of the statutory factors.

Under the analysis of this Opinion and Award, however, the simple fact that a two-tier wage provision is contained in the existing contract--that it is part of the 'bargaining history'--overwhelms all other statutory factors. Award at 14, 18. This analysis makes the Act 312 factors, enumerated in section 9, subservient to a 'factor' that did not merit mention in the Act. This analytical framework turns Act 312's factor balancing test on its head.

At this point, it is worthwhile to note just how strongly the traditional section 9 factors support the Firefighters' LBO in this case. Of the seven communities chosen as comparable in these proceedings, five have no two-tier pay scale at all./[2] One has a two-tier pay scale with a 10% 'penalty' that ends after 5 years. The seventh has a two-tier scale with a penalty of 5% that is career-long. Firefighters' Brief at 10-15.

Under the Firefighters' LBO, the Parties' current second-tier wage penalty would remain (at between 10-15% at the beginning of each rank), but would disappear after 7 years. Under the

[2] / An eighth city, Taylor, was offered as comparable by the City, and was rejected. Award at 7.

City's LBO, the second-tier penalty would shrink somewhat from the *status quo*, but would persist for a firefighter's entire career at a level typically between 10% and 20%.

Of the seven comparable communities (excluding Ann Arbor), the median city would have no two tier provision at all. The Firefighters' LBO, if adopted, would leave Ann Arbor ranked sixth out of eight cities--below the median, and close to the bottom. The City's LBO would leave Ann Arbor at the bottom, worse than the worst of the seven comparables. *Id.* at 16-24. The Firefighters' LBO "more nearly complies" with the external comparability factor than the City's.

The Firefighters' LBO also "more nearly complies" with the internal comparability factor as well. Under the Firefighters' LBO, second-tier firefighters would begin their careers earning a lower yearly salary than police officers, and would "move to parity within several years." Award at 12. Under the City's LBO, second tier-firefighters would begin their careers below the police, and would fall farther and farther behind, ending up over 20% behind their internal comparables. *Id.* at 13. "No evidence was offered to justify the 20+ percent lower pay differential . . . other than cost savings." *Id.* Again, the Firefighters' LBO "more nearly complies" with the statutory factor known as 'internal comparability.'/[3]

With regard to the other factors, the Award acknowledges that they are not relevant under the facts presented. *Id.* at 10-11. In sum, the Firefighters' LBO more nearly complies--and by a considerable margin--with the only enumerated section 9 factors that are relevant in this case.

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[3] / It is worth noting that the City presented a single justification for an LBO that keeps second-tier firefighters so far below the top tier for their entire careers, *viz.*, that Ann Arbor new hires enjoy a defined benefit pension plan, while firefighters in the comparable cities do not. Firefighters' Brief at 34-35. The Panel found that this claim was not supported by the record. Award at 13-14.

And yet--the Firefighters' LBO was rejected, and the Employer's adopted, because in the Panel's estimation, the enumerated section 9 factors were swamped by a *status quo* bias dredged from section 9's "catch-all" provision with a non-Act 312 case from 1970. *Id.* at 14, 18.

I dissent.

Respectfully Submitted,

HELVESTON & HELVESTON, P.C.

/s/Ronald R. Helveston

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