STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Act 312
Arbitration Between:

MERC Case No. L13 K-1044

CITY OF GRAND RAPIDS,

Respondent/Employer

and

GRAND RAPIDS FIRE FIGHTERS
UNION (IAFF LOCAL 366)

Petitioner/Labor Organization

ACT 312 OPINION AND AWARD

Dennis P. Grenkowicz, Panel Chair
Kenneth Deering, City Delegate
Joe Dubay, Union Delegate

APPEARANCES:

FOR THE CITY OF GRAND RAPIDS

John H. Gretzinger
Mika Meyers Beckett & Jones PLC

FOR THE GRAND RAPIDS FIRE FIGHTERS UNION (IAFF LOCAL 366)

Alison L. Paton
Alison L. Paton PC

Summary

This matter was heard by the 312 Arbitration Panel subsequent to the filing of a petition for a 312 arbitration hearing by the Grand Rapids Firefighters Union (hereinafter referred to as the Union) on March 26, 2014, with an answer being file by the City of Grand Rapids (hereinafter referred to as the City) on June 10, 2014. Hearings were held in the City of Grand Rapids on October 22 and 23, November 10, 11, 25, 26, and, December 13, 2014. The parties presented a combined total of 12 witnesses and several volumes of exhibits. The comparable communities utilized in this proceeding were the five cities proposed by the Union: Ann Arbor, Battle Creek, Lansing, Muskegon, and Saginaw.

Three issues were presented to this Panel for resolution: suppression employee scheduling coupled with wage increases, determination of hourly wage rates, and the use of part-time firefighters. The first two issues are economic in nature while the third issue is non-economic in nature. After hearing the witness, examining the exhibits, reviewing the hearing transcripts, and considering the arguments of counsel, the Panel finds in favor of the City on issues one and two and in favor of the Union on issue three.

Applicable Statutes

These proceedings are governed by MCL 423.238 and MCL 423.239. MCL 423.238 provides as follows:

Sec. 8.
The arbitration Panel shall identify the economic issues in dispute and direct each of the parties to submit to the arbitration Panel and to each other its last offer of settlement on each economic issue before the beginning of the hearing. The determination of the arbitration Panel as to the issues in dispute and as to which of these issues are economic is conclusive. The arbitration Panel, within 30 days after the conclusion of the hearing, or within up to 60 additional days at the

discretion of the chair, shall make written findings of fact and promulgate a written opinion and order. As to each economic issue, the arbitration Panel shall adopt the last offer of settlement which, in the opinion of the arbitration Panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.

MCL 423.239 provides as follows:

Sec. 9.

(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 interests 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 financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the employer.

(c) Stipulations of the parties.

(d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in both of the following:

(i) Public employment in comparable communities.

(ii) Private employment in comparable communities.

(e) Comparison 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, holidays, 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.

(j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration Panel by a financial review commission as authorized under the Michigan financial review commission act.

(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.

Issue One: Suppression Annual Work Schedule (City Issue 7) and Payment for Additional Hours Worked by Suppression Employees(City Issue 8)

The City's Last Best Offer is as follows:

The current suppression work schedule utilizes a 24 hour work day and a scheduling cycle that has suppression employees scheduled to work three out of every nine days. This would result in employees being scheduled to work an average of 56 hours a week (2912 in a year) but an "L" day off is added every 10 work days to reduce the number of hours to an average of 50.4 hours per week (2620.8 in a year). Under this system, the "regular" hourly rate for a suppression employee is their current annual salary divided by the number of hours in their yearly schedule. This average 50.4 hour work schedules eliminates issues related to FLSA, which requires overtime to be paid for all hours actually worked in excess of 212 in a 28 day work period but goes further than necessary to avoid scheduled statutory FLSA overtime (an average 53 hour work week).

City Proposal:

The City proposes to modify the work schedule for suppression employees to eliminate "L" days in those 28 day work cycles that have employees scheduled to work 9 shifts, but retain "L" days in those 28 day work cycles that have employees scheduled to work 10 shifts. This will result in an average 54 hour work schedule that would schedule suppression employees for 2818 hours of work each year. This change would be effective at the beginning of the first 28 day work period that begins on or after July 1, 2015, and will be accomplished as follows:

(1) Annual Duty Draw: Temporarily modify Article 14, Section 2 to have a duty draw on the first Monday in May for the six month period starting July 1, 2015 and have transfers made shortly after July 1, 2015. The normal annual duty draw on a calendar year basis shall resume on November 1, 2015.

(2) Workweek. Modify Article 42, Section 1A to read as follows:

SECTION 1. WORK WEEK

Regular full-time employees in the Fire Department, excluding Deputy Fire Chiefs, Fire Captain-Building/Fleet Maintenance, Assistant Fleet Maintenance Supervisor, Fire Marshall, Fire Captain-Prevention, Fire Lieutenant-Prevention, Fire Lieutenant-Hazardous Materials Planner, Fire Captain-Strategic Planning, Fire Lieutenant-Strategic Planning, Fire Chief-Training, Fire Captain-Training, Fire Lieutenant-Training, Fire Captain-EMS and any other positions mutually agreed upon, are normally scheduled to work 2818 hours in a calendar year. The normal work week for these employees consists of an average of 54 hours including meal periods. An actual work week for these employees may include more or less than 54 hours to adjust for peak demands for service, or assignment to a 40 hour work week when necessary for administrative duties.

(3) Work Schedule. Modify Article 42, Section 2A and the first sentence of 2C to read as follows:

SECTION 2. WORK DAY

A. The schedule of employees required to work an average 54 hour work week as set forth above shall be as follows: 1 day on, 1 day off, 1 day on, 1 day off, 1 day on, and 4 days off. In the 28 day work cycle where there would be 10 duty days, one "L" day off work is scheduled to have the employee actually scheduled to work on 9 duty days.

C. The shift starting time for personnel assigned to the 54 hour work week will be 0700 hours.

(4) Additional compensation for 54 hour work schedule:

After calculation of the 2015 wage increase, add an additional 2.00% for all classifications and at all steps (Excluding the hourly rates for Certified Fire Instructor, Provisional Fire Instructor and Assistant Fire Instructor.) The calculation of the regular hourly rate of pay for a suppression employee will be determined by dividing the annual rate of pay by 2818 rather than the current 2620.8.

(5) Contractual Overtime and Holiday Pay rate. Add the following letter of Understanding:

The change to calculation of the regular hourly rate of pay for a suppression employee determined by dividing the annual rate of pay by 2818 rather that the current 2620.8 will result in a temporarily reduced regular hourly rate of pay. For purposes of the payment of contractual overtime under Article 17, Section 4 B and for the payment of holiday pay under Article 21, Section 3 the regular hourly rate of pay for suppression employees shall be the regular hourly rate of pay applicable to them as of June 30, 2015 or the regular hourly rate of pay calculated by dividing the annual rate of pay by 2818, whichever is greater. This provision will remain in effect only until such time as the actual hourly rate for a particular employee is greater than the hourly rate for that employee that was in effect as of June 30, 2015.

(6) Contractual references. References in the Collective bargaining agreement to 50.4 hours personnel shall be changed to 54 hour personnel.

The Union's last best offer on this issue is as follows:

- Modify Article 42, Section 1(A) to provide as follows:

" The work week for regular full-time employees in the Fire Department – excluding Deputy Fire Chiefs, Fire Maintenance Electrician, Fire Captain-Building/Fleet Maintenance, Assistant Fleet Maintenance Supervisor, Fire Marshal, Fire Captain-Prevention, Fire Lieutenant-Prevention, Fire Lieutenant-Hazardous Materials Planner, Fire Captain-Strategic Planning, Fire Lieutenant-Strategic Planning, Fire Chief-Training, Fire Captain-Training, Fire Lieutenant-Training, Fire Captain-EMS, and any other positions mutually agreed upon – shall consist of an average of 50.4 hours per week including meal periods. However, at such time as the City wishes to do so, the City shall have the right to change the average 50.4 hours per week work schedule to an average 53.2 hours per week work schedule including meal period, through the elimination of six (6) Leave Days. Upon the City's implementation of the change from the 50.4 hour schedule to the 53.2 hour schedule, all "50.4" hour references throughout contract shall be changed to "53.2".

- Modify Article 42, Section 2(A) to add new second paragraph providing as follows:

"At such time as the City wishes to do so, the City shall have the right to change the work schedule set forth in the paragraph above from the existing 50.4 hour schedule to a 53.2 hour schedule, through the elimination of six (6) Leave Days. In the event the City chooses to do so, the first paragraph of this Section 2(A) will no longer apply, and instead the following will apply in its place: The schedule of employees required to work an average 53.2 hour work week as set forth above shall be as follows: 1 day on, 1 day off, 1 day on, 1 day off, 1 day on, and 4 days off. In addition, employees assigned to such schedule shall be granted a paid leave day based upon the following: Earned leave days are established in cycles of 20 work days numbering 1 to 20. Each employee is assigned 1 of the numbered leave days in each cycle. In the event an employee is transferred to a different shift, his/her leave day number shall be changed. It is understood that compliance with the average 53.2 hour schedule is accomplished if an individual has a scheduled leave day in each completed leave day cycle. A complete leave day cycle shall be construed to mean a 20 work day cycle beginning with the leave day 1 and ending with leave day 20. However, it is recognized that the trading of leave days between individuals may result in 2 or more leave days occurring in 1 cycle and none in others."

- Modify Appendix B to add the following:

"For classifications in Appendix B which are changed from the 50.4 hour schedule to the 53.2 hour schedule, the annual salaries set forth in Appendix B shall be adjusted (in addition to the 2014 wage increase of 2.25% and the 2015 wage increase of 2.25%) to reflect regular straight time compensation for the additional work hours resulting from the elimination of six (6) Leave Days, which changes the average weekly work hours from 50.4 to 53.2, an increase of 5.55% (.0555). Accordingly, for those classifications in Appendix B which are changed from the 50.4 hour schedule to the 53.2 hour schedule, the annual salaries set forth in Appendix B shall, at such time that the new 53.2-hour schedule is implemented by the City, be immediately increased by 5.55% representing straight time compensation for the additional work hours under the new 53.2-hour schedule."

Because this is an economic issue, the Panel must adopt the last best offer of settlement which, in the opinion of the Panel, more nearly complies with the applicable factors prescribed in MCL 423.239. Only applicable factors need be considered. *City of Hillsdale v Michigan State Fire Fighters Union Local 961* 164 Mich App 627 (1987). Because many of the statutory factors often overlap, they will be discussed in relation to each of the Panel's findings.

Findings on Issue One

Fair Labor Standards Act Work Cycle. The parties currently operate under a 27 day FLSA work cycle. The current contract is silent on this topic. The City's last best offer specifically includes a 28 day work cycle. The Union's last best offer is silent on the subject of the work day cycle. At the 312 arbitration hearing, the Union counsel asserted that the Union's last best offer did not need to specify a FLSA work cycle because the work cycle is a matter of federal law and not a condition of employment or a matter of bargaining. The Union counsel further asserted that the City is free to continue with a 27 day cycle or change it to a 28 or 25 day cycle. The City counsel responded that the contract's maintenance of standards provision would subject the City to a grievance, should the City change the FLSA work cycle unilaterally. The City counsel also pointed out that a change of the work cycle from 27 days to 28 days would impact statutory overtime because overtime is due after 204 hours in a 27 day period and over 212 hours in a 28 day period (Transcript Volume 4, page 145 et seq.). The City's concern is well founded.

The absence of a FLSA work cycle provision in the Union's last best would not be problematic if its last best offer included an explicit disclaimer statement asserting that the setting of a FLSA work cycle is—to the extent that it is in compliance with federal and state law—within the City's discretion. Because of the absence of a FLSA work cycle provision and the absence of an explicit provision ceding the authority to set the FLSA work cycle to the City, the adoption of the Union's last best offer would introduce a disconcerting element of ambiguity into the labor contract. The Panel has no authority to integrate a FLSA work cycle provision or a disclaimer statement into the Union's last best offer.

There is no question that the Union and its counsel are sincere in their position that the FLSA work cycle is within the City's discretion. Nonetheless, Union leadership could change. Its choice of counsel could change. With those changes, the Union's position on this issue could change. Contract ambiguity is a permissible consideration under MCL 423.239(1)(i) and this factor weighs in the City's favor.

Comparable Communities. The City's proposal for a 54 hour work week is consistent with the work week schedule used by each of the comparable communities, all of which use at least a 54 hour work schedule. The Union's proposal for a 50.4 hour work week or a 53.2 hour work week (at the City's option) is unique and is not used by any of the comparable communities. This is a mandated consideration under MCL 423.239(1)(d)(i) and weighs in the City's favor.

Increased Staffing. The fire suppression work force—which is made up of six battalion chiefs, 11 captains, 34 fire lieutenants, 45 equipment operators, and 80 firefighters—currently has a 50.4 hour weekly schedule. The City's last best offer would increase the weekly work schedule to 54 hours and the daily staffing levels by four people. The Union's last best offer would—at the City's option—increase the weekly work schedule to 53.2 hours and increase daily staffing levels by three people. Either proposal would be an improvement over the current 50.4 hour work week schedule. Increased personnel on duty better serves the public and improves firefighter safety. This is a mandated consideration under MCL 423.239(1)(a)(ii), welfare of the public, and MCL 423.239(1)(i)—conditions of employment, specifically firefighter safety, and weighs in the City's favor.

Employee Morale. Although employee morale is not specifically listed as a factor for consideration by the Panel under MCL 423.239, it will be considered under the catchall subsection of MCL 423.239(1)(i). Both parties presented testimony regarding the adverse effect the resolution of this issue will have on employee morale. Both parties are correct. Adoption of the City's last best offer will adversely affect the suppression employees' morale. Adoption of the Union's last best offer will adversely affect the administrative employees' morale. The City proposal involves a raise for all Union employees. However, only the suppression employees would be required to work more hours. The result is that the suppression employees would earn less per hour than administrative employees although their yearly earnings will be the same.

Under the Unions's proposal, only suppression employees would receive a raise. Suppression employees would earn the same hourly rate as administrative employees, but they would have higher yearly earnings. This factor favors neither party.

Market Price of Fire Fighter Services. It is clear that the City has historically been paying a premium price for it firefighter services. An examination of City Merits Exhibit 30 reveals that as of July 1, 2014, the Union weekly work schedule was 50.4 hours. This was below that of all of the comparable communities, all of which had at least a 54 hour weekly schedule. Despite this shorter weekly work schedule, the Union employees earned more than most of their peers and well above the average compensation rates. This statutory factor under MCL 423.239(1)(d)(i) weighs heavily in the City's favor.

The City's Financial Ability to Pay. Of the statutorily mandated factors the arbitration Panel must consider, MCL 423.239(2) requires the Panel to give the financial ability of the City to pay the most significance, if the determination is supported by competent, material, and substantial evidence. In determining the City's financial ability to pay, the Panel is directed by the statute, subsection (1)(a), to consider the award's financial impact on the community along with the interests and welfare of the public.

The City's primary witness on this issue was Scott Buhrer. Mr. Buhrer, the chief financial officer for the City of Grand Rapids since 2004, displayed an encyclopedic knowledge of the City's financial matters. His testimony and conclusions were support by the testimony of Eric DeLong, the Deputy City Manager since 1999, and a surfeit of exhibits consisting of budgets, forecasts, and memos. The Union presented Dr. Alan Reinstein as an expert witness in its case-in-chief. Dr. Reinstein is a well qualified financial expert. However, he did not seriously challenge any of Mr. Buhrer's testimony or his conclusions.

The focal point of Mr. Buhrer's testimony was that for at least the last ten years, the City of Grand Rapids has been engaged in a concerted effort to eliminate its structural budget deficit. Mr. Buhrer explained that a structural budget deficit exists when there is a mismatch between ongoing revenues and ongoing expenses. This is distinguishable from a cyclical budget deficit where there is a temporary decline in revenue that can be compensated for with reserve funds. A cyclical budget deficit usually occurs during a recession and ends when the recession ends. An entity, however, does no grow out of a structural budget deficit, and this is the position the City found itself in the decade of the 2000s.

In response to its structural budget deficit the City began a transformational process designed to reduce expenses and improve efficiency. When the transformational process began, two areas of particular concern were the police and fire department budgets. Together they represented 65% of the City's general operating fund. As part of the transformational process, the City eliminated over 500 employment positions. As originally adopted the City's transformational goal was to secure a 10% reduction in employee compensation with a 10% reduction in operational costs. The City later reduced its goal of a 10% reduction in employee compensation to 8.2%. With a series of structural improvements, increased efficiencies, and numerous employee concessions, including several by the Union, the City has made impressive progress to reaching its goal of financial sustainability. Nonetheless, the as of the date of Mr. Buhrer's testimony on October 23, 2014, the City still had an approximate one million dollar structural budget deficit.(Volume 2 page 19)

As part of the City's strategy in achieving financial sustainability, the City's financial guidelines set a goal of maintaining a 25% fund balance, made up of a 15% fund balance in the general operating fund and a 10% balance in the budget stabilization fund. As Mr. Buhrer testified, a 25% fund balance goal is advisable for two reasons. First, Grand Rapids is an income tax dependent city. Income tax revenue is a volatile source of revenue as opposed to property tax revenue which tends to be stable. (Buhrer Volume 3 page 112 and 113). Second, because of the deep cuts in the City's workforce over the last ten years with over 500 positions having been eliminated, the City will not have the option of utilizing employee layoffs as a budget balancing measure during the next economic downturn. Mr. Buhrer testified that a 25% fund balance is necessary for the City to have the financial resources to survive the next economic downturn, assuming that it is not a generational downturn akin to that of 2008 or the 1930s'. (Volume 3 page 113)

The 2013 ending fund balance was 21.8%. As of the date of the hearings, the projected 2014 ending balance was projected to be 22.4%. This was nearing the pre-recession highs, but still below the 2006 level. (Volume 4 page 114)

The Union makes the argument that its last best offer is less expensive than cost of the City hiring ten new firefighters. Its financial analysis proves this to be true. Nonetheless, the Union's argument is misplaced. The choice for this Panel is not between the Union's last best offer and the hiring of ten new firefighters; it is a choice of either the City's last best offer and the Union's last best offer. And it is undisputed that the Union's proposal is more expensive than the City's. The Union calculates that its 5.55% raise will cost the City an additional $846,144.00 annually (Union Exhibit II-12b). Using the Union's figures to calculate the annual cost of the City's last best offer of a 2% raise reveals an additional annual cost to the City of $304,916.76. Hence, the Union's figures shows that the cost of its last best offer is $541,227.24 more expensive than the City's last best offer. By the City's calculation, the Union's last best offer is $648,231.00 more expensive than the City's. The difference may be caused by the parties using different FLAS work schedules. In any event, even if one were to assume that the Union's figure of $541,227.24 is correct, the additional cost of the Union's last best offer is prohibitive for a city that is still in the process of placing its financial house in order.

Adoption of the City's last best offer will assist the City in reaching it goal of a 25% fund balance. A 25% fund balance is essential for the City to survive the next economic downturn. This is a mandated consideration under MCL 423.239(1)(a) and weighs in the City's favor.

The City's most salient and the decisive point is that the City cannot achieve financial sustainability while paying above market prices for City services. Historically, this has been the City's relationship with the Union. The City pays more than most comparable communities for fewer hours worked. Adoption of the City's last best offer for this issue will bring its expenditures for firefighter compensation in line with those of comparable communities and will help it achieve financial sustainability. This conclusion alone—even if all other factors favored the Union—requires a finding in favor of the City on issue one. The Panel also concludes that this finding is supported by competent, material, and substantial evidence. The previously discussed issues only bolster this finding.

Despite the fact that almost all of the statutory factors all weigh in the City's favor, one can readily understand the suppression employees' position. They have steadily been making transformational progress since before 2002, at least eight years before the transformation process became official City policy in 2010. Their workload has been increasing while their department has been growing leaner. In 2002 the Department made a total of 17,484 runs. By 2013 that number had increased to 21,537. In 2002 there were 243 fire suppression employees by 2013 that number had decreased to 192. Still, the fact remains that the Union, like all City residents, has a vested interest in the City reaching its goal of final sustainability. To do that the City must continue on its current path of financial restructuring. Accordingly, the Panel finds in favor of the City on issue one.

Issue Two: Hourly Wage Rates. (City Issue 9)

The City's last best offer is as follows:

Although not stated in the collective bargaining agreement, an employee's regular hourly rate of pay is calculated by dividing their annual salary rate by the number of hours in their annual work schedule. These hours are currently 2620.8 for suppression employees and 2088 hours for non-suppression employees.

City Proposal:

Modify Article 17, Section 1 to read as follows:

Section 1. Wage Schedule. Wages for employees covered by this Agreement shall be in accordance with the schedule set forth in Appendix B. The regular hourly rate of pay for a suppression employee is determined by dividing the annual rate of pay by the number of hours in their annual work schedule and the regular hourly rate of pay for a non-suppression employee is determined by dividing the annual rate of pay by 2088.

The parties have stipulated to change the number "2088" to "2080."

The Union's last best offer is to modify Article 17, Section 1 to provide as follows:

"Wages for employees covered by this Agreement shall be in accordance with the schedule set forth in Appendix B. For purposes of defining the hourly rate of pay for benefit and overtime calculation purposes, the following shall apply: For those classifications working an average 50.4 hour/week schedule, their straight time hourly rate shall be the annual salary divided by 2,620.8. For those classifications working an average 53.2 hour/week schedule, their straight time hourly rate shall be the annual salary divided by 2,766.4. For those classifications working the 40 hour/week schedule, their straight time hourly rate shall be annual salary divided by 2,080."

Findings on Issue Two

This is an economic issue; one of the above alternatives must be accepted as proffered. Both parties agree that the party who prevails on issue one must also prevail on issue two. Accordingly, with the City having prevailed on issue one, its last best offer on issue two is adopted.

Issue Three

The City's last best offer for issue three is as follows:

The City possesses broad management rights that are codified in Article 4, including the right to hire and utilize part-time employees. The City proposes that this right be explicitly spelled out in the Agreement by addition of the following new section in Article 1 Recognition:

Section 3. Part-time Employees. Management reserves the right to hire and utilize part-time firefighters, whose schedules of work shall be determined by Management. The Union recognizes that the City's assignment of firefighting related work to part time firefighters will not constitute a violation of any provision of this agreement even if it could remove potential work or overtime opportunities for full time firefighters; provided, however, that part time firefighters shall not be utilized in a manner that will cause a full time employee to be laid off or to lose time from their regularly scheduled hours.

The Union's last best offer for this issue is as follows:

ISSUE 3(c): Use of Part-Time Employees

(City Issue; Non-Economic)

Status quo - no change.

This is a non-economic issue. Therefore the Panel is not limited to selecting one or the other of the last best offers as proffered. MCL 423.238 directs that the Panel's findings shall be based upon the applicable factors prescribed in MCL 423.239.

The City maintains that it has an inherent right to utilize part-time employees. However, it has cited no statute or ruling by any appellate court recognizing or establishing such a right. Independent research has likewise revealed none. Moving forward from the premise that the City has no such inherent right, a decision on issue three must be decided under the statutory factors of MCL 423.239.

The City did offer evidence that the use of part-time employees might be cost effective. However, that evidence was not persuasive. The Union conversely presented a strong case that the use of part-time firefighters would raise issues of firefighter safety. Firefighter Joe Dubay and Lieutenant Richard Clark both testified that the use of part-time firefighters raised safety concerns. Mr. Dubay made the point that firefighting is a team endeavor. Full-time firefighters spend fifty hour a week working and training together. This is an essential of becoming a team. Part-time employees would spend fewer hours with their co-workers; they would by definition have less interaction with the fellow firefighter either working or training. One can infer from Mr. Dubay's point that part-time firefighters would not become fully integrated into the "team." This would cause them, their fellow firefighters, and the public to be at a disadvantage. Lieutenant Clark put it aptly when he—in comparison to part-time firefighters—stated that firefighting was his profession, that he spends a third of his life with his fellow firefighters. Further, that as a full-time firefighter he was no worried about another job as a construction worker or a mechanic. He did have two skill-sets to keep up.

Under MCL 423.239(1)(i), conditions of employment, the Panel finds in favor of the Union on issue three.

Order of the Panel

A majority of the Panel votes to adopt the last best offer on each issue as set forth in this opinion.

Dennis P. Grenkowicz
Panel Chair

5/19/15
Date

Joe Dubay
Union Delegate
I concur regarding the award in favor of the Union
I dissent regarding the awards in favor of the City

Date

Kenneth Deering
City Delegate
I concur regarding the awards in favor of the City
I dissent regarding the award in favor of the Union

Date