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CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED

Ken Hobbs - President
Ypsilanti Firefighters Association
Local 401, IAFF, AFL-CIO

Re: Requirements for Promotion to Fire Marshall

President Hobbs,

Please allow this correspondence to serve as a response to your request for an opinion as to the requirements for promotion to the rank of Fire Marshall. In order to render this opinion, I have reviewed the current language of the Collective Bargaining Agreement ("CBA"), the relevant provisions of Public Act 78 of 1935 ("Act 78"), other documents provided by the Union and my notes from our conversations regarding this matter. For the reasons set forth below, it is my opinion that bargaining unit members must have served as a Fire Captain for 2 years in order to be qualified to test for promotion to Fire Marshall.

The provisions governing promotions are found in Article 24 of the CBA. More specifically, Article 24, Section 1 establishes the requirements to be eligible for a promotion. This section of the CBA indicates that the Union and City have agreed to follow the provisions of Act 78, Section 12(b) when filling vacancies in ranks above fire fighter by promotions. Section 12(b) of Act 78 requires candidates for a promotion to have 5 years of experience in the Fire Department and 2 years of experience in the next lower rank in order to be eligible for a promotion and that the promotional examination be competitive. This section of Act 78 also contains the procedure for ensuring enough applicants are testing for the promotion. If there are no applicants who have served 2 years in the next lower rank, then all employees in that next lower rank may test for the promotion in order to hold a competitive promotional exam. Additionally, there must be at least 2 employees taking an examination for it to be competitive. If necessary, an applicant that served 2 years in the second lower rank would be able to take the exam if there were not 2 applicants from the next lower rank; however, that does not appear to be the case here.

Since the relevant provisions of Act 78 require 2 years of service in the next lower rank in order to be eligible for a promotion, it is my opinion applicants for promotion to Fire Marshall are required to have been in the Department for 5 years and have served as a Captain (the next

lower rank) for at least 2 years. Although the CBA does not explicitly provide an organizational chart, the wage differentials found in Article 8, Section 1 are instructive. According to increases in salary, the Fire Department ranks advance from Fire Fighter to Fire Lieutenant to Fire Captain to Fire Marshall to Fire Chief. Additionally, there has been some past practice of having the Fire Chief also serve as the Fire Marshall, which also supports the position that the Fire Marshall is the highest rank in the bargaining unit.

Lastly, the Union provided me with a document that appears to be a job description of sorts for the position of Fire Marshall. The document appears to be relatively old as it contains signature lines for former Chief Ichesco and April McGrath which are blank. Even if the document had been signed by City representatives, it does not appear in the CBA, was not negotiated with the Union, and in my opinion it does not have any legal effect on the provisions of the CBA. The provisions of the CBA take precedent over unilateral actions by the City because the Union and City agreed to those provisions. In fact, Article 2, Section 5 explicitly provides that the provisions of the CBA prevail in any conflict with City or Department rules, regulations, policies and procedures.

I hope you consider the above information to be both helpful and instructive. As always, please feel free to contact me if you have any questions or concerns.

Very truly yours,
HELVESTON & HELVESTON, P.C.

Ronald R. Helveston