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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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BUREAU OF MICHIGAN  
EMPLOYMENT RELATIONS  
DETROIT OFFICE

In the Matter of the Arbitration between:

THE CITY OF BELDING, (MICHIGAN)

Employer

-and-

Case No. G91 I-0046

LABOR COUNCIL, MICHIGAN FRATERNAL  
ORDER OF POLICE, BELDING POLICE  
OFFICERS DIVISION,

FILE COPY

Union

ARBITRATION PANEL:

Donald F. Sugerman, Impartial Arbitrator and Chair  
Joseph W. Fremont, Director, Labor Relations Services, Michigan Municipal League  
and City Delegate  
Ray Wallace, Field Representative and Union Delegate

APPEARANCES:

For the City: Michael A. Snapper, Esq. of Miller, Johnson, Snell &  
Cumiskey, Grand Rapids, Michigan

For the Union: Kenneth W. Zatkoff, Esq. of John A. Lyons P.C., Troy, Michigan

CHRONOLOGY:

The most recent collective bargaining agreement between the parties was for the period July 1, 1989 through June 30, 1991; unsuccessful negotiations led to a mediation session on July 9, 1991 that was equally unsuccessful; the petition giving rise to this proceeding is dated July 11, 1991 and was received by the Employment Relations Commission on July 15, 1991; the Chair was appointed by the Commission on September 6, 1991; a pre-hearing conference

was held in Lansing on January 17, 1992; the hearing was conducted in Lansing on April 27, 1992; last offers of settlement were submitted on May 19, 1992; able post-hearing briefs were received on July 15, 1992; the panel of delegates met in Ann Arbor on August 10, 1992 and conferred by conference telephone call on September 1 and 8, 1992, and; this Opinion and Award was issued on September 16, 1992.<sup>1</sup>

## OPINION AND AWARD

### INTRODUCTION

The City of Belding, in Ionia County, is about 35 miles northeast of Grand Rapids. The last census shows its population as 5,969. The State Equalized Value (SEV) of all property in the City is valued at \$50,741,000.

There are seven full-time sworn police officers employed by the City's Police Department. These employees are represented by the Union. Their wages, hours and other terms and conditions of employment have been memorialized in successive collective bargaining agreements. The most recent agreement between the parties expired on June 30, 1991.

The parties have agreed that the term of their new contract will be for two years; July 1, 1991 through June 30, 1992 and July 1, 1992 through June 30, 1993. They are separated by eleven substantive items. These are: 1. Equalization of Overtime; 2. Insurance for Retirees; 3. Wages; 4. Ambulance Service; 5. Work Rules; 6. Management Rights; 7. Overtime; 8. Prescription Drug Rider; 9. Dental Insurance; 10. Vacations, and; 11. A "Me Too" Clause. Each of these items will be discussed below.

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<sup>1</sup>This opinion was drafted by the Chair.

## STATUTORY AUTHORITY

The Statute (Section 9) requires the Panel to "base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration process.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

Neither the lawful authority referred to in Section 9, subparagraph (a) nor the ability of Belding to meet the costs in subparagraph (c) is an issue in this case. In determining the terms and conditions for a replacement contract the Panel does not have free reign to dispense equity or to impose what a majority of its members consider to be industrial justice. Its decisions must be based on the applicable standards delineated in Section 9 of Act 312.

Indeed, the often quoted statement of Justice Williams in City of Detroit v. Detroit Police Officers Association, 408 Mich 410 (1980) succinctly describes the methodology for

such decision making:

[T]he Panel's decisional authority has been significantly channeled by eight specific factors or standards listed in Section 9 . . . That section trenchantly circumscribes the arbitral tribunal's inquiry to only those disputes involving "wage rates or other conditions" of employment embraced by a newly proposed or amended labor agreement, and commands the panel to "base its findings, opinions and order" relative to those narrow disputes on the eight listed "factors, as applicable." (at p. 453).

Heeding the directive of the Statute and the Court, the Panel has considered the criteria of subparagraphs (b), (c) [first part], (d), (e), (f) and (h) in reaching its decision in this matter.

### COMPARABLE COMMUNITIES

In this type of a proceeding the parties, in accordance with the mandate of the statute, seek to identify comparable communities and base their arguments, at least in part, on the terms and conditions that apply in those communities. Here, the Union claims the cities of Allegan, Eaton Rapids, Grand Ledge, North Muskegon, Otsego, Rockford and Roosevelt Park are comparable to Belding. While agreeing that Allegan and Eaton Rapids are comparable, the Employer denies that is true of the Union's other nominees. Instead, it has selected Hastings, Hudsonville, St. John's, and Zeeland as being communities that most closely resemble Belding.

As might be expected, each party accuses the other of using a simplistic approach in selecting comparable communities while at the same time promoting its own respective system as truly "objective." But neither are! The parties' selections appear to be result driven. In other words, having chosen communities that support their substantive positions, criteria was then imaginatively adopted to demonstrate the reasonableness of the choices.

Ideally, the system should work in just the opposite fashion.

Be that as it may, an examination of the relevant criteria produces only four of the nominated communities that reasonably resemble Belding. They are the cities of Allegan, Eaton Rapids, Otsego and Rockford. These cities have been selected because of population, size, location (in Southwestern Michigan), total SEV, and number of officers in the police department most closely parallel those of Belding. The following chart reveals this data:

<u>City</u>	<u>Area</u>	<u>Pop.</u>	<u>SEV</u>	<u>Off</u>
Belding	4.3	5969	50,000,741	7
Allegan	4.5	4547	54,000,872	8
Eaton Rapids	3.1	4695	45,000,886	7
Otsego	1.8	3937	53,000,266	7
Rockford	3.0	3750	55,000,462	8

The other cities nominated by each of the parties are either too large, too small, too "rich," or too "poor" when compared to Belding. A few examples will suffice. Zeeland's population is similar to Belding's (5417) but it's SEV is over twice as large (117,700,000). St. Johns has a population 22 percent higher (7284) and an SEV almost twice that of Belding (98,000,900).

## 1. EQUALIZATION OF OVERTIME (Economic)<sup>2</sup>

The City operates an ambulance service for its citizens and those in surrounding communities. That a city performs such a service is not unusual. Many cities do so. What is unique is the staffing. Belding is the only known Michigan city to operate an ambulance services using police personnel. It has done this for just over 20 years.

While the police department provides the major source of staffing for the ambulance service, it is not exclusive to the unit. Chief of Police Roger Mason, Sgt. Gary Olger, Records Clerk Dela Granzo perform ambulance service as do Reserve Police Officers John Magirl, Mary Sage, Donald Eady, Dennis Magirl and Paul Leslie.<sup>3</sup>

The Union proposes to delete Article VIII, Section 6 that requires authorization for overtime and makes such overtime authorization discretionary with the shift commander and to replace it with the following provision:

An equalization of overtime lists shall be posted on a bi-weekly basis showing the number of police overtime hours worked by each bargaining unit member. Any police overtime, ambulance call-in and/or ambulance standby time is to be offered to bargaining unit members first. It is understood ambulance standby time is not paid on an overtime basis unless ambulance standby falls on a holiday, then bargaining unit members will be compensated one and one-half times the rate. The above will be authorized by the Chief of Police or a sergeant. In a case where neither is available, the senior officer in the department will make the decision.

The Employer opposes the change. There are two reasons for this. First, the bi-weekly equalization, it argues, will create a considerable amount of paperwork and therefore increase costs. Second, it points out that the requirement for bargaining unit employees to

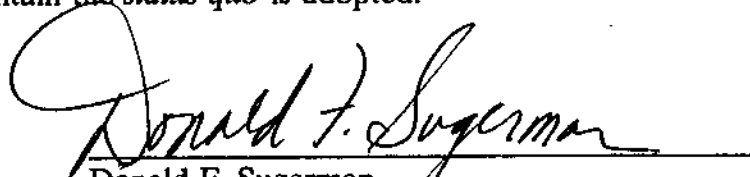
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<sup>2</sup>The parties stipulated to the status of each of the issues as either economic or non-economic.


<sup>3</sup>Reserve officers are not in the bargaining unit.

receive first call is a less than subtle effort to eliminate non-bargaining unit employees from performing ambulance work.

The comparable communities do not support the general proposition of equalization of overtime. Furthermore, absent compelling evidence, the Panel should not be placed in a position of reducing the work of persons who are not represented in this proceeding and whose views on the subject have not been made known. Further, there has been no showing that the operational aspects of the ambulance service is in need of such an overhaul. Accordingly, the Union's proposal to change the language of Article VIII, Section 8 is denied. The City's proposal to maintain the *status quo* is adopted.

  
Donald F. Sugerman

  
Joseph W. Fremont 9-23-92

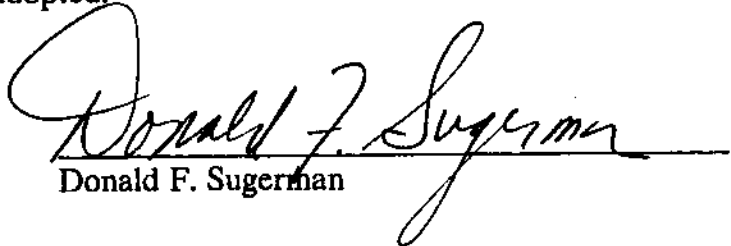
  
Ray Wallace 9-28-92  
DISSENTING

## 2. INSURANCE FOR RETIREES (Economic)

Currently the Employer pays \$75 per month for an employee who has ten to fifteen years of service at time of retirement; \$100 a month for those with fifteen to twenty-five years of service, and; \$150 a month for those with twenty-five or more years of service. The Union proposes to increase these numbers by \$38, \$36, and \$45, respectively. The Employer

opposes the increase. The sole rationale for this increase is that health care costs have risen and continue to do so.

This benefit operates only prospectively. None of the unit employees are expected to retire during the term of the new Agreement. None of the comparable communities support this increase; Allegan, Otsego and Rockford provide no contribution on behalf of retirees. Only Eaton Rapids pays such a the benefit and it is limited to employees 65 years of age with 20 years of service. For these reasons, the Union's proposal will be denied and the City's proposal of the *status quo* adopted.

  
Donald F. Sugerman

  
Joseph W. Fremont 9-23-92

  
Ray Wallace 9-28-92  
DISSENTING

### 3 WAGES (Economic)

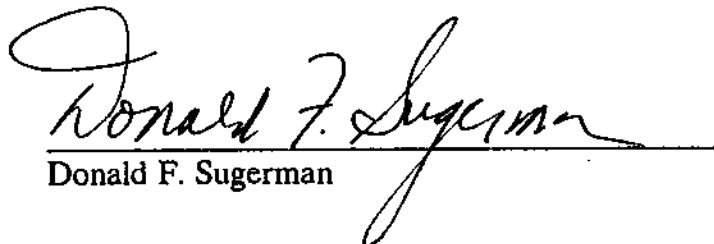
The Union proposes a 5% increase for each of the two years of the Agreement under consideration. The City proposes an increase of 4% the first year and 3.5% the second year.


Currently, a Belding Police Officer at top of scale receives an annual salary of \$27,572. For 1991, the average in the comparable communities is \$29,771 and for 1992 it is \$30,657. The City's proposal for the first year would increase the Belding Police Officer

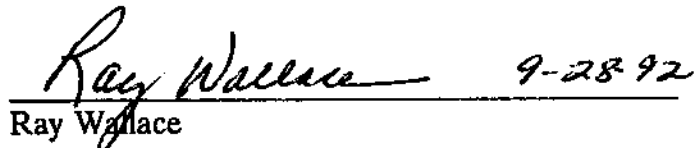


to \$28,675. The Union's proposal would increase the amount to \$28,951. Ordinarily, the latter would be preferred as it is closer to the average. A slight deviation is, however, required as the Union's proposal will skew the rate for the second year. For 1992, the City proposal will be substantially below the average and the Union proposal substantially over average.

To solve this problem, the Panel has decided that the City's proposal of 4% for 1991 and the Union's proposal of 5% for 1992 will be adopted. This comports favorably with the average of the Consumers Price Index over the last five years. The All Cities average for that period has increased by 4.36%. Accordingly, a police officer at the top of scale will receive \$28,675 for 1991 (an increase of \$1,103) and \$30,109 for 1992 (an increase of \$1,434). These increases closely approximate the CPI and track overall averages for officers in the comparable communities.

  
Donald F. Sugerman

  
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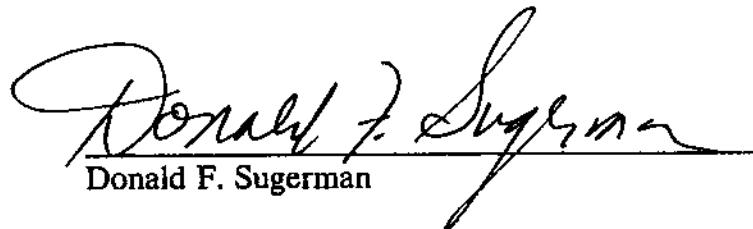
#### 4. AMBULANCE SERVICE (Economic)

The Union seeks to change Appendix A, Section 2 of the Agreement. The amount paid for standby (currently \$6.23 per hour) plus \$10 for an actual run would remain in tact.

The important changes in the Union's proposal are:

1. A recognition by the parties that ambulance service is an established practice and function of bargaining unit employees;
2. Bargaining unit employees shall have first choice of all standby time;
3. A year to date list of ambulance standby hours worked by bargaining unit and part-time attendants will be posted bi-weekly.

This issue has been mentioned in Item 1 above and will be further noted in Item 6 below. For the reasons explained elsewhere herein, the Union's proposal is denied. The language shall remain as set forth in the current Agreement. The increase in wages, however, will increase the standby to \$6.48 for 1991 and to \$6.80 for 1992.

  
Donald F. Sugerman

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Joseph W. Fremont

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Ray Wallace

## 5. WORK RULES (Non-economic)

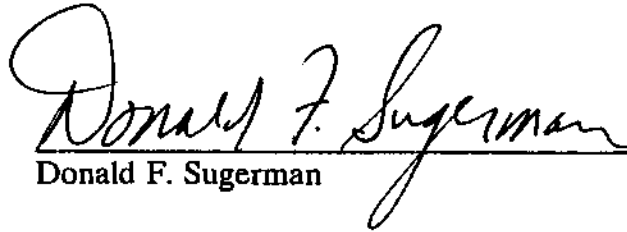
The Management Rights provision of the Agreement gives the Employer the authority "to adopt, revise and enforce working rules and procedures contained within the Belding Police Department Law Enforcement Procedure Manual." The Union proposes to add a new Article to the Agreement entitled "Work Rules." It would read, "The City and the Union agree to negotiate new and revised departmental work rules."

Assuming that the new provision would take precedence over the corresponding reference in the Management Rights provision, the net affect would be to foreclose the Employer from adopting new work rules and otherwise modifying or changing old ones without first negotiating and reaching agreement with the Union.


The establishment of work rules is generally held to be a management prerogative. The Union, of course, retains the right to grieve either the reasonableness of the rule itself or the reasonableness of its application and/or implementation. This traditional method of operation has generally worked well. While it may not be perfect, it is the most efficient means of conducting operations. Thus, to make such rules contingent upon mutual agreement would, in the opinion of the Panel majority, promote gridlock in this important endeavor. Appropriate checks and balances are present with the Union's ability to grieve.

No persuasive reason for changing the current arrangement has been demonstrated. None of the comparable communities support the Union's position. Its proposal will therefore be denied, with a minor exception. The City will be required to notify the Union of planned additions, modifications, changes or amendments of its rules and give it the opportunity to be heard thereon. In this fashion change will not come as a surprise. This

comports with sound labor-management relations.

  
Donald F. Sugerman

  
Joseph W. Fremont

 9-28-92  
Ray Wallace DISSENTING

#### 6. MANAGEMENT RIGHTS (Non-economic)

The Employer seeks to change the Management Rights provision by modifying the restrictive language on subcontracting. This will permit, should it choose to do so, the subcontracting of ambulance service. There is little question that providing ambulance service is costly. It does not currently pay for itself for a variety of reasons, none of which need be detailed here.

Quite naturally the Union vigorously opposes this change. It seeks to preserve work for its members. The Employer counters by temporizing its proposal as follows:

Provided, however, that the subcontracting of ambulance service shall not be the immediate and direct cause of the layoff of any present (as of June 30, 1992) member of the bargaining unit, at any time through June 30, 1993.

As noted above, the comparable communities provide no guidance because of the unique nature of the ambulance service being operated by a police department. Instead, the Panel majority relies on concepts of equity and sound labor-management relations. It has

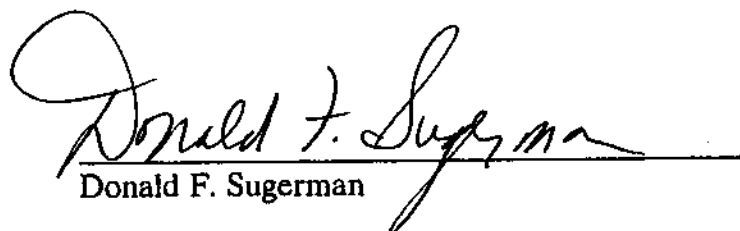
attempted to balance the right of the Employer to subcontract ambulance service against the rights of employees--at least as the current Agreement is written--to receive standby and ambulance run earnings. This has been a difficult task, to say the least. Neither party, is to be sure, happy with the outcome. Nevertheless, it is believed that the following proposal is in the best long-term interest of the City, its citizens, the Union and its members.

Article II, Management Rights will be amended by adding the underlined language to Subsection (c) so that the entire clause will read:

(c) To subcontract or purchase any or all of the construction of new facilities or the improvement of existing facilities, and bargaining unit work when an immediate and unforeseen emergency places demands which exceed the personnel capability of the Police Department; however, all other subcontracting shall be the object of collective bargaining, except for ambulance services as set forth in (p) of this Article.

Sub-paragraph (p) will be added to Article II. It shall read as follows:

(p) To sub-contract ambulance service; provided, however, (i) that it does so only for reasons of administrative efficiency and economic savings; (ii) that it provides the Union with written notice 120 days in advance of any planned sub-contract together with all relevant financial information thereon showing cost savings and efficiency; (iii) that, upon request by the Union, made within 30 days after receipt of the information set forth in sub-paragraph (ii) above, it will meet and confer with the Union and consider alternatives the Union may propose to obtain the same efficiencies and savings without subcontracting; (iv) if it nevertheless puts its sub-contract proposal into effect, it will bargain with the Union over the impact of this decision on unit employees, and; (v) further provided that no unit employee on the force on the date of such sub-contract who was both in the unit on July 1, 1992 and EMT certified will suffer a reduction of gross earnings because of this sub-contract for a twelve month period from the earlier of the dates referred to in either (ii) or (iv) of this subparagraph.

  
Donald F. Sugerman

Ray Wallace 9-28-92  
Ray Wallace

7. OVERTIME (Economic)

The Employer proposes to change the definition of overtime from work performed by an officer "over and above his/her normal scheduled work day or normal scheduled work week" and limiting it to work in excess of 40 hours per week. The City contends this would ease an administrative burden. The burden, however, does not appear to be that great. A substantial savings in this area (other than overtime payments) cannot be expected. Moreover, none of the comparable communities support the Employer's position. In light of this, the City's proposal will be denied and the Union's offer of the *status quo* will be adopted.

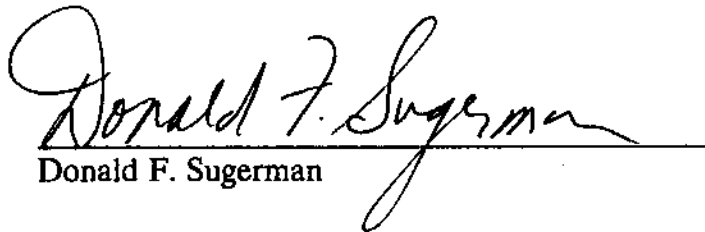
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Donald F. Sugerman

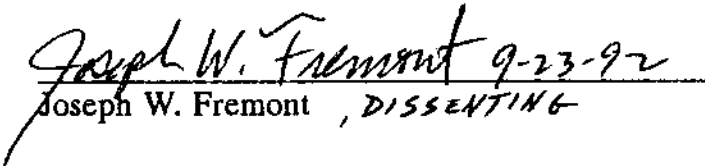
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Joseph W. Fremont, *DISSENTING*

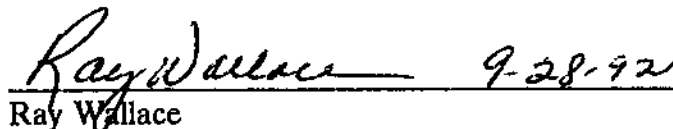
Ray Wallace 9-28-92  
Ray Wallace

Class I, 75 percent for Class II and 50 percent for Class III benefits to 50 percent for each Class. It also offers to add orthodontia coverage with a maximum lifetime limit of \$1,000.

The Union objects to the proposed changes. Two of the comparables support the Union's position (Allegan and Eaton Rapids) and two support the Employer's position (Otsego and Rockford). Given the fact that the dental plan was only adopted during the last contract, and given that it was put into place by the Union having diverted monies from what surely would have been a larger wage increase to cover this cost, it is not appropriate to reduce the benefit at this time. Accordingly, the Employer's last offer is denied and the Union's last offer of *status quo* will be accepted.

  
Donald F. Sugerman

  
Joseph W. Fremont 9-23-92  
DISSENTING

  
Ray Wallace 9-28-92

#### 10. VACATIONS (Economic)

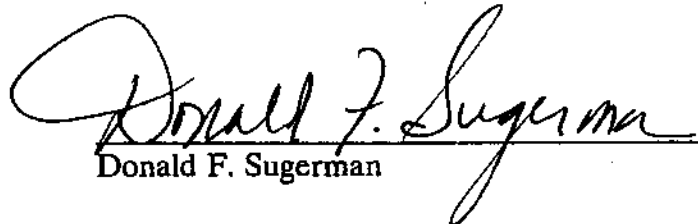
The City proposes to delete the following three sentences from Article 23, Sec. 3:

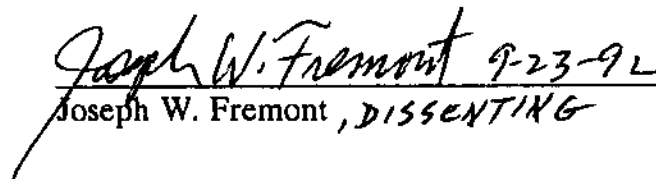
After July 1, 1987, an employee may sell to the City up to ten (10) days of accumulated vacation allowance after having used ten (10) days of his/her vacation. The City and labor counsel make the following agreement: The fiscal year shall be used when computing vacation time used after a request for payment of accumulated vacation time is made by an employee. The employee must first have used ten (10) days of vacation time in the fiscal year in which the request for payment of accumulated vacation time is submitted.

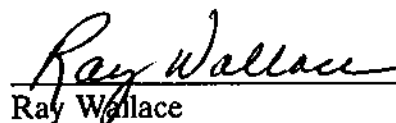
In support of this proposition, the City points to the fact that police work is stressful

and that vacation time should be used by employees to refresh themselves. None of the comparable communities provides for the selling of vacation time.

Vacation time, however, is a personal matter. Some employees jealously guard their vacation days and use all of them. Others do not feel a need to do so. In fact, forcing such an employee on vacation may be counter-productive. After all, one cannot guarantee that he/she will engage in rest and relaxation. The Panel majority concludes that the *status quo* should be maintained. The City's last offer is denied and the Union's last offer is accepted.

  
Donald F. Sugerman

 9-23-92  
Joseph W. Fremont, *DISSENTING*

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Ray Wallace

#### 11. THE "ME TOO" CLAUSE (Economic)

Article XXXII, Section 2 states:

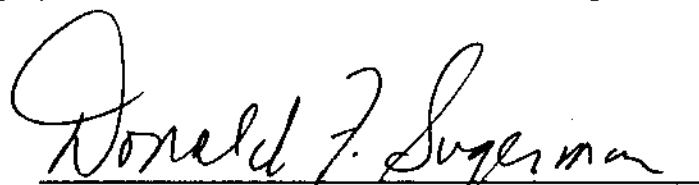
The following fringe benefits shall not be less than that of other employees for the duration of the contract:


- A. Mileage
- B. Retirement
- C. Sick Leave
- D. Longevity
- E. Leave of Absence



The Employer argues that not a single contract among the comparable communities contains such a clause; it adds benefits or forms of compensation which may not be given a high priority by employees or their representative but which imposes costs on the City; it removes all such increases from the purview of collective bargaining; employees automatically receive improvements without having to negotiate and this imposes unreasonable burdens on the collective bargaining process that may make it more difficult to settle.

While commonplace at one time, the "Me Too" clause has lost its glamour in direct proportion to the sophistication of the bargainers in public employment. The reason for the provision is somewhat obscure. Presumably it was used to protect units long considered to be in *pari passu*, e.g., police officers and fire fighters. Each was jealous that the other might get something they did not have. This is not the case in Belding. There are not similar competing units. Accordingly, the Employer's last offer of settlement will be adopted.

  
Donald F. Sugerman

  
Joseph W. Fremont

  
Ray Wallace      9-28-92  
DISSENTING

### SUMMARY OF AWARD

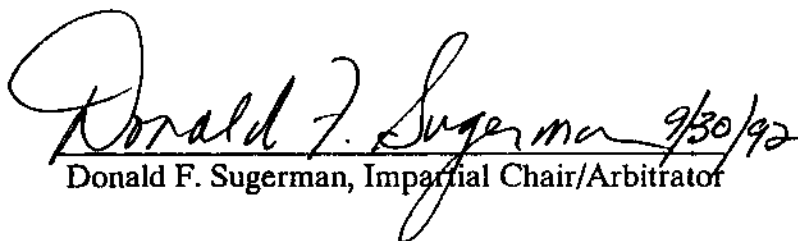
The City's Last Offers are accepted for the following economic items:

1. Equalization of overtime
2. Insurance for retirees
3. Wages for 1991
4. Ambulance service
8. Prescription drug rider
11. "Me Too" clause

The Union's Last Offers are accepted for the following economic items:

3. Wages for 1992
7. Overtime
9. Dental insurance
10. Vacations

The Chair's proposal has been adopted by a majority of the Panel on the change in the Management Rights provision that would alter the sub-contracting of ambulance service. The City's proposal on Work Rules has been adopted with a slight modification made by the Chair concerning notice.

 9/30/92  
Donald F. Sugerman, Impartial Chair/Arbitrator

September 16, 1992