

7/6/78 ARB

BEFORE

DR. A. DALE ALLEN, JR.

IMPARTIAL ARBITRATOR

In the Matter of Arbitration between )

City of Benton Harbor )  
Benton Harbor, Michigan )

and )

The Benton Harbor )  
Patrolmen's Association )

Interests Dispute Involving

Unresolved Labor Agreement Areas

City of Benton Harbor

LABOR AND INDUSTRIAL  
RELATIONS LIBRARY  
OPINION AND AWARD OF THE ARBITRATOR

Michigan State University

July 6, 1978

ARBITRATION AWARD

In the Matter of:

City of Benton Harbor  
Benton Harbor, Michigan

and

The Benton Harbor  
Patrolmen's Association

Chairman of Arbitration Board:  
City's Delegate:  
Association's Delegate:  
Representing the City:  
Representing the Association:

Dr. A. Dale Allen, Jr.  
Melvin Farmer  
Ronald Immoos  
Yvonne Hughes, Esq.  
John Dewane, Esq.

Pursuant to the provisions of Act 312, P.A. 1969, as amended, the City of Benton Harbor, Michigan, hereinafter called the "City" and the Benton Harbor Patrolmen's Association, Fraternal Order of Police, hereinafter called the "Association", selected an Arbitration Board composed of Melvin Farmer for the City, dissenting; Ronald Immoos for the Association, concurring; and Dr. A. Dale Allen, Jr., Baylor University, Waco, Texas, the Chairman and impartial arbitrator. Hearings were held at the City Hall, Benton Harbor, Michigan, on March 9 and March 27, 1978. Full opportunity was afforded the parties for the introduction of evidence, examination and cross-examination of witnesses, and oral arguments. Post-hearing briefs were received from both parties on May 4, 1978. The Arbitration Board met in Executive Session on May 24, 1978, the date upon which the case was declared closed.

## ISSUES

The parties, in their contract negotiations, were unable to agree upon the following:

Non-Economic Issues -- Vehicular Safety, Purchase of Clothing, Definition of Detective, Definition of Patrolperson, Definition of Workweek, Representation Fee, Special Assignments, Weapons and Ammunition, Hours of Work, Management Rights, Civil Service.

Economic Issues -- AM Radios in Police Vehicles, Air Conditioning in Police Vehicles, Plain Clothes Allowance, Physical Training, Overtime, Time Allowed, Educational Allowance, Longevity, Sick Leave Payout, Salary of Patrolpersons, Salary of Detectives.

## PROVISIONS OF ACT 312

"... the arbitration panel shall 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 ability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally traditionally taken into consideration in the determination of wages, hours, conditions of employment through voluntary collective bargaining, mediation, finding, arbitration or otherwise between the parties, in the public service or private employment.

## POSITION OF THE ASSOCIATION

The City of Benton Harbor is located in Berrien County, which is in southwestern Michigan. Benton Harbor currently has a population of about 16,000.

The patrolpersons and detectives in the Benton Harbor Police Department are members of the Benton Harbor Patrolmens Association. There have generally been 15 employees in this bargaining unit but at the time of the Hearing this had been increased to 17.

The collective bargaining agreement between the parties expired on June 30, 1977. Prior to its expiration, and because the parties were unable to reach an agreement on a new collective bargaining agreement, the Association demanded arbitration under Act 312 and, pursuant to Section 13 of the Act, MCLA 423.243; MSA 17.455(43), the Association members have been working under the terms of the prior contract. The dispute was submitted to arbitration on June 27, 1977, prior to the July 1, 1977, commencement of the 1977-78 fiscal year. Accordingly, the panel's award may be retroactive to July 1, 1977. MCLA 423.240; MSA 17.455(40).

The parties are in agreement that the contract arising out of the arbitration award by this panel will be a two year contract retroactive to July 1, 1977 and expiring on June 30, 1979.

1. The interests and welfare of the public and the financial ability of the City to meet those costs.

The interests and welfare of the citizens of the City of Benton Harbor dictate that its police department consist of employees who are highly trained, well motivated, professional law enforcement officers. One of the principal factors in maintaining a police department composed of such employees is to have wages and fringe benefits comparable to the police departments in the cities discussed in subparagraph 2, infra, so long as the city has the financial ability to meet the costs involved. The record clearly shows that the city has made a turnabout in its financial position and during the past fiscal year was blessed with a surplus.

The evidence shows that the city has recently been able to settle with its Firefighters Union for exactly what the Patrolmens Association is asking -

successive 6% increases effective July 1, 1977, January 1, 1978, July 1, 1978 and January 1, 1979.

It is obvious that the city is financially able to provide the wages and fringe benefits being sought by the Association.

2. Wages, hours and conditions of employment in comparable communities.

The most significant statutory factor is the comparison of wages, hours and conditions of employment with the police departments in comparable communities.

The Association has set forth a list of the cities in the lower peninsula of Michigan with populations between 10,000 and 25,000. In determining which of these cities are comparable to Benton Harbor, close attention must be paid to the crime report statistics. This is not only an index of the workload undertaken by the members of the various departments but also is a measure of the risk attendant to the performance of their job duties. It is obvious from a review of these statistics that Benton Harbor, with a total index report in 1976 of 2,788 is comparable in this regard to Ecorse (1,906), Harper Woods (1,873), Hazel Park (1,967), Mount Clemens (2,227), Wayne (1,937) and Hamtramck (2,632). It should be noted that in each of the cities listed, the compliment of patrolmen is greater than the 15 to 17 patrolmen working the the City of Benton Harbor, typically being 21 to 27 patrolmen but, in the case of Hamtramck, being 39.

In the years of 1975 to 1976 Benton Harbor had eight non-negligent homicides. This was exceeded only by Hamtramck which had ten and equaled by Ecorse and Muskegon Heights followed closely by River Rouge with seven.

During the years of 1975 and 1976, Benton Harbor had a total of forty-five rapes.. By comparison, the cities closest to that number are River Rouge (21) and Hamtramck (20), Mount Clemens (20) and Monroe (16).

With regard to robberies, separate statistics were maintained in 1975 for armed robbery and for strong armed robberies. However, the 1976 statistics do not differentiate between the two. Benton Harbor had a total of 322 robberies during 1975 and 1976. Hamtramck had far more than any city, having 555. However, all of the other cities on the list had many less robberies than Benton Harbor and the cities with the totals closest to Benton Harbor were Ecorse (205), Mount Clemens (149), Hazel Park (146), River Rouge (98), Wayne (76) and Muskegon Heights (75).

Thus, in attempting to select comparable communities, it becomes apparent that on the basis of the crime factor involved, which is the most important factor to be considered, Benton Harbor is comparable to Ecorse, Harper Woods, Hazel Park, Melvindale, Mount Clemens, Monroe, Wayne, Muskegon Heights, Hamtramck, and River Rouge.

### 3. Cost of Living.

Association Exhibit 7 reveals that the urban consumer cost of living index increased during the year ending January, 1978, by 6.8%. The January rate of increase, annualized, is 8.4%.

#### Non-Economic Issues

Vehicular Safety -- A number of vehicular safety problems have arisen due to the fact that the police department cars are currently maintained by mechanics employed in the City's Public Works department. To insure that all vehicles driven by Association members are kept in safe and efficient operating condition, the cars should be required to be taken to the place of purchase at least once a month for a routine safety and operational inspection. Any maintenance service needed should be immediately performed prior to the vehicle's return to service.

Purchase of Clothing -- City seeks to force its plainclothes employees to purchase clothing within the City of Benton Harbor. Such a contractual provision

would unduly restrict an employee in his free choice of retail outlets. There is currently within City limits only one large, good quality retail clothing outlet. However, the Association could agree to a broadened restriction which would include any retail outlet within Berrien County.

Definition of Detective and Special Assignments -- Work duties, qualifications, and additional compensation paid to detectives indicate the need for a separate collective bargaining agreement definition and classification for detectives. For the same reasons, it is also necessary to have an orderly, systematic and fair way of selecting persons for that position. Thus, Association recommends that when openings occur in the Criminal Investigation section, the opening be posted for applications. Applicants are to be compared and selected on the basis of a point system which considers seniority, written examination, performance evaluation by Lieutenants, oral review by an examining board composed of non-City employees, and a review by the Chief of Police. Further, promotion to the rank of detective shall be permanent in nature except for demotion, suspension or discharge for just cause.

Definition of Patrolperson -- This definition is necessary to clearly distinguish between Patrolperson and Detective. Such definition would merely reduce the current practice to writing and inclusion in the labor agreement.

Definition of Workweek -- Association proposes that a workweek of 40 hours be included in the labor agreement as is the current practice.

Representation Fee -- Association seeks the standard Agency Shop provision which is permitted by Michigan law. This will insure that all members of the collective bargaining unit share fairly in the costs of collective bargaining. The current labor agreement between the City and its general employees contains an agency shop provision.

Weapons and Ammunition -- A mandatory combat handgun training program which was to have been started by the City pursuant to a Letter of Agreement has never been implemented. Association's proposal would require that such a program be launched and would also set forth specific requirements of such a program. This training would be mandatory, considered as hours worked, and paid accordingly. All facilities, targets, and ammunition shall be furnished by the City except as otherwise specified. Failure to qualify with a 70% score shall result in a five point reduction in the Association member's next quarterly evaluation. Qualifying Association members shall receive an additional two points on their next quarterly evaluation.

Hours of Work -- Frequently, a member is required to work two consecutive shifts without any time off. Association's proposal would excuse the member from one of the shifts with pay. Secondly, if the department changes the pass days of a member and, as a result, the officer works less than five consecutive days between pass days, no loss of pay shall be imposed upon the member. This latter proposal merely reduces current practice to writing.

Management Rights -- Association maintains that the Management Rights provision currently contained in the labor agreement is adequate to protect the City. Acceptance of the City's demand on this issue could lead to serious disruption of several current practices in such areas as subcontracting, assigning and laying off of employees, reducing the workweek or workday, and break times.

Civil Service -- In its last offer, Association agreed with the City in its desire to limit members to using either Civil Service appeal procedures or the labor agreement grievance procedure, but not both. Association recommends use of the collective bargaining agreement grievance procedure only.



### Economic Issues

AM Radios -- Association proposes that the City purchase, install and maintain AM radios for all marked and unmarked police vehicles. Many other departments have AM radios. They would keep the officer on patrol in contact with events taking place in the community, nation, and world.

Air Conditioning -- A policeman's "office" is his patrol car. It should be equipped with air-conditioning in order to provide reasonably comfortable working conditions in hot weather. Almost every sizable police department in the state of Michigan provides air-conditioned cars. City has presented no substantial evidence to support a compelling reason to institute a change in the current policy of having air-conditioned patrol cars.

Plain Clothes Allowance -- In essence, the Association proposes an increase in this allowance from \$350 per year to \$400 due to the rising cost of clothing.

Physical Training -- Association maintains that the current physical training requirement is much too strenuous to be reasonable and contains a harsh penalty for failure to meet the standards. Association offers a program comparable to the one used by the Michigan State Police which includes pushups, pullups, situps, a one-half mile run, an obstacle course, all to be completed within 17 minutes. Failure to complete the test would result in a five point reduction in the member's next quarterly evaluation.

Overtime -- Association proposes that a clause recognizing a 40 hour workweek with time and one-half for overtime be written and incorporated in the collective bargaining agreement to conform with current state law and past practice.

Time Allowed -- Under the current provisions, the City can give officers time off for overtime work rather than make overtime payments in cash. This scheme is acceptable to the Association, but the Association now asks that employees who take time off be given the same time and one-half rate in time off as they would receive if they took a cash payment.

Educational Allowance -- Association requests an increase of \$50 for 40 hours of study in college, \$100 for the Associates degree, \$200 for a Bachelors degree and \$250 for a Masters degree. City benefits from having better educated employees. Moreover, many comparable communities pay a higher rate of this allowance than the City.

Longevity -- Association feels there is inadequate support for any change in the current contractual language.

Sick Leave Payout -- Association rejects any notion that there should be any alteration in the current sick leave payout provision. It has been in effect since 1954 and, therefore, is a long standing fringe benefit of importance to employees. This issue has been arbitrated before with the Association's position upheld. Moreover, such a program encourages judicious use of sick leave by an employee and results in more efficient operation of the department.

Salary of Patrolpersons -- Association's last best offer on salaries for patrolpersons is as follows:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
7-1-77	11,640	13,480	14,150
1-1-78	12,180	14,100	14,800
7-1-78	12,900	14,950	15,688
1-1-79	13,480	15,620	16,394

This last offer represents a 6% increase on 7-1-77, a 4.6% increase on 1-1-78, a 6% increase on 7-1-78, and a 4.5% advance on 1-1-79 for a total 8.4% increase in each of the two contract years. Even with the Association's last best offer being adopted, Benton Harbor would still rank 22nd in the list of 24 comparative cities in wages paid to Patrolpersons. Given the unusually high crime rate in the area, the limited size of the police force, skills required to be a police officer, and the rising cost of living, the Association feels its last best offer for this issue is reasonable and fair.

Salary of Detectives -- Currently, detectives' salaries are determined by using the Patrolpersons' rates and adding 5%. Association contends that this difference should be raised to 7½% in recognition of the greater skills, expertise and training required of detectives. Moreover, currently nearly 50% of the Patrolmen can earn more income than detectives via overtime.

#### POSITION OF THE CITY

The City operates under a mayor/commission-manager form of government with the City Manager appointed by the City Commission. The Charter for the City of Benton Harbor was adopted in 1921.

The City is an isolated municipal enclave that is clearly distinct from not only the immediate surrounding area, but from the entire county as well. Its uniqueness is readily identifiable from a comparative analysis of any primary socio-economic factor--i.e. growth, unemployment, housing, etc. There is a tremendous divergence in the incidence and degree of these indicators between Benton Harbor, which manifests all of them at the negative end of the continuum, and the rest of the area.

Benton Harbor has experienced an intensive exodus of whites and more affluent individuals. The City's population has decreased from 19,136 in 1960 to 16,481 in 1970. In 1973, population figures were updated for federal revenue sharing purposes and showed the City's population had further decreased to 15,874. Local attitudes indicate that moderate to high income residents are leaving old neighborhoods to escape what they perceive to be substandard educational opportunities and inadequate housing stock. The transfer of income to areas outside Benton Harbor has substantially reduced the viability of local retail activity, depressed the sale value of residential and commercial property, and has significantly eroded the assessed valuation of real property.

Statistical Needs Documentation demonstrates that the annual unemployment rate for the City of Benton Harbor is generally twice that of Berrien County and substantially higher than that of Detroit and the entire State of Michigan; the educational attainment of Berrien County; Benton Harbor's per capita AFDC (Aid for Dependent Children) load is the highest in the United States and the percentage of persons residing in Benton Harbor is four times that of the surrounding region; and the crime rate is exceedingly high when compared with that of Berrien County, Detroit, and the State of Michigan.

At the time of the hearing there were 304 City employees. Of this number, 27 were employed by the Fire Department and 54 were employed by the Police Department. The remaining 223 employees were non-uniformed. Approximately 177 of these employees occupy federally funded positions, of which 127 are CETA funded positions and are community development funded positions.

The City of Benton Harbor has been hard hit by the recession. Two large employers which employed over 500 employees, Benton Harbor Maaleable Industries and V-M Corporation, recently shut their doors, and several other industries appear on the brink of bankruptcy.

Of the activities operated from the general fund, the largest activity costwise is the Police Department budget. The total amount of federal revenue sharing funds which the City anticipates receiving this year which may be used for General Fund purposes has been budgeted for the Police and Fire Departments. As a percentage of the total budget for the activities operated from the general fund, the amount for the Police Department has steadily increased resulting in the receipt by the Police Department of a disproportionate of monies as related to the number of employees.

It is against this background of declining population, the dependence of the City upon federal funds to the extent that such funds currently provide the money for more than 58% of the City's work of 304 employees, high

unemployment, declining tax base, declining tax collection rate, operation of the City under the maximum millage which may be levied under the State law and the City's Charter, declining revenue for general fund activities, declining federal funds for general fund activities, an ever increasing percentage of the general funds being budgeted for the Police Department, that the City's position must be viewed.

As with many municipalities and other governmental units, the City of Benton Harbor has found it increasingly more difficult to meet regular daily operations and basic services for its citizens. The dual scourge of inflation and recession over the past two years has caused both labor and materials to zoom, while reducing the revenue generating capacity of municipal funding systems; i.e., economic growth, increasing personal incomes, equalized valuations on property and subsequent natural increases in revenue from taxes.

Benton Harbor's general fund, for day-to-day operations, ran a deficit of \$112,719 in 1975. This deficit was balanced by utilizing a portion of the accumulated surplus from previous years. There remains a surplus balance of approximately \$68,000, but this will not be adequate to meet the expected deficit for the current year. The problem is exemplified by a declining tax base and a reduced tax rate.

Between 1971 and 1975 Benton Harbor's state equalized valuation tax base declined, causing the city to suffer a total reduction of \$2.4 million during that period. The tax base stood at \$66.2 million in 1971 but fell to \$63.8 million by 1975. In addition, the property tax rate for the general fund dropped 20%, from 20 to 16 mills.

The bleak economic circumstances that affect the city in general also have an individual personal effect upon its residents. The city suffers the brunt of those consequences as well. For example, the city cannot collect

all the general fund taxes it is owed. The general fund delinquencies totaled \$411,255 in 1975. Such delinquencies are expected to go above \$500,000 for the current year and peak at about \$750,000 for all city funds. The reasons are evident and certainly not profound, but they are basic to the very viability of the city: shrinking tax base, lack of new development, rising costs, uncollectible delinquent taxes and a pension plan that demands an inordinate amount of the city's resources (\$15.8 million over the next 40 years).

The city is taking the necessary steps to do what it can to bring costs down. It is realized that cuts have got to be made now to keep down an expected general fund deficit. Those cuts are being manifested through reduced departmental budgets and reductions in city personnel. Lay-offs are being affected in many departments, along with some previously vacant administrative and management level positions being left vacant. Vacant positions include the Director of Personnel and Administrative Services, Director of Finance, a full-time City Attorney and staff, and an administrative assistant for operation of the IBM processing center.

The city has received federal funds in the past for categorical grant programs. However, being categorical in nature they provided for specified activities within the parameters of their respective restrictions. Therefore, they offered no assistance to a threatened general fund. Revenue Sharing, on the other hand, did provide a resource to augment general operations. The city utilized Revenue Sharing (RS) funds to bolster some needed capital improvements and construction throughout the city: the paving of two streets and the improvement of others, improvements to the sanitary lift station, rubbish and garbage pick-up, and operation and maintenance of public safety capability.

Benton Harbor's use of RS funds is similar to other cities included in federal reports on the program. Benton Harbor has used RS for physical improvements so as to provide visible results in the city. And these are more than just "one shot construction projects" claimed by national critics of RS use, they are basic and fundamental improvements essential to economic viability and minicipal advancement. They stand to serve the citizens for years to come.

Revenue Sharing legislation expires in 1976 and is currently under Congressional review for possible extension. If RS is lost, it could mean high local taxes in many areas. Such a tax increase is all but irrelevant as a local option for Benton Harbor; the city is unable to collect on its current rate.

The City's Bond Obligations also place an increasing demand on dwindling resources. The city's bond responsibility for the remainder of 1976 (March through December) totals \$311,520; \$245,000 in principal and \$66,520 in interest. Annual bond responsibility is going to increase in that the city has not yet begun to pay the principal on two bond issues, although interest on them is already being paid. Benton Harbor's total current outstanding bond obligations, with interest, extend for fifteen years and total \$2,750,040.00.

Benton Harbor strongly supports extension of Federal Revenue Sharing at increased levels of support for cities whose needs are certainly justified. Even with that, however, there may be only dim hope for the city's future as an economically viable community.

### Non-Economic Issues

Vehicular Safety -- The City is as concerned about vehicular safety as is the Association. However, the Association's proposal is an expensive "overkill". City proposes that all cars have an annual safety and operational inspection. Any maintenance service required will be performed prior to the vehicle being returned to service. Some of these vehicles were purchased out of state making it unreasonable to return them to their place of purchase for servicing. Further, a monthly check would place a harsh financial burden upon the City unjustified in light of minimal potential benefits which might be derived.

Purchase of Clothing -- A great deal of the financial problems currently experienced by the City result from a declining real property tax base. It is to the advantage of the City and its employees to encourage local businesses. Thus, City proposes that monies issued to employees to purchase plainclothes be spent in local retail clothing stores to help bolster their sales.

Definition of Detective and Special Assignments -- Association's aim is to establish a separate detective bureau, develop a testing procedure for promotion, create higher salary ranges for detectives and, generally, diminish management rights to assign members to these positions. There is no evidence that this assignment function has been administered in an arbitrary or abusive manner. Moreover, the size of the detective bureau is too small to create a separate division and classification. City contends that current contract language should be continued.

Definition of Patrolperson -- In conjunction with the preceding discussion concerning a separate classification for detectives, there is no need to alter the current definition of "Patrolperson".



Definition of Workweek, Hours of Work, and Overtime -- City maintains that all three of these Association proposals must be viewed in concert as they are interdependent. These proposals are an attempt to demolish management rights to establish a Sunday - Sunday type workweek. Patrolmen may work less or more than 40 hours in any given week due to the nature of the job, but they average 2,000 hours a year, and within each month, about 40 hours per week. Adoption of the Association's proposal would effectively eliminate management's right to assign as needed and entitle a member to unearned overtime.

Representation Fee -- City proposes that the current open shop system be retained. Adoption of a representation fee would increase time required by the City's Personnel Department, and reduce the potential labor force.

Weapons and Ammunition -- City agrees that a handgun combat course is desirable. However, the costs of this program should be shared equally by the Association. Additionally, failure to obtain a 70% score should result in a 3% pay decrease until the standards have been successfully achieved.

Management Rights -- City seeks a much more detailed Management Rights clause than exists in the current agreement. Nothing is added which is not already granted to the City via applicable state and local laws, rules and regulations. Main purpose of the more detailed provision is to eliminate time-consuming and expensive mediation and arbitration caused by ambiguity and/or ignorance manifested by the current clause.

Civil Service -- Currently, Association members are able to travel two separate routes in voicing complaints, the Civil Service procedure and/or the grievance procedure set forth in the labor agreement. City proposes that Association members be limited to selecting one procedure or the other, but not be able to use both avenues of pursuit. No other City employees utilize a dual grievance process.

### Economic Issues

AM Radios and Air-Conditioning in Vehicles -- The Association has presented no convincing evidence to demonstrate a correlative relationship between the presence of this equipment and police performance. City has agreed to installation of these devices in plainclothes cars, but the costs associated with doing this for all vehicles is considerable. Additionally, an AM radio might distract an on-duty officer unduly.

Plain Clothes Allowance -- City offers a \$360 per year allowance spread equally over four quarters of the year. This represents a \$10 increase over the current \$350 allowance. Association's last offer is clearly too expensive.

Physical Training -- The current physical training requirement is the Royal Canadian Air Force program. This should be maintained. Failure to achieve appropriate standards for two successive evaluation periods will result in 3% pay decrease until the standards have been successfully met. Three successive failures may result in dismissal.

Time Allowed -- Budgetary considerations demand that time allowed in lieu of overtime pay should be granted at straight time hours and not at time and one-half as proposed by the Association.

Educational Allowance -- Association's demand on this item, again, is clearly excessive. City proposes that the current allowance for 40 hours of study completed be raised from \$75 to \$82.50, for an Associates degree from \$150 to \$165, for a Bachelors degree from \$300 to \$330, and for a Masters degree from \$500 to \$550 per year.

Longevity -- City proposes omitting a paragraph from the current longevity provision which requires that, upon separation from City service, longevity is added to the established day rate in refunding unused sick, vacation, or holiday leave credits, or in cashing in of unused sick leave prior to termination or retirement. Again, cost savings is the primary motivator for this proposal.

Sick Leave Payout -- Currently, unused sick leave is allowed to accumulate from April 1, 1954, at a 100% rate and a maximum payout of 100% unused sick leave upon retirement if one has 25 or more years of continuous service. This represents a potentially terrific expense to the City in coming years if allowed to accumulate and pay out at that unreasonable rate. This benefit is clearly out of line with comparable police departments. City proposes that the employee have an option of cashing either 50% of his total sick leave days accumulated or 100% of same as of July 1, 1977, whichever is greater. Employees hired after July 1, 1977, shall be entitled to 50% of the total accumulation.

In effect, the City's proposal would not deprive current patrolmen of any sick leave payout already earned. It would merely put a "cap" on future hirees and bring this potential cost under manageable control. Rationale for sick leave is to allow an employee to receive compensation for days when he is too ill to work, not to accumulate a savings account.

Salary of Patrolpersons and Detectives -- Association's wage demands are clearly excessive in light of the City's bleak financial picture as described earlier herein. City's last best offer is:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
7-1-77	11,640	13,476	14,150
7-7-78	12,338	14,285	14,999

City's offer represents a 6% increase in both years of the contract, generous in light of the City's current financial condition, and considering that this proposal will further increase the disproportionality of the amount of monies expended from the General Fund for salaries for the Police Department.

City can find no evidence to justify raising the pay differential for detectives from 5% to 7½% as demanded by the Association. A 5% differential fairly recognizes the differences in skills, training, etc., between patrolpersons and detectives.

## POSITION OF THE ARBITRATION BOARD MAJORITY

To briefly summarize the analysis of factors used in assessing the parties' positions, it is true the City's financial picture has been bleak, although it improved slightly last year. However, a comparison of wages with other comparable communities and workers readily indicates that Benton Harbor police are on the "low end of the totem pole." Moreover, they combat an unusually high crime rate with a disproportionately small police force. Given an inflationary rate of around 7-8%, the "trade-offs" in this dispute became very difficult to assess. Following are the final determinations of the Board majority.

### Non-Economic Issues

Vehicular Safety -- In recognition of the importance of safety and efficiency of police cars, the Board has determined that all vehicles are to be given safety and operational inspections every six months, and, if necessary, are to be repaired before being placed back into service. City is permitted to continue using its own mechanics for this task. However, City is to insure that these mechanics are properly trained and equipped to perform this assignment.

Purchase of Clothing -- The Board considers an officer's clothing allowance to be part of his compensation package. Thus, they should not have their freedom of choice in selecting clothing merchants completely restricted to the City's limits. However, in recognition of the City's desire to try and retain as much City payroll as possible within the nearby surroundings, the Board directs that the clothing allowance is to be spent within Berrien County.

Definition of Detective and Patrolperson -- There appears to be relatively little need for establishment of a separate classification for detectives at this time. Consequently, the Association's proposals to create a Criminal Investigation classification and to rewrite the current description for Patrolpersons is rejected.

Definition of Workweek and Hours of Work -- Board majority agrees to leave language pertaining to these two items as it now exists in the collective bargaining agreement. Defining the workweek as 40 hours might hamper the City's ability to manipulate schedules to include a Sunday - Sunday workweek. Nature of a police officer's job, particular the 24 hour availability, makes this flexibility essential. However, officers should average only 40 hours per week over the year -- current practice and procedure seems to be fair and workable.

Representation Fee -- Since all members of the bargaining unit derive benefits from collective bargaining efforts of the Association, it is fair that they should help cover the costs of this activity, but without being forced to take an active role in the Association's activities. This, of course, is the object of an Agency Shop arrangement permitted under Michigan law. The Board hereby directs that, as a condition of continued employment, all employees covered by the collective bargaining agreement, by August 1, 1978, shall pay a representation fee equivalent to the amount uniformly required of members of the FOP State Lodge of Michigan Labor Council. Employees hired hereafter are required to tender said representation fee within 31 days after completion of recruit school.

Special Assignments -- In keeping with the decision not to establish a separate detective classification, the testing procedure proposed by the Association for promotion to detective is also rejected. At this time, sergeants and lieutenants in the Criminal Investigation unit have no such protection either. Thus, the current practice for placement into this special task is to be continued.

Weapons and Ammunition -- The Board majority decided to accept portions of both of the original proposals for this issue. As adopted by Board, the Chief will require a patrolperson to shoot a Handgun Combat course and/or a Night-Time Combat course. This shall be done at least two times per year, approximately every six months, and a minimum of twice through the course per session. The

course shall be conducted by a person selected by the Chief or his designee. Costs of all facilities, targets, and ammunition shall be borne by the City except as otherwise specified by the labor agreement. Failure to qualify with a 70% score shall result in a five point reduction in the Association member's next quarterly evaluation. Qualifying Association members shall receive an additional two points on their next quarterly evaluation.

Management Rights -- It was determined by the Board majority that the City's proposal for revising the Management Rights clause was excessive in several areas. Thus, it was decided to retain the current provision without alteration.

Civil Service -- In their final last offers, the parties agreed that Association members, henceforth, would be required to use only the collective bargaining agreement grievance procedure and thereby, avoid the unnecessary costs of duplicative procedures by eliminating the Civil Service grievance machinery. However, all remaining provisions of the Civil Service Ordinance dealing with the hiring of employees and other matters should and must be retained.

#### Economic Issues

AM Radios -- The City's position regarding installation of AM radios in marked patrol cars is upheld herein. Unmarked plainclothes vehicles are to have radios. However, AM radios in marked cars is an unnecessary expense and might prove to be a distraction from the officer's regular duties.

Air Conditioning -- Hot weather combined with long hours in the vehicle make air-conditioning a justifiable asset to the accomplishment of a patrolperons's duties. Air-conditioning is not only commonly found in business offices everywhere, but evidence indicates it is also commonplace among police department vehicles in comparable communities. Thus, the Board directs that the next set of police vehicles be equipped with air conditioning.

Plainclothes Allowance -- On this item, the City's last best offer is accepted. Plainclothes allowance is increased from \$350 per year to \$360. The allowance is to be paid in equal \$90.00 amounts every 90 days for the first year, and \$180 on July 1 and January 1 for succeeding years.

Physical Training -- As with "Weapons and Ammunition," on this issue the Board majority decided to blend together portions of each parties' proposals. Consequently, the final plan adopted by the Board includes the Association's physical fitness test of minimums of 15 pushups, 5 pullups, 30 situps, two one-half mile runs, and an obstacle course, with a maximum time limit of 17 minutes. The obstacle course shall be mutually agreed upon by the City and the Association. This test will be administered on or about April 15 and October 15. Any member scheduled to be on vacation during the time the test is administered will be given the opportunity to take the test either prior to or upon returning from vacation at the member's choosing. Failure to achieve appropriate standards for two successive evaluation periods will result in a 3% pay decrease until the standards have been successfully met. Patrolpersons who fail three successive physical fitness evaluations may be dismissed, although unusual conditions such as recovery from a job related disability will be considered by the City in assessing such a penalty.

Overtime -- For essentially the same reasons as presented for the non-economic factors of "Definition of Workweek" and "Hours of Work", the Overtime provision is to be left unaltered. Current practice and Michigan law assures correct overtime payments anyway.

Time Allowed -- The Association's last offer is accepted by the Board concerning "Time Allowed". Since the City has the option of giving time off in lieu of cash payments for overtime, it seems fair to provide officers with an equivalent trade off -- time and one-half hours off in exchange for loss of time and one-half pay.

Educational Allowance -- Board majority was able to agree on an Educational Allowance slightly higher than the City's last offer:

40 hours of study completed	\$100 per year
Associates degree	\$200 per year
Bachelors degree	\$350 per year
Masters degree	\$575 per year

Longevity -- City offered practically no argument for changing the current contract language regarding Longevity. Hence, the Board decided to continue the existing provision without modification.

Sick Leave Payout -- City sought to place a "cap" on Sick Leave Payout in the future. Board admits that, indeed, this is a generous fringe benefit in comparison with similar programs in other collective bargaining agreements. It is retained intact, however, for two basic reasons. Firstly, the current program has already been supported by a previous arbitration decision in 1975. Secondly, this benefit represents a "bright cloud" in an otherwise modest financial picture for patrolpersons. Hence, it seems only fair to continue this long-standing fringe benefit without modification.

Salary of Patrolpersons -- Weighing important variables mandated for consideration by Act 312, the Board majority was able to agree upon a final wage package for Patrolpersons that represents a compromise position between the parties' original last offers:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
7-1-77	11,585	13,412	14,083
1-1-78	12,106	14,015	14,717
7-1-78	12,711	14,716	15,453
1-1-79	13,283	15,378	16,148

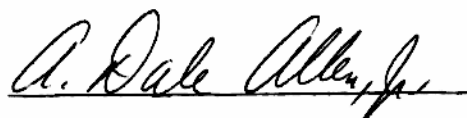
This package grants a 5½% increase on 7-1-77, a 4½% raise on 1-1-78, a 5% increase on 7-1-78, and a 4½% boost on 1-1-79, for an average increase of 7.9% the first year and 7.4% the second year. To reiterate, the Board believes this



to be fair and equitable salary settlement in view of the contrasting "pulls" of a rather bleak financial situation for the City over against the comparatively low current standing of Association salaries combined with an excessively high crime rate and smallish police force. Further, it was noted by the Board that the recent contract settlement between the City and its Firefighters resulted in a 9½% boost in wages in each of two years of the agreement's life. When one considers also an increasing Consumer Price Index on the order of 7% to 8%, the above salary increments seem justifiable.

Salary of Detective -- In view of the fact that a large percentage of Patrolpersons, with overtime, can earn as much or more than the more highly trained and skilled detectives, the Board majority determined to boost the wage differential between Patrolpersons and Detectives from the current 5% to 6%.

Dated: July 6, 1978



Dr. A. Dale Allen, Jr.  
Chairman

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Melvin Farmer, City's Delegate

Concurs \_\_\_\_\_ Dissents \_\_\_\_\_

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Ronald Immoos, Associate's Delegate

Concurs \_\_\_\_\_ Dissents \_\_\_\_\_