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BRANNICK & DUDUS

ATTORNEYS AT LAW  
404 S. JACKSON ST.  
JACKSON, MICHIGAN  
49201

GEORGE J. BRANNICK  
JAMES E. DUDUS

FAX  
(517) 784-7188  
TELEPHONE  
(517) 787-1303

March 8, 1989

Clary, Nantz, Wood,  
Hoffius, Rankin & Cooper  
500 Calder Plaza  
Grand Rapids, MI 49503

Fette, Dumke & Passaro, P.C.  
720 State Street  
P.O. Box 890  
St. Joseph, MI 49085

ATTENTION: ROBERT W. WHITE

ATTENTION: THOMAS R. FETTE

RE: CITY OF BENTON HARBOR  
-AND-  
IAFF, LOCAL 685  
Act 312 Case No. G87 C-258

Gentlemen:

Having received your concurrences and dissents on a line item basis, and, further having reviewed the documents and correspondence, the Impartial Chairman hereby incorporates his original Opinion and Award herewith; and, in view of your concurrences and dissents, the majority Awards as follows:

The Panel awards as follows:

**A. Economic Items:**

1. Wages - The Union's last best offer as:

- (1) effective 7/1/87 - 2% across the board
- (2) effective 1/1/88 - 2% across the board
- (3) effective 7/1/88 - 3% across the board
- (4) effective 1/1/89 - 3% across the board

2. Use of Automobile - The City's last best offer, which does not require the City to provide a specific automobile for firefighter use.

3. Food Allowance - The Union's last best offer, to wit, retain current \$16.00 per week per employee.

4. Number of Sick Days - City's last best offer, to wit, maintain current number of sick days.

5. Number of Vacation Days - City's last best offer, maintain current number of vacation days.

6. Number of Personal Leave Days - Maintain current number of personal days per parties' agreement.

Mr. Robert W. White  
Mr. Thomas R. Fette

-2-

March 8, 1989

7. Medical Insurance for Future Retirees and Spouses of Future Retirees - City's last best offer, retain current medical insurance provisions.

8. Life Insurance - City's last best offer, to wit, as soon as it can be administratively arranged following the date of this Award, all employees covered by this agreement, who retire during the term of this agreement, shall be provided a \$5000 term life insurance policy, which will be maintained for them with the City paying the premiums until they have reached age 65.

9. Definition of Normal Day - Maintain current Contract provisions, per parties agreement.

10. Call Back Rates - Both parties agree to retain current Contract language.

11. Compensation for Holidays - Union's last best offer, retain current system.

12. Plus Rates - City's last offer, which provides that the following language be substituted for the second sentence in Section III of Article 10 and that the third sentence in the same Section be deleted, "Such temporary assignment to a higher class shall be paid for the time actually worked."

13. The next 5 issues, to wit, Level of City's Pension Contribution, Longevity Pay, Recognition of Employee Education, Amount of Pay for Personal Day, and Driver's Pay shall remain the same pursuant to the parties agreements thereon.

14. Length of the Agreement - The Union's last proposal with respect thereto, a 2-year Contract from July 1, 1987, to June 30, 1989.

**B. Non-Economic Items:**

1. The Substantiation of Sick Leave and the Approval of Educational Leave by City Manager shall remain as current.

2. 40-Hour Work Week - Is modified as is set forth on Pages 16 and 17 hereof.

3. Physical Fitness Program - Is modified as set forth on Page 17 hereof.

Mr. Robert W. White  
Mr. Thomas R. Fette

-3-

March 8, 1989

Finally, in keeping with the Commission's Rules and Regulations, the Panel determines that all other items not specifically mentioned herein, which are set forth in the predecessor Contract Joint Exhibit 5, are incorporated in the new Agreement achieved by this Arbitration Proceeding.

The above becomes the final Award of the Panel.

Respectfully submitted,

By

  
GEORGE J. BRANNICK  
Arbitrator

GJB/shd  
cc: James Amar

### SUMMARY OF THE AWARD

The Panel awards as follows:

**A. Economic Items:**

1. Wages - The last best offer of the Union as follows:

- (1) effective 7/1/87 - 2% across the board
- (2) effective 1/1/88 - 2% across the board
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\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

2. Use of Automobile - The City's last best offer, which does not require the City to provide a specific automobile for firefighter use.

\_\_\_\_\_  
CONCUR

  
\_\_\_\_\_  
DISSENT

3. Food Allowance - The Union's last best offer, to wit, retain current \$16.00 per week per employee.

  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

4. Number of Sick Days - City's last best offer, to wit, maintain current number of sick days.

\_\_\_\_\_  
CONCUR

  
\_\_\_\_\_  
DISSENT

5. Number of Vacation Days - City's last best offer, maintain current number of vacation days.

\_\_\_\_\_  
CONCUR

  
\_\_\_\_\_  
DISSENT

6. Number of Personal Leave Days - City's last best offer, maintain current number of personal days.

\_\_\_\_\_  
CONCUR

  
\_\_\_\_\_  
DISSENT

7. Medical Insurance for Future Retirees and Spouses of Future Retirees - City's last best offer, retain current medical insurance provisions.

\_\_\_\_\_  
CONCUR

Tom R. F.  
\_\_\_\_\_  
DISSENT

8. Life Insurance - City's last best offer, to wit, as soon as it can be administratively arranged following the date of this Award, all employees covered by this agreement, who retire during the term of this agreement, shall be provided a \$5000 term life insurance policy, which will be maintained for them with the City paying the premiums until they have reached age 65.

\_\_\_\_\_  
CONCUR

Tom R. F.  
\_\_\_\_\_  
DISSENT

9. Definition of Normal Day - Union's offer to retain current Contract provision.

Tom R. F.  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

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Tom R. F.  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

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Tom R. F.  
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\_\_\_\_\_  
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12. Plus Rates - Union's last offer, which provides that the following language be substituted for the second sentence in Section III of Article 10 and that the third sentence in the same Section be deleted, "Such temporary assignment to a higher class shall be paid for the time actually worked."

Tom R. F.  
\_\_\_\_\_  
CONCUR

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DISSENT

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Tom R. F.  
\_\_\_\_\_  
CONCUR

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14. Length of the Agreement - The Union's last proposal with respect thereto, a 2-year Contract from July 1, 1987 to June 30, 1989.

  
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\_\_\_\_\_  
DISSENT


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\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

Finally, in keeping with the Commission's Rules and Regulations, the Panel determines that all other items not specifically mentioned herein, which are set forth in the predecessor Contract Joint Exhibit 5, are incorporated in the new Agreement achieved by this Arbitration Proceeding.

Dated: February 6, 1989.

  
\_\_\_\_\_  
GEORGE J. BRANNICK  
Impartial Chairman (aka)

  
\_\_\_\_\_  
THOMAS R. FETTE  
Union Delegate

\_\_\_\_\_  
ROBERT W. WHITE  
Employee Delegate

### SUMMARY OF THE AWARD

The Panel awards as follows:

**A. Economic Items:**

1. Wages - The last best offer of the Union as follows:

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\_\_\_\_\_  
CONCUR

Robert W White  
DISSENT

2. Use of Automobile - The City's last best offer, which does not require the City to provide a specific automobile for firefighter use.

Robert W White  
CONCUR

\_\_\_\_\_  
DISSENT

3. Food Allowance - The Union's last best offer, to wit, retain current \$16.00 per week per employee.

\_\_\_\_\_  
CONCUR

Robert W White  
DISSENT

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Robert W White  
CONCUR

\_\_\_\_\_  
DISSENT

5. Number of Vacation Days - City's last best offer, maintain current number of vacation days.

Robert W White  
CONCUR

\_\_\_\_\_  
DISSENT

6. Number of Personal Leave Days - ~~City's last best offer,~~ <sup>Both parties agree to</sup> maintain current number of personal days.

Robert W White  
CONCUR

\_\_\_\_\_  
DISSENT

7. Medical Insurance for Future Retirees and Spouses of Future Retirees - City's last best offer, retain current medical insurance provisions.

Robert W White  
CONCUR

DISSENT

8. Life Insurance - City's last best offer, to wit, as soon as it can be administratively arranged following the date of this Award, all employees covered by this agreement, who retire during the term of this agreement, shall be provided a \$5000 term life insurance policy, which will be maintained for them with the City paying the premiums until they have reached age 65.

Robert W White  
CONCUR

DISSENT

9. Definition of Normal Day - <sup>Both parties agree RWW</sup> ~~Union's offer~~ to retain current Contract provision.

Robert W White  
CONCUR

DISSENT

10. Call Back Rates - Both parties agree to retain current Contract language.

Robert W White  
CONCUR

DISSENT

11. Compensation for Holidays - Union's last best offer, retain current system.

CONCUR

Robert W White  
DISSENT

12. Plus Rates - <sup>C.M.'s - RWW</sup> ~~Union's~~ last offer, which provides that the following language be substituted for the second sentence in Section III of Article 10 and that the third sentence in the same Section be deleted, "Such temporary assignment to a higher class shall be paid for the time actually worked."

Robert W White  
CONCUR

DISSENT

13. The next 5 issues, to wit, Level of City's Pension Contribution, Longevity Pay, Recognition of Employee Education, Amount of Pay for Personal Day, and Driver's Pay shall remain the same pursuant to the parties agreements thereon.

Robert W White  
CONCUR

DISSENT



14. Length of the Agreement - The Union's last proposal with respect thereto, a 2-year Contract from July 1, 1987 to June 30, 1989.

\_\_\_\_\_  
CONCUR

Robert W. White  
DISSENT

**B. Non-Economic Items:**

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Robert W. White  
CONCUR

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Robert W. White  
DISSENT

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CONCUR

Robert W. White  
DISSENT

Finally, in keeping with the Commission's Rules and Regulations, the Panel determines that all other items not specifically mentioned herein, which are set forth in the predecessor Contract Joint Exhibit 5, are incorporated in the new Agreement achieved by this Arbitration Proceeding.

Dated: February 6, 1989.

George J. Brannick  
GEORGE J. BRANNICK (skd)  
Impartial Chairman

\_\_\_\_\_  
THOMAS R. FETTE  
Union Delegate

Robert W. White  
ROBERT W. WHITE  
Employee Delegate

**IN THE MATTER OF  
ARBITRATION**

**BETWEEN**

**CITY OF BENTON HARBOR**

**and**

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,  
LOCAL 685**

**Under Act No. 312**

**MICHIGAN PUBLIC ACTS OF 1969**

**THOMAS R. FETTE  
Union Delegate**

**ROBERT W. WHITE  
Employee Delegate**

**GEORGE J. BRANNICK**

**Arbitrator  
and  
Impartial Chairman**

## OPINION

This is a compulsory Arbitration matter pursuant to Act 312 of the Public Acts of the State of Michigan, 1969, as amended MSA 17.455(31) et seq.; MCLA 423.231, et seq., (hereinafter the Act).

The members of the Arbitration Panel are:

GEORGE J. BRANNICK  
Impartial Chairman

ROBERT W. WHITE  
City Delegate

THOMAS R. FETTE  
Union Delegate

The dispute involves Contract negotiations between the CITY OF BENTON HARBOR, (hereinafter the City, or Employer) and INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 685, (hereinafter the Union or Employees).

The parties have had a Collective Bargaining relationship for some period of time and their last Collective Bargaining Agreement having expired on July 1, 1987.

The parties met on several occasions in an attempt to resolve outstanding issues, including a Mediation session, but were unable to resolve certain issues hereinafter identified.

A Petition was filed for Arbitration under the Act and pursuant thereto these proceedings were undertaken.

After the Preliminary Hearing Conference, Hearings were held on March 3, 1988 and on April 25, 1988 with both parties present and represented by the respective delegates named herein.

At the opening of the Hearing the parties stipulated that there were no unresolved procedural or threshold issues and that all matters were properly before the Arbitration Panel.<sup>1</sup>

As the Hearing progressed, the issues became more defined, as the same are hereinafter addressed.

The Formal Hearing concluded on April 25, 1988 at 4:15 p.m., and the parties later determined the procedures for the submission of last best offers and Briefs, which were received on August 31, 1988.

The Hearing consisted of the testimony of six (6) witnesses and thirty-four (34) Exhibits.

The parties ultimately agreed on the open issues to be resolved, and submitted Last Best Offers with respect to those issues, which are as follows:

#### ECONOMIC

1. Wages
2. Automobile use by firefighter.
3. Amount of food allowance.
4. Number of sick days.
5. Number of vacation days.
6. Number of personal leave days.
7. Medical insurance for future retirees.
8. Life insurance for retirees.

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<sup>1</sup>There was a question of definition of issues raised at the opening of the Hearing which the Chairman took under advisement, this Opinion responds to that issue.

9. Change in definition of normal day.
10. Call back rates.
11. Compensation for holidays.
12. Plus rates for higher skills.
13. Level of City's pension contribution.
14. Longevity pay.
15. Recognition of employee education.
16. Amount of pay for personal day.
17. Driver's pay.
18. Length of agreement.

#### **NON-ECONOMIC**

19. Performance of forty (40) hours of work within work week.
20. Substantiation of sick leave.
21. Physical fitness program.
22. Approval of educational leave by City Manager.

The parties are in agreement with respect to the above-stated issues and also with their status on Economic or Non-Economic.

Since there is agreement as to the remaining unresolved issues and their status as Economic and Non-Economic, this Chairman will accept that agreement as a stipulation, thus resolving the threshold issue raised with respect to the scope of issues to be resolved. Having defined the issues to be decided, we now look to the standards to be applied.

#### **STANDARDS FOR DECISION**

The Legislature has provided with the Act the method of Decision, Section 8, requiring "Written Findings of Fact", and "A

written Opinion and order upon the issues presented to it and upon the record made before it". Further, the Act mandates that "the findings, opinion and order shall be just and reasonable and based upon the factors prescribed in Section 9".

Those factors set forth in Section 9 are:

"Where there is no agreement between the parties, or when there is an agreement but the parties 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, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and 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 proceedings.
- (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."

We will address each issue on the basis of the above-cited factors upon the record before the Panel, and we shall retain jurisdiction to interpret the Opinion and Award and to adjust the same, if necessary.

#### THE HEARING

The City of Benton Harbor is a Charter City, incorporated pursuant to the Michigan Constitution of 1963, Art VII., Sec. 22. It is located in St. Joseph County, Michigan, and in its Charter it has set forth, in Chapter II, its General Municipal Powers. Those powers include, Section 2.1, inter alia,

" Any and all powers, . . . expressed and implied which cities . . . are permitted to exercise or to provide for under the Constitution and Law of the State of Michigan and of the United States of America . . . as fully as though those powers . . . were specifically enumerated in . . . this Charter."

Certain powers are specifically enumerated in the Charter, including pensions for members of the Fire and Police Departments, Section 2.4, and to provide for several Departments, including Public Safety (Sec. 3.16), and to a Fire Department headed by a Chief (Sec. 3.36).

On the basis of the Charter (Joint Exhibit 10), there remains no question as to the lawful authority of the Employer.

We have previously indicated that the parties had stipulated that no procedural questions exist, thus Standards (a) and (b) are

met.

The remaining standards will then to be applied to the issues on an issue-by-issue basis.

We shall first address the Economic issues.

# I.

## WAGES

The City's last best offer proposes that the current wage scale be continued until January 1, 1990, at which time a four percent (4%) increase be made at each step and that on January 1, 1991, an eight percent (8%) increase be given over the January 1, 1990 schedule.

The Union's last best offer proposes a two percent (2%) increase effective July 1, 1987 and January 1, 1988, and a three percent (3%) increase effective July 1, 1988 and January 1, 1989.

As comparables, the Union uses the wage scales of St. Joseph, Niles, and Benton Township.

The City disputes the Union's comparables on the basis that there are substantial differences in the millage rates, per capita income, and the State's equalized value of real estate.

There is no question that the City occupies a somewhat unique position, having one of the highest millage rates in the State of Michigan and one of the lowest per capita income averages within the State. The City suggests that, on the basis of the differences between the offered comparables, the same should not be utilized. However, Section 9(d) of the Act requires only a 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 . . . comparable communities".

The Panel suggests that finding comparables as to millage rates, per capita income and SEV would require looking to geographic areas so far removed from Benton Harbor as to make their inclusion suspect. Those factors deal more with Standard (c), i.e.,

"The interest and welfare of the public and financial ability of the unit of government to meet those costs",

than with the question of wages, hours, and conditions of employment.

The City did not offer alternate comparables and, accordingly, as to working conditions, wages, hours and conditions, the Panel accepts the comparables offered by the Union. No evidence was adduced with respect to other wages, hours, and conditions for private sector employees other than the per capita income basis.

There are substantial arguments on both sides of the issue of wages that require more wisdom than this Chairman possesses. Like the symbol of justice holding the scales and blind to other influence, the decision must tip in favor of the greatest need. Here the City is in desperate straits attempting to recover from economic problems of heroic proportions, and agrees that the general public's good outweighs any needs of the individual segments of its parts. The City further relies heavily upon

Standard (c) of Section 9 of the Act, stating that it not only does not have the financial ability to meet the increased cost, but also, in view of the recovery program it is engaged in, any increased cost would not be in the public interest.

The Union counters that the City does have the ability to pay its demand, citing a recent increase in the SEV, a saving which could be achieved by the payment of interest on certain special funds, and savings generated by recently passed millage for loan repayment and Dial-a-Ride.

Additionally, the Union takes the position that the public interest would best be served by increasing the wages of the firefighters since, due to the low wages, there are significant morale problems and that experienced personnel are moving to cities in other areas offering better wages.

Thus, we have a classic confrontation of individual need versus group need. The Panel finds, on the basis of the evidence submitted, that by making certain budgetary adjustments, the City does have the ability to pay the amounts set forth in the Union's last best offer.

As to the public interest, this Panel is of the opinion that, within the entire plan of recovery of the City, one of the single most important factors is the ability of the City to provide public safety to its current and prospective inhabitants, be they residents or business enterprises.

It is granted that the interest and the welfare of the general public could be abetted without granting any increase, but the

further loss of experienced personnel and the lack of proper morale and motivation seem to this Panel of much more importance than any speculative short-term gains.

Accordingly, when viewed in the light of all of the evidence submitted, and when applied against the statutory standards, it is the opinion of this Panel that the last best offer of the Union should be accepted and we so decide.

We are not aware of the financial condition of the City and of the alleged "me too" effect of our decision. However, this Union cannot be penalized for the acts of others over which it exercised no control, and, even though the City has other serious financial problems, the demands here are of such a modest degree as to permit the adjustments necessary to meet them.

## II.

### AUTOMOBILE FOR USE OF FIREFIGHTERS

The subject of the automobile for use of firefighters did not receive much attention at the Hearing, and the subject does contain a number of inherent problems, if this Panel should make such use a contractual obligation, because of the propinquity of the Fire Department to other City agencies, this Panel can see no reason why an inter-agency motor pool can't be established to resolve the alleged problems.

Recognizing that we cannot amend or modify last best Economic offers, we are of the opinion that the City's position appears to meet the current problem and that to accept the Union's last best offer could create other problems as noted in the City's Brief.

Therefore, it is the Panel's opinion and decision that the City's last best offer is accepted and becomes the decision of the Panel.

### III.

#### AMOUNT OF FOOD ALLOWANCE

This presents the Chairman with the strange and somewhat unique opportunity to opine with respect to a Union being offered more than it asked. The Panel, however, in view of the Union's last best offer and the financial problems testified to, feels that it must accept that offer and it thus becomes the decision of the Panel, without any further need for explanation.

### IV.

#### NUMBER OF SICK DAYS

The basis for the request for additional sick days appears to be that, because of a reduction in manpower, there is more stress connected with the work and, therefore, the employees are suffering more illnesses due to the stress. It appears to this Panel that any job-related illnesses are more the subject of Worker's Compensation questions than sick leave proposals, and that any additional time taken off would be more likely to compound the problem than to alleviate it. Therefore, it is the Panel's opinion that the additional sick day would be self defeating and the City's last best offer becomes the Panel's decision.

### V.

#### NUMBER OF VACATION DAYS

The reasons set forth above would have to apply here to establish any validity to those reasons.

Accordingly, it is the opinion of the Panel that the City's last best offer be its decision.

**VI.**

**NUMBER OF PERSONAL LEAVE DAYS**

The parties both offered to maintain the current Contract language and, thus, by stipulation, that becomes the decision of the Panel.

**VII.**

**MEDICAL INSURANCE FOR FUTURE RETIREES**

This issue as much as any other presents the most difficult problem to this Panel. The fears of most Americans with respect to increasing medical costs are of such significance as to merit judicial notice, notwithstanding the lack of concrete evidence. The cost factor of medical insurance is not subject to easy determination and cannot be reliably predicted. Add to the speculative nature of the City's exposure the truism that medical care for older people seems to increase, and we must conclude that as an uncapped benefit, the City has no means of budgeting for these potential costs. Accordingly, although the Panel regrets that it must opine that the last best offer of the City be its decision, that must, in the light of all of the evidence, be its decision.

**VIII.**

**LIFE INSURANCE FOR FUTURE RETIREES**

As indicated in the City's Brief, this is a new benefit for the firefighters. No testimony was adduced as to who or how many

employees would be affected during the term of the Contract. The Panel is of the opinion that future negotiations with respect to this benefit are needed, but that the establishment of the benefit is of important significance at this time. Having stated that, the last best offer of the City becomes the Panel's decision.

#### **IX.**

##### **CHANGE IN THE DEFINITION OF THE NORMAL WORK DAY**

Although the City seems to qualify its last best offer, the Panel accepts the same as a stipulation with the Union to retain the current Contract and so decides.

#### **X.**

##### **CALL BACK RATES**

Both parties' last best offer retains the current language and so, again, by stipulation, it becomes the decision of the Panel.

#### **XI.**

##### **COMPENSATION FOR HOLIDAYS**

The Panel sees no justifiable reason to change the holiday compensation. Firefighters generally work on schedules that are, at best, difficult for non-firefighters to understand. As the Panel interprets the City's last best offer, holiday pay would only be paid to employees who work on the holiday. If that interpretation is correct, then holidays become overtime zones only, and lose any other significance. Although it may be only wishful thinking on the part of the Panel, it is hoped that the celebration of the holiday will have more meaning to both parties

then a mere economic free day and, accordingly, rather than to reduce some of the truly significant days in our history to mere overtime zones, the Panel is of the opinion that the last best offer of the Union should be adopted and it so decides.

## **XII.**

### **PLUS RATES**

The Panel does not like to tamper with Contract language which has been previously agreed to by the parties. Here, however, the City has a justifiable reason to change the language and the Union states in its Brief that it has no particular objection to the proposal, although its last best offer is to retain the current conditions. It appears that the current position lacks any real justification and the City's last best offer represents a logical disposition that such should be the opinion and decision of the Panel, and it so decides.

Happily, the next five issues, i.e., Pension Contributions, Longevity Pay, Recognition of Employee Education, Amount of Pay for Personal Days, and Driver's Pay, have been resolved by the parties in their last best offers, so again, by stipulation, the same becomes the decision of the Panel with respect to those matters.

## **XVIII.**

### **LENGTH OF CONTRACT**

The parties are at some distance with respect to the length of the Contract, which both parties leave tied to wages. Having accepted the Union's last best offer with respect to wages, the

Panel is practically estopped from accepting the City's proposal for a four (4) year Contract, since the same is conditional upon substantial increases in the final two (2) years, and the Panel has no authority to fold in the two proposals. Accordingly, it is the opinion of the Panel that the parties would be best served by a two (2) year Contract, giving them an opportunity to deal realistically with current problems.

Accordingly, the last best offer of the Union is accepted as the Panel's decision.

#### **NON-ECONOMIC ISSUES**

Two (2) Non-Economic issues remain to be resolved, since the issue of Approval of Educational Leave by the City Manager and the Substantiation of Sick Leave have, by the parties' last offer, been stipulated to remain as currently set forth in the Contract, and we so decide.

The remaining issues are:

1. Performance of 40 Hours in a Week.
2. Physical Fitness Program.

Here, pursuant to the statute, the Panel is offered some latitude in adjusting the positions of the parties, i.e., the Panel is not obligated to accept only the last best offer without modification.

#### **I.**

##### **PERFORMANCE OF 40 HOURS IN ONE WEEK PROPOSAL**

The Panel feels that, based upon the evidence adduced at the Hearing, the City is entitled to somewhat more active, as opposed



to passive, effort upon the part of the firefighters, but would not feel that sixteen (16) hours of active effort is warranted.

Accordingly, the Panel is of the opinion that, in addition to the current schedule of 8 to 11 and 1 to 4 for active efforts, that the City may, during the work week, schedule educational training and physical fitness programs outside of the current active hours, i.e., 8 to 11 and 1 to 4:00 p.m. Should the educational training or physical fitness programs conflict with the active work hours, then such work hours may be extended to cover such periods.

A caveat is offered that the training, educational, or physical fitness times should be genuine and not used as a subterfuge for other activity.

## II.

### PHYSICAL FITNESS PROGRAM

As to the Physical Fitness Program, there appears to this Panel merit in the City's proposal. However, as implemented by that proposal, it could have serious repercussion in the Department as currently manned.

We, therefore, feel that current employees should be exempt from the harsh requirements as proposed by the City, while at the same time letting the City start a system which would achieve the benefits sought by the City. Accordingly, the City's proposal is awarded. However, the current employees shall not be subject to that program and shall be entitled to continue under the old program for the duration of this Contract, or until changed through the Collective Bargaining procedures.

This should accomplish the City's goals over a period of time and remove the Union's fears.

## SUMMARY OF THE AWARD

The Panel awards as follows:

### A. Economic Items:

1. Wages - The last best offer of the Union as follows:

- (1) effective 7/1/87 - 2% across the board
- (2) effective 1/1/88 - 2% across the board
- (3) effective 7/1/88 - 3% across the board
- (4) effective 1/1/89 - 3% across the board

\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

2. Use of Automobile - The City's last best offer, which does not require the City to provide a specific automobile for firefighter use.

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CONCUR

\_\_\_\_\_  
DISSENT

3. Food Allowance - The Union's last best offer, to wit, retain current \$16.00 per week per employee.

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CONCUR

\_\_\_\_\_  
DISSENT

4. Number of Sick Days - City's last best offer, to wit, maintain current number of sick days.

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CONCUR

\_\_\_\_\_  
DISSENT

5. Number of Vacation Days - City's last best offer, maintain current number of vacation days.

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CONCUR

\_\_\_\_\_  
DISSENT

6. Number of Personal Leave Days - City's last best offer, maintain current number of personal days.

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CONCUR

\_\_\_\_\_  
DISSENT

7. Medical Insurance for Future Retirees and Spouses of Future Retirees - City's last best offer, retain current medical insurance provisions.

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CONCUR

\_\_\_\_\_  
DISSENT

8. Life Insurance - City's last best offer, to wit, as soon as it can be administratively arranged following the date of this Award, all employees covered by this agreement, who retire during the term of this agreement, shall be provided a \$5000 term life insurance policy, which will be maintained for them with the City paying the premiums until they have reached age 65.

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CONCUR

\_\_\_\_\_  
DISSENT

9. Definition of Normal Day - Union's offer to retain current Contract provision.

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CONCUR

\_\_\_\_\_  
DISSENT

10. Call Back Rates - Both parties agree to retain current Contract language.

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CONCUR

\_\_\_\_\_  
DISSENT

11. Compensation for Holidays - Union's last best offer, retain current system.

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CONCUR

\_\_\_\_\_  
DISSENT

12. Plus Rates - Union's last offer, which provides that the following language be substituted for the second sentence in Section III of Article 10 and that the third sentence in the same Section be deleted, "Such temporary assignment to a higher class shall be paid for the time actually worked."

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CONCUR

\_\_\_\_\_  
DISSENT

13. The next 5 issues, to wit, Level of City's Pension Contribution, Longevity Pay, Recognition of Employee Education, Amount of Pay for Personal Day, and Driver's Pay shall remain the same pursuant to the parties agreements thereon.

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CONCUR

\_\_\_\_\_  
DISSENT

14. Length of the Agreement - The Union's last proposal with respect thereto, a 2-year Contract from July 1, 1987 to June 30, 1989.

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CONCUR

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DISSENT

B. Non-Economic Items:

1. The Substantiation of Sick Leave and the Approval of Educational Leave by City Manager shall remain as current.

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CONCUR

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DISSENT

2. 40-Hour Work Week - Is modified as is set forth on Pages 16 and 17 hereof.

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CONCUR

\_\_\_\_\_  
DISSENT

3. Physical Fitness Program - Is modified as set forth on Page 17 hereof.

\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

Finally, in keeping with the Commission's Rules and Regulations, the Panel determines that all other items not specifically mentioned herein, which are set forth in the predecessor Contract Joint Exhibit 5, are incorporated in the new Agreement achieved by this Arbitration Proceeding.

Dated: February 6, 1989.

  
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GEORGE J. BRANNICK  
Impartial Chairman

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THOMAS R. FETTE  
Union Delegate

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ROBERT W. WHITE  
Employee Delegate