

7/28/77 ARB

STATE OF MICHIGAN

STATUTORY LABOR ARBITRATION PANEL

(Pursuant to Act 312, P.A. 1969, as amended)

In the Matter of Arbitration Between:

THE CITY OF BENTON HARBOR

-and-

THE BENTON HARBOR LIEUTENANTS
AND SERGEANTS' ASSOCIATION

LABOR AND INDUSTRIAL
RELATIONS DIVISION

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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Benton Harbor City of

OPINION AND AWARD

Chairman of Arbitration Panel: Barry C. Brown

City's Delegate: Melvin Farmer

Association's Delegate: Ronald Immoos

Representing the City: Yvonne Hughes, Esq.

Representing the Association: John Dewane, Esq.

Hearing Held: May 3, 1977 at the City Hall offices in Benton Harbor, Michigan.

Opinion and Award: July 28, 1977

I. STATEMENT OF THE CASE:

This matter came on for hearing before a panel of arbitrators appointed pursuant to the terms of Act 312 of the Public Acts of 1969 (as amended) for the purpose of hearing and deciding the unresolved issue of pay out of sick leave. This matter is the sole remaining issue in dispute between the City of Benton Harbor (hereinafter called the City) and the Benton Harbor Lieutenants and Sergeants Association (hereinafter called the Association) in their negotiations for a new contract. Pursuant to the governing statute, Barry C. Brown was appointed by the Director of the Michigan Employment Relations Commission to serve as chairman of the arbitration Panel. The City designated its City Manager, Mr. Melvin Farmer. The Association designated Ron Immoos, who is the Assistant Director for the Fraternal Order of Police for Michigan. So constituted, the panel conducted a hearing on May 3, 1977, in the offices of the City in Benton Harbor, Michigan. During this hearing, testimony was taken from several witnesses, and the parties presented numerous exhibits to make a complete record.

On May 3, 1977, both parties expressly waived the time limits set forth in the statute. They also mutually stipulated that the panel was properly appointed and functioning in accordance with the statute. Finally, they agreed there was but one issue remaining in dispute--the pay out of sick leave. The parties agreed that

this was an economic issue. They acknowledged that therefore the statute (Section 8) required that the panel's award be limited to the last best offer of either the City of the Association.

Following the hearing, the chairman received the official transcript, and he then prepared a draft Opinion and Award based upon the record and the law dated June 24, 1977. A copy of this draft was mailed to the other panel members for their review and concurrence or dissent. On June 27, 1977, the Association's panel member concurred without comment. On July 13, 1977, the chairman made a telephone call to City Manager Farmer to discuss the draft and to give the chairman an opportunity to modify or enlarge the draft. The panel member representing the City disagreed with certain of the findings and awards set forth hereinafter. Accordingly, the signatures of the City's panel member at the conclusion of this Opinion and Award does not represent a concurrence with the final award but rather constitutes a recognition that there was a majority vote of the panel in support of the final award. The City offered certain new reports and exhibits in its Letter of Dissent, dated June 27, 1977. The panel did not consider this material to be a part of the record and, thus, could not use such material in making its final decision.

II. THE BACKGROUND:

The City and the Lieutenants and Sergeants' Association were signatory to a Collective Bargaining Agreement which expired on June 30, 1976. The parties held numerous bargaining sessions throughout 1976. Two meetings were held under the auspices of the State Mediator, Howard Case. On December 7, 1976, Lieutenant Fred Rellis of the Association requested that a panel of arbitrators be appointed under the Police-Fire Fighters Arbitration Act. Subsequently, on January 11, 1977, Michigan Employment Relations Commission implemented the provisions of that Act.

The parties continued to meet in negotiations in efforts to reach a contract settlement. In fact, on the eve of the hearing before this arbitration panel, the parties agreed upon a six per cent (6%) salary increase for the Lieutenants and Sergeants in 1976 and a second six per cent (6%) increase for the year 1977. In addition, the parties had earlier agreed on expanded Blue Cross-Blue Shield medical coverage, additional life insurance and other improvements in benefits in the new contract. Thus, the only remaining issue before the arbitration panel is the pay out formula for accumulated sick pay upon termination of employment.

The prior agreement between these parties (July 1, 1975, to June 30, 1976) was the first contract bargained separately by the Lieutenants and Sergeants. Previously these command officers were a part of the unit made up predominately of patrolmen, and they

received all benefits set forth in that contract. They also got a higher rate of pay commensurate with their rank. In 1975 the city administration suggested that the command officers bargain separately from the patrolmen's association. The Lieutenants and Sergeants agreed and a new unit was formed and the parties met in early 1975 to reach their first agreement. In that settlement, the Lieutenants and Sergeants received a substantial wage increase of ten per cent (10%) plus other fringe benefits. However, the City convinced them that they should take a reduction in the pay out of accumulated sick leave upon termination of employment. The Association agreed to a program which in effect froze their pay out based on accumulation up to July 1, 1975, with the alternative of taking 50% pay out of accumulations under a new plan.

The Association argues that it accepted this reduction in the pay out of sick leave with the expressed understanding from the City Manager that if the patrolmen got more than they had settled for they would be brought to parity with the patrolmen. The City denies that it made such a commitment. Further, it challenges that the Association has proven that such a promise was ever made. Finally, the City argues that its financial situation was bleak in 1975 and that is why it sought relief by decreasing this high cost benefit in all bargaining units of City employees in that year. The City was successful in eliminating the 100% pay out of sick leave in all agreements except that one with the Patrolmen's

Association. In that case, the City maintains it fought the 100% pay out provision in that contract in every way it could but it lost out finally in a Public Act 312 Arbitration Panel Award. Thus, even if it had agreed to give the command officers everything it gave in negotiations to the patrolmen, it should not be bound to such agreement when the benefit was not "given" but was awarded against the City's intentions and its efforts to the contrary.

Finally, the City continues its claim of its inability to pay the benefits sought by the Association. Therefore, whatever were its prior commitments or whatever the equities of the Associations demands, the City cannot meet the Associations's demands because of its financial situation.

It is in this context and with this background that the parties made their last best offers.

III. THE LAST BEST OFFERS:

The City offered to continue the language as it most recently had appeared in the contract, as follows:

Payment of Unused Sick Leave: Unused sick leave accumulated since April 5, 1954, shall be converted into cash, and paid to an employee, or, in case of death, to his beneficiaries (as provided for in Section 13.10 hereof), on the basis of 50% of the total hours accumulated as follows:

1. At 33-1/3% hourly rate at time of termination from one to 15 years of continuous service;
2. At 50% of hourly rate at time of termination with from 15 to 20 years of continuous service; or at employee's request for any excess over 720 hours of accumulated sick leave;
3. At 75% of hourly rate at time of termination with from 20 to 25 years of continuous service; or at employee's request for any excess over 1440 hours of accumulated sick leave; and
4. At 100% of hourly rate at time of termination with 25 or more years of continuous service; at employee's request for any excess over 2160 hours of accumulated sick leave; upon the death of the employee; or upon retirement under one of the City's retirement systems, at no less than full retirement age, as provided in either the Fire and Police or General City Pension Plan.

Provided, however, the terminating employee or his beneficiaries shall have the option of cashing either 50% of the total sick hours accumulated or 100% of the number of sick hours accumulated as of July 1, 1975, whichever is greatest.

For the purposes of computing creditable years of continuous service in payment of unused sick leave, any fractional part of a year equal to six month or more will be considered a year. Any fractional part of a year less than six months will be disregarded.

The Association wishes to return to the language that covered them when they were in the patrolmen's association prior to July 1, 1975, as follows:

Payment of Unused Sick Leave. Unused sick leave accumulated since April 5, 1954, shall be converted into cash, and paid to an Association Member or in case of his death, to his beneficiary or beneficiaries (as provided for in Article 26, Section 2 hereof), on the basis of 100% of the total hours accumulated as follows:

1. At 33-1/3% of hourly rate at time of termination with from one to 15 years of continuous service;
2. At 50% of hourly rate at time of termination with from 15 to 20 years of continuous service;
3. At 75% of hourly rate at time of termination with from 20 to 25 years of continuous service;
4. At 100% of hourly rate at time of termination with 25 or more years of continuous service; upon the death of the employee; or upon retirement under one of the City's retirement systems, at no less than full retirement age, as provided in either the Fire and Police or General City Pension Plan.

For the purpose of computing creditable years of continuous service in payment of unused sick leave, any fractional part of a year equal to six months or more will be considered a year. Any fractional part of a year less than six months will be disregarded.

IV. THE FINDINGS AND CONCLUSIONS:

The following opinion and order takes into consideration each of the factors enumerated in Section 9 of Act 312. The lawful authority of the Employer is not a significant factor in this case. The City had previously paid out 100% of accumulated sick leave and there was no argument that it could not lawfully continue to do so.

The panel has carefully considered the comparisons offered by both parties which have provided a basis to review the appropriateness of the economic rewards and working conditions of the Benton Harbor Lieutenants and Sergeants. The wages, hours and conditions of work for employees in this unit were compared to those of employees performing similar services and with employees generally in comparable communities. Also, the panel has taken into account the stipulations of the parties, the average consumer prices for goods and the over-all compensation presently received by the Benton Harbor Police Department's Lieutenants and Sergeants. These and other factors normally considered in determining provisions for collective bargaining contracts have been the basis of the following findings, opinions and awards.

Comparable Communities

Benton Harbor is a city which has a population of approximately 16,000. It is located in southwest Michigan on the shores of Lake Michigan. It is across the river from a similar town of St. Joseph which has a somewhat smaller population. These twin cities are a manufacturing and commercial center for a three or four county area of the state. Though its population is declining and its center city is aging, Benton Harbor is still the major city in the southwest area of the state. Its population has a high percentage of minorities and many of these citizens have a relatively lower annual income. Also, the city has a relatively high crime rate which creates a high work load for its Police Department.

The City has presented evidence in the form of Municipal League statistical reports that used 14 cities with a 10,000 to 25,000 population range. Some of these cities suggested as comparable were located in the Detroit or up-state areas.

The Association has offered basically the same list of cities for purposes of comparison. The panel has selected those communities of like size and character which are in the same general location of southwestern Michigan. Thus, St. Joseph, Niles, Muskegon Heights, Grand Haven, Albion, and Grandville present the most similarities for comparisons. These communities were used by both parties in their reports and arguments, and thus, they should provide a sound basis for the panel's deliberations.

Ability to Pay

The panel is also charged with considering the City's ability to pay before it makes its final award [MSA 17.455 (39C)]. The City did not claim it was financially unable to grant the benefit sought by the police command officers. Rather, the City Treasurer expressed concern about the long run accrual of a large liability (p. 83 of Transcript). In other words, the benefit change sought through this arbitration could conceivably result in no increased cash pay out during the term of the contract. That result would come if none of the bargaining unit's twelve members was to terminate his employment in 1976 or 1977.

However, the City did operate with a \$160,000 deficit in the fiscal year ending June 30, 1976. It must now attempt to balance its present and future budgets by increasing revenues and restricting costs. The City's accrued liability to all city employees for sick leave as of June 30, 1976, was \$367,000. Of course, under either the City's last best offer or the Association's last best offer, the amount of this liability would not be reduced. In fact, under both formulas this liability would continue to grow. However, under the City's proposal it would not increase at such a rapid rate.

The \$367,000 sick leave accrual liability was created in relationship to all 224 eligible city employees (p. 90 of Transcript). Thus, the twelve employees of this unit would represent only about five per cent (5%) of the total covered by the fund. The parties

agree that the total accrued cost (at 100%) that could be experienced by the City under the Association's proposal would be \$6,500. That amount would be decreased by the number of sick days actually used during the years by the City Police's Sergeants and Lieutenants. The Benton Harbor patrolmen's 312 Award determined that 60% of the Police Department's sick pay was utilized (see award on p. 12) in the year 1974. If we conclude that as much as 50% of the command officers' sick pay was accumulated, the liability incurred by the City for this unit might be as low as \$3,300 annually. Under the City's last best offer, this liability still might be as high as \$2,000. Thus, the projected cost comparison of the two last best offers are probably no more than \$3,000 apart. The City's plan would cost somewhat more than 50% of the total of the Association's proposal because the old formula only paid out at 100% for those employed 25 years or more (p. 95 of Transcript), and lower pay out rates were paid for lesser years of service.

It seems clear that the City could financially afford the \$3,000 which is in contention as set forth above. Even though there are less funds now available to the City, there are options and discretions in the hands of the City's leaders whereby they could absorb this new liability without plunging the City into bankruptcy. Certainly in any budgetary process, the decision makers have to set priorities and satisfy the needs and desires of their citizens. Arbitrators have said that public employees are not

expected to subsidize the community by being required to accept substandard compensation [see Decision of Richard Block, Oscoda Board of Education, 55 LA 568 (1970)]. However, the salary demands of all public employees must be viewed in light of the total demand of the community for public funds. [see Bourough of Turtle Creek, 52 LA 233 (McDermott, 1968)]

The panel here cannot ignore that the ability to pay issue goes beyond the \$3,000 increased liability for the twelve member unit of police Sergeants and Lieutenants. The City hopes to win the 50% pay out provision that it lost to the patrolmen in their 1976 Act 312 Arbitration Award. It also hopes to hold the line with the present 50% pay out provisions for the firefighters and other units of city employees. Thus, the City's ability to pay and its financial status must be continually reviewed throughout this award. The City clearly has the ability to pay what is sought in this narrow arbitration issue. The panel will view that award in the context of its impact on the benefits of other city employees. [see a similar situation in City of Easton, Pennsylvania, 51 LA 879 (Handsaker, 1968)]

In this regard Arbitrator J. Warren Eardly recently wrote a scholarly decision in which he examined the question of whether there was a "lack of funds" in the City of Benton Harbor so as to justify a reduction in manpower under the terms of the City's agreement with the patrolmen's association. [City of Benton Harbor,

M.E.R.C. 76-5; Eardley, 2/11/77.] That decision was helpful to the panel in that, as a part of the record, it served as a useful analysis of the City's financial situation. The arbitrator therein concluded that there was a sufficient lack of funds to support the City's layoff of police personnel. While such a decision is a helpful guide to this panel, Arbitrator Eardley's decision is not dispositive of the question of whether the City's financial situation ought to cause this panel to reject the Association's last best offer regardless of the merits of that offer. The City may well seek to lay off more personnel in the future so that there would clearly be sufficient city funds to pay the benefits sought now by the Association.

Public Interest and Welfare

The interest and welfare of the citizens of Benton Harbor have also been considered by the panel. The public needs well motivated, highly skilled and fairly compensated police officers so that these employees will perform their duties well. On the other hand, the city's citizens should not be forced to give up other vital or desired city services nor to tax themselves disproportionately in order that their city police officers may receive additional compensation. Some interest arbitration panels have awarded fringe benefits to police officers in spite of a city's financial plight [City of Uniontown, 51 LA 1072 (Duff, 1968)]. While other panels denied police officers benefits because of their city's inability to pay [City of Mount Vernon, 49 LA 1229 (McFadden, 1968)]. Therefore, the equities of the public employees petition for greater benefits will be balanced with the cost impact on the municipality to determine if the public's interest is well served.

V. THE DISCUSSION:

The salary surveys submitted by both parties for comparable cities show that the Sergeants and Lieutenants in Benton Harbor receive annual earnings which are in the same range as those for employees in like assignments and rank in similar Michigan communities. The overall compensation of the bargaining unit personnel, as reflected in their last full collective bargaining agreement, is reflective of the size and location of this city. The salary surveys show what one would expect: that the cities in the more urban areas pay greater salaries and the cities in the rural areas pay less. Benton Harbor pays its Sergeants and Lieutenants at very nearly the same rate as do comparable communities (i.e. \$15,138 for Lieutenants and \$13,738 for Sergeants.) Some salary comparisons are difficult because of the pendency of Act 312 arbitrations in several cities in the survey.

The comparisons on the issue of pay out of accumulated sick leave is as follows in the six key comparable cities:

<u>City</u>	<u>Max. Days Accumulated</u>	<u>Pay Out Formula</u>
St. Joseph	120	50% of Accum.
Niles	180	50% of Accum.
Muskegon Heights	50	100% of Accum.
Grand Haven	120	100% of Accum.
Albion	90	50% of Accum.
Grandville	180	50 cents x yrs x days

<u>City</u>	<u>Max. Days Accumulated</u>	<u>Pay Out Formula</u>
Benton Harbor (1975) Sgt. & Lts. Asso.	No Max	50% of accum. hours and 33% to 100% of rate depending on years of service
Benton Harbor Patrolmen's Asso.	No Max.	100% of accum. hours and 33% to 100% of rate depending on years of service

From this chart, it is clear that prior to 1975 Benton Harbor had one of the more liberal pay out plans. However, it is difficult to compare the different plans because some cities do not pay a lesser hourly rate for terminations at less than 25 years of service as does Benton Harbor. Also, it is not clear if other cities pay on all terminations or if, like Benton Harbor, they will pay less for early retirement. The trend of recent settlements shows that the number of days allowed to be accumulated is increasing in other cities and that the pay out formulas in comparable communities are becoming more liberal. The panel concludes, however, that even with this trend the Association's last best offer would return their members to the top of the list in receipt of this benefit.

But, like the panel in the Patrolmen's Association Act 312 award, these arbitrators do not feel that because the bargaining unit members would enjoy this benefit while other employees in this and other cities do not, that fact is sufficient justification

to adopt the City's last best proposal (see P. 15 of the patrolmen's 312 award). This panel does not conclude that the bargaining unit members here do not received a salary which is comparable to that paid in similar communities as it has been determined that their salaries are in an appropriate range. However, the inclusion of the additional pay out benefits sought by the Association here would not so weight their overall compensation level so that it would be disproportionately high in comparison to the total fringe package paid in like communities.

The panel here places the greatest emphasis on the fact that until 1975 the 12 Sergeants and Lieutenants in this unit were part of the patrolmen's bargaining unit. If they had remained in that unit, these men would still be receiving the benefit they seek through this panel. These command officers were told that it would be best if they formed their own bargaining unit. They did so at the suggestion of the City. In this context, the panel is persuaded that the Association's understanding following the 1975 negotiations is correct--that is that the command officers would receive the same compensation as the patrolmen. The panel believes that this assurance from the City Manager referred to all levels of compensation. Thus, when the patrolmen were awarded the 100% pay out, the City was morally, if not legally, obligated to give the same compensation to the other bargaining unit in the Police Department. The panel concludes therefore that the City had pledged in its 1975 pre-contract

negotiations that it would regard both of the police units on a parity basis and that though these units are separated, they will receive the same basic benefits unless a variation is expressly bargained. A panel in interest arbitration must give great weight to such negotiation commitments [Rochester Transit Corp., 19 LA 538, (Tolley, 1952)].

The City will have to deal with its other bargaining units on the issue of sick leave pay out regardless of the outcome of this award. Certainly the patrolmen's award of 100% pay out is already a fact. This panel believes that a decision that both police bargaining units are to be treated alike will not create a greater problem for the City in its dealings with the fire fighters or the other unions representing city employees.

The Sergeants and Lieutenants of the Benton Harbor Police Department had enjoyed the 100% pay out policy on accumulated sick leave for many years prior to 1975. This benefit was enjoyed long before there was union representation. Their decision to relinquish this benefit in 1975 was accomplished in part because of the City's appeal to their loyalty and partly because they believed the patrolmen would also give up this benefit if they took the lead. After a review of the record, the panel concludes that the bargaining history supports the Association's position. The City had for years found a 100% pay out to be justified and a part of the fair compensation for its policemen. Under the

circumstances, it seems proper to return the command officers to these conditions [see Luckenach Steamship Co., 6 LA 98 (Kerr, 1946) where similar weight was afforded to the prior practices of the parties and the arbitrator denied discontinuance of benefits previously in effect.]

The panel believes that the City has not shown that the difference in pay out levels will all be a cost it will have to absorb. If the police command officers were to receive approximately one-half as much pay out upon retirement, they might be inclined to take more personal leave days charged to their sick leave or to take time off when suffering from a minor illness. The motivation to "use up" sick leave might be particularly strong if a police officer has low morale and he has already accumulated all he can for retirement by the pre-1975 formula. The overtime and extra-duty hours necessary to cover an increase in absenteeism could well offset with actual cash outlay, the hoped for long-term savings to be gained by lesser pay out upon termination.

Further, the City has in the past used the overall compensation of its employees as a factor for consideration in its collective bargaining with them or in interest arbitrations with its police and fire employees. Thus, if the police officers have a high benefit level in any one area, the City will seek to offset benefit levels in other areas. Therefore, it is likely that any additional costs created by this award can be recaptured in part

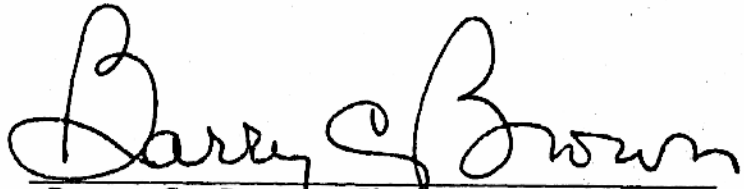
in future negotiation. Surely future efforts to enlarge on sick day eligibility or the rate of accruals each year ought to be limited by the present pay out provisions. Finally, as to the relationship of this award to the other city units--it is not unusual that police and/or fire units have some benefits not enjoyed by other city employees.

The actual cost to the City of a 100% pay out on termination to this unit of employees is small by the City's own calculations. There may be no actual cash flow in the life of this agreement. The maximum sick leave pay out liability accrued by this unit is probably only \$13,000 (\$50,000 for all police employees in the 1974 audit when there were 50 employees including 12 (or 25%) from this unit.) The annual cost of increased liability is offset by lessened sick leave utilization, improved morale and future offsets in bargaining. From all of this, it is concluded that the equities of the employees' last best offer outweigh the City's arguments and its claim that such offer is not financially feasible for the City. It is determined that the City can meet this demand of the Association without being put in a deficit position and that the public's interest is not impaired by such award.

AWARD

The contract between the parties for the period of July 1, 1976, through June 30, 1977, shall contain the Association's last best offer on pay out of accumulated sick pay. Otherwise, this contract shall be a continuation of the prior agreement with a new salary schedule and whatever other benefits mutually agreed upon by the parties.

DATED: July 28, 1977


Barry C. Brown, Chairman


Melvin Farmer, City's Delegate

Concurs ☐ Dissents ☒


Ronald Immoos, Association's Delegate

Concurs ☒ Dissents ☐



CITY OF BENTON HARBOR

MICHIGAN

July 27, 1977

Attorney Barry C. Brown, Chairman
McGinty, Rosewarne, Halverson, Brown, & Jakubiak, P.C.
Woodland Pass Professional Building
271 Woodland Pass, Suite 103
East Lansing, Michigan 48823

RE: Benton Harbor Lieutenants and Sergeants Association
MERC Act 312, File No. 1347(77)B

Dear Attorney Brown:

Enclosed please find the signed Opinion and Award document and the Citys' dissent of the issues of the Award.

Issues of Dissent:

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The City did not convince the Lt. & Sgts. - they gave up the sick leave pay out reduction to receive the 10% pay increase which was the highest granted to them since their affiliation with any organized labor contract.

The Association did not receive any reduction in "other benefit levels". In addition to a 10% pay increase they received, per their contract, (1) expanded Blue Cross/Blue Shield family master medical coverage, (2) additional double-indemnity life insurance in the amount of \$30,000.00, plus \$5,000.00 term life insurance for retired lieutenants and sergeants to age 65, and (3) and expanded vacation schedule allowing them more paid days off.

It was thoroughly understood by all concerned that all other benefits would be set forth in the Citys' Classification Compensation Plan, which covered all other employees except the Patrolmens Association with whom the City was negotiating with at that time. The only item subject to change was Compensation - which the City agreed to pay the Lt. & Sgt. Association any increase in excess of 10% that the Patrolmen Association received as a result of negotiations.

There is no factual evidence to substantiate the claim that the former City Manager, Charles Morrison ever made such a statement during or after negotiation in 1975. In fact, the verbal testimony was to the contrary, in that the City testified to the contrary and Lt. Hardy (a 20 year officer) of the Association negotiating team testified that James Peeples made the statement

when in fact James Peeples only became City Manager February 23, 1976, and had never participated in any labor negotiations for the City. There are no minutes, letters, notes, or files of any kind to substantiate the Association's claims.

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The projected \$2,000.00 cost as stated in the Ability to Pay section of the Award does not correspond with the City's projections (enclosed exhibit A).

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The fact that the Lt. & Sgts. opted to form their own unit, appears to be being held against the City. The bargaining team of the Association had a combined 46 years of service (Lt. Rellis 18 years, Lt. Hardy 18 years, and Sgt. Schneider 10 years) and all had previously negotiated contracts for the Patrolmens Association. They are senior, experienced officers and knew full well the meaning of the contract document that was ratified by their Association and signed by them. Again, there is no substantiation of the Association's claim that the City gave any type of assurance on sick leave.

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The Panels belief that their decision "will not create a greater problem" with firefighters and general employees is not valid. The fact of the matter is that it was the Firefighters who first agreed to the reduced sick leave payout in 1975 and as a result of this pending decision, the City as a result of this pending decision, had to agree per a Letter of Understanding (enclosed exhibit B) to reopen negotiations on the sick leave payout issue. Also, this is now a major item of negotiation with the general employees A.F.S.C.M.E. union.

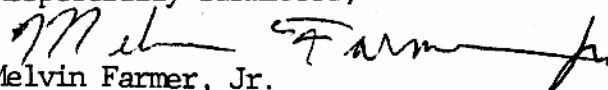
The Panels' conclusion that because an employee always had a benefit, they therefore, should always be entitled to it whether or not they negotiate it away for something else, refutes and erodes the whole bargaining procedure. The Panels' conclusion implies that whatever the City has gained through legal negotiations one year can be arbitrarily returned to the Association when they do not want to hold to that position the next year. Yet the City is expected to continue whatever benefits it provided in the past, regardless of its ability to pay for them or plan its future solvency.

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The statement that "additional costs" can be recaptured in future negotiations is not consistent with the trend of negotiation and/or arbitrators awards. This is borne out by this pending decision, whereby the City did gain, through negotiation, an item of particular concern and the Panel has decided to give it back to the Association.

The City contends that the decision reached by the Panel is not supported by competent, material and substantial evidence on the whole record per 423.240 Section 10 of MERC Act 312, P.A. of 1969, and respectfully request the Panel to reconsider its decision in favor of the City.

Respectfully submitted,


Melvin Farmer, Jr.
City Manager