

2/1/79 Aub

In the Matter of the Arbitration Between:

CITY OF BENTON HARBOR

-and-

BENTON HARBOR LIEUTENANTS AND
SERGEANTS ASSOCIATION

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APPEARANCES:

For the City: Mel Farmer, City Manager

For the Association: John Dewane, Attorney

This matter was submitted to binding arbitration under Act 312 of the Michigan Public Acts of 1969, as amended, which provides for compulsory arbitration of labor disputes in municipal police and fire departments.

Benton Harbor is a small community adjacent to the City of St. Joseph, the county seat, in the southwestern portion of the State of Michigan. The City covers an area of 4.3 square miles.

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 at further decrease to 15,874.

I. WAGES 7/1/77 - 6/30/78

SERGEANTS

Last best offer of the City of Benton Harbor.

<u>7/1/77</u>	<u>1/1/78</u>
\$15,717	\$16,117

Last best offer of the Association:

\$16,280	\$17,260
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Kanner, Richard L.

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Neither party submitted evidence of wages in comparable cities for the above first year of the contract.

The City's average offer as to Sergeants in the above period is \$15,917. The Association's average offer is \$16,770.

There being no comparables submitted, the Panel is of the Opinion that the following statutory criteria is applicable:

Section 8..."As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9..."

Section 9. "Where there is no agreement between the parties, or where 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:

(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.

The base wage for Sergeants as of July 1, 1977 is \$15,368.

Therefore, the City's average offer for 1977-78 of \$15,917 is a 3.5% increase. The Association's average offer for 1977-78 is \$16,770 and is a 9.1% increase.

The Association argues that its offer is justified by virtue of an increase in cost of living of 7.4% from June 1977 to

June, 1978. However, it is to be noted that the Firefighters Association only received a six percent increase for 77-78. Thereby the issue resolves down to a choice between the City offer of 2.5% below the 6% Firefighter increase, and the Association's offer of 3.1% above the Firefighters increase.

FINANCIAL ABILITY OF THE CITY
TO PAY

The City argues that it does not have the financial ability to meet the Association's offer. The subject city alleges such inability to pay because of its poor financial condition.

The City's argument is hereafter recited from its brief:

"The City of Benton Harbor has been hit by the loss of industrial jobs and revenues. Three large employers which employed over 1100 employees, Benton Harbor Malleable Industries, V-M Corporation, and Superior Steel, recently shut their doors, and several other industries appear on the brink of bankruptcy.

Of the activities operated from 1978-79 General Fund budgeted of \$3,337,321.00, the largest activity costwise is the Police Department budget of \$1,040,496.00 or 1/3 of the total General Fund. The total amount of Federal Revenue sharing (\$467,536.00) funds which the City annually receives this year, and may be used for General Fund purposes has been budgeted exclusively for the Police and Fire Departments. As a percentage of the total budget for the activities operated from the general fund, the amount 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 62% of the City's work force of 330 employees, high unemployment, declining tax base, operation of the City under the maximum millage which may be levied under the State law and the City's Charter, declining local 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. In light of this bleak background, the City submits that its proposal regarding each of the issues should be sustained...."

"Cost of fringe benefits already received by members of this Association adds an additional amount of approximately 2% in cost; Further, roll up costs amount to approximately 33% so that for every dollar increase in wages, the City will experience an additional 33¢ in cost because of wage related fringe benefits."

Ability to pay is a most difficult issue. Where the City runs a substantial deficit or is so financially pressed as to be under the control of the Michigan Finance Commission, considerable weight has to be given such fact. However, in the subject case, Harold A. Anderson, Assistant Financial Director testified that the City came from a deficit position in 1976 to a "black" position in fiscal 7/1/77 - 6/30/78. (TR 55). This improvement was made in spite of the fact that on March 15, 1978 the City repaid a loan made by the Police and Fire Pension Fund in the amount of \$313, 360.00 (TR 51).

According to Anderson, although there is presently a cash flow problem, it is being rectified, albeit with some difficulty.

Therefore, the Panel is persuaded that the City's financial plight is not so severe as to over-balance the other statutory criterion above set forth.

CRIME STATISTICS

The City further argues that crime statistics in the City are down. Such factor is significant, but only where crime statistics are also proffered as to other comparable cities. That is to say that the Panel has to give considerable emphasis to median wages paid in comparable cities. Therefore, where hypothetically crime is reducing in all or most of these comparable cities, but still the median is higher

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than the Association's offer, than the fact that the subject city's crime is down is academic. No evidence was submitted, as aforesaid, as to comparable cities wages or crime statistics as to the first year of this contract.

Taking all factors into account, the Panel is persuaded to the Association's offer when considering the added factor of 7.4% cost of living increase during 77-78.

AWARD

The Panel awards the Association's offer as to Sergeants for July 1, 1977 - June 30, 1978.

LIEUTENANTS - 7/1/77 - 6/30/78

Last best offer of the City of Benton Harbor.

<u>7/1/77</u>	<u>1/1/78</u>
\$17,296	\$17,696

Association's offer:

\$17,960	\$19,040
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The average offers for Lieutenants by both parties for the year 7/1/77 to 6/30/78 amounts to:

- Association offers 9.1% increase
- City offers 3.2% increase.

Again, and for the same reasons as above noted in connection with the Sergeants wage proposal, the Panel is persuaded to the Association's offer.

AWARD

The Panel awards the Association's offer as to Lieutenants for the year 7/1/77 - 6/30/78.

SERGEANTS' SECOND YEAR -
7/1/78 - 6/30/79

Last best offer of the City of Benton Harbor

<u>7/1/78</u>	<u>1/1/79</u>
\$16,845	\$17,550

Last best offer of the Association.

\$18,290	\$19,390
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COMPARABLES - STATUTORY CRITERION

"Section 9. Where there is no agreement between the parties, or where 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:

(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.

In the Panel's view the above statutory criteria emphasizing comparison with comparable communities is to be given considerable emphasis. This is for the reason that the rationale of Public Act 312 is based upon the long standing labor credo of equal pay for equal work. Thereby, the median wage paid by comparable communities is the standard to which the subject city is to be compared. Ideally, therefore, most comparable communities should eventually be clustered around the same wage level. The above principle is thereby served, i.e., equal pay for equal work.

COMPARABLES

The Association submitted a list of twenty-five comparable cities denoting wages paid for Sergeants which included cities from all over the State of Michigan. (Association 10). These cities are comparable in that their respective populations correspond with that of Benton Harbor. The median wage reflected upon such exhibit is \$18,920.00.

The City submitted three cities as comparable denoting a median for Sergeants at \$16,600.00.

The Association's offer for 1978-79 for Sergeants has to be the average of the 7/1/78 offer of \$18,290.00 and the 1/1/79 offer of \$19,390.00 or the sum of \$18,840.00. Therefore, the Association's median offer is \$2,240.00 above the City's comparable median/figure of \$16,600.00. It is \$80.00 below the Association's comparable figure of \$18,920.00.

The City's offer as of 7/1/78 for Sergeants of \$16,845.00 and as of 1/1/79 of \$17,550.00 averages to \$17,197.00 which is \$597.00 above its \$16,600.00 median denoted in its comparables, and \$1,723.00 less than the Association's median of \$18,920.00 as denoted on its comparables.

In selecting between the comparables submitted by both parties, the Chairman is persuaded to the efficacy of the Association's exhibit 10. This is for the reason that 25 cities in the same population range represents a fairer sampling than does the three cities denoted on City Exhibit #7.

AWARD

Therefore, comparison of the City's average offer for 1978-79 of \$17,197.00 and the Association's average offer of \$18,840.00 denotes that the Association's offer more closely approximates the median of \$18,920.00 denoted on the Association's exhibit setting forth comparables.

LIEUTENANTS - 7/1/78 - 6/30/79

The City of Benton Harbor last best offer.

7/1/78

\$18,146.00

1/1/79

\$18,696.00

The Association's last best offer.

\$20,180.00

\$21,390.00.

As to the Lieutenants, the Association's offer of 7/1/78 at \$20,180.00 and as of 1/1/79 at \$21,390.00 averages to \$20,285.00.

The City's offer of 7/1/78 at \$18,146.00 and as of 1/1/79 at \$18,696.00 averages to \$18,421.00.

The Association submitted 21 comparable cities denoting a median wage of \$21,225.00. (Association #11).

The City submitted four comparable cities denoting a median wage of \$17,589.00. (City Exhibit #7)

Therefore, the Association average offer for 78-79 of \$20,285.00 is \$940.00 less than the median per its exhibit, but \$2,464.00 more than the median per the City's exhibit. The City's average offer for 1978-79 of \$18,421.00 is \$832.00 more than the median per its exhibit, and \$2,804.00 less than the median of \$21,225.00 per the Association's exhibit.

Again, the Arbitrator is persuaded to the efficacy of the Association's exhibit denoting 21 comparable cities for reasons as aforestated. Therefore, comparison of the Association's average offer for 1978-79 of \$20,785 with the City's average offer of \$18,421 denotes that the Association's offer more closely approximates the median of \$21,225 denoted on Association Exhibit #11.

AWARD

The Panel awards the Association's offer as to Lieutenants for the period 7/1/78 thru 6/30/79.

II. SICK LEAVE PAY OUT

City of Benton Harbor last best offer.

"Article XVIII, Section 6 0 Sick Leave Payout

"Payment of Unused Sick Leave: Accumulated unused sick leave shall be converted into cash, and paid to an employee (or, in case of his death, to his beneficiary or beneficiaries). The terminating employee or beneficiary shall have the option of cashing either fifty (50%) percent of the total sick leave days accumulated or one hundred (100%) percent of the number of sick leave days accumulated as of July 1, 1978, whichever is greater. Employees employed after July 1, 1978, shall be entitled to fifty (50%) percent of the total accumulation.

Conversion of unused sick leave into cash shall be computed as follows, at the prevailing rate:

1. At 33 1/3% of the daily rate at time of termination with one (1) to fifteen (15) years of continuous service.
2. At 50% of daily rate at time of termination with from fifteen (15) to twenty (20) years of continuous service.
3. At 75% of daily rate at time of termination with from twenty (20) to twenty-five (25) years of continuous service.
4. At 100% of daily rate at time of termination with twenty-five (25) or more years of continuous service.

Provided, however, the terminating employee or beneficiaries shall have option of cashing either 50% of the total sick leave days accumulated or 100% of the number of sick leave days accumulated as of July 1, 1977, shall be entitled to 50% only of the accumulated sick leave as herein provided by the above formula.

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 (6) months will be considered a year. A fractional part of a year less than six (6) months will be disregarded.

Terminal sick leave shall be computed in accordance with the provisions of this section and deductions from terminal sick leave be made as herein provided. Unused sick leave cashed in at time of termination shall not be included in computing yearly averages of retirement benefits, or in computing earning for Social Security records." (City's Brief)

Association's last best offer.

"The Association proposes no change in the current language regarding sick leave pay out as contained in the Judgment entered in the Circuit Court for Berrien County on January 13, 1978, a copy of which was entered in to evidence as association exhibit 7.

The Association exhibit 7 recites a Judgment filed in the Circuit Court for the County of Berrien file #77-2826-CZ-2 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 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 of 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." (Association Exhibit #7)

The above Judgment was entered to enforce a previous PA 312 Award.

The above Association offer recites the above provision that has been in the labor contract between the parties for the past twenty-five years.

The City has presented a list of thirteen comparable cities denoting that these cities have a maximum sick leave pay out on death or retirement of from 45 days to 200 days. (City exhibit #13). Further, the subject City's Firefighter Contract (City exhibit #11), and also the general employees contract (City exhibit #12) provides for the same cap of 50% of the total accumulation of sick leave, or optionally 100% of total accumulative sick leave through 7/1/78 whichever is greater. This factor is worthy of considerable emphasis as comparison with other city employees is one of the statutory criteria. (Subsection 9 D above).

The City offer does not deprive Association members of any sick leave already earned, but applies only to the period subsequent to 7/1/78.

The Association points out that the cost of the present accumulated sick leave pay out is only approximately \$3,000.00.²

² See Public Act 312 Award dated July 28, 1977. (Association Exhibit #6)

Hence, such low cost justifies continuation of the present plan.
The Panel does not agree.

CONCLUSION

As above noted, the status of comparable communities and comparable benefits paid to the subject cities' employees must be stressed in a PA 312 proceeding. The fact that a certain benefit has been enjoyed by the Association for a long period of time should be considered. However, such fact does not absolutely foreclose consideration of the status of such benefit among comparable communities and among the city's other employees.

It should be emphasized in this connection that a PA 312 proceeding is not a one way street wherein only the Association may expect to achieve benefits. On the contrary the City is also entitled to have its demands considered among which may be a demand to abrogate a long standing benefit to the Association.

AWARD

The Panel awards the City offer as to accumulated sick leave pay out.

III. HEALTH INSURANCE FOR RETIREES

The City of Benton Harbor's last best offer is as follows:

Article IX - Insurance

"Section 1. Group Insurance - Hospital and Medical:

The City shall provide at City expense for all active Lieutenants and Sergeants and their dependents a hospitalization and medical insurance plan which shall provide benefits and coverage at least equal to the benefits and coverage previously provided under the Blue Cross-Blue Shield Group Policy which was in effect on December 31, 1977.

In the event that any benefit or coverage is denied under the plan thus provided by the City and such benefit or coverage would have been granted under the Blue Cross-Blue Shield Group Policy in effect on December 31, 1977, such benefit or coverage

shall be included in the plan and reimbursement for charges which would have been covered by the Blue Cross-Blue Shield Group Policy shall be made under the plan." (City Brief).

Association's last best offer is as follows:

"The last best offer of the Association on the issue of insurance for retirees is that the following language should be added to Article IX Sec. 1, relating to the group hospital and medical insurance program:

The City shall continue to provide an opportunity for retired lieutenants and sergeants and their dependents to participate in said plan at their own expense, provided that such expense shall be at a group rate fixed in such a manner so that it is comparable with the cost of the continuation program which was available to such retired employees under the blue cross-blue shield group policy which was in effect on December 31, 1977, with appropriate adjustments for changes in costs and changes in experience factors."

Formerly the City covered employees and retirees under a Blue Cross-Blue Shield plan. However, retirees paid their own premium. In September 1977, the City switched to a self-insured plan. The Association seeks to continue the same insurance retirement plan for retirees as was formerly in effect.

On or about February 1, 1978, the Association sought an injunction to restrain the City from discontinuing Blue Cross-Blue Shield plan. The case was settled on the basis of the following stipulation:

1. "The City shall, on February 1, 1978 implement and keep in effect until the parties mutually agree otherwise, a hospital and medical insurance program for active and retired members of the Plaintiff associations, and their dependents, which provides benefits and coverage that is at least equal to the benefits and coverage which was provided under the Blue Cross-Blue Shield hospital and medical insurance program that was in effect on December 31, 1977."

According to Sergeant Dwight Kloiler, the basis for such settlement was that the City was to be allowed to discontinue the Blue Cross-Blue Shield plan, but in return the City agreed to continue the retirees under the City's self-insurance plan.

The City argues that prior to such settlement agreement it had the option to include retirees in the Blue Cross plan. It asserts that the settlement agreement intends to allow it to continue such option at its discretion.

The Arbitrator cannot agree with the City's position. The language in the settlement agreement is clearly mandatory by use of the word "shall". The Arbitrator is not disposed to ignore the recent agreement of the parties wherein the City achieved a quid pro quo i.e., dismissal of the lawsuit. The fact that the subject issue was settled pursuant to litigation brings into play the following statutory criteria.

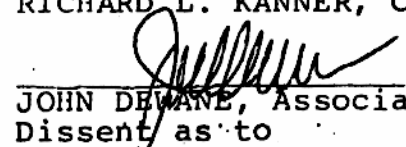
- 9.(h) "Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

Such settlement is an extraneous factor which can be considered by the Panel.

AWARD

The Panel awards the Association offer as to health insurance for retirees.


RICHARD L. KANNER, Chairman


JOHN DEWANE, Association Panel Member
Dissent as to

Dated: February 1, 1979

MET, FARMER, City Panel Member