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Benton Harbor, City of

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

CITY OF BENTON HARBOR

And

BLOSSOMLAND LODGE NO. 100
FRATERNAL ORDER OF POLICE

Nov., 1970

DECISION AND AWARD OF ARBITRATION PANEL

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Reinke, Willis A.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

City of Benton Harbor

And

Blossomland Lodge No. 100
Fraternal Order of Police

DECISION AND AWARD OF ARBITRATION PANEL

On October 2, 1970, the undersigned Willis A. Reinke, was appointed by the Chairman of the Employment Relations Commission, Robert G. Howlett, as impartial chairman of a panel of arbitrators in a dispute involving the City of Benton Harbor and Blossomland Lodge No. 100, Fraternal Order of Police. The Honorable Wilbert F. Smith, Mayor of Benton Harbor, and Richard S. Hennes had been named by the City and the Police respectively as their delegates.

A pre-hearing conference with counsel for the parties, Samuel R. Henderson and Seymour Zaban, was held in the offices of the latter on October 12, 1970. Hearing was held and testimony taken at the Benton Harbor Library on November 12, 1970 from 10:00 A.M. until 7:00 P.M. Both parties were afforded full opportunity to present evidence and to examine and cross examine witnesses.

APPEARANCES

For the City

Samuel R. Henderson
City Attorney
Don C. Stewart
City Manager

For Police Officers Association

Seymour Zaban, Counsel
Fred Byers, Patrolman
Benton Harbor Police Department
Harry Leonardson, Sergeant
Benton Harbor Police Department
Francis Fleischer, Lieutenant
St. Joseph Police Department

A verbatim record of the hearing was made by Robert Holle, reporter for Holle and White, South Bend, Indiana. Transcripts were not ordered by the parties.

Conferences were held in Benton Harbor by the arbitrators on November 13, 1970 and again on November 17, 1970. The decision of the Panel is unanimous except as to one item to which the Honorable Wilbert F. Smith dissents which will be duly noted hereinafter.

Joint Exhibit #1 consists of a list of contract proposals numbering nine (9) to which the parties had already agreed. Joint Exhibit #2 is a list of thirty-two (32) original proposals including those to which the parties had agreed as well as those withdrawn and those still unsettled. Joint Exhibit #3 is an agreement dated July 6, 1970 by and between the parties providing for the contingency of arbitration and further providing for retroactivity in the event the Arbitration Panel should award an increase in compensation.

The substance of the Police testimony consisted of oral testimony by the three police officers listed supra relating generally to conditions of work, wages, hours and related matters in the area. The Police also called the City Manager, Don Stewart, for cross examination to lay a foundation for certain evidence thereafter offered.

In addition the Police offered twenty (20) exhibits in evidence as follows:

1. Base pay scale for St. Joseph Police Department
2. List of Police officers who had left the Department from 3/1/65 to date
3. Michigan Municipal League, Information Bulletin #109 (Revised, Salaries, Wages and Fringe Benefits in Michigan Municipalities over 4,000 Population, 1970)
4. Rules and Regulations of the Benton Harbor Police Department

5. Extract from annual reports of offenses known to the Benton Harbor Police Department as reported to the FBI for the years 1966, 1967, 1968, 1969
6. Agreement between City of Niles and Niles Police Officers Association effective August 1, 1969, together with extract of salient features relating to seniority, Hours and Holiday, vacation, sick leave and bereavement pay.
7. List of salaries of City Managers in comparable cities
8. Population of cities in cities surveyed, 1960 census.
9. List of survey cities providing amount of Hospitalization Insurance provided for dependents and proportion of cost thereof borne by city.
10. Ditto Life Insurance
11. Item from Detroit Free Press, November 11, 1970 regarding Battle Creek Police settlement
12. Item from Detroit Free Press, October 27, 1970 regarding Taylor Police settlement
13. Pay increase comparison cost for Police proposal
14. Fraternal Order of Police, State Lodge of Michigan 1969 Survey of salaries and working conditions of Michigan Law Enforcement Agencies.
15. Ditto 1970
16. Michigan Municipal League Report of Salary and Wage Rates, Cities over 4,000 population, 1970.
17. Local area comparisons of police wage scales including Benton Harbor, St. Joseph, Niles, Benton Township, Taylor, Holland, Monroe and Petosky.
18. Pay scale of Benton Harbor Police.
19. Increases in pay scale of Benton Harbor Police 1962 and 1970
20. Wage scales various construction trades in Benton Harbor area 1970

The City offered oral testimony by City Manager Don Stewart relating primarily to budgetary and fiscal matters. In addition the City offered in evidence the following exhibits:

- A. Tax data annually from 1960-61 to 1970-71 including State Equalized Valuation, Total General Operating Tax Revenue, Total General Operating Income, Police Department Operating Expenditures and Police Payroll.
- B. Figures for 1960-61 to 1970-71 showing population per census, Funds from State sources and Police and Firemen Pension contributions.

- C. Number of sworn officers, Benton Harbor Police and Fire Departments and other city employees, 1960-61 to 1970-71
- D. Data from 14 cities of comparable size, including Benton Harbor, listing population, number of sworn police personnel and 1970 tax base
- E. Figures for 1960-61 to 1970-71 showing pay comparisons for City of Benton Harbor laborers, clerk typists, Light equipment operators, Firemen and Police Patrolmen
- F. Figures showing rise in cost of living 1958-59 to 1970-71
- G. Police Department comparative per capita amounts in personnel salary and wage expenditures for 14 cities 10,000 to 25,000 population (1960 census)
- H. Extract from International City Management Association Publication, September 1970, showing Police and Fire Department per capita expenditures.
- I. 1970-71 Budget, City of Benton Harbor
- J. City of Benton Harbor Audit Report, year ended June 30, 1970
- K. Current City of Benton Harbor Wage Plan

ISSUES AND PROPOSALS

Joint Exhibit #2 lists the following proposals as either unsettled or withdrawn and therefore presumably before this Panel for decision.

- 1. One vs Two year contract
- 2. Pay Increase
- 3. Call In Procedure for filling shift vacancy including application of seniority
- 4. Longevity Pay
- 5. Call Back Pay - for Court appearances, et. al.
- 6. Carrying Revolver off duty
- 7. Second Weapon to be supplied
- 8. Dry Cleaning allowance
- 9. Cost of Medical Insurance for Dependents
- 10. Life Insurance
- 11. Sick Leave
- 12. Job Incurred Injury - supplemental pay

13. Holidays (See discussion and award)
14. Vacation Increase
15. Funeral Leave or Bereavement Pay

POSITION OF THE PARTIES

The Police Officers Association

The Police contend that their salary schedule and fringe benefit schedule has fallen behind those of Police Departments in cities of comparable size and those in the area for example: St. Joseph, Niles, Benton Township, Taylor, Holland, Monroe and Petosky. (See also Police Exhibits 9, 10 and 17 - identified supra as well as Exhibits 3, 14 and 15.)

A considerable preponderance of the evidence appears to support the Police contention particularly with respect to salary, medical insurance and life insurance. This also appears to be true with respect to the call in and call back pay issues so far as the Panel can determine.

With respect to vacation schedule, number of holidays, sick leave and bereavement pay, the evidence is not so conclusive. It appears to the Panel that generally speaking these items vary widely from locality to locality and have developed on a local basis with no clear pattern prevailing.

The Police also contend that there has been what they consider a relatively high turnover in personnel over a five year period which they imply is due to the present relatively unfavorable position of the Benton Harbor Police salary and fringe benefit schedule vis-a-vis other areas. While the Panel might be willing to concede that this may have had some effect in motivating some policemen to resign in search of greener pastures, we are unable to bring ourselves to believe that it has had the wholesale impact implied in Police Exhibit #2, identified supra. While we understand the implications of

Exhibits 18 and 20, identified supra with respect to pay schedules of the City Manager, Chief of Police and Construction Trades, we do not consider them necessarily entirely germane to the issue here.

The Police also point out the steadily increasing rise in actual offenses from 1965 to 1969 necessitating greater activity on the part of the Police Department. We also note, as they state, the impact of the Miranda and other U.S. Supreme Court decisions which require a greater degree of skill and finesse in handling alleged violators than may have prevailed in the past.

The City's Position

In brief the City is "pleading poverty" or inability to meet the Police proposals because of its parlous fiscal position. The record shows that the City Manager, speaking for the City, indicates that he and the Council are not unsympathetic toward many of the Police contentions and that he and they recognize the merit and equity inherent therein.

It seems worthwhile at this point to briefly relate the developments of the past ten or twelve years to explain how the City of Benton Harbor finds itself in its present fiscal position.

In 1959 the State Equalized Valuation was \$67,689,296.00. This declined to a low of \$57,000,000.00 in 1963-64 and has gradually risen in succeeding fiscal years until it is now \$67,000,000.00 for fiscal 1970-71. Since the fiscal year 1962-63 the maximum millage (10 mills) provided by the Charter has been levied.

Starting about 1959 the City Manager and City Council saw the handwriting on the wall and decided to move toward attempting to correct the declining position of the City. The first move was toward reclamation of the river front. Federal

approval was secured toward a \$6,000,000.00 Urban Renewal plan with the City's share to be \$1,000,000.00. An Urban slum area was converted to business and light industry involving relocation of 347 families. Coinciding with this however, a County-wide reappraisal for tax purposes by Berrien County resulted in the loss of \$12,000,000.00 from the tax base as noted supra.

Also a continuing influx was occurring of a class of people which vastly swelled the welfare rolls. This presumably has had a corresponding impact on the rise in the crime rate referred to in the discussion of the Police Position. In this connection the State of Michigan found an ancient ruling requiring the City to pay for upkeep of city prisoners in the County jail amounting to an added cost of some \$40,000.00 per annum. Also at the urging of the down-town business community, the Council voted to eliminate parking meters which resulted in the elimination of some \$70,000.00 per annum in income.

The old City produce market was in the core of the Urban Renewal area. A new market was built which is paying its own way, but the City is paying \$30,000.00 per annum on its indebtedness for construction of the market. The City has \$300,000.00 from its general fund tied up therein with no chance of recovery.

The five year Urban Renewal plan approved by the Federal Government in 1965 which was over 90% complete in July of this year 1970 has increased in cost as the result of the general inflationary trend from \$6,000,000.00 to \$10,000,000.00. No provision has been made for the added cost to the City, whose original share was estimated to be \$1,000,000.00.

On the plus side, the City is resorting to strict code enforcement of prevent further deterioration of existing buildings, particularly in the down town area with the objective

of holding clearance and removal to the minimum and prevent further erosion of the tax base. The City has received a \$1,300,000.00 "Model City" grant from the Federal Government which involves a 45% local contribution. The cost, however, has risen by \$170,000.00 for which the City will not be compensated.

Improvements to the water system, originally estimated to cost \$368,000.00 with a \$225,000.00 Federal grant, are now estimated to cost \$598,000.00.

The City Manager has pointed out to the Panel members that in a number of instances the only salvation for the City has been the voluntary contributions by industry to alleviate emergency fiscal conditions.

For several years preceding the current year the City has managed to balance its budgets by selling off tracts of land available from the Urban Renewal program. It has now come to the end of this means of emergency financing. To cap its other woes the preliminary report of the 1970 census shows a loss of about 2,600 in population. This, of course, if it becomes finalized, will result in a loss in those revenues from the State which are based on population.

The budget for fiscal 1970-71 now reflects only \$6,000.00 still available in the General Contingency Fund. From all the Panel can determine and all the expert testimony of the City Manager Don Stewart shows on examination and cross-examination there is no water to be wrung from the budget. In fact, anticipating a crisis this fiscal year, the Council on advice of the City Manager went to the voters for a 4-mill special assessment to run for a three-year period expiring in 1973. This was presented to the voters as necessary to maintain the Police and Fire Departments at current strength and anticipated no increases in the current fiscal year ending June 30, 1971. The millage was approved by the voters.

In addition it has been the historic practice of the City to apply increases negotiated with the Police Officers Association uniformly across the board to the other city employees. This applies to both salary schedule and fringe benefits. Therefore, although on the surface, any action the Panel might take toward accepting the Police position theoretically applies only to them, as a practical matter it would be an across-the-board city employee increase. The City contends that any major increase in this fiscal year certainly can only result in a cut-back in Police and Fire Department personnel, a result which is obviously to be deplored in light of the rising crime rate.

DISCUSSION AND CONCLUSIONS OF THE PANEL

The Panel attended with great care the presentation of positions by the parties and appreciate the courtesy and thoughtfulness with which witnesses responded to our questions. We met on the day following the formal hearing and again on November 17, 1970 in a serious effort to arrive at an award which would be just and equitable to both parties. As the result of these deliberations we have reached some conclusions which will be discussed now.

The statute pursuant to which this proceeding came into being and this panel functions poses certain specific criteria which the panel must consider in arriving at a conclusion:

- "(a) The lawful authority of the employer
- (b) Stipulations of the parties
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

- (a) In public employment in comparable communities.
- (b) 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.

The panel unanimously agrees that the fiscal position of the City during the Fiscal Year ending June 30, 1971 precludes awarding any salary increase during that period. We further agree, however, that under every criteria other than (c) supra the Police case has merit. Faced with this dilemma, after serious consideration the Panel has decided to establish its own priorities in attempting to accommodate to the greatest extent feasible the demands of the Police which we find reasonable and justified. These are based in large part upon the closing summation of counsel for the Police Officers Association, particularly his response to the Chairman's request for his suggestion as to priorities and to the opinions of the Police Officers Association delegate to the Panel.

We have determined that the cost of the additional two holidays tentatively agreed upon by the parties would be better applied to purchasing a \$7,500.00 straight life insurance policy with double indemnity provision. ~~The current number of~~ paid holidays is not markedly out of line with practice in other cities, although there is a wide variation. On the other hand, Life Insurance is a very generally accepted fringe

benefit particularly for Policemen and the policy we propose would place Benton Harbor in a very favorable position comparison-wise.

Regarding improved vacation we again feel that the current policy is not entirely out of line but in the order of priority we have set it takes a lower rank and we cannot grant the request at this time. Although 3 days Bereavement Pay is becoming increasingly common the same applies.

With respect to the request for five additional sick leave days annually the Panel denies the request and further offers the following for consideration of the City Council at the appropriate time.

During the course of the formal hearing and in the panel's discussions subsequent thereto it became apparent that the panel members were all of the opinion that over the years the City had allowed itself to become encumbered with a contingent liability that is not only unfunded but is getting increasingly out of hand. We refer, of course, to the provision in the wage plan whereby city employees may accumulate unused sick leave without limit and upon their retirement receive a lump sum payment therefor amounting to severance pay. We in no way are indicating disagreement with severance pay as a principle but do feel the City Council might well rethink the present approach. For their consideration we point out that last year Congress passed a law providing that retiring Federal employees would have their unused sick leave added to their length of service for determination of pension benefits. This is one approach which might well net the retiree more in the long run and at the same time could be considered actuarially when the City finally unravels the present complications involving its Employee Pension Fund.

Taking another leaf from the Federal Book, around 1950 Congress and the Civil Service Commission realized that during and following World War II, certain Federal employees had partly through necessity and partly otherwise accumulated vast amounts of annual leave which was being paid off on a lump sum basis upon retirement. New regulations were promulgated providing that all accumulated annual leave in excess of 60 days would be used by a date certain. Those employees left with 60 days would be allowed to retain that amount until retirement at which time the lump sum payment would be made. The same applied to any amount more than 30 but less than 60 days. In the future employees would be allowed to accumulate up to thirty days but at that point would either have to use their leave annually or forfeit it.

It occurs to the Panel that the City Manager and City Council might give consideration to combining these two in some form so that the benefit currently accrued by present employees would not be destroyed, but the pyramiding aspect of the present approach would be brought under control. This present approach appears inequitable when one contrasts the situation of the unfortunate employee who is plagued by a siege of serious illness or incapacity and uses all his sick leave before retirement and his more fortunate colleague who, blessed with good health, accumulates a vast amount of sick leave at a low rate of pay and is lucky enough through pay increases and promotions to be paid off at double or better the rate at which a large amount of the leave was accumulated. The Panel recognizes the foregoing is gratuitous advice and in no way binding on the City but it explains, we believe, our reason for disapproving the Police request.

With respect to supplemental pay for job incurred injuries it is our understanding that the present policy is

to allow 10 weeks at full pay and we believe in light of action we shall take on other issues the City is not in a position to undertake any other burden at this time.

Except where current policy may provide for cleaning or replacement of uniforms damaged in line of duty we do not see fit to grant a dry cleaning allowance.

The balance of the open issues listed supra will be discussed below in the Panel's Decision and Award.

DECISION AND AWARD

1. Salary Increase

The Panel feels, as indicated earlier, that the evidence submitted by the Police Officers Association would normally warrant some increase in the current fiscal year, certainly at least 6% to compensate for the loss in buying power attributable to the continuing inflation. However, search as we may, we can find no money to pay for it. However, we feel that by granting a two year contract and splitting an increase in the fiscal year 1971-72, some measure of equity will be achieved. The City will be on notice that it has a commitment to meet next year and can take what steps it sees fit to allow for it.

Accordingly, with Mayor Wilbert F. Smith, City Delegate dissenting, the Panel awards an 8% pay increase to the Police effective July 1, 1971 and an additional 8% effective January 1, 1972. It should be noted that the panel considers 12% of this in lieu of the cost of living increases prevalent in industry and elsewhere for a 3 year period. The remaining 4% is to help toward keeping the salary schedule in Benton Harbor somewhat abreast of other municipalities. It should be further noted that the Mayor does not dissent on the ground that the Police are not entitled to an increase, but solely on

the basis of the City's troublesome fiscal position as discussed in detail supra. The Panel notes that 18 of the present 51 sworn officers will receive interim step increases this year.

2. Health Insurance

Effective January 1, 1971 the City will contribute an additional \$10.00 per month toward paying the cost of the spouse and/ or dependents Blue Cross - Blue Shield Coverage. Effective July 1, 1971 the City will assume full cost of Blue Cross - Blue Shield for employee and dependents. In addition where the spouse is employed elsewhere and covered by health insurance the City should take care that there is coordination of benefits. In effect this will also amount to a modest increase in take home pay for the employee effective January 1, 1971.

3. Life Insurance

Effective as soon as possible after the date of this award the City will negotiate a group life insurance policy - straight term life insurance in the amount of \$7,500.00 with double indemnity in case of accidental death or death in line of duty. This is in lieu of and at a cost roughly equivalent to the two additional holidays previously tentatively agreed to by the parties.

4. Call Back Pay

Effective upon date of this award the City will pay Police Officers a minimum of 2 hours at time and one-half call back pay for court appearances and similar necessary duties.

5. Call In Pay

Effective upon date of this award regular Police Officers shall be afforded the opportunity to work in the event of necessity for recall before calling in auxiliary police. However, taking into consideration the fact that under a given set of circumstances a particular officer's services may be required, strict seniority need not prevail but the

Chief of Police or his designate shall be responsible for balancing overtime so far as possible.

6. Carrying Revolver Off Duty

It is understood that by agreement on the record at the close of the hearing on November 12, 1970 the Police have withdrawn their request for \$1.00 per day additional compensation and that the Police Department will continue its requirement with regard to carrying of revolver off duty.

7. Additional Weapon

Assuming that weapons are available without charge through the Headquarters State Police, the City will make the necessary arrangements to provide such weapons to Police Officers who wish an extra weapon presumably to be carried concealed.

Other agreements reached by the parties prior to the convening of this arbitration Panel including Coffee breaks, practice ammunition allowances, \$100.00 per year increase in allowance to a total of \$300.00 for the Plain Clothes Division, Establishment of a Grievance Procedure, Special Compensation for Education achievement, Pay for negotiating time and False Arrest Protection are added to and made a part of this award.

The Panel feels that both parties have shown complete good faith throughout this proceeding and it is our sincere hope that this will continue.

Willis A. Reinke

WILLIS A. REINKE
IMPARTIAL CHAIRMAN

Wilbert F. Smith

WILBERT F. SMITH, MAYOR
CITY OF BENTON HARBOR DELEGATE

Richard S. Hennes

RICHARD S. HENNES
BLOSSOMLAND LODGE NO. 100
FRATERNAL ORDER OF POLICE DELEGATE