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STATE OF MICHIGAN
 DEPARTMENT OF LABOR
 EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

TOWNSHIP OF BENTON,
 BERRIEN COUNTY, MICHIGAN,
 Employer,

- and -

CASE NO. G-80 C-438

BENTON TOWNSHIP POLICE
 OFFICERS ASSOCIATION

Labor Organization

BEFORE AN ARBITRATION PANEL COMPOSED OF:

~~Fredric A. Grimm, Chairperson,~~
~~Margaret Crishal, Employer Delegate, and~~
 John E. Dewane, Labor Delegate

STATE OF MICHIGAN
 BUR. OF EMPLOYMENT RELATIONS
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TOWNSHIP OF BENTON, BERRIEN COUNTY, MICHIGAN

APPEARANCES:

FOR THE EMPLOYER:

Henry W. Gleiss,
 Attorney

FOR THE ASSOCIATION:

John E. Dewane,
 Attorney

OPINION OF THE CHAIRPERSON

The negotiations, by the parties, concerning the terms of a new collective bargaining agreement having reached a stalemate, and mediation having failed to resolve the impasse, this dispute was submitted to binding arbitration pursuant to the provisions of Act 312, P.A. 1969, as amended, for resolution. The Benton Township Police Officers Association (Association), in presenting its petition to the Michigan Employment Relations

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 RELATIONS DIVISION

Commission for arbitration under Act 312, specified eleven issues as being unresolved and subject to arbitration. The Employer subsequently designated four additional issues. Each of those issues will be subsequently considered herein.

At the hearing, held on September 24, 1980, ten witnesses appeared before the panel and testified. Additionally, the parties submitted a total of thirty-four exhibits for the panel's consideration.

The members of the panel have been mindful of the requirement, set forth in section 9 of Act 312, MCLA 423.239, that its findings, opinions and orders shall be based upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and 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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

Additionally, the members of the panel have been cognizant of that portion of section 8 of Act 312, which provides:

"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."

The evidence submitted at the hearing established the following facts pertinent to the issues herewith concerned:

1. The Township is the most populous of all the political subdivisions in Berrien County.
2. Except for Lake Township, the total valuation of the real and personal property situated in the Township exceeds that of any other Berrien County municipality.
3. The Township has the second highest crime rate in the County, being surpassed in that category only by the adjacent City of Benton Harbor.
4. The Township Police Department is comprised of well trained, capable personnel, but, in common with many other such departments, it is undermanned.
5. Although the Township's financial condition is currently in the best shape it has been for some period of time, due to the recent renewal of a 3 mill levy for police services and the earlier establishment of a 2 mill special assessment district, it, like other local units of government, is faced with possible future financial woes resulting from announced reductions in federal revenue sharing monies and state funds.

The Issues

Duration of Contract

This issue was resolved in favor of a two year contract when, during the hearing, this Arbitrator was asked to make that decision so that the parties could proceed with the preparation of their respective last best offers. The decision was based upon the evidence that, with the exception of the last collective bargaining agreement, the interests of the parties in their prior contracts had best been served with agreements of two years duration.

Wages

For The Fiscal Year 1980-81

Throughout the negotiations the Association contended for a 12% general wage increase for the contract year commencing April 1, 1980. The Township countered with a 10% general wage increase offer.

After giving careful consideration to the evidence submitted herein, the briefs of the parties, and the Act 312 guidelines aforementioned, this Arbitrator is of the opinion the Association's contention for a 12% wage increase "...more nearly complies with the applicable factors prescribed in section 9" than does the Township's proposal. Consequently, this Arbitrator favors a 12% general wage increase for all Association members for the first year of the contract, said increase to take effect as of April 1, 1980.

The aforesaid increase should be applied only to the job classifications and salary step increase schedules set forth in Article XIV of the last contract, after said schedules have been recomputed to reflect the 5.5% increase of March 31, 1980. This proviso constitutes a rejection, by this Arbitrator, of the base wage rate schedule set forth in the first paragraph of the Association's last best offer. There are two reasons for this rejection. First of all, the rates for Captain and Lieutenant, as amended, include premium pay allowances and thus no longer qualify as base wage rates. Secondly, the base rate of \$11,962 for the classification of Secretary apparently includes the \$600 Matron's Bonus, one of the unresolved issues in this arbitration.

For the Fiscal Year 1981-82

The Association proposed a 12% general wage increase and the Township offered a 10% general wage increase for the second

year of the contract. Following the aforestated Act 312 criteria, this Arbitrator opts for the Township's general wage increase offer of 10%, effective as of April 1, 1981.

Rank Differential

The Association has proposed that the wages of Sergeants, Lieutenants and Captains be adjusted so that hereafter there would be at least a 10% minimum differential between scheduled salaries for the classifications of Patrolmen and Sergeants, of Sergeants and Lieutenants, and of Lieutenants and Captains. The Township has opposed the proposal, basing its opposition primarily on the cost factor.

The submitted evidence favors acceptance of the Association's proposal, provided the amount required, from time to time, to effect the 10% differential relates solely to the differences appearing in the approved salary schedules of the classifications involved, irrespective of any premium pay or other ancillary income any persons within the pertinent classifications may receive. Currently, the differential provision would be applicable to only two classifications, i.e., Lieutenant and Captain. If this Arbitrator's calculations are correct, the total cost of implementing this proposal over the two years of the contract will amount to approximately \$2,518.

Shift Differential

The submitted evidence does not support the Association's proposal that the personnel working the afternoon and midnight shifts receive premium pay by way of a 5% shift differential. No one in the department is permanently assigned to either of said shifts and, where multi-shift coverage is required, the officers involved are regularly rotated. This Arbitrator takes notice of the fact that, in the Association's list of comparables, Association Exhibit No. 2, only two of the eight

agencies therein listed have provided for shift differential payments in their contracts.

Cost of Living

Without going into the details concerning the Association's COLA proposal, it is suffice to say that the submitted evidence does not justify serious consideration of this issue by the panel. Again referring to Association Exhibit No. 2, not one of the eight agencies listed therein has a COLA provision in its collective bargaining agreement.

Sick Leave Accumulation

The parties have heretofore provided in their contract, that police department employees are entitled to one paid sick day per month of service and that sick days shall be cumulative up to a total of 180 days. The Association has proposed there be no cap on sick leave accumulation. The Township opposes that proposal.

Here, once again, the submitted evidence does not justify an acceptance of the Association's proposal. The Association argues that its members and the work performed by them compares favorably with the Michigan State Police and the work performed by that organization. This Arbitrator does not quarrel with that comparison. However, it does not necessarily follow that because the State Police have no limit on sick leave accumulation the Association should have it too. In order to reach that conclusion one would have to accept the premise that the State of Michigan and the Township of Benton are comparable units of government. Such reasoning would be fallacious.

Sick Leave Pay Out

On this issue the Association proposes there be a full pay out of all accumulated sick leave on severance of the employee. The Township contends that the provision in the prior contract, that retiring employees shall be entitled to 75% pay for accumulated sick leave time up to a maximum of 180 days.

The submitted evidence simply does not support the Association's position on this issue.

Pension Contribution

The Association has proposed that, from and after April 1, 1981, the cost of the pension plan be fully paid by the Township. The Township opposes the Association's proposal and calls attention to the pertinent statute, 1937 PA 345, as amended, which mandates that employees contribute 5% of salary, via payroll deductions, to the retirement system.

In support of its proposal the Association cited several townships that have, by contract, agreed to fully fund the retirement system contributions. The Association also evidenced its reliance upon the decision in Detroit Police Officers Association v City of Detroit, 391 Mich 44 (1974). The Township cited Attorney General Opinion No. 5342, of June 29, 1978, in support of its position on this issue.

No evidence was submitted as how the cited townships got around the mandatory provisions of 1937 PA 345, supra. One can only surmise that those municipalities, like the Association herein, relied upon the decision in the Detroit case, supra.

This Arbitrator, however, suggests that reliance solely on Detroit, supra, to override the mandatory provisions of 1937 PA 345, supra, could well be misplaced. While a retirement plan was a matter of concern in Detroit, supra, the decision therein turned on the distinguished difference between "permissible

charter provisions" and "mandatory charter provisions" under the provisions of the home rule cities act. Further, the Court, in Detroit, supra, at p. 67, took pains to call attention to the proviso in the home rule cities act, MCLA 117.36; MSA 5.2116, which states:

"No provision of any city charter shall conflict with or contravene the provisions of any general law of the state."

No similar provision is contained in 1937 PA 345, supra. Consequently, this Arbitrator concludes that the submitted evidence does not support the Association's proposal on this issue.

Cleaning Allowance

On this issue the submitted evidence clearly weighs in favor of the Association. Thus, this Arbitrator approves of a cleaning allowance of \$250 per year for uniformed officers, to be paid in semi-annual installments of \$125, on May 1 and November 1 of each year.

Gun Allowance

There was no evidence submitted which would justify giving any consideration to the Association's proposal on this issue.

Vacation Accumulation

The collective bargaining agreement has heretofore provided that employees may accumulate vacation time for a total of thirty days. The Township would like that provision eliminated and, in lieu thereof, a clause inserted which provides that a vacation must be taken in the year in which it is earned. The Association opposes the proposed change.

The submitted evidence was insufficient to warrant approval of the Township's proposal.

Compensatory Time

The Township proposes that compensatory time be limited to a two day accumulation per year rather than being on an unlimited basis as it is presently. The Association opposes the request. The Township argues that since compensatory time constitutes additional vacation time it becomes a difficult situation to schedule around.

This Arbitrator has difficulty understanding the alleged problem with scheduling. Surely the management rights clause and the clause in Article VIII providing that vacation schedules be cleared with the Captain gives management the necessary authority to properly staff its shifts, irrespective of the vacation and compensatory time-off desires of some employees.

Inasmuch as this issue is an economic one, this Arbitrator is obliged to side with the Association's opposition to the Township's proposal.

Educational Allowance

For an undisclosed period of time the collective bargaining agreements of the parties have contained a provision providing for the annual payment of an "educational bonus" to employees who have earned specified educational degrees. The Township has proposed that the payment of said bonuses be limited to a one time payment. The Association has opposed that proposal and contends for the retention of prior understanding. The Township submitted no specific evidence on this issue, restricting itself to the argument that the advantage of an advanced educational degree is a diminishing factor over a period of years and, as a consequence, does not justify the continuing payment of bonuses over a long period of time. The Association in its exhibit of comparables, shows that 50% of the agencies therein listed have a similar educational allowance provision in their contracts, and that each such provision calls for higher annual bonus

payments than those paid by the Township.

Thus, this Arbitrator can only conclude, as per the aforementioned guidelines, that the submitted evidence is not sufficient to justify the panel's acceptance of the Township's proposal.

Wage Increase for Secretaries (Matron's Bonus)

The Association has proposed that the department secretaries each receive a base salary increase of \$600, in addition to the general wage increases previously discussed. This proposal is based upon the premise that the secretaries occasionally are required to perform duties which a matron would do if the department has such a classification. The duties are: (1) assisting a male officer in the transporting of female prisoners, and (2) conducting the body search of female detainees if such action is deemed necessary. The Township opposes this proposal.

The submitted evidence does not support the Association on this issue. The evidence shows that: (1) the departmental secretaries are already the highest paid of the Township's secretarial and clerical employees; and (2) the need for the performance of such duties is rare, according to Chief Farris, averaging one such occasion per month.

Residency

The Township has proposed that residency in the Township be a condition for continuing employment for all new departmental employees by the time such employees have completed their probationary periods. By definition this requirement would not apply to present departmental employees. The Association opposes the proposal, contending that the residency requirement provision contained in the last contract should be continued.

A residency requirement quite similar to the one presently proposed was contained in the collective bargaining agreement of the parties for the two year period which commenced on April 1,

1977. However, during the 1979 contract negotiations, the Township agreed to extend the residency requirement for new employees to the area lying within a ten mile radius of the Township's borders in exchange for the resolution of its longevity pay problem.

If the issue of residency as a condition of employment for police department employees was to be dispassionately determined on the basic pros and cons, which would include the Association's contention that a residency requirement constitutes an erosion of the right of an individual to live where he or she chooses, this Arbitrator is of the opinion the result would weigh heavily in favor of the residency requirement. See the opinion of H. Platt, Chairman of the Arbitration Panel, in City of Detroit, 65 LA 293 (1975), for a comprehensive discussion of the issue.

There are, however, extraneous factors which could tip the scales in the opposite direction. Among such factors is the inability of potential new employees to locate suitable housing, a condition which, according to the submitted testimony, has been a stumbling block in recruiting by the City of Benton Harbor. However, the evidence submitted herein also showed that suitable neighborhoods and housing are available in the Township.


It appears to this Arbitrator from the evidence herein submitted, that the proposed residency requirement did not receive a reasonable test during the term of the 1977-78 contract, a time of Township financial hardship resulting in layoffs within the department. It further appears, after considering all applicable factors, that the proposed residency requirement is reasonable and is in the best interests of the citizenry of the Township. Consequently, this Arbitrator accepts the Township's proposal on this issue.

AWARD OF ARBITRATION PANEL

The collective bargaining argument between the Township of Benton and the Benton Township Police Officers Association, insofar as the issues before this arbitration panel are concerned, shall:

1. Provide that the agreement be in effect for a period of two (2) years, commencing as of April 1, 1980;
2. Require the payment by the Township of a 12% general wage increase, effective as of April 1, 1980, to all employees in the job classifications and based upon the salary step increase schedules set forth in Article XIV of the last agreement, after said schedules have been recomputed to reflect the 5.5% increase of March 31, 1980;
3. Require the payment of a further general wage increase of 10%, effective as of April 1, 1981;
4. Provide that, effective April 1, 1980, after giving effect to the 12% general wage increase aforementioned, and thereafter from time to time, the salaries of Sergeants, Lieutenants and Captains be adjusted so that there will be at least a 10% minimum differential between the scheduled salaries for the classifications of Patrolmen and Sergeants, of Sergeants and Lieutenants, and of Lieutenants and Captains, said differentials relating solely to the differences appearing in the approved salary schedules of the classifications involved, irrespective of any premium pay or other ancillary income any persons within the pertinent classifications may receive;

5. Contain no provision providing for shift differential pay;
6. Contain no provision relating to a cost of living allowance;
7. Retain the sick leave provision as it appeared in the prior contract (Article IX) unchanged;
8. Contain no provision relating to the assumption of all pension payments by the Township;
9. Provide for the payment of a cleaning allowance, by the Township, to uniformed officers of \$250 per annum, in semi-annual installments of \$125, on May 1 and November 1 of each year, commencing May 1, 1980;
10. Retain the gun allowance provision as it appeared in the last contract (Article XIII, Section 6) unchanged;
11. Retain the vacation time provision as it appeared in the last contract (Article VIII) unchanged;
12. Retain the educational bonus provision as it appeared in the last contract (Article XII, Section 2) unchanged;
13. Contain no provision for any additional wage increase as a "matron's bonus" for secretaries; and
14. Provide, in lieu of the language contained in Article XVI of the last contract, that, from and after December 15, 1980, all new employees encompassed within the bargaining unit covered by this Agreement shall be residents of the Township of Benton prior to the time such new employees complete their probationary requirements.


Fredric A. Grimm
Chairperson

Dated December 15, 1980