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Port Huron, City of

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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION
(Act 312, Public Acts of 1969, As Amended)

CITY OF PORT HURON

- and -

PORT HURON POLICE OFFICERS
ASSOCIATION, LOCAL NO. 1518,
COUNCIL NO. 55, AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES

1/8/76

ARBITRATION PANEL'S FINDINGS OF
FACTS, OPINIONS AND ORDERS

MEMBERS OF THE PANEL:
George T. Roumell, Jr.
Chairman

Guy Provost,
City's Designee

Dale D. Latta,
Local No. 1518 Designee

APPEARANCES:

FOR CITY OF PORT HURON:
Dean Luce, Attorney

FOR LOCAL NO. 1518:
Mitchell Gradowski,
Staff Representative
Council No. 55

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AUG 3 1976

This is a compulsory arbitration proceeding pursuant to Act 312 of Michigan Public Acts of 1969, as amended. Hearings were held on Friday, November 14, 1975 and Saturday, November 15, 1975. Transcripts for the above hearings were received by the Chairman on Wednesday, December 10, 1975. Pursuant to the statute the findings of facts, opinions and orders of the Panel in this matter are due by January 9, 1976. The parties have all stipulated that all time limits be set by the statute have been met or mutually extended by agreement.

The parties entered into a collective bargaining agreement effective July 24, 1973 except that the annual wage increase was retroactive to July 1, 1973. The contract expires on June 30, 1976. However, as set forth in Chapter VII, Section 7-2, the parties did provide for a "re-opener for collective bargaining purposes limited, however, to economic items which involve the actual expenditure of funds by the employer". The disputes here are as a result of the parties failure to agree on economic items that were re-opened pursuant to the above clause for the 1975-1976 fiscal year, i.e. July 1, 1975 to June 30, 1976.

The parties did engage in collective bargaining concerning the issues raised as a result of the re-opener, went through mediation, reached a bargaining impasse, and on petition to the Michigan Employment Relations Commission, the invoking of an Act 312 panel was initiated.

As an initial matter the City of Port Huron has challenged the jurisdiction of the arbitration panel on the grounds that Act 312 is unconstitutional. Specifically, the City maintains that the Act is unconstitutional for the following reasons:

- "1. The panel has no accountability to the electorate and taxpayers of the City of Port Huron.
2. These proceedings usurp the management and governmental rights and powers provided by the State Constitution, the Michigan Home Rule Act and the City Charter.
3. The Act provides an unlawful delegation of legislative power to the panel.
4. A binding arbitration award amounts to taxation without representation.

The short answer to these arguments is the decision of the Michigan Supreme Court decided June 24, 1975 known as Dearborn Fire Fighters Union Local No. 412, I.A.F.F. v. City of Dearborn, 394 Mich 229 where the Supreme Court of Michigan, by a divided court, affirmed both the decisions of the Trial Judge and the Michigan Court of Appeals (42 Mich App. 51) (1972) upholding the constitutionality of Act 312. Likewise, reference is made to

to this Arbitrator's opinion in the City of Southgate, 54 LA 901 (1970) at 903-904 where he five years previous to the Supreme Court, had expressed his views based on the prevailing law in the United States that, in fact, Act 312 is constitutional. For these reasons the majority of this Panel again holds that Act 312 is, indeed, constitutional.

Pursuant to Section 8 of Act 312 (17.455)(38) the Panel is to "identify the economic issues in dispute". To the credit of the parties they have narrowed down the issues in dispute. Thus, by a unanimous vote, the Panel ruled on November 14, 1975, that the economic issues, and the only issues before the Panel, are as follows:

1. Wages
2. Vacation-Holidays
3. Educational Pay
4. Dental Rider

Again, pursuant to Section 8, the Panel directed the parties to submit their last best offers on each of the economic issues listed above. This, likewise, was done on November 14, 1975 and the Panel now proceeds as to each issue to make findings of facts and an order concerning same.

WAGES

The last best offer of the City as to wages is a proposed increase of the 1974-1975 base salary from \$13,200.00 to \$13,800.00 plus rolling-in the cost-of-living earned during the 1974-1975 contract year. This would mean an additional \$312.00. Thus, the base salary would actually be increased to \$14,112.00. Furthermore, the City would continue the cost-of-living adjustment formula negotiated by the Union and the City for the contract year 1974-1975 except to increase the maximum of the cost-of-living from \$.15 to \$.16. It should be noted that as far as the cost-of-living portion of the City's offer, the parties are in agreement. The City also had an alternative offer, that is, to continue the above offer for 1975-1976 year but then to extend the collective bargaining agreement for an additional year, to-wit: the 1976-1977 fiscal year and to increase the new proposed base rate of \$13,800.00 plus the \$312.00 cost-of-living by 4% for the second year of the contract and continue the cost-of-living formula.

The Union's last best offer as to wages is a base rate of \$14,500.00 including the \$312.00 cost-of-living. In other words, the Union is proposing a \$14,188.00 base rate plus the \$312.00 cost-of-living.

In terms of actual dollars, there is a difference of \$388.00 between the two offers per police officer. Both parties agree that the meter maid's wages is to be reflective of the percentage increase that the officer receives. There is no dispute as to meter maid's wages once the police officers wages are established.

It also should be noted that the Union rejects the concept of a second year of the contract on the grounds that it would deprive the Union of an opportunity of bargaining for other terms and conditions at the end of the current contract.

Section 9 of Act 312 provides for the criteria that the panel must consider in issuing any orders concerning economic issues. Among the criteria that is to be used for consideration are the financial ability of the governmental unit (9)(c), comparisons with other public and private employers in comparable communities (9)(d), the cost-of-living (9)(e), and other factors commonly used in fact finding and arbitration in resolving interest disputes. Among these other factors are included the consideration of the effect on the settlement on other employees employed by the governmental unit as well as the parties' past and current bargaining history.

The City does not plead inability to pay or poverty. However, the City has presented a plea to continue its financial integrity. The City has pointed out that comparing the mean family income between Port Huron, Michigan and a number of cities in eastern and middle Michigan its size as well as St. Clair County and the contiguous City of Marysville, shows a Port Huron mean family income of upward of \$1,000.00 less than that of the other Michigan cities compared, about \$400.00 less than St. Clair County and upwards of \$1,400.00 less than nearby Marysville. The City does have the problem associated with other municipalities, namely,

rural growth and shopping centers looming outside the municipal corporate limits which has the affect of reducing the City's tax base.

Yet, the City of Port Huron has been blessed with an extremely able professional management staff. The Chairman of the Panel is impressed with staff members who appeared, including the City's Manager and Financial Director. There is little question that the City, though troubled by economic problems, has nevertheless, insisted on maintaining financial integrity. The results have shown and it is for this reason that the City's plea that its offer be accepted in order to maintain this record of financial integrity cannot be ignored.

In this regard, the City points out its total general fund revenues and expenditures for the last four years. Two things are obvious. Revenues have increased, but so has expenditures. There is very little left after all expenditures are made from the revenues. The City has been able to build up some revenues but, indeed, its budget is very precairously balanced. The figures are as follows:

<u>Fiscal Year Ending June 30</u>	<u>Revenues</u>	<u>Expenditures</u>
1972	\$4,343,115	\$4,310,519
1973	4,720,088	4,688,778
1974	5,085,758	5,056,167
1975	5,444,074	5,419,900

During the same period of time, not including fringe benefits, the cost of operating its Police Department has increased, and obviously, have in affect, consumed a larger proportion of the City's budget. These costs are as follows:

<u>Fiscal Year Ending June 30</u>	<u>Administrative and Clerical</u>	<u>Detective</u>	<u>Patrol</u>	<u>Total Police Department</u>
1972	\$ 90,049	\$108,854	\$607,483	\$ 806,386
1973	109,182	136,031	640,735	885,948
1974	116,026	139,877	685,913	941,816
1975	146,745	153,745	742,970	1,043,460

The costs of the two respective proposals, including the dental rider and the holiday pay as well as the proposed educational incentive pay, are claimed by the City to be as follows:

	<u>Total Cost</u>	<u>Amount of Increase over 1974-1975</u>
1974-1975 Cost	\$723,600.61	
City Proposal 1975-1976	775,693.00	\$52,092.31 (7.2%)
Union Proposal 1975-1976	809,357.00	85,756.00 (11.85%)

Two things are obvious, the City's proposed increases, at least for the 1975-1976 fiscal year is a 7.2% raise. The Union's proposal represents about 11.85% raise. The difference, according to the City, represents approximately \$32,000.00.

There is little question that if one follows the revenue spending pattern in Port Huron, the additional \$32,000.00 would, indeed, make the budget a much tighter budget when one recognizes that the excess in the budget over the last four years, as just noted, has been in the range of \$32,000.00 to \$25,000.00. Thus, it could well be that the last best offer of the Union would put the City in a position of having an extremely tight budget, for in the past, a figure of \$32,000.00 has been the difference between a balanced and a deficit budget.

The City, thus, suggests that 7.2% offer is fair, in today's economy, and is consistent with the needs to protect its fiscal integrity.

The City buttressed its position on the fact that, in the past, it has compared its offers with certain cities, similar in size, in its so-called Area 2 of Michigan, i.e. eastern and middle Michigan. These cities of similar population and the comparables are as follows:

ARBITRATION ISSUE COMPARISON

CITY	SALARY		EXPIRATION DATE	VACATION							DENTAL RIDER	EDUCATIONAL INCENTIVE
	MAXIMUM			1 YR	5 YR	10 YR	15 YR	20 YR	25 YR			
Rattle Creek	13,715		7-1-76	10	15	20	25	25	25		None	City Pays Full Tuition
Bay City	13,953	4% Increase	1-1-76	23	23	23	28	28	28		None	Certificate \$100 Associate \$300 Bachelor \$500
East Lansing	13,420		7-1-75	5	10	15	20	20	20		None	None
Holland	11,556	5% Pension	7-1-76	7	12	17	22	22	22		None	City Pays 50% of Tuition
Jackson	16,048		7-1-76	10	12	15	20	20	20		None	City Pays Full Cost of Tuition & Books
Midland	14,490		7-1-76	14	19	21	23	25	27		None	Associate \$350 Bachelor \$675
Muskegon	12,500		12-31-75	7	10	15	21	21	21		None	None
Portage	12,924		7-1-75	10	10	15	15	15	15		None	None
Port Huron	13,512		7-1-75	10	10	10	15	15	15		None	None
Burton	11,060		7-1-75								None	

The City maintains that in the past it has surfaced at about the middle of the range of the above enumerated cities.

This comparison is interesting. The offer of the City amounts to \$14,112.00 base salary plus a cost-of-living formula. This base salary is to be compared with Midland at \$14,490.00 and Jackson at \$16,048.00. Likewise, it is to be compared with Bay City which, as of January 1, 1976, is \$14,511.00. Battle Creek seems to be less at \$13,715.00. The Muskegon \$12,500.00 figure is obsolete for that contract expired on December 31, 1975. The same can be said for Portage whose contract expired on July 1, 1975, and therefore, the figures listed in the above comparable are obsolete.

In summary, the City's offer is shy of its traditional position which it claims is somewhere in the middle of the above comparables cities. Of course, the record does not reveal whether these other cities have cost-of-living and it is very possible that with the continuation of the cost-of-living that the City offer may, indeed, be almost consistent with its previous history of bargaining.

But there is a new factor this year that causes considerable consternation among the unionized employees at the Police Department. Local 1518 represents the employees serving as police officers with the St. Clair County Sheriff's Department. Port Huron is a county seat of St. Clair County. Traditionally, the City of Port Huron Police Officers, also represented by Local 1518, have been paid more than the sheriff deputies.

By virtue of negotiating a cost-of-living index which is different than most usual cost-of-living indices, the sheriff deputies had, by the time of the hearings here, reached a base rate of \$14,537.00. The rate of increase of sheriff deputies, in fact, has been quite rapid and, obviously, has exceeded the base rate of the city police.

Now here is the problem. Within the same community, two different units of government employing police officers have developed a certain ratio between each other in terms of rate of pay over the years. This ratio has now been reversed so that now, the first time in a number of years, the police in Port Huron are being paid less than the St. Clair County Sheriff Deputies. Not only is the same community involved^{1/} but its employees are represented by the same local union.

It is this rationale that has caused the Local 1518 to insist on a \$14,500.00 base. When one considers that the \$14,500.00 base is comparable with the previous comparable cities as outlined above one must conclude that sound labor relations would require the adoption of the Union's position, for a different view would obviously undermine the City police morale under these unusual circumstances because of the sheriff deputies' base rate.

1/ Port Huron is the County seat of St. Clair County.

One of the other criteria that can be considered by a panel under the general definition in Section 9(h) "such other factors...which normally are traditionally taking into consideration in the determination of wages...through fact finding..." is the so-called strike criteria. Not for one minute is this Chairman suggesting that there should be public employees strikes. Nevertheless, it is clear that Act 312 is a substitute for a strike when there is an impasse. Obviously, there is not only an impasse here, but in fact, if there had been a strike, no doubt, with this bargaining history and these comparables, what has happened in the sheriff's department would have a decisive factor on what the results of a strike may well have been.

The Chairman realizes the sincerity of the City's administration in attempting to maintain financial integrity. He must, again and again, emphasize this to the reader. It is for this reason that the Chairman emphasizes that results here are only to be controlling for 1975-1976 fiscal year. Another year is another matter. It may very well be that another panel or the negotiators themselves, in subsequent years, may find themselves not able to compare with the County deputies simply because the County had different financial means and the delicate financial balance in the City of Port Huron may dictate a reversal of the rolls between the City police and the deputies. From the City police standpoint, they hope that this may not happen but, at least, is a recognition that this situation must be closely watched and that the results here do not necessarily serve as a precedent.

Also, it should be noted that the last statements are not joined in by the Union Designee, who has signed the wage order here, but are purely the comments of the Chairman.

Finally, the City's offer as to a second year of contract, obviously, cannot be accepted for two reasons. First, the majority of the Panel cannot accept the City's last best offer as to the first year and, thus, undermining the foundation upon the second year offer is made. Secondly, the Union's argument that a contract should not be extended when all that is before the Panel is a re-opener is well taken. There might be other matters which, after a three year contract, the Union may want an opportunity to negotiate on matters that do not necessarily affect economics. They made a bargain for three years. When the Union agreed to a re-opener, it did not bargain for a four year contract. This point is well taken.

DENTAL PLAN

The Union proposes a dental plan which will cost the City about \$5,000.00 to implement with the City paying 50% of the premiums. The City argues that if it introduced a dental plan for police officers it would have to apply the dental plan to all City employees and that this would increase the cost to the City about \$39,600.00. The basis for the Union's argument is that the sheriff's deputies have a dental plan. However, when one makes a comparable with previously comparable cities, even though the \$14,500.00 base can be argued as being comparable, there is no city listed that has a city-paid dental plan.

As noted above, the Union's proposal, exclusive of a dental plan, amounts to about a 10% increase. The Union will continue to receive cost-of-living for its membership. Adding a dental plan at this time, even though the St. Clair County Deputies may have some, may, indeed, disrupt the delicate balance of the City's financial budget and interfere with the City's stress for financial integrity. Likewise, the comparables outside of the St. Clair County Deputies do not support this demand. Thus, the majority will adopt the City's last best offer of no dental plan.

EDUCATIONAL INCENTIVE PAY

With respect to educational pay, the Union proposes that those officers who have earned an associate or a bachelor degree in police science be paid an additional 1% of their annual salaries. The City would propose that there be no such educational incentive in the contract.

Educational incentives are not universal based upon the comparables of the Area 2 cities outlined above. Furthermore, the City makes no requirement that its officers have an associate or a bachelor of police science.

Although the Chairman of the Panel advocates as much advanced training for police officers as possible, at this stage, there seems to be no justification for such an educational incentive in Port Huron. Frankly, the Chairman has emphasized wage increases for all employees, and chose not to deal with any special interest for he is convinced that the City has only so much money and the question is where the money should be put. The Chairman has voted with the Union representative to put that money into direct wages.

Likewise, he has voted with the City delegate not to put that money elsewhere. In this case, this means not putting the money for educational incentives that will benefit only a few of the some thirty-eight (38) employees in the Department covered by this proposal. For these reasons, Chairman will join the City Designee in adopting the City's last proposal as to educational incentive.^{2/}

VACATION-HOLIDAYS

The parties are basically in agreement as to vacations. The City has increased the vacation schedule so that present employees who have up to nine years of service will receive ten vacation days and employees with nine through fourteen years of service will receive fifteen vacation days and employees with fifteen years of service or more will receive twenty vacation days.

This represents an increase of five vacation days for employees at the ten to fourteen level and for employees with fifteen years or more longevity.

The problem here is the question of holidays. Previously, under the contract, the police officer received ten holidays, whereas other City employees only received nine. The reason why the police officers received the ten was because of the vacation schedule, the additional holiday permitted longer vacations. This followed because as police work was a seven-day operation, holidays actually were utilized as added vacation time. The extra day was needed in order to round off vacation time. However, now with increased vacations, there is no need for the additional holiday.

^{2/} By eliminating a City paid dental plan and educational incentive pay, the increased wage rate ordered herein will result in an expenditure of about \$16,000 over the City's last best offer. The Chairman believes that such an amount will not interfere substantially with the City's financial integrity.

What the City proposes to do is to continue the ten holidays for all present police officers. New officers hired, after the date of this award, would revert back to nine holidays.

This proposal seems fair because the reason for the ten holidays is no longer applicable and the City, in fact, has agreed to increase vacation benefits. The Chairman will then join the City's Designee in adopting the City's last best offer as to vacations and holidays.

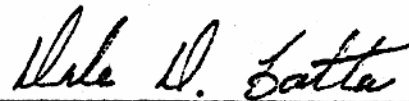
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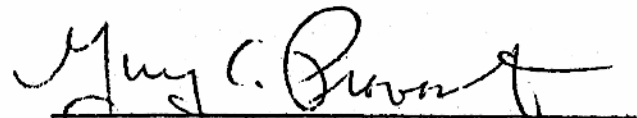
In arriving at the finding of facts, opinions, and orders here, the Arbitrator has been authorized by Union Designee, Dale Latta, to say that he joins in the order as to wages but does not adopt all the reasoning and conclusions thereof. Mr. Latta dissents as to the Panel's findings of facts, opinions, and orders as to the dental plan, educational incentive and vacations and holidays. Mr. Provost dissents as to the issue of wages and concurs with the Chairman as to the other economic issues. The Chairman and Mr. Latta would hold Act 312 constitutional. Mr. Provost would hold it unconstitutional.

The Panel hereby makes the following orders:

1. The Union's last best offer as to wages for the 1975-1976 fiscal year retroactive to July 1, 1975, is hereby ordered.
2. No dental plan will be ordered for the 1975-1976 fiscal year.
3. No educational incentive pay plan will be ordered for the 1975-1976 fiscal year.
4. The City's last best offer as to vacation-holidays is hereby ordered.


George T. Rounell, Jr.
Chairman


Dale D. Latta
Concurring as to the wages
order but dissenting as to
all other orders.


Guy Provost
Concurring as to all orders
except as to wages and as to
wages, he hereby dissents.

Dated: January 8, 1976

APPENDIX A. CALCULATIONS

1. Days from July 16, 1975 to September 30, 1976
July 16 - December 31, 1975 = 168 days
January 1 - September 30, 1976 = 273 days
441 days
2. Number of weeks from July 16, 1975 to September 30, 1976
 $441 \div 7 = 63$ weeks
3. Number of hours of work in 63 weeks
 63×40 hours = 2,520 hours
4. New wages per police officer as a result of the Wage Increase Award
 $2,520$ hours \times .39 cents = \$982.80
5. New money received per police officer as a result of the Group Health Insurance Award
 $2,520$ hours \times .23 cents = \$579.60
6. Total new compensation received by each police officer for the period July 16, 1975 to September 30, 1976
\$ 982.00 - new wage increase
580.00 - new compensation for Group Health Insurance
\$1,562.00 - Total compensation for each police officer.