

EX A  
11/25/75

Warren, City of

IN THE MATTER OF THE ARBITRATION OF  
CITY OF WARREN

and

LOCAL 1383, WARREN FIREFIGHTERS  
ASSOCIATION

Kanner

11/75 /

INTERIM MEMORANDUM OPINION

ISSUES

- I. Can the award of the Arbitration Panel be made retroactive to January 1, 1975?
- II. What disposition shall the Arbitration Panel make of the pending grievance arbitration on the issue of payment of cost of living allowance for the period July 1, 1974 through July 1, 1975?

OPINION AS TO ISSUE I

The City asserts that no good faith bargaining, impasse and attendant mediation occurred pursuant to Public Act 312 prior to June 30, 1974 so as to warrant the Union's request to the Michigan Employment Relations Commission for arbitration on April 8, June 10, and June 27, 1974.

(Union Exhibit #6, Union Exhibit #1, Union Exhibit #9)

The Union asserts that, faced with a fiscal year ending June 30, 1974, it attempted good faith negotiations on March 25, 1974 (Union Exhibit #1a), but negotiations were rejected by the City. On April 22, 1974, they requested the Michigan Employment Relations Commission to appoint a mediator pursuant to the Act. A mediator was assigned, but no mediation occurred.

The panel has reviewed the evidence and testimony and makes the following findings of fact:

A. Mr. John D. Doytim's letter to Mr. Richard Parker dated March 25, 1974 (Union Exhibit #1a) evidences on its face a good faith attempt to enter into negotiations, notwithstanding the fact that no demands were appended or submitted contemporaneously.

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B. The Union did, in fact, have demands prepared in April or May of 1974.

C. The City failed to bargain at the Union's request.

#### CONCLUSIONS OF LAW

1. The requests for arbitration by the Union were timely as presented prior to the start of the City's fiscal year, July 1, 1974.

2. The present contract under adjudication by the Panel shall be retroactive to January 1, 1975. The Panel is cognizant that, where request for arbitration is timely, section 432.240 of Act 312 recites that "such awarded increases may be retroactive to the commencement of such fiscal year ...", and that the fiscal year of the subject City is July 1, through June 30. However, the Panel does not believe the legislature contemplated that a Collective Bargaining Agreement might encompass a calendar year as in the subject case. The Panel obviously cannot order retroactivity back to July 1, 1974 which is within the term of the parties preceding contract effective January 1, 1974 through December 31, 1974.

#### OPINION AS TO ISSUE II

The parties are in dispute as to payment of a cost of living allowance pursuant to provision in the January 1, 1974 through December 31, 1974 contract. The Union has filed a grievance claiming that the contract requires payment of a cost of living allowance not only on July 1, 1974, but also on July 1, 1975. The later date is well within the time limits of the subject contract being adjudicated by this Panel. The Issue is before an Arbitrator, but the hearing date has not yet been set.


The City denies that the January 1, 1974 through December 31, 1974 contract can be interpreted to carry over its cost of living provision to July 1, 1975 as the Union requests.

The City has presented as one of its demands in the subject 312 arbitration that the Panel order that the "cost of living arbitration case be withdrawn."

The Union has offered as a compromise to allow the Panel to adjudicate the grievance on the merits as a contract interpretation question, but not as an economic issue.

#### CONCLUSION OF LAW

The Panel has concluded that the issue between the parties is economic and within the purview of Public Act 312. The reason for the Panel's decision is that the payment of a cost of living allowance as of July 1, 1975, per the Union request, covers a period of six (6) months into the period of the subject contract being adjudicated by this Panel. As such, the Panel concludes that it is an economic issue affecting the costs to the City and economic benefits to the Union during the calendar year 1975, which is the period of the contract under adjudication. The Panel, therefore, will assume jurisdiction of the pending arbitration and consider the subject issue as economic.

  
RICHARD L. KANNER, Chairman

  
ROBERT BAKER, Panel Member

  
EARL BOONSTRA, Panel Member

Dated: November 25, 1975

DISSENT #1

CON PUV #2