

## AGREEMENT

1. This Agreement is made between MARY ANN BRANDON, the CITY OF PORTLAND ("City") and the PUBLIC EMPLOYEES RETIREMENT BOARD ("Board").

2. Based on the Statement of Agreed Facts (attached hereto, marked Appendix A) and the Statement of the Parties Contentions (Appendix B) the parties agree to compromise and settle their disputes in lieu of litigation on the following covenants, terms and conditions.

3. Ms. Brandon shall pay to the Board the sum of \$6,018.50 plus interest at the rate of 7 1/2% per annum from January 1, 1984 through December 31, 1984, and plus additional interest at the rate of 15% per annum from January 1, 1985 through December 31, 1985 on the total principal and interest accrued as of January 1, 1985, for a total sum of \$7,440.37, to reinstate her PERS employee account.

4. City shall pay to the Board the sum of \$9,700.38 plus interest at the rate of 7 1/2% per annum from January 1, 1984 through December 31, 1984, and plus additional interest at the rate of 15% per annum from January 1, 1985 through December 31, 1985 on the total principal and interest accrued as of January 1, 1985, for a total sum of \$11,992.10, to reinstate Ms. Brandon's PERS employer account.

5. The Board shall credit to Ms. Brandon's account the sum of \$1,974.76, plus interest at the rate of 7 1/2 per annum from

January 1, 1984 through December 31, 1984, and plus additional interest at the rate of 15% per annum from January 1, 1985 through December 31, 1985 on all principal and interest accrued as of January 1, 1985, for a total sum of \$2,441.30 to reinstate Ms. Brandon's PERS account.

6. The payments set forth in Paragraphs 3 and 4 herein shall be made to the Board as soon as possible but not later than December 31, 1986. If the payments are not received on or before that date, this agreement shall be null and void.

7. Upon receipt of the sums set forth in Paragraphs 3 and 4 herein, the Board shall reinstate Ms. Brandon's PERS employee and employer accounts and benefits arising therefrom as if there had been no disruption in Ms. Brandon's employment, contributions and/or accrual of benefits.

8. The EEOC back pay award to Ms. Brandon does not require any contributions to the Public Employees Retirement System ("PERS"). Ms. Brandon shall not at any time make any claim for any PERS benefit attributable to the back pay award. Ms. Brandon hereby releases and covenants not to sue the City or the State of Oregon, including the Board, the system or any of their officers, agents, or employees regarding any claim for any PERS benefits which might be attributable to the back pay award.

9. Ms. Brandon agrees that by executing this agreement she acknowledges receipt of all the retirement contributions and income to her PERS employer and employee accounts for the period

January 26, 1979, through present for which she bargained and to which she is entitled; to the extent that it might have been less than she was entitled to by law, she knowingly agreed to accept it and the agreement is fully executed. Ms. Brandon shall execute simultaneously the disclaimer attached as Appendix C. The appendices are incorporated into and made a part of this agreement. In making this agreement Ms. Brandon does not rely on any representations or statement not contained therein.

I HAVE CAREFULLY READ AND UNDERSTAND THIS AGREEMENT  
(INCLUDING THE RELEASE AND PROMISE NOT TO SUE CONTAINED IN  
PARAGRAPH 8) AND SIGN IT FREELY AND WITHOUT RESERVATION.

MARY ANN BRANDON

Date: \_\_\_\_\_

CITY OF PORTLAND

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

PUBLIC EMPLOYES RETIREMENT BOARD

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

15B/63

APPENDIX ASTATEMENT OF AGREED FACTS

1. Mary Ann Brandon was employed by the City of Portland Bureau of Police as a police identification technician from January 26, 1979, through April 4, 1984. As such, the City made contributions to the Public Employees Retirement System ("PERS") on her behalf for the period of July 26, 1979, through April 4, 1984.
2. As a result of a sex discrimination case under the Federal Civil Rights Act, Ms. Brandon, the City, and the Federal Equal Employment Opportunity Commission (EEOC) entered into a conciliation agreement settling Ms. Brandon's claim. PERS was informed that pursuant to the conciliation agreement, Ms. Brandon was restored to a police officer position (non-PERS covered employment) on April 5, 1984, which was effective retroactive to January 26, 1979.
3. On March 29, 1984, Ms. Brandon submitted a signed PERS form request for refund of her PERS employee account balance.
4. Based on the above, PERS concluded that the only option available for Ms. Brandon was the cancellation of her account in PERS since PERS understood that it had been determined that she should have been classified as a police officer during the time of her membership and therefore not eligible to participate in PERS. Therefore, PERS canceled her refund request and sent a refund of both employee and employer contributions to the City on April 19, 1984, in the amount of \$5,604.95 of employee contributions (\$1,211.38 withheld from the employee, plus \$4,393.57 picked up by the employer) and \$9,700.38 of employer contributions. The City then paid Ms. Brandon \$6,018.50, which included \$413.55 of 1984 employee contributions picked up by employer which PERS would not refund to the City until the end of 1984. The City holds the \$9,700.38 of employer contributions (not including pickups). The \$1,974.76 of earnings credited to Ms. Brandon's account for the years 1979 through 1983 were retained by PERS and no earnings for 1984 were distributed.
5. The EEOC conciliation agreement was signed on behalf of the City April 9, 1984, by Ms. Brandon May 6, 1984, and approved by the EEOC May 11, 1984. The EEOC conciliation agreement provides, in pertinent part, that the City "agrees to reinstate the Charging Party (Ms. Brandon) as a permanently appointed Police Officer as of April 5, 1984." Section 11, paragraph 1. Ms. Brandon was also awarded \$23,478.29 in back pay, section II, paragraph 2, and the City agreed "to restore to the Charging Party all fringe benefits and seniority rights which would have accrued had Charging Party not been demoted from position of Police Officer." Section II, paragraph 3.

APPENDIX BSTATEMENT OF THE PARTIES' CONTENTIONS

## A. PERB contends that it is arguable that:

(1) Pursuant to the EEOC conciliation agreement Ms. Brandon was awarded back pay for discriminatory demotion from a sworn police officer to a police identification technician, but was not reinstated as a sworn police officer retroactive to January 26, 1979, as PERS previously had been informed. The change in Ms. Brandon's status as an employee was effective April 5, 1984. From July 26, 1979 through April 5, 1984, Ms. Brandon was a member of PERS. In 1984 she became vested. ORS 237.111. On March 29, 1984, Ms. Brandon elected to withdraw her PERS account. Although PERS cancelled that request for withdrawal PERS should have recognized that request and refunded her account, including earnings. However, in September 1984, Ms. Brandon validly withdrew her refund request and therefore her account should be reinstated.

(2) The back pay award constitutes salary pursuant to ORS 237.003(8)(b) for which employee and employer contributions are required to be made to PERS by City.

## B. City contends that it is arguable that:

(1) The EEOC conciliation agreement reinstated Ms. Brandon as a police officer effective January 26, 1979, and therefore no contributions to PERS were required on the back pay award.

(2) Ms. Brandon's request to PERS to refund her account was valid and could not be rescinded.

## C. Ms. Brandon contends that:

(1) Her cancellation of her refund request was valid.

(2) The back pay award was not subject to any contributions to PERS.

APPENDIX C

## NOTICE OF DISCLAIMER OF PERS BENEFITS

(ORS 105.625 - 105.640)

I, MARY ANN BRANDON, the beneficiary of the within described property, do hereby unqualifiedly disclaim in whole any rights of transfer to me by reason of my interest in any and all employe and employer contributions, income and benefits payable by the Oregon Public Employees Retirement System (PERS) attributable to the back pay awarded to me by virtue of the conciliation agreement In the Matter of U.S. Equal Employment Opportunity Commission and Mary Ann Brandon, charging party, and Bureau of Police, City of Portland, Oregon, respondent, before the Equal Employment Opportunity Commission, Seattle, Washington (charge No. 101791502) approved by the EEOC on May 11, 1984.

I will not accept any of the above described contributions, income or benefits.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_.

MARY ANN BRANDON

\_\_\_\_\_  
Signature

STATE OF OREGON       )  
                              ) ss.  
County of \_\_\_\_\_)

Personally appeared the within named MARY ANN BRANDON, known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that she executed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

ORDINANCE NO. **158924**

An Ordinance authorizing execution of an agreement between Mary Ann Brandon, the City of Portland and the Public Employees Retirement Board to restore Ms. Brandon's PERS membership; authorizing the drawing and delivery of a warrant for \$11,992.10; and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. Mary Ann Brandon was appointed as Police Officer on August 31, 1977; demoted to Identification Technician, her former classification, on January 26, 1979; and restored to a Police Officer position on April 5, 1984 through conciliation with the Equal Employment Opportunity Commission. During her employment as Identification Technician, Ms. Brandon was a member of the Public Employees' Retirement System (PERS).
2. Upon her reinstatement as Police Officer, PERS cancelled Ms. Brandon's account and paid the contributions therein, but not the earnings, to the city. The city, in turn, paid the employee contributions and employer-paid employee contributions to Ms. Brandon.
3. Ms. Brandon claims that her PERS account should be restored. The parties, through their attorneys, have tentatively agreed that Ms. Brandon and the city will return their respective shares of the contributions, with interest at the rate earned by accounts in 1984 and 1985, and PERS will restore prior earnings of the account, also with interest for 1984 and 1985.

NOW, THEREFORE, the Council directs:

- a. The Mayor is authorized to execute an agreement with Mary Ann Brandon and the Public Employees Retirement Board to accomplish the purpose set forth above. A copy of the agreement is attached to the original only of this ordinance, marked Exhibit A, and by this reference made a part hereof.
- b. The Mayor and Auditor are authorized to draw and deliver a warrant for \$11,992.10 payable to Public

**ORDINANCE No.**

Employees' Retirement System. This warrant will be charged to General Fund, Special Appropriations, Indemnities (BUC 41500506, Expense 490) and delivered to the Office of City Attorney for safekeeping until a fully executed agreement is obtained for filing with the Auditor.

Section 2. The Council declares that an emergency exists in order that there be no delay in resolving Mary Ann Brandon's claim and satisfying the debt thereby incurred by the city; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **AUG 27 1986**

**MAYOR CLARK**

Richard A. Braman:clp  
August 20, 1986

**Jewel Lansing**

Auditor of the City of Portland

By

*Don E. O'Leary*  
Deputy



THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
BOGLE	✓	
LINDBERG	✓	
SCHWAB	✓	
STRACHAN	✓	
CLARK		

FOUR-FIFTHS CALENDAR	
BOGLE	
LINDBERG	
SCHWAB	
STRACHAN	
CLARK	

Calendar No.

1736

# ORDINANCE No. 158924

## Title

An Ordinance authorizing execution of an agreement between Mary Ann Brandon, the City of Portland and the Public Employes Retirement Board to restore Ms. Brandon's PERS membership; authorizing the drawing and delivery of a warrant for \$11,922.10; and declaring an emergency.

Filed AUG 21 1986

JEWEL LANSING  
Auditor of the CITY OF PORTLAND

By Nancy Dunford  
Deputy

INTRODUCED BY

MAYOR CLARK

NOTED BY THE COMMISSIONER

Affairs

Finance and  
Administration

Safety

Utilities

Works

BUREAU APPROVAL

Bureau:

Prepared By:

Date:

Richard A. Braman

8-20-86

Budget Impact Review:

☐ Completed

☐ Not required

Bureau Head:

CALENDAR

Consent

Regular

NOTED BY

City Attorney

City Auditor

City Engineer