

100

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
IN THE MATTER OF
THE ACT 312 ARBITRATION

CHARTER TOWNSHIP OF CANTON, RESPONDENT
AND
LABOR COUNCIL, MICHIGAN FRATERNAL ORDER
OF POLICE, CHARGING PARTY

M.E.R.C. ACT 312
Case No: D89H-2078

COMPULSORY ARBITRATION PURSUANT TO ACT 312,
MICHIGAN PUBLIC ACTS OF 1969, AS AMENDED

AWARD OF ARBITRATION PANEL

ARBITRATION PANEL:

Allen J. Kovinsky
Arbitrator/Chairperson

Daniel Durack
Employer Designee

Michael Somero
Union Designee

APPEARANCES ON BEHALF OF PARTIES:

Andrew T. Baran, Esq.
Cox & Hodgman
201 W. Big Beaver
Troy, MI 48084
(Appearing on behalf of the Employer)

Kenneth Zatkoff, Esq.
Law Offices of John Lyons, P.C.
675 E. Big Beaver, Suite 105
Troy, MI 48083
(Appearing on behalf of the Union)

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
RECORDS SECTION

92 JAN 10 PM 4:10

RECEIVED

INTRODUCTION

These proceedings were commenced pursuant to Act 312 of the Public Acts of 1969, as amended. The Arbitration Panel was comprised of the Chairperson, Allen J. Kovinsky; the City Delegate, Daniel Durack; and the Union Delegate, Michael Somero.

A pre-hearing conference was held on April 22, 1991 and the hearing was conducted on July 16, 1991 at the Charter Township of Canton Municipal Offices. The Township was represented by Mr. Andrew T. Baran of the firm of Cox and Hodgman. The Union was represented by Kenneth W. Zatkoff of the firm of John A. Lyons, P.C. The record consists of 199 pages of recorded testimony and a total of 2 Joint Exhibits, Employer Exhibits numbered 1 - 31, and the Union Exhibits numbered 1 - 7A. After submission of last best offers dated July 25, 1991, the parties forwarded written Briefs dated September 25, 1991 on behalf of the Township and September 26, 1991 on behalf of the Union. The Panel subsequently met in executive session in January of 1992.

The parties stipulated that the outstanding issues, with the exception of the determination of comparable communities, were all economic and accordingly the Panel has been guided in its deliberations and findings by Section 8 of Act 312. Section 8 provides that each economic issue must be decided by the Panel by selecting the last best offer which more nearly complies with the applicable factors set forth in Section 9 of the Act. The applicable factors to be considered as set forth in Section 9 are as follows:

(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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Where applicable and where either testimony or Exhibits were introduced the Panel has considered each of the facts set forth hereinabove with respect to its findings.

The parties stipulated that the following communities were mutually agreeable for purposes of determining comparable wages and benefits in those communities with respect to the Charter Township of Canton. The communities are: the City of Madison Heights, the

City of Roseville, the City of Royal Oak and Shelby Township.

In addition, the Union proposed the following two comparable communities: Clinton Township and Waterford Township.

The Charter Township of Canton proposed as additional comparable communities the City of Dearborn Heights and the Township of West Bloomfield.

The parties also engaged in a number of stipulations on the record which are incorporated herein by reference and set forth in summary fashion:

(1) The length of the Collective Bargaining Agreement shall be three (3) years.

(2) Retroactivity shall be applicable on wages and for purposes of overtime in accordance with the past practice of the parties. There shall be no retroactivity with regard to other fringe benefits.

(3) Joint Exhibit 1 is incorporated herein by reference and shall become a part of this award based upon the stipulated issues entered into as tentative agreements by the parties:

(A) Article 1 - The dates of the contract shall be changed to conform to a new three (3) year period of time.

(B) Article 6, Section 3 - The status quo shall be maintained with regard to the language.

(C) Article 11, Section 11.11 - The status quo shall be maintained with respect to the language.

(D) Article 14, Section 14.1, .2, .3, .6 and .8 shall be included in the Collective Bargaining Agreement in accordance with the language set forth in Joint Exhibit 1.

(E) Article 15, Section 15.1 shall contain language as set forth in Joint Exhibit 1.

(F) Article 16, Section 16.2(c) shall contain language as set forth in Joint Exhibit 1.

(G) Article 18, Section 18.4(B) shall contain language as set forth in Joint Exhibit 1.

(H) Article 20, Section 20.2 shall contain language as set forth in Joint Exhibit 1.

(I) Article 27, Section 27.1 shall contain language as set forth in Joint Exhibit 1.

(J) Article 28, Section 28.3 - The parties have agreed to a vesting period for pensions of four (4) years.

(K) Article 31, Section 31.5 - The Collective Bargaining Agreement shall retain the current language.

(L) Article 31, Section 31.6 shall reflect the agreement contained in Joint Exhibit 1 on the optical program with respect to amounts employees are to be reimbursed for various items.

(M) The parties have agreed that there will be no beeper/standby pay.

(N) The parties have agreed on language contained in Joint Exhibit 1 for a tuition reimbursement program.

With respect to the Issues set forth on the Petition filed by the Union Issues 1, 6 and 7 were left by the parties for consideration and determination by the Panel. The following Issues were agreed upon as hereinafter set forth:

Issue No. 2 - The parties agreed that there would be no proration of benefits after the first thirty (30) days. The parties further agreed to draft appropriate language setting forth that agreement.

Issue No. 3 - The parties agreed to adopt the administrator's language and benefits regarding the P.T.O. Program.

Issue No. 4 - The parties agreed to retain the status quo.

Issue No. 5 - The parties agreed to incorporate language as mutually agreed upon with regard to the issue of retiree health insurance.

With respect to the Issues raised by the Township of Canton in answer to their Petition the parties have agreed as follows:

Issue No. 1 - The parties have agreed to increase the probationary period from six (6) months to one (1) year.

Issue No. 2 - The parties have agreed on the issue of sick leave to allow the accumulation of seniority on sick leave for a period of two (2) years or the length of the employee's seniority, whichever is less.

Issue No. 3 - This Issue was resolved in accordance with Union Issue No. 2.

Issue No. 4 - The Township withdrew its proposal with regard to mandatory contribution by members for health insurance coverage. The remainder of the issues set forth in Issue No. 4 were and are determined by the Panel.

Issue No. 5 - The parties agreed to the same language as contained in the patrol officers contract in Article 35.3(D).

Issue No. 6(A) - The parties agreed that there would be no accumulation of compensatory time when employees are on sick leave.

(B) - The issue has been withdrawn by the Employer, however, the parties have agreed to meet in order to attempt to negotiate agreeable language outside the terms of this award.

Issue No. 7 - The parties have agreed that employees may take physical examinations during working hours without loss of wages. The parties further agreed that physical training tests will be given to employees either during working hours or if during non-working hours the employees will not be compensated.

Issue No. 8 - The Township withdrew its position on this Issue and the status quo shall be maintained in the Collective Bargaining Agreement.

With respect to the various Exhibits introduced by the parties it should be noted that Union Exhibit 1 which is a book of exhibits separately tabbed and numbered is only relevant for these proceedings with respect to tabs lettered A through F, J and N.

Likewise, with respect to the Employer Exhibits originally introduced as a packet and numbered 1 through 22, the only Exhibits which were deemed to be relevant for purposes of these proceedings were Employer Exhibits 1 through 9, 13 through 14, 16 through 17 and 21 through 22. In addition, Employer Exhibits 23 through 31 were subsequently submitted to the Panel without objection with the exception of Employer Exhibit 26 which is a description of Blue Cross Blue Shield benefits and was objected to by the Union but received by the Panel over the Union's objection.

COMPARABLE COMMUNITIES

As previously noted the parties have stipulated to four comparable communities. Therefore, the question for determination by the Panel is whether or not to accept in addition to the four stipulated communities the two communities proposed by the Union (Clinton Township and Waterford Township) and/or the two communities proposed by the Charter Township of Canton (Dearborn Heights and West Bloomfield Township). The Union has urged the Panel to adopt a standard wherein comparable communities would include those communities that meet a level no more than fifty (50%) percent above or fifty (50%) percent below the population and state equalized valuation of the Charter Township of Canton. The Union urged the adoption of that standard based upon its position that population affects every facet of a municipality including demand for services, crime rates and departmental size while, state equalized valuation provides a general picture of the overall economic value of the municipality and determines tax base. In addition, the Union emphasizes that geographical proximity is also an important factor to be considered in order to insure that the potential comparable communities are within the same labor market and accordingly, the Union urges the adoption of the tri-county area as the appropriate geographical area from which to draw comparable communities.

The Employer agrees in part and disagrees in part with the Union. The Employer urges the panel to consider factors such as the size of the population of the proposed comparables, their form

of government, budgets, state equalized valuation, department sizes and the identity of the comparables previously used by the parties which have been traditionally employed in determining comparability. In support of the two communities proposed by the Employer, it notes that Dearborn Heights was the only community offered by either party located in Wayne County as is Canton Township. The employer also alleges that Dearborn Heights is similar in population, size and state equalized valuation. While, the Employer disagrees with the Union's fifty (50%) percent standard above and below that of Canton Township it notes that even under that standard, Dearborn Heights would have been offered as a comparable community. The Employer further notes that West Bloomfield Township is similar to Canton Township in terms of population, area and the size and budget of its police department. In fact, according to the Township when compared with the four disputed comparables, West Bloomfield Township becomes the most comparable community of the four proposed by the Union and the Employer. The Employer notes the discrepancy in the state equalized valuation between West Bloomfield Township and Canton Township was the only basis for exclusion by the Union which the Employer considers to be arbitrary and not mandated by statute, the Michigan Employment Relations Commission or any other source.

The Employer acknowledges that the selection of comparable communities is not an exact science but rather a blending process of numbers, precedent, intuition and common sense.

The Employer objects to the inclusion of Clinton Township

based upon the fact that Clinton Township exceeds in population that of Canton by more than fifty (50%) percent and therefore even under the Union's own yard stick it would not be appropriate. Moreover, the Employer notes that Clinton Township's police department budget exceeds that of Canton Township by more than forty-five (45%) percent and accordingly is unlike other communities which have either been stipulated to or proposed by the parties.

On the other hand, the Employer notes that while Waterford Township and Canton Township are similar in size, population and several other areas, nevertheless, the Employer simply feels that Dearborn Heights and West Bloomfield Township constitute better comparables.

Canton Township currently levies 9.01 mils. Dearborn Heights levies 14.855 mils, West Bloomfield 5.1713 mils, Clinton Township 9.8748 mils and Waterford Township 7.4619 mils. Canton Township currently generates approximately 7.653 million dollars in tax revenues. Dearborn Heights generates 10.646 million, West Bloomfield generates 8.571 million in tax revenues, Clinton Township is unknown in terms of actual dollars and Waterford Township generates 8.251 million in general, police and fire revenues.

In terms of the 1990 population Canton Township has a population of approximately 57,000 while Dearborn Heights has 61,000, West Bloomfield Township 54,500, Clinton Township 85,900 and Waterford Township 66,700.

In terms of territory Canton Township has slightly over 36 square miles whereas Dearborn Heights has 12 square miles, West Bloomfield 31.25 square miles, Clinton Township 28 square miles and Waterford Township 35.2 square miles.

In terms of real and personal state equalized valuation Canton Township has as of 1990 \$891,424,000.00 with a SEV rate per capita of \$15,628.00 dollars. Dearborn Heights has real and personal state equalized valuation of \$792,829,000.00 with a SEV rate per capita of \$13,032.00. West Bloomfield Township has a state equalized valuation for real and personal property of \$1,659,885,000.00 with a SEV per capita of \$30,448.00. Clinton Township has a state equalized valuation for real and personal property of \$1,291,190,000.00 with a SEV per capita of \$15,037.00 and finally, Waterford Township has a state equalized valuation for real and personal property of \$1,111,429,000.00 with a SEV per capita of \$16,655.00.

In terms of population density Canton Township has approximately 1,688 persons per square mile while Clinton Township has 2,862 persons per square mile, Waterford Township has 2,009 persons per square mile, Dearborn Heights has approximate 5,000 persons per square mile and West Bloomfield Township has approximately 8,000 persons per square mile.

In terms of departmental size Canton Township has 58 sworn officers of whom 10 are command officers. Dearborn Heights has 93 sworn officers of whom 27 are command officers. West Bloomfield Township has 50 sworn officers of whom 15 are command officers.

Clinton Township has 86 sworn officers of whom 19 are command officers. Waterford Township has 80 sworn officers of whom 23 are command officers.

The average value of a home in Canton Township of \$102,913.00. In Dearborn Heights \$66,394.00. In West Bloomfield Township \$167,988.00. In Clinton Township \$78,700.00 and in Waterford Township \$76,189.00.

The respective departmental budgets for Canton Township is 4.569 million, Dearborn Heights 6.5 million, West Bloomfield 4.2 million, Clinton Township 8 million and Waterford Township 6.3 million.

A careful review of the comparable factors leads the Panel to the conclusion that in some areas each of the communities which are in dispute are comparable to Canton Township and in other areas each of the communities are not comparable to Canton Township. The real and personal state equalized valuation of West Bloomfield Township and the SEV per capita of West Bloomfield Township as well as its average home value leads the Panel to the conclusion that West Bloomfield Township should be excluded as a comparable community.

The population of Clinton Township and the state equalized real and personal property value of Clinton Township has also led the Panel to the conclusion that it must be excluded.

The comparables in terms of population, real and personal state equalized valuation, SEV per capita, and proximity to Canton Township has led the panel to the conclusion that Dearborn Heights

should be included as a comparable community.

The population of Waterford Township, its SEV per capita, and its departmental budget, along with other facts has led the Panel to the conclusion that it should be included as a comparable community.

WAGES

A. FIXED WAGE DIFFERENTIAL

Canton Township proposed that there be no fixed wage differential. The Union proposed a wage differential for sergeants and lieutenants of fourteen (14%) percent and twenty (20%) percent above the rate of a top paid patrolman for January 1, 1990; sixteen (16%) percent and twenty-two (22%) percent effective January 1, 1991; and seventeen (17%) percent and twenty-three (23%) percent effective January 1, 1992. Among the six comparable communities three of the communities do not provide for a differential and three of the communities do provide for a differential. The Township notes that the command officers have never been subject to a wage differential nor are any of the other Township bargaining unit employees subject to such a differential. The Township further notes that it has staggered contract terms for its police command and patrol bargaining units. Accordingly, the Township has concluded that due to the differing expiration dates of the contracts the police command and the patrol officers have historically based upon those facts as well as having had different concerns on different issues and benefits agreed on different wage increases. The Township further notes that in the future the members of the patrol and command bargaining units may have different and perhaps even conflicting concerns regarding benefits and other terms and conditions of their employment and accordingly a lock step arrangement on wages should be avoided in order that the parties may preserve a needed flexibility to address the

differing concerns of each bargaining unit. The Township further maintains that the Union and the Township prior to these proceedings have always been able to reach agreement on wages through direct bargaining and that the Union has offered no compelling reason to explain why the elimination of the system is either necessary or appropriate. In fact, the Township notes that the only testimony given by the Union in support of this issue was based upon the fact that a wage differential was being sought due to the fact that command officers were held to a higher standard of responsibility and performance than patrol officers. This, according to the Township, does not offer a sufficient basis to support or explain why an automatic wage differential should be instituted rather than rewarding the added responsibilities through direct negotiations.

Finally, the Township notes with respect to this issue that the Union has failed to demonstrate that any defects or problems have been caused by the existing system for determining compensation nor that the parties would receive any particular benefits which would accrue from the abandonment of the direct wage bargaining system as opposed to the imposition of a fixed wage differential.

In support of its position, the Union notes that the average wage differential in the communities which employ one between a top paid patrolman and a top paid sergeant is approximately 16.2% while the current differential between a sergeant and a patrolman in Canton Township is 12.4%. In comparable communities the

differential between a lieutenant and a top paid patrolman is 28.2% while in Canton Township the differential is 17.7%. The Union further notes that while past promotions to command have come from within the department there are no current plans by the administration to increase the current compliment of command officers. This, according to the Union, will create an increased burden on the command officers with respect to their duties and responsibilities. The Union notes that Canton Township is the only community among the comparable communities utilizing an indepth assessment center process for promotions. This results in a more credible and accurate process to identify leaders and potential leaders within the organization. Canton Township has historically expected a high degree of performance from their command officers. Command officers routinely have been required to attend various educational and training programs. By attending these programs and schooling the command officers have been able to maintain the highest degree of professionalism possible.

The Union also notes that the duties and responsibilities of command officers have increased during the immediate past. Sergeants spend more time acting as road supervisors in addition to acting as shift commanders in the absence of a lieutenant. Command officers have assumed various training and educational responsibilities both within the department and in the general community. In addition, command officers as opposed to patrol officers receive a relatively small amount of over time, court time or call in time routinely enjoyed by patrol officers. Finally, the

Union notes that if its differentials are accepted they will act to bring the command officers in terms of their overall wages more in line with the comparable communities than would the percentage increases offered by the Township.

A careful review of the testimony and exhibits with respect to this issue has led the Panel to conclude that the proposal of the Union with respect to the institution of automatic wage differential should be and is hereby rejected. The last best offer of the Township, which is that no said wage differentials be instituted, is hereby accepted. The reasons submitted by the Union simply do not justify a departure from the historic method of collective bargaining employed by the parties in order to reach wage settlements for the command unit. The institution of a set, inflexible percentage differential between patrol officers and sergeants and lieutenants which would be imposed by the Panel if the Union offer were to be accepted represents a violent departure from the concept of collective bargaining. It introduces a third party into the equation whose actions would affect the wages of the command officers who are not parties to the collective bargaining process between the patrol officers and the Township. In the absence of a mutual agreement by the parties to impose set, inflexible wage differentials an Act 312 Panel should avoid forcing the parties to abandon their historical bargaining patterns. All of the issues raised by the Union in support of a set wage differential could be and should be addressed in the normal collective bargaining process between the command officers and the

Township with respect to setting adequate levels of pay. The fact that command officers have additional training, attend assessment centers as patrolman, assume additional duties and responsibilities and receive little in the way of overtime pay are easily addressed in the normal collective bargaining process. There is no assurance that by setting a fixed percentage differential those concerns would be addressed adequately now or in the future. Undoubtedly, should the patrol officers place emphasis in other areas, as noted by the Township, and the command officers wished to emphasize an increase in their wages, a fixed percentage differential would not constitute an adequate basis for the command officers attaining their goals. For example, what would happen under the situation where the patrol officers sought a large increase in a fringe benefit such as a pension and were willing to accept a very small wage increase, as opposed to the command officers wishing a larger wage increase with little or no increase in their pension benefits. Under the Union proposal the command officers could never attain that goal unless they sought larger and larger wage percentage differentials. This would undoubtedly lead to inflexible postures by both parties and an increased reliance upon the Act 312 procedures. In addition, a fixed percentage differential while maintaining the same percentage of difference between the rate of a patrolman and a sergeant, for example, would lead to increasingly wider dollar differentials. When a patrolman is earning \$20,000.00 a year a 10% differential with a sergeant would lead to a rate of pay for the sergeant of \$22,000.00 a year with a wage differential

of \$2,000.00. When a patrolman reaches \$30,000.00 per year the wage differential now becomes \$3,000.00. It may not be in the best interests of the respective bargaining units to stretch out the actual differential in wages to that extent. However, under an inflexible wage percentage differential that is exactly the result that would be accomplished.

Accordingly, for the reasons set forth herein the proposal of the Township for no wage differential is accepted and the proposal by the Union is rejected.

WAGES

The Township has proposed wage increases of 5% for January 1, 1990, 4.5% for January 1, 1991 and 4% for January 1, 1992 in its last best offer. The Union in its last best offer has proposed wage increases of 6%, 6% and 5% on each of the three respective dates.

Overall the Township has proposed a collective increase for sergeants and lieutenants over a three year period of 13.5% compounded. The Union has proposed an increase for sergeants and lieutenants of 17% compounded. A top paid sergeant in 1989 earned \$37,327.00 and a top paid lieutenant earned \$39,190.00 in Canton Township. The comparables as proposed by the Union and the Township reflect different conclusions reached by each party based upon the fact that many of the communities have a fiscal year which begins in the middle of the year rather than on January 1. Accordingly, for example in Madison Heights a top paid sergeant earned \$38,818.00 for the first half of 1989 and \$40,565.00 for the second half of 1989 for an effective annual wage of \$39,541.00 which represents a difference \$2,214.00 or 5.9%. In Roseville a top paid sergeant earned \$38,699.00 in the first half of 1989 and \$40,246.00 in the second half for an effective wage of \$39,472.00 or a differential of \$2,145.00 which is an effective percentage of 5.75%. In the case of Royal Oak the percentage differential is 6.26% and in the case of Shelby Township the differential is also in excess of 6%.

The City of Dearborn Heights for at least half of 1989 paid

its sergeants over \$3,600.00 less than Canton Township and Waterford Township paid its sergeants \$930.00 less than Canton Township.

In the case of the lieutenants, Canton Township in 1989 paid its lieutenants \$39,190.00. Madison Heights paid its lieutenants an effective average wage of \$43,802.00 for an effective differential of \$4,612.00 which represents an effective percentage of 11.77%. Roseville paid its lieutenants an effective rate in 1989 of \$43,420.00 for a differential of \$4,230.00 or an effective percentage differential of 10.79%. Royal Oak paid its lieutenants an effective salary of \$43,211.00 for a differential of \$4,021.00 or an effective percentage differential of 10.26%. Shelby Township paid its lieutenants an effective rate of \$44,424.00 for an effective differential in the sum of \$5,234.00 or an effective percentage rate of 13.36%.

Dearborn Heights lieutenants in the first half of 1989 earned approximately \$3,400.00 less than the Canton lieutenants and Waterford Township paid its lieutenants in 1989 approximately \$1,337.00 less than Canton Township.

The remaining years for the comparable communities are somewhat sketchy based upon the fact that they were either in negotiations or in Act 312 proceedings. However, Madison Heights command officers will enjoy an increase of 4% in the fiscal July 1990 through June 1991, Roseville enjoyed an increase of 4% for the first half of 1990, Royal Oak for its fiscal years ending in May of 1990, 1991 and 1992 granted increases of 4.5%, 4%, and 4%.

Shelby Township for its fiscal years ending in June of 1990, 1991 and 1992 granted annual increases of 4% each year.

On an internal comparable basis Canton Township in 1990 and 1991 granted its clerical employees 5.5% and 5% wage increases at the top step. In 1990 it granted its police patrol and firefighters 4% increases, its employees represented by AFCME a 4.5% increase and its non union administrative employees a 5% increase. For 1991 the Township had also provided for a 5% increase for its employees represented by AFCME with the police patrol, firefighters and non union employees in negotiations.

In its Brief the Union notes that if the Union positions and last best offers were to be accepted on January 1, 1992 a sergeant would earn \$44,037.00 as opposed to the Township offer of \$42,595.00 for a differential in the sum of \$1,442.00. With respect to the lieutenants the Union proposal would provide a lieutenant with a wage of \$46,234.00 on January 1, 1992 as opposed to the Township's offer of \$44,721.00 for a differential in the amount of \$1,513.00. The total difference in wages for the three years in question for a sergeant would equal \$2,798.00 under the Union proposal and \$2,939.00 for a lieutenant. The Union based upon its computation of the highest rate payable in a fiscal year indicated that an average sergeant in the comparable communities would have been more than \$2,000.00 above a sergeant in Canton Township and an average lieutenant would be more than \$4,500.00 above a Canton Township lieutenant. Even under the Union proposed rate increases the sergeants in Canton Township in each year would

be below the overall comparable community averages. The same is true for a lieutenant. The Union notes that the Employer's wage offer for a lieutenant in 1992 would not equal the average wage of a lieutenant in comparable communities for 1990. The Union maintains that its proposal while higher than that of the Township is more consistent with the comparables and will do more to maintain the command officer's relevant status among them as opposed to the Township's offer which will serve to increase the differential between Canton and the other comparable communities. The Union further sets forth the fact that in its opinion its position is realistic, reasonable, equitable and that the Township has the financial ability to pay the demand which is consistent with the standards of comparability set forth in the statute.

In support of its position the Township noted that its proposal was more generous than wage settlements obtained by any comparable community offered by either party for the contract years beginning in 1990. Moreover, the 4.5% average annual increase proposed by the Township is second only to the four year agreement obtained by one of the rejected comparable communities. The Township notes that the Union demand is considerably more than increases received by police command units in any comparable community for the period covered by the term of the proposed agreement and more than any settlements reached with any other group of Township employees.

The Township argues that although it recognizes the differential between Canton Township and comparable communities the

Panel should not base its award upon that factor since the Union position rests on a flawed assumption that communities below the median in any wage or benefit area must be moved toward the median if not above. The Township maintains there is no basis in law or logic for such a position. The Township argues that nothing in Act 312 or the history of its application suggests that the purpose of Act 312 Arbitration is to reduce the range by awarding disproportionate or larger increases to employees of communities who fall below the median or average wage level of comparable communities. The Township has argued that it is more logical that barring a showing of significant change in circumstances an Act 312 Panel fulfills its obligation by merely acting to maintain existing differentials and insuring that contract settlements are neither disproportionately high nor low when compared to relevant communities. The approach advocated by the Union, according to the Township, would merely serve to exacerbate an upward spiral of wages forcing lower ranked communities to perpetually be pushed toward the middle or upper ranges of a comparable group while employees in the middle and upper ranges then demand percentage increases comparable to those obtained in the lower rank communities.

The second flaw in the Union argument, according to the Township, is based upon the fact that the differential between Canton Township and the comparable communities is far smaller than that which was portrayed by the Union. Canton Township objects to the use of 15 year sergeants and lieutenants for comparison

purposes since Canton Township has no command officers who have that much seniority. Moreover, the Township notes that the Union used wage data for a higher rank of a sergeant than that which exists in Canton Township. In addition, all wages were presented as of mid year in order to include wage increases which were in effect for only a portion of the year. (It should be noted that the Arbitrator recognized that method of calculation on the record and in terms of the figures set forth hereinabove calculated an average annual wage as opposed to the maximum or minimum figure paid during the calendar year).

The Township also notes that there is a clear differentiation between the cities and townships agreed upon or proposed as comparable communities. In general cities which have been agreed upon or proposed as comparable communities are older, fully developed communities with declining populations and mature, well established police departments. On the other hand, the townships agreed upon or proposed as comparable communities are newer, growing communities with growing police departments. Thus, the Township argues that when one only compares the agreed upon townships or those townships which have been used for comparable purposes the differential is virtually eliminated. The Township notes that the major differential wages between Canton Township and the cities used as comparables represents the cause for the major difference in overall wage comparisons. The Township also notes that while many townships have taken steps to reduce incentives and non-wage payments to new command officers Canton Township's

bargaining unit continues to receive benefit improvements such as increases in longevity, vacation, tuition reimbursement and weapon proficiency allowances.

With respect to the arguments raised by the Township the panel must reject the argument concerning the use of cities. It should be noted that of the four agreed upon comparable communities only one was a township. It was Canton Township and the Union which stipulated to those four comparable communities. Moreover, of the two communities proposed as comparable by Canton Township West Bloomfield Township has been eliminated leaving the City of Dearborn Heights as an additional comparable community while only Waterford Township was accepted by the Panel as proposed by the FOP. The Township simply cannot have it both ways. It cannot stipulate to the use of three cities and then in addition propose a fourth city and then argue that the wages in those cities really should not be used as a comparison of the wages of Canton Township officers. Moreover, Employer Exhibit E-3 was used as the basis by the impartial Chairperson for determining the effective wages of sergeants and lieutenants in other communities. It is the Employer's Exhibit which has established the wage differentials hereinabove set forth. In addition, Employer Exhibit 27 compares the total compensation of a Canton Township sergeant on January 1, 1989 with sergeants in the comparable communities. The differential for Madison Heights, Roseville and Royal Oak, including the entire compensation and using the lowest wage figure earned by sergeants in those cities in that year still exceeds that

of Canton Township by more than 10%. In the case of Shelby Township Canton Township in its Exhibit used the same methodology in reverse that it accuses the Union of using. It only used the lowest rate of the sergeant which was applicable for half the year rather than a weighted rate which would take into consideration the wages paid before and after July 1. The differential is more than \$1,500.00 and therefore at least \$750.00 should be added to the total compensation paid to a sergeant in Shelby Township for 1989. This would mean that the Shelby Township sergeant earned approximately \$2,000.00 more than a Canton Township sergeant. Only the sergeants in Dearborn Heights and Waterford according to the Employer's Exhibit earned less total compensation. In the case of Dearborn Heights the overall compensation figure again is inaccurate since it only reflects a figure that was used for half the year. A similar comparison of lieutenants leads one to the same general conclusions with respect to overall differentials between Canton Township and the comparable communities with the same considerations being taken into account for those communities which have a fiscal year in May, June or July. In fact, the discrepancies and percentage differentials are even greater between the lieutenants than they are between the sergeants. Again, this conclusion is based on an Employer Exhibit (E-28) rather than the Exhibits and arguments of the Union.

The Employer quite correctly notes that none of the command officers in the bargaining unit have 15 years of seniority but all of them will have attained at least 14 years of seniority in the

last year of the Collective Bargaining Agreement which is before the Panel for its consideration.

The Panel further cannot agree with the Employer's contention that Act 312 is not intended to reduce a range of disparity between the command officers in Canton Township and the comparable communities. If, that were the case, Section 9(D) of the Act would be virtually read out of existence. Section 9(D) mandates that the Panel compare 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 in both public and private employment. In addition, the Panel must take into consideration under Section 9(F) the overall compensation presently received by the employees. Clearly, the overall compensation presently received by employees is not viewed by the Panel in a vacuum but rather on a comparative basis.

Whether the Panel was to merely use a wage for wage comparable basis or a total compensation basis it is clear that the sergeants and lieutenants in Canton Township are not paid comparable wages nor comparable total compensation to their counter parts in the stipulated to comparable communities as well as the two additional comparable communities selected by the Panel from among the four communities proposed by the respective parties.

It is incumbent upon the Panel not merely to seek out the last best offer which continues the differential between the parties but where the ability to pay is not in dispute the Panel should also

seek on a reasonable basis to move the parties toward a more realistic wage scale which will be in the final analysis at least comparable to the average wages paid in the comparable communities while still taking into account the overall wages paid within the community itself.

Since, both 1990 and 1991 will be paid on an entire retroactive basis and since the Township has offered an increase which is comparable to or greater than the increases enjoyed by its other employees the Panel will accept and award the last best offer of the Township in the sum of 5% for wage increases for the sergeants and lieutenants for the period of January 1, 1990 to December 31, 1990.

In light of the principals hereinabove set forth the Panel for the calendar years commencing on January 1, 1991 and January 1, 1992 will accept and award the Union's last best offer for an across the board increase for sergeants and lieutenants of 6% on January 1, 1991 and 5% on January 1, 1992. This will result in an overall increase to the sergeants and lieutenants of 16% compounded for the three years in question as opposed to the 13.5% offered by the Township. The Township since it had not negotiated wage increases with most of its employees for 1991 or 1992 will be in a position if it so chooses to meet those percentage increases for their other employees. In addition, the award will effectuate the purposes of the Act and will result in wage increases which will more nearly reflect a comparable wage and comparable total compensation package for the sergeant and lieutenants with respect

to those communities which were deemed to be comparable by the Panel.

PENSIONS

The Union has requested a change in the provisions of the Collective Bargaining Agreement with regarding to pensions which would change the current eligibility requirements from age 55 with a minimum of 25 years of service for normal retirement with 100% medical benefits to a normal retirement age of 50 with 25 years of service with 100% or medical benefits. The Township has proposed no change in the pension benefits. Under the current pension plan all command officers of Canton Township are eligible to retire at age 55. If they have 10 or more years of service the Township pays one-half of the cost of retiree health insurance in addition to any other retirement benefit the officer has earned. If the employee has 25 years of service or more at age 55 the Township pays the full cost of the retirement health insurance. Those provisions are identical with those enjoyed by all other employees of the Township including police patrolman and Township administrators. In addition the Township agreed to a previous request from the Union wherein a letter of agreement was negotiated enhancing the retirement benefit for certain command officers. Those officers who are covered by the agreement are eligible to retire at age 55 with full retiree health insurance coverage even though they will not have 25 years of service. The Township maintains the Union presented no convincing evidence to support its request. The Township maintains that the officers should not be encouraged to leave employment prematurely based upon the costs that the Township has incurred in developing its command officers. The Township

further maintains the current retirement system is fair to all parties and adequately addresses the interests of the employees in obtaining secure retirement benefits as well as the Township's interest in obtaining a sufficient return in terms of years of service for the efforts expended in developing a competent group of command officers.

The Township notes that the Union proposal to change the normal retirement age from 55 to age 50 with 25 years of service would have no impact under the proposed Collective Bargaining Agreement since no member of the bargaining unit would be eligible to retire during that period of time. In fact, no member of the bargaining unit would be benefitted by that proposal for the remainder of the decade. Only three members of the bargaining unit would be benefitted and they are already covered by the aforementioned letter of understanding during this decade. As noted by the Township the first members who would benefit should this demand of the Union be awarded would become eligible in the year 2003.

The Township notes that there is no urgent requirement for a resolution of this issue.

Among the Union Exhibits it would seem that only three of the comparable communities provide for a pension benefit with 25 years of service and no age requirement. The remaining communities do not.

Based upon both the external and internal comparables as well as the fact that the Union proposal would not benefit anyone within

the next decade there would seem to be no basis for awarding the Union's last best offer. Accordingly, the last best offer of the Township with respect to the issue of pensions is hereby accepted by the Panel.

DENTAL INSURANCE

The Union in its last best offer has requested two modifications with respect to the current dental insurance coverage. First, the Union has requested that the current 60%/40% dental coverage be increased to 80%/20%. Second, the Union has requested that the current orthodontic limit be increased from \$1,000.00 per person/per lifetime to \$2,000.00 per person/per lifetime. In its last best offer the Union withdrew its second proposal. Accordingly, the Panel will only consider the first issue.

Canton Township in its last best offer has proposed that it maintain the status quo with no modification of the dental coverage.

In support of its proposal the Union claims that both its Exhibits and those of the Employer indicate that of the four agreed upon communities, Canton Township ranked last with regard to that benefit. The same would be true with the addition of Dearborn Heights and only Waterford Township would rank below the Canton Township dental benefit. The four agreed upon communities have a composite coverage of 82.5%. A figure which remains virtually constant with the addition of the other two comparable communities. The Union further noted in its Brief that the current coverage for all other Township employees while being 60%/40% for the various classes of benefits was not necessarily a determining factor since virtually all of the other bargaining units were currently in negotiations. Moreover, the Township witness had testified that

all of the employees do not necessarily receive the same benefits. The total difference in payment per month for the additional dental coverage would be approximately \$20.00 per person or \$140.00 per month or a total of approximately \$1,680.00 per year. Of course, that increase is insignificant in terms of the command officers but if applied by the Township to the patrol unit, the firefighters and its other bargaining units it would clearly be significantly higher.

The Township in support of maintaining the status quo alleges that only the command officers and non-union administrators currently enjoy the dental benefit to the extent set forth in the Exhibits. The Township police patrol officers have a lower maximum annual benefit and no orthodontic coverage. The Township notes that none of the comparable communities offer across the board 80%/20% coverage for all three classes of benefits. Some communities offer 100% percent for class 1, 85%/15% for class 2, and 50%/50% for class 3. However, those communities have lower yearly limits than Canton Township currently enjoys. The Township notes that the Union now seeks a plan which would be superior to that of any proposed comparable community and far superior to that given other Township employees.

The Township clearly is correct in its assertion regarding the Exhibits. The City of Madison Heights provides 75% coverage for class 1 and 2 with no indication as to the class 3 coverage. The City of Roseville provides 80%/60%/50% coverage for the three classes of benefits. The City of Royal Oak provides 75%/50%/25%

coverage for the three classes of benefits. Shelby Township provides 100%/85%/50% coverage for the three classes of benefits and Waterford Township provides 50%/50%/50% coverage for the three benefits. In addition, no community offers a greater maximum benefit than the \$1,000.00 per person lifetime benefit enjoyed by the Canton Township employees in terms of the gross amount. However, Madison Heights and Shelby Township do provide for an annual maximum benefit which clearly over a persons lifetime could and would exceed the maximum lifetime limitation contained for the class 3 benefits. With respect to this issue, it should be noted that the Township has proposed in the health insurance area an issue which it believes would effectuate a savings. In light of the Panel decision with regard to that issue as well as the external comparables submitted by the parties the Union's last best offer is deemed to most nearly comply with the statutory standards and accordingly is hereby awarded.

HEALTH INSURANCE

The Union in its last best offer has requested that the current contractual language remain and that the status quo be maintained with regard to health insurance.

The Township in its last best offer has proposed that the first sentence of Article 31.1 of the Collective Bargaining Agreement be revised to state as follows:

"The Employer agrees to provide employees with coverage equivalent to Blue Cross/Blue Shield CMM-100 Plan with a \$3.00 drug prescription rider."

The remainder of Article 31.1 would remain unchanged.

The Union contends that there is no merit to the requested change in health care coverage by the Township. The Union alleges that the proposed modification would result in a substantial reduction of current employee benefits by increasing the deductibles, providing for 80%/20% employee co-pays and increased prescription fees. The Union believes that the harm caused by these types of benefit reductions would be compounded by the fact that command officers are currently substantially underpaid. In addition, the Union maintains that the Township's last best offer is unsupported by comparables either externally or internally and is substantially outweighed by the legitimate health care concerns and needs of the command officers association.

According to the Exhibits and evidence the Township command officers currently have four options with regard to health insurance. They may select Blue Cross/Blue Shield health insurance, one of two HMOs (M-Care or Care Choices) or an employee

who has health coverage through a spouse may opt to receive a cash benefit in lieu of health insurance. Currently, only four members of the command group have selected the Blue Cross/Blue Shield health insurance. In addition, one of the four is married to another Township employee who enjoys the same health insurance options as do the command officers.

The Township does not seek any change in the HMOs or the cash option for employees with alternative health insurance coverage. It is requesting that the Blue Cross/Blue Shield policy be changed to a CMM-100 plan. That plan provides for \$100.00 annual deductible for individuals and a \$200.00 deductible for families. The current plan provides for such deductibles only with regard to the master medical coverage. In addition, the proposed plan would increase the prescription drug rider co-payment from \$2.00 to \$3.00 per prescription. Finally, the new proposed plan would require employees to pay 20% of the cost of health insurance benefits used up to a maximum of \$1,000.00. Once the maximum was reached the plan would provide for full benefits without any further contribution by the employee.

The Township's health insurance costs during the four years immediately prior to the hearing increased at an average annual rate of approximately 26%. The proposed changes in the health insurance coverage would result in a savings to the Township of approximately \$100.00 per month for family coverage without reducing the scope of available coverage. Thus, for the employees who opted for the Blue Cross/Blue Shield CNN-100 plan the Township

would effect an annual savings of \$1,200.00 per month. The Township had previously proposed a contributory plan, however, prior to the hearings the Township dropped that proposal. The Township believes that its proposal is moderate in nature while preserving existing coverage. Moreover, the Township proposal is considered to be reasonable by it in light of the fact that there are alternative coverages available for employees unwilling to pay any deductibles. As previously noted, only four of the employees currently have selected the Blue Cross/Blue Shield coverage and one of those would be entitled to retain the coverage through his spouse while at the same time accepting a cash benefit for opting out of the program. Thus, the Township concludes that only three members of the bargaining unit would be effected in any way by the change proposed by the Township and that would only occur if those employees chose to remain under the CMM-100 plan as opposed to selecting one of the two HMOs or the cash payment alternative. The Township further notes that the proposal of the Union to retain the status quo makes no sense in light of the escalating costs of insurance. It is no longer fair to require the Township to single-handedly continue to bear the entire burden of cost and cost increases while facing assured increases in the future.


In light of the wage increases awarded by the Panel as well as the increase in dental benefits it is not unreasonable for the Panel to award the Township's last best offer with regard to health insurance coverage. Employees will still have the option of selecting either an HMO or an alternative cash payment. In

addition, the additional cost to the employees is at best minimal. The average employee certainly will not have to expend more than a few dollars per year on prescriptions based upon the difference between a \$2.00 drug prescription rider and a \$3.00 drug prescription rider. The maximum additional amounts that any employee would be required to expend should they opt out for the CMM-100 coverage would be the \$200.00 family deductible plus an additional \$1,000.00 on the family co-pay. This would mean that they would have had to incur \$5,200.00 in total expenses in order to reach that maximum pay-out figure of the deductible and the co-pay. While, \$1,200.00 is not an insignificant amount, in light of the wage increases granted the bargaining unit as well as the dental benefits granted the bargaining units it is not unreasonable for members of the bargaining unit to bear a small portion of their medical costs while at the same time helping to alleviate the increased costs of health insurance coverage to the employer. It is estimated that if the four employees in the bargaining unit continue with Blue Cross/Blue Shield coverage the employer will realize a savings of \$50,000.00 over the next ten years. This is not an insignificant amount. Based upon the statutory standards it would appear to the Panel that the Employer's last best offer on this issue more nearly meets those standards especially in light of Section 9(C) with respect to the interests and welfare of the public and the financial ability of the unit of government to meet costs, Section 9(F) based upon the overall compensation presently being received by the employees including both direct wage

compensation and various fringe benefits and Section 9(H) which includes other factors which are not normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment, i.e. the continuing excessive escalating increase in cost of health insurance coverage.

For the reasons hereinabove set forth the last best offer of the Township is hereby awarded with respect to the issue of health insurance coverage.

DATED: January 11, 1992.


ALLEN J. KOVINSKY
Impartial Chairperson


DANIEL DURACK
Employer Designee


MICHAEL SOMERO
Union Designee

Panel Member Durack dissents with respect to the following issues:
Wages for January 1, 1991 and January 1, 1992 and dental insurance.

Panel Member Somero dissents with respect to the following issues:
The denial of a fixed wage differential, the wages awarded on January 1, 1990 and the awarding of the Township issue with respect to health insurance.