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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

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In the matter of the Arbitration between

TOWNSHIP OF CLINTON

-and-

CLINTON TOWNSHIP FIRE FIGHTERS ASSOCIATION, LOCAL 1381, I.A.F.F. AFL-CIO

Case No. D82B-861

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APPEARANCES:

Ronald R. Helveston, Esq.
Attorney for the Union

Charles R. Towner, Esq.
Attorney for Township

ARBITRATION PANEL:

Robert A. McCormick, Chairman

Richard Rosin, Township Delegate

Franklin Heeney, Union Delegate

OPINION AND AWARD

The undersigned arbitrator, Robert A. McCormick, was appointed Chairman of the Arbitration Panel by letter dated May 19, 1983 from the Employment Relations Commission pursuant to its authority under Public Act 312 of 1969, as amended. The Parties held a pre-hearing conference on July 15, 1983 at the offices of the Michigan Employment Relations Commission. The results of

this pre-hearing conference were made part of a letter dated August 3, 1983 addressed to the Parties. The summary which included the schedule of outstanding issues was accepted by the Parties. Hearings on this matter were conducted in Detroit and Clinton Township, Michigan on May 14 and 16, June 18, July 3, 16, 17, and August 1, 1984.

In addition, meetings among the delegates were held on January 11, January 31, and March 8, 1985.

At the prehearing conference, the Parties stipulated to the following matters:

(1) The Matter is properly before the Arbitration Panel.

(2) The statutory time limitations are waived.

(3) The Award of the Panel will adopt the language of the prior contract except where that language is modified by agreement between the Parties or by decision of the Panel.

(4) The duration of the contract will be three (3) years.

The Parties identified some twenty outstanding issues. As to four of those issues--light duty, clothing allowance, past practice and time trading--the Parties were unable to reach agreement as to their economic or non-economic character. At the request of the Chairman, the Parties submitted briefs on October 8 and 9, 1984 in support of their respective positions. On November 16, 1984 the Panel rendered its opinion ruling that light duty, clothing allowance and past practice were economic

decisions within the meaning of the Act and that time trading was a non-economic issue.

After the close of the testimony, on October 17, 1984 the Parties submitted last offers of settlement. On or about December 7, 1984 in accordance with time limitations established by the Chairman, the Parties submitted comprehensive briefs in support of their final offers.

By letter dated January 2, 1985, Counsel for the Township wrote the undersigned Chairman. In this letter the Township objected to the Union's "references...to facts that occurred after the hearing" as being "totally inappropriate and improper." Specifically the Township cited the Union's reference to collective bargaining agreements in comparable communities that had been reached after the close of testimony in this matter. In addition, the Township objected to references in the Union's brief to a Fire Department millage passed in Clinton Township on November 6, 1984, after the close of testimony. By letter dated January 24, 1985 the Union withdrew the evidence submitted by way of brief regarding the passage of the millage for the Clinton Township Fire Department. The Panel has accepted that withdrawal and has not considered, as part of its deliberation, references to a November, 1984 millage. The Union did not withdraw its references to collective bargaining agreements consummated after the taking of testimony in this matter. Upon the request of the Township, on February 20, 1985, the Chairman wrote the Parties

inviting the Parties to submit written briefs, in lieu of oral argument, in support of their respective positions as to the admissability of the Union's proffered evidence.

The Union and Township submitted briefs on February 27 and March 1, 1985, respectively, as to this matter. The Township points out that the Act requires that the Panel may look only to "competent" evidence in rendering its opinion. Moreover, the Township argues, the Michigan Supreme Court has interpreted the Act as requiring that the record be developed by the "Parties". Material submitted by one Party after the close of testimony and without the benefit of cross examination is, in the Township's view, not "competent" evidence on which to base a decision. Finally, the Township looks to case law in which one Party's attempt to introduce argument after an arbitrator's award had been rendered was rebuffed by the court. The Union, on the other hand, argues that its case has been based upon factors set forth in Section 9 of Act 312. Evidence was submitted during the taking of testimony which set forth certain wage rates and contract expiration dates in comparable communities. The information submitted in brief is, in the Union's view, appropriate updating of that evidence. The Union also looks to Section 9(g) of the Act which directs the Panel to contemplate "changes" occurring "during the pendency of the arbitration proceedings." "Proceedings", the Union states, includes, by definition, the time from commencement of the action to execution of judgment.

The Panel has carefully considered the arguments offered by the Parties and a majority of the Panel members has decided to consider the Union offered evidence regarding updated contracts in comparable communities. One of the critical statutory factors upon which the Panel must rely is a "comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours and conditions of employees performing similar services [in public employment in comparable communities]." In the Chairman's view, it is the duty of the Panel to consider the most recent possible data bearing on this factor. While in the normal course of events, all evidence should be subject to the opportunity for cross examination, as to this data, a Panel notes that it is a matter of public record which is easily verifiable and is wholly objective in nature. Accordingly, the need for cross examination as a mechanism for arriving at the veracity of the evidence is not present. Moreover, no suggestion has been made that the data is inaccurate or incomplete. Under these circumstances, and given the statutory direction to consider "changes in any...circumstances during pendency of the arbitration proceedings", the Panel is satisfied that the data is appropriately before the Panel for its consideration.

STATUTORY CRITERIA:

Section 9 of Act 312 sets forth factors to be used by the Panel in findings, opinions, and orders.

The factor of "the lawful authority of the Employer" is satisfied by the stipulation of the Parties.

The second factor, "stipulation of the Parties" will be recognized, where applicable, especially in reference to matters resolved by stipulation during the hearing. The factor of "comparison of wages, hours, and conditions of employment, et.al.", is frequently referred to comparability. This issue is treated separately below.

Act 312 also lists as criteria upon which the Panel must base its award, "the interests and welfare of the public and the financial ability of the unit of government to meet those costs". This issue is commonly referred to "ability to pay". It bears noting that the Township has not specifically relied on an inability to financially meet the demands of the Union although the Township has emphasized the costs involved in several of the Union's proposals. This factor will be considered in connection with individual issues.

Section 9 of the Statute requires the Panel to consider the "cost of living" in its deliberations. The Panel has examined, in particular, documentary evidence in the form of Consumer Price Indexes. The Panel's findings accompany discussion of several economic issues.

Finally, the Statute requires the Panel to consider the overall compensation presently received by the Employees including direct wage compensation and all other benefits

received; changes in the foregoing circumstances during pendency of the arbitration proceedings, and "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."

COMPARABLE COMMUNITIES:

The Union and the Township agree that East Detroit, Mount Clemens, Roseville, St. Clair Shores, Sterling Heights, Warren and Harrison Township are communities which are comparable to Clinton Township. In addition, the Union offers 18 other communities as being sufficiently comparable to Clinton Township so as to warrant comparison of wages, hours, and conditions of employment for fire fighters there with Clinton Township fire fighters. Those communities are: Allen Park, Birmingham, Dearborn, Dearborn Heights, Ferndale, Garden City, Hazel Park, Inkster, Lincoln Park, Livonia, Plymouth, Plymouth Township, Redford Township, Royal Oak, Shelby Township, Southfield, Westland, and Wyandotte. Some of these communities have been recognized as comparable communities in prior Act 312 proceedings.

The Township does not agree that the additional 18 communities offered by the Union are sufficiently comparable to

be looked to in this proceeding. The Township points out that the communities it offers as comparable are all within Macomb County, are contiguous to Clinton Township and are subject to the same tax allocation board as is Clinton Township. Because these communities share the same roads, shopping facilities, utilities and the like, the Township argues that its list is more appropriate than that offered by the Union.

While geographic proximity is obviously an important factor in determining comparability, other factors persuade the Panel that the Union--offered communities are sufficiently like Clinton Township that they may be used for comparison purposes. First, the Panel notes that all of the Union offered communities are within close geographical proximity to Clinton Township if not contiguous to it. As or more importantly, the evidence shows that Clinton Township falls at or near the median when viewing several other factors: in terms of Per Capita S.E.V., Clinton Township falls squarely in the middle with 13 communities enjoying a greater Per Capita S.E.V. and 12 having less. In terms of median family income, 12 of the Union offered communities are higher than Clinton Township and 13 are lower. With respect to 1982 taxes levied, in 15 communities higher taxes were levied while in 10 communities, lower taxes were levied. As regards housing values and numbers of units as well as Per Capita income, Clinton Township is at or very near the median. And while Clinton Township has a greater population, land area and S.E.V.

overall than most of the Union offered communities, the experience in those communities is not so divergent as to make them incomparable.

Accordingly, the Panel has looked to the wages, hours, and working conditions in all of the offered comparable communities in arriving at this Opinion and Award.

ISSUES:

I. **WAGES:**

Clinton Township Fire Fighters at full pay currently earn $24,714 per year. For the first year of the contract, April 1, 1982 through March 31, 1983, the Union proposes a 7% increase for all ranks and classifications. For the second and third years of the contract, 1983-84 and 1984-85, the Union seeks a 3% increase on April 1 and on October 1 of each of those years.

The Township proposes a wage increase of 4% for the first year. For the second and third years of the contract, the Township proposes a 3% increase annually. The Parties have agreed that the Panel may consider the last offers of settlement individually and accept or reject the offers separately.

DISCUSSION:

Documentary evidence submitted at the hearing comparing the base wage rate for fire fighters in Clinton Township with annual rates earned by fire fighters in comparable communities reveals

that of the twenty-six communities, wages for Clinton Township employees rank 22nd.[1]

Adoption of the Union's wage proposals would result in fire fighters receiving annual base wages of $29,762. This figure would place Clinton Township ahead of all other comparable communities at least until collective bargaining agreements for 1984-85 were reached in those communities.

Acceptance of the Township's proposal, on the other hand, would place Clinton Township, for the time being, tenth on the list of comparables.

The Union argues that when overall compensation is considered, Clinton Township is ranked twenty-first out of twenty-six comparable communities--a ranking that would not be significantly altered by the Employer's proposed wage schedule. Moreover, the Union points out, inflation has actually served to decrease the purchasing power for fire fighters from the amount earned in 1973--a disadvantage left unremedied by the cost of living adjustment provision.

The Township argues, in essence, that its proposals put the Clinton Township Fire Fighters above the average, at least for comparable communities offered by the Employer. In addition, other bargaining units within the Township, represented by AFSCME

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[1] As indicated earlier in this Opinion and Award, the Panel has considered the updated contracts in certain of these comparable communities.

as well as unrepresented employees, accepted a wage freeze for 1982-83--the first contract year under consideration here. Some of those employees received a 3% raise for 1983-84 and the offer of a 4% raise for 1984-85. Other of these employees received a 7% raise for 1984-85 only. In this case no such wage freeze for any of the years is offered.

As regards for any comparison with the compensation afforded police officers, the Township argues that the granting of the Union's proposal would put the top paid fire fighter nearly $1,700 above that earned by a similarly situated police officer. In turn, the Union argues that the Towship's wage proposal would leave fire fighters earning nearly $800 less than their counterparts on the police force. Moreover, the Union points out, fire fighters work, on the average, approximately 800 hours more than police officers, exacerbating the difference in compensation. In addition, as regards the so-called "internal comparables", the Union points out that department heads and elected officials in the Township received wage increases ranging from 7% to 19.9% and that in 1984, elected officials received an additional 7% increase.

DISCUSSION:

The Panel has considered the foregoing arguments and has determined, for the following reasons, to adopt the proposal of the Union (7%) for the first year of the contract and the proposals of the Employer (3% and 3%) for the remaining two years

on the contract. This Award will result in an annual wage of $28,054 dollars for full paid fire fighters and will place Clinton Township fire fighters fifth amoung the 26 comparable communities, subject to some erosion as contracts are reached in the numerous communities where contracts are still unresolved. In the Panel's judgment, this represents a fair compromise between the proposals offered by the Parties. Given the lengthy time Employees have been without a wage increase and the effects of inflation during those intervening years, placing Clinton Township Fire Fighters, for the time being, fifth as opposed to tenth among comparable communities appears equitable. Moreover, this resultant wage rate is the virtual equivalent of wages earned by police officers within the community. It is true, of course, that there are substantial differences in the task performed by fire fighters and police officers to which both parties look in support of their positions. At the same time, however, the critical services performed by both departments as well as the general tradition of parity outweigh the differences between the departments and support a wage rate minimizing the differences in pay.

AWARD:

The Union's last offer of settlement for the first year of the contract (7%) is adopted. The Employer's last offer of settlement for the remaining two years (3% and 3%) is also adopted.

II. COST OF LIVING ADJUSTMENT:

The current cost of living provision (Schedule "B") in the contract, has two elements in which the Union seeks a change. Under the present formula, Employees' salaries are adjusted, quarterly, on the basis of increases or decreases in the Bureau of Labor Statistics Consumer Price Index, with the Employees receiving an increase or a decrease of one cent per hour for each three tenths (0.3) change in the index. In addition, the index for the last month of the preceding quarter to determine whether, and in what amount, an increase or decrease will be awarded.

The Union seeks to eliminate the possibility that wages will be reduced on the basis of a decrease in the Consumer Price Index. The Union also proposes that the base index for comparison purposes be established annually instead of quarterly. Under the Union's proposal, these modifications would be implemented only for the final year of the contract. The Township proposes that the current arrangement be continued.

In support of its position, the Union argues that under the current formula, Employees may actually end up reimbursing the Employer as inflation decreases or actually recedes. Thus, what was envisioned as a benefit to ameliorate the effect of inflation may end up working a hardship upon Employees. The Union also looks to the experience in comparable communities in support of its position. In the twenty-five communities offered by the Union as comparable to Clinton Township, ten provide for a C.O.L.A.

and seven of those ten do not require Employees to pay back money to the Employer when the C.P.I. falls. Moreover, of the ten communities providing C.O.L.A., four use an annual, rather than a quarterly base.

The Township, in contrast, argues that the majority of comparable communities provide no C.O.L.A. benefit whatsoever. Additionally, the Township argues, even though a minority of communities with cost of living provisions provide for deductions, the elimination of a possibility for decreasing the cost of living benefit appears to be contrary to the reason for having a cost of living adjustment to begin with.

DISCUSSION:

At the outset, it is an operating principle of this Panel that changes in the agreed upon relationship between the Parties will not be ordered without a showing of deficiency or inequity resulting from the current arrangement. Here, it is clear that, on occasion, the current cost of living adjustment formula will work to the detriment of the fire fighter. At the same time, the Panel finds persuasive the Employer's argument that the purpose of a cost of living adjustment is to keep wages in line with costs and, therefore, that a potential for decrease is as warranted as is a potential for increase. In addition, while the quarterly calculation will, on occasion, diminish the benefit accorded fire fighters, the Panel sees the more frequent adjustment as reflecting, with greater precision, the actual

living costs facing employees. Given the fact that a substantial majority (15) of the comparable communities provide no protection against increases in the cost of living whatsoever, the Panel concludes that the present benefit is satisfactory. Put a different way, the Panel sees the infirmities in the current arrangement as insufficient to warrant a change in the current benefit.

AWARD:

The last offer of settlement of the Employer is adopted.

III. **LONGEVITY:**

Fire Fighters in Clinton Township currently receive longevity pay in an annual lump sum payment equal to a percentage of their base salary in accordance with the following schedule:

5 to 9 Years -- 2 percent

10 to 14 Years -- 4 percent

15 to 19 Years -- 6 percent

20 to 24 Years -- 8 percent

25 Years and Over -- 10 percent

There is a ceiling of $13,000 to which these percentages are applied.

The Union proposes that, beginning April 1, 1984, the $13,000 maximum be increased to the salary of a two year fire fighter as is awarded in this proceeding. The Township seeks to retain the current provision in its entirety.

The Union argues that although the current longevity formula has been in effect for at least sixteen years, the ceiling on wages to which the formula is applied has not been improved since approximately 1972. The Union also looks to the experience in comparable communities in support of its proposal. Evidence regarding longevity pay in the other communities submitted during the taking of testimony and updated in the Union's brief, reveals that Clinton Township ranks 17th out of the 26 comparable communities. This ranking, the Union notes, is subject to potential downward movement in the event contracts in other communities improve this benefit for those Employees.

The Employer underscores the fact that this Union proposal would be costly to the Township. The average longevity among Clinton Township Fire Fighters is approximately 15 years. For such an Employee, the Union's proposal would result in longevity pay being twice that currently enjoyed. This, in turn, would result in an annual expense of approxiately $20,000 to the Township. When longevity pay is viewed as part of the total compensation package for Clinton Township Fire Fighters, the Employer argues, these Employees receive ample remuneration that ought not to be radically increased.

DISCUSSION:

A review of the experience with longevity pay in communities comparable to Clinton Township reveals that a bare majority (13) of the 25 communities have longevity pay formulae similar to that

requested by the Union here--that is, the percentage is applied to the salary. In the remaining 12 communities, the experience varies widely. Many, like Dearborn, Garden City, Inkster, Westland and Wyandotte place a cap on longevity pay in the $500 to $600 range. This variety of approaches makes the resolution of this proposal difficult.

The documentary evidence submitted by the Union[2] shows that in terms of longevity pay, Clinton Township Fire Fighters currently rank 17th out of the comparable communities. Under the Union formula, longevity pay for Clinton Township fire fighters would rise to $1,058 for a ten year fire fighter and to $2,644 for a twenty-five year fire fighter. This would place the Clinton Township fire fighters in 8th and 7th place respectively. Although this is not an unreasonable result, when viewed together with the overall compensation being awarded in this proceeding, the evidence does not compel a change from the status quo in the area of longevity pay. For many fire fighters, the Union's proposal would result in a doubling of longevity pay annually awarded. The decision of this Panel in the area of wages puts Clinton Township fire fighters 5th among the 26 comparable communities. While the effect on relative compensation of the addition of longevity pay is not altogether clear, it is likely that the Union's last offer of settlement would place Clinton

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[2] Union Exhibits 40 and 41.

Township fire fighters at or very near the top of the comparable communities.

The Statute requires that the Panel consider "the overall compensation presently received by the Employees" including, in effect, all benefits. Evaluation of this factor persuades the Panel that the Union's burden of establishing cause warranting a change from the status quo has not been met.

AWARD:

The last offer of settlement of the Township is adopted.

IV & V. **UNIFORM AND CLOTHING ALLOWANCE:**

Under the current policy regarding uniforms and cleaning allowance in Clinton Township, newly hired fire fighters must purchase their own work uniforms. Upon the completion of the probationary period, the Township contributes $200 toward the purchase of a dress uniform. Thereafter, the Township provides annual payments of $137.50 for clothing allowance and $225 annually for Employees who wear dress uniforms on a daily basis.

The Employer seeks to alter the method of reimbursement for clothes cleaning beginning April 1, 1985. Thereafter, rather than providing a lump sum payment, the Employer offers to pay on a per diem basis $3.00 per day or $5.00 per day if a dress uniform is required. The Union also seeks a change from the current practice. Under the Union's last offer of settlement, fire fighters would receive an annual payment of $200 for work uniforms and $300 for Employees required to wear dress uniforms.

In addition, the Union proposes that the payment toward uniform purchase be increased to $335. Each of these uniform proposals would take effect April 1, 1984. For the remaining two years of the contract, the prior practice would continue.

ARGUMENT:

The Union argues that the cost of a dress uniform is $336.95 and that therefore, the $335 initial payment proposal is justified. As regards the dress uniform cleaning allowance proposal, the Union argues that, in fact, these expenses will not likely arise because, at the present time, bargaining unit members are not required to wear a dress uniform on a daily basis. In the event such a requirement did come to pass, the Union argues that the cost of dry cleaning would range from approximately $400 to $500 annually.

Finally, the Union argues that the current annual allotment of $275 is inadequate. Evidence submitted by the Union suggest that the annual costs for dry cleaning work uniforms is $390 to $480 per year. Even if laundered at home, there are obvious costs to the Employee.

The Union also appears to argue that the increase in uniform cleaning allowance is satisfied by the fact that Employees must,and unfairly in the Union's view, provide their own initial uniforms. These costs could be ameliorated by the additional clothing allowance.

The Township argues that the annual payment to fire fighters does not reflect actual usage and, therefore, compensates some Employees who are not on duty and therefore not in a position to dirty their uniforms. In addition, the Employer points out that the Union's proposed increase in cleaning allowance from $275 to $400 annually represents a 45% increase; the increase for dress uniform maintenance for $225 to $300 annually constitutes a 25% increase and the proposed increase in initial contribution toward the purchase of a dress uniform from $200 to $335 constitutes a 67 1/2% increase. These increases, without evidence of equivalent increases in costs, are, the Employer argues, impermissible.

The Employer calculates that the average fire fighter in Clinton Township works 106 days per year. This, then, would result in an average annual compensation of $318 per year--an increase of 17% over the current $275 allotment. The Employer further argues that the same rationale applies to a per diem allowance for dress uniform cleaning. Again, based upon a 106 day work year, Clinton Township Fire Fighters would receive $530 annually--an increase of approximately 17% over the current rate of $450.

DISCUSSION:

As with other issues in dispute, the respective positions of the parties have much to commend them. Thus, for example, the Employer's proposal that the cleaning allowance be tied to actual

per diem usage would tailor the allowance to its intended purpose. At the same time, it is apparent that the current $200 payment toward the purchase of the dress uniform is inadequate.

While there are advantages to each of the proposals, the following factors have persuaded the Panel that the Union's last offer of settlement is more appropriately called for by the statutory factors.

As has been indicated, the per diem concept makes sense in theory but the resulting allowance falls substantially short of the amounts permitted in comparable communities.

Moreover, the Panel recognizes the potential difficulty with the Employer's proposed payment of clothing allowance for "each full day work". On its face, this language would limit compensation to Employees working a full, 24-hour shift and would deny compensation to the Employee who was slightly tardy or who worked overtime for a portion of a day. Such a result undermines the Employer's own purpose to tie the allowance to actual daily use--and, accordingly, undermines the Employer's position regarding this issue.

AWARD:

The last offer of settlement of the Union is adopted.

VI AND VII. PENSIONS/FINAL AVERAGE COMPENSATION AND PENSIONS/MULTIPLIER

Although technically the issues of Final Average Compensation and Pension Multiplier are separate, because of

their interrelatedness, this Opinion will discuss them together.

Under state law, at a minimum, a fire fighter's pension is calculated by first averaging the final five consecutive years of highest annual compensation received during the ten years of service immediately preceding retirement. This figure is, then, multiplied by 2% for the first 25 years of service and by 1% for each year of service after 25 years. State law permits an increase in the multiplier to be used as well as a limitation in the years to be looked to in calculating Final Average Compensation.

The Union seeks an improvement in the pension formula. Under the Union's last offer of settlement, the 2% "multiplier" would increase to 2.25% and the years looked to in arriving at the final average compensation would be changed to the three years highest annual compensation received during the ten years immediately preceding the fire fighter's retirement. These improvements would take effect during the final year of the contract.

The Township urges a continuation of the status quo in this area.

DISCUSSION:

After careful consideration of this issue, the Panel has concluded that the Union's last offer of settlement more closely comports with the statutory factors set forth in Section 9. The experience in the comparable communities weighs heavily in favor

of the Union's position on this issue. By the Chairman's interpretation of Union Exhibit No. 33, some 16 of the 25 comparable communities have a multiplier equal to or greater than 2.25%--the figure sought here. As regards Final Average Compensation, a slight majority of 14 out of 25 offer Final Average Compensation equal to or more beneficial to the fire fighter. It is also noteworthy that considering only the Township's offered comparablea in Employer Exhibit No. 18, a majority of four out of seven communities utilize a three year average in determining Final Average Compensation--the figure sought by the Union here--and that all of the Township's comparable communities have a multiplier greater than that currently in effect. Indeed, in 6 of those 7 communities the multiplier is greater than the amount sought here.

The Panel is also influenced by the effect of inflation on a fire fighter's pension benefit. The Act directs the Panel to base its findings upon "the average consumer prices for goods and services, commonly known as the cost of living." The Union illustrates the erosion of benefits a hypothetical fire fighter would experience, between the time of retirement (at age 55) and the time he becomes eligible for social security benefits. Under the current pension arrangement, assuming an annual increase of 4% in fire fighter wages, by the time social security benefits are available, the fire fighter's annual pension would equal only 40.7% of the wage an active employee would earn. While the

inclusion of social security benefits would increase that percent replacement factor, for a time, the continuing effect of inflation would substantially diminish the purchasing power of the pension benefit.

The Employer currently contributes 16.15% of its payroll costs to the retirement system for fire fighters. Granting the Union's proposal, unquestionably, will substantially increase the Township's unfunded accrued liability and will increase the percentage of pay contribution to 22.18%. At the same time, a review of the experience in comparable communities reveals that even with the 22.18% contribution rate, Clinton Township will rank 10th out of 25 communities in terms of the Employer contribution rate.

Among the Panel's greatest concerns in the area of pensions is that this Award will alter the parity between police and fire fighters for pension purposes. Nevertheless, however, consideration of the statutory factors, particularly the experience and comparable communities and the effect of inflation upon benefits, persuades the Panel that the Union's last offers of settlement should be adopted.

AWARD:

The Union's last offer of settlement regarding Final Average Compensation and Multiplier are adopted.

VIII. LIGHT DUTY

In Clinton Township currently, Employees who have been injured in the line of duty are offered so-called "light duty". Under this arrangement, fire fighters who are unable to perform fire suppression tasks may be reassigned to perform other, less physically demanding, functions--watchroom duties, dispatching functions and the like. Such tasks are not available to Employees who are injured outside of employment, however.

The Union proposes to provide for light duty functions to be assigned Employees whose injury or illness prevents them from performing fire fighting duties, regardless of whether their illness or injury occurred at, or away from, work. The Township seeks to maintain the present arrangement.

ARGUMENT:

The Union argues that their proposal would be advantageous to the Employer as well as Employees. Permitting temporarily disabled Employees to perform light duty would free another fire fighter to respond to emergencies. The Union argues that this provision would come at little or no cost to the Employer and might, in fact, result in a savings to the Employer when all Employees on duty are needed for fire fighting tasks.

Finally, the Union notes that 10 of the comparable communities offer light duty positions to Employees who are unable to perform the range of fire fighting tasks due to non-duty related injury or illness. The Employer argues that the

open endedness of the Union's proposal would entitle a disabled Employee to retain a light duty assignment indefinitely and would unduly burden the Department's decision making discretion. In addition, the Employer queries, would a partially disabled fire fighter, in fact, create problems for the operation of the Department inasmuch as the Employee's disability might hamper his effectiveness even as to emergencies arising at the Department?

The Employer also looks to the experience in comparable communities and underscores the fact that 16 of the 26 communities do not provide for light duty assignment as is requested here.

DISCUSSION:

In all candor, the Chairman is of the firm opinion that the Union's light duty proposal is eminently sensible. Permitting a disabled Employee to perform tasks he could perform would not only help the ill or injured Employee by diminishing his loss of accrued sick leave but would, in addition, come at little or no financial expense to the Employer. The Employer harbors legitimate worries that Employees who are injured or ill would be unable to assist in emergencies at the fire station or be inadequately skilled for dispatching duties. These fears, however compelling in the abstract, are, nevertheless, undercut by the fact that Employees who are injured on the job are already permitted to perform these tasks. There is no apparent distinction between on-the-job and off-the-job injuries that

would warrant a difference in treatment. Moreover, in the event the Employer could demonstrate that a disabled Employee would be unable to perform the required light duty tasks, nothing in the contract would prevent the Employer from exercising its managerial prerogatives to exclude such an Employee from light duty assignment.

The Panel recognizes that the majority of comparable communities do not, as yet, have light duty provisions. At the same time, Clinton Township has already had some experience under its current contract with such a practice and the Panel has been presented no evidence indicating that it has created a burden for the Employer. In light of this history, the Panel is persuaded that the light duty provisions of the contract ought to be extended to fire fighters whose illness or injury occurs away from employment.

AWARD:

The last offer of settlement of the Union is adopted.

IX. JURY DUTY

The current agreement between the Parties contains no provision for compensating Employees called for jury duty. One result is that Employees lose a day's pay for each day served on jury duty. The Union proposes to add the language to the contract which would enable fire fighters to receive their daily wage for each day served on jury duty less any compensation

received for such duty (except mileage fees). The Employer proposes to retain the current arrangement.

The Union looks to comparable communities in support of its position. In those communities, 18 provide for compensation in accordance with the formula proposed here by the Union. Moreover, the Union points out, three out of the eight collective bargaining units within Clinton Township also make provision for jury duty. Inasmuch as only two fire fighters have been called for jury duty in the last 16 years, the cost of such a proposal, in the Union's view, would be minimal.

The Employer, for its part, argues that the Union's proposal places no requirement on the Employee to return to fire fighting duties as soon as the jury duty obligation expires. In addition, the Employer points out, this jury duty provision would place the Employer in the position of paying the Employee excused for jury duty as well as that fire fighter's replacement--normally at overtime rates.

The Employer argues that the record evidence does not reveal whether the comparable communities have minimum manning requirements as does Clinton Township, nor does it reveal whether the three "internal comparables" call in replacements for absent Employees.

DISCUSSION:

For the following reasons, the Panel is persuaded that the Union's last offer of settlement regarding jury duty is

appropriate. Foremost, the experience in the comparable communities overwhelmingly supports the Union's proposal. The Employer argues, in sum, that the evidence does not show whether these communities have minimum manning requirements. If, the argument appears to run, the communities do not have minimum manning requirements, those Employers would not bear the financial burden of having to replace Employees lost to jury duty. The infirmity in this argument, however, is that the Employer has not generally presented an inability to pay defense.

Given the relative rarity with which the jury duty obligation occurs, it is appropriate that fire fighters suffer no diminution in pay for this legal obligation. Finally, given the Union's assurances during the hearing in this matter as well as management's right to require attendance for regularly scheduled work hours, the Panel is persuaded that the Employer can insure that Employees whose jury duty obligation has ceased report to work.

AWARD:

The last offer of settlement of the Union is adopted.

X & XI: SERVICE CONNECTED INJURY AND WORKERS' COMPENSATION

The current contract provision regarding benefits for fire fighters injured in connection with their employment is as follows:

Section 2 - Service Connected Injury

"No sick days shall be charged to the account of any Employee who is ill or who has suffered an injury arising

> out of his employment and connected with his employment, and which prevents him from his performance of duties for the Township. In such cases, the Employee shall continue to receive full compensation for a period not to exceed (six) calendar months; provided, however, if an Employee is eligible for workers' compensation benefits, the Township shall make application for such benefits and monies received therefrom shall be assigned over and paid to the Township upon receipt thereof by the Employee."

The Union seeks to modify this provision for the last year of the contract only (April 1, 1984 through March 31, 1985). Under the Union's proposed revision, fire fighters injured on duty would receive full compensation for 12 months instead of the 6 months currently provided. During that time, however, if the Employee were receiving workers' compensation benefits, the Employer would pay only the difference between the workers' compensation benefit and 80% of the "employee's base pay currently in effect for his/her classification."

After the expiration of the 12 month period, under the Union's proposal, the Employee would continue to receive the same compensation but such compensation would be realized by using accumulated sick leave, annual leave and other paid leaves until such reserves were exhausted. The Union's last offer of settlement also calls for payroll deductions to be made for credit union, union dues and fire department pension contributions at the full bi-weekly rate.

The Employer argues that Employees are sufficiently protected under the current contract. The Township may grant an additional leave, after the expiration of the 6 month. And, in

any event, after the 6 month period has passed, Employees receive workers' compensation and, if eligible, may seek disability retirement under Act 345 as well as benefits under the Township's life insurance policy.

In addition, in the event employment were terminated, the Employee would receive benefits in cash attributable to accrued sick and annual leave. Accordingly, the Employer seeks to continue the present arrangement regarding service connected injury.

The Employer argues that one deficiency in the Union's proposal is that by allowing the Employee to remain on the payroll even after the passage of 12 months, according to the Union's proposal, the Employee would continue to accumulate sick and annual leave benefits even as such benefits were being used. According to the testimony of Mr. Troppens, such an arrangement might permit an Employee to accrue as many days as are expended and thereby to extend his employment virtually indefinitely.

Although the Township seeks to maintain the status quo as regards to service connected injury, it proposes to amend the contract in the area of workers' compensation to provide that, effective April 1, 1985, the Township shall compensate Employees rendered ill or injured on the job by paying the difference between the workers' compensation benefit and 80% of the Employee's base pay at the time of injury.

The Employer seeks this change for two reasons: First, this amendment is in keeping with the provision granted by a panel involving Clinton Township and the police officers. Second, the Employer argues, the current arrangement can result in an Employee receiving a windfall if injured on the job.

The Union argues that the Employer's last offers of settlement regarding service connected injury and workers' compensation are contradictory. That is, the Employer's proposed revisions in these areas have terms which cannot exist simultaneously. The Union does recognize, through its last offer of settlement, the propriety of providing the difference between workers' compensation and 80% of the Employer's base pay. Such a proposal, the Union points out, provides an Employee with less than the current provision (100% of base pay).

One problem with the Township's last offer of settlement on workers' compensation is, the Union argues, that the proposed language makes no provision for insuring that an Employee who is ill or injured during employment will be compensated without use of sick leave. In addition, the Township's proposed language might be interpreted to mean that Employees injured on duty, but not receiving workers' compensation, might not be entitled to full compensation from the Employer.

In the Union's view, the Township's proposal, by baseing compensation on the Employee's base pay at the time of illness, could work to deprive Employees of a wage increase that otherwise

would have been enjoyed. Instead, the Union argues that in a majority of the comparable communities, fire fighters receive 100% of their compensation without use of sick leave for one year or more--a benefit substantially equal to or greater than that sought by the Union here.

DISCUSSION:

The interrelated proposals regarding service connected injury and workers' compensation are inextricably connected and difficult to resolve. In the Panel's view, there are major, and indeed possibly insurmountable, problems with both final offers.

As regards the Employer's proposals, the Union's observation that the offers are inconsistent appears to be well taken. It simply is not possible to maintain the current provision for service connected injury as well as the Employer's proposal regarding workers' compensation simultaneously. If for no other reason, the proposals are incompatable because under the current service connected injury language, Employees are entitled to 100% of their pay less workers' compensation benefits while under the Employer's proposal regarding workers' compensation, Employees, injured in the line of duty, would receive the difference between workers' compensation benefits and 80% of their pay. Accordingly, this Panel could not implement the Employer's final offer of settlement on these two issues.

The major drawback to the Union's proposal is that under it, Employees are retained on the payroll after the expiration of 12

months. According to Mr. Troppens unrefuted testimony, such an arrangement might enable a firefighter to continue to accrue sick leave and annual leave benefits while depleting the same benefits, thereby, in effect, unduly extending the period of employ. In addition, while a bare majority of the comparable communities provide benefits equal to or greater than that sought by the Union here, the record does not reflect the status of Employees once the automatic period for full compensation has expired. Finally, no evidence has been submitted to establish that the current arrangement has worked a hardship on any Employee or that the current provision has been otherwise inadequate.

It is the Chairman's view that this issue is ripe for further negotiation by the Parties. For the time being, the status quo appears preferable to either proposal.

AWARD:

The Employer's last offer of settlement regarding service connected injury is adopted. Inasmuch as the resolution of this issue also determines the resolution of the workers' compensation issue, the workers' compensation issue is rendered moot.

XII: FOOD ALLOWANCE

By agreement between the Parties, incorporated by stipulation into an earlier Act 312 Award, an allowance for food is provided fire fighters by the Township. The current contract

arrangement provides that this allowance will be adjusted to reflect changes in the costs of food.

The Union proposes to retain the status quo in the area of food allowance with technical changes only to reflect the actual amount disbursed for 1982-83.

The Employer seeks to alter the contract commencing April 1, 1985, to provide food allowance based on a per diem basis of $6.50 for each full day worked.

ARGUMENT:

The Union argues that the current Plan insures parity with the police officers in Clinton Township who receive a gun allowance. In addition, the Union asserts that its proposal is more closely in keeping with the experience in comparable communities. Moreover, the Union argues, the Employer's per diem formula will result in a net cost to the Township which is approximately $5,000 greater than under the Union's last offer of settlement. Finally, the Union argues, under the Employer's proposal, Employees would be entitled to food allowance only if the full, 24 hour day is worked. Anything short of the full shift would remove that Employee from the food allowance eligibility.

The Township argues that, based on days worked not including overtime, the benefit to the firefighter would be approximately the same as under the current contract. The advantage of the Employer's proposal, it argues, is that Employees would receive

food allowance only for days worked and Employees on extended leave would not receive the allowance. Under the current arrangement, Employees who are called in to work overtime receive no greater compensation and the Employee not working continues to receive the food allowance.

DISCUSSION:

As in the area of clothing allowance, the Employer's proposal seeks to compensate Employees for actual usage as opposed to a blanket sum. As in the area of clothing allowance, the logic of this approach carries considerable weight. In the Chairman's view, the allowance for food ought to be tailored, if possible, to serve its intended purpose.

At the same time, however, there are defects in the Employer's proposal that make it unacceptable to the Panel. First, it must be observed that none of the comparable communities allocate food allowance in the way urged by the Employer here. More importantly, however, is the fact that fire-fighters would be precluded from receiving any allowance for serving less than one full day. As a result, Employees working a partial shift on overtime or Employees who are absent for a portion of the shift due to personal emergency or jury duty for example would receive no compensation for food purchased and consumed during the hours the Employee does work. This result undermines the logic of the Employer's approach. Finally, it appears that the Employer's proposal would, in fact, be more

costly to the Township than the Union's last offer of settlement inasmuch as fire fighters regularly work overtime, thereby raising the per diem cost to the Employer above that described in its brief. Accordingly, in consideration of the statutory factors, the current practice regarding food allowance is more appropriate than the Employer's proposed change.

AWARD:

The last offer of settlement of the Union is adopted.

XIII. PERSONAL DAYS AND BIRTHDAY

Under the current contract, fire fighters receive two personal business days per year. In addition, Employees receive a paid day off for the Employee's birthday, to be taken when the Employee chooses.

The Township seeks to eliminate the birthday holiday beginning April 1, 1985, and to provide, in its stead, three-quarters of one day's pay for unused personal business days at the end of each year.

The Union proposes to retain the current birthday benefit and seeks, for the last year of the contract only, to have fire fighters compensated at the rate of three-quarters of one day's pay for each of the unused personal business days.

The Township argues that other units within the Township have eliminated the birthday benefit and have substituted an additional paid personal business day for Employees in those units. Here, the Employer suggests that the additional personal

business day is unwarranted because fire fighters would continue to receive a greater percentage of paid time for personal business days than would police officers in Clinton Township. Finally, the Employer argues, the Union's last offer of settlement is internally inconsistent because it purports to seek the status quo, on the one hand, and, at the same time, seeks compensation at three-quarters of one day's pay for each unused personal business day.

The Union argues that its proposal is more equitable because it compensates fire fighters for each unused personal business day. Moreover, the Union argues that the Employer's comparison with police officers is inappropriate inasmuch as fire fighters work 40% more hours than do police officers. And, parity with the other units in Clinton Township would be diminished because, here, unlike those units, under the Township's last offer of settlement, the birthday will not be converted to an additional personal business day.

DISCUSSION:

There is some confusion in the Chairman's mind with respect to each of the last offers of settlement. For example, the Employer's last offer clearly says "...the Township shall then [in the event of forfeited days] pay such fire fighters three-quarters of one day's pay for the forfeited personal days..." In brief, however, the Employer states, "...we are merely agreeing

to pay the firefighter three-quarters of a day's pay for each personal day that is forfeited..."

Regarding the Union's position, it seeks in its last offer of settlement "...to retain the current provisions..." while simultaneously requesting the addition of compensation at the rate of three-quarters of one day's pay for each of the waived personal days.

For purposes of this Opinion and Award the Chairman has made the following assumptions: First, the Township's last offer of settlement is clear and provides only for one day's pay for forfeited personal business days regardless of their number. Notwithstanding an apparently contrary position taken in brief, the Chairman understands the last offer of settlement to embody the Township's position. The Union's final offer, however, is read by the Chairman to mean that the status quo should be continued except that the additional compensation for unused personal business days is also sought. With those assumptions in mind, the Panel has reached the following decision regarding personal business days and birthdays.

First, the evidence does not support the Township's position that the birthday holiday should be removed from the contract. Wherever this arrangement has been reached elsewhere in the Township, Employees have received, in return, an additional personal business day. The Panel is not persuaded that the duties of the firefighter or their time worked are sufficiently

less than other Employees so as to warrant the proposed change. Moreover, no change in circumstances appears to support the diminution in the birthday benefit.

Second, it is slightly more difficult to assess the evidence regarding remuneration for personal business days forfeited by fire fighters. All other Township Employees, however, receive three-quarters pay for each unused personal business day. This fact alone makes the Union's proposal more appropriate. Given the fact that several other Employee groups including police officers have three personal business days to which the benefit applies while fire fighters have only two, the equities appear to favor the Union's proposal.

AWARD:

The last offer of settlement of the Union is adopted.

XIV: GRIEVANCE PROCEDURE

The Employer seeks to change the present grievance procedure in effect between the Parties. That proposed change is reflected in Employer Exhibit 33. The Union seeks to maintain the status quo in this area.

The primary purpose for the proposed change is to obviate the possibility that the officer in charge who may be a member of the bargaining unit, could settle a grievance lodged by a fellow Employee at Step 1. A secondary goal of the Township's last offer of settlement is to create two kinds of grievances--"personal" and "general" grievances. This, it is argued, would

serve " to modernize the old grievance procedure and to eliminate the step one objections of Management."

The Union argues that the potential conflict of interest raised by the Township is illusory. In fact, the Union argues, no grievance has been settled by the Officer In Charge and, as a matter of practice, grievances have begun at Step 2 of the Grievance Procedure. As regards the separation of grievances into "personal" and "general" catagories, the Union asserts that an attempted distinction of this sort will only serve to engender controversy and result in grievances over the meaning of the distinction between the two types of grievances.

DISCUSSION:

Sergeant Elliott gave unrefuted, credible testimony that the Union has never sought to settle a grievance at Step 1 of the Grievance Procedure. At the same time, the Union does not dispute the fact that such a settlement is possible under the current contract language. While one general operating rule of this Panel is to refrain from altering the relationship where problems or inequities have not arisen, the Union, in its brief, indicates that an alteration of the contract to remove the authority of the Officer In Charge to bind the Employer regarding a grievance would not be objectionable.

AWARD:

The Panel has concluded that a change in the Grievance Procedure is warranted if only to embody the current practice in

the contract. Accordingly, as to this non-economic subject of bargaining, the Panel has determined that Article II, Step 1, of the contract should be amended to state that no grievance shall be granted at Step 1 of the Grievance Procedure without the approval of the Fire Chief or his designee.

As regards the remainder of the Township's proposal, the Panel has concluded that the division of grievable subjects would be unduly cumbersome and that the record evidence does not support such a change.

XV: MANPOWER

The minimum manning requirements contained in the contract between the Parties came as a result of an Act 312 proceeding leading to the contract immediately preceding the contract in debate here. The contractual provision states that, at a minimum, six fire fighters must be on duty at the headquarters station and that three fire fighters must be on duty at each of the two outlying stations. The contract further states that if a scheduled Employee is unable to report for work, he will be replaced by the Township calling in an off-duty fire fighter. If a second or third fire fighter should be unavailable to work, the contract states that replacements will not be called in and that the Department may reduce its Employee complement to ten. Thereafter, of course, if additional Employees do not report for work, the Employer is obligated to call in additional fire fighters so as to meet the minimum of ten.

The Employer proposes to modify the minimum manpower requirement in two principle ways: First, the Township seeks to reduce the number of fire fighters assigned to the headquarters station from six to five. Second, the proposed revision would reduce the total minimum manpower from ten to nine fire fighters to be assigned at the discretion of the management. The Union vigorously opposes the Township's proposal and seeks to retain the current minimum manning requirements.

ARGUMENT:

The Township argues that prior to the implementation of minimum manpower requirements, the Department operated with a minimum of eight Employees. Since that time, the utilization of overtime has increased dramatically. This, the Employer asserts, is largely a result of the safety manning requiements.

The Township argues that its proposal will not result in a diminution in safety standards in Clinton Township. In support of this, the Assistant Chief said that he would not require a firefighter to perform a task in a situation perceived to be unsafe and that the minimum manning requirements have not had any effect on safety. This conclusion, the Township offers, is supported by the Union's witness, Mr. Hollen. Mr. Hollen acknowledged that the City of Detroit had no contractual minimum manning requirement.

The Union argues that since the Township seeks to alter the existing working conditions, the burden rests with the Township

to establish the justification for the change. This justification, the Union asserts, has not been demonstrated.

In contrast, the Union argues, the effect of the Township's proposal would be to endanger the safety of the fire fighters as well as the citizens of Clinton Township. In recent years, the Union points out, Clinton Township has experienced considerable growth. A major civic center, senior citizen activity center, department of public works, and an addition to the water department facility are some of the major construction projects which have been undertaken in recent years. New home construction is continuing; multiple-family dwellings are being built and housing configurations in two mobile home areas all show that a reduction in minimum manpower is, in the Union's judgment, unwarranted and unwise.

The Union looks to the testimony of Chief George Walker, taken in an Act 312 proceeding which preceded this matter. In short, the Union asserts, Chief Walker himself testified in favor of the Union's position on minimum manning in the earlier case--- a position urged here as well. Moreover, the Union argues, the testimony of Mr. Hollen, former Deputy Chief of the Detroit Fire Department, supports its position. Mr. Hollen testified that a minimum staffing of three men on an engine is necessary because one firefighter must stay with the engine leaving two men to effect a rescue or begin fire suppression duties. Without that

minimum, fire fighters run attendant risks due to fatigue and exposure to extreme heat.

In response to the Employer's assertion that secondary responses are available, the Union argues that it is the first moments of any fire that are critical and the possibility of a secondary response cannot diminish the importance of the first arrivals.

Finally, the Union argues, the experience in comparable communities supports its position. Of the 25 comparable communities, 14 provide for minimum manning by contract and 8 others do so by way of verbal agreements or departmental policy.

DISCUSSION:

It is obvious to the Panel that the minimum manpower issue raises strongly held beliefs. At the outset, the Panel agrees with the Union that the burden rests upon the Employer to demonstrate some reason why the current manpower requirements are inappropriate or inequitable. In the Panel's judgment, the Township has failed to meet that burden.

The testimony of Mr. Hollen as well as that of Chief Walker persuades the Panel that there is a direct relationship between minimum manning and firefighter safety. The hazards and duties of firefighting in Clinton Township have not diminished in the years since the initial implementation of minimum manning requirements. Indeed, to the contrary, the Panel is persuaded that because of growth in the community, firefighting has become

more complex and potentially more dangerous.

Testimony at the hearing and colloquy among the Panel members makes it obvious that the costs of overtime to the Township are a major and legitimate concern. At the same time, the Township has not, generally, plead an inability to pay. And, more importantly, there are other avenues which the Employer can travel to relieve the unquestioned cost burden of overtime. Beyond mounting costs, the Township has not produced probative evidence warranting a change from the established safety manning requirements, and the Panel is unwilling to permit the financial relief sought at the potential risk of the safety of fire fighters and citizens.

AWARD:

The last offer of settlement of the Union is adopted.

XVI: PAST PRACTICES

In the current contract between the parties, the Management Rights Clause contains the following limitation:

> "...subject only to the condition that, except as modified in the collective bargaining agreement, all conditions of employment, as they existed on March 21, 1980, shall remain in full force and effect and no recognized practice or arbitral award defining rights and benefits shall be construed to be modified, except as specifically modified by the terms and conditions of a written agreement between the Parties."

The Township seeks to modify this language to substitute the following language,

> "...however, arbitral awards which have not been incorporated in this agreement shall be included as a past practice and hereby incorporated in this agreement unless the arbitral award has been modified by a subsequent amendment to this agreement and to that extent the arbitral award shall be null and void."

The Union seeks to retain the current contract language regarding this issue.

The Employer seeks the change because, in essence, the current contract language might be viewed by the Union as freezing a broad range of practices as "conditions of employment." For example, the Township might want to make changes in the work schedules or to require physical examinations or driving skill tests for fire fighters. The current provision, the Township argues, would hamper the Department in exercising its managerial obligations.

In support of its positions, the Township looks to the testimony of Sergeant Elliott who indicated that if the Employer inquired of Employees who call in sick where those Employees would be during the day, this action might result in the filing of a grievance. This approach, the Township avers, could result in grievances being filed each time a new duty or job requirement was imposed. Under its proposal, the Employer points out, arbitral awards are incorporated into the contract. At the same time, the Township would not be bound to continue all patterns

and practices in existence on March 21, 1980 in perpetuity.

The Union argues, in essence, that the Township failed to adduce evidence which would warrant the contract change. Instead, the Union argues, the Township seeks, by eliminating this language, to avoid its bargaining obligation. Moreover, the Union argues, the Township offered no evidence to show that the current language ever posed a hardship to the Employer.

DISCUSSION:

The current contract language specifying a date after which, "conditions of employment" and "recognized practices" shall remain fixed except as modified by mutual consent, appears to the Chairman, at least, to be unusual contractual language. It would appear, at first blush, to hamper the Employer's exercise of traditional managerial functions in that it would give the Union effective veto power over management's exercise of reserved rights.

Two observations diminish this legitimate managerial concern: First, the phrase "conditions of employment" is a term of art in labor relations law and together with "wages" and "hours" are designed to be "words of limitation"[3]

According to the law, as the Chairman understands it, the Employer is precluded from altering those matters that fall

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[3] Fibereboard Paper Products Corp. v N.L.R.B. 379 U.S. 203 (1964) Stewart, J. (concurring)

within the concept of "conditions of employment" without first, at least, negotiating with the Union irrespective of the contract language.

Second, in the event the Employer perceived a need to impose some obligation upon Employees like the taking of tests or examinations, that decision, presumably, would be subject to review under the grievance procedure. In that circumstance, the issue before the grievance arbitrator would be whether the Employer's directive constituted a deviation from past practice which had become part of the contract between the Parties. Again, however, past practice has a limited meaning. It has been written that, "in the absence of a written agreement,'past practice' to be binding on both Parties, must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both Parties".[4]

Thus, it appears, retention or removal of the language does little to change the Parties' obligations. The Employer must bargain over changes that fall within the concept of "conditions of employment". If the Employer imposes a duty on Employees, such an imposition would be subject to review under the grievance procedure with the term "past practice" being accorded a narrow interpretation. And, with or without the contractual language,

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[4] Celanese Corp. of America 24 L.A. 168, 172, quoted in Elkouri & Elkouri, How Arbitration Works (3d Ed.) at 391.

the Township would be prevented from altering established past practices without mutual consent.

Accordingly, the Panel sees the current language regarding support a decision to retain or remove the language. In this event, the Employer has produced no evidence showing that the current language has created a hardship. In keeping with the Panel's view that the burden rests on the moving party to establish a reason for altering the status quo, language shall be retained.

AWARD:

The last offer of settlement of the Union is adopted.

XVII: TIME TRADING:

Under the current contract between the Parties,

> "...employees may voluntarily trade work or sick leave days between themselves, provided that any such trade shall receive prior approval of the Chief, Assistant Chief, or in his absence, the officer designated by the Chief as next in charge, provided requests for time trading commencing Saturday or Sunday shall be made no later than twelve o'clock noon the preceding Friday, except in the event of an emergency."

The Township's last offer of settlement, in effect, would make two changes in the current system: First, in the event both the Fire Chief and the Assistant Fire Chief were absent, approval for trading time could come from the Fire Liason Officer or the Officer In Charge at the headquarters station. Second, if time trading were taken on a weekend day without fulfilling the

requirement that a request be made by twelve o'clock noon the preceding Friday, a full explanation of the weekend time trade would have to be submitted by the firefighter to the Fire Chief or the Assistant Fire Chief within 48 hours after leaving duty. The Union seeks to retain the current time trading language in the contract.

ARGUMENT:

The Township seeks the change "to have the Fire Chief and Assistant aware of time trading and the purposes for which this trading is occurring and allow Management to make the decisions as to who are allowed to trade to maintain the efficiency of that station unit." This requested change, in substance, would, in the Township's judgment, give the Fire Chief and Assistant Fire Chief more current knowledge regarding who is on duty, at what stations and would enable the Department to determine whether the personnel were efficiently deployed.

The Union opposes the Employer's proposed change on the grounds that they are unwarranted. Time trades, the Union points out, under the current procedures are, in the vast majority of circumstances, requested ahead of time in writing with approved trades being "logged". Thus, the Union argues that any failure on the part of the Fire Chief to be accurately apprised of personnel on duty must ultimately rest with him.

Moreover, the Union asserts, the addition of the Liason Officer as a supervisor with authority to approve trades and the

requirement of an explanation within 48 hours after an emergency time trade do not address the putative reasons for seeking the change.

As regards the proposed requirement of a written explanation, the Union argues that no evidence was adduced showing that the current practice, requiring no explanation, had resulted in problems warranting the change.

DISCUSSION:

The Employer's objective of greater knowledge about the personnel involved in trading time is, of course, an appropriate one. At the same time, the Panel fails to apprehend how the proposed change would result in enhancing this objective. Neither the addition of the Liason Officer nor the requirement of an after-the-fact explanation appear to give the Department more complete information regarding personnel on duty at any given time.

As importantly, given the fact that the record evidence does not reveal that problems have, in fact, resulted from the current procedure, the Panel is reluctant to alter the contract language and procedure already in place.

AWARD:

The last offer of settlement of the Union is adopted.

XVIII: <u>PAY FOR ACTING RANK OR PIPEMAN AS OFFICER IN CHARGE</u>

Under the current contract an officer must be in charge of each station at all times. If the regularly scheduled officer is

absent, the Township must call in an off-duty officer. In the event no off-duty officer is available, the Senior Pipeman on duty assumes the responsibilities of the Officer In Charge. The Township seeks to eliminate the requirement of calling in an off-duty officer when the scheduled officer is absent and to utilize the Senior Pipeman in his stead. The Senior Pipeman assuming these duties would receive the officer's higher pay after the first one-half hour of assuming these duties up to the rate of pay of the rank immediately above the Pipeman's existing rank or the Lieutenant's pay at headquarters station. The Union seeks to retain the current requirement that the Employer call in an off-duty officer if possible before permitting the Senior Pipeman to assume the officer's responsibilities.

ARGUMENT:

The Township argues that three or four times per month and particularly during holidays, it will face the situation of having to call in an off-duty officer at overtime rates because the regularly scheduled officer is absent. The Employer seeks to temporarily assign the job of officer to the Senior Pipeman on duty. In return, the Employer proposes to reduce from two hours to one-half hour the amount of time the Senior Pipeman must act in this capacity before receiving the higher rate of pay.

The Union argues that the ranks above Pipeman carry additional responsibilities requiring education and seniority. That is, officers have both knowledge and experience which

distinguish them from lower ranking fire fighters regardless of how proficient the latter might be. In the event of a multiple alarm fire requiring the firefighter in charge to supervise fire fighters from mutual aid communities, the responsibility ought not to weigh upon a Pipeman. In addition, the Union argues, four officers are scheduled to work everyday. When a station with one scheduled officer experiences an absence of that officer, the station which has two officers on duty can transfer one to the station that needs him. Thus, the Union argues, the only time the Township would have to call in an off-duty officer would be when two or more officers are absent. Finally, the Union argues, the Employer bears the burden of establishing the justification for the proposed change and, here, such evidence has not been forthcoming.

DISCUSSION:

Some confusion exists as to the extent to which the current provision has worked a hardship upon the Township. The Township states in its brief to the Panel that stations have actually been required to be shut down because officers were not available to man them. This appears inconsistent with the practice of temporarily appointing the Senior Pipeman to the position of Officer when no officer is present.

In the Panel's view, the primary justification for the proposed change is to avoid the payment of overtime wages to officers called in because regularly scheduled officers are

absent. While these payments are, unquestionably, a financial burden on the Township, the Panel, in general, has not been presented an inability to pay defense. Accordingly, the persuasive weight of the cost burden is diminished. At the same time, there appear to be important, safety related reasons for having an Officer In Charge whenever possible. In the Panel's judgment, the evidence does not show that the current arrangement should be supplanted by the one proposed by the Employer.

As the Chairman understands the testimony, the Senior Pipeman is placed in charge of a station when no officer is present or available for duty. Discussion among the Panel members reveals that this contractual provision has not caused the closing of a fire station. Accordingly, the evidence does not support the Township's proposed change in the existing contract provision.

AWARD:

The last offer of settlement of the Union is adopted.

XIX: EDUCATIONAL LEAVE

The current contract requires that the Township grant an Employee a leave of absence to attend work-related courses at a recognized institution so long as the Employee submits proof that the school has admitted the Employee as a full-time student. Under the current language, no more than two Employees may be on such educational leave at one time.

The Employer proposes to alter the applicable article to make the grant of such leave permissive rather than mandatory. In support of this, the Employer argues that the intent of the Parties was to make such a grant permissive and that no opportunity to object to the current language has been available since the imposition of minimum manpower requirements. With minimum manpower requirements in place, the Employer, although willing to pay for tuition for appropriate classes, wishes not to be bound to permit educational leave for two fire fighters.

The Union argues that no justification for the proposed change has been offered. The Union points out that no record evidence of abuse of this provision was offered by the Employer. And, indeed, no requests for educational leave have been made. Accordingly, the Union argues, the status quo must be maintained.

DISCUSSION:

The Township's admitted concern is with the minimum manpower requirements under the contract. That is, the Employer is bound by contract to employ a certain number of fire fighters and to grant educational leave upon request. The Chairman appreciates the dilemma faced by the Township because of these contractual requirements.

At the same time, the problem described by the Township has, to date, been only theoretical inasmuch as no Employee has ever requested educational leave. Given the Panel's approach of changing the contract only where facts and circumstances warrant

such a change, the Panel has concluded that the same basic contractual provision for educational leave should be retained. However, it is the Panel's determination also that some relief ought to be available to the Township when faced with a request for an educational leave of absence at a time when the loss of an Employee would make it impossible for the Township to meet its minimum manpower obligations or under other clear and compelling circumstances. It is reasonable, under such conditions, that the Township have the opportunity of establishing such emergency or compelling circumstances warranting the denial of an educational leave of absence request.

AWARD:

As to this non-economic matter, the Panel has decided that the current language of the agreement between the Parties should remain in force and effect. However, language should be added to the applicable contract section stating: "However, when the Township can show compelling or emergency reason why the leave should not be granted, then the Township may withhold the leave of absence grant."

XX: <u>SICK LEAVE</u>

Under the current contract, fire fighters accumulate one 24 hour day of sick leave per month. There is no limitation on the accumulation of sick leave. At retirement, fire fighters receive a 50% payoff for the unused sick days accumulated.

The Township seeks to alter this arrangement commencing April 1, 1985, by reducing the accumulation of sick leave from one to one-half day per month. The Union seeks to continue the present arrangement.

The Township argues that its proposal would place Clinton Township fire fighters in a position comparable to that of police officers. The Township argues that sick days constitute 4.6% of the police officers scheduled working days and 9.9% of the fire-fighters scheduled working days. Even under the Township's proposal, it argues, fire fighters would continue to receive a higher percentage of working time as sick leave than would police officers in Clinton Township.

In addition, the Employer argues, the nature of a fire fighter's schedule gives him lots of time away from work. Therefore, a brief illness is less likely to interfere with scheduled work time for a firefighter than for a police officer. This difference, the Employer argues, has resulted in a substantially greater accrued liability for unused sick leave for fire fighters ($405,083.00) than for police officers ($193,408.00) despite the fact that there are more Employees in the police department than in the fire department.

The Union argues that the Employer's comparison of annual sick leave accumulation and scheduled work days in the fire and police departments ignores other important elements in the fire fighters work schedule. For example, although it is plainly true

that police officers work a greater number of days per year, fire fighters actually work some 40% more hours than do police officers because a working day for a firefighter is 24 hours as compared to 8 for police officers. Thus, the Union argues, the work schedule of the two departments are so dissimilar, comparisons of the variety suggested here by the Employer are inappropriate. When compared, however, the record reveals that fire fighters and police officers both accumulate one day per month for sick leave purposes. If the Employer's proposal is adopted, sick leave for fire fighters will be reduced to half that of police officers. In the Union's judgment this is an unjustified result.

Moreover, the Union argues, the conclusion is unwarranted that fewer sick days are needed for fire fighters than for police officers because the latter work five consecutive days while the former do not. Police officers receive from four to six consecutive days off in a one month period not counting scheduled days off. Therefore, it is possible that, using the Township's example, a police officer could be ill for five consecutive days and not utilize any sick leave. The Union also looks to the experience in comparable communities in support of its proposal. In those communities, fire fighters in 7 of the 25 accumulate 12 hours or fewer per month. One community allows 15 hours per month and 4 permit accumulation of 18 hours per month. In one community fire fighters earn 20 hours per month. In 9

communities fire fighters earn 24 hours per month as do fire fighters in Clinton Township. In Redford Township, fire fighters may accumulate 36 hours per month and 2 communities permit accumulation on an unlimited basis. Looking to the so-called "internal comparables", in all bargaining units within Clinton Township, Employees are permitted to accumulate 12 sick days per year.

Moreover, the Union argues, the Township's proposal would have the effect of also reducing by one-half the amount of sick leave Employees could accumulate for purposes of payout at retirement. Although the accumulated sick leave represents a much higher dollar value for fire fighters than police officers, the Union points out that the Clinton Township Fire Department is nearly twice as old as the Police Department and that this, certainly, contributes to the overall accumulation.

DISCUSSION:

There are, obviously, different ways of viewing any comparison between the police and fire departments. The Employer's argument is accurate as is the Union's. That is, the percentage of scheduled work days that are allowed for sick leave is substantially greater for fire fighters than for police officers in Clinton Township. At the same time, as the Union points out, fire fighters work approximately 40% more hours than do police officers.

In view of this, the Panel has concluded that an attempted comparison between departments for purposes of arriving at a sick leave policy is not helpful. Unfortunately, consideration of the experience in comparable communities does little to assist in arriving at a determination on this issue. Of the 25 comparable communities, in a bare majority (13) fire fighters are entitled to fewer hours of sick leave per month than are fire fighters in Clinton Township. In the remaining communities, fire fighters receive the same as or more sick leave than do Clinton Township fire fighters. While it is true that other Employees in Clinton Township receive one day per month, the problems with this comparison are the same as an attempted comparison with police officers. As a result, this evidence compells neither suggested outcome.

Finally, it is true that the accumulated sick leave has resulted in a greater accumulation within the fire department than within the police department. At the same time, there are factors other than the sick leave formula, namely the age of the department, that bear on the size of the accrued sick leave liability.

The Panel is, finally, of the opinion that the statutory factors are fairly even. This being the case, the Panel has concluded that the burden for justifying change has not been met.

This conclusion is made with much greater certainty given the Township's proposal to cut the sick leave benefit in half.

AWARD:

The last offer of settlement of the Union is adopted.

Robert A. McCormick
Chairman

Richard Rosin,
Employer Delegate
DISSENTS AS TO ISSUES I, IV V VI, VII, XII, XIII, XV + XX.

Franklin Heeney,
Union Delegate
DISSENTS AS TO ISSUES I, II, V.

Dated: March 21, 1985
Detroit, Michigan