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MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
PUBLIC ACT 312 ARBITRATION

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IN THE MATTER OF:

TOWNSHIP OF CLINTON,

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN.

CASE NUMBER:

D-82-J-3836

ARBITRATION PANEL:

Sandra G. Silver,  
Arbitrator

Richard E. Rosin,  
Employer Delegate

William Birdseye,  
Union Delegate

STATE OF MICHIGAN  
BUR. OF EMPLOYMENT RELATIONS  
DETROIT OFFICE

1984 JAN 23 AM 8 17

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Clinton, Township of

APPEARANCES:

William Birdseye, Advocate for Police Officers Association of Michigan

Charles R. Towner, Advocate for Clinton Township

HEARINGS:

Pre-arbitration hearing: April 7th, 1983;  
June 20th, 21st, 24th and July 21st, 1983

Briefs submitted November 1st, 1983

JAN 26 1984

BACKGROUND:

Clinton Township is a general law township in Macomb County. It operates a police department of approximately fifty-one persons, which non-supervisory personnel are organized collectively as a unit of the Police Officer's Association of Michigan (hereinafter "POAM"). The contract in effect between the parties expired on March 31st, 1982. It was agreed by the parties that the terms of that contract remained in full force and effect while negotiations continued.

The parties were unable to reach any agreement and, according to statute, the matter was taken to mediation and finally to compulsory arbitration under Michigan Public Act 312. Sandra G. Silver was appointed by MERC to act as the neutral chairperson arbitrator of the panel and a pre-arbitration meeting was held on April 7th, 1983. At that time, it was agreed that the issues to be presented to the arbitration panel were retroactivity of the award, wages, longevity pay, pension multiplier factor, pensions final average compensation and premium pay for officers in the Detective Bureau as demands of the Union. The Township demands at issue before the panel were deletion of Paragraph 6.6 and 6.7, reduce supplement to workmen's compensation payments to the level of standard pay, establish a policy for benefit payments after leave of absence, provision of counsel for individual police officers, elimination of permanent shifts, elimination of shift premium, elimination of educational allowance and relief from present manpower requirements. The parties agreed that the contract period covered would be for three years commencing April 1st, 1982 through March 31st, 1985.

Additionally, the demand of the Township for relief from manpower requirements was eliminated from consideration by the panel. This was done in a ruling by

the chairperson that the layoff of personnel was not a mandatory subject of bargaining, and therefore fixed manpower was not within the panel's authority. Metropolitan Council 23 v City of Centerline, SC 63505. The parties stipulated that all tentative agreements were to be included as part of the panel's decision and made part of the contract.

Evidence in the form of testimony and documents was submitted by the parties on an issue by issue basis. All exhibits had been submitted to the arbitrator prior to hearing and exchanged between the parties. Testimony was taken on June 20th, 1983, June 21st, 1983, June 24th, 1983, and July 21st, 1983. Briefs were submitted on November 1st, 1983. The delegates met to review the evidence on December 6th, 1983.

The tentative agreements reached by the parties and adopted as part of the contract by this Opinion and Award are as follows:

6.1: All original appointments to any position in the Police Department shall be for a probationary period of one (1) year after the completion of the legally required courses of basic training. Once the officer completes the required basic training under Act No. 47 of the Public Acts of the State of Michigan, 1971, as amended, and has completed the one (1) year period following the successful completion of said basic training, then the officer shall accrue seniority retroactively to the initial date of employment as a full-time police officer with the Clinton Township Police Department.

7.1: All employees shall receive a lump sum payment in the last pay period in November, each year, for thirteen (13) holidays. The said holidays are New Years Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Easter Sunday, Veteran's Day, Thanksgiving, Christmas

Eve Day, Christmas, New Years Eve Day. In addition to the above payment all employees who work any of the said holidays shall receive an extra days pay based on their base salary for each holiday worked and that extra days pay shall be included in their regular scheduled pay check covering the pay period which the holiday or holidays occurred.

For the purpose of defining the day on which each of said holidays will be observed, the parties have agreed on the attached Addendum \_\_\_\_\_ as the traditional holidays to be used by the parties to compute holiday pay.

26.1: Each member shall be compensated at the rate of One Dollar and Fifty Cents (\$1.50) per day for carrying their side arm. Payment for said weapon allowance shall be paid on the last regularly scheduled pay of each contract year.

26.2: It is further agreed that each member covered by this agreement will participate in a mandatory shooting program provided and offered by the Township which will consist of an opportunity to shoot at twenty (20) shoots between the first of May and the end of September during which time members will shoot a minimum of five (5) times with a minimum of one (1) shooting for qualification.

26.3: It is further agreed between the parties hereto that the Police Department shall have a qualified gunsmith inspect each weapon at least once a year to clean same and determine its condition relative to tuning and safety and if any defects are found the same will be corrected before the weapon is returned to the Department for use. Each officer shall be provided a minimum of eighteen (18) rounds of new ammunition each year.

33.1: All persons utilized as Clinton Township Police Reserve Officers or Dispatchers shall be required to wear shoulder patches on their uniforms and/or badges which clearly and conspicuously distinguish such persons as a reserve officer or dispatcher, whichever the case may be. No reserve officer or dispatcher shall be allowed to wear a badge during outside employment.

3.2: If the Bargaining Committee of the Association so requires, the Department shall permit three (3) on-duty officers to serve on the Bargaining Committee without loss of benefits, upon approval of the Chief of Police, depending upon the manpower situation at the time. However, not more than four (4) members of the Clinton Township Police Department shall be at the negotiation table at one time.

4.4: Step 1. If either an officer or the Union feels they or it have been aggrieved, they shall discuss the grievance with their immediate supervisor and the Local President or a designated representative of the Local President. If the grievance is not satisfactorily resolved in this manner, the Local President or a designated representative of the Local President shall file the grievance verbally or in writing within fifteen (15) days with the Officer's immediate supervisor, or if not available, to the next ranking officer in charge who shall answer the grievance in writing within fifteen (15) days of its receipt.

16.1-A: The parties hereto agree that the insurance carrier specified in this collective bargaining agreement may be substituted by the Township provided the benefits afforded are equal and the Union approves the substitution.

16.2: The officers understand that the life insurance provided by the Township might provide a disability option, and the parties acknowledge that if that option is exercised the life insurance guarantee of Twenty Thousand Dollars (\$20,000.00) may be diminished. Any officer requesting disability benefits shall assume the obligation of determining how such option affects his life insurance benefits.

#### WAGES AND RETROACTIVITY:

The wages to be paid for work are at the crux of any collective bargaining agreement. In this matter, the Township and Police Officers Association have

both presented wage packages clearly far apart, and neither of the offers sufficiently comported to the evidence, when considered in total. In deliberations by the panel, it was agreed that the final offer on wages presented by each party could be separated and ruled upon by the panel on an annual basis and not as an entire package. The years to be thus considered in related offers are as follows:

<u>Union</u>	<u>Clinton Township</u>
1982 - 7% increase	1982 - wage freeze
April 1, 1983 - 6% increase	1983 - 3% increase
April 1, 1984 - 6% increase	1984 - 3% increase
Corporals at 110%	Corporals at 109%
All retroactive to April 1, 1982	No retroactivity

Since retroactivity had been made an inseparable portion of the Union's final offer, the Union delegates did agree to remove that issue and consider the Township and Union offers on a separate basis for each year.

The issues have been made severable, the Arbitrator will rule on the issue of corporals pay first. The proposed increase for corporals earning 109% of a top patrolman's wages, to 110%, was a demand made by the Union. However, no evidence was presented to substantiate this demand, and the 9% differentiation holds as between the other ranks in the department. The Union, having failed to support its demand for an increase for corporals to 110%, the demand is rejected and the final offer of the Township to maintain corporal wages at 109% is adopted.

The primary evidence presented to the Arbitrator to support the final wage offers of the parties were those of comparable communities, inflationary pressure, and ability of the Township to tax and pay the costs of the wage increases. Much attention was given to the fact that Clinton Township is a general law township

and not a charter township. Although this imposes limitations on the Township's ability to tax, the Township does receive a one mill allocation from the Macomb County tax allocation board and is also allowed to tax three mills for the police department. The Township may also impose an additional millage, so long as it holds hearings. The Township has not done this in the past, and does not do so because of the implied political consequences of taxing without the approval of the Township residents. Residents have rejected any requests when a choice has been given.

Although no resident of Clinton Township has voted for the arbitration panel giving them the authority to tax, it is certainly worth noting that Clinton Township, in an exhibit submitted by the Township, shows that it pays less per capita for police protection than any comparable community submitted. With whatever criterion used in the comparable communities submitted by the Employer, and that submitted by the Union, Clinton Township is receiving police protection at a very low cost per capita.

Additionally, there was ample testimony, on the record, that Clinton Township has shown a surplus in its budget over a number of years, including last year. The Township maintains a general fund of monies in excess of a year's income. This is done primarily because the fiscal year and the receipt of taxes as income are not synchronized and the Township must have funds on hand to pay current obligations prior to the time when tax receipts are had. No matter how this is explained, the Township would have had to have a surplus to build up to have that extra year's receipts. If one goes back to year one, there must have been an accumulated surplus to have built up the general fund. There was testimony from an accountant that a ten percent reserve is recommended for municipal financing. That may well be true, but healthy surpluses, combined with the very low per capita

expenditure for police protection, demonstrate an ability to pay on behalf of the Township and an unwillingness on the part of the citizenry to fully pay for the protection they have received. By the Township's submission of its own comparables, the operating millage for the police budget is less than any community shown by at least 50 percent. Added to these facts is the fact that there has been an increase in the cost of living since the negotiation of the last contract and one sees that the Township offer of a freeze on wages in 1982 is indefensible. For these reasons, the Arbitrator accepts the last best offer of the Union for April 1st, 1982 representing a 7 percent wage increase.

If the Union offer on wages for 1983 and 1984 is added to the 7 percent increase granted by the panel for 1982, the cumulative effect of such an increase would be 19 percent plus. There was no evidence whatsoever submitted to the panel that would support an increase that great. If comparable communities submitted by the Union for those years are examined closely, it is discovered that there are almost no figures to compare with 1984 because contracts are in negotiation, have expired or are in an Act 312 arbitration. There are a few more comparables available for 1983, but not many. The Union attempted to show the deviation between its comparables and its offers for 1983 and 1984, and stated that it was greater than those by less than the Township offer was below them. If the same figures are used, however, comparing 1983 and 1984 with a base of having accepted the Union's 7 percent increase in 1982, the deviation of the Township's offer becomes less.

The Union also attempted to present cost of living assuming at a 5 percent inflation rate on the consumer price index for each year of its offer. The Arbitrator would be remiss in her duties if she did not recognize that the CPI in 1983 ran considerably less than 5 percent. Assuming the Union's 5 percent



for each of the three years, the Union's wage offers for 1983 and 1984 place the police officers salaries well above that of the current inflation rate.

The Union's offer of a 6 percent increase for the years 1983 and 1984 does not comport with the evidence which the Union itself presented. The increase demanded is in excess of revenues of the Township, cost of living increase, and wages paid in comparable communities. For these reasons, the Arbitrator accepts the final offer of the Township for 1983 and 1984 of a 3 percent increase for each year as reasonably in accord with the evidence presented.

#### PENSIONS:

There are two proposals put forth by the Union in changing the pension benefit available to bargaining unit members of the police department. Essentially, they were considered by the Arbitrator together and will be discussed in a similar manner.

One proposal of the Union's was to change the final average compensation on which a pension multiplier is used from a period of the five consecutive years of service out of the last ten years service, to determine final average compensation by using the highest three of the last ten years of service.

The Union attempted to present evidence at hearing that the cost of this benefit was negligible, in the range of \$20,000 per year. However, the Union had no response to the fact that other pension plans within the Township such as firemen's and Police Sergeants and Lieutenant's were also figured on the same base for final average compensation. No economic figures were presented to encompass the effect of granting the same benefit to all of these other groups. The Arbitrator cannot remain totally unaware of that reality and the fact that

the firemen's union contract in particular is pegged to that of the Police Officers Association. Although nine of the sixteen Union comparables have the best three years of ten benefit, many of those same communities have a lower multiplier, or differing employee contribution rates. The real comparable to be considered in this area is, in the Arbitrator's opinion, that of the other employee groups in Clinton Township itself. For that reason, the Arbitrator rules, and the panel maintains the status quo in contract language concerning final average compensation.

The second demand of the Union concerning pension, is an increase in the multiplier factor by which the amount paid is computed. The Union seeks to improve the factor from 2 percent to 2.5 percent of the final average compensation. The primary argument put forward by the Union to support this increase is a comparison of what the comparable communities submitted contribute on a percent of payroll basis. A more valid comparison is the amount received by the individuals on pensions in each community. The contribution percentages may be a reflection of poor management, a different starting date by which the same payoff is being made, the number of years on which the actuarial plan is based, etc. The single factors of percentage of payroll is not sufficient to support the increased cost.

An additional factor to be considered by the panel was that police officers' pension is governed by Act 345. These same officers are not required to come under Social Security as are many employees. However, in Clinton Township, all police officers are part of the Social Security plan. Thus, when figuring the percentage of employer contribution, the amount dedicated to the pension fund must also have added to it the employer contribution in Social Security. For the first time since the inauguration of Social Security, 1984 will see a greater

employer contribution rate than that of employees. The Arbitrator must take this into consideration in weighing the actual cost of plans and benefits received by the employees.

Another consideration put forward by the Union and rejected by the Arbitrator is that of actually re-doing the plan as presently constituted. The amortization factor for the Clinton Township pension plan is presently 23 years. The Union hypothesized that if the amortization was spread over 30 years, that the present cost of the benefit demanded would be less. Although the immediate cost to the Township could be less under a 30 years amortization, there is no comparable testimony, or evidence, to show what the real cost would be to the Township by having a reduced amount in the fund's earning power to offset future obligations. That fact, in itself, is one of the reasons why it is so difficult for the Arbitrator to conclude that the costs on a percentage basis are valid comparisons.

The testimony of Mr. Broesamle was that there would be an increase in the employer's annual contribution of \$104,138. The problem, as always, in dealing with pension contributions, is the amount which must be funded for past service when a new increase is enacted. To provide for the past service under the new proposal, the Township would be required to add an additional \$715,000.

Uncontradicted testimony presented by the Township, was that only 60 percent of net income is needed to support a retiree in the same standard of living enjoyed when he was working. This comes about because of the tax benefits afforded Social Security income, pension benefits, etc. Although the figures were not applied precisely to police officers in Clinton Township, the thrust of the argument that retirees receive tax benefits, not available on the income of working persons, is correct. The Social Security benefit received by the Clinton Township police officers does provide benefits over and beyond those enjoyed at the

retirement level. The life insurance and disability benefits attached to Social Security are a benefit whose value can be estimated, but which was not considered in the testimony presented. The present pension plan, with Social Security, provides benefits so that a Clinton Township police officer receives 77 percent of his current pay at age 65. With the accrued tax benefits on such income, a retired Township police officer has a spendable income somewhat greater than that enjoyed while he was working.

For all of the above reasons, the Arbitrator and panel reject the Union demand for an increase in the multiplier factor from 2 percent to 2.5 percent. The status quo in pension plans for Clinton Township police officers shall be maintained in the present contract.

#### LONGEVITY:

The Union has proposed new language to modify the existing longevity payments in the prior collective bargaining agreement. As presently constituted, the members of the police department are paid on a base salary of \$13,000, and increasing percentages of longevity bonus are paid in increments of five years' service. The Union has requested that this arbitrary base salary limit be removed and replaced with the actual base salary of each officer for calculation of the benefits.

The Arbitrator is in agreement with the Township that longevity pay is, essentially, wages. It is a recognition that length of service is of benefit to the employer, but it is in fact a payment directly related to that employment.

It is extremely difficult to base a comparison on the information submitted by the Union as to the longevity pay paid in other communities. This is so

because some of them are based on a base salary which is unknown, some have fixed sum payments and others have percentages of base salary less than that presently being paid by Clinton Township. Since the factors of increased cost of living and comparable wages paid in other communities have been considered and resolved in the award of wages to the members of the department, an increase as well in the longevity would bump up those wages beyond that considered appropriate by the arbitration panel.

Another factor testified to and considered by the Arbitrator is that the longevity scale as presently constituted in the contract is the same as that paid to all other employees of Clinton Township. The reality of management responsibility is that a grant of an increase in base salary upon which longevity is computed, would be applied throughout the Township representing a large increase of expenditures beyond that which is budgeted. Evidence submitted does not appear to support such an increase for the police department, much less the ripple effect it would have throughout the other groups of employees.

The Arbitrator rejects the Union proposal for a change on the salary base for longevity pay. The contract language presently contained in Paragraph 27.1, 27.2, 27.3 and 27.4 shall be retained under the new contract.

#### EDUCATIONAL ALLOWANCE:

The Township has proposed to change the contract so that payment for the earning of educational credit shall be limited to a lump sum payment upon completion of the certificate or degree. The Union upholds the status quo of the present contract language in Article XXV which provides for a sum certain each contract year.

The Township's purpose in proposing this change was not one of necessary economy, but rather the desire to spend the funds presently being paid to individual officers for educational achievements for more in-service training for all officers. The Police Chief stated that many officers do not wish to take on further education and all of the officers would benefit from greater participation in programs directly related to police work.

Testimony was also offered by Professor O'Brien to the effect that he was doubtful as to the beneficial effects of additional educational credit for police officers. This was surprising testimony from someone who is employed as a professor educating persons in law enforcement. He did agree that the greater education achievement produces a better rounded person, but not necessarily a better police officer.

Although no figures were presented into evidence by either of the parties as to the cost savings involved in elimination of the annual contract payment for education, the Police Chief did state that funds were being spent which he would prefer spending differently. Adoption of the Township's proposal would mean an immediate reduction in pay for many of the officers in Clinton Township. That reduction could personally make a great deal of difference while the participation and in-service training would not assist them financially at all.

It must be presumed by the Arbitrator that some officers undertook additional education efforts in order to achieve the allowance provided by contract. Having relied on this provision, it would be unfair to those same officers to inflict an immediate reduction in pay and tell them their reliance on the contract was misplaced. Many comparables were offered into evidence which provide a similar benefit. This Arbitrator cannot recommend adoption of the Township proposal.

The panel adopts the proposal of the Union that the payment of an educational allowance be continued and the language of Article XXV be adopted as part of the contract.

PERMANENT SHIFTS:

The expired contract provides for shifts to be chosen on a semi-annual basis. The choice of shifts is done on a seniority basis with senior officers choosing their shifts on the first choice, and the second choice is done by inverse seniority. The Employer proposes that permanent shifts be abolished, and a reasonable rotation instituted. The Union wishes to maintain the status quo.

Most of the comparable communities submitted by the Union did have some form of permanent shifts. However, each community had its own unique method of scheduling so comparison is difficult. The only testimony offered by the Union in support of maintaining the status quo for permanent shifts was that the ability to choose a permanent shift is of value to the more senior patrolmen who will not be able to pass tests, or have reached an age where they know that promotion is unlikely. In a sense, the permanent shift choice was described as a consolation prize or benefit.

Testimony was offered by several witnesses called by the Township to support their proposal to move away from permanent shifts. The primary aim of the Township in doing this, by testimony of the Chief of Police, was to avoid having the same officers always in the position of having the particular types of confrontations common to certain shifts. Additionally, there was a strong feeling that young new officers should receive exposure and training to the different kinds of work presented by each shift in the police department.

This position was strongly supported by the testimony of Professor O'Brian. His opinion was that it was necessary to rotate shifts because the officers would have no other way of appreciating the needs of the community and the different kinds of police work required over a twenty-four hour period. He also stated that the physiologic and psychologic stress associated with frequent shift changes was very damaging to the individual officer. The Professor's opinion, as an expert, was that shifts need to be rotated for police officers to assume all types of duty, but that the shift changes should not be of great frequency.

The Chief of Police of the Livonia Police Department testified that he was unalterably opposed to permanent shifts and had never had them in his department. Livonia was one of the comparable communities submitted by the Union.

The testimony of Clinton Township officials reflected a concern about the same officers being sued on a regular basis. This, they felt, would be cured by a more frequent shift rotation, so that the same persons would not be forced into the situations common to a given shift which frequently result in litigation. It is a concern that, one would think, would be shared by the police officers themselves. Possible personal liability which can accrue in some situations is one which, it would be hoped, police officers would wish to avoid.

The arguments in testimony presented by the Township concerning the defects of permanent shifts is substantially supported by the evidence. However, the language for the proposed contract change refers only to "reasonably rotate". The Arbitrator does not feel that the bargained for benefit of permanent shift can be eliminated from the contract without providing a definite and fair alternative. The Township has made a good case for moving away from permanent shifts; it now must offer a substitute. This it has not done. The Arbitrator rules that



paragraphs 43.1 and 43.2 shall remain unchanged and further strongly recommends that this issue be re-negotiated in the next round of bargaining.

SHIFT DIFFERENTIAL:

The Township has proposed the addition of Section 29.3 beginning April 1st, 1984, that all patrolmen not assigned to the Detective Bureau be paid a shift premium of \$.25 per hour over their hourly rate. This would delete the present paragraphs 29.1 and 29.2. The Union supports the status quo which provides for an additional 4 percent for afternoon shifts, 5 percent for split shifts, and 6 percent for midnight shifts.

The shift differential pay was originally a means of providing those who work irregular hours or unusual shifts with some financial compensation for the inconvenience and life style difficulties involved. All of the comparable communities presented by the Union had some form of shift differential pay. Of those 16 Union comparables, 9 are more generous than the \$.25 per hour offered by the Township. The Township's offer would clearly be within a medium range of these comparables, however, the Township is suggesting that it be paid to everyone. There is no rationale for a shift premium being paid to everyone when the object is to compensate those on afternoon, split or midnight shift.

The present language of the contract addresses the payment to those who are working unusual hours. Since the Township wishes to abolish permanent shifts in the interest of a more efficiently run police department, it would be more reasonable under all the evidence presented to maintain the status quo as to shift differential pay. The present language of the contract shall be maintained.

PREMIUM PAY FOR DETECTIVE DUTIES:

The Employer requested that Section 6.6 and 6.7 of the collective bargaining agreement be deleted. The parties agreed to the deletion of Paragraph 6.6 with the proviso that one patrolman working in the detective bureau would be grandfathered into the contract.

Additionally, the Union has requested new language to be substituted for Paragraph 6.9. Paragraph 6.9 as presently constituted merely defines what the term "bureau" means. The Union proposes additional language that the work shall be performed by officers holding the rank of corporal.

The Employer opposed this language change on grounds that patrolmen who could be brought into the bureaus would not be allowed. Additionally, the Township was concerned that this language would mean that those with a rank higher than corporal would not be able to work in the bureaus.

The testimony and discussion with panel members revealed that corporals are primarily the persons assigned to the detective bureau. For years there was a problem with a patrolman in the detective bureau, Martin Maleski, who had never achieved the rank of corporal, but who was receiving detective pay. The Union's primary concern is that persons doing the same work not be paid at a different wage scale. Management's concern is that the control of appointments to the detective bureau of those most able to do the work not be eliminated.

In reality, with the exception of Patrolman Maleski, those persons who have achieved the rank of corporal, or who have passed the State examination awaiting an opening for promotion in rank, are those who would gain appointment to the detective bureau. The addition of this language would accommodate the reality.

However, the new language does not, in any manner, prohibit the appointment

of sergeants or lieutenants to work in the detective bureau, nor does it prohibit any patrolman from temporary assignment to the detective bureau. Police Chief Smith was concerned that the patrolmen who were unfamiliar faces whom he may wish to appoint to undercover operations, be allowed to do so. There is nothing in the proposed Union language which prohibits such temporary transfer assignment. This meaning of the language and interpretation placed by the Arbitrator on the Union proposed Paragraph 6.9 was explained to the panel and accepted by them. With this proviso, the Union language of Exhibit 41, Paragraph 6.9 is adopted and shall read as follows:

"6.9: It is agreed that the term 'bureau' relates to the following: Detective Bureau, Youth Bureau, SCAT Bureau, Intelligence Bureau, the Crime Prevention Bureau, and the work in these bureaus shall be performed by officers holding the rank of corporal."

#### COMPENSATION:

The Township has placed the bargaining demand that Article XXVII be amended in three paragraphs, Section 17.1, 17.2 and 17.3.

The thrust of this management proposal was to insure that an employee on workman's compensation benefits would not receive more money as net pay than that person would have received if working. The necessity for the language, as demonstrated in Exhibit 43 and testimony is that the Township, under the present contract, pays a person receiving workman's compensation the difference between that compensation and the regular salary. Since the workman's compensation benefit is tax free, the employee ends up receiving greater net take-home pay than he would have had the entire amount been paid to him as salary.

The proposal presented by the Township appears reasonable and is strongly

supported by the evidence on the record. No employee would be hurt by this proposal, and it has the great virtue of avoiding unintended windfalls through payment of a benefit program that tries to protect loss of earning capacity because of a work related injury.

The Township proposal for Article XXVII is adopted by the Arbitrator and shall read as follows:

"17.1: Provision of the Workman's Compensation Laws of the State of Michigan shall apply in all accidents, injuries, or illnesses of employees arising from the performance of their duties. Any employee who is unable to work as a result of such injury or illness and who is eligible to draw workman's compensation benefits shall be entitled to a supplemental check by the Township for the duration of recovery not to exceed six months from the occurrence of the injury or illness.

17.2: The supplemental check referred to in Paragraph 17.1 above shall be the difference between the workman's compensation benefit and 80% of the employee's base pay at the time of said accident, injury, or illness.

17.3: Normal payroll tax deductions will be made on the supplemental check issued by the Township. However, total authorized deductions for credit union, union dues, and police pension contributions shall be deducted at the full annualized bi-weekly rate. Employees shall be required to submit copies of all workman's compensation checks which they have received to the Police Chief. The Police Chief shall forward same to the accounting department with the bi-weekly payroll transmittal."

#### TERMINATION OF BENEFITS AS A RESULT OF INABILITY TO WORK WITHOUT BEING ON LEAVE:

The Employer has proposed new language to be added to Article XIX of the collective bargaining agreement. The Union has not opposed the addition of the language, and discussed the issue at executive sessions of the panel. An explanation of the language was placed on the record at hearing, and appears to be reasonable.

No specific objections have been heard or considered. The Arbitrator adopts the language of paragraph 19.11 of the contract submitted as Employer's Exhibit 42. The language is as follows:

"Any employee who is unable to perform his regular job, is not on leave, and has used all of his or hers sick days, vacation days, and personal days, shall not be considered to have any rights of employment and shall be terminated as an employee.

Benefits such as longevity, clothing allowance, holiday pay, weapon allowance and the like shall be paid and prorated to the date of termination.

The provisions of this section shall no way effect the compensation provisions under the worker's compensation section nor does it apply to leave of absences where the leave is conditioned and the conditions have been fulfilled."

#### AMENDMENT TO CIVIL LIABILITY INSURANCE:

The Employer has proposed additions to the language contained in Article XXI of the collective bargaining agreement. The addition requires that every member of the bargaining unit be required to familiarize themselves with the provisions of the insurance policy carried by the Township. Further, it contains language that individual employees be required to secure their own counsel in those lawsuits which could exceed the dollar amount of the insurance protection, or causes of action not covered by the insurance. The Union opposes this addition of language, and demands the status quo.

There was little or no evidence presented by either of the parties on this issue. The Employer witness, Norman Trappens, stated that legal costs could be great to an individual, as much as \$6,000 or \$7,000. It is possible the Township could reimburse, but the likelihood of that occurring would not be guaranteed.

The Arbitrator is faced with an unusual problem concerning this proposed addition to the language in a Public Act 312 arbitration. The interpretation of the language of present Article XXI is necessary in order to discuss the additions. The language as is presently constituted does not provide counsel to any individual employees. The only provision is that the Township provide insurance protecting the employee against certain causes of action. No amount of the policy is contained in the language, and no provision for an occurrence of a lawsuit in an amount beyond the Township coverage is contained therein.

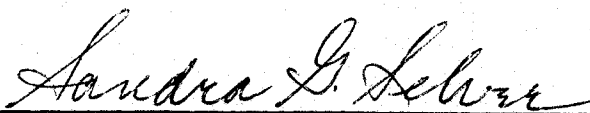
As a result, the individual police officer who is being sued would be aware of a demand for an amount greater than the insurance. It would behoove him to obtain the services of counsel. However, the present language leaves him with the alternative of the possibility of the judgment being entered against him personally without representation of counsel. Frequently such lawsuits are brought against an individual and a township jointly and severally. In such an event, if amounts are greater than that covered by the township, an individual would be foolish indeed not to have obtained the services of counsel. The new language proposed by the Employer does not detract from those benefits presently provided by the Township.

The language proposed merely adds what has been explained, that when there is such a lawsuit, that the individual should obtain counsel. One would think that the concern of the Union would be for the amount of the liability coverage and for the actions included. There is presently a problem with a lack of definition in the contract. The Employer's proposed language does not improve the situation to a great degree, but does clarify a few matters which are already implied. For that reason, the Arbitrator adopts the Employer's proposal to add the following language to Article XXI:

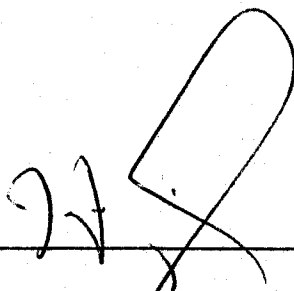
"The Union shall be issued a copy of the insurance policy and each employee shall be required to familiarize themselves with the provisions thereof.

It is incumbent on each employee to secure their own counsel, to work with the attorneys for the Township or the Township insurance carrier, for those lawsuits which could exceed the dollar amount of the insurance protection or causes not covered by insurance."

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Sandra G. Silver  
Chairperson  
Arbitrator



William Birdseye  
Police Officers Association of Michigan  
24133 Southfield Road  
Southfield, Michigan 48075  
(313) 569-8075

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Richard E. Rosin  
2 Crooker Boulevard  
Mount Clemens, Michigan 48043  
(313) 469-7575

*Dissents as to 7% wage  
increase for April 1, 1982  
year, only. RER*