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10/12/76 ARB

STATE OF MICHIGAN
BEFORE A COMPULSORY ARBITRATION PANEL

THE TOWNSHIP OF COMMERCE

-and-

COMMERCE TOWNSHIP FIRE FIGHTERS
ASSOCIATION, LOCAL 2154, AFL-CIO

O P I N I O N

ARISING UNDER ACT 312 MICHIGAN PUBLIC
ACTS, 1969, AS AMENDED.

PANEL MEMBERS:

Mr. Mario Chiesa
Impartial Chairman

Mr. Richard L. Higginbotham
Employer Delegate

Mr. Edwin Manley
Association Delegate

Submitted: October 12, 1976

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Commerce Township

INTRODUCTION

Throughout this Opinion the Commerce Township Fire Fighters Association, Local 2154, AFL-CIO shall be referred to as the Union, while Commerce Township shall be referred to as the Township.

A pre-hearing conference was held on June 3, 1976. The parties agreed that the first hearing date would be July 9, 1976. Subsequent hearing dates were July 15, 1976 and August 3, 1976. The executive meeting was held on September 25, 1976. This Opinion has been rendered within the time limits agreed to by the parties.

APPEARANCES

FOR THE TOWNSHIP

Clark, Hardy, Lewis & Fine, P.C.
132 North Woodward Avenue
Birmingham, Michigan 48009
(By Mr. Stewart Slatkin)

FOR THE UNION

Gregory, Van Lopik & Higle
2142 First National Building
Detroit, Michigan 48226
(By Mr. Philip J. Dunn)

ISSUES

The parties have agreed that the following represents the issues which need to be resolved:

Two-Year Agreement

	<u>April 1, 1976- March 31, 1977</u>	<u>April 1, 1977- March 31, 1978</u>
Salary	Issue	Issue
Sick leave	Issue	-
Hospitalization	Issue	Issue
Overtime pay	Issue	-
Number of holidays and holiday pay	-	Issue
Vacations	-	Issue
Longevity	-	Issue
Retroactivity is an issue		

All issues have been designated as economic, with the exception of those portions of the vacation issue which deal with splitting of vacation days and the weight to be placed upon seniority when schedules are determined.

NOTE OF EVIDENCE

The hearing produced approximately 640 pages of transcript and 40 exhibits. Much of the evidence will be discussed herein; however, it is impossible to address each item separately. Nevertheless, all the evidence was considered and analyzed.

COMPARABLES

Some of the factors that this panel must base its opinion upon are the wages, hours and conditions of employment of similar employees employed by comparable communities (MCL 423.239; MSA 17.455(39)).

In order to satisfy the above the Union has offered as comparable communities the cities of Pontiac, Southfield, Birmingham and the Townships of Clinton, West Bloomfield, Waterford, Redford and Plymouth.

The Township would much rather be compared to White Lake Township and Lyon. It also suggests Walled Lake and Brandon Township.

The Union maintains, that each of the communities that it alleges are comparable to Commerce Township, are located within the Detroit metropolitan area, and as a result, the cost of living in each community is essentially similar. Further, the Union states that each community has a part full-time and part volunteer fire department or a completely full-time department. It did not consider communities with volunteer fire departments. Also, the Union maintains that there cannot be a true comparison with

communities that do not have organized fire fighters.

Commerce Township could be described as semi-rural. It has a population of approximately 22,100 people and occupies an area of 29 square miles. It has three fire stations, seven full-time men including the chief and approximately thirty-five volunteer firemen. It has an operating millage of 1.4 with a total budget of \$769,013.31 and a fire budget of \$239,786.49 (Employer 11).

The evidence reveals the following:

The City of Southfield does not have volunteer firemen. It is highly developed, denser in population and has many multi-story and high-rise structures (115-119).

Birmingham employs more firemen than does Commerce. It has high-rise buildings. There are no volunteer firemen in Birmingham. The City is more developed than Commerce Township (115-118).

Pontiac has at least twice the population of Commerce Township. It is highly developed with many commercial and retail establishments (116-119).

Redford Township occupies a smaller area than Commerce, but has a larger population. It also employs more firemen (121,122).

Clinton Township is located within Macomb County. Its population is comparable to Commerce. Fire protection is provided by a mixed professional and volunteer department (121, 129, 130).

West Bloomfield Township borders Commerce. It has 5 stations as opposed to 3 in Commerce. It employs 22 full-time fire fighters and has 22

volunteers. Its population exceeds that of Commerce by about 6,400 people, while both are approximately equal in size (119, 120, 121 Employer 11).

Waterford Township borders Commerce. It is approximately the same size as Commerce, but has at least double the population. It also employs more firemen (130, Employer 11).

Walled Lake does not have professional fire fighters as such. Volunteers fight the fires, while the equipment is dispatched by a police-fireman dispatcher (126-129).

Lyon is slightly larger than Commerce. However, it has one-fifth of the population and except for a chief and fire marshall, it has no full-time fire fighters (Employer 11).

White Lake Township is larger than Commerce, but has a smaller population. It employs three full-time men and is not organized (Employer 11).

Brandon Township is located north of Commerce. It is larger than Commerce, but has 75% less population. It employs three full-time men and has 41 volunteers (133, Employer 11).

It is fair to state that it is difficult to conclude that any one of the above mentioned communities is identical to Commerce Township for the purpose of evaluating the firemen's salaries. Yet, with certain exceptions they must be considered. The only departments that should not be considered are those that do not employ full-time firemen. The evidence establishes that a full-time fire fighter, at least in Commerce, has more training, more responsibility and is worth more to a community than a volunteer is. Thus, Lyon and Walled Lake shall not be considered. Neither will any other all volunteer department.

Except for the deleted communities all others were considered, along with those contained in Employer Exhibit 11. When salaries were compared, the differences between the various communities was carefully considered (See Employer 15).

ISSUE:

SALARY AND RETROACTIVITY
(Economic)

LAST AND BEST OFFERS:

Under the prior agreement (Joint 2), salaries were paid pursuant to the following schedule:

<u>Fire Fighters</u>	<u>Effective July 1/74</u>	<u>Effective April 1/75</u>
0-6 months	\$10,600.00	\$11,800.00
6-12 months	11,100.00	12,300.00
12-24 months	11,850.00	13,050.00
24 months and over	12,900.00	14,100.00

The Union's last and best offer seeks a 7% increase in the first year of the agreement and an 8% increase in the second year. If adopted, the schedule would appear as such (rounded to the nearest \$50.00):

<u>Fire Fighters</u>	<u>Effective April 1/76</u>	<u>Effective April 1/77</u>
0-6 months	\$12,600.00	\$13,600.00
6-12 months	13,150.00	14,200.00
12-24 months	13,950.00	15,050.00
24 months and over	15,100.00	16,300.00

(Union 24)

The Township's last and best offer contains a wage adjustment of 2% in the first year and 7% in the second. If adopted, the schedule would appear as such:

<u>Fire Fighters</u>	<u>1976-1977</u>	<u>1977-1978</u>
0-6 months	\$12,036.00	\$12,878.52
6-12 months	12,546.00	13,424.22
12-24 months	13,311.00	14,242.77
24 months and over	14,382.00	15,388.74

Retroactivity is also an issue. Neither party has submitted a formal last and best offer, but their positions are clear: the Union seeks full retroactivity, while the Township does not offer any retroactivity.

EVIDENCE

Union Exhibit 24 presents the following information:

<u>Cities/Townships</u>	<u>Salaries</u>		<u>Contract Expires</u>
	<u>Fire Fighters</u>	<u>Engineers</u>	
Birmingham City	\$16,484.00	-	June, 1976
Southfield City	17,090.00	\$18,800.00	June, 1976
Pontiac City	16,484.00	17,474.00	January, 1976
W. Bloomfield Twp.	16,850.00	-	March, 1977
Waterford Twp.	-	12,942.00	Dec., 1976
Plymouth Twp.	15,277.00	-	April, 1976
Redford Twp.	17,173.00	17,878.21	March, 1977
Clinton Twp.	15,525.00	-	March, 1976

It should be noted that the testimony establishes that Waterford Township pays a COLA, which may approach \$4,000.00 (p. 131).

Employer Exhibit 11 presents the following information inter alia:

	<u>Firemen Salaries</u>
White Lake Township	\$14,000.00
Walled Lake	14,754.00
W. Bloomfield	15,450.00
Waterford Township	12,942.00
Brandon Township	12,200.00

Union Exhibit 25 shows that the Bureau of Labor Statistics has established that the intermediate budget for the autumn of 1975 was \$15,701.00. It further shows that the CPI has risen 3.7% from August, 1975 to May, 1976.

The Township has argued that it does not possess the ability to pay the costs that would be created if the Union's offer were accepted.

Employer 5 is the financial report for 1975-1976 and the proposed budget for fiscal 1976-1977. It shows revenues of \$769,013.31, operating expenditures of \$263,166.82, plus public service expenditures of \$505,846.69. Proposed cuts in operating expenditures have resulted in a proposed decrease of \$41,081.39 from the previous year, while proposed increases in public services area have resulted in a proposed increase in expenditures of \$86,161.27. The adjusted fund balance at the end of 1975-1976 was approximately \$21,000.00 (139).

The Township has an allocated operating millage of 1.4 and the citizens have not indicated any willingness to increase this amount.

Employer Exhibit 10 is a comprehensive cost analysis of both the Township's proposals and the Union's proposals. Based on the 1974-1976 agreement, the Township's offers, if adopted, would increase the cost per man 7.8% in the first year and an additional 9% in the second year. If the Union's offers were adopted, they would increase costs 19.11% in the first year and 12.85% in the second year.

The Township also states that it is presently involved in litigation; that if lost, would cost it at least \$17,000.00. There is also \$10,000.00 in drain costs that will have to be paid and while a special assessment was considered as a means of raising the money, a current court decision may prevent the use of that procedure (56).

Employer 7 shows that during April 1, 1975 to March 31, 1976, the average cost of wages and fringes, per fireman, was \$19,456.06.

The Township also points out that it has assumed the obligation of paying the 5% pension contribution that heretofore has been paid by the employees. Thus, the employees will have more disposable income than in the previous year. The Township maintains that its first year offer amounts to a 7% adjustment.

CONCLUSIONS:

It is apparent that Commerce Township fire fighters receive less salary than those fire fighters employed by the communities listed in Union Exhibit 24. Even the adoption of the Union's offer would rank Commerce last. However, it must be remembered that the communities listed in the exhibit, for the most part, are wealthier in a total budget sense and for the most part larger and more developed. When the differences are analyzed, perhaps Commerce fire fighters should rank last. The question is how far behind should they be.

It is agreed that the full-time fire fighters employed by Commerce are competent and conscientious individuals. Many of them have acquired skills and knowledge which are in addition to the job requirements. They fight fires, render limited medical aid and train volunteers. They are professional fire fighters.

The Township has stated that it will assume payment of the employee's contribution to the retirement plan. Thus, it argues that an employee will realize more disposable income. This is true; however, it must be kept in mind that up to this point a fire fighter was not receiving the salary listed in last year's schedule. Last year a fireman with 24 months+ service was receiving, per the schedule, \$14,100.00. When the pension contribution is subtracted, his salary became \$13,395.00. The \$14,100.00 was a mirage.

The Township has argued that it is in bad financial shape. The evidence shows that the Township is not destitute, but by the same token, it is not wealthy. The residents of the Township have refused to pass additional operating millage and thus have caused a financial squeeze. The residents must make a choice very soon.

The cost of living has increased a substantial amount. This fact is rather well known so it will not be discussed.

After analyzing all the evidence, the panel adopts the Union's first year salary proposal. However, none of the economic benefits dealt with in this opinion or the increase in salary will be retroactive.

Thus, the first year salary schedule will appear as such (rounded to the nearest \$50.00):

	<u>1976-1977</u>
0-6 months	\$12,600.00
6-12 months	13,150.00
12-24 months	13,950.00
24 months and over	15,100.00

The 7% increase in salary is clearly warranted and supported by evidence. The spread between the communities listed in Union

Exhibit 24 and Commerce Township was quite large. The cost of living has increased a substantial amount. It is true that other Commerce employees only received Township assumption of the 5% pension contribution. However, firemen should be compared to firemen and not to other employees employed by the same employer who perform services which are different than those performed by firemen. The 7% increase will substantially reduce the effect of the increase in cost of living and also make a very small movement towards improving Commerce's salary rank.

The panel cannot guarantee that the Township will be able to meet the costs without encountering problems. In fact, problems, serious problems, may be presented. However, the firemen should not be required to bear the burden of decreasing funds. New millage increases must be sought, for the cost of essential services is increasing. If the residents are not willing to provide additional operating millage, then they run the risk of losing essential services. The choice is theirs.

AWARD: (First Year Salaries)

The panel orders that the Union's last and best offer regarding the first year salary schedule be adopted.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

The panel will not order retroactive benefit or salary payments. The Union's offer does present a rather hefty increase in cost and there is no desire to cause financial chaos. When the other awards contained herein are considered, the lack of retroactivity seems entirely reasonable. By denying retroactivity, the Union will receive an actual gain of about 3.5% and additionally begin the second year of the agreement with a higher base figure. At the same time, the Township will not be forced to pay the increase as of April 1, 1976. This should allow temporary relief from acute financial strain. It should be clearly understood that this award was not rendered to establish a continuing practice. It was rendered because of the present circumstances.

AWARD: (Retroactivity)

The panel orders that the Township's last and best offer be implemented and thus all benefit and wage increases shall be initiated on the date that this Opinion is rendered, except for those which are to be implemented in the second year of the agreement.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

The second year's salary adjustment presents another issue. The Union seeks an 8% increase, which if adopted, would present the following salary schedule (rounded to the nearest \$50.00):

	<u>1977-1978</u>
0-6 months	\$13,600.00
6-12 months	14,200.00
12-24 months	15,100.00
24 months and over	16,300.00

The Township offers a 7% increase, which if adopted, would present a salary schedule which would appear as such:

	<u>1977-1978</u>
0-6 months	\$13,482.00
6-12 months	14,070.50
12-24 months	14,926.50
24 months and over	16,157.00

There is little to choose between the two offers.

After analyzing the available evidence, the panel adopts the Township's last and best offer. First, there is no doubt that the increase granted the firemen in the first year of the agreement will cause other employees to push for a wage increase. Thus, more economic pressure will be exerted upon the Township. Secondly, the other awards contained herein will present additional costs to the Township and additional benefits to the firemen. Keeping this in mind, the panel feels that the adoption of the Township's offer would provide an equitable increase in salary and yet present a cost increase that is less than that contained in the Union's offer.

AWARD: (Second Year)

The panel orders that the Township's last and best offer be implemented and thus first year wages shall be increased by 7% on April 1, 1977.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

ISSUE:

SICK LEAVE (Economic)

A. Limitation B. Secondary employment

LAST AND BEST OFFERS:

Article VIII, Section A of the prior collective bargaining agreement states:

"Employees shall earn twelve (12) sick days a year accumulative to 24 days at the rate of one day per month worked, plus a disability insurance. The Board will provide a disability insurance policy when an employee is unable to work, which commences after 15 calendar days of illness or injury, plus \$5,000.00 more life insurance. During the first sixty (60) days an employee is drawing disability insurance, he shall continue to be covered with hospitalization insurance paid by the Board." (Joint Exhibit 2)

The Union's last and best offer states:

"Employees shall earn twelve (12) sick days a year accumulative to 24 days at the rate of one day per month worked, plus a disability insurance. The Board shall provide a disability insurance policy when an employee is unable to work, which commences after 15 Calendar days of illness or injury. While an employee is drawing disability insurance he shall be continued to be covered with Hospitalization Insurance paid for and provided by the Board." (Union Exhibit 1)

The Township seeks to add the following sentence to the prior language:

"The sick leave program (paid days and disability insurance) shall not cover any illness and/or disability occurring out of any other employment." (Employer Exhibit 1)

EVIDENCE:

Union Exhibit 17 displays the following:

<u>Cities/Townships</u>	<u>Extended Coverage</u>	<u>Length of Coverage</u>
Pontiac	Yes	150 days
Southfield	Yes	160 days (non-duty) 100% (duty)
Plymouth	Yes	Length of illness or injury

<u>Cities/Townships</u>	<u>Extended Coverage</u>	<u>Length of Coverage</u>
Redford	Yes	Length of illness or injury
Clinton	Yes	180 days
Waterford	Yes	Length of illness or injury
Birmingham	Yes	?
W. Bloomfield	Yes	?
Commerce	Yes	60 days

The present disability policy provides for a maximum payment of \$175.00 per week, less any other amount received by the employee, such as workmen's compensation. The policy provides coverage for one year (98).

The Union states that while a fireman is on disability, the Township should maintain his hospitalization coverage (98, 160).

The Township feels that it should have the right to limit its liability. It maintains that it should not be forced to subsidize a fireman's secondary employer by providing benefits when the fireman is disabled as a result of his secondary employment (Employer 11).

There have been a couple of instances wherein a fireman was disabled for a relatively long period of time (126).

CONCLUSIONS:

The parties have agreed that if a last and best offer is not submitted on a particular issue, the party that doesn't respond is taking the position that its last and best offer would be prior contract language or the status quo (12).

If the present issue is carefully studied, it becomes apparent that the panel is confronted with two issues. The first concerns the 60-day limitation, while the second concerns the exception regarding disabilities caused by secondary employment.

The only evidence regarding the comparison of the 60-day limitation to limitations contained in other communities is Union Exhibit 17. It shows that a majority of the communities contained therein provide a greater limit than exists in Commerce.

The cost of this benefit is variable. The maximum cost would equal one year's premium, since the disability policy provides benefits for only one year (98). The minimum cost would be nothing.

If the benefit were granted, a disabled fireman would be guaranteed medical services for himself and most important, his family.

As the Township states, if a fireman receives an injury which arose out of and in the course of his employment, the workman's compensation carrier would have to provide benefits and thus the extended limitation would be unnecessary (MCL 418.101 et seq; MSA 17.237 (101) et seq.) However, the extended limitation would increase the period of time in which a disabled fireman's family would receive medical protection.

After analyzing all the available evidence, the panel concludes that the above considerations warrant the adoption of the Union's last and best offer.

AWARD:

The panel orders that the Union's last and best offer be implemented and thus the 60-day limitation contained in Article VIII, Section A of the prior collective bargaining agreement is eliminated. The following language shall be added:

While an employee is drawing disability insurance, he shall continue to be covered with hospitalization insurance provided and paid for by the Board.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

The second part of the general issue presents a perplexing problem.

The Township does not wish to subsidize secondary employers. Some of the firemen have second jobs, one of which is involved with driving an ambulance (165).

The chairman agrees with the concept that is forwarded by the Township. Yet, the specifics present some problems. Because of the variables involved, it would be impossible to discuss the exact savings that the Township would enjoy if its proposal were adopted.

The language contained in the Township's proposal is vague. Does "any other employment" include helping a neighbor shingle his home when the fireman will be paid a token amount of money? Does the term include independent contracting? Quite frankly, if the language was more specific, or if it contained a clause preventing duplicate benefits, or a setoff for benefits received from a secondary employer, the chairman would have voted to have it implemented. Under the present language the chairman cannot.

AWARD:

The panel orders that the Union's last and best offer be adopted and thus the language proposed by the Township shall not be incorporated into the new agreement.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

ISSUE:

HOSPITALIZATION (Economic)

LAST AND BEST OFFERS:

Article V, Section A of the prior collective bargaining agreement states:

"The Board shall pay the cost of Blue Cross/Blue Shield Comprehensive Hospital, Certified MVF-1, for employees at rates in effect for each full-time employee, as a single subscriber, or married with spouse, or married with spouse and family." (Joint Exhibit 2)

The Union's last and best offer states:

"The Board shall pay the cost of Blue Cross-Blue Shield Comprehensive Hospital, Certified MVF-1 to include Master Medical and Prescription Rider with \$2.00 deductible at rates in effect for each full-time employee, as a single subscriber, or married with spouse, or married with spouse and family."

The Township's last and best offer states:

"1st Year - The Employer agrees to pay the 29% increase in Blue Cross Blue Shield rates scheduled to take effect July 1, 1976. This amounts to approximately \$249.12 per employee, per year. Additional increases, if any, during the 1st year of the contract shall be paid by the employee.

"2nd Year - The Employer agrees to absorb the employees cost of any Blue Cross Blue Shield rate increases which took effect during the 1st year, but additional increases in the basic coverage during the second year, if any, shall be paid by the employee.

"Starting the second year, the Employer shall provide the Blue Cross Blue Shield Master Medical and \$2.00 deductible prescription drug rider."

EVIDENCE:

Union Exhibit 14 shows the following:

<u>Cities/Townships</u>	<u>Master Medical In Effect</u>	<u>Pres. Rider in Effect</u>
Birmingham City	Yes	Yes
Southfield City	Yes	Yes
Pontiac City	Yes	Yes
W. Bloomfield Twp.	Yes	Master Medical Cov.

<u>Cities/Townships</u>	<u>Master Medical In Effect</u>	<u>Pres. Rider in Effect</u>
Waterford Twp.	Yes	\$1.25
Plymouth Twp.	No	Yes
Redford Twp.	Yes	Yes
Clinton Twp.	Yes	Yes

White Lake Township provides a prescription rider, but not master medical (124). Further, the evidence does not establish whether or not all the above communities pay the entire cost of the medical coverage.

The Union maintains that the cost of both benefits would be \$7.14 per man per month (135).

The Township maintains that the cost of the programs would be \$159.48 per man per year for 1976-1977 and \$191.37 per man per year for 1977-1978 (Employer 10). The Township argues the expense involved and the possibility of unforeseeable cost increases.

CONCLUSIONS:

The evidence certainly establishes that the fire fighters should receive these benefits. Apparently both parties agree, for both offer them. The Township would implement the benefits in the second year of the agreement, while the Union seeks them in the first year.

The Township seeks a provision which would cause the employees to pay a portion of the insurance cost. The Township has stated that it will pay for the 29% increase that was effective on July 1, 1976.

The evidence doesn't establish whether the other communities pay the entire cost of medical insurance and, further, it would be unfair and perhaps in error to assume that they do or don't.

Quite frankly, if it were not for the statutory mandate (see MCL 423.238, MSA 17.455(38)), the chairman would reject both

offers, then formulate and adopt one that is different than those submitted by the parties.

The evidence indicates that the Union's last and best offer should be adopted. With the exception of Plymouth Township and White Lake Township, both of which have only the prescription rider, all the listed communities have both master medical and the prescription drug rider. The cost of these benefits, per Employer 10, would be \$956.88 in the first year and \$1,148.22 in the second year. It cannot be said that the costs involved are overwhelming.

Without further evidence, the panel cannot adopt the Township's cost sharing proposal.

AWARD:

The panel orders that the Union's last and best offer be implemented.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

ISSUE:

OVERTIME PAY (Economic)

LAST AND BEST OFFERS:

Article VI, Section D of the prior collective bargaining agreement states:

"In the event an employee is assigned to work in excess of his shift, straight time shall be paid for each hour worked in excess of shift."
(Joint Exhibit 2)

The Union's last and best offer states:

"All hours assigned in excess of a 56 hour work week for regular uniformed personnel shall be paid at the rate of time and one-half of the employee's regular rate of pay. The employee shall work overtime when necessary and overtime shall be allocated as evenly as possible among all employees to perform this work. The 56 hour week is the standard number of hours a firefighter works based on 1925 Public Act 125, as amended (MCLA 123.841)."

The Township seeks to retain prior contract language.

EVIDENCE:

Union Exhibit 16 shows the following:

<u>Cities/Townships</u>	<u>Time and One-Half Currently Paid</u>
Birmingham City	Yes
Southfield City	Yes
Pontiac City	Yes
W. Bloomfield Twp.	Yes
Waterford Twp.	Yes
Plymouth Twp.	Yes
Redford Twp.	Yes
Clinton Twp.	Yes

White Lake Township does not pay time and one-half (125).

The evidence shows that there are eight overtime days built in because of vacations. Sick days could account for more (176-177). Further, in 1974 there were ten sick days used, which

averages out to less than two per person (177). The evidence establishes that time and one-half for overtime is paid in manufacturing, other fire departments and police departments (92). The average fire fighter works 56 hours a week (92).

CONCLUSIONS:

The comparison evidence clearly establishes that time and one-half for overtime is a extremely common and almost universal practice.

The Township has argued the cost of the Union's proposal and the financial burden it would place on the Township. The Township has also stated that the Union's proposal may be illegal for it requires firemen to work more than 56 hours per week.

In answer to the Township's contention regarding the legality of the Union's proposal, the panel states that the statute uses the word "require" whereas in this case the firemen would be agreeing to work more than 56 hours per week (MCL 123.841; MSA 5.3331; also see Op Atty Gen, Nov. 8, 1950, No. 1310; April 15, 1957, No 2958).

After analyzing all the evidence, the panel has concluded that the Union's last and best offer should be adopted.

AWARD:

The panel orders that the Union's last and best offer be implemented.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

ISSUE:

NUMBER OF HOLIDAYS AND HOLIDAY
PAY (Economic)

LAST AND BEST OFFERS:

Article IX of the prior collective bargaining agreement states:

"The following days shall be deemed holidays for purposes of this Agreement:

New Years Day	Washington's Birthday
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day
Labor Day	Christmas Eve
Veterans Day	New Years Eve"
(Joint Exhibit 2)	

As to the number of holidays, the Union's last and best offer states:

"The following days shall be deemed holidays for purposes of this agreement.

New Years Day	Washington's Birthday
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day
Labor Day	Christmas Eve
Veterans Day	New Years Eve

"In addition to the present holidays now in effect Commerce Firefighters shall be compensated for all election days on which Oakland County offices are closed.

"Holidays as used in this paragraph shall not include acts of God.

"Increase in Holidays shall take effect April 1, 1977."

The Township seeks continuation of prior language.

As to holiday pay, the Union's last and best offer states:

"VI Holiday Pay: (Second year)

All uniformed employees shall receive 1/2 of one day's pay for all holidays. Holiday pay shall be paid the first pay in November."

The Township seeks continuation of prior language which provides for time and one-half for all holidays worked.

EVIDENCE:

Union Exhibit 18 shows the following:

<u>Cities/Townships</u>	<u>Holidays Now In Effect</u>
Clinton Twp.	13
Pontiac City	11
W. Bloomfield Twp.	11
Redford Twp.	11
Southfield City	10
Waterford Twp.	Straight Dollar Amount
Plymouth Twp.	Straight Dollar Amount
Birmingham City	Straight Dollar Amount

Union Exhibit 19 shows the following:

<u>Cities/Townships</u>	<u>Holiday Pay</u>
Clinton Twp.	\$833.95
W. Bloomfield Twp.	765.82
Waterford Twp.	532.60
Southfield City	704.00
Pontiac City	693.00
Birmingham City	519.36
Redford Twp.	726.50
Plymouth Twp.	400.00

The above is all the comparative evidence. Employer Exhibit 18 shows that the cost of the Union's holiday pay proposal would be approximately \$676.85 per man per year. The total cost would be \$4,061.10 for the second year of the contract.

CONCLUSIONS:

If the Union's holiday pay proposal were adopted, Commerce would rank higher than Plymouth Township, Birmingham and Waterford Township.

At this point in time Commerce firemen receive as many holidays as Southfield firemen and only one less than firemen employed in Redford Township, West Bloomfield Township and Pontiac. If the Union's proposal were adopted, it is unknown how many holidays Commerce firemen would receive. At the minimum it would be one holiday every two years.

Addressing itself first to the number of holidays, the panel feels that the Union's offer cannot be adopted. Presently, the number of holidays enjoyed by Commerce firemen is not far behind the listed communities. In fact, it is equal to the number enjoyed by Southfield firemen and only one less than the average, i.e., 10 versus 11. Keeping in mind the statements made in the prior discussion regarding comparable communities, the panel feels that the number of holidays presently enjoyed by Commerce firemen compares favorably with the evidence.

The panel feels that Commerce firemen should receive an increase in holiday pay. However, it does not agree that the Union's proposal is acceptable. As previously stated, if the Union's proposal were adopted, Commerce would rank higher than Birmingham, Plymouth Township and Waterford Township.

If the panel had the power, it would have formulated an award that would have compared favorably to the comparison data. However, it cannot, so it is forced to deny the Union's request.

AWARD:

The panel orders that in the areas of holiday pay and the number of holidays, the Township's last and best offer be implemented.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

ISSUE:

VACATIONS

(Economic except for paragraphs E & F)

LAST AND BEST OFFERS:

Article X of the prior collective bargaining agreement states:

"A. An employee completing one full year, through the second full year with Commerce Township, will earn three paid vacation days.

"B. An employee completing three full years, through the fourth full year with Commerce Township, will earn six paid vacation days.

"C. An employee completing five full years, through the sixth full year with Commerce Township, will earn eight paid vacation days.

"D. An employee completing twelve full years, and thereafter with Commerce Township, will earn nine paid vacation days.

"E. Vacations may be split twice.

"F. The Fire Chief shall determine when vacations may be taken by an employee. He shall take into consideration an employee's seniority along with other concerns when determining vacation schedules." (Joint Exhibit 2)

The Union's last and best offer states:

"A. An employee completing one full year, through the second full year with Commerce Township, will earn three paid vacation days.

"B. An employee completing three full years, through the fourth full year with Commerce Township, will earn six paid vacation days.

"C. An employee completing five full years, through the ninth full year with Commerce Township, will earn nine vacation days.

"D. An employee completing ten full years and thereafter with Commerce Township will earn ten paid vacation days.

"E. Vacation days may be taken anytime, so long as no hardship is put upon the fire department.

"F. The fire chief shall take into consideration an employee's seniority along with other concerns when determining vacation schedules."

The Township wishes to continue prior language.

EVIDENCE:

Union Exhibit 20 shows the following:

<u>Cities/Townships</u>	<u>1 Year</u>	<u>5 Years</u>	<u>Maximum</u>
Birmingham City	5 days	7 days	10 days
Southfield City	10 days	10 days	10 days
Pontiac City	6 days	9 days	12 days
W. Bloomfield Twp.	6 days	7 days	10 days
Waterford Twp.	6 days	9 days	12 days
Redford Twp.	12 days	12 days	13 days
Plymouth Twp.	6 days	6 days	12 days
Clinton Twp.	6 days	9 days	12 days

Employer Exhibit 8 shows the following inter alia:

	<u>Seniority Date</u>	<u>Present Vac. Days</u>	<u>Under Union Prop.</u>
Pennell	6/15/65	9	10
Bolitho	5/1/70	8	9
Clark	10/1/69	8	9
Leach	11/1/69	8	9
Thompson	11/1/69	8	9
Lyon	8/16/71	8	9

CONCLUSIONS:

If the Union's proposal were adopted, the cost in the second year of the contract would amount to approximately \$7,405.20 without adding the overtime necessary to cover for the absent man.

As seen in Union's Exhibit 20, the number of vacation days available to Commerce firemen under the one-year experience column is much less than available to firemen employed by the other communities. However, Commerce has no firemen in that experience bracket.

In the five-year column, where five out of the six Commerce firemen qualify, the number of vacation days available to Commerce firemen adequately compares to the amount of days available to the listed communities.

In the maximum column, where one Commerce fireman qualifies, the number of vacation days available is less than the amount of days available in all the other listed communities.

When analyzing this evidence, the comments made in the salary section of this opinion, regarding Commerce's rank, must be kept in mind.

The panel concludes that the number of vacation days available to the Commerce firemen, except one, is comparable to the number available in the other communities; therefore, the panel must reject the Union's offer.

AWARD:

The panel orders that the Township's last and best offer be adopted.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

Paragraphs E & F present a non-economic issue.

Basically, the firemen seek to be able to split their vacations more than twice.

The Union states that a fireman should be able to split his vacation more than twice, in order to facilitate non-work activities (130).

The Township is concerned with the scheduling problem.

Since this issue is non-economic, the panel can formulate its own award and need not adopt one or the other party's last and best offer.

After analyzing all the available evidence, the panel renders the following:

AWARD:

- E. An employee may split his vacation (3) three times.
- F. The Fire Chief shall determine when vacations may be taken by an employee. Seniority shall control.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE

This award allows a fireman more flexibility when it comes to taking portions of his allotted vacation time. Yet, the Chief will have adequate control and a guideline to follow, i.e., seniority.

ISSUE:

LONGEVITY (Economic)

LAST AND BEST OFFERS:

The prior collective bargaining agreement did not contain a provision dealing with longevity.

The Union's last and best offer states:

"A. An employee completing five (5) full years, through the ninth (9) year with Commerce Twp., shall receive two percent (2%) of base rate of pay.

"B. An employee completing ten (10) full years, through the fourteenth (14) year with Commerce Twp., shall receive four percent (4%) of base rate of pay.

"C. An employee completing fifteen (15) full years through the nineteenth (19) year with Commerce Twp., shall receive six percent (6%) of base rate of pay.

"D. An employee completing twenty full years, and each year thereafter, with Commerce Twp., shall receive eight percent (8%) of base rate of pay."

The Township seeks to maintain the status quo, i.e., no longevity.

EVIDENCE:

Union Exhibit 23 shows the following:

Birmingham City

6 thru 10 years	\$250.00
11 thru 15 years	650.00
16 years and up	850.00

Pontiac City

6 thru 12 years	2%
12 thru 17 years	4%
18 thru 20 years	6%
21 years and over	8%

Southfield City

3 and 4 years	1%
5 thru 9 years	2%
10 thru 14 years	4%
15 thru 19 years	6%
20 years and over	8%

W. Bloomfield

5 thru 9 years	2%
10 thru 14 years	4%
15 thru 19 years	6%
20 years and over	8%

Waterford Township

6 thru 8 years	2%
9 thru 11 years	4%
12 thru 14 years	6%
15 thru 19 years	8%
20 years and over	10%

Redford Township

5 years	\$200.00
6 years	240.00
7 years	280.00
8 years	320.00
9 years	360.00
10 years	400.00
11 years	440.00
12 years	480.00
13 years	520.00
14 years	560.00
15 years	600.00
16 years	640.00
17 years	680.00
18 years	720.00
19 years	760.00
20 years	800.00

Plymouth Township

5 years	\$100.00
6 years	140.00
7 years	180.00
8 years	220.00
9 years	260.00
10 years	300.00
11 years	340.00
12 years	380.00
13 years and over	400.00

Clinton Township

6 thru 10 years	2%
11 thru 15 years	4%
16 thru 20 years	6%
21 years thru 25 years	8%
26 years and over	10%

Employer Exhibit 8 shows the following:

	<u>Seniority Date</u>	<u>Union's Long. Proposal</u>
Pennell	6/15/65	4%
Bolitho	5/1/70	2%
Clark	10/1/69	2%
Leach	11/1/69	2%
Thompson	11/1/69	2%
Lyon	8/16/71	2%

White Lake Township does not pay longevity (129). There is no promotion through the ranks in Commerce and the Union feels that longevity allowance may help compensate for the lack of promotions (16-17).

The Township maintains that the average cost per man for longevity allowance would be \$380.19 (Employer 10).

CONCLUSIONS:

If longevity were granted, the total cost in the second year of the agreement would amount to \$2,261.98.

If longevity were awarded, five out of the six Commerce firemen would be receiving a \$323.14 longevity payment. This would represent 2% of salary. That amount would be greater than the payments in the following communities:

<u>Communities</u>	<u>Span of Years</u>
Redford Twp.	5 to 8 years
Plymouth Twp.	5 to 10 years
Birmingham	6 to 10 years
Waterford Twp.	5th year
Pontiac	5th year
Clinton Twp.	5th year

(Commerce 2%, i.e., \$323.14 at 5 years to 9 years)

One fireman would receive 4% or \$646.28. This would be greater than the amounts paid by the following communities:

<u>Communities</u>	<u>Span of Years</u>
Birmingham	6 to 14 years
Pontiac	6 to 11 years (% is greater)
Plymouth Twp.	5 to end of schedule
Redford Twp.	5 to 16 years
Clinton Twp.	10th year (% is greater)

(Commerce 4%, i.e., \$646.28 at 10 years to 14 years)

At the last step, 8% at 20 years, Commerce would be paying more longevity than Birmingham, Plymouth Township and Redford Township.

The question that remains is whether or not the Union's demand should be met. The panel thinks it should. First, longevity allowance is a specific benefit which is directed at rewarding and recognizing the increased worth that an employee presents as he or she gains experience. Secondly, Commerce firemen do not have a promotional system for there are no ranks. Longevity could compensate for the lack of promotional opportunity. Thirdly, the additional cost amounts to \$2,261.98 in the second year of the

contract. The Township will have ample opportunity to budget for this rather small cost item.

The evidence that supports the adoption of the Union's last and best offer, is so compelling that the Union's offer will not be deemed unacceptable, even though it places Commerce in a higher rank than some of the other listed communities. This is unlike the facts and circumstances that surrounded the issue regarding increase of holiday pay.

AWARD:

The panel orders that the Union's last and best offer be adopted.

CHAIRMAN

UNION DELEGATE

TOWNSHIP DELEGATE