

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BUREAU OF EMPLOYMENT RELATIONS
ACT 312 ARBITRATION**

In the matter of:

CHARTER TOWNSHIP OF EMMETT,

Employer,

MERC Act 312 Arbitration

and

Case No. L99 A-1001

**POLICE OFFICERS' LABOR COUNCIL,
Public Safety Officers**

Union.

Michael P. Long, Chairperson
James Demarest, Employer Delegate
Homer Lafrinere, Union Delegate

Emmett Township

ACT 312 ARBITRATION DECISION

A Hearing was held in the above Act 312 Arbitration case on February 9, 2000 at the Emmett Township offices in Battle Creek, Michigan. The Employer was represented by attorney Michael R. Kluck and the Union was represented by attorney Timothy J. Dlugos. A pre-hearing conference was held on August 23, 1999. The parties submitted their Final Offers of Settlement on or about April 20, 2000 and their Post-Hearing Briefs were submitted by June 7, 2000.

The parties met for collective bargaining sessions on February 8, 1999, February 25, 1999, and April 19, 1999, respectively. On May 27, 1999, the parties held a mediation session that yielded no resolution of any outstanding issues. The Petition for Arbitration was filed on June 1, 1999, after the parties reached an impasse in their negotiations for a new contract.

The following are the open issues of the parties:

UNION ISSUES

- | | | |
|--|--|---|
| <input type="checkbox"/> WAGES Appendix "A" | <input type="checkbox"/> INSURANCE AND PENSION Article 34 | <input type="checkbox"/> HOLIDAYS Article 36 |
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EMPLOYER ISSUES

- ☐ GRIEVANCE PROCEDURE
Article 18

The parties agreed that the following communities were somewhat comparable and therefore were considered when reviewing the outstanding issues of the parties. However, these communities were not relied upon as an identical source of reference, but only the closest that the parties could determine through their research.

- | | | |
|---|-------------------------------------|--------------------------------------|
| <input type="checkbox"/> Albion | <input type="checkbox"/> Essexville | <input type="checkbox"/> Ionia |
| <input type="checkbox"/> Blackman Township | <input type="checkbox"/> Greenville | <input type="checkbox"/> Springfield |

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|----------------------------|
| STATUTORY AUTHORITY |
|----------------------------|

Public Act 312 of 1969 provides for compulsory arbitration of labor disputes in municipal police and fire departments. Section 8 of the Act provides that the arbitration panel shall adopt the last offer of settlement on each economic issue which most nearly complies with the factors prescribed in Section 9 of the Act. Section 9 of the Act reads as follows:

"Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.

- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which as 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." [MCLA 423.239]

GENERAL FINDINGS

The Charter Township of Emmett is located within Calhoun County and consists of an area of 32.2 square miles (E. Ex. 10 and E. Ex. 13). The estimated population as of 7/98 was 12,586 (E. Ex. 10). In 1999, the State Equalized Valuation was 224,481,185 (E. Ex. 10). For year ending June 30, 1999, the Shared Revenues were \$842,310 (E. Ex. 12).

DECISIONS ON ISSUES PRESENTED

Union Issue 1: WAGES, Appendix "A"

The Union's last offer proposed a 4% across-the-board increase for the three (3) year collective bargaining agreement. The Employer's last offer proposed 3% wage increases for the first 2 years of the contract retroactive to April 1, 1999 and a 2.5% increase for the 3rd year. Each year is to be considered a separate and distinct issue for consideration and decision.

UNION RATIONALE

Historically, Emmett Township has ranked below the average base wage for the six comparables (U-6, pp.3,4). It is reasonable to expect that salary increases would result from current negotiations. Therefore, the proposed 4% across-the-board unit increases would keep the current salaries competitive in association with the selected comparables.

The proposed salary increases would allow for: a) effective 4/1/99: 4%, b) effective 4/1/00: 4%, and c) effective 4/1/01: 4% and be retroactive:

PROPOSED UNION APPENDIX "A"

Effective the first full payroll period after April 1, 1999, the salary schedule for the Charter Township of Emmett Public Safety Department for the period ending March 31, 2000, shall be as follows:

| CLASSIFICATION | NEW HIRE | AFTER 6 MOS | AFTER 1 YEAR | AFTER 2 YEARS | AFTER 3 YEARS | AFTER 4 YEARS |
|----------------|-------------|----------------|-----------------|------------------|------------------|------------------|
| 1999 PSO III | \$29,108.46 | \$30,036.15 | \$31,769.70 | \$32,648.66 | \$33,529.38 | \$35,381.27 |

Effective the first full payroll period after April 1, 2000, the salary schedule for the Charter Township of Emmett Public Safety Department for the period ending March 31, 2001, shall be as follows:

| CLASSIFICATION | NEW HIRE | AFTER 6 MOS | AFTER 1 YEAR | AFTER 2 YEARS | AFTER 3 YEARS | AFTER 4 YEARS |
|----------------|-------------|----------------|-----------------|------------------|------------------|------------------|
| 2000 PSO III | \$30,272.79 | \$31,237.59 | \$33,040.49 | \$33,954.60 | \$34,870.56 | \$36,796.52 |

Effective the first full payroll period after April 1, 2001, the salary schedule for the Charter Township of Emmett Public Safety Department for the period ending March 31, 2002, shall be as follows:

| CLASSIFICATION | NEW HIRE | AFTER 6 MOS | AFTER 1 YEAR | AFTER 2 YEARS | AFTER 3 YEARS | AFTER 4 YEARS |
|----------------|-------------|----------------|-----------------|------------------|------------------|------------------|
| 2001 PSO III | \$31,483.71 | \$32,487.09 | \$34,362.11 | \$35,312.79 | \$36,265.38 | \$38,268.38 |

□ The rate of pay for PSO IV shall be the PSO III rate plus \$4,000.00.

In addition, per their allotted budget and forecasted increases generated from the Special Assessment District, the Township is more than capable of handling the additional increases for each year (Tr. 2/9/00, pp. 43-44 & 51-55). Furthermore, the panel should note that the Township's recommended budget for non-union personnel is a 4.3% wage increase (Tr. 2/9/00, p. 50).

EMPLOYER RATIONALE

The Employer's proposed 3% wage increase for the first two years and a 2.5% increase for the third year is more than reasonable considering that most public sector contracts are settled within that percentage range. Unit members are currently receiving a competitive wage in comparison to other employees within the comparable communities. In fact, no comparable community has ever received a 4% wage increase.

Costs associated with providing other benefits, such as health care, have increased since 1998 by approximately 28.5% (p. 48) and are equivalent to offering the employees a 4.9% to 5% raise (p. 50). Also, these costly benefit increases can be seen through additional personal days, sick leave accrual, expense and mileage reimbursement, comp-time benefits, and holidays pay benefits already generously provided by the employer. Therefore, the Employer's proposal is reasonable and should be adopted.

PROPOSED EMPLOYER APPENDIX "A"

Each year is to be considered a separate and distinct issue for consideration and decision.

1st YEAR – 3.0%

Effective the first full payroll period after APRIL 1, 1999, the salary schedule for the Charter Township of Emmett Public Safety Department shall be as follows:

| CLASSIFICATION | NEW HIRE | AFTER 6 MOS | AFTER 1 YEAR | AFTER 2 YEARS | AFTER 3 YEARS | AFTER 4 YEARS |
|----------------|---|----------------|-----------------|------------------|------------------|------------------|
| PSO III | \$28,828.57 | \$29,747.34 | \$31,464.22 | \$32,334.73 | \$33,206.98 | \$35,041.06 |
| PSO IV | The rate of pay for PSO IV shall be the PSO III rate plus \$4,000.00. | | | | | |

2nd YEAR – 3.0%

Effective the first full payroll period after APRIL 1, 2000, the salary schedule for the Charter Township of Emmett Public Safety Department shall be as follows:

| CLASSIFICATION | NEW HIRE | AFTER 6 MOS | AFTER 1 YEAR | AFTER 2 YEARS | AFTER 3 YEARS | AFTER 4 YEARS |
|----------------|---|----------------|-----------------|------------------|------------------|------------------|
| PSO III | \$29,693.43 | \$30,639.76 | \$32,408.15 | \$33,304.77 | \$34,203.19 | \$36,092.29 |
| PSO IV | The rate of pay for PSO IV shall be the PSO III rate plus \$4,000.00. | | | | | |

3rd YEAR – 2.5%

Effective the first full payroll period after APRIL 1, 2001, the salary schedule for the Charter Township of Emmett Public Safety Department shall be as follows:

| CLASSIFICATION | NEW HIRE | AFTER 6 MOS | AFTER 1 YEAR | AFTER 2 YEARS | AFTER 3 YEARS | AFTER 4 YEARS |
|----------------|---|----------------|-----------------|------------------|------------------|------------------|
| PSO III | \$30,435.77 | \$31,405.75 | \$33,218.35 | \$34,137.39 | \$35,058.27 | \$36,994.60 |
| PSO IV | The rate of pay for PSO IV shall be the PSO III rate plus \$4,000.00. | | | | | |

Award: The Union's Last Offer of Settlement is adopted in each of the three years for the issues regarding wages.

Reason: The Union's Last Offers of Settlement are adopted for the reasons set forth above. In addition, the Emmett Township Public Safety Officers' base wages average approximately \$1600.00 below the average base wage for the six comparables. For 1999 and 2000 the 4% increases would reduce this discrepancy by approximately \$300.00, but not substantially change the ranking of the Township Public Safety Base Wage Rate Scale in relation to the other comparables.

Union Issue 2: HOLIDAYS, Article 36

The Union's last offer proposed that the collective bargaining agreement should include language that would provide an additional "Holiday Benefit" equal to straight time for every designated holiday. This language would include every employee regardless of whether or not they work the currently recognized 13 ½ holidays. In addition, this allows those employees who work the holiday to receive one and one-half times the normal rate for all hours worked on the holiday. The Union also proposes that the current 13 ½ holidays remain status quo.

The Employer agrees that the annual holiday lump-sum payment be phased out and will adopt the Union's position with one main difference: reducing the number of designated holidays to 11 ½ days annually instead of the 13 ½ currently in place.

UNION RATIONALE

The collective bargaining agreement should include the following "Holiday Benefit" language:

"Effective [date of implementation of award], all employees, whether working or not, receive a Holiday Benefit equal to straight time for every above listed "Holiday". This amount is in addition to the Holiday Pay received pursuant to either the first paragraph of this Article or the second paragraph of this Article, whichever applies."

In addition, the average of paid days off for the external comparables is 52 days; Emmett Township is 50.5 days. Thus, there is no justification for reducing the number of holidays by two days and the number of holidays should remain status quo.

EMPLOYER RATIONALE

Currently, Emmett Township recognizes the following 13 ½ annual holidays:

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|------------------------|----------------------------|
| New Years Day | Columbus Day |
| Martin Luther King Day | Veterans' Day |
| Presidents' Day | Thanksgiving Day |
| ½ Day Good Friday | The Day After Thanksgiving |
| Memorial Day | Christmas Eve |
| July Fourth | Christmas Day |
| Labor Day | New Year's Eve |

The costs associated with these 13 ½ holidays are excessive for the Employer and the proposed 11 ½ days is consistent with the number of holidays designated in other public safety departments while maintaining reasonable costs associated with the benefit. In addition, the comparables, as suggested by the Union, only benefit from an average of 11.16 designated holidays per year (U. Ex. 7). Therefore, the following offer should be adopted:

Effective April 1, 2001, the above holiday provisions will be replaced with the following:

Section 1. All probationary and regular employees will be eligible to receive holiday pay in addition to regular pay under the following regulations:

Employees who do not work on a designated holiday will be paid their current rate based on an eight (8) hour day for said holiday [four (4) hours for a half-day (1/2) holiday]. In order to qualify for the holiday pay for the holiday so designated, an employee will be required to work his/her last scheduled day prior to and his/her first scheduled day after the holiday occurs, unless on an approved paid leave.

Section 2. Paid holidays are designated below:

| | |
|-------------------|----------------------------|
| New Years Day | Veterans' Day |
| Presidents' Day | Thanksgiving Day |
| ½ Day Good Friday | The Day After Thanksgiving |
| Memorial Day | Christmas Eve |
| July Fourth | Christmas Day |
| Labor Day | New Year's Eve |

"The Employer's Final Offer is flexible to allow the Union to select any 11 ½ days a year, so long as the total does not exceed said amount."

Section 3. Employees working a holiday as designated in the Agreement will be paid at the rate of time and one-half (1 ½ their regular rate of pay for the hours actually worked, plus holiday pay.

Award: The Township's Final Offer of Settlement is adopted.

Reason: The Township's Final Offer of Settlement is adopted for all the reasons set forth above. In addition, both the Employer's and Union's Final Offers of Settlement provide an additional benefit equal to straight time pay for every holiday to every bargaining unit employee, whether the employee works the holiday or not. Officers who work the holiday will continue to receive the premium rate of one and one-half times the normal rate for all hours worked on the holiday. Because employees will now be

compensated regardless of whether or not they work on the designated holiday, the number of annual days so designated becomes a very relevant cost factor to the Employer. The Township's offer meets the Union's request to change the way employees are paid holiday leave benefits, while incorporating a more reasonable cost to the Employer, wherein the number of designated holidays is similar to that of the external comparables. None of the external comparables have as many as 13.5 holidays.

Union Issue 3: INSURANCE AND PENSION, Article 34

The Union proposed a 50/50 matching of the costs for providing health care for retirees and their spouses. The Employer proposed maintaining the status quo.

UNION RATIONALE

The Union proposes the following inclusion of a new Section 8 that reads:

"Section 8. Effective [date of implementation of award], the Employer shall provide retirees and their spouses with continued Hospitalization and Medical Coverage at the time of retirement as set forth in Section 2 of this Article. Fifty percent (50%) of the cost of the continued coverage shall be paid by the Employer. The remaining fifty percent (50% of the cost shall be the responsibility of the retiree and spouse. The Hospitalization and Medical Coverage for retiree and spouse shall become effective at the time of retirement and shall continue until eligible for Medicare/Medicaid cover. At the time Medicare/Medicaid coverage begins, the Employer and retiree and spouse continue to share equally the cost of supplemental coverage at the same 50/50 ratio."

The majority of external comparables benefit from this type of insurance coverage and our employees should also have the opportunity to plan towards retirement. As a whole, the unit is young and therefore costs experienced by the Employer will not be immediate, thus, allowing for future planning of associated costs.

EMPLOYER RATIONALE

The Union has no credible evidence to support the financial cost of this request. Although the Employer recognizes the fact that other employers provide this type of benefit, the costs associated with health care benefits is "skyrocketing". Controlling costs is imminent since we are already providing other benefits to employees, such as, wages, holiday pay, personal days, comp time, etc. At this time, only one employee would be affected by this proposal and to date has not indicated any intention of retiring within the next two years. The Employer is open to discussing

this issue in future contracts when it has more of an impact on the bargaining unit employees. Therefore, the status quo should be maintained.

Award: The Township's Last Offer of Settlement is adopted.

Reason: The Township's Final Offer of Settlement is adopted for all the reasons set forth above. In addition, it is noted that the Union asserts that five out of the six comparables provide some form of health insurance coverage for retirees, but there is no evidence in the record of the actual or projected financial cost of this proposal. The panel should not require the costs of such a commitment to be incurred without more information as to what they will be. The Employer has indicated that it would like to provide such benefits to the employees, and strongly feels that this is an issue to be discussed in negotiations for future contracts. Under the circumstances, the best alternative is for the status quo to be maintained, as set forth in the Employer's final offer.

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| Employer Issue 1: GRIEVANCE PROCEDURE, Article 18 |
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The Employer's last offer proposed changes for two (2) non-economic issues in the present Grievance Procedure:

- 1) the following contract language for Section 5. Arbitrator's Powers be included in the contract language regarding back pay, as presented in its Final Offer:

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| <p>"In the event of a back pay award, the Employer shall receive a set-off equal to 100% of all unemployment compensation benefits paid to the employee. In addition, the Employer shall receive a set-off of earnings from another source which exceed those sums normally earned by the employee prior to his/her suspension or discharge."</p> |
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- 2) eliminate the step that calls for a hearing before the Township Board prior to the submission of a grievance to arbitration and adopt the following contract language as presented below for Section 4. Steps of Grievance Procedure, Step 3:

"If the answer in Step 2 is unsatisfactory to the Union, the Union must within five (5) days from receipt of the Step 2 answer, appeal the grievance to the Township Supervisor. Upon receipt of such an appeal, the Supervisor will arrange a meeting to be attended by the Supervisor, Director and/or labor counsel, and the steward and staff representative. The Supervisor will give a written disposition of the grievance to the Union no later than the end of the fifth (5th) working day following the date of the meeting."

The Union is in agreement with the new contract language regarding the set-off of back pay awards, but proposes that Section 4 – Step 3 of Article 18 remain status quo.

EMPLOYER RATIONALE

The Employer requests that the contract language for Article 5. Arbitrator's Powers, as already agreed upon by the Union, be adopted within the collective bargaining agreement. In addition, the Employer requests that the grievance step (Section 4 – Step 3 of Article 18) that requires a hearing before the Township Board prior to the submission of a grievance to arbitration, be eliminated. This elimination is requested due to the amount of time and money that the Employer states is wasted in addition to inefficiency of the process.

UNION RATIONALE

The Union agrees to the inclusion of a new provision in Article 18 for the set-off of back pay awards. However, the Union would like to maintain the status quo when addressed with the change proposed by the Employer for Section 4, Step 3 of the Grievance Procedure. Since grievances are a rare occurrence, the Township Board does not experience any significant time or cost burdens. The Township Board is a crucial part of the grievance procedure and allows for protection of privacy interests and public awareness for the Public Safety Department.

Award: The Township's Final Offer of Settlement is adopted.

Reason: The Township's Final Offer of Settlement is adopted for all the reasons set forth above. In addition, The Michigan Public Employment Relations Act (Act 336 of 1947, as amended) at Section 423.215 states, in pertinent part:

"... to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at

reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising under the agreement, and the execution of a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or require the making of a concession."

The parties are required to confer (bargain) in "good faith" regarding the resolution of any matters covered under the statute. Grievances are *questions arising under the agreement*, and the same rules and, therefore, the principles of good faith bargaining that apply to contract negotiations, also apply to the grievance resolution process. A acceptable difference is that the parties agree in advance what the process will be for purposes of handling such disputes during the term of the contract, and prescribe a final dispute resolution mechanism, such as arbitration, for final resolution of a dispute unable to be resolved otherwise.

The Union's stated primary reason for wanting to maintain the Township Board as part of the grievance procedure is public awareness. The current procedure allows the Union the opportunity to publicize its grievances and concerns as an official part of the grievance procedure. The Township's proposal does not deny the Union members the opportunity to take up any matter with the Township Board, but does not include the public forum as part of the official grievance procedure. Public attendance and input - such as that which is part of a Township Board meeting - is not conducive to effective good faith bargaining for contract negotiations or grievances, as is required by the statute.

CONCLUSION


Each and every proposal of both of the parties has been evaluated in relation to each of the statutory criteria. The decisions concerning the individual proposals take into account all the evidence presented as it applies to such criteria.

The specific language from the parties' proposals has not been quoted in this decision, in the interest of saving space. However, in adopting the proposal of one party or the other, it is intended that the exact language proposed by that party in its last offer is adopted.

DATED:

9-20

, 2000

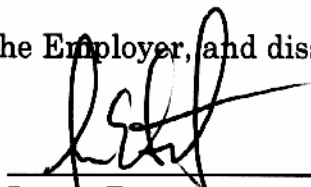

Michael P. Long, Chairperson

I concur with the issues awarded in favor of the Employer, and dissent on those issues awarded in favor of the Union.

DATED:

9/12

, 2000


James Demarest
Employer Delegate

I concur on the issues awarded in favor of the Union, and dissent on those issues awarded in favor of the Employer.

DATED:

9-15-00

, 2000


Homer Lafriniere
Union Delegate