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STATE OF MICHIGAN  
ARBITRATION UNDER ACT NO. 312  
PUBLIC ACTS OF 1969 AS AMENDED

In the Matter of the Statutory Arbitration between

TOWNSHIP OF HURON, Employer

-and -

LABOR COUNCIL  
MICHIGAN FRATERNAL ORDER OF POLICE, Labor Association

Michigan Employment Relations Commission  
Case No. D-86 -- I-1858  
-----/

FINDINGS, OPINIONS AND ORDERS OF THE ARBITRATION PANEL  
22 November 1987

Arbitration Panel:

Carl Cohen	Chairman
Christine Gamber	Township Panelist
Richard Ziegler	Association Panelist

Representing the Union: John Lyons, Attorney

Representing the Township: Richard G. James, Attorney

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## 1. Authority and Constitution of this Arbitration Panel

These arbitration proceedings are pursuant to Public Act No. 312, Public Acts of 1969, as amended by Act No. 127, Public Acts of 1972, providing binding arbitration for the resolution of unresolved contractual issues in municipal police and fire departments in the State of Michigan.

The Michigan Employment Relations Commission, by letter of 2 June 1987, appointed Carl Cohen to serve as Chairman of a Panel of Arbitrators in a dispute involving contract negotiation between the Township of Huron [the "Township"] and the Michigan Fraternal Order of Police [the "Union"]. The Township appointed Ms. Christine Gamber as its delegate to the Panel; the Union appointed Mr. Richard Ziegler as its delegate to the Panel. The Township was represented by Mr. Richard G. James, Attorney; the Union was represented by Mr. John Lyons, Attorney.

This document is the final report of the arbitration proceedings in the above-captioned matter; it presents the judgments and registers the final orders of the Arbitration Panel.

## 2. Hearings, Chronology, Exhibits, and Appearances

### A. Hearings

Arbitration proceedings in the matter began with a pre-hearing conference, involving a lengthy review of the issues pending, which was held on 30 June 1987. The formal hearing of this matter, open to the public, was held on 14 September 1987. A lengthy executive session of the arbitration panel was held on 2 November 1987. All sessions were held at the Huron Township Hall, 37290 Huron River Drive, New Boston, Michigan.

In these hearings the parties were given full opportunity to examine and cross-examine witnesses, and to present evidence and submit argument on all aspects of the matters before the arbitration panel.

A verbatim record of the proceedings of the Hearing was made by Susan Beale, CSMR 2741; this record was been received by the Chairman in timely fashion.

### B. Chronology

The Last Offers of Settlement with regard to matters remaining in dispute were submitted by both

parties to the Arbitration Panel in timely fashion on 7 October 1987; the Post-hearing Briefs of the parties were submitted, in timely fashion, on 21 October 1987. An executive session of the arbitration panel was held, as noted above, on 2 November 1987, to review the evidence and argument submitted.

These Opinions and Orders of the Arbitration Panel are being issued on 22 November 1987.

#### C. Exhibits

Voluminous documentary evidence was submitted by both parties in this matter. The Union submitted eighteen exhibits, including a great variety of comparative materials as well as labor agreements from comparable municipal police departments; the Township submitted 5 massive exhibits, including detailed reports on the financial condition of the Township, in the recent past and at present. Two Joint Exhibits were submitted by the parties, J-1A and J-1B, those being the old labor agreements, recently expired, between the Township and the police dispatchers, and between the Township and the Police Patrolmen and Sergeants, respectively. These exhibits, in total, amounted to many hundreds of typescript pages.

#### D. Appearances

Both the Township and the Union were well and forcefully represented. Presenting the case for the Township was Mr. Richard A. James, Esq., of Allen, James and Tanner, P.C., 11368 Allen Road, Taylor, MI 48180. Presenting the case for the Union was Mr. John Lyons, Esq., 6735 Telegraph Road, Suite 330, Birmingham, MI 48010.

Appearing as witness for the Township was Ms. Christine Gamber, Township Treasurer (and Panel delegate).

Appearing as witnesses for the Union were Mr. Richard Ziegler, Staff Representative for the Michigan Fraternal Order of Police (and Panel delegate); Mr. John Cady, Police Officer with Huron Township, and Union Steward; and Joanne Brown, Clerk/dispatcher with Huron Township and Union Steward.

### 3. Background.

A long process of negotiation, and attempted negotiation between these parties has failed to produce a new contract. The efforts of a state-appointed mediator were also unsuccessful. On some matters the parties are in agreement. They agree that what before were two separate bargaining units, one representing police patrolmen and sergeants and the other police dispatchers should be consolidated into one, with a single contract covering the entire membership, and which will include such language as is needed to distinguish different groups (dispatchers, patrolmen and sergeants) of employees. These orders, therefore, will apply to the formulation of one, consolidated contract. The parties also agree, and the arbitration panel confirms, that the new contract will run for a period of three years, from April 1, 1987 (the day after the expiration of the old contracts) through March 31, 1990. Where these orders do not alter the conditions of the new contract, it is agreed by all parties that the language and conditions of the old contracts shall remain in effect.

### 4. Issues: Classification and Criteria for Resolution

Twenty issues were in dispute between the parties. A few of these, as noted below, have been resolved through the negotiation of the parties. Almost all of the disputed issues are economic in nature, as agreed by the parties and the panel. The panel is required by Act 312 to adopt, with respect to each economic issue, "...the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9." This panel is therefore obliged to resolve each economic issue -- almost all of the issues before us -- by ordering the application of either the last best offer of the Employer, or the last best offer of the Union. Because the last best offers of the parties, on some of the major economic issues outstanding, are very far apart, this statutory obligation forces the panel to issue orders that are certain to be very painful for one or the other party. The panel emphasizes the fact that it has no latitude in this matter, but must comply with the letter and spirit of the governing statute. In a very few cases, noted below, the issues are not essentially economic, and the panel has greater latitude in formulating its resolution of the dispute.

Section 9 of Act 312, referred to in the passage quoted above, specifically requires that:

"...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 proceedings 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 times, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

The panel has examined, in making the judgments below, all of these factors. They will not be alluded to in every matter, but on each issue the several criteria listed immediately above have been given careful consideration.

Two of these factors, of particular importance in this proceeding, require a fuller discussion at this point, since they will be factors considered heavily throughout. These are (1) the ability of the Township of Huron to meet the costs of the arbitration orders issued, and (2) the nature and names of the communities with which the panel, in reaching its decisions, considers the Township of Huron to be properly comparable.

#### (1) Ability to Pay.

The panel has been presented, by both parties, with a great deal of evidence pertaining to the capacity of

Huron Township to meet the cost of possible contractual provisions. The Annual Financial Reports of the Township, for the years ending 31 March 1984, 1985, and 1986, [Exhibits E-1, E-2, and E-4] as well as the Budget Performance Report for the period 1 January -- 30 June 1987 [Ex E-5], have been closely examined; there is no doubt that this is a Township in difficult financial circumstances. The restriction upon sources of revenue for this Township, the reduction in available revenue-sharing funds, the history of responses of the citizenry to additional millage requests -- all have been taken into consideration.

Indeed, representatives of the Township have themselves exhibited substantial sympathy for the plight of the police patrolmen, sergeants, and dispatchers, but have pleaded throughout these proceedings that that plight is not within their power to remedy, given their present financial condition.

How heavily must this factor, ability to pay, be weighed by this arbitration panel? It is, certainly, a very important factor. All of the factors to be weighed need not be considered of equal weight, and in this case this factor, ability to pay, must loom large in making any rational judgment. But, at the same time, it would not be in the spirit of the Act governing this panel, nor would it be in accord with the established law of this State, for the panel to proceed as though the question of ability to pay is the only, or the ultimately determinative factor in resolving these disputes. The Court of Appeals of the State of Michigan addressed this question precisely in 1983, in the case of City of Hamtramck v. Hamtramck Firefighters Association [128 Mich App 457]. In that case the Employer argued that since it had established its inability to pay, that inability ought to have been treated by the 312 arbitration panel as completely dispositive. That argument was rejected by the Michigan Court of Appeals. To consider the ability to pay as determining the issue absolutely would, said the Court, "effectively amend Act 312." That is, it would establish this one factor, rather than the set of nine factors listed above, as the considerations governing the arbitration panel. And that view of the matter, the Court continued, "would result [improperly] in a burden of proof being imposed upon the employees to disprove a City's assertion of the inability to pay." [128 Mich App, at page 466] This is a burden the Union cannot be expected to be able to sustain -- and therefore Act 312, which carefully lists ability to pay as only one of many factors, cannot be understood fairly to have imposed this burden upon a Union. This panel concludes from the wording of the statute governing us, and from the findings of the Court of appeals in cases in which similar arguments have been made, that while

ability to pay must be given the most serious and careful consideration, it may not rightly control the judgment of the panel absolutely.

## (2) Comparable Communities.

What is reasonable for the panel to decide in some of the issues before us must depend upon the normal pattern of activity in the police departments in comparable communities. Factor (d) in Section (9) of Act 312, it will be recalled, specifically mentions the "comparison of the wages hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services...in public employment in comparable communities."

But which are the appropriately comparable communities? Both parties have submitted careful lists of the communities it considers appropriately comparable to Huron Township. The Union, in its post-hearing Brief, defends its list by exhibiting the comparability of some communities on the basis of a number of sub-criteria: population, size, department size, officers per capita, state equalized valuation (SEV), etc. The Township, while offering a differing (but not wholly different) set of proposed comparables, does not defend that list in its post-hearing brief. It becomes the task of the panel to determine, by examining the evidence put before it, which of the municipalities suggested are, indeed, to be treated as comparables for the purpose of this set of arbitration orders.

The following procedure has been adopted by the panel. Those cities or townships that have been chosen by both the Township and the Union as examples of comparable communities have been selected as the appropriate body of communities with which to begin comparisons. There are, however, only three of these. They are:

Grosse Ile Township  
City of Trenton  
City of Woodhaven

But even with these three, upon which the parties agree, there are important respects in which comparability cannot be completely maintained. The Township of Huron rightly points out, in its Brief, that, in the end, each municipality faces its own set of problems with its own, unique circumstances. Woodhaven, for example, is geographically close to Huron -- but it is only about one-fifth the geographical size, although having a slightly larger population than Huron Township. Grosse Ile Township



and Huron Township have almost identical populations (between 9 and 10 thousand), police forces of the exact same size (15), and a ratio of officers to citizens that is almost identical. But the Grosse Ile SEV per capita is almost twice as great as that of Huron, and the tax rate in Grosse Ile is over 60% higher, total tax revenue in Grosse Ile being more than twice that of Huron Township. Analysis along such dimensions as these has compelled the panel, after seeking to determine the behavior of comparable communities, especially these three comparables agreed upon, to make adjustments in light of the greater size of Huron Township, and the poorer and more restricted financial condition of Huron Township as compared to the others.

There is no easy solution through comparability -- but it is plain that attending to the performance of comparable communities (as we are by law obliged to do) will help the panel to reach a fair resolution of some of the disputes at hand.

#### 5. Issues: Opinion and Orders.

##### Issue # 1. Wages.

The parties have agreed that this issue should be considered as broken into three separate issues: the wage increase (if any) for each of the three years of the new contract. Complying with this agreement, the panel treats the wages issue as follows:

Issue 1a: year 1; April 1, 1987 to March 31, 1988  
 Issue 1b: year 2: April 1, 1988 to March 31, 1989  
 Issue 1c: year 3; April 1, 1989 to March 31, 1990.

Positions of the parties: The Township, in its last best offer of settlement, proposes "no change from present pay scale" for any one of the three years. That is, it offers zero per cent for each of the three years. The Union, in its last best offer, proposes a 6% increase for each of the three years, a total of 18% for the three-year contract, not counting the compounding effect of the second and third year increases.

##### Issue 1a: Year one of the new contract (1987-88)

In dealing with this dispute, the panel looks first to the present status of the police department employees in Huron Township. The standing of Huron, as contrasted to its major comparables, with respect to the Base Wage of a policeman for 1985-86, is as follows:

Trenton	\$27,887
Woodhaven	27,622
Grosse Ile T.	26,686

Huron T.

24,053

The average of the three comparables is thus \$27,411, or \$3,358 higher than Huron. The panel recognizes, of course, that these three comparables are not as financially stricken as is Huron, and that allowances must be made for differing circumstances. Nevertheless, these are the three comparables upon which the parties agree, and with respect to those three communities the basic wage of the top-paid patrolman in Huron Township is now 14% lower than that pay in comparable communities.

For the year 1987-1988 (Year 1 of the contract now in dispute) the wages agreed upon for the comparable communities are as follows:

Woodhaven	not known
Grosse Ile T.	\$27,747
Trenton	30,453

The average for the known comparables, therefore, is \$29,100. If the wage of the top-paid patrol officer in Huron Township were to remain at the present scale, in accord with the Township offer, it would be more than \$5,000 below that average, and would need to be increased by 21% simply to be brought to the same level.

The Chairman of the arbitration panel cannot find this a fair result for the police officers of Huron Township. Fully mindful of the financial strains faced by Huron Township, the panel notes that a Township has the duty to pay its bills, and just like that duty, the duty to pay its employees a fair wage. Even if one allows that, because of the relatively greater resources of the comparables, the 21% figure derived above is high, one cannot deny that the present salary level for Huron Township policemen is not adequate in view of the payment for comparable services in comparable or nearly comparable communities. Thus, the panel is obliged (with the Township delegate dissenting) to award the 6% increase for year one of the contract, proposed by the Union.

The increase for year one of the new contract is thus \$1,443. The basic wage for top-paid patrol officers for the year 1987-88 will thus be \$25,496. [\$24,053 + \$1,443].

The cost of this increase to Huron Township, for year one of the contract, will be (as nearly as can be presently calculated) \$12,552 in newly required money. As of June 30, 1987, with substantial expenses yet to be faced, the General Fund balance of Huron Township, [as shown in Employer's Exhibit 5, p. 3] is \$21,574. It is clear that this increase in the wages of policemen will impose a

strain on the Township, but it is a strain the Township can and must grapple with.

Issue 1b: Year two of the new contract (1988-89)

The only one of the comparable communities for which the basic wage for the year 1988-89 is known is Trenton, where the top-paid patrol officer will receive 31,824. If the Union offer, in the present dispute over year two, were adopted, [+6%] the basic wage would rise from \$25,496. to \$27,026 [\$25,496 + \$1,530]. This would leave Huron patrol officer pay almost exactly \$4,800 below the pay in that comparable community, and still needing an increase of nearly 18% simply to catch up. If, on the other hand, the Township offer [zero percent] were adopted, the gap would widen to \$6,328, and the increase needed to bring Huron to the level of that comparable would be nearly 25%.

It must be borne in mind that Trenton (and the other comparables upon which the parties agree) have greater financial resources than does Huron Township, and can more readily expand those resources in view of their legal authorities. Nevertheless, all will agree that the disparities in this sphere become very great -- more and more painful as the years roll on.

The arbitration panel faces a dilemma. On the one hand it recognizes the just call for a reasonable pay increase for these patrol officers; on the other hand it recognizes the painful incapacities of the Huron Township authorities to commit monies that they do not now have, or monies normally committed to other obligations.

The Chairman of the panel, torn by these conflicting concerns, had determined that it is essential, in respecting the decisions of the people of the Township to restrict the services they wish to pay for, to acknowledge the financial incapacity of the Township during Year two (since a 6% increase has been ordered for year one). Our award, for the second year, is therefore the adoption of the Township offer, leaving the salary scale during 1988-89 at the same level it was on during 1987-88. We are pained by the fiscal need to do this.

Issue 1c: Year three of the contract (1989-90)

We cannot know the basic wage rate for comparable police departments for this third year with any degree of certainty, since there are no settled agreements available. We can be very confident, however, that the rates will be no less than they are for 1988-89, and they may be a fair

amount higher. Let us surmise, not unreasonably, that the police wages in Trenton and other comparable communities rise for year three by 2%, a conservative estimate during a period in which inflation rates threaten to rise far more sharply than that. That (only estimated) rise would put the Trenton rate, for example, at approximately \$32,460 -- possibly lower, of course, and very likely higher. Using that admittedly uncertain figure, the gap between that and the pay rate in Huron township (absent any rise) would increase to nearly seven thousand dollars per year, and possibly more. An increase of more than 27% would be needed for Huron Township patrolmen to catch up then. At this point the situation once again forces the arbitration panel to attend to simple equity, and to accept, for year three of the contract now at issue, the last best offer of the Union, which, being an increase of 6% for that year, does not bring this Township to equality -- but is, at least, a little closer to reasonableness than the only other option open to the panel.

We emphasize the fact that this panel has only two alternatives for wages in year three, as for wages for each of the three years of the new contract. We can accept the Township offer of zero, or the Union offer of 6%. For year three, in view of the decision earlier made about year two, the Township offer is unconscionable. The Union offer is therefore adopted.

The orders of the arbitration panel with respect to wages (Issues 1a, 1b, and 1c) for the three years of the contract, each treated as a separate issue, may be summarized as follows

- 1a: Year one, 1987-88: +6% (Union offer).
- 1b: Year two, 1988-89: no increase (Township offer).
- 1c: Year three, 1989-90: +6% (Union offer).

## Issue #2 Pension Benefits

Positions of the parties. The current pension system is presently dealt with -- but not at great length -- in Article XXIII, Section 20 of the old contract [ex J-1B]. The Union seeks certain changes in the system now in effect. It urges that members become eligible for retirement at age 52 with 22 years of service; it urges that the lump-sum payment option be retained (no change in this respect); and, most importantly, it urges that the pension system be adjusted so that, upon retirement, there be a minimum payout to the retired employee of \$1,500.00 monthly, and a minimum of \$1,000.00 if the option including benefit for employee and spouse had been selected. The Township rejects all changes, and urges retention of the present plan.

There was little concrete evidence submitted on this matter by either party. In argument, the Township contends that the selection of the present program was largely a consequence of the choice expressed by the members, given the funds available. The Union contends, reasonably, that the amount sought in this request is not very great, and that it would do no more than insure a minimally decent retirement benefit.

This is a flatly economic issue. How much would it cost? In truth, neither party can say with any confidence what the additional financial cost to the Township would be. The matter is speculative -- and especially so, since the retirement of most of the present senior officers in the Department is at least five years off.

In matters of this kind, the decisions importantly affecting the retirement benefits of the members of the Department should be made as the result of fully informed negotiation between the parties. It is not the place of an arbitrator to alter a long-standing arrangement negotiated by the parties, and replace it with new conditions sought by one of the parties. This is particularly true when the cost of those new conditions cannot be known with precision, and when the financial condition of the Township, that would become responsible for the minimum, is so very weak -- as all evidence shows.

The panel therefore adopts the Township position on this issue; the pension system is retained as in the old contract. The Union delegate dissents.

### Issue #3 Hospital Insurance Extension

Position of the parties. The Union seeks a rise in the amount of life insurance coverage to \$40,000, in a term policy. And, what is likely to be more costly, the Union seeks full health insurance coverage for retirees, with full payment by the employer. The Township seeks to retain the status quo, covering no parties not presently covered.

The cost of the first aspect of this matter - increase in the size of life insurance coverage -- is not very great (\$552.00, by the Employer's own account); the cost of the extended health insurance is not precisely determinable. It is clear that greater health coverage would be an important benefit for retirees. But benefits of this kind, changing the negotiated conditions of the contract, are properly initiated through negotiations. The Township argues that, much though it might like to offer those benefits, it simply cannot afford benefit increases at this time. That is a plausible claim. And in view of the wage increases being ordered in this award, additional benefits must await negotiation between the parties.

The panel adopts the position of the Township (with the Union delegate dissenting); the status quo, in matters of health insurance benefits, is retained.

### Issue #4 Compensatory time/Overtime choice

This issue, argued at hearing, was one upon which the parties report, in their final offers, that a negotiated resolution has been achieved. Since there is no dispute outstanding, there is no need for an award from this panel on the matter.

### Issue #5 Leaves of Absence.

As with Issue #4, above, a negotiated resolution has here been achieved. No dispute remains, no award by the arbitration panel is called for.

### Issue #6 Longevity pay

Article XXIII, Section 4, of the old contract lays down the provisions now governing longevity pay in the Department. A \$50 payment is made from the fifth to the tenth years; after that the longevity payment rises to \$100 plus \$10 for each year of service over ten. The Union seeks to have these payments increased, to \$200 per year from the

5th to the 10th year, and after that \$400, with \$20 per year additional for each year of service over ten.

This is an economic issue whose cost can be precisely calculated. The present circumstances of the 15 employees of the Department call for longevity payments totaling \$490 per year. Increases in accord with the Union proposal would bring this yearly cost, according to the Employer's Brief (p.7) to \$1,680. This means the cost of the change is less than twelve hundred dollars a year. The Township agrees that the amount is not terribly great, but argues that it is "akin to the proverbial straw placed on the camel's back," and is therefore a burden the Township should not be forced to assume.

This is a delicate matter. A great enough quantity of straws, however light each one may be by itself, certainly will break the camel's back. The arbitration panel must, and will, be careful not to impose financial burdens upon the Township thoughtlessly. Indeed, we have been careful not to cause the Township to be exposed to financial risks that could not be carried or foreseen. In this case, however, the burden is within the power of the Township to shoulder - and it is an expenditure that serves the citizens of the Township well. Longevity payments reward employees who are loyal, who stick with the Township and are likely to understand its needs and its citizens. Longevity payments, even after being increased as proposed by the Union, will remain very moderate. In Trenton, one of the comparables, longevity payments begin at \$300; in Woodhaven, another comparable, they begin lower, but rise quickly in larger increments to over \$200. Very generally it has been recognized that the people of a community are well served by a loyal police force, and in determining the size of the longevity payments designed to reward that loyalty, the proposed increase in burden of about \$1200 must be found acceptable.

The arbitration panel, mindful of the cost to the Township, nevertheless adopts the Union proposal in this matter, raising the longevity payments in the manner described in the Union's last best offer of settlement. The Township delegate dissents.

#### Issue #7    Disability Pay.

The issue in this matter concerns delay in the receipt of disability payments. When such delay is experienced the employee and his family suffers, plainly. The Union asks that the disability payments due be paid by the Township immediately, and that the payments, when received from the third-party payer, reimburse the Township. The Employer rejects this change, on the ground that it is thus exposed

to substantial financial loss in the event that the expected disability payments are not made for any reason out of the Employer's control. And there is no way to protect against that loss, which could, in the event of serious multiple injury, be rather great.

This is not entirely an economic issue, but its economic ramifications must be attended to; this Township is not in a position to suffer unforeseen losses as a consequence of non-compensable injuries. The panel therefore must accept the Township proposal in this matter, rejecting any change in the contract that would oblige the Employer to make early payment.

Discussion with the representatives of the parties reveals that, when the paperwork requesting disability payments has been promptly and fully submitted, there have not been delays. The one case of extended delay appears to have arisen where the groundwork was not laid promptly and efficiently by the employee. The panel therefore urges both parties, Employer and Union alike, to give the assistance and support needed by injured employees in submitting the paperwork required. If that is done, this issue is not likely to arise again. If, in some special circumstances, delay in payment were a consequence of administrative hurdles only, and if the Township could know with confidence that it would be fully reimbursed, making those early payments to the disabled employee would be a mark of concern that would improve employer/employee harmony in this workforce. In some unusual circumstances that might prove very wise, and totally without financial cost. However, although urging such humane regard for its employees, the arbitration panel cannot force the Employer to accept the burden of risk in this matter. The Union delegate dissents.

#### Issue #8 Animal Control Officer Accretion into Bargaining Unit.

There is one, part-time animal control officer in the municipality. He is not presently a member of this, or any bargaining unit. The Union seeks his addition to this unit; the Employer argues that his functions and duties are distinct from those of other members of the bargaining unit, and do not justify his inclusion in this unit.

This is not an economic issue. What is at issue is fairness with respect to this employee, and the Township's legitimate authority as employer. The Township is correct in maintaining that the functions of an animal control officer are largely distinct from those of patrol officers. But both have, as their larger aims, the keeping of order and the meeting of emergencies, large and small, faced by the citizens of the community. If there is any group of



employees with which the animal control officer can be rightly grouped, the Police Department is that group. The Union argues, correctly in the view of the panel, that if this animal control officer is to have his opportunity to be represented by a union, it must be this one. That does seem to be the case, and the Township offers no good reason to deny him the opportunity for such representation. Accordingly, the panel (with the Township delegate dissenting) accepts the Union proposal on this matter, authorizing the accretion of the animal control officer into this bargaining unit.

#### Issue # 9 Sunday Premium for Dispatchers

For work in many contexts, assignment on Sunday yields a time-and-one-half premium. Full time dispatchers in this Department work a schedule, with rotations, such that work on Sunday is known to be an inevitable assignment from time to time, for all. The Union seeks the introduction of the time-and-one half premium for Sunday dispatcher assignments. The Township argues that, in the case of work of this kind, that premium is uncalled for, and rejects the proposal.

The Employer is correct, in this case, in pointing to the fact that Sunday premiums normally function as incentives -- but in this case, the normal work assignment, known by all before seeking the appointment, is one that includes Sunday work from time to time. Thus, this change would be no more than a way of increasing the pay of dispatchers, in times of great financial stress. The arbitration panel agrees with the Township argument in this matter, and holds (with the Union delegate dissenting) that since the Sunday assignment is a normal part of dispatchers' work, the introduction of a Sunday premium is not now essential.

If the change here proposed is to be introduced, that should be done as a consequence of the negotiations of the parties, with dispatchers and policemen now forming one bargaining unit. It would be inappropriate for an arbitrator to change the long-standing arrangements negotiated by the parties; such changes ideally require their joint agreement.

#### Issues #10 and #11 Extra-Contract Agreements; and sub-contracting agreements.

The Union, in its Brief, asserts that "This issue (#10) has been withdrawn by the Employer." Essentially these two issues were put forward at hearing by the Employer; they concern Article IV and Article VI of the Contract, which forbid agreements with any other labor organization during

the life of the agreement, with respect to the employees covered by this Agreement, and which forbid the sub-contracting of work in this Department to any other non-department employees.

In its Brief, the Employer in fact argues both matters very briefly, contending that the contracting out of police and dispatch services may prove necessary in order for it to provide adequate services to the residents of Huron Township. But no evidence or extended argument to that effect has been submitted; it may even be that the Employer did intend to withdraw the question(s) from the table. For the Union these provisions are matters of important self protection, understandably. In any event, given the existing long-standing arrangements negotiated by these parties, the Arbitrator -- in these two matters as in so many other matters arising in this proceeding -- will refrain from altering the arrangements the parties themselves have negotiated, absent evidence that gives clear and compelling reason to do so. Such evidence and reasoning being here absent, the panel accepts the position of the Union (if any issues remain in fact) leaving the status quo, with respect to extra contract agreements, and sub-contracting (Articles IV and VI of Joint Ex 1B), in force. The Township delegate dissents.

#### Issue #12 Released Time for Union Stewards

Article VII of the old contract provides for the released time of the Union Steward, or his alternate, in the presentation or investigation of grievances, without loss of pay or time. The Employer seeks the removal of this language from the contract; the Union seeks its retention.

The Employer submits no evidence on this matter, but alleges that its change would save money for the Employer, and would encourage the parties to negotiate. That is not obvious. Good representation of an employee with a grievance will assist the process of negotiation, avoid the escalation of disputes and unnecessary arbitration, and may in the long run be an economy. In any event, without evidence that there has been any abuse of this provision, or that it has proved an excessive burden, the arbitrator cannot take it upon himself to alter the arrangements so long in place.

With the Township delegate dissenting, the Union position, retaining the status quo with respect to released time for Union Stewards, is adopted.

### Issue #13 Grievance Procedure Language

The parties report that they have succeeded in working out the language that will resolve this dispute without the need for an award by the arbitration panel. No award being called for, none is made.

### Issue #14 Cumulative vacation time.

This is not strictly an economic matter, since in no case will the cost of vacations to the Township be lowered by the change it seeks. The Employer seeks to oblige the employees to take vacations when they are due, and not to permit their accumulation. But the Union argues that there is a long-standing practice of allowing employees to make the judgment about how vacations can best serve them, best refresh them for the work that is to be done. The panel finds that, in such matters, where cost or efficiency is not seriously at issue, respecting the interests and preferences of the employees is likely to maximize their contentment, and thus maximize the usefulness of the vacation benefit.

In the interest of the citizens of the Township, who are well-served by policemen who feel they are being treated fairly, the panel accepts the Union proposal in this matter, retaining Section 3 of Article XII of the old contract, which permits accumulation of vacation time, not to exceed more than two times annual vacation leave. The Township delegate dissents.

### Issue #15 Sick Leave and Personal Leave

There are two aspects of Article XVI here in dispute. The first concerns the cap of 60 days (specified in Section 1) on the amount of sick leave that may be accumulated. The second concerns the rate of payout (specified in Section 2) for accumulated sick leave upon death, retirement, or layoff. The Employer seeks two changes -- to remove the cap, and to reduce the rate of compensation from 100% to 50% of accumulated time. The Union urges no change in Article XVI.

Here again the panel is faced with a proposed change for which little evidence or argument is given. Plainly it will cost the Township less, over the long run, if the payout is made at a 50% level. How much will thus be saved, at whose cost, is simply not determinable, and has not even been estimated. Given this dearth of evidence, the arbitration panel, mindful of the financial burdens upon the Township, cannot simply re-arrange the long-standing arrangements that have been negotiated by the parties. With the Township delegate dissenting, the panel adopts the

proposal of the Union, leaving the sick leave language, in Article XVI, intact.

#### Issue # 16 Workers Compensation Supplement

Article XVIII of the old contract provides that any difference between the amount paid by workmen's compensation to an injured employee, and that employee's net salary, will be paid by the Township. The Employer seeks to eliminate that obligation; the Union to retain it.

Here again we confront a matter that can only be dealt with intelligently through the careful negotiation of the parties. No evidence or substantial argument on the matter was submitted to the arbitration panel. In some cases, apparently rarely, the Township will be saved some money by this change. How much is not determinable in advance, and even retrospectively the panel has no data that would justify a change.

Police work is often risky; the reason for provisions of this kind, earlier negotiated by the parties, is to protect the employee against the possible adverse impact of serious injury on the job. That agreement, which appears to have put a burden upon the Township only very occasionally, is not unreasonable.

The arbitration panel would emphasize, in this case as in others of a like kind, that it is not proper for it to interfere with the long-standing arrangements of the parties, certainly not without very clear and strong evidence that the changes sought are essential for reasons of economy or justice. Such evidence is totally lacking with respect to this, and a number of other similar changes requested by the Employer. The only documentary evidence provided by the Employer concerns its financial condition, which is poor, but not desperate. Evidence of that kind cannot justify the arbitration panel in making wholesale changes to the negotiated labor agreement between these parties.

With the Township delegate dissenting, the panel adopts the Union proposal in this matter, retaining the contractual provisions concerning workmen's compensation pay supplements.

#### Issue #17 Insurance Contribution Cap.

The Employer seeks to put a contractual cap on its contribution to the insurance coverage provided for members of this bargaining unit.

Once again the arbitration panel is faced with a request to make a very substantial change in a key provision of the negotiated Agreement, without the provision of any substantial evidence regarding the savings to be effected, or the impact of the change upon the well-being of the employees. All that is said on the matter, in the Brief of the Employer, is that "rising insurance costs are an ever increasing burden for the Employer." (p.11) No doubt that is true. But for an arbitration panel to impose a non-negotiated cap upon a long-standing contractual benefit would be inappropriate given the dearth of evidence before it. Moreover, as the Union argues, correctly, the escalation of health care costs is sharper than is the rise in employees' incomes. Thus the insurance provided is a matter of very great importance to them, and the change is one that must be discussed by the parties if it is to be introduced.

With the Township delegate dissenting, the arbitrator adopts the proposal of the Union in this matter, retaining the present language of the contract [Article XIX] with respect to insurance costs.

#### Issue #18 Service Records Review.

The parties report that this matter has been resolved, and no dispute remains outstanding. No award being called for, none is made.

#### Issue #19 Shift Premium

Article XXIII, Section 15, of the old contract calls for a shift premium of 20 cents per hour for the afternoon shift, and 40 cents per hour for the midnight shift. The Employer seeks the elimination of this premium; the Union seeks its retention.

In this case the amount of the savings sought by the Township can be calculated; approximately \$3,500 will be saved in wage costs if the shift premiums be eliminated. But, as the Union points out, such premiums are of long standing, not only in this Department but in comparable Departments as well. To effect so major a change in the relations of the parties as to eliminate such a benefit, the parties must come to negotiated agreement. It would be inappropriate for an arbitration panel to eliminate language of such importance, so long in effect. Here again the panel is being asked to do what should be done, if at all, by negotiation.

No direct evidence on this matter is submitted. Only the general economic condition of the Township is put forward by the Employer as ground for this change.

Concerning this argument the arbitration panel has indicated, repeatedly, that it is mindful of the financial straights of the Township, but cannot treat that condition as compelling in every circumstance.

With the Township delegate dissenting, the panel adopts the proposal of the Union in this matter, retaining the shift premiums, as provided for in Section 15, Article XXIII of the old contract.

#### Issue #20 Use of Reserve Officers in Hours of Darkness

Article XXIII, Section 3, of the old contract provides that, during the hours of darkness, employees will be scheduled to ride patrol cars in pairs. The issue here concerns the availability, for the makeup of these pairs, of reserve officers. The Township would like the contract to include language that would permit the use of reserve officers; the Union rejects such an interpretation and its attendant language.

This is not strictly an economic issue. It is plain that the intent of the Township in this matter is not to undermine the work of the members of the unit, but to make it possible to provide better police coverage during the night hours. If, for example, there are three officers on duty, the present interpretation requires that they patrol together, since the third person cannot be paired; if a reserve officer could be called upon to pair with him, much better protection could be given to the residents.

The panel finds the Township argument in this matter quite compelling. It is not reasonable, in the effort to protect the work opportunities of the bargaining unit members, to interfere with the provision of better service to the community. Many reserve officers are able to offer excellent service. The Township makes it clear, in discussion, that their honest intent is good service; they do not wish to insist that a regular officer be paired with a reserve officer who is thought incompetent or insufficiently experienced. Noting that respect for the well being of the employees, and that honest interest in the improvement of service, the panel adopts the proposal of the Township in this matter. The inclusion of new contract language, or the interpretation of the existing language, so as to permit the use of reserve officers to make up the patrol pairs during hours of darkness, is ordered. The Union delegate dissents.

## 6. Summary of Arbitration Orders and Concluding Remarks

For convenient review, the twenty issues originally identified are here listed, by number and caption only, with the arbitration order issued (if any) briefly indicated. Table form is used; following each issue appears either: Township -- indicating that the Township proposal is ordered by the arbitration panel; or Union -- indicating that the Union proposal is ordered by the arbitration panel; or No order -- indicating that the issue was withdrawn, or that the parties report having reached resolution through negotiation.

For substantive details, see the appropriately numbered sub- sections of this Opinion, above.

<u>Issue</u>	<u>Order</u>
#1 Wages	
1A (Year 1, 1987-88)	Union
1B (Year 2, 1988-89)	Township
1C (Year 3, 1989-90)	Union
#2 Pension Benefits	Township
#3 Hospital Insurance Extension	Township
#4 Compensatory time/overtime, choice	No Order
#5 Leaves of Absence	No Order
#6 Longevity Pay	Union
#7 Disability Pay	Township
#8 Animal Control Officer Accretion	Union
#9 Sunday Premium (dispatchers)	Township
#10 Extra Contract Agreements	Union
#11 Sub-contracting	Union
#12 Released Time for Union Stewards	Union
#13 Grievance Procedure Language	No Order
#14 Vacation time, cumulative	Union
#15 Sick and Personal Leave, payout	Union

#16 Workmen's Compensation Supplement	Union
#17 Insurance Contribution Cap	Union
#18 Service Records Review	No Order
#19 Shift Premium, eliminate	Union
#20 Darkness, Reserve Officer Use	Township

### Concluding remarks.

The arbitration panel concludes this report with three brief remarks of a general nature.

First, we re-emphasize the fact that in applying the several factors laid down in the statute, the panel has been particularly sensitive to the difficult financial circumstances of the Township in recent years. They have been barely able to maintain a balanced budget, and may find that yet more difficult in the years ahead. Acutely mindful of that fact, the panel has resisted every inclination to award benefits that would be unreasonably burdensome. But, following the principles laid down by the Michigan Court of Appeals, noted above in this Opinion, we cannot view the inability to pay as a totally determinative consideration. Where a determination can be made of a clear need to increase wages, as in this case, we must order those increases, based upon all of the appropriate factors identified in the Michigan statute.


Second, the panel would re-emphasize the fact that in every economic issue it has no latitude, but must, by law, choose one or the other of the last best offers submitted. In a number of cases the last offers in this proceeding were very far apart. This means, inevitably, that the orders of the arbitration panel were bound to be very painful to some in some matters. There simply is no way to avoid this, in light of the statute by which we are governed.

Third, the panel would note once again that, so far as possible, the matters in dispute should, ideally, be resolved through negotiation. The panel therefore cannot properly alter the long-standing arrangements of the parties without clear and compelling evidence that, in view of the factors indicated in the statute, it is obliged to do so. Where it is possible, the panel seeks to leave the negotiated arrangement of the parties intact.



The Chairman of the arbitration panel expresses his thanks for the thoughtfulness, and unfailing civility of all persons involved in these proceedings, the representatives of the parties who argued their cases vigorously, and the delegates to the panel who exhibited reasonableness and intelligent restraint throughout. The Chairman also notes here that the Orders of the arbitration panel, as given above, are adopted with the Union delegate dissenting on Issues 1b, 2, 3, 7, 9, and 20; and that the Orders are adopted with the Township delegate dissenting on Issues 1a, 1c, 6, 8, 10, 11, 12, 14, 15, 16, 17, and 19.

Respectfully submitted,



Carl Cohen  
Chairman, Arbitration Panel



Christine Gamber  
Township Delegate to the Arbitration Panel



Richard Ziegler  
Union Delegate to the Arbitration Panel