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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

In the matter of:

CHARTER TOWNSHIP OF VAN BUREN,

Employer,

MERC Act 312

and

Case No. D97 H-1241

POLICE OFFICERS' LABOR COUNCIL,

Union.

Michael P. Long, Chairperson
Allen J. Kovinsky, Employer Delegate
Jerry Caster, Union Delegate

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MERC ACT 312
EMPLOYMENT RELATIONS COMMISSION

BACKGROUND

A Petition for Arbitration was filed with the Michigan Employment Relations Commission or about December 1, 1997, after the parties reached an impasse in their negotiations regarding employee pensions and other issues. An arbitration tribunal was convened under authority of Michigan Public Act 312 of 1969. A Pre-Arbitration Conference was held on June 28, 1999. At the conference the Employer argued that the subject matter of the Union's demand concerning Article XV - Promotions was not a mandatory subject of collective bargaining. An Expedited Decision and Summary Opinion was issued concerning the issue of the arbitrability. That issue was subsequently resolved. Arbitration hearings were held regarding the remaining issues on November 18, 1998, and November 19, 1998 at the Van Buren Township offices. The Employer is represented by attorney Allen J. Kovinsky and the Union is represented by attorney Mark P. Douma.

CURRENT PENSION PLAN

ARTICLE XXI - RETIREMENT FULL-TIME

- A. **Full-Time** Under the current Pension Program, employees are mandated to contribute five percent (5%) of their base earnings into the Plan and may contribute an additional five percent (5%) or ten percent (10%) to a maximum of fifteen percent (15%) which will be one hundred (100%) vested immediately upon entry to the plan.

The Employer shall guarantee ten percent (10%) of the employees base earnings to be vested immediately upon entry into the plan.

The Employer shall provide to all employees in the pension program documentation explaining the group pension plan.

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]

STIPULATIONS AND RESOLVED ISSUES

Prior to the Arbitration hearing, the parties reached agreement on the following items:

1. The Charter Township of Van Buren contract proposals dated March 13, 1998;
2. The Police Officers Labor Council tentative agreement list dated June 18, 1998; and the reference to the transfer of seniority from part-time status to full-time status dated February 26, 1998;

3. The parties stipulated that all economic items, whether they be Township or Union items, were withdrawn with the exception of the following items:
- a. The addition of one holiday (Presidents' Day)
 - b. Effective with the date of the Award, the dental language in the Police Officers Labor Council contract will be amended to reflect the same language as currently exists in the AFSCME contract with the Township. This would affect the amount of the employee contribution to the monthly premium. Police officers shall pay the same amount as AFSCME employees.
 - c. The weekly sickness and accident benefit amount and the number of weeks for short-term and long-term coverage will remain the same but the parties will incorporate the language from the AFSCME contract with respect to the accumulation of sick leave days which provides for one-half day per month, which will be effective on the date of the award.
 - d. Wages. All members of the bargaining unit who are employed as of the date of the Award will receive a five percent (5%) wage increase retroactive to January 1, 1998; a four percent (4%) wage increase retroactive to January 1, 1999; a four percent (4%) wage increase effective January 1, 2000; and a five percent (5%) wage increase effective January 1, 2001.
 - e. Bonuses. There are currently five separate bonuses. Four of those bonuses will be rolled into the wage structure effective January 1, 1999. The fifth bonus - clothing and cleaning allowance - will be eliminated effective January 1, 1999. Although the bonuses had been paid for 1998, subsequently it was agreed that for purposes of wage increase calculations, the effective date of the roll-in of the bonus would be January 1, 1998.
 - f. Language will be added to the Collective Bargaining Agreement which will provide as follows:
 - No part-time Employee may be regularly scheduled more than 72 hours in a 14-day period
 - g. The contract shall terminate on December 31, 2001.

DISCUSSION

There is no dispute about most of the statutory criteria as they pertain to the instant dispute. The great majority of the evidence presented centered on sub sections c and d of Section 9 of the Act as set forth above.

Act 312 relies on comparability in Section 9 c but does not strictly define the term. Numerous facets of potential comparable communities are researched by the parties, and on the basis of this resulting data a list of comparable communities is proposed by each party, whereupon an objective determination of comparables is made by the arbitrator.

It its selection process regarding comparables for Van Buren Township, the Union indicated that it examined the demographic makeup of all of the municipalities within a fifteen (15) mile radius of the Township of Van Buren. The Union stated that a "mile radius" criterion was instituted to insure that comparables were selected from a similar labor market. The Union then analyzed the communities that surround Van Buren Township based on what the Union indicated were the two most widely accepted criteria for comparable selection: Population and State Equalized Valuation. The communities that fell within a +/-50% range of that of Van Buren Township were determined. The socioeconomic makeup of the municipalities that met this criteria was then examined. The eight (8) communities determined by the Union to be most comparable to the Township of Van Buren were:

Brownstown Twp.	Riverview	Wayne	Wyondotte
Pittsfield Twp.	Southgate	Woodhaven	Ypsilanti

The Employer limits its comparables to townships. It indicates that there is no basis for comparison between cities and townships as cities and townships are regulated differently under the Michigan Constitution as to taxing authority. Cities have the ability to levy at least 4 to 5 times the tax rate of townships.

The Employer proposed the following as comparable communities:

Grosse Ile Twp.	Northville Twp.	White Lake Twp.
Green Oak Twp.	Blackman Twp.	Plymouth Twp.

After a review of all the data submitted regarding the comparability of the communities suggested by the parties, with close attention paid to the areas of population, state equalized valuation (for those communities for which the information was supplied), and income per capita using an approximate +/- 30% range of that of Van Buren Township, it is determined that the most comparable of the suggested communities are Plymouth Township, Northville Township and White Lake Township.

In comparison of + / - 30 % to Van Buren Township:

Blackman Twp.	less income per capita
Brownstown Twp.	less income per capita
Green Oak Twp.	less in population
Grosse Ile Twp.	less in population
Northville Twp.	similar to Van Buren Township
Pittsfield Twp.	more in State Equalized Value
Plymouth Twp.	similar to Van Buren Township
Riverview City	less in population and State Equalized Value
Southgate City	more in population
Wayne City	less income per capita
White Lake Twp.	similar to Van Buren Township
Woodhaven	less in population
Wyondotte	more in population and S. E. V.; less in income per capita
Ypsilanti	less in State Equalized Value and per capita income

The Police Officers' Labor Council proposes the following changes:

Pension:

Effective January 1, 1999 or as soon thereafter as possible, members of the Van Buren Township Police Patrol bargaining unit shall become members of the Municipal Employees Retirement System (MERS) with prior service credit to their individual department adjusted seniority date of hire with the following benefit level:

- MERS benefit B-3 (2.25% multiplier)
- V-6 (six year vesting)
- Twenty-five and out
- RS 50% (survivor rights)

Each member shall make a 5% contribution.

All bargaining unit member assets on deposit in the defined contribution plan at the time of change to the MERS plan shall be transferred to the MERS plan on behalf of each bargaining unit member.

UNION RATIONALE

It is reasonable to expect that the Township has the financial ability to meet the Union's change in pension request based upon the evidence presented and the chosen Union comparables. These comparables are similar in nature with respect to labor market, population, and state equalized value. With these components in mind, the Union proposes the implementation of a "defined benefit plan" in place of the current "defined contribution plan".

As the defined contribution plan currently stands, all of the investment risk is on the employee. This plan also subjects employees to claims by employer's creditors. By implementing a defined benefit plan, the employee will be at less investment risk and will not be subject to the downswings of the market. This program also includes a duty disability plan that ensures a pension guarantee for police officers.

Currently, only those police officers that are classified as full-time bargaining unit employees are eligible for the current defined contribution plan. Therefore, it is reasonable to propose that the three current part-time employees, who are not eligible for this plan, be included and credited for their time because they are typically utilized on a nearly full-time basis.

The Union proposed defined benefit plan would be less costly for the Township for the following reasons:

- the annual contribution proposed is only 10.3% of each employees wages (Union Ex. 1, Tab 11, Employer computed contribution, MERS Benefit B-3)
- since the Union's proposal includes transferring members' assets from the current defined contribution plan into the MERS plan, the Township's contribution should be reduced to below 10% of each employee's wages
- since there is currently approximately \$300,000.00 in the current plan (Tr. V. 2, p. 206) this should result in approximately a 1.14% reduction in the Employer's annual contribution (Union Ex.1, Tab

11, Employer computed contribution, MERS Benefit B-3, note 1; each \$50,000 transferred will result in a 0.19% reduction in Employer" contribution).

- seven out of the eight Union comparables, that have a defined benefit pension plan (Union EX. 1, Tab 11), have a higher multiplier than is being requested by the Union. Id.

The Union argues that based upon the evidence and reasoning presented, the Union's proposal for a defined benefit plan should be implemented.

The Charter Township of Van Buren proposes to continue its existing defined contribution plan in full force and effect for its full-time employees in the Police Department with the following modifications:

- A. Effective January 1, 1999, or the date of the Act 312 Arbitration Award, whichever is later, the Employer will increase its contribution from ten percent (10%) to eleven percent (11%) for each full-time officer and /or dispatcher.
- B. Effective January 1, 2001, or the date of the Act 312 Arbitration Award, whichever is later, the Employer will increase its contributions from eleven percent (11%) to twelve percent (12%) for each full-time police officer and/or dispatcher.
- C. Effective January 1, 1999, or the effective date of the Act 312 Arbitration Award, whichever is later, and each year thereafter, the Employer and the individual employee contribution shall be computed on base wages as follows:
 1. Full-time 12-hour Employees-the applicable hourly rate times 2,184 hours times the applicable percentage;
 2. Full-time 10-hour Employees-the applicable hourly rate times 2,080 hours times the applicable percentage;
 3. Full-time 8-hour Employees-the applicable hourly rate time 2,080 hours times the applicable percentage.
- D. Effective January 1, 1999, or the date of the Act 312 Arbitration Award, whichever is later, all new full-time employees shall be eligible for entry into the pension plan on the first day of the month following the month in which the employee is hired as a full-time employee.

- E. Effective January 1, 1999, or the date of the Act 312 Arbitration Award, whichever is later, any employee may elect to have his/her contribution treated as a before-tax deduction (i.e., deducted from the gross pay of the employee before the employee's W-2 is calculated). The Employer's contribution currently is not calculated into the employee's gross pay and shall continue to be excluded from the employee's W-2 gross wages.

EMPLOYER RATIONALE

The defined contribution plan does not place all financial risk on the employee because the Employer makes the majority of these contributions. In fact, the current plan provides for a number of option plans that the employee can choose from that are practically risk free. The current pension plan is far more beneficial to the employee and therefore, the Employer's proposal to maintain the defined contribution plan with its proposed modifications should be adopted.

By maintaining the defined contribution plan, employees will continue to reap a variety of program benefits including:

- the ability to receive profits, at an earlier time, from investments made through employee/employer contributions when the employee chooses to leave employment
- being vested 100% upon the date of employment and first contributions to the plan
- the flexibility upon retirement of either taking the money out entirely and paying the taxes or rolling it over and reinvesting it and allowing it to grow tax free
- the ability for the primary beneficiary to receive 100% of the value of the monies that are then currently in the plan including the employee's contributions, the employer's contributions, and any increase in the value of those contributions upon the employee's death

The Employer argues that the comparables presented by the Employer more closely compare with the Township rather than the ones chosen by the Union. Clearly, the defined contribution plan allows the Employer to forecast and budget pension contributions as opposed to the uncertainty of a defined benefit plan that is subject to annual actuarial calculations. If the Union's proposal is adopted, hardship is

sure to follow as a result of the amount of money that the Employer must contribute in order to adequately fund a plan of that type.

The defined contribution plan has been in place for decades and should continue to be available to benefit employees; therefore, the Employer proposal should be adopted.

Analysis of the data regarding the three closest comparables reveals:

- White Lake Township has a MERS pension system in place. The Employer pays 10% of the employee's base pay into the system each year. The employee is responsible for any other required sums in excess of 10%.
- Northville Township had a defined contribution plan for all employees prior to 1997. Subsequent to 1997, new employees are under MERS with a 15% maximum contribution limitation insofar as the employer is concerned.
- Plymouth Township has a Michigan Township Association Pension Plan, which is a defined contribution plan. The employer contributes 15% of the employee's base salary.

As to the other suggested communities, the data reveals:

- Brownstown, Kalamazoo, Northville, and Plymouth townships currently have defined contribution pension plans.
- Green Oak Township is subject to MERS but only has as a defined benefit the C Plan with an F55 rider. The Employer is limited to a maximum of seven percent of payroll as its annual contribution with the employees paying everything in excess of seven percent.
- Grosse Ile Township is under the MERS with a B-3 F55 rider requiring 25 years of service.
- Northville Township had a defined contribution plan for all employees prior to - 1997. Subsequent to 1997, new employees are under MERS with a fifteen percent maximum contribution limitation insofar as the Employer is concerned.

- Pittsfield Township is under the MERS with a C-2 Plan with an F55-15 rider.
- The city of Riverview has a local ordinance pension. It levies a portion of its millage for funding purposes. Riverview currently levies 16.94 mills.
- The city of Southgate is under the provisions of Public Act 345. It is allowed to levy all that is necessary to fund the pension as millage in addition to its general fund millage. In 1998, the city of Southgate levied two additional mills for pension funding purposes.
- The city of Wayne has a pension pursuant to its City Charter, which is similar to Public Act 345. It is allowed to charge one mill annually for funding purposes.
- The city of Wyandotte has a pension plan pursuant to its City Charter. It is a defined benefit plan similar to the provisions of Public Act 345. It has been funded in the past through the sale of a city hospital owned by the city of Wyandotte for the sum of \$17 Million, which was used to endow the pension fund.
- The city of Ypsilanti is subject to the provisions of Public Act 345. As such, it levies 2.3534 mills for the funding of the plan in addition to its General Fund millage.
- The city of Woodhaven has a pension plan pursuant to Ordinance No. 33 of the City Ordinances. It is a defined benefit plan. In the 1990s, the defined benefit plan was red-circled for current employees. New employees are subject to a defined contribution plan.

A concern expressed by the Union was lack of a rider in the defined contribution plan offered by the Employer to make pension contributions on behalf of employees who became disabled and could no longer work. The Employer called witness Todd Carless of the Burnham and Flowers risk management agency, which administers the current Van Buren Township defined contribution plan. Mr. Carless testified that Van Buren Township provides a long term disability policy, which has a pension rider to employees under the current defined benefit plan. He indicated that the long term disability policy not only will provide a disability benefit to the employee, but in addition will continue to pay 15% of the employee's gross wage at the time of disability to the defined contribution plan for the duration of the disability.

An important area of comparables not to be overlooked is internal Van Buren Township comparables. All of the employees and elected officials in the Charter Township of Van Buren are members of the Township's defined contribution plan. The Township bargaining unit represented by another union has recently ratified a new Collective Bargaining Agreement effective October 1, 1997, until September 30, 2001. This agreement continues the defined contribution plan for all of the employees in the unit, and provides for increases in the pension contribution by the Employer in the same amount and manner as has been set forth in the Employer's Last Best Offer with respect to the Police Officers Labor Council - Patrol Unit.

CONCLUSION

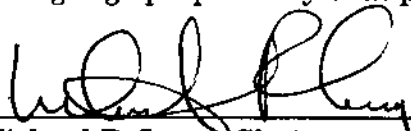
Award: The Employer's proposal as to Pension is adopted.

Reason: Based on the facts as presented, the Employer's contribution of 12% of the Employee's base pay under the Employer's proposal is more than the 10.3% required under the Union's plan. The Township's proposal is more in line with the benefits provided by the selected comparables, including the other employees of Van Buren Township, as well as the ability of the Employer to fund the system. It has not been demonstrated that there is a sufficient benefit to the employees to justify a change from the current defined contribution program (with the changes contained in the Employer's last offer of settlement) to the defined contribution program proposed by the Union.

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

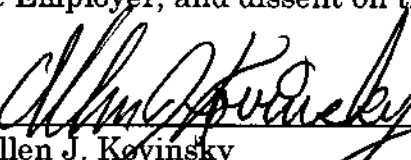
The specific language from the parties' proposal has not been quoted in this decision, in the interest of saving space. However, in adopting the proposal of one party or the other, it is intended that the exact language proposed by that party in its last offer is adopted.

DATED: July 16, 1999


Michael P. Long, Chairperson

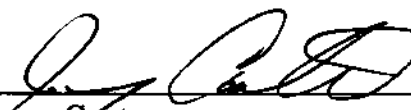
I concur with the issues awarded in favor of the Employer, and dissent on those issues awarded in favor of the Union.

DATED: 7/20/99, 1999


Allen J. Kovinsky
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: 8.9.99, 1999


Jerry Caster
Union Delegate