

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

In the Matter Between:

TOWNSHIP OF WASHINGTON

AND

MERC Case No. D97 A-0033

FIRE FIGHTERS UNION LOCAL 3299

CLARIFICATION OF ACT 312 AWARD

**Impartial Chair Anne T. Patton
September 27, 2000**

Panel

Anne T. Patton, Impartial Chair
Jack Dorrough, Employer Delegate
Tony Krepps, Union Delegate

Attorney for the Employer:

Kenneth E. Scherer, Attorney

Attorney for the Union:

Ronald R. Helveston, Attorney

INTRODUCTION

On April 7, 2000, the Act 312 Award was issued in the above captioned case. One of the issues in dispute was Article XV, Section 1 – Fire Fighter / Medic Wages. The Union's Last Best Offer (LBO) was, as follows:

Amend Article XV, Wages, Salaries and Trading of Days, Section 1, Salary and Wage Scale, to provide for across the board annual wage increases as follows:

| | |
|-------------------------|-------------------------------------------------------------------------|
| Effective April 1, 1997 | 6% (applied to all Fire Fighter / Medic salary steps except start rate) |
| Effective April 1, 1998 | 6% (applied across-the-board to all steps) |
| Effective April 1, 1999 | 5.5% (applied across-the-board to all steps) |
| Effective April 1, 2000 | 5.5% (applied across-the-board to all steps) |

The Employer's LBO provided, as follows:

Section 1A. Salary and Wage Scale – Firefighter

The following wage and salary scale shall apply during the term of this Agreement. The applicable salary for each current employee as hereafter set forth shall be determined with reference to the date of hire of such employee.

| | 97-98 | 98-99 | 99-00 | 00-01 |
|---------|-------------------------|------------------------|------------------------|------------------------|
| 1 Year | 30,080.26 10.914./hr | 30,982.67 11.242/hr | 31,912.15 11.579/hr | 33,188.64 12.042/hr |
| 2 Years | 33,422.52 12.127/hr | 34,425.20 12.491/hr | 35,457.96 12.866/hr | 36,876.28 13.380/hr |
| 3 Years | 36,764.76 13.340/hr | 37,867.70 13.740/hr | 39,003.73 14.152/hr | 40,563.88 14.718/hr |
| 4 Years | 40,107.01 14.553/hr | 41,310.22 14.989/hr | 42,549.53 15.439/hr | 44,251.51 16.056/hr |

The Employer's LBO amounted to the following yearly percentage increases:

| | |
|---------|----|
| 1997-98 | 3% |
| 1998-99 | 3% |
| 1999-00 | 3% |
| 2000-01 | 4% |

A majority of the Act 312 Panel adopted the Union's LBO for the first and second years of the 1997 to 2001 contract and the Employer's LBO for the third and fourth years.

After issuance of the Act 312 Award, a dispute arose regarding the effective implementation date of the pay increases awarded. According to the Union, the increases should be made effective on April 1st of each year of the contract. The Employer maintains that the increases are effective on each employee's anniversary date.

With the consent of Ruthanne Okun, Director of the Bureau of Employment Relations, the parties agreed to request Clarification of the Act 312 Award.

HISTORICAL BACKGROUND

At my request, the parties submitted the following historical information:

1. On July 17, 1989, the Township hired six full-time fire fighters. In early 1990, these fire fighters organized for the purpose of collective bargaining.
2. In July 1991, the parties negotiated their first collective bargaining agreement, dated 1990 to 1993. Article XI, Section 1 provided, in relevant part:

Section 2. Salary and Wage Scale

The following wage and salary scale shall apply during the term of this Agreement. The applicable salary for each current employee as hereafter set forth shall be determined with reference to the date of hire of such employee:

The Salary and Wage Scale provided for annual step increases, but no annual wage increases.

3. Thus, during the term of the 1990-93 Agreement, the only wage increases received by employees were step increases, effective on their anniversary dates.
4. In the 1993 to 1997 Agreement, the parties did not change the language of Article XV, Section 1, quoted above. After the Section 1 paragraph, the parties inserted a schedule detailing the annual step increases.

After the schedule for step increases, the parties added the following provision for base wage increases:

Base wage increase determined by increasing current wage per step by fourteen (14%) percent. ¼ of the increase is added to the base wage over a period of four (4) years (the "annual increment").

| | |
|---------|----------------------------------------------------------------------------------------------------------------|
| 1993/94 | Current wage per step x 2.5% + annual increment. |
| 1994-95 | 1993/94 wage per step x adjustment granted non-union employees or 2% (whichever is greater) + annual increment |
| 1995/96 | 1994/95 wage per step x adjustment granted non-union employees or 2% (whichever is greater) + annual increment |
| 1996/97 | 1995/96 wage per step x adjustment granted non-union employees or 2% (whichever is greater) + annual increment |

The 1993-96 Agreement was ratified in July 1992, after the anniversary dates of all Fire Fighters then employed.

5. The Township did not pay any annual wage increase on April 1, 1994.
6. Union President Anthony Augugliaro contacted the Township by letter stating that the Union's interpretation of Article XV, Section 1 of the 1993-97 Agreement was that annual increases were to be effective on April 1st.
7. In response, the Township Attorney stated the Township's position in a letter to Augugliaro, dated April 20, 1994. That letter states in relevant part:

Section 1 is clear that applicable salary levels and related increases are determined with reference to the "date of hire." We do not recall any discussion of this issue during negotiations, which was contrary to the clear language of Section 1. Accordingly, it is the Township's position that the date of hire will dictate the applicable salary for each employee covered under the terms of the Contract.

8. Throughout the term of the 1993-97 Agreement, annual wage increases, as well as step increases, were paid on the employee's anniversary date.
9. In his Affidavit dated August 4, 2000, Augugliaro stated that that since 1994 he has "made numerous verbal and written attempts to demonstrate to Township administrators that the Union's interpretation of Article XV is correct." In response to this statement, the Township stated in its September 8, 2000 letter that no written documents to this effect were found in the files of the accounting department.
10. No grievance has been filed on the issue of the effective date of annual wage increases.

THE ACT 312 PROCEEDING

The Act 312 petition filed by the Union identified that the wages of fire fighter / medic employees was in dispute. Throughout the proceeding, the parties expressed this dispute in terms of the amount of the annual wage increase. Neither party indicated that the effective date of the annual wage increase was also in dispute, or that it had been in dispute during the term of the 1993-97 contract. Further, neither party indicated how the annual wage increases had been paid during the term of the prior contract.

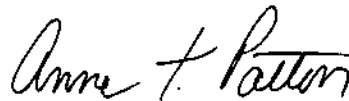
CLARIFICATION

The purpose of this Clarification is to make clear what I intended when adopting the Union's LBO regarding fire fighter wages for the first two years of the Agreement and the Employer's LBO for the final two years of the Agreement.

The language on the face of the Union's LBO is abundantly clear that it sought to have its proposed increases made effective as of April 1st of each year of the Agreement. When adopting the Union's LBO, I intended two things, obvious from the plain meaning of the language used. First, I intended that the effective date of the Union's proposed increases to be exactly as stated in the LBO, "Effective April 1, 1997 and April 1, 1998." Because I lacked knowledge of how annual increases had been paid during the prior contract term, I had no basis for realizing that the effective date of April 1st represented any change. Second, I intended that fire fighters be given 6% increases during the first and second years of the contract.

When adopting the Employer's LBO, I intended to adopt its proposed percentage increases – 3% for 1999-00 and 4% for 2000-01. I further intended, for the sake of consistency, that the effective dates of these increases be April 1, 1999 and April 1, 2000. The fact that the Employer did not object to April 1st as changing when annual wage increases had been paid, combined with the fact that I lacked knowledge of both the historical dispute and of how annual increases had been paid, led me to believe that April 1st was an acceptable effective date. This belief was furthered by my 20 years experience with collective bargaining agreements, which typically provide that annual increases are effective on a specific date each year for all employees, rather than on an individual employee's anniversary date. For the same reasons, I did not regard the inclusion of Section 1, Article XV in the Employer's LBO to mean that the Employer was proposing that annual wage increases be made effective as of the "date of hire," i.e., the anniversary date, of each employee. Rather, I concluded that the inclusion of Section 1, Article XV meant that the Employer desired to continue to pay annual step increases as of the employee's anniversary date.

Thus, I intended that the annual wage increases be made effective on April 1st of each year of the contract term.



Anne T. Patton, Arbitrator

Dated: September 27, 2000