

1911.

**STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION**

**In the Matter of the Statutory Arbitration:**

**CHARTER TOWNSHIP OF SHELBY**

**-and-**

**SHELBY TOWNSHIP COMMAND OFFICERS' ASSOCIATION**

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**COMPULSORY ARBITRATION**

**PURSUANT TO ACT 312, MICHIGAN PUBLIC ACTS OF 1969, AS AMENDED**

**ARBITRATION AWARD**

**Arbitration Panel**

**Jerold Lax  
Arbitrator/Impartial Chairman**

**Danny N. Bartley  
Shelby Twp. Command Officers Association Delegate**

**Michael Smith  
Charter Twp. of Shelby Delegate**

**Appearances for:**

**Union: Mark Douma**

**Employer: Steven J. Fishman**

## **ARBITRATION AWARD**

This arbitration is pursuant to, and under the provisions of Act 312, Public Acts of 1969, as amended, providing compulsory binding arbitration for the determination of unresolved contractual issues, both economic and non-economic, in police and fire departments. Mr. Jerold D. Lax ("Lax") was appointed Impartial Chairman of a three-person panel of arbitrators to resolve a dispute involving contract negotiations between The Shelby Township Command Officers Association and The Charter Township of Shelby (MERC Act 312 Arbitration Case D00-1242). The Shelby Township Command Officers Association named Mr. Danny Bartley ("Bartley") as its delegate on the panel. The Charter Township of Shelby named Mr. Michael Smith ("Smith") as its delegate on the panel;

The matter came on for decision before the panel, based on the arbitration hearing held April 14, 2003 at 667 E. Big Beaver Road, Suite 205, Troy, MI 48083, and the continued arbitration hearing held on April 17, 2003 at 40950 Woodward Avenue, Suite 350, Bloomfield Hills, MI 48304. At the arbitration hearing, a factual record of testimonial and documentary evidence was presented by the parties and received in evidence by the arbitration panel. The parties stipulated that no stenographic record be made of the procedures and that the statutory time limits be waived. The arbitration panel delegates considered the competent, material, and substantial evidence on the whole record, and the factors set forth in MCLA 423.239;

While an individual panel delegate may have dissented on one or more items in dispute, a majority decision of the panel members, including the Impartial Chairman, was reached with respect to each disputed item of the labor contract;

Therefore, after careful review of the competent, material, and substantial evidence on the whole record, and the factors set forth in MCLA 423.239, the arbitration panel issues the following award, consisting of mandated amendments to the labor contract between The Charter Township of Shelby and The Shelby Township Command Officers Association (effective January 1, 1996 and expiring December 31, 2000). All issues not covered by this award are withdrawn per stipulation of the parties:

### **ARTICLE 2: RECOGNITION**

Replace the terms "ranking Command Officers" with "employees". Replace the terms "above Patrol Officer" with "in the ranks of Sergeant, Lieutenant and Captain."

### **ARTICLE 3: REPRESENTATION**

Modify by replacing "fifteen (15) paid man days per Agreement year for Association business" with "eighteen (18) paid days per Agreement year for Association business". After the first sentence, add a sentence stating "Use of these days must be requested in advance and be approved by the Chief of Police."

#### **ARTICLE 4: MANAGEMENT RIGHTS**

Modify Section 4.1(E) deleting the following language: "including the "Twenty-one Standards of Conduct", and adding in its place: "pertaining to actions and behavior of command officers while both on and off duty, provided these matters relate to the performance of their duties as a command officer."

#### **ARTICLE 5: SEPARABILITY AND SAVINGS CLAUSE**

Modify Section 5.3 to read, in entirety, as follows:

"Should a Command Officer be terminated or suspended and challenge same, the Employer agrees to continue hospital, medical and surgical benefits for a period not to exceed nine (9) months or until a decision is rendered by an arbitrator and/or the Act 78 Commission, whichever comes first. In the event that the suspension or termination is upheld the Township shall be reimbursed for the cost of the continuation of benefits."

#### **ARTICLE 7: PAYDAYS**

After the first sentence, add a new sentence stating: "Effective May 30, 2003 payday shall be changed to Thursday."

#### **ARTICLE 8: PROMOTIONAL EXAMINATION PROCEDURE**

Modify Section 8.1 to delete "Chief of Police" from second sentence.

Modify Section 8.2 to read, in entirety, as follows:

"Applicants for sworn positions within the Bargaining Unit shall be tested in a two (2) phase examination. The first phase shall be a written examination constructed by a professional selection service, selected by mutual agreement of the parties one hundred and twenty (120) days prior to the expiration of the previous eligibility list, and the second phase shall be an oral examination. In the event that the parties are unable to agree on a professional selection service, the selection shall be made by the Charter Township of Shelby Police and Fire Civil Service Commission. In computing the final score, one hundred (100%) percent, of each phase shall be considered as fifty (50%) percent of the testing. The score of the written test and the score of the oral test shall be added together and divided by two (2), which will result in the final testing score. Each applicant for promotion, with a final testing score of seventy (70) and above, shall be given one (1) point for each year of service within all ranks being tested to a maximum of ten (10) points provided that, any applicant with less than five (5) years of department seniority shall not receive service points. Service points shall be added to the above stated testing score. A veteran's preference will be granted to veterans as defined in MCL 35.61 and MCL 35.401 for promotions above the rank of Sergeant. The veterans shall be given one-half (½) point as a veteran's preference with said one-half point to be added to the above stated final testing score. In the event

that a veteran, as defined in MCL 35.61 and MCL 35.401, is tied on the eligibility list, the veteran will be given an additional preference in order to break the tie. The oral test shall be prepared, administered and scored by a professional testing agency selected in the same manner as the written testing agent.

If a Command Officer wants to examine the written examination, his/her answers and the correct answer, the Command Officer must request the review and complete the review within ten (10) days of receiving the results of the written examinations. The review will be performed in the presence of a member of the Civil Service Commission or his/her designee. The Command Officer will not be allowed to bring any writing instruments or papers to the review and will return the examination, his/her answers and the correct answers upon completion of the review."

Delete former Section 8.5, and replace it with the following:

"It is agreed that position of Chief of Police of Shelby Township shall be filled in compliance with the provisions of Act 78 of the Public Acts of 1935 as amended. The parties agree however that the minimum qualifications shall be as follows:

- a. Possession of a Bachelor's Degree in Police Administration, Criminal Justice, Public Administration or equivalent degree from an accredited college or university, and;
- b. Graduation from either the FBI National Academy, or Northwestern University Center for Public Safety Police Staff and Command or similar program agreed to by the parties, or Masters Degree in Public Administration or Police Administration, or equivalent degree from an accredited College or University, and;
- c. Three (3) years of successive command experience above the rank of Sergeant either within the Charter Township of Shelby Police department or of another command of at least thirty (30) sworn police officers. This command experience must be within the last two (2) years, and;
- d. Must present three (3) letters of recommendation from persons meeting the requirements listed above attesting to the applicant's ability."

Delete former Section 8.6, and replace it with the following:

"The parties further agree that selection of the Chief shall be made from applicants from within the department meeting these qualifications, provided at least two (2) qualified candidates express interest. In the event fewer than two (2) qualified applicants exist, additional candidates from outside the department shall be permitted to participate in the selection process."

Add a new Section 8.7, reading as follows:

"The method of selection shall be an assessment center conducted by a professional selection service, selected by the Charter Township of Shelby Police and Fire Civil Service Commission. The minimum passing score shall be seventy (70)."

Delete the former Section 8.8, and add a new Section 8.8, reading as follows:

"Based upon the results of the selection process stated above the Commission shall certify the top five (5) candidates, with a passing score, for consideration by the Township Board of Trustees."

Change the former Section 8.7 to Section 8.9, and modify to read as follows:

"The Township and the Association further agree that if, within the first year of employment as Chief of Police, circumstances arise whereby the present highest ranking, sworn Police Officer vacates the position of Chief of Police for reasons other than retirement, pursuant to Act 345 of the Public Acts of 1937, as amended, or is terminated for cause, pursuant to Act 78 of the Public Acts of 1935, as amended, the sworn Police Officer who assumes the position of Chief of Police pursuant to the terms hereof, may return to the Association as a member in good standing at the rank and capacity he held immediately prior to becoming the Chief of Police carrying with him any seniority and benefits earned."

Change the former Section 8.9 to 8.10, and modify to read, in entirety, as follows:

"Vacancies shall be filled from an eligibility list that is continually maintained by the Employer and Civil Service Commission pursuant to Act 78 of Public Acts of 1935, as amended."

## **ARTICLE 9: WAGES**

Modify Section 9.1 to read, in entirety, as follows:

"Salary of Command Officers shall be as listed hereafter in Addendum A of this agreement. Wages between rank shall be based on a percentage relationship between the Patrol Officer who has reached top pay and Officers of a higher rank rounded to the nearest whole dollar. The Sergeant entry rate shall be fifteen (15%) percent more than a four (4) year Patrol Officer. The maintenance of the differential between the ranks of Patrol Officer and Sergeant shall be maintained through December 31, 2004.

After one (1) year of satisfactory performance, a Sergeant shall be paid an annual wage of three (3%) percent more than the Sergeant entry level.

The rank of Lieutenant shall be paid an annual wage of twelve (12%) percent more than the Sergeant one year rate. The rank of Captain shall be paid an annual wage of twelve (12%) percent more than Lieutenant.

For the purposes of this Agreement, the base hourly rate of pay shall be derived by the following formula:

**(Yearly Annual Wage divided by 2080 hours = the base hourly rate)**  
**Wages for the duration of this Contract will be found in Addendum "A")**

Modify Section 9.2, entitled "SUPPLEMENTAL SHIFT PAY", to add a sentence at the end of the provision reading:

"Effective June 29, 2003, shift premium shall only be paid to officers working a "non-day" shift, and shall be increased to three (3%) percent."

Wage adjustments shall be retroactive only for those employees actively employed as of April 17, 2003.

#### **ARTICLE 10: HOURS OF WORK**

Modify Section 10.2 to delete Section 10.2 (D), and delete the word "man" from Section 10.2(E).

Add a new Section 10.5, reading, in entirety, as follows:

Uniform Command Officers (Shift Lieutenants and Sergeants) shall have the opportunity to select the platoon (A, B, C, D) of their preference every twelve (12) weeks based on their seniority (within their respective ranks). Selection shall be based with seniority being the determining factor. During the eighth (8th) week of the current schedule, shift preference forms shall be placed in the employee's mailbox. The employee shall complete the form and return it within seven (7) days from the date that the form was issued or forfeit his/her position on the seniority list for the shift selection under consideration. The department schedule will then be adjusted according to the changes and the shift period will then be posted ten (10) days prior to the beginning of the new shift. The union recognizes that management has the right to assign members in instances where management can articulate that there is a discipline problem and/or where a situation exists where a personality conflict is present between members which affects the working environment within the department. Whenever possible, management shall make said assignments(s) before the other members are allowed to make their selections. Management assignments shall be in effect for the selection period only and the situation that caused the assignment shall be reviewed with the union prior to the next selection period. The parties further agree that this procedure along with the use of the twelve (12) hour shift system shall remain in effect through December 31, 2004. Thereafter the use of twelve hour shifts may be terminated by the Township with ninety (90) calendar days notice to the Association. Should this occur, the parties agree to meet and establish a new shift selection process.

#### **ARTICLE 12: LONGEVITY PAY**

Modify Section 12.2 to add the following:

"Effective for all payments earned after December 31, 2003, payments shall be made on the first pay period following the employee anniversary date corresponding to the scale listed above. Upon retirement employees shall receive a prorated longevity payment for time served since his last anniversary date."

#### **ARTICLE 15: VACATIONS**

Modify Section 15.6 to read, in entirety, as follows:

"All Vacations shall be discharged by December 31st of each year, with the exception of days cancelled per Section 15.5. In no event shall a Command Officer lose his/her vacation days."

#### **ARTICLE 16: CLOTHING ALLOWANCE**

Modify Section 16.4 to add a sentence at the end of the provision reading: "Coverage under this provision shall be secondary to any insurance payment available to the employee."

#### **ARTICLE 17: FUNERAL LEAVE**

Modify Section 17.2 to read, in entirety, as follows:

"In the event of the death of a spouse, children or step-children, the Command Officer shall immediately be allowed five (5) paid consecutive working days leave, with benefits."

#### **ARTICLE 19: SICK LEAVE GRANT SYSTEM**

Modify Section 19.1(A)(4) to delete "one hundred (100%)", and replace it with "eighty (80%)."

Modify Section 19.1(A)(5) to read as follows:

Upon separation from the department for reasons other than disciplinary cause, any credited sick hours, minus the initial bank grant from section 19.1 A 2, will be paid for at eighty (80%) percent of the then current base hourly rate of pay. Said hours to be redeemed shall not exceed two hundred forty (240) hours maximum.

Modify Section 19.1(A)(5) to delete the last sentence reading "The Chief of Police will notify the Personnel Department."

Delete, in entirety, Section 19.1(A)(9) reading: "The Personnel Director will notify a Command Officer of the expiration of the Employer-paid allowances."

Renumber the former Section 19.1(A)(10) as Section 19.1(A)(9).

Modify Section 19.2(B), entitled "SHORT TERM DISABILITY PROVISION" by deleting, in entirety, subparagraph (1), stating:

"When a Command Officer has exhausted all of his/her current sick hours accumulated pursuant to the provisions of Section 19.1 A, as well as personal days and, if the Command Officer chooses, vacation time and who continues to the 31st day of consecutive lost work days due to illness, such Command Officer will be covered by the Short Term Disability Provision as follows."

Modify Section 19.4 to delete the following portion of the last sentence: "and shall be subject to the retirement provisions of the Agreement and Act 345."

Modify Section 19.5 to read, in entirety, as follows:

Each Command Officer shall be entitled to forty-eight (48) hours nondeductible personal days per year with pay. Such hours shall be used for handling personal affairs and the Chief of Police shall be notified forty-eight (48) hours in advance, of the day to be taken. The utilization of personal time with less than forty eight (48) hours notice shall be permitted provided the use does not create overtime. Further, personal time shall not be taken on Holidays without the approval from the Chief of Police. In the event the Command Officer does not use his/her allotted days by the end of the Agreement year, he/she shall receive cash payment at eighty (80%) percent of the Member's base hourly rate of pay.

Delete the former Section 19.7 and 19.8 , and replace them with the following:

- 19.7 Employees suffering an injury compensable under the Worker's Compensation Disability Act which renders them unable to perform their regular and normal job functions shall be paid by the Township their regular base weekly income from the first day of injury for a period not to exceed one hundred and four (104) weeks. The employee shall submit any worker's compensation payments to the Township. If the Township has work available within the employee's medical restrictions the Township may require the employee to perform such work. After one hundred and four (104) weeks, sick leave and vacation leave may be utilized to supplement the amount received from worker's compensation and any disability insurance payments, not to exceed base weekly wage.
- 19.8 An employee receiving worker's compensation benefits shall apply for disability insurance when eligible. Any disability payments received during the one hundred and four (104) week period in Section 19.7 shall be submitted to the Township.
- 19.9 If an employee is placed on a service connected disability retirement, he/she shall continue to receive an amount equal to his/her salary, less the amount the command officer receives from the pension system until he/she is placed on a regular pension as provided for in this agreement and Act 345 of 1937, as amended. The term salary shall mean any increases or decreases as determined by the collective bargaining agreement. If an employee is placed on a service connected disability retirement,



he/she shall continue to receive all insurance benefits as provided for in this agreement until he/she meets the requirements for a regular pension under this agreement and Act 345 of 1937, as amended.

#### **ARTICLE 21: HOSPITAL-SURGICAL-MEDICAL COVERAGE**

Delete the former Sections 21.1, 21.2, 21.3, 21.6, 21.7, 21.8, 21.9, 21.10, 21.11, 21.12, and replace with the following:

"21.1 For the period from the effective date of this Agreement to December 31, 2004, the cost of premiums for Michigan Blue Cross and Blue Shield Hospitalization and Medical Insurance coverage, MVF-1 with Master Medical, Option IV, shall be paid in full by the Employer for the Employees, their spouses, and dependent children with the following riders:

- M L Rider;
- Prescriptions (\$10.00 deductible); and
- Family Coverage

Or, at the option of the Employee, the cost of premiums for HAP or Michigan Blue Cross and Blue Shield Hospitalization, Community Blue, Option 1 shall be paid in full by the Employer for the Employees, their spouses and dependent children with the following riders:

- M L Rider;
- Prescriptions (\$10.00 deductible); and,
- F C Rider (Family Continuation Rider)

21.2 For Employees hired after June 30, 1992, the costs of premiums for HAP or Michigan Blue Cross Community Blue, Option 1 shall be paid in full by the Employer for the Employees, their spouses and dependent children with the following riders:

- M L Rider;
- Prescriptions (\$10.00 deductible); and
- F C Rider (Family Continuation Rider)

21.3 An employee who is provided with medical insurance coverage through a source other than Shelby Township may choose to decline the Township provided medical, dental and vision coverage. Proof of alternative coverage shall be documented by completion of a form provided by the Township financial management department. Employees who decline the Township provided medical, dental and vision coverage will be paid the sum of One Thousand Five Hundred (\$1,500.00) Dollars annually, paid by the Township as bi-weekly contributions to the Employee's Deferred Compensation Account. Such payments shall not be included in the employee's straight time hourly rate for purposes of overtime calculation.

21.4 The option to forgo medical, dental, and vision coverage set forth set forth in Section 21.3 may only be selected or changed at the time of hire, or during the annual open enrollment period.

21.5 Subject to policy requirements and conditions existing at the time he or she exercises the election set forth in Section 21.3, in the event the alternative coverage under which the employee was covered is terminated, the employee may reinstate Township provided medical, dental, and vision coverage. Upon reinstatement of Township provided medical, dental, and vision coverage, the employee shall cease to receive the compensation provided in Section 21.3.

21.6 It is agreed that no changes will be made in any benefit plans without prior negotiations and concurrence with the Union except that the Township may change without prior negotiations the insurance carrier for the insurance set forth in Article 21 as long as the terms of the coverage remain the same.

21.7 Health care benefits will be fully paid by the Township for the surviving spouse and children of an active or retired Employee as outlined in Article 21. Coverage for the surviving spouse shall cease upon remarrying. In the case of dependent children, this policy shall remain in effect until their 19th birthday unless such child continues to be dependent upon the family, in such case, the policy shall be extended to the maximum allowable age set forth in the policy.

21.8 Employees who select an insurance plan different from their plan may return to their original plan during the open enrollment period.

21.9 The Township will continue to provide benefits outlined in Article 21 for retirees, as provided for regular Employees provided that said Retired Employees apply for Medicare parts A and B, when they are eligible. The Township agrees to provide Blue Cross/Blue Shield benefits for each Command Officer and his/her eligible dependents, provided under the current plan known as Master Medical Option IV, effective June 30, 1980, subject to the availability of such coverage.

Replace section 21.4 of the collective bargaining agreement, which expired on December 31, 2000 with the following:

"21.10 Failure of a retiree to make application for Medicare Insurance when eligible, shall discharge any obligation on the part of the Township to provide hospitalization insurance to such person and his/her dependents under the terms of the Agreement."

Renumber the following sections of the collective bargaining agreement which expired on December 31, 2000:

21.5 to 21.11 and 21.9 to 21.12

## **ARTICLE 23: RETIREMENT**

Delete, in entirety, Sections 23.2(C), 23.2(D), 23.2(E), 23.2(F), 23.2(G).

Modify Section 23.2(H) by adding the following sentence after the first sentence of the provision:

"Effective April 20, 2003 the Employer shall pay only two (2%) percent of the five (5%) percent Employee contribution. Effective December 31, 2004, the Employer shall pay only one (1%) percent of the five (5%) percent Employee contribution."

Delete, in entirety, Section 23.3, 23.5, and 23.7.

## **ARTICLE 24: SAFETY-HEALTH-WELFARE**

Modify Section 24.11 to read as follows:

"The Employer will at no time, except in emergency cases, assign or contract work currently being performed by Officers covered by this Agreement to outside agencies and/or departments that will result in a reduction in staffing levels from those in place on April 17, 2003."

Modify Section 24.13 to delete the last sentence of the provision reading: " Each cash benefit shall be paid on a separate and individual check."

Modify Section 24.16 to read as follows:

"After fifteen (15) years of service, a Command Officer may be granted a leave of absence for up to one (1) year. Said leave is to be without pay, hospital, medical and surgical benefits, but with continuation of rank and seniority. Benefits previously funded by the Command Officer shall continue to be funded by the Command Officer. This benefit shall be a one time only benefit."

Delete, in entirety, Sections 24.19, and 24.21.

Modify Section 24.22 to read as follows:

"Any Member or past member, who left the employ of the Township in good standing, who is named as a defendant or co-defendant in any lawsuit in connection with or arising from his/her employment, shall be fully covered by the Employer concerning any and all costs arising from said lawsuit(s). The Employer agrees to indemnify and save the Command Officer harmless from any expense, responsibility and/or liability of any kind from said lawsuit(s), unless said Command Officer is legally found to be guilty of gross negligence in the performance of his/her duties."

Modify Section 24.27 to delete the term "Sergeant I" from first sentence.

**ARTICLE 27: DURATION OF AGREEMENT**

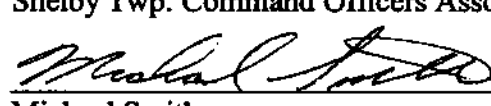
Modify Section 27 to read, in entirety, as follows:

"This Agreement and each and every Appendix, Addendum, etc., shall remain in full force and effect from the date of January 1, 2001 until December 31, 2004 (except to the extent as otherwise provided in this Agreement) and then, all of its provisions (except as otherwise indicated herein) shall continue thereafter until amended or modified by subsequent collective bargaining between the parties. Either party may serve written notice upon the other of its desire to so modify or amend, within ninety (90) days prior to the expiration date. In such event, the parties shall commence negotiations immediately on such proposed amendments for a succeeding Agreement."

This Award is made and entered this 9 day of May 2003, as set forth above.

  
Arbitrator-Impartial Chairman Jerold D. Lax

  
Danny N. Bartley  
Shelby Twp. Command Officers Association Delegate

  
Michael Smith  
Charter Township of Shelby Delegate