

1913

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF

Township of Waterford,

MERC Act 312  
Case No. D90 E-0782

- AND -

Waterford Township Police Supervisors/  
Labor Council, Michigan FOP

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COMPULSORY ARBITRATION

Pursuant to Act 312, Michigan Public

Act of 1969, as amended

AWARD

Arbitration Panel

Donald R. Burkholder  
Arbitrator/Chairman

Stanley W. Kurzman  
Township Delegate

Mike Somero  
Union Delegate

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STATE OF MICHIGAN  
DEPT. OF EMPLOYMENT RELATIONS

## INTRODUCTION

These proceedings were commenced pursuant to Act 312 of the Public Acts of 1969, as amended. The arbitration panel was composed of the Chairman, Donald R. Burkholder; Township Delegate, Stanley W. Kurzman; and Union Delegate, Mike Somero.

A pre-hearing conference was held on Tuesday, May 14 at a conference room in the Waterford Township Hall. Subsequently, hearings were held Thursday and Friday, September 5 and 6, 1991, and on Monday, September 16, 1991, in the same location as the pre-hearing conference. The Township was represented by Stanley W. Kurzman of the firm Kurzman and Associates, with Mr. Kurzman also serving as Township Delegate. The Union was represented by David K. Sucher of the firm John A. Lyons, P.C. The record consists of 300 pages of recorded testimony and a total of 126 exhibits. After submission of last best offers, the parties forwarded written briefs. Subsequently, the panel met in executive session on Tuesday, December 17 and Friday, December 20, 1991.

It should be acknowledged that the hearing dates were originally scheduled in July. They were, however, postponed because of budget constraints and mandatory delay imposed by the Michigan Employment Relations Commission (MERC). It should also be noted that Mr. Sucher, representing the Union, wrote to MERC to protest a delay in submission of the Township's brief on its last best offer, asking to have the record closed and that the panel go immediately to executive session. Inasmuch as the employer's

brief arrived almost simultaneously with Mr. Sucher's telefaxed letter, and the executive session had already been scheduled for December 17, 1991, the Chairman decided to proceed to executive session as scheduled.

The panel was guided by Section 8 of Act 312, which provides that each issue deemed economic in nature must be decided by the panel selecting the last best offer which more nearly complies with the applicable factors in Section 9. Since the panel, at the pre-hearing, deemed the outstanding issues economic in nature, Section 9 was applicable. The applicable factors to be considered, as set forth in Section 9, are as follows:

- (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 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 considered the factors delineated in the statute.

### COMPARABLE COMMUNITIES

At the outset, the parties stipulated to the comparable communities. They were as follows:

Birmingham, Bloomfield Township, Farmington Hills, Ferndale, Madison Heights, Novi, Royal Oak, Troy, and West Bloomfield Township.

### AWARD

The parties have agreed on all outstanding issues for the period of January 1, 1991 through December 31, 1991, except those that were the subject of these proceedings, i.e., decided by the panel, as follows:

#### ISSUE I - Medical Insurance

The panel, as a determination of fact, after considering the comparables noted and the Township's exhibit regarding rapidly escalating costs in the area of medical insurance, decided that the Union position would prevail. This decision was not taken lightly, with the panel in general agreement that the cost of medical insurance is a growing national problem, and that serious steps must be taken to contain it. Nevertheless, because of over-all findings on the issues, there is no change in the medical insurance

contractual language at this time.

## ISSUE 2 - PENSION

The Union sought to increase the current multiplier from 2.25% of Final Annual Compensation (FAC) to 2.5% of FAC. The Union further asked that, upon receiving Social Security benefits, there would be a reduction in the multiplier from 2.5% to 2.25% of FAC. Alternatively, the Union asked that if it did not receive an increase in the current multiplier from 2.25% to 2.5%, the current rollback should be eliminated, i.e., the current rollback from 2.25% to 2.0% of FAC when Social Security is activated.

The panel gave considerable attention to the comparables which, both in terms of employee contribution rates and FAC levels provided some evidence for improvement. Ultimately, consideration of the comparables, equity, and responsible financial practice on the part of the Township led to a determination of fact, or finding, by the panel that the Township proposal that there be no increase in the current 2.25% FAC should be adopted, along with the Union's request that if the Union does not receive an increase in the current multiplier to 2.5% of FAC, then the Union request that the current roll-back when receiving Social Security benefits to 2.0% of FAC be eliminated.

The following language for Section C of Article XXXIX, Pension, replaces Section C language in the last contract.

C. Effective January 1, 1991, for all police officers in the bargaining unit, the pension multiplier used to compute the annual pension shall be 2.25 percent of Final Annual Compensation (FAC). This benefit is fully paid by the employer. The pension benefit shall not be re-computed when the employee receives Social Security payments, and the multiplier shall remain at 2.25 percent of FAC.

(The sections, or paragraphs C. Pre-Social Security and D. Social Security in the preceding contract, page 52, should be eliminated. Section/paragraph E becomes D, F becomes E, and G. becomes F.)

Mr. Somero, the Union Delegate, pointed out that members of the unit became retirees during 1991, and are covered by the contract presently being arbitrated. They are Donald Bailey, Richard Finkbeiner, and Wesley Sebastian. Thus the provisions of Section C as set forth above and retroactive pay due them as a result of the new Schedule A-Wages would apply to these three retirees along with any others who have retired since January 1, 1991.

### ISSUE 3 - RANK STRUCTURE

The Union's last best offer on rank structure was as follows:

There shall be three ranks of supervision: staff lieutenant, lieutenant, and sergeant.

The Township's last best offer on rank structure was that the rank structure be changed to provide for two supervisory ranks, lieutenant and sergeant.

The Township position and language on this proposal has been adopted by the panel.

Consideration of the comparables presented, concern for clarification of the structure as it relates to the interest and welfare of the public, and enhancement of internal equity among ranks in the unit are persuasive and substantive factors in determining that the Township's position on rank structure should prevail. It seemed apparent from the exhibits and testimony that the rank of staff lieutenant had no rationale apart from the fact that it was imposed in a prior arbitration. The restructuring is done in such a way as to ensure that staff lieutenants will lose no salary, while lieutenants will be moved to the pay grade used for staff lieutenant. The panel adopts the Township language as Article XXXIV, Rank Structure, effective January 1, 1992, as follows:

#### XXXIV RANK STRUCTURE

A. The present Lieutenant will be upgraded to the Staff Lieutenant pay grade upon passing the Michigan Municipal League's written Lieutenant's examination or by attrition, whichever occurs first. Upgrade to Staff Lieutenant pay grade through attrition shall be on the basis of seniority.

1. The change in pay grade shall have no effect on eligibility for promotion or other existing benefits based on seniority.
2. Eligibility for promotion above Lieutenant shall be in accordance with paragraph E.

B. The position title will be changed to "Lieutenant" but with pay and benefits at the Staff Lieutenant level, subject to the provisions of paragraph A.

C. Through attrition, as a current Lieutenant's position is vacated, for whatever reason, that position will be replaced by a Sergeant.

D. The current eligibility list for promotion to Lieutenant shall continue to remain in effect and any promotions to Lieutenant shall come from that list until its expiration.

E. Eligibility for testing for any position above Lieutenant shall be determined as follows:

1. First choice - those with a least two years in the Staff Lieutenant rank prior to its change.
2. If there is not sufficient participation from that group to result in a competitive test, those with at least two years service in the old Lieutenant's position shall be eligible to test.
3. If there is not sufficient participation from that group to result in a competitive test, those with less than two years service in the old Lieutenant's position shall be eligible to test.
4. If there is not sufficient participation from that group to result in a competitive test, Sergeants with at least two years service in rank shall be eligible to test.

F. Shift preference will be based on seniority, those with the highest seniority having first choice, and then each succeeding Officer making his/her choice. At no time will there be more than two Lieutenants on a shift in the Patrol Division.



#### ISSUE 4 - SALARY

The last best offers on salary are as indicated below.

The Union requested a set contractual wage differential be established between ranks as follows: sergeants and detectives: 10% above a top-paid patrolman's base; plus report writing; lieutenant: 10% above a top paid sergeant; staff lieutenant: 10% above a top-paid lieutenant.

Alternatively, should the panel not award the Union's demand of a set contractual wage differential, the Union requested the following increases in wages for the years January 1, 1991 to December 31, 1991: 1991 - 4%; 1992 - 4.5%; 1993 - 5%.

<u>YEAR</u>	<u>Union LBO</u>	<u>Township LBO</u>
1991	4.0%	3.5%
1991	4.5%	4.0%
1993	5.0%	4.0%

The panel was not convinced by the exhibits and testimony that the Union's last best offer on rank differentials should be adopted. Therefore, the panel awards a wage improvement based on percentage.

The panel adopted the Township's last best offer for the first year, 1991, of a 3.5% increase. The Union's last best offer for the second year, 1992, was adopted at 4.5% increase. The Township's last best offer for 1993, at 4.0 increase, was also adopted. Consideration of the variables presented, the Township's ability to fund increases in view of a State-imposed assessment freeze, comparability with districts deemed comparable, and the last best offers themselves led the panel to determine the above-noted increases.

In Computing Schedule A in Article XXXIII, General Wage Provisions, it should be noted, as discussed in Issue 3, Rank Structure, that effective on January 1, 1992, Lieutenant's pay is raised and computed at the old Staff Lieutenant's base rate.

SCHEDULE "A"

ANNUAL SALARY

<u>Effective Date</u>	<u>Date of Promotion</u>	<u>Six (6) Months After Promotion</u>
<u>SERGEANT</u>		
1/1/91	\$37,279	\$38,801
1/1/92	\$38,958	\$40,547
1/1/93	\$40,518	\$42,169

LIEUTENANT

1/1/91	\$39,577	\$40,354
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STAFF LIEUTENANT

1/1/91	\$41,772	\$43,578
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<u>Effective Date</u>	<u>Date of Promotion</u>	<u>Six (6) Months A After Promotion</u>
<u>*LIEUTENANT</u>		
1/1/92	\$43,652	\$45,539
1/1/93	\$45,398	\$47,361

\*Effective 1/1/92, computed for all Lieutenants and Staff Lieutenants at Staff Lieutenant base, with Staff Lieutenants included in Lieutenants' salary scale.

ISSUE 5- SHIFTS AND TRADING OF DAYS . . (Article XIV)

The Union adopted the Township position, in the Union's Last Best Offer on Sections A and B, and this language is included below. The only remaining issue is the trading of days off with oneself.

Consideration of the respective positions regarding shifts and trading of days off centered on a concern for the interest and welfare of the public. It is clear to the Chairman that predetermined and proper staffing is especially crucial in a public safety or police unit. Neither a reading of the article in the former contract nor testimony from witnesses provided any indication that the intent of the parties when the language was originally accepted was to provide for trading with oneself. Although it may be true, as has been strongly asserted by the Union representatives, that trading with oneself came to be an accepted practice, the panel sees no justification for permitting this practice to continue. At the same time, the panel does not want to limit the unit member's right to request time off as otherwise provided in this contract.

The panel adopts the language listed below as new language for Sections A and B of Article XIV. The language in A and B is taken from the Union Brief in Support of its Last Best Offer, in which the Union adopts the Township position on these two sections. Section G below is new language, now a part of the contract, which notes that preceding language is not to be interpreted as providing for a member to trade days off with himself.

#### XIV - SHIFTS AND TRADING OF DAYS

A. An employee may exercise shift preference once each shift cycle (every 3 months, on the first Saturday of each quarter, being the months of January, April, July and October) with seniority within rank having preference. Such request shall be made in writing at least two weeks prior to the shift cycle, and the granting of such a change of shift shall be based upon seniority within rank.

B. During any shift cycle, an employee on a particular shift may by mutual consent with another employee on a different shift, exchange shift assignments for a period not exceeding one month during said shift cycle. Such exchanges of shift must be requested of the police chief or his designee who shall have discretion to grant such mutual request if in his discretion such shift changes will not disrupt the efficient operation of the police department.

C. Same

D. Same

E. Same.

F. Same

G. The language above in this article is not to be interpreted as providing for a member of the Unit to trade days with himself/herself. This does not change the unit member's right to request time off as otherwise provided in this contract.

#### CONCLUDING COMMENTS

The Chairman is appreciative of the professional, assertive, and courteous manner in which the discussions, both at the hearings and in executive session, were conducted. The parties' interests were well represented, and the findings of fact, determinations, or decisions were reached only after thorough exploration of the factors required to be considered.

## SUMMARY

The Chairman's decisions on the issues were as follows:

### ISSUE 1 - MEDICAL INSURANCE

No change. The status quo contained in Article XXII of the collective bargaining agreement will be maintained.

Township	<u>      </u>	AGREE	<u>      </u>	DISAGREE
Union	<u>      </u>	AGREE	<u>      </u>	DISAGREE

### ISSUE 2 - PENSION

Maintain 2.25 percent FAC. Pension not re-computed when employee receives Social Security.

Township	<u>      </u>	AGREE	<u>      </u>	DISAGREE
Union	<u>      </u>	AGREE	<u>      </u>	DISAGREE

### ISSUE 3 - RANK STRUCTURE

Move to two-tier level, Sergeant and Lieutenant. Lieutenants move to Staff Lieutenant pay grade. Promotional and testing guidelines clarified.

Township	<u>      </u>	AGREE	<u>      </u>	DISAGREE
Union	<u>      </u>	AGREE	<u>      </u>	DISAGREE

### ISSUE 4 - SALARY

For 1991, 3.5%, the Township's LBO.

Township	<u>      </u>	AGREE	<u>      </u>	DISAGREE
Union	<u>      </u>	AGREE	<u>      </u>	DISAGREE

For 1992, 4.5%, the Union's LBO.

Township	<u>      </u>	AGREE	<u>      </u>	DISAGREE
Union	<u>      </u>	AGREE	<u>      </u>	DISAGREE

For 1993, 4.0%, the Township's LBO.

Township	<u>      </u>	AGREE	<u>      </u>	DISAGREE
Union	<u>      </u>	AGREE	<u>      </u>	DISAGREE

ISSUE 5 - SHIFTS AND TRADING OF DAYS

Clarified language on shift preference. New section specifying that language is not to be interpreted to provide for a member to trade days with himself/herself. This does not change the unit member's right to request time off as otherwise provided.

Township

SWT AGREE

DISAGREE

Union

SWT AGREE

DISAGREE

Donald R. Burkholder  
Donald R. Burkholder  
Arbitrator/Chairman

Stanley W. Kurzman  
Stanley W. Kurzman  
Township of Waterford Delegate

Mike Somero  
Mike Somero

FOP Command Officers - - - Union Delegate

Date: December 23, 1991