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STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312, PUBLIC ACTS OF 1969 ARBITRATION PANEL

In the Matter of:

DAVISON TOWNSHIP

-and-

MERC Case No. L05 F-8003

POLICE OFFICERS LABOR  
COUNCIL

**ARBITRATION PANEL OPINION AND AWARD**

George T. Roumell, Jr., Chairman  
Fred B. Schwarze, Township Delegate  
Lloyd Whetstone, Police Officers Labor Council (Union) Delegate

**APPEARANCES:**

FOR DAVISON TOWNSHIP:

FOR POLICE OFFICERS LABOR  
COUNCIL:

Fred B. Schwarze, Attorney  
Kurt D. Soper, Township Supervisor  
Larry R. Hrinik, Chief of Police

Lloyd Whetstone, POLC  
Randy Forman, POLC  
Chad Haynes, POLC

**Background**

Davison Township is a township situated in Genesee County, outside of Davison, Michigan and near Flint, Michigan. It is basically a "bedroom community." The Township has a Police Department consisting of 14 full-time Patrol Officers, four Lieutenants and a Chief of Police.

The Police Officers Labor Council has represented the Patrol Officers and has negotiated successive Collective Bargaining Agreements. The current Agreement

covered the period from July 1, 2002 and expired on June 30, 2005. Prior to the expiration of the contract, the parties commenced negotiating for a successor Agreement. Not able to reach agreement, the parties engaged in mediation on May 30, 2005, at which time they were not able to resolve the issues in dispute and the mediator declared an impasse.

Subsequently, on June 10, 2005, the Police Officers Labor Council filed a Petition for Act 312 Arbitration.

The petition listed the following subjects in dispute:

- (1) Promotional Language
- (2) Work Standard
- (3) See Attached Lists of Issues that may be resolved
- (4) Removal of Discipline from officer file

The referenced "attached lists" included statements as to the following issues:

Health Care  
Life Insurance  
Court Time  
Longevity  
Retiree Medical  
Supplemental Insurance  
Educational Benefit  
Payroll  
Shift Premium  
Duration  
Wages  
Residency  
Holidays  
Event Overtime  
Sick Days  
Removal of Discipline  
Negotiate new promotional language  
Negotiate the work standard

The Township filed an answer to the Petition for Fact-Finding and, in Paragraphs C, D and E set forth its view as to the Labor Council's Petition for Act 312 Arbitration,

which paragraphs read:

C. The Township objects to the Petition for the reason that it is an inaccurate and incomplete statement of the issues to be submitted in Act 312 Arbitration, in that, the Petition does not set forth all of the Township's issues. The Township's issues are as follows:

- (1) Wages
- (2) Health Insurance, including:
  - (1) Prescription Drug Rider;
  - (2) Benefit Coverages;
  - (3) Doctor Office Visits; and
  - (4) Premium Cap.
- (3) Retiree Medical;
- (4) Longevity;
- (5) Supplemental Insurance;
- (6) Education Premium;
- (7) Shift Premium;
- (8) Length of Agreement;
- (9) Pension Cost;
- (10) Life Insurance;
- (11) Court Time;
- (12) College Incentive; and
- (13) Sick Days.

D. It is the Township's position that all of the terms of the parties' prior agreement shall continue subject to the Township's issues.

E. The Township opposes any retroactivity of any economic improvements which may be awarded by the Arbitration Panel. The Township's position is that any economic reductions which may be awarded by the Arbitration Panel should be made retroactive to the first day of the parties' new contract.

The Petition for Act 312 Arbitration was granted by the Michigan Employment Relations Commission and the Undersigned was appointed as Chairman.

#### **The Criteria**

The awards of an Act 312 Arbitration Panel are not made in a vacuum. They are based

upon certain recognized criteria which serve as guides to fact finders when formulating recommendations.

When the legislature enacted the provisions of binding arbitration in police and fire disputes, namely, Act 312 of Public Acts of 1969, the legislature provided in Section 9 (MCLA 423.239) the list of criteria that arbitrators under that Act are to apply, namely:

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 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.

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the award, and comparables, both internally and externally with other similarly situated public and private employees in the geographical area involved.

In addition to the enumerated criteria, the legislation, in setting forth Section 9(h), incorporated criteria that are sometimes used by fact finders in making recommendations as to collective bargaining agreements that are not enumerated in Section 9. This means that, in addition to the enumerated Section 9 criteria, the Act 312 Arbitration Panel can utilize criteria used by fact finders in making recommendation.

It also should be recognized that the particular circumstances may dictate that certain criteria might be emphasized more than other criteria.

Among the criteria utilized by fact finders is the bargaining history of the parties, both past and current, as well as the "art of the possible," namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations. The "art of the possible" in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

In addition, fact finders do use the bargaining history of the parties, both the bargaining

history in the past and the bargaining history during the current negotiations, in an attempt to ascertain, along with the art of the possible, what the parties may have settled upon on their own when faced with outside deadlines.

As enumerated in Section 9, there is the comparables criteria. This comparables criteria would include external comparables as well as internal comparables. The function of the comparables criteria is to ascertain the value of the marketplace in the geographical area for similarly-situated public employees has placed on the type of employment involved.

It is this analysis of the applicable criteria that serves as a guide to this Panel's recommendations for settlement of this dispute.

In applying the criteria in this case, the criteria that stands out as serving as a guide to resolving this dispute is the comparable criteria, the bargaining history (both current and in the past) and the art of the possible.

### **The Bargaining History**

The parties did engage in extensive bargaining before mediation and, to some extent, after mediation. They did reach certain agreements and addressed some of the issues that were in dispute at the time of the Petition for Act 312. These agreements will be incorporated into the Award here.

### **The Comparable Criteria**

The comparable criteria addresses comparables, particularly as to such issues as wages and health care costs, with other surrounding communities. The parties did bargain as to wages. But in order to arrive at a contract on all issues, though they seem to have agreed on a 2.5% across-the-board increase on July 1, 2005 and a 2.5%

increase for July 1, 2006, the parties were in dispute as to an increase for July 1, 2007.

There was also a question raised as to whether there would be a four year contract, recognizing that, by the time arbitration commenced, at least six months into the new contract had already past. Recognizing the comparables and also, though the Township does not argue an inability to pay, the fact is the Township is experiencing increased health insurance care.

It seems that in some surrounding communities there has been an increase in drug co-pays. It is recognized that one of the escalating costs of health insurance is the escalating cost of drugs, particularly name brand drugs. Thus, insurance plans have adopted techniques to encourage recipients to utilize generic drugs. There is also a need to provide for some co-pay in the HMO's for office visits. In balancing comparables, along with the ability to pay and what the Chairman believes is the art of the possible, the Chairman has opted for an insurance plan that does increase office co-pays and drug co-pays to address the issue of increasing health insurance costs.

The Chairman has also opted to continue the 2.5% increase for July 1, 2007 and for the fourth year a 2.5% across-the-board increase for July 1, 2008. The reason for this is that, with the Michigan economy the way it is, and recognizing that Davison Township is in the sphere of the auto industry, the Township does need some financial stability. Four years will give that financial stability and is fair both to the Township and to the employees.

### **The Issues Revisited**

Though there was some debate in the arbitration hearing concerning health care, and wages in particular, and other issues, the primary concern that seemed to separate

the parties was the issue of work standards and promotions. The issue of work standards has caused the parties to previously go to grievance arbitration. There was a concern that the Township was insisting to implement amendments to the work standards. After much discussion among the Panel and listening to the arguments of the parties, the Panel, weighing the interests of both parties and in particular applying the art of the possible criteria, will make an Award that incorporates the following Letter of Understanding:

Davison Township currently has a work standard for Patrol Officers. The standard was developed pursuant to the Township's right to direct employees and to establish work performance levels pursuant to Article IV, Management Rights.

The parties agree that the current standard is reasonable and recognize that any future changes in the standard must also be reasonable.

While the Township reserves the right to revise its work standards, it agrees to meet with the Union, review, discuss, obtain input from and have dialogue with the Union regarding any proposed changes before the changes become effective.

Within five (5) work days from the meeting, the Union will inform the Chief whether or not it will grieve the standard. After the expiration of the fifth work day, the revised standard will be posted for 30 calendar days before it goes into effect.

If the Union believes the revised standard is unreasonable, it shall have the right to file a written grievance directly to arbitration, by notifying the Chief within said five (5) workdays. If the Union grieves the standard, the parties will promptly select an arbitrator from the panel and request a hearing within thirty (30) days. The parties shall only file briefs by mutual agreement. The Arbitrator shall render a decision within seven (7) days from the close of the hearing and the losing party shall pay the Arbitrator's fee.

The second issue that seemed to be a point of contention was the promotional issue. The issue seemed to be centered over promotions to the rank of Lieutenant. This seemed to be a contentious issue between the parties. After hearing from the



parties and considering the concern that, among the officers, the individual promoted have experience in the Davison Township Police Department, the Chairman has opted for the following provision as to the promotion policy:

**ARTICLE - PROMOTIONS**  
(Replace current Article V with the following)

**Section 1.** In filling the position of Lieutenant (or to the first rank in the Command Officers contract if there is a rank created by the Township below the rank of Lieutenant), the following promotional policy will be in effect, to wit:

- A. Candidates with four or more years of patrol officer experience, two of which are with Davison Township, shall be eligible to apply.
- B. Promotions shall be on a competitive basis, with the Township Supervisor and the Chief of Police having the right to select from among the top three candidates. If there are not three candidates, the Township shall have the right to add a candidate(s) from outside the Department.
- C. A written and oral examination shall be given and past experience will be awarded each time such a vacancy is to be filled. The following criteria and weight will be used:

Written Examination - 40%  
Oral Examination - 40%  
Past Experience - 20%

In evaluating an employee in regard to past experience, the Chief will also consider seniority, attendance, prior evaluations and job performance.

- D. The oral exam will be conducted by at least three (3) members with law enforcement background not employed by Davison Township who are of the rank of Lieutenant or above.

The Award will so provide.

There was also a dispute concerning language in a proposed Article IX, Section 2, "Discipline and Discharge," concerning the length of time that a prior reprimand

stayed in an employee's file. The dispute centered around the reference of the type of reprimand that would stay in the file for 24 months. After considering the arguments of the parties, the Chairman did opt for a provision that provided that, in adding a new Section 2 to Article IX, "Discipline and Discharge," "providing no further like disciplinary action has been issued to the officer during said periods." The Award so provides.

### **The Art of the Possible**

As already mentioned in the above discussion, there is the art of the possible criteria. What the Chairman has done in reviewing the various issues, including the issues that seemed to separate the parties, namely, promotions and work standards, was to utilize the art of the possible criteria, namely, to attempt to predict what the parties may have arrived at if left to their own devices and faced, for example, with a strike deadline. For example, in order to provide some of the improvements, the Township wished to have a four year contract to assure some financial predictability and stability. This was an example of the art of the possible. And it is this criteria that has been considered by the Chairman.

### **Procedure**

Many of the issues that have been considered by the Chairman have been economic in nature. The position taken by the Chairman in the Award is based upon the offers that were made by the parties on the economic issues. Promotions and work standards may not have been economic, but the Chairman, after listening to the parties, has opted for a resolution as set forth in the Award and the discussion herein. The members of the Panel – the Township Delegate and the Labor Council Delegate – have

agreed to waive signatures and have agreed that the decision and signature of the Chairman of the Panel shall be binding and have the full force and effect under Act 312 as if this Award had been signed by all members. The Award is entered on this basis.

### **Duration**

The contract will be effective on the date of this Award and shall continue to and including 11:59 p.m. on June 30, 2009. However, the provision for wages shall be retroactive to July 1, 2005 for all employees on the seniority list at the date of this Award.

### **AWARD**

1. Four year agreement effective the date of this Award, to and including 11:59 p.m. on June 30, 2009, with Appendix A retroactive to beginning of pay period on or after July 1, 2005 for all employees on the seniority list as of the date of this Award.

2. **Miscellaneous Language Changes**

1. Article XII, Section 2 – Change “at least four (4) days before the check is issued” to “the day after the end of the pay period.”
2. Article XLII, Residency – Change “Township Hall” to “Township boundaries.”
3. Article XXVI, Holidays, Section 2 – Clarify that holiday pay is eight (8) hours by revising Section 2 to read:

“Each officer shall receive eight (8) hours of holiday pay (and if he/she works the holiday, he/she shall receive time and one-half (1-½) for all hours worked on his/her shift as provided in Section 4 below) at his/her regular rate of pay for each defined holiday, with the understanding that officers on 10 and 12-hour shifts also only receive eight (8) hours of

holiday pay.”

4. Article XXXI, Night Shift Premium – Add a new Section 3 defining shifts:

“Section 3. Said shift premiums shall be paid for all shifts starting after 12:00p.m. and before 2:00 a.m.”

5. Article XII, Section 5 – Add the following after the word “list” at the end of the second sentence:

“When all officers are at zero overtime, the high seniority officers will be offered the overtime first.”

6. Article XIII, Grievance Procedure, Section 6 – Replace last sentence of Section 6 with the following:

“Within seven (7) days following receipt of the notice to arbitrate, the Township Supervisor or his/her designee and the Union President/POLC Representative shall select one of the arbitrators from the panel below by blind draw. The panel shall be:

Mario Chiesa  
Pat McDonald  
C. Keith Groty

Multiple grievances may not be submitted at the same time to the same arbitrator except by mutual agreement. Neither party will identify the Mediator’s findings or recommendations before an arbitrator.”

7. Remove outdated Letters of Understanding.

3. Article IX, Discipline and Discharge – Make the first paragraphs Section 1. Add a new Section 2 as follows:

“Section 2. A prior verbal warning will be removed from an officer’s file after 18 months and a prior reprimand after 24 months, providing no further like disciplinary action has been issued to the officer during said periods. A disciplinary suspension will remain in the file but will not be used for progressive discipline after 36 months, providing no further like disciplinary action has been issued to the officer during said period.”

4. Article XXIV, Supplemental Compensation – Delete Section 2 and rewrite Section 1 to read:

“75% of gross pay for workers’ compensation for up to 36 months, 75% of gross pay for non-related illness/injury for a period of up to 26 weeks, and 66-2/3% of gross pay for long-term disability.”

5. Article XLI - College Incentive – Effective July 1, 2006, the BA stipend shall be increased from 4% to 5%. Such incentive will be added to the base pay effective the first pay period in July 2006.
6. Article XXV, Section B – Change “four (4) hours” to “three (3) hours.”
7. Promotions – See Attachment 1.
8. Work Standards – See Attachment 2.
9. Longevity, Wages and Health Insurance –
  1. Health Insurance –
    - Provide an employee opt-out under a Section 125 Plan. Pay \$125 for each month employee opts out of health care, payable in December of each year. Start the opt-out January 1, 2006.
    - Change the PPO to \$20 Doctor Office and \$20 Chiropractic co-pay with a \$10/\$40 Prescription Drug beginning of the month 30 days following the date of this Award.
    - HMO – Change to \$10 Doctor Office, \$10 Chiropractic with \$10/\$20 Prescription Drug.
  2. Longevity – Add an eight-year step increase to the contract at \$693 making 8 years = \$52,000. Roll longevity into base pay effective first pay period in July 2006.
  3. Appendix A – Effective beginning of pay period on or after:

7-1-05 -	Increase Appendix A by 2.5%
7-1-06 -	Increase Appendix A by 2.5%
7-1-07 -	Increase Appendix A by 2.5%
7-1-08 -	Increase Appendix A by 2.5%
10. All Other items – Current Agreement.

## **ATTACHMENT 1**

### **ARTICLE - PROMOTIONS**

**(Replace current Article V with the following)**

**Section 1.** In filling the position of Lieutenant (or to the first rank in the Command Officers contract if there is a rank created by the Township below the rank of Lieutenant), the following promotional policy will be in effect, to wit:

- A. Candidates with four or more years of patrol officer experience, two of which are with Davison Township, shall be eligible to apply.
- B. Promotions shall be on a competitive basis, with the Township Supervisor and the Chief of Police having the right to select from among the top three candidates. If there are not three candidates, the Township shall have the right to add a candidate(s) from outside the Department.

- C. A written and oral examination shall be given and past experience will be awarded each time such a vacancy is to be filled. The following criteria and weight will be used:

- Written Examination - 40%
- Oral Examination - 40%
- Past Experience - 20%

In evaluating an employee in regard to past experience, the Chief will also consider seniority, attendance, prior evaluations and job performance.

- D. The oral exam will be conducted by at least three (3) members with law enforcement background not employed by Davison Township who are of the rank of Lieutenant or above.

## **ATTACHMENT 2**

### **LETTER OF UNDERSTANDING**

Davison Township currently has a work standard for Patrol Officers. The standard was developed pursuant to the Township's right to direct employees and to establish work performance levels pursuant to Article IV, Management Rights.

The parties agree that the current standard is reasonable and recognize that any future changes in the standard must also be reasonable.

While the Township reserves the right to revise its work standards, it agrees to meet with the Union, review, discuss, obtain input from and have dialogue with the Union regarding any proposed changes before the changes become effective.

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If the Union believes the revised standard is unreasonable, it shall have the right to file a written grievance directly to arbitration, by notifying the Chief within said five (5) workdays. If the Union grieves the standard, the parties will promptly select an arbitrator from the panel and request a hearing within thirty (30) days. The parties shall only file briefs by mutual agreement. The Arbitrator shall render a decision within seven (7) days from the close of the hearing and the losing party shall pay the Arbitrator's fee.

  
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GEORGE T. ROUMELL, JR.  
Chairman

February 24, 2006