

STANLEY T. DOBRY
ARBITRATOR, MEDIATOR & FACT FINDER

P.O. Box 1244
Warren, Michigan 48090-0244
E-Mail: Dobry@NAArb.org
Phone & Facsimile: (586) 754-0840

3116 West Montgomery Road
Suite C, No. 226
Mainville, Ohio 45039
(513) 621-8445

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY COMPULSORY ARBITRATION TRIBUNAL

In the matter of Statutory Arbitration Between:

CHARTER TOWNSHIP OF WATERFORD,

Employer

-and-

MICHIGAN ASSOCIATION OF POLICE,

Union

Arising pursuant to Act 312,
PA 1969, as amended

MERC CASE NO.:D05 B0689

PANEL'S FINAL OPINION AND AWARD

I. APPEARANCES

BEFORE THE COMPULSORY ARBITRATION PANEL

STANLEY DOBRY, Impartial Chairman
STANLEY KURZMAN, Employer Delegate
FRED TIMPNER, Union Delegate

STANLEY W. KURZMAN, ESQ. P16308
Attorney for the Employer
1090 W. Huron Street, Waterford, MI 48328
Phone 248-681-8861 Facsimile 248-232-1538
E-mail stankurzman@kurzmanlaw.com

FRED TIMPNER
Representing the Union
Michigan Association of Police
27704 Franklin Road, Southfield, MI 48034
Phone (248) 304-8800
E-mail <julie.palmquist@ameritech.net>

Dated: May 16th 2006

II. INTRODUCTION

This Panel is created under the authority of the Michigan Employment Relations Commission (hereinafter MERC), pursuant to the authority of Act 312 of the Public Acts of 1969, as amended; MCLA 423.231 et seq.; MSA 17.455(31) et seq. That agency maintains a panel for the resolution of contractual impasses in the collective bargaining process between municipalities and police or fire personnel. The chairman of this panel was appointed to this dispute by letter dated September 20, 2005.

Act 312 proceedings in this matter were initiated by petition filed by the Michigan Association of Police after several bargaining and mediation sessions failed to result in settlement of a new Collective Bargaining Agreement. The previous CBA expired on December 31, 2003.

The parties are the Township of Waterford (“Township” or “Employer”) and the Michigan Association of Police (“MAP” or “Union”).

Waterford Township has five bargaining units, four of which are public safety units, all of which were in Act 312 Arbitration at the commencement of these proceedings. The non-public safety unit (the Teamsters) was in fact-finding. The primary issues with all the bargaining units have been wages, health care, sick pay and new-hire pensions. The Township opines that it has attempted to make essentially similar proposals to all bargaining units as a matter of fairness and internal equity.

At the time of the petition filing in this case there were several outstanding issues. During the course of these proceedings, with the conciliatory assistance of the Impartial Arbitration Panel Chairperson, all but the Township’s proposed changes in Sick Leave (including Short and Long Term Disability programs) and wages were resolved. It was determined by a majority of the Panel, over the Township Delegate’s objection, that the Township’s Sick Leave proposal was an economic issue. A majority of the Panel, again with the

Township objecting, determined that the duration of the contract would be for four years, commencing on January 1, 2004, and expiring on December 31, 2007. The Panel unanimously decided that each year of the wage proposal would be treated as separate issues; provided, however, that the majority of the Panel decided that the first half and the second half of the fourth year would be treated as separate and independent issues.

Following suggestions by the chair, it was stipulated by the parties that the following 11 communities and their unions were to be considered “comparable” for consideration by the Panel in this proceeding:

Bloomfield Township
Clinton Township
City of Pontiac
City of St. Clair Shores
West Bloomfield Township
White Lake Township

Canton Township
Oakland County
City of Royal Oak
Shelby Township
City of Westland¹

Hearings were held on December 2, 5 and 19, 2005, during which testimony and exhibits were provided. Full transcripts were made.² Hearings are concluded.

The collective bargaining agreement between the parties expired on June 30, 1994. Both before and after that date, the parties engaged in collective bargaining and mediation in attempts to arrive at a new collective bargaining agreement.

A number of tentative agreements were reached through the process of collective bargaining. As an extension of that, other tentative agreements were made as this proceeding progressed. These agreement are incorporated herein by reference as though they were set forth in full. Importantly, they are the living context in which this proceeding was conducted, and this

¹The parties were kind enough to provide the panel with historical data, which was available to provide rankings and establish the relationships over many years. Correlations were apparent. This data demonstrates where the parties have placed their worth relative to these other bargaining units, all of which are in the same general labor market.

²By Tamara A. O’Connor, Certified Professional Reporter, toconnorrptg@aol.com, 2385 Jakewood Drive, West Bloomfield, Michigan 48324, (248) 360-1331.

opinion rendered. In fact, their existence has helped shape the panel's final determinations.

All public safety units accepted the Township's health care proposal of changing the base health care plan to Community Blue 10. The Teamster's, although still in fact-finding on other issues, also accepted the health care proposal as well as the Township's wage proposal of 0% for 2004, 3% for 2005 and 3% for 2006. The Firefighters' unit accepted the health care change and agreed to 3% wage increases for both 2005 and 2006, leaving open the wage increase for 2004 with that unit.³ The immediate implementation of the health care changes immediately saved the Township many dollars, while preserving health care benefits for employees.

When the parties reached impasse, the Union timely filed a petition for interest arbitration pursuant to Act 312, and after informal conferences of the hearing panel together with, at times, the advocates for the parties, the interest arbitration hearings were held on December 2, 5 and 19, 2005, at the offices of the Township of Waterford located in Oakland County, Michigan, before the hearing panel consisting of the impartial chairman and two delegates, namely STANLEY KURZMAN for the Employer and FRED TIMPNER for the Union.

Post hearing briefs and rebuttal briefs were duly filed.

Purpose and Procedure

The purpose of an Act 312 Arbitration is the peaceful and principled resolution of labor disputes in the public sector. To this end, the Act provides for "compulsory arbitration of labor disputes in municipal police and fire departments." The general statement of statutory policy is enlightening. The statute is to be expressly liberally construed to achieve its legislative purpose. Found at Michigan Compiled Laws Annotated (MCLA) 423.231, and Michigan

³Prior to the issuance of this Award, Act 312 Interest Arbitrator Benjamin Kerner adopted the Township's Last Best Offer of 0% increase for 2004.

Statutes Annotated (MSA) 17.455(31), it states:

Sec. 1. It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provision of this act, providing for compulsory arbitration, shall be liberally construed."

The law further defines policemen and firefighters [MCLA 423.232; MSA 17.455(32)]; establishes methods and times of initiating the proceedings [MCLA 423.233; MSA 17.455(33)]; provides for the selection of delegates [MCLA 423.234; MSA 17.455(34)]; and establishes the method for selection of the Arbitrator [MCLA 423.235; MSA 17.455(35)].

It also sets forth procedural timetables;⁴ has a provision for the acceptance of evidence;⁵ and allows that the panel may issue subpoenas and administer oaths. [MCLA 423.237; MSA 17.455(37)]. The dispute can be remanded for further collective bargaining. [MCLA 423.237a; MSA 17.455(37a) [MCLA 423.239; MSA 17.455(3a)]. Finally, the law provides for enforcement, judicial review, maintenance of conditions during the pendency of the proceedings. [MCLA 423.240-247; MSA 17.455(47)].

Finally, at or before the conclusion of the hearing, the panel is required to identify each issue as "economic" or "noneconomic". The classification is critical. The panel may adopt either party's offer or its own position on a noneconomic issue. However, on an economic issue, the "arbitration panel *shall* adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies" with the factors set forth in the statute. [MCLA

⁴The Arbitrator is supposed to "call a hearing to begin within 15 days" of his appointment. The deadline seems virtually impossible, or at least severely impracticable, to meet. Fortunately, these parties had the good sense to waive all statutory time limits.

⁵"Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired." A verbatim record is required. The panel works by majority rule. (MCLA 423.236)

423.238; MSA 17.455(38)] [Emphasis added].

In other words, the panel must choose the more reasonable of the parties' two offers. Therefore, in a very real sense, Act 312 proceedings, or at least particular issues, are not "won" by a party; they are "lost" by the party making unreasonable demands in light of the facts confronting them.

On contested issues, the panel must base its findings on the statutory criteria, to the extent they are applicable. There are ten.⁶ MCLA 423.239; MSA 17.455(39) states in relevant part:

. . . 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.

⁶The existence of these criteria is critical to the constitutionality of this entire statutory scheme.

(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.

IV. DISCUSSION

Preface

Act 312 Arbitration is an extension of the collective bargaining process.

Although the following determinations are not necessarily the only solution to the problems confronting the parties, the Arbitrator is convinced they are closest in conformity with the terms of the statute. The Arbitrator has reviewed each of the statutory criteria as they apply to the respective issues and has concluded that these criteria, as applied to the record before the Arbitrator, virtually command these determinations. On the economic issues, it is respectfully submitted that this disposition represents a fair compromise between the needs of the Township for fiscal responsibility, and the Union members' requirement of economic security. This resolution is plainly within the parameters of settlements in comparable communities. It maintains the historical pattern and relationship these parties have freely bargained for in the past. As such, it reflects the parties' clear consensus of their relative worth.

Moreover, both the Township and the Michigan Association of Police dealt with this proceeding and modifying their contract in the mature and sophisticated way that is to be expected of real professionals.

As a personal note, the Arbitrator was greatly aided by the quality of the representatives' advocacy and the wise counsel of both delegates, and especially their balanced input in the deliberation process. This proceeding is a classic example of the way Act 312 was meant to work.

Initial Determinations

Based upon a full and careful review of the exhibits and stipulations of the parties, the Panel unanimously makes the following determinations:

1. This contract will be in effect for four years from commencing with January 1, 2004 with an expiration date of December 31, 2007.⁷
2. The tentative agreements of the parties, as attached hereto, are incorporated as part of the award.

Procedural Issue on Final Offers on Sick Leave

3. The parties became locked into a procedural argument. This dustup revolves around the last best offer on the issue of sick leave.

On January 3, the employer submitted its last best offer as follows:

SICK LEAVE – SHORT AND LONG TERM DISABILITY BENEFIT

(Note: To be implemented effective October 1, 2006; status quo until then).

ARTICLE XII - SICK LEAVE, SHORT AND LONG TERM DISABILITY

⁷There are at least six identifiable arguments that have been made against the legality of compulsory public sector arbitration. They are: (1) it interferes with constitutional and home rule power; it constitutes an illegal delegation of legislative authority to a non-public person; (2) the statutes lack sufficient standards, so that there is an illegal delegation; (3) it is a delegation of the power to tax to the arbitration panel, and (4) therefore violates the equal protection clause's mandated principle of one-man one-vote; (5) the hearings do not comport with minimum due process standards; and (6) there is a constitutional violation because there was no appropriate scope of judicial review. See "Constitutionality of Compulsory Public Sector Interest Arbitration Legislation: a 1976 Perspective," Labor Relations Law in the Public Sector, Andrea Knapp, Ed., ABA Section of Labor Relations Law. The standards set forth in this law pass constitutional muster. The Michigan Supreme Court stated: "It is generally acknowledged that the instant and similar statutory schemes are directed toward the resolution of complex contractual problems which are as disparate as the towns and cities comprising the locations for these critical-service labor disputes. The Legislature, through Act 312, has sought to address this complicated subject through the promulgation of express and detailed standards to guide the decisional operations. . . . We must conclude that the eight factors listed in Section 9 of the act provide standards at least as, if not more than as, 'reasonably precise as the subject matter requires or permits' in effectuating the act's stated purpose 'to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes.'" City of Detroit vs Detroit Police Officers Association, 408 Mich 410, 461, 294 NW2d 68 (1980).

SECTION 1 – GENERAL

- A. Employees working an eight (8) hour day shall be granted annually forty-eight (48) hours of paid time off for illness or injury of the employee, resulting in an inability to work, or to care for an ill family member of the employee. Employees working a twenty-four (24) hour day will be granted seventy-two (72) hours. Paid Time off for sickness shall be subject to verification by the township. The annual allotment of sick days shall be provided on October 1st of each year. New employees entering the group shall receive an allotment of 4 for 8 hour shift or 6 hours for 24 hour shift per full month.
- B. Employees may use sick days as a Personal Leave Day subject to the same advance notice and approval process.
- C. Any sick leave hours remaining after September 30th shall be paid to the employee at their full rate of pay on that date. Payments will be made on the last payroll date in October.
- D. Should the employee exhaust their paid sick time bank prior to September 30th, they shall be allowed to use vacation, personal leave or compensatory time off to cover an illness or injury. Employees on Family Medical Leave must use any available paid time off above 40 hours to cover their medical leave.
- E. Employees shall be provided a Short-Term Disability (STD) benefit that shall go into effect after seven consecutive calendar days off on a verifiable illness or injury. The illness or injury must prevent the employee from performing their normal work duties. The STD shall pay the employee Eighty percent (80%) of their normal base wage for a period of up to sixty (60) calendar days. From the sixtieth (60th) day through the one hundred and eightieth (180th) day their STD benefit shall be paid at sixty percent (60%) of their normal base wage.
- F. The Township shall provide an insured Long-term Disability (LTD) benefit that will cover disabilities beyond 180 days through normal social security age. This benefit shall be at 60% of the employees' base wage at the time of disability. The benefit will coordinate with any duty or non-duty disability benefit provided to the employee through their pension system. The coverage summary for the LTD benefit program is included in Appendix ??.
- G. Employees may use Vacation or Personal Leave in lieu of banked sick time in order to be eligible for the year end payment for excess sick hours. This option is available subject to the approval of the employee's supervisor/manager. The approval is subject to the ability to verify that the employee or a family member is sick.

SECTION 2 - OTHER EMPLOYEE BENEFITS

An employee on sick leave and short term disability shall be deemed to be on continued employment for purposes of computing all benefits. Sick days shall be construed as days worked. Benefits on Long Term Disability shall continue for a period of 1 year from the original date of illness or injury.

SECTION 3 - PERSONAL LEAVE

- A. Twenty-four (24) hour employees may use up to twenty-four (24) hours personal leave time per year. Forty (40) hour employees may use up to sixteen (16) hours personal leave time per year. Personal days will not accumulate from year to year and must be requested in advance except in an emergency which must be specified.
- B. The personal leave request will not be denied provided no other employee is on personal leave at the same time. The personal leave time can be split no more than one time, with a minimum increment of four hours.

SECTION 4 – FAMILY MEDICAL LEAVE

All Family Medical Leave time must be taken as paid leave if available. Sick time shall be used if the employee has a serious health condition. In addition to the time off allowed under section one (1) above, other paid time-off including vacation, compensatory time and personal leave shall be taken to care for a family member, or because of the birth of a child, or the placement of a child with the employee for adoption or foster care. Family Medical Leave shall be based on the calendar year. Subject to the foregoing, the Township may take any action in compliance with the FMLA.

LIMITATION AND EXCLUSIONS

- A. No benefits shall be paid for any sickness or injury for which the employee is entitled to benefits under any worker compensation or occupational disease law.
- B. Benefit payment will be reduced by an amount received by the employee from any other employer paid sick and accident insurance policy, disability retirement program, regular retirement program, or social security payments.
- C. No sick or disability benefits shall be provided while an employee is laid off, discharged, retired or receiving a pension from the Township.
- D. No sick or disability benefits shall be provided for any loss caused by war or any act of war, whether declared or undeclared, or while in the service of the National Guard, or any military or naval services of any country.

ARTICLE XVIII– DELETED LTD INCLUDED IN NEW ARTICLE XVII

ARTICLE XIV– RETURN TO WORK FROM SICK LEAVE OR LIGHT DUTY (EDITED TO CORRESPOND WITH NEW SICK/DISABILITY PLAN)

SECTION 1- GENERAL

- A. Employees returning to work without restrictions from Sick Leave under Article XII shall be considered recovered from their illness or injury. Any future paid time for sick leave shall be considered a new and separate illness or injury.
- B. Clearance to return to work without restrictions shall be determined by the Township.
- C. Should the Employee dispute the Township's clearance, the employee's treating

physician and the Township's designated physician shall select a 3rd Dr. who specializes in the employee's particular illness or injury to determine if the employee is fit to return to work without restrictions.

- D. Employees may dispute the Township's determination to return or not return to work without restrictions.
- E. If the 3rd Dr. determines the employee fit for duty without restrictions, contrary to the Township's physician, the employee shall be paid as if the employee worked back to the date the employee was determined fit for duty by the employees treating physician.
- F. If the 3rd Dr. determines the employee fit for duty without restrictions, contrary to the employee's physician, the employee shall not be entitled to paid sick leave or long-term disability from the date the employee was determined fit for duty by the Township. Any time off back to the date the township determined the employee fit for duty shall be charged to the employee's paid leave banks.
- G. An employee on Long Term Disability may supplement their benefits by using accumulated vacation, compensatory time and personal days so as to not exceed one hundred percent (100%) of their regular weekly gross income based on the normal fifty-six (56) or forty (40) hour workweek.
- H. If the township's physician clears an employee for light duty work, the township may require the employee to perform bargaining unit work within the restrictions established by the Township's Physician. An employee on light duty shall be paid full pay for hours worked.
- I. Should the employee's Dr. disagree with any light duty restrictions the dispute would be resolved using the 3rd physician as described above.
- J. Any dispute concerning what constitutes "light duty bargaining unit work" shall be resolved through a special conference between the Union and the Fire Chief. Should the issue not be resolved in this conference the dispute may be grieved and resolved through arbitration under Article XXIV of the Bargaining agreement between the parties.

The township shall pay the fee for the 3rd physician any time a 3rd physician is used in this process.

On January 10, the employer submitted a purported corrected offer as follows:

ARTICLE XX

SICK LEAVE - SHORT AND LONG TERM DISABILITY BENEFIT

20.1 Employees shall be granted annually forty-eight (48) hours of paid time off for illness or injury of the employee or a family member under the care of an employee. Paid Time off for sickness shall be subject to verification by the township. The annual allotment of sick days shall be provided on October 1st of each year. New employees

entering the group shall receive an allotment of 4 hours per full month worked. The credit for new hires will be given at the end of each full month.

20.2 Employees may use sick days as a Personal Leave Day subject to the same advance notice and approval process.

20.3 Any sick leave hours remaining after September 30th shall be paid to the employee at their full rate of pay on that date. Payments will be made on the last payroll date in October.

20.4 Should the employee exhaust their paid sick time bank prior to September 30th, they shall be allowed to use vacation, personal leave or compensatory time off to cover an illness or injury. Employees on Family Medical Leave must use any available paid time off above 40 hours to cover their medical leave.

20.5 Employees shall be provided a Short-Term Disability (STD) benefit that shall go into effect after seven consecutive calendar days off on a verifiable illness or injury. The illness or injury must prevent the employee from performing their normal work duties. The STD shall pay the employee Eighty percent (80%) of their normal base wage for a period of up to sixty (60) calendar days. From the sixtieth (60th) day through the one hundred and eightieth (180th) day their STD benefit shall be paid at sixty percent (60%) of their normal base wage.

20.6 The Township shall provide an insured Long-term Disability (LTD) benefit that will cover disabilities beyond 180 days through normal social security age. This benefit shall be at 60% of the employees' base wage at the time of disability. The benefit will coordinate with any duty or non-duty disability benefit provided to the employee through their pension system. The coverage summary for the LTD benefit program is included in Appendix K.

20.7 Employees may use Vacation or Personal Leave in lieu of banked sick time in order to be eligible for the year end payment for excess sick hours. This option is available subject to the approval of the employee's supervisor/manager. The approval is subject to the ability to verify that the employee or a family member is sick.

Should the amended last best offer of the Employer be considered by the panel?

The Union submits that the answer must be no.

On December 19th, 2005, the parties held the final arbitration hearing on the above listed case. Before the close of the hearing, the parties were given the rules for the filing of the last best offers as well as when the respective briefs were to be filed.

The Union quotes from the transcript:

Arbitrator Dobry:"...Last Best Offers are going to be exchanged through the Arbitrator electronically as attachments on or before January 3, 2006. The transcript will be filed after the 1st of the year, and briefs will be due forty-five days after the transcript, and as I recollect, I have thirty days after the briefs are filed to..."

At this point in his directions to both the Employer and the Union, a clear date was set, January 3, 2006, as the date each party had to submit their offers to the arbitrator.

The Union sought clarification for the record, so that there could be no misunderstanding as to what was to be submitted by January 3, 2006.

Mr. Timpner: "May I ask a question for clarification? On the Last Best Offers that will be submitted to you electronically, I am assuming that the parties are to submit their Last Best Offers not only on our issues by the Last Best Offer on in this case the Employer's issue, and in the exact language that we are asking, seeking the Panel to adopt?"

Arbitrator Dobry: "That would be correct."

Both the Employer and the Union submitted their Last Best Offers, electronically on January 3, 2006. Subsequently, the arbitrator made the exchange of the Last Best Offers by sending, electronically, the Employer's to the Union, and the Union's to the Employer.

The Union argues: "It is clear that the parties were to exchange last best offers electronically, through the arbitrator, in the exact language the party was seeking, by January 3, 2006. It so clear, there is no room for confusion. What happened was contrary to the rules established by Arbitrator Dobry. . . . What is evident, the Employer is seeking to amend its LBO, contrary to the rules established by the panel, after having the benefit of reviewing the Union's LBO. This should not be allowed to occur. The Union is therefore requesting the panel to refuse to accept the second or amended Employer's Last Best Offer submitted in these proceedings. Instead, the panel should consider only the Last Best Offers filed by the parties on January 3, 2006. "

The arbitrator notes that the Union made all of the arguments it could raise, which under other facts and circumstances could have carried the day. As a general rule, the arbitrator believes that the rules are the rules, and that once the agreement is put upon the record and adopted by the panel, the parties must live and die by them. Creating exceptions will interject chaos into the proceeding.

However, the employer's first offer was plainly the firefighter offer that was mistakenly submitted. The employer offers the excuse that this was due to a "clerical error."

The Employer's original Last Best Offer proposed sick time language for employees working eight hours and employees working twenty-four hours. The the majority of the employees in this bargaining unit work a ten hour day. There are simply no employees covered by this bargaining unit that work a twenty-four hour day.

It is significant that the 24-hour language submitted by the Township was nonsensical in the context of the hours actually worked by this bargaining unit. It is abundantly clear that the employer inadvertently proffered a cockamamie offer that made no sense for this unit, in that it was based upon a schedule that had no application here. Putting contractual language in that is a 'dead letter' is not something that the employer would have rationally done.

It is more compelling that the employer did not, as a matter of fact, try to alter or change its position, other than to reaffirm what it had always been offering throughout the proceeding. There was no surprise to the Union, and no attempt by the employer to gain a strategic or tactical advantage.

In the peculiar and narrow circumstances presented, it would be wrong to glorify procedure over the substance of the controversy.

Therefore, the Union's objection is noted and **DENIED**. The Arbitrator will consider the amended offer of the employer, and pass on the merits of the respective offers.

The Merits of the Sick Leave Proposal

4. The Union's last offer on sick leave is *status quo*. It offers the following analysis and final offer:

Sick Time.

The Union does not believe there is any issue with the current sick leave policy. Any issue that may exist is one of an administrative or lack of a fair, reasonable and consistent policy. Because of this, the Union

proposes the following:

No change in the status quo on the current sick leave program. Instead, the Union proposes that the Employer and the Union meet and agree on a procedure for the administration of the sick leave policy that will prevent the possibility of sick time abuse. The arbitrator is to retain jurisdiction for sixty days should the parties not reach a mutual agreement on fair and reasonable policy.

The Township proposed a change to a sick-bank arrangement, along with modifications to the short term and long-term disability programs that is the same as has been instituted with the management and 51st District Court employees. The employer urges the need to maintain *internal* consistency and comparability. It points out the administrative convenience of administering unified systems, which it believes will save costs.

It also urges that the sick-bank concept is consistent with *every* external comparable.

Sick time issue is an economic issue. The Arbitration Panel, over the objection of the Township, determined that this is an economic issue, Nevertheless, the Township maintains its objection and position that this issue is non-economic in nature and should be treated so by the Arbitration Panel.

That being said, the chair believes that the designation of matters as “economic” or “noneconomic” is a fundamental precursor to the drafting of the final offers. To make a change now would truly be ‘changing the rules in the middle of the game.’ Therefore, the employer’s request to treat the issue as noneconomic is **DENIED**.

On the merits, it is worth quoting from the employer’s brief::

“While at first blush it may appear that the Township is proposing a radical change in its sick leave program, in the final analysis, the proposal put forth by the Township is not only not radical because it is consistent with all of the external comparables and accomplishes the [laudable] goal of providing reasonable income security for the common day-to-day illnesses that employees may encounter but, in addition, offers a substantial improvement in both the short term and long term safety net in cases of more extended injury or illnesses. In addition, the Township’s proposal actually rewards those employees, of which there are many, who

have not and will not abuse the system.

“The Township’s reasoning and rational is succinctly set forth by Mr. Seeterlin’s testimony . . . and needs no repetition here. The issue here is not so much one of economics, but rather of productivity and stabilization of the work force so that the Township can continue to provide the reasonable and necessary services to the residents – a factor that should be taken into consideration by the Arbitration Panel.”

To be sure, on the merits of that dispute, the employer proved only that there is a real problem with sick time, in other parts and departments of the township. However, the employer utterly failed to prove that there was a problem with this bargaining unit, whose members have largely been scrupulous in using sick leave for its intended purpose, with no abuse proved. This bargaining unit is definitely not the problem. To the extent that there may be some individual problems, the evidence suggests that this is a prospective administrative issue that can and will be addressed by the command staff.

The current sick leave system was adopted at the behest of the employer. It is a policy that was the product of a negotiated settlement between the parties approximately 13 years ago. The Employer points to a rise in sick leave usage as a reason to change. The increase in usage is a phenomenon that may be in other Township bargaining units, but by the admission of Mr. Seeterlin, this unit is not the problem. Not the problem, but the Employer still seeks to wring a concession from this group.

Mr. Seeterlin believes that under the old system, employees were rewarded for not using sick time by a lump sum payoff of the sick bank at the end of ones career. Any support for this argument is lost since the Employer does not propose to return to what was status quo 13 years ago, but rather something far less.

Employer's exhibit 240 compares the average sick usage among all of the Townships organized employee groups in 2003 and 2004.

Sick Leave by Group

	<u>2003 Use</u>	<u>2003 Avg.</u>	<u>2004 Use</u>	<u>2004 Averag</u>
Teeamsters	8,520.25	86.70	8,407.75	96.00
Dispatch	2,391.00	159.40	1,825.25	130.40
Patrol	6,996.75	109.32	5,377.50	89.70
Police Command	1,453.00	65.20	1,999.50	95.20
Fire	5,894.25	92.10	5,516.00	86.20

Note: Fire Line Personnel work
2912 Hours All others work 2080

Description: This exhibit compares sick leave usage among the Township's labor groups for 2003 and 2004.

Source: Township payroll records

Sick Leave Comparison

<u>Community</u>	<u>Days per Year</u>	<u>Max Bank</u>	<u>Payout Rate</u>	<u>Can be used for family</u>
Bloomfield Township	13	1,000 hrs	Days in excess of 1,000 on 11/1 at 60%	Yes
Canton Township	For verified illness use only, 2 months at 100% for every year of service	18 months		
Clinton Township	12	unlimited	50% of accumulated leave at retirement, 50% of leave in excess of 90 days	Yes
Oakland County	5 days	15 days	None	Yes
Pontiac	12	Primary Bank: 150 days, secondary bank unlimited	50% of accumulated leave in the primary bank	Yes
Royal Oak	12	unlimited	Max of 600 days at 100% at retirement	NA
St. Clair Shores	12	unlimited	200 days at 100% at retirement, days in excess of 200 annually at	Yes

Shelby Township	12	300 hrs.	the 100% rate. Hours in excess of 300 paid at 80% each year. All credit paid at 80% upon severance.	Yes
West Bloomfield Township	12	100 days	Days in excess of 100 paid at 50% each year. All credit paid at 50% upon retirement only.	Yes
Westland	12	1,600 hrs.	Hours in excess of 1,600 paid at 100% each month. All credit paid at 100% upon severance.	Yes
White Lake Township	12	unlimited	50 days pay at retirement	No

The Employer's exhibit clearly does not support the Employers proposal of a maximum accumulation of forty-eight hours. That is less than five days for officers on a ten hour shift. The Union believes this to be unreasonable.

As stated previously, the current system was the product of negotiations between the parties. The record indicates that it was the Employer's proposal that was finally accepted by the parties. The old system that it replaced provided for a day per month accumulation with no maximum. There was a formula that provided for a payoff of accumulated but not used sick time that occurred at the end of the officer's career.

In exchange for the accumulated sick bank and the resulting payoff, the current sick time and disability plan was instituted. After several contracts, the Employer seeks to change the sick leave system by replacing it with something far less than the current or the previous sick leave system provided.

The new system the Employer is seeking to have this panel adopt, provides for an annual payoff of unused time. The current system contains no provision for a payoff for unused sick leave. The proposed plan would contain a provision for an annual payoff that would occur

for any unused sick leave. This is far less generous than the previous plan that was in place.

The Employer maintains that the reason for the change, is the alleged abuse of the system by the employees. The evidence in the record does not support this allegation. The testimony from the Employer witness and its own exhibits indicates that not only do the employees of this bargaining unit use less sick time than the other groups, but sick time usage went down from 2003 to 2004. (See Employer exhibit number 239.) The allegations of wide spread sick time usage and abuse, by this bargaining group are not supported by the evidence in the record.

Mr. Rob Seeterlin, testified that the Employer describes high use as, "...As a group, more than ten days per year on average."

As Employer exhibit indicates, the average number of sick time hours used by employees in this unit was 89.625 hours. This is less than 9 days.

A majority of the panel finds this puzzling. The position of the Employer in these proceedings is different than the position it takes with the firefighters Act 312. The amount of time in the sick leave policy proposed by the Employer for the firefighters fact finding would permit a firefighter to be off a month without losing pay or resorting to the use of other banked time. Police officers are not treated the same by the Employer. The Employer's proposal would amount to four and one half days off before losing pay or utilizing other sources of paid leave. Why the disparity in treatment? Employers exhibit 240 shows that as a group firefighters used only 3.5 hours less than the police officers in 2004. However when a firefighter called off sick in 2004, the Employer didn't charge the employee with twenty-four hours, only eight.

Upon cross examination of the Employer witness, it appears that exhibit 240 was inaccurate, or at least misleading. Specifically, it included members of the bargaining unit who were off on long term illness or injury. There were some former employees listed who were high end users who had long since left employment due to disability retirement. The prospect of

the average use of the group is even less when these corrections are made.

Concerning Employers exhibits 239 and 240, there seems to be an underlying premise that *use* of sick leave automatically constitutes 'abuse of sick leave.' This is simply not true. Employees may be off an extended period of time on sick leave due to legitimate reasons. Maternity leaves, injury leaves as well as leaves associated with the Family Medical Leave Act are anything but sick leave abuse. Employer's exhibits 239 and 240 make no distinction as to why the numbers are what is reported. What is significant is that no one, whose name appears on the exhibits, was ever charged with sick leave abuse.

The Employer testifies at length that it is difficult for the management of the department to administer or enforce the policy. The Union does not disagree. It must be difficult to enforce a policy that does not exist. The Employer could not produce a single document that goes to enforcing the sick leave policy. It doesn't exist.

Union witnesses testified that the Union has always expressed a willingness to work with management to develop such a policy. In sixteen years, the Employer has failed to meet once with the Union. With out a policy in place, it would be virtually impossible to sustain any disciplinary action brought against an employee for alleged sick time abuse. Union witnesses testified, and the Employer agreed, that no employee from this bargaining unit had been brought up on departmental charges of excessive use or abuse, of sick leave.

The Union believes that its solution to the issue is the best result. To change a sick leave policy that has been working for sixteen years due to a perception of sick leave abuse is not the answer. The fact that the parties operated for sixteen years, a sick leave policy that had no administrative guidelines, no definition of what is sick leave abuse, is amazing. What is needed is a comprehensive sick leave policy that defines sick leave abuse and outlines for management how to administer the program.

The Union proposes that a sick leave policy developed jointly between the

parties, will produce a policy that will be clear, unambiguous and supported by everyone. The Chairman agrees. The Union therefore asks that the panel reject the Employer's Last Best Offer on the revised sick leave policy and instead award the Union's position, *i.e.*, maintain the *status quo*. It also mandates the Union and the Employer to meet and jointly develop a fair and reasonable sick leave policy that management will be able to administer. In case the parties are unable to reach an agreement, the Union asks the Chair to maintain jurisdiction with regard to this issue to resolve any impasse.

When one factors in the Fire department's 2912 hour work schedule, the employees in this bargaining unit use less than any other employee group listed in the exhibit. The record indicates that this means that they used less than nine days of sick leave in 2004. This is hardly "abuse of sick time" by any standard.

As the proponent of a contractual change, the employer had the burden of proof on the issue. It had 'the laboring oar.'

A great labor leader from a bygone era, United Mine Workers of America President John L. Lewis, colorfully once said something I can paraphrase as, 'if it ain't broke, don't fix it.' That principle is applicable here.

Therefore, the panel **ADOPTS** the Union's final offer on sick leave as its award.

Wage considerations

5. In evaluating wages, the panel must take into account a myriad of factors. Act 312 itself only hints at the possibilities, although it has an ‘escape clause’ that permits consideration of such other and further factors as are commonly considered by interest arbitrators. Section (h) is broader than the rest of the factors, and is to be “liberally construed.”

The tapestry may include: historical and future comparisons and relationships to other internal bargaining units; external communities and bargaining units, prevailing wages paid in similar communities; wage settlement patterns in the public and private sectors; ability to pay; economic events and prognostications in the community and region; labor market rates; costs of maintaining other benefits (especially health care and retirement costs); cost of living increases; adequacy of staffing, needs and expectations of the public; tax effort; and other factors applicable to the wage proposals.

We are trying to establish a fair rate in the context of the historical relationship of the parties, and taking into account the labor economics concept of “orbits of coercive comparison.” This is *not* the first time that wage rates were established for Waterford police.

Here the panel considers the Township’s Ability to Pay and internal comparability to be crucial factors for the Arbitration Panel to consider in making its findings in regard to the its wage and Sick Leave proposals.

The Township’s argument revolves around the fact that as a result of significant reduced state revenue sharing, increased operational costs and it’s attempts to maintain levels of service in the interests and welfare of the Waterford citizens, it has been spending down its fund balance to the extent that any reserves for additional costs without reductions in services will leave the Township in an untenable economic position or will seriously impact on the levels of service provided to the citizens of the Township. As the evidence showed, the Township has been making extraordinary efforts to raise additional revenue and reduce expenses. Twice in

2004, the Township sought additional millages for police services. Both times the attempts were soundly defeated by the voters. (Twp. Ex. 212). The Township has substantially increased fees for services to bring these fees more into line with the costs for the services as allowed by law. . The Township also has laid off or otherwise reduced 10% of its work force since 2003.

The “fund balance” is the key figure to demonstrate the financial condition of the Township and represents the measure of its ability to provide wage and benefit enhancements to the employees. Waterford’s fund balance, as testified to by Joe Heffernan, of Plante & Moran, the Township auditors, has been eroded significantly in recent years as the Township has attempted to maintain adequate levels of services and continue to provide its employees with reasonable wages and benefits. As a result Waterford’s fund balance is less than is generally acceptable. In his expert opinion, Mr. Heffernan testified that Waterford should maintain a fund balance of approximately 10% of its annual expenditures. Mr. Heffernan’s testimony and Township Exhibit 207 shows that Waterford’s fund balance was well in excess of that level in 2000, but, as the Township’s revenue sources began to dry up, the fund balance in 2004, and beyond, was well below the 10% level. Although the percentage is an important but abstract consideration, it is not the percentage that is significant, but the actual dollars, for it is these dollars from which will come the added wages and benefits demanded by this Union and other employee groups. As Mr. Heffernan testified, there are only two sources from which the Township can draw to pay for employee wages and benefits – the fund balance and any contingencies that have been budgeted.

Also pointed out in the testimony of Mr. Heffernan, Waterford Township has limited means to raise revenues, and, perhaps more importantly, the Township’s ability to raise revenues is significantly less than the ability of the comparable communities. (See Emp. Ex. 110). Excluding the City of Pontiac, which has an income tax as an additional source of revenue, the four other cities, St. Clair Shores, Royal Oak, Westland and Dearborn Heights have

significantly larger millage authority. As cities, these communities can levy up to 20 mils, while Waterford, as a Charter Township is limited to 5 mils. Canton Townships has unlimited Act 33 millage with which to fund its police, fire and EMS services. Clinton Township has Act 345 millage to fund its police and fire pension systems , as does Redford and Shelby Townships. Unlike those communities, all of Waterford's pension contribution come directly from the general fund.

The other major factor referenced by Mr. Heffernan in discussing Employer's Exhibit 214, Mr. Heffernan pointed out that Waterford Township's per capita taxable value is well below the average of the comparable communities. Mr. Heffernan further noted that increased revenue for Waterford is limited because of the lack of new growth.

On the expenditure side, perhaps the largest and essentially uncontrollable problem for the Township is the increased Health Care costs for pensioners. For the Patrol unit, alone, retiree health care costs soared from \$389,890 in 2000 to \$954,202 budgeted in the year 2005, with further increases reasonably anticipated going forward.⁸ (Twp. Ex. 215).

It is clear to this Panel that Waterford's ability to pay for increased wages and any additional benefits is extremely limited, if not impossible, without substantial lay-offs and the attendant reduction in services to its residents.

Aside from the differences between Waterford and the comparable communities previously pointed out, it should also be noted that the Union's comparison with these comparable communities is misleading in another significant respect. All of the comparables, except the City of St. Clair Shores and Canton and Redford Townships, do not provide Social

⁸Two overriding issues in health care are: (1) double digit increases in health care costs, while the cost of living goes up in the low single digits; and (2) legacy costs, that is, the need to pay for the health care costs of present and future retirees. A large portion of the record dealt with the intricacies of the new Government Accounting Standards Board (GASB) Rule 45, which now requires government to recognize on its balance sheets the projected costs of these liabilities. While the rule did not create new liabilities, it did require that they be more prominently stated.

Security coverage, as does Waterford.

One of the most serious considerations in looking at the Township's future income and the resultant financial position is the expiration of the voted Police Millage No. 2, which expires in August, 2006. That millage will produce approximately \$3.6 million in revenue in 2006. The \$3.6 million is approximately 31% of the Police Budget. The Township Board is committed to asking the voters for a renewal of this millage, but, as evidenced by prior attempts for police millages, the outcome of that election is anything but certain. If that millage renewal request fails, the Township will be forced into substantial lay-offs in the Police and other Township Departments. The impact on the interests and welfare of the public should that occur will be substantial and must be considered by the Arbitration Panel in making its findings and award, particularly as it relates to the Union's wage demand for 2007.

One of the criteria listed in Public Act 312 that the panel must consider in its deliberations, if raised, is the Employer's ability to financially afford the economic issues raised by the Union.

Section 9, subsection (c) of the act states:

"Where there is not agreement between the parties, or where there is a 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: * * *

- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs. (See Public Act 312, 423.239 Section 9 (c).

The Employer raises this section of the Act and attempts to make its case through a series of exhibits as well as through testimony of its witnesses.

To be sure, the Employer, not unlike others in the public sector in this state, find themselves facing declining revenue sharing dollars, reduction in property taxes due to Headlee and Proposal A on one side of the ledger, with pressure from employees for wage and benefit

improvements on the other side.

This Employer went to great lengths, in this hearing to portray a picture of financial doom and gloom. Does this accurately show the financial affairs of Waterford?

The Union submits that the answer is no. To support this, the Union would have the Arbitrator examine Employer's Exhibit 202. This exhibit purports to show the rise in revenues, expenditures and the decrease in the fund balance from years 2000 through 2004.

Revenues grew consistently throughout this period from \$11,166,763 to \$13,784,583. This is a 23.4% increase. Over the same time, expenditures grew from \$11,306,654 to \$13,833,252. This is an increase of 22.3%. In short, revenues outstripped expenditures from 2000 to 2004. Exhibit 205 examines Police Fund revenues, expenditures and fund balance from 2000 through 2004. Revenue increases averaged an annualized rate of 5.86% during the period under examination. At the same time, fund balance dropped from 4.81% of expenditures in 2000 to .31% in 2004, as departmental costs outpaced revenues in all but one of the years considered.

This exhibit demonstrates that the Employer always had a fund balance. At no time did it operate in the red. The fund balance declined from \$554,791 in 2000 to \$43,650 in 2004. The situation seems to have stabilized in that revenues and expenditures were virtually even in 2003 and 2004.

The Union notes [footnote in Employer's 202] that revenue increased an average of 5.86% per year.

Employer's exhibit 201 purports to show the increases in the C.P.I. from 1994 to 2004. An examination of this exhibit for the years 2000-2004 indicates that the Employer's revenues outstripped inflation by a large margin each of the years cited.

Consumer Price Index – Urban

Year	CPI - U Annual
1994	2.7%
1995	2.5%
1996	3.3%
1997	1.7%
1998	1.6%
1999	2.7%
2000	3.4%
2001	1.6%
2002	2.4%
2003	1.9%
2004	3.3%

Description: For comparative purposes, the Consumer Price Index for All Urban Consumers (CPI-U) will be used.

Source: United States Department of Labor Bureau of Labor Statistics

The effects of the Employer's proposal would amount to erosion of economic status for the employees in this bargaining unit. They wouldn't keep up with inflation. A benefit the Employer has enjoyed. At the same time that expenditures were keeping pace with revenues, the staffing levels in the police department were dropping.

Employer's exhibit 219 examines total departmental benefits costs in relation to departmental staffing levels for the period 2000 through 2005. Benefit cost included health care, pension, dental, flexible spending seed money, and FICA. In 2004 total benefit costs climbed by \$410,667, or 11.4%, even though departmental staffing levels declined by 5 positions. Between 2000 and 2005, total benefit costs rose by \$1,381,692, or 53%, while the staffing level dropped by 14 positions. The proposed 2006 budget before the Township Board reduces departmental staffing by another three positions to 104.

Exhibit 219 can mislead the inattentive. It reflects both sworn and non-sworn police department personnel. It includes clerical support as well as dispatch. It also counts supervisory staff levels as well. It does however, indicate that staffing levels dropped by 17 positions from 2000 to 2005. In other words less personnel are doing more work.

What about the rest of the services offered by the township? How have they fared in cuts in personnel? Employer's exhibit 221 answers the question:

Township Staffing By Department
2003 v. 2006 (Proposed)

	2003	2006	Difference	Percentage Difference
Supervisor/Assessing	10	9	-1	-10%
Clerk	7	6	-1	-14%
Treasurer	7	7	0	0%
Fiscal & Human Resources	4	3	-1	-25%
Court	35	31	-4	-11%
Community Planning	14.5	9	-5.5	-38%
Information Systems	4	5	1	25%
Facilities & Operations	12.2	10	-2.2	-18%
Building & Engineering	16	10	-6	-38%
Parks & Recreation	17	13	-4	-24%
Police	117	104	-13	-11%
Fire	69	68	-1	-1%
Library	20	21	1	5%
Water & Sewer	52.3	51	-1.3	-2%
TOTAL	385	347	-38	-10%

Description: This exhibit examines the Township's staffing levels from 2000 through the proposed 2006 fiscal year. Beginning 2003, the Township has reduced staffing in almost every department. The spike in 2003 is due to a voter approved dedicated millage to place another EMS unit in service twenty-four hours a day, seven days a week. Twelve positions were created in the fire department to staff that unit. Ten percent of all Township positions have been eliminated since 2003.

Source: Township budgets

This exhibit, when compared to the previous one, is extremely interesting.

Employer's 221 shows the Township reduced staffing levels overall by 38 positions, seventeen of those coming from the police department. While total Township employment fell 10%, the police department lost 14.8% of its budgeted positions. Not all of the seventeen positions were from this bargaining unit. Some were, but the exhibit fails to indicate the number of sworn personnel budgeted positions that were cut. What is significant is that this exhibit demonstrates that the Police Department in Waterford Township suffered the most cuts of any other Township

Department. All this while the Township has a fund balance.

In an attempt to downplay the fact that the Employer has had a fund balance throughout this entire time, the Employer presented Mr. Joseph Heffernan, from the accounting firm of Plante Moran. Mr. Heffernan stated that he is, "... the engagement partner that handles the Waterford Township audit engagement."

Mr. Heffernan testified as to the importance of a community to maintain a fund balance of a certain amount.

Arbitrator Dobry: Why is it important to have a fund balance?

The Witness: That is a good question. Essentially there is two reasons why everyone must have a fund balance, every government.

The first reason I refer to as the cash flow reason, and that is because the cash in any particular government does not come in and out on a rateable basis, on a smooth basis. Property taxes is the single largest revenue source. It comes in in a two-and-a-half-month period, from December through March. State-shared revenue is the second largest source. It comes in in one check every two months. So any particular government, if you were to look at their cash balance, it is going to fluctuate up and down, and so you need to have enough fund balance to take you through the troughs. That is reason number one, just to smooth out the cash flows.

Reason number two, some people use different words for that. Rainy Day Fund, Contingency Fund, and that is the unanticipated expenditures.

Mr. Heffernan went on to state that in 2000 the Township had a fund balance well above his recommended 10% level. He went on to testify that each succeeding year after 2000, the fund balance dropped to a low in 2003 to 764,000. However, Mr. Heffernan went on to state that in 2004, the Township almost doubled its fund balance by raising it to 1.3 million. Mr. Heffernan told the arbitration panel that the 2005 budget indicates the fund balance of the Township maintaining a 1.3 million dollar balance.

But what about these proceedings and what effect could it have on any fund balance? Mr. Heffernan's answer to this question is quite interesting.

Q. And are you familiar with the fact that the Township had – now there hasn't been a contract, as evidenced by this hearing. Did the Township put in any contingencies in their budget for potential

expenses, wage increases and such?

- A. Mr. Heffernan: My understanding from talking with the Budget Director is that the Township has put some contingencies in that 2006 budget which would cover any combination of expenditure increases that were unforeseen in the original budget and revenue shortfalls that were unforeseen in the original budget, yes.

It is evident that the Employer has set aside money in anticipation of wage and benefit increases that may arise out of these proceedings. How much was set aside? The record does not indicate. What ever was set aside, has been augmented since the Union brought a health care plan to the table that provides significant savings to the Employer.

This bargaining unit took what it believes to be a responsible position in this round of negotiations and presented a health care plan that not only reduced the Employer's cost, but at the same time improved the benefit level. It an almost unheard of move, the Union permitted the Employer to implement the new plan prior to the issuance of a decision by the panel on all of the outstanding issues. The Union even sweetened the offer to the Employer by making this health care plan available to non-bargaining unit members and thereby increasing the savings to the Employer. The effect was the Employer began realizing savings that they hadn't planned or anticipated beginning in December of 2005. Since that time, other Township employees have chosen this plan resulting in an even greater savings to the Employer.

Employer exhibit 216 shows the savings on just the family rate for the Blue Cross Blue Shield family rate for the new CB 10 plan which was part of the agreement. The MET Trust, the plan brought to the table by the Union, has an even greater savings since it is cheaper than the CB 10 Blue Cross Blue Shield plan.

Exhibit 216 compares the Township's family base health insurance plan cost to inflation for the ten year period from 1996 to 2005. During this period the Township's health care cost rose by 91.77%, for an annualized 10.22% average. This figure includes the recent change in the bargaining unit's base plan to Community Blue 10. Inflation for the period, as

measure by the CPI-U, was 23.7%, for an annualized 2.63%.

Even though the Union took the responsible position and worked to give the Employer relief in the area of health insurance premiums, the Employer still seeks to have this bargaining unit subsidize the Township fund balance by accepting further wage and benefit cuts. Based upon the evidence in the record, the Union believes that the Employer has failed in its burden to prove a pure “inability to pay” as outlined in section 9 (c) of Public Act 312. The employer has not actually undertaken that burden. It did not offer across the board zero percent increases, for example. Rather, its arguments, and the record do show that there are limits on what the Township of Waterford can prudently handle. This makes the total sum of the Union’s demands unreasonable, since it is foreseeable that leadership by this Union will result in a ‘whipsaw effect’ with other employee groups. Layoffs are something this Arbitration Panel wants to avoid. We do not want to significantly reduce services and protections to the citizens of Waterford Township.

While each annual wage increase must be considered separately, the Panel considered the over-all costs of any wage increases for the life of the contract.

Based upon the financial statements and Mr. Seeterlin’s testimony, if the Panel were to grant the Union’s demands, in full, without compounding, the cost to the Township over the four years of the Union’s proposal would be \$1,514,115 for the MAP unit alone. That is well beyond any conceivable ability of the Township to pay. It is reasonable to assume that if this Arbitration Panel granted the Union’s wage requests it would set a pattern for the other public safety bargaining units in the Township. The total cost of the Township’s proposal is \$882,718.

A year-by-year breakdown of the Union’s demands, compared to the Township’s offer, shows that the Union’s demands exceed the ability of the Township to pay in these tough economic times. State aid to townships has become unpredictable, unreliable and withered away on a consistent basis.

The 2% the Union demands in the first year would be a cost to the Township of \$429,837 over the four years for just the MAP unit. But it could get worse. If this award were to set a pattern for other public safety units, the costs would escalate to the Township to \$1,152,181. This cost alone would all but erase the Township's fund balance. The Arbitration Panel cannot, in good conscience, grant the Union any increased wages for 2004.

In the second year, the Township proposes a 3% wage increase, while the Union demands 3.5%. The cost of the extra .5% over the three years – 2005-2007 – would be \$78,179.

In the third year, the Township again proposes a 3% wage increase and the Union again demands 3.5%. The cost of the Union demand, over and above the Township offer, for the last two years of the contract would be \$53,410.

The Union's fourth year demand is equally troublesome. The impact of the additional 2½% wage increase in mid-year adds an additional cost to the Township in 2007 above the Township's proposed 2% for the full year, of \$69,010. Again, if we take into consideration the fact that this award will likely set a pattern for all public safety units, this would mean a 4.55% wage increase for all units in 2007. If the requirement that the Arbitration Panel must consider the employer's ability to pay means anything at all, the Union's fourth year demands in this case must be rejected. If, for example, the Panel were to accept, as it should, the Township's wage freeze proposal for 2004, and then grant the Union's demand for 2007, all that would accomplish is to delay the inevitable collapse of the Township's financial situation.

The Township's projected fund balance on December 31, 2006, would be approximately \$1.3 million. It is obvious that granting of the Union's demands for 2004, much less the proposals for 2005, 2006 and 2007, will certainly wipe out the contingencies budgeted as well as most, if not all, of the projected fund balance. Waterford Township simply does not have the economic ability to meet the Union's demands without substantial lay-offs and the resultant reduction in the services to the citizens of Waterford.

In considering internal equity, the Arbitration Panel notes that Management employees received no wage increase in 2004 and Teamsters Local 214, which represents the general employees of the Township agreed to accept no wage increase for 2004. The township is leading by example. This is an important consideration.

In considering the wage proposals for 2004, and beyond, the Arbitration Panel paid close attention to how the Union fared in its wages compared to the cost of living. Since 1994 through 2003, the cost of living has increased by 26.49%, while the base wages of each member of the MAP bargaining unit has increased by more than 43%. (Twp. Ex. 222). In reviewing the most recent contracts with the Patrol unit and the Police Command unit, it is apparent that the Patrol Unit has fared very well in the preceding three years, receiving a total of 14.5% increases compared to 13.6% for the Command unit. (Twp. Ex. 225).

From a historical standpoint, in 1991 Waterford Township's police patrol base pay ranked last or next to last when compared to the comparable communities. (Twp. Ex. 224). In 2003, Waterford Township had moved from next to last to 7th out of the 12 comparable communities. (Twp. Ex. 223).

Moreover, when the Arbitration Panel looks at 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 Waterford Township moves to the head of the class of those comparable communities for which the information is available. (Twp. Ex. 226).

Wage award

6. Both the Township and the Union failed to strike the correct balance in their wage proposals. The Panel had to come to grips with economic reality.

In light of all the foregoing, it is evident that the state, region and this community have been gravely wounded by the economic downturn, and especially the decline in manufacturing. It is significant that Michigan is 49th in unemployment, just ahead of Louisiana. The present costs of health care, and the projected increases over the life of the contract, will present real challenges to the employer.

In short, ability to pay and internal comparability are the overriding reasons for the panel's decision on wages.

The parties have each made the following wage proposal:

	1st year	2nd year	3rd year	4th year	4.5 year
	1/1/04	1/1/05	1/1/06	1/1/07	7/1/07
Employer proposes	0%	3.0%	3.0 %	2.0%	0.0%
Union proposes	2%	3.5%	3.5%	2.5%	2.0%

The 2nd year would be retroactive to January 1, 2005. The third year would be retroactive to January 1, 2006. The fourth year is divided into two parts, one being effective January 1, and the other being effective July 1, 2007.

Therefore, a majority of the Panel makes the following award on increased base wages.

Panel awards	0%	3.5%	3.5%	2.5%	0.0%
---------------------	----	------	------	------	------

7. The Panel expressly determines that all other requests for changes in the current collective bargaining agreement are not supported by competent and substantial evidence, and therefore, those requests are denied.

V. CONCLUSION AND AWARD

For all the foregoing reasons, the Panel hereby awards the foregoing provisions, adopts this statement as its complete award, and remands this matter to the parties for the drafting of a collective bargaining agreement in accordance with the determinations set forth above. The Arbitration Panel retains jurisdiction as indicated in the Union's offer on Sick Leave. Otherwise, the panel does not retain jurisdiction.

STANLEY T. DOBRY, Impartial Chairman

Dated: May 16th 2006

I **concur** on those issues and the reasoning on which the employer prevailed. I respectfully **dissent** from those in which it lost.

STANLEY KURZMAN, Employer Delegate

Dated: May 16th 2006

I **concur** on those issues and the reasoning on which the Union prevailed. I respectfully **dissent** from those in which it lost.

FRED TIMPNER, Union Delegate

Dated: May 16th 2006