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STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION

TOWNSHIP OF WATERFORD

-and-

Case No. D03 L-5716

COMMAND OFFICERS ASSOCIATION  
OF MICHIGAN

July 14, 2006

DECISION AND AWARD

I. INTRODUCTION

The collective bargaining agreement between these parties expired on December 31, 2003. The Union filed a Petition with the Employment Relations Commission for Act 312 Arbitration, dated December 26, 2003. The Chairperson's appointment letter is dated March 18, 2004.

A pre-hearing conference was held on October 24, 2005. The Township and the Union named Stanley Kurzman and Gerald Radovic as their respective Delegates for the Panel. The Advocates are Robert Seeterlin for the Township and William Birdseye for the Union. The conference identified the issues in dispute, established tentative dates for hearing, named the agreed-upon comparable communities and addressed other procedural matters.

After the pre-hearing conference and before the first hearing date, the parties resolved several issues and requested that the Panel issue an "Interim Order" setting forth these matters as an "Award". The hearing was held on January 20 and March 21, 2006. The parties' last offers of settlement were exchanged on April 10, 2006; the parties' post-hearing briefs were exchanged on May 22, 2006. The Panel met to review the Opinion and Award on July 13, 2006.

The bargaining unit is composed of sergeants/detectives and lieutenants, employed by the Waterford Township Police Department, twenty-one at the time of the Petition.

On each issue the Panel has been guided by Section 9 of Act 312 and its recitation of factors to be taken into consideration in

order to resolve this dispute and reach its decision. The record of evidence and argument establishes that the parties emphasize these Section 9 factors:

(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... 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 ...

(f) The overall compensation presently received by the employees... .

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors ... which are normally...taken into consideration in the determination of wages, hours and conditions of employment

To implement §9-d, the parties agreed upon the following six communities for use as external comparables: Canton Township, Clinton Township, Shelby Township, Pontiac, Royal Oak and Westland. The statute also contemplates the use of internal comparables; in this proceeding, the Township has submitted relevant data, most particularly concerning the firefighters and patrolmen, but also it refers to a Teamsters unit, non-union administrative employees and court employees. "During the pendency of the [instant] proceedings," panels issued Act 312 Decisions for Waterford's Patrol Officers and Firefighters.

The City urges the Panel to consider primarily its ability to pay for the costs of providing services as well as the interest and welfare of the public. The Township's police operations are financed from a separate Police Fund; in turn, the monies in that fund come from three sources - a transfer from the General Fund (fifty-one percent), a dedicated tax millage or property tax (forty-six per cent), and an amount described as "own-source" revenues such as charges for services, fines and fees, licenses and permits, State and Federal sources (three per cent). (Township Exhibit 103)

The Township notes that the General Fund -- which gets its monies primarily from property taxes and state-shared revenue -- is the major contributor to the Police Fund. Property taxes have substantially leveled off with little prospect for increase; receipts from state-sharing declined both from 2001 - 2004 in actual and real (purchasing power) amounts. The Employer asserts it has lost \$3.6 million to inflation in that period and it expects State revenue-sharing payments to stay flat for the next two or three years.

Concerning Waterford's ability to increase its revenues, the amount coming from state-sharing is beyond its control. Its legal status makes it less able to increase its millage assessments than the comparable communities: three are cities allowed higher millage (up to twenty mills) rates; townships are limited to five mills; Canton and Clinton Townships operate under Public Act 33 which permits a special assessment for police, fire and EMS services; Shelby Township voters approved coverage by Act 345 which allows levies for police and fire pension contributions. (Township Exhibit 100; transcript Volume I, pp. 10 -13<sup>1</sup>) Waterford ranks sixth among the comparables in per capita revenue. It has submitted four millage requests for additional police funding, in 2002 and in 2004; the first two were approved and the last two were rejected. (A vote on renewing the existing millage is scheduled for August 2006.)

Heffernan stated, as to the prospects for increased revenue, that Waterford is a "built-out community" meaning that taxable value increases from the sale of property but generates no new dollars because of the Headlee Amendment. (Tr. I, p. 21-23).

The Police Fund's five-year history (2000 - 2004) reveals that in all but 2003 its expenditures exceeded revenue, leading to a diminution of the Fund's balance from \$554,791 in year 2000 to \$43,650 in 2004. (Township Exhibit 102) Pertinent to this matter is the balance in the General Fund. Heffernan stated that "an adequate level of fund balance" for a community the size of Waterford Township is ten percent of expenditures. (Tr. I, 17) In 2004, the level was 6.5 percent; together with the Police Fund and the Fire Fund, the fund balance of the three funds was about five percent.

Heffernan stated that increased spending for pensions and health care explained much of the rise of expenditures in relation to revenues, both in the Police Department and Township-wide. In an effort to curb its outlays, the Township has reduced staffing levels in the Police Department from 117 employees in 2003 to 104 in 2006. It eliminated ten percent of all Township positions in this period.

The Union does not challenge the Employer's evidence with respect to its contentions concerning limitations upon its ability to meet the Union's demands. However, it urges consideration of equitable factors with respect to wages; it also contends the Township could make further cuts in services to the public, in effect giving uppermost fiscal primacy to public safety operations.

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<sup>1</sup> J. Heffernan, Audit Partner at the accounting firm of Plante and Moran, is in charge of professional standards for the public sector group. His firm has audited Waterford Township since the mid 1980's. He provided much of the testimony and exhibits concerning the Township's financial status.

The parties have submitted to the Panel three issues for decision: Duration, Wages, Sick Leave/Short-Term/Long-Term Disability. Further discussion of the Section 9 factors will be had in addressing the contractual issues.

## ISSUES

### I. DURATION

The Township proposes a three-year term for the Agreement commencing January 1, 2004. The Union seeks a four-year term. The Act 312 Panel for the patrol unit, issued at about the time of the submission of Last Offers and Briefs in this proceeding, awarded a four-year duration.

The Township argues the terms for the succeeding Agreement, starting January 2007, should wait upon the result of the upcoming (August 2006) police millage, when the parties will be informed about available revenues. The Union urges that the term of the 2003-2006 Agreement will expire within approximately six months of its likely June 2006 inception, necessitating almost an immediate return to bargaining.

Conclusion. The Panel finds the Union's position to be the more persuasive. For the parties to be required to return to negotiations so quickly is burdensome. The additional time will allow the opportunity for consideration of the fiscal circumstances as well as other pertinent factors. A four-year term will be awarded.

### II. WAGES

The parties agreed to have each year's wages decided separately and not as an overall wage package. Further, in its deliberations, the Panel adopted a 2.5% increase for the fourth year of the Agreement, commencing January 2007.

The Township offers for the first three years of a new contract the following: 2004 - 0%; 2005 - 3%; 2006 - 3%. The Union's final offer of settlement is as follows:

#### January 1, 2004

##### Sergeants

Start 6% above highest base wage for police officer upon promotion.

Full 12.5% after six months in rank.

##### Lieutenants

Start 6% above highest base wage for sergeant upon promotion.

Full 10% after six months in rank.

#### January 1, 2005

##### Sergeants

Start 6% above highest base wage for police officer upon promotion.

Full 13.5% after six months in rank.  
 Lieutenants  
Start 6% above highest base wage for sergeant upon promotion.  
Full 10% after six months in rank.

January 1, 2006

Sergeants  
Start 6% above highest base wage for police officer upon promotion.  
Full 14.5% after six months in rank.  
 Lieutenants  
Start 6% above highest base wage for sergeant upon promotion.  
Full 10% after six months in rank.

According to the Employer, its offer for three years yields an increase in wage costs of \$178,960. Its comparable calculation for the Union's demand is \$266,851. (Township Brief, pp. 13-14.)

Comparison of Waterford Sergeant top pay with the six communities shows for the two years available, 2003 and 2004, that Waterford ranked fifth in 2003 and sixth in 2004.

As to the internal units, the Act 312 Panel for the Patrol Unit awarded no increase for 2004, a 3.5% increase in 2005 and 3.5% in 2006, higher than the 3.0% the Employer proposes for the Command Unit. The Act 312 Panel for the Firefighters awarded no increase for 2004; it adopted the parties' agreed-upon wage increases, 3% for 2005 and 3% for 2006.

Discussion. The Employer emphasizes as to the year 2004 that union-represented Township employees (Patrol Officers, firefighters, Teamsters, Dispatchers) as well as the non-union Management & Administrative group received no wage increase.

In the prior three years the Patrol Officers and Command Officers had received the following increases:

<u>UNIT</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Patrol Officers	5.0%	5.0%	5.0%
Command Officers	4.7%	4.6%	4.3%

The COAM contends it should be treated differently in 2004 because it had received "a shortfall" in the previous three years; that is, it had gotten an increase that was 1.6% less than the Patrol Unit obtained. "The effect of the Union's offer in the first year, 2004, is to grant a 1.5% increase." (Union Brief, p. 4)

Of the six comparable communities, according to the Employer's Brief, three have negotiated rank differentials. This bargaining unit has not had such wage provision in the past. The Employer argues that to introduce this change to its pay structure is so major that it should be left to bargaining rather than put in place by this tribunal.

The Employer's concern for its ability to pay is well-founded; nonetheless, the public has an obligation to provide funds sufficient to compensate its public safety personnel. It must be educated to understand the interrelationship between public service and commensurate funding.

Balancing the equities of the parties and making a small step toward effecting the structural relationship sought by COAM among the three levels of police officers, the Panel will award the following: for year I, 2004, the Township's Offer of no wage increase will be awarded; for year II, commencing January 2005, a differential for sergeants of 13.5% over the patrolman top rate and a differential for lieutenants of 10% over the sergeant top rate is awarded. For year III, commencing January 2006, the Township's offer of 3% is awarded. For the year commencing January 2007, the agreed-upon increase of 2.5% is awarded.

### III. SICK LEAVE, SHORT AND LONG TERM DISABILITY

Briefly stated, Article XXIII provides the current Sick Leave benefit allowing employees to use sixty calendar days for each illness or injury.<sup>2</sup> A **Long Term Disability** benefit (Article XXV) commences on the 61st day of incapacity; it pays 75% of regular wages for a total of twelve months from the onset of the disabling condition. The sick leave policy has been in effect for about ten years. The following examination addresses only the provisions deemed most critical for decision.

The Employer proposal would cap sick leave at 48 hours; unused days are paid off at the end of the year. If the sick leave allowance is exhausted, the employee may use vacation, personal leave or compensatory time off to cover the absence.

The Employer further proposes to establish a Short-Term Disability plan; it starts after a seven (consecutive) day absence and pays the disabled employee 80% of base wages for sixty calendar days. Coverage at 60% of base wages takes over from the sixtieth day through 180 days. A Long-Term Disability benefit would then provide a benefit (60% of base wages) starting after the 180 days and until normal social security age.

The Union seeks to maintain the status quo; it proposes no change to the present sick leave provisions. (Articles XXIII, XXV)

Discussion. Seeterlin testified that the Township seeks to change its current sick leave plan because it is "seeing... high usage" which he attributes to there being no sick bank and hence, employees "have no stake in the time off...". (Tr. II, p. 20)

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<sup>2</sup> R. Seeterlin, Director of Fiscal and Human Resources, provided testimonial evidence for the Township on this issue.

The Union challenged the Employer's data regarding utilization of sick leave by this group; its figures for 2004, accepted in the record, reduce usage from the Township's 2,115 hours to 1904.50.

More important, the evidence shows that in 2004 three of the four employees with the highest usage had been hospitalized; in the case of the fourth, his absence was caused by his wife's several surgeries. While their combined usage was 1050 hours, their absences (and others) were documented and clearly are not examples of sick leave abuse.

Employers, including this one, are not without the means to control an employee's excessive absenteeism that is suspected of constituting abuse. Patterns of abuse are discernible: absence on the day before or after a day off, frequent one-day absences are but two examples. The requirement for verification in such a circumstance may well cure the problem.

Conclusion. The Panel is persuaded to reject the Township's proposal. The current plan is the product of the parties' negotiation and agreement. The proposed plan does not simply 'tweak' the previous policy, but rather, it introduces a major structural change. As the Employer argued with respect to wages,

[W]here an employer proposes a change in the status quo without presenting convincing and compelling evidence to support a change, nor evidence of a drastic change in circumstances, the party has not met its burden and the status quo must continue. (Township Brief, p. 13)

The primary basis for proposing the change is the Employer's interest in curbing sick leave abuse. The record evidence does not support the existence of such abuse. Hence, there is no "convincing and compelling evidence to support a change".

AWARD

I. DURATION The Union's offer - a four-year term for the Agreement, commencing January 1, 2004 and expiring December 31, 2007 - is awarded.

II. WAGES The Township's Offer for 2004 providing no wage increase is awarded. For the year commencing January 2005, the Union's offer is awarded:

Sergeants

Start 6% above highest base wage for police officer upon promotion.

Full 13.5% after six months in rank.

Lieutenants

Start 6% above highest base wage for sergeant upon promotion.

Full 10% after six months in rank.

For the year commencing January 2006, the Township's offer, a 3.0% is awarded. For the year commencing January 2007, the agreed-upon increase of 2.5% is awarded.

III. SICK LEAVE, SHORT TERM AND LONG TERM DISABILITY. The Union's Offer, namely, status quo or no change to Articles XXIII and XXV is awarded.

The Panel adopts the parties' Interim Award. It is incorporated with this Decision in Appendix A.

  
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Ruth E. Kahn, Panel Chairperson

  
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Stanley Kurzman  
Employer Delegate

  
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Gerald Radovic  
Union Delegate