

2166

**STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC)
ACT 312 ARBITRATION**

IN THE MATTER OF:

POLICE OFFICERS LABOR COUNCIL,

Petitioner,

vs.

Case No. L05 K-4001 (Non-Supervisory Employees)

Case No. L05 K-4002 (Supervisory Employees)

CHARTER TOWNSHIP OF LANSING,

Respondent.

OPINION AND AWARD

ADVOCATES:

FOR POLICE OFFICERS LABOR COUNCIL:

MARK DOUMA, ESQ.
John A. Lyons, P.C.
675 East Big Beaver Road, Suite 105
Troy, MI 48083

FOR CHARTER TOWNSHIP OF LANSING:

MICHAEL R. KLUCK, ESQ.
Michael R. Kluck & Associates
4265 Okemos Road, Suite G
Okemos, MI 48864

MERC ACT 312 PANEL:

ALLEN J. KOVINSKY, Chairperson
HOMER LaFRINERE, Police Officers Labor Council Delegate
JOHN DAHER, Panel Representative for Charter Township of Lansing

I. STIPULATIONS.

1. The parties in Joint Exhibit 1 stipulated to the following items:

- A. Exhibit 10 A – Supervisory Agreement terms not in dispute.
- B. Exhibit 10 B – Non-Supervisory Agreement terms not in dispute.

2. The issues in dispute are all economic and include:

- A. Wages;
- B. Retroactivity;
- C. Which employees are to be included in the Award; and
- D. Light Duty.

3. The Panel will render its Award with respect to wages with each year of the proposed three year agreement to be a separate determination.

4. The comparable communities are:

- A. Bath Township;
- B. Buena Vista Township;
- C. Flushing Township;
- D. Northfield Township; and
- E. St. Joseph Township.

5. All issues with the exception of those set forth in Paragraph 3 have been settled or have been waived by the parties.

6. The parties stipulate that there are no procedural issues with respect to timeliness.

7. The parties stipulate that the disputed issues were properly before the Act 312 Panel; however, notwithstanding this stipulation, the Employer had preserved an objection to the Panel's jurisdiction to enter any award on the "Light Duty" proposal of the Union, as it contends such proposal is a permissive subject for collective bargaining. The Township further had not agreed to bargain on that permissive subject. It should also be noted that at the time of the Executive Meeting of the Panel members, the members of the Panel jointly stipulated (unanimously) that if the issue were to be determined contrary to the last best offer of the Police Officers Labor Council, the determination would be on the merits only, without regard to the procedural issue raised by the Township with respect to whether or not the item is or is not a permissive subject of bargaining.

8. The parties further stipulated to the receipt by the Panel of all of the relevant Exhibits as follows:

- A. For the Union, Exhibit 1, tabs 1 through 7; and
- B. For the Employer, Exhibits 1 through 51.

9. At the time of the Executive Meeting of the Panel members, it was jointly stipulated that with regard to the issue of who was to be included in an award if retroactivity were to be granted in order to be eligible, an ex-employee must qualify for health benefits and further, must have qualified under the defined contribution plan for full vesting.

10. The parties further stipulated that all issues which had been tentatively approved are included by reference in this award. In addition, all items of the prior collective bargaining agreement, which were not revised, amended, deleted, or added to by the tentative agreements and/or by this Award are included in the Award by reference as well. (It should be noted that Employer Exhibits 10A and 10B were stipulated to by the parties as embodied by the entire collective bargaining agreement for both the Supervisory and Non-Supervisory Units, with the exception of the issues which are to be determined by this Award).

II. LAST BEST OFFERS.

1. Wages.

A. The Union's last best offer for a wage increase was as follows:

- (1) Effective 1-1-06, 2.0% across the board;
- (2) Effective 1-1-07, 2.5% across the board;
- (3) Effective 1-1-08, 3.0% across the board.

B. The Employer's last best offer is as follows:

- (1) Effective the first year, 1% across the board, effective the first full payroll period after the date of the Act 312 Panel's Award.
- (2) Effective the second year, 2% across the board, effective the first full payroll period after January 1, 2007.
- (3) Effective the third year, 2.5% across the board, effective the first full payroll period after January 1, 2008.

It should be noted that both the Union's and the Employer's last best offers for wages and all other issues are applicable to both the Non-Supervisory and the Supervisory bargaining units.

2. Retroactivity.

A. The Union's last best offer requested retroactive wage payments resulting from any awarded wage increases back to January 1, 2006.

B. The Employer's last best offer as noted above for the first year was based on the first full payroll period after the date of the Act 312 Panel's Award. Accordingly, the Employer objected to retroactivity, but rather proposed its wage increases on a prospective basis from the date of the Panel's Award.

C. The Union's last best offer with regard to who was to be included in the Award for the purpose of retroactive wage payments was initially as follows:

"Appropriate retroactive wage payments shall be made to all individuals employed in either bargaining unit on or after January 1, 2000, who, prior to the date of the Award, were not discharged for cause or did not voluntarily resign from employment for reasons other than retirement."

D. The Employer's last best offer was as follows:

"Wage increases, including any retroactive pay adjustments will be applicable only to employees on the active payroll as of the date of the Act 312 Award. Any

employee who has retired, quit, or has been terminated prior to the award date, shall be ineligible for any retroactive pay or wage adjustment.”

3. At the time that the Panel met, it was unanimously stipulated by the Employer and the Union that in order to be eligible for retroactive wage payments, if granted, an employee must have qualified for health benefits and must have qualified under the defined contribution plan for full vesting. This would include any employees who voluntarily left the bargaining unit and/or retired if they otherwise qualify as hereinabove set forth, but would exclude employees who had been terminated for cause.

4. The Union’s last best offer with respect to light duty assignments requested that the following language be inserted into the collective bargaining agreement:

“All employees who may become unable to perform their normal job description duties due to medical restrictions associated with either work-related or non-work related injuries or illnesses, shall be assessed for “light duty” and shall comply with light duty job assignments. The goal of the program is to get the employee back to productive employment in normal duties as soon as medically possible. Light duty jobs have been developed to enable the Employer to assign employees to work which will accommodate their medical restrictions.

The Employer will assign light duty jobs after review of medical evidence of restrictions. These light duty jobs may or may not:

- A. Be located in the department where the employee is normally assigned;
- B. Be within the bargaining unit where the employee is normally assigned;
- C. Consist of duties which the employee normally performs; and
- D. Take place during shifts which the employee normally works.

Officers will not be assigned to perform custodial or maintenance duties. However, all light duty job assignments will be made consistent with the medical restrictions associated with the employee’s injury. Officers on light duty assignments shall not be counted for regular staffing purposes, and nothing herein shall limit management’s right to determine appropriate staffing levels.

All employees assigned to light duty will report to that work site as directed, take directions as given by the job site supervisor, and perform duties as instructed. Employees on light duty shall receive their regular hourly rate of pay and benefits. The maximum period of time an employee can be on light duty for any one illness or injury is twelve (12) consecutive months.”

The Employer’s last best offer with respect to light duty was as follows:

“Include no provision in the collective bargaining agreement with respect to light duty.”

It should also be noted that the Employer objected to the issue in its entirety on the basis that it was a non-mandatory subject of bargaining, but rather a permissive subject, and the Employer had not agreed to bargain on that issue. However, as previously noted, the parties, through their Panel members, stipulated that if the decision were to be to retain the status quo, that is to say no provision with respect to light duty in the new collective bargaining agreement, it would be appropriate to determine the case on the merits, rather than on the procedural issue.

III. INTRODUCTION AND BACKGROUND INFORMATION.

The Charter Township of Lansing, hereinafter referred to as the “Employer” or “Township,” and the Police Officers Labor Council, hereinafter referred to as the “Union,” are parties to collective bargaining agreements covering the Supervisory Division and Non-Supervisory Divisions of the Township’s police department. Both of the contracts were effective when signed in March of 2003 and had original expiration dates of December 31, 2005. Subsequently, the Employer and the Union agreed to extend the contracts through January 31, 2006.

Negotiations for successor collective bargaining agreements commenced in November of 2005. The parties were unable to successfully negotiate an entire new collective bargaining agreement, and as a result, petitions were filed for both bargaining units pursuant to the provisions of Act 312. According to the Employer, it had discussed its “weak economic position” with the Union and submitted proposals designed to control its spiraling health insurance costs and maintain the work force without increasing expenditures.

Prior to the Act 312 hearing, the parties had reached agreement on most of the economic and non-economic issues. Those Agreements were incorporated into Employer Exhibits 10A for the Supervisory Division and 10B for the Non-Supervisory Division. Included in the Agreements were a proposal by the Union to modify the pension plan from a defined contribution plan to the “MERS Defined Benefit Plan” with a B3 multiplier, F55(25) early retirement provision, disability, and the D-2 Rider.

The Employer also achieved insurance costs containment provisions by increasing office visit co-payments from \$10 to \$30, prescription drug co-payments from \$15 generic/\$30 brand name to \$10 generic/\$40 brand name, and upon the signing of the new agreements, employees/retirees will contribute \$12 per pay period toward the cost of health care coverage.

The hearing was convened before the Act 312 Panel on November 13, 2006, at the offices of the Charter Township of Lansing and was concluded on the same date. At the hearing, stipulations were entered into, exhibits introduced, and testimony taken. Subsequently, the parties exchanged the last best offers as set forth under Part II of this decision.

It should be noted that the Panel has considered all provisions of Section 9 of Act 312 (MCLA §423.239) which were applicable to the issues before the Panel. The Act provides the following criteria:

- A. The lawful authority of the Employer.
- B. Stipulation of the parties.
- C. The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- D. Comparison of wages, hours and conditions of employment of the employee involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. 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 times, 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 proceeding.

H. Such other factors and not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Employer has urged that for purposes of comparability, the Panel take note of the thoughts of Arbitrator, Robert A. Howlitt, who noted:

“Examination of the cases decided by the arbitration panels in the several states that use final offer arbitration discloses that the comparability factor is one of the most significant in the decision making process. The panels look to comparable units of government and possibly to some private enterprises for both economic and non-economic issues.”

Further, the Employer urges the Panel, for purposes of comparability, to take note of the thoughts of Ronald Helveston and Alison Paton from their article entitled, “An Act 312 Primer; Interest Arbitrations for Fire Fighters and Police in Michigan,” 64 Michigan Bar Journal, 1060 (October 1985) wherein they stated:

“The criteria usually employed in selecting comparables include:

1. Type of Departments: for example, a full-time, non-volunteer fire department should not be compared with volunteer fire department or public safety (consolidated police and fire) departments.
2. Size of Department.
3. Geographic proximity.
4. Population; ratio of population to employee.
5. Size of community in square miles; ratio of square miles to employee.
6. Number of housing Units; ratio of housing units to employee.
7. Type of community: industrial, commercial, residential.
8. Per capita income; household income; family income.
9. Tax base as measured by SEV.
10. Millage rates.

11. Annual number of fire runs, medical runs, arrests; ratio to employee.
12. Crime rate (per capita and per employee).
13. Comparable communities historically used in Act 312 Arbitrations.”

It should be noted that the Panel has carefully considered all of the Exhibits of the parties. In terms of population, the Charter Township of Lansing was last among the comparables, but second in terms of taxable valuation. In terms of comparable units, the Supervisory Unit of two employees in Lansing was tied with two of the comparables, ahead of two of the comparables, and behind one of the comparables. The Non-Supervisory bargaining unit of 11 members was third in size when compared to the other comparables.

It should be noted that the Township reached agreement on or about June 16, 2006 with its fire fighters. The fire fighters received wage increases of 1% effective after the first full pay period of the Township Board’s ratification, which then put the first year increase into effect in July of 2006, and in addition the fire fighters were to receive 2% on or after January 1, 2007, and an additional 2.5% on or after January 1, 2008.

The revenues of the Township have remained fairly steady with revenues being \$3,812,000 in 2002 and \$3,794,000 in 2006. Revenues for 2007 were projected to be \$4,083,000 and in 2008, the projections are for \$3,764,000. Annual revenue sharing was approximately \$874,000 in 2002, but through November 1 of 2006 was only \$596,000. The prior years showed a declining trend as well.

The general fund balance of the Township was approximately \$980,000 in 2001 and by 2006 had been reduced to approximately \$318,000. It should also be noted that the Township’s witness, Mr. Aaron Stevens, a partner in the C.P.A. firm of Abraham and Gaffney, testified to the fact that the recommended fund balance for municipalities should be between 15% and 20% of their annual budget or the equivalent of approximately 60 days of operation in order to eliminate short-term borrowing costs. As far as comparables are concerned, two of the comparables had a lower fund balance, two had a much higher fund balance, and one had a slightly higher fund balance. The fund balances range from a low of approximately \$82,000 in Buena Vista Charter Township, to a high of \$1,356,000 in St. Joseph Township for 2005, which was the last year for which the comparables appeared in the Exhibits. With respect to the fund balance as a percentage of annual expenditures and other financing costs, the Charter Township of Lansing had the second lowest fund balance for 2005 at 8.43%. Buena Vista only had 4.16%, while St. Joseph Township had a fund balance of 107.31%. Public Safety expenditures as a percentage of total general fund expenditures in the Charter Township of Lansing were the highest among the comparables at just under 72% for 2005. The rest of the comparables range from 36.43% for Bath Charter Township up to a high of 55.34% in Northfield Township. Police salaries and overtime expenses increased from approximately \$688,000 in 2002 to \$781,000 in 2005. Fringe benefit expenditures and overtime costs increased from \$324,000 in 2002 to \$361,000 in 2005. However, sick time pay outs decreased from \$32,000 in 2002 to \$2,000 in 2005. While during the same period of time police salaries increased from \$668,000 in 2002 to \$763,000 in 2005. The police salaries included the Chief’s salary and fringe benefit costs of

approximately \$80,000. The Township's health care costs have increased from 2001 to 2006 by 42% for a single individual, 49% for a husband and wife, and 62% for a family.

The wages of a patrol officer with 49 months or more of seniority increased from \$45,719 to \$48,504 between 2003 and 2005, while those of the detective increased from \$46,710 to \$49,555. On a comparable basis the average wage among the comparable communities for 2005 was \$47,251 with a low of \$44,600 in Buena Vista Township and a high of \$50,006 in St. Joseph Township. The comparable wages for July 1, 2006 show an average of \$48,437 among the comparables with a high of \$51,001 in St. Joseph Township and a low of \$45,046 in Buena Vista Township. For July 1, 2007, four of the comparables had negotiated wage increases as of the time of the hearing, with a high of \$52,020 in St. Joseph Township and a low of \$45,947 in Buena Vista Township. For July 1, 2008, the only negotiated figures were for St. Joseph Township which will have wages of \$53,060 and Bath Township which will have wages of \$51,979.

The Employer notes in its Exhibit 42 that only the Charter Township of Lansing employees do not contribute to their pension plan. The other Townships, with the exception of St. Joseph Township have employee contributions of 2% as a low in Flushing Township to a high of 7% in Bath Township. St. Joseph Township has a defined contribution plan, and it is noted that the Employer contributes 14% of base pay only. There is no indication that the employees contribute anything to the defined contribution plan in St. Joseph Township.

Between 2000 and 2005, the population of the Charter Township of Lansing has decreased by approximately 430 individuals.

The base wage history, according to the Union Exhibits, indicates that in 2002, the Charter Township of Lansing, for a patrolmen was the highest paid with the salary being \$44,388 a year, while the overall average of the comparable units was \$41,616 per year. In 2003, the Charter Township of Lansing fell to second place with a salary of \$45,720 per year, while the average of the comparables was \$44,216 per year. The Charter Township of Lansing was also second in 2004, with a base wage of \$47,091 per year, versus an average among the comparables of \$45,537 per year. In 2005, again the Charter Township of Lansing was second with a base wage of \$48,504 per year for a patrolmen, versus a comparable average of \$46,675 per year. The Union Exhibits also indicate that as of July 1, 2006, on a maximum compensation basis, a Union patrolmen in the Charter Township of Lansing would receive \$53,179 in total compensation versus an average among the comparables of \$51,237 with only the Charter Township of St. Joseph employees having a greater overall economic compensation package of wages, educational incentives, longevity, shift premiums, uniform cleaning, and gun allowance.

With respect to comparables for sergeants, the Charter Township of Lansing sergeants earned from \$51,043 base wage in 2002 to \$55,776 in 2005. The average for the comparables was \$47,390 in 2002 and \$55,110 in 2005. The sergeants had a rank among the comparables of number one in wages in 2002 and a ranking of number 2 in 2005. On an overall compensation basis, the sergeants in Lansing Township for July 1, 2006 were projected to have a total economic compensation base of \$61,619 versus an average among the comparables of \$59,677. While it is not clear, it would appear that that compensation package for the sergeants is based

upon a projected wage increase of 3% for 2006 at the time that the Exhibits were prepared. The other comparable units for 2006 indicate that only three of the Townships had a comparable rank and only one, Flushing Township would have had a greater overall economic package than the sergeants in the Charter Township of Lansing.

With respect to lieutenants, the Exhibits indicate that in 2002, a lieutenant in the Charter Township of Lansing earned \$53,391 in base wages, and in 2005 earned \$58,342 in base wages. Only Northfield Township had a similar rank and in 2005 the Northfield Township lieutenant earned \$59,928. As far as total economic package is concerned, the Charter Township of Lansing lieutenant for 2006 (again assuming a 3% wage increase was utilized in the Exhibit) would have earned \$64,262 and the Northfield Township Lieutenant would have earned \$64,625 with none of the other Townships again having a comparable rank.

On an internal comparable basis, it appears that the Charter Township of Lansing has treated each of its collective bargaining units in the same way with respect to annual wage increases. Between 1981 and 2005 it would appear that there are only four years in which the teamsters, fire fighters and police (both supervisory and non-supervisory) did not receive exactly the same wage increase. In 1986, teamsters and police both received 4.5% wage increases while the fire fighters did not receive a wage increase in order to prevent the lay off of one man. In 1988, the teamsters received 2.5% in wage increases, while the fire fighters and police (both units) received 3% wage increases. In 1992, the police and fire fighters received 4% wage increases and the teamsters only received a 3% wage increase followed by 1993 in which the teamsters received a 4% wage increase and the police and fire fighters only received 3.5% wage increases.

IV. POSITIONS OF THE PARTIES.

A. Position of the Union. Essentially, the Union believes, based upon the evidence, that its members deserve more than what the Employer is offering. The Union argues that Section 10 of Act 312 provides that the decision of the Panel must be supported by “competent material and substantial evidence on the whole record.” It further notes that in the case of the City of Detroit vs. the Detroit Police Officers Association, 408 Mich 410(1980), the Court stated:

“The legislature has neither expressly or implicitly evinced any intention in Act 312 that each factor of Section 9 be accorded equal weight. Instead, the legislature has made their treatment, where applicable, mandatory on the Panel through the use of the word “shall” in Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to insure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrator with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all ‘applicable’ factors must be considered.”

While acknowledging that the Township has faced a loss in state revenue sharing, the Union notes that so have all other Michigan communities, and the Union alleges that the Township is able to meet the reasonable requests of the Union. The Union acknowledges that the Township has been faced with certain financial challenges (the testimony and exhibits indicated that two major General Motors facilities have closed in the Township), however, the Union asserts that its reasonable request will not overburden the Township. Even if the Union wage increases were to be awarded, the Township’s general fund balance would only be reduced by approximately 6%. Furthermore, the Union’s requested wages only amount to 2% more than the Employer is offering over the life of the contract (however, it should be noted that the Employer’s effective wage increase would be less based upon the lack of retroactivity offered by the Employer). The Union notes that while the Township is facing financial challenges, it will need to continue to provide services to its residents and continue to purchase goods and services at market prices. The Union notes that the suppliers will not be discounting their products to the Township based upon the Township’s financial challenges. Accordingly, the same standards should be applied to the police officers providing services at the going market rates, rather than at a discounted rate as proposed by the Township according to the Union.

B. Position of the Employer. The Employer notes that under Section 9(c) of Act 312, the legislature has provided that “the interest and welfare of the public and financial ability of the unit of government to meet those costs” be a criteria considered in formulating the Award. The Township claims that it has appropriately raised its inability to pay defense which should be considered first before the Panel addresses the propriety of any economic award.

The Township notes that Mr. Stevens, its primary witness for economic considerations, testified that approximately 85% of the Township’s total revenue come from state revenue sharing and property taxes and that the Township should not consider federal grant monies as a basis to pay fixed costs. As previously noted, there has been a decrease in Township revenues, and state revenue sharing will not increase in the immediate future. The state shared revenue was reduced by \$6,678 between 2004 and 2005, and the Township received no federal revenue sharing. Any federal grants received are capital grants and cannot be utilized for operational purposes. The Township notes that its fund balance has dropped dramatically to \$317,000 in 2006, from \$662,000 in 2001. The Township further notes that Mr. Stevens testified that a fund balance of 15% to 20% is considered to be desirable, and that amount would only cover 60 days of operating costs, while avoiding the necessity for short-term borrowing. Three of the comparable communities actually had increases in their fund balances between 2004 and 2005. None of the communities remotely compares to the Township in terms of public safety expenditures, with the closest comparable being Northfield Township with 55% of its general fund expenditures being related to public safety, as opposed to 71% for the Township.

The Township had a major economic dependency on General Motors which closed two major plants within the Township in 2006. 19% of the Township’s property tax revenues and 13.5% of its water revenues are attributable to General Motors. The Township observes that the plant closures will certainly result in declining revenues with respect to property taxes and water revenue.

In addition, with respect to post employment health care benefits, changes in accounting standards will result in those benefits being recorded as a cost, thus necessitating reserving monies to fund the future costs.

The Township notes that Mr. Stevens stated that anything below his recommendation of 15% to 20% fund balance of annual expenditures would be an example of an inability to pay. Thus, to meet the Union demands would result in a weakening of the Township’s economic situation and be fiscally irresponsible.

The Township has not been able to implement health containment measures for the two police units based upon the lack of a collective bargaining agreement. Thus, the benefits to be received by the Township for the health containment costs hereinabove set forth will not be implemented until the effective date of the Award.

The Township further notes that on an internal comparable basis, the fire fighters association received no retroactive wage adjustment in 2006. Its wage increase only took place after a collective bargaining agreement was negotiated and ratified in July of 2006. In addition, at that time the fire fighters commenced contributing \$12 per pay period toward the cost of a

more economical health insurance plan. The Township notes that the fire fighters' collective bargaining agreement had expired on December 31, 2005, therefore, the fire fighters did not receive any portion of the wage increase for 2006 between January 1, 2006 and June 30, 2006.

V. DECISION AND DISCUSSION.

A. **RETROACTIVITY.** The arguments of the respective parties with regard to retroactivity have been carefully considered. There are equities on both sides. On the one hand, if the police officers receive a retroactive wage increase to January 1, 2006, they will have received six months of additional wage increases over and above those of the fire fighters in the Township. However, on the other hand, if the police officers do not receive a retroactive wage increase, they will have received by the time this Award is issued, eight months of no wage increases for 2006 and an additional two months of no wage increases for 2007, or possibly even more than the eight months and two months since the parties will not be able to effectuate this Agreement until sometime in mid March of 2007.

As a general rule, retroactivity is normally stipulated to in 312 cases or in the absence of a proven plea of poverty, routinely granted based upon a review of awards in which retroactivity was an issue. While the Township has pled an inability to pay, it has specifically refused the opportunity to plead poverty. The Township was specifically questioned by the Chairperson of the Panel with regard to the issue of whether or not the Township was pleading poverty. The Township never responded in the affirmative to that question. Rather, the Township has either pled an inability to pay, or in the alternative, that it wishes to remain fiscally responsible.

Based upon the Awards hereinafter granted, it is the determination of a majority of the Panel that the wages should be retroactively granted. To do otherwise would result in the opinion of the Chairperson of the Panel and the Union representative on the Panel a greater inequity if the wages were not to be retroactive than the inequity of granting the wages retroactivity which gives the police officers an increase effectively six months before the increase enjoyed by the fire fighters.

The officers worked the entire year of 2006 as well as the first two months of 2007 without enjoying any wage increase whatsoever. In the meantime, the Township had the use of the funds and could, and most likely did, receive additional income from investments as a result of not having to pay the wage increases for the past 14 months. While the income generated will not, in all likelihood, equal the cost of the wage increase, it will help offset the cost. Moreover, based upon the wage increase granted for 2006 (as hereinafter set forth) the additional cost to the Township of the retroactive wage increase would only approximate \$7,000 to \$8,000 for the two bargaining units over and above the cost if the police had received the same benefit as the fire fighters with a wage increase effective July 1, 2006 as opposed to January 1, 2006.

Accordingly, it is the decision of the majority of the Panel that the wage increase for 2006 shall be retroactive to January 1, 2006, and the wage increase for 2007 shall be retroactive to January 1, 2007. It should be noted that the Panel representative for the Charter Township of Lansing, dissents.

B. **APPLICABILITY.** Pursuant to the stipulations of the parties, the retroactive wage increases shall be applicable to all current bargaining unit employees and any other bargaining unit employees who may have left the employment of the Township if the employee

qualified for health care benefits and further was qualified under the defined contribution plan for full vesting, excluding any employee who was terminated for cause.

C. WAGES. In its last best offer, the Union requested wage increases of 2% effective January 1, 2006, 2.5% effective January 1, 2007, and 3% effective January 1, 2008. The Employer offered 1% without retroactivity in the first year, 2% effective January 1, 2007, and 2.5% effective January 1, 2008. Based upon the Exhibits provided by the parties and the testimony of the Employer witness, it is the determination of the Panel that the employees in both bargaining units shall receive a 1% wage increase, effective January 1, 2006; a 2.5% increase effective January 1, 2007; and a 3% increase effective January 1, 2008. The 1% increase shall be fully retroactive to January 1, 2006; the 2.5% increase shall be effective retroactively to January 1, 2007; and the 3% increase shall be effective prospectively on January 1, 2008. The wage increases as hereinabove set forth shall be effective for both bargaining units. It should be noted that with respect to the 1% retroactive wage increase for January 1, 2006, the Union Panel member dissented, and for the two wage increases effective January 1, 2007 and January 1, 2008, the Employer Panel member dissented.

The difference between the Award of the Panel and the proposal of the Union is approximately 1% less. The difference between the Award of the Panel and the last best offer of the Employer is in the overall picture 1% more. However, the Panel does note that because of its Award of retroactivity, the overall effect on the Employer will result in a payment of approximately \$11,000 more for 2006 and an additional \$4,000 for the 2006 retroactivity in 2007. According to the Employer proposal, the second year increase of 2.5% is only .5% more than the last best offer of the Employer and the prospective award of 3% on January 1, 2008, again, is only .5% more than the Employer proposed in its last best offer.

The Employer certainly has the lawful authority to pay the Awards hereinabove set forth. It is the belief of a majority of the Panel that the interest and welfare of the public has not been unduly impacted by this Award. In addition, it is the determination of a majority of the Panel that the Township does have the financial ability to meet these costs. While it will negatively impact the overall general fund balance, any wage increase would have a negative impact on the general fund balance, and the proposals of both the Union and the Employer are so close that the overall impact of the Award is relatively minor with regard to the general fund balance.

With regard to the comparable communities, it is the determination of the Panel that the Award of wages hereinabove set forth will result, at best, in maintaining the overall ranking of the Township with its comparable communities. The comparison of wages as hereinabove set forth certainly will not place the Township in a markedly difference position than it already enjoyed.

While no evidence was introduced with regard to the cost-of-living index, the Panel can take judicial notice of the fact that the wage increases for 2006 and 2007, when combined, certainly will not be greater than the overall increase in the cost-of-living. Obviously, with respect to 2008, no determination could be made at this time.

The Panel has also taken into consideration that the Township will enjoy certain cost savings in terms of health containment costs by virtue of this Award and the stipulations and tentative agreements entered into between the Township and the Union. It is unfortunate that the cost containment benefits to be achieved by the Township have been delayed for the past 14 months, however, the delay was due to the inability of both parties to meet a common ground with respect to the issues which have been determined by the Panel and which will be subsequently determined by the Panel with regard to the remaining issue. Neither party is deemed to be at fault since each had a good faith belief in its proposals and was free to stand by those proposals and have their positions adjudicated by the Panel.

Based upon the fact that this Agreement extends into the future, it is uncertain whether or not the Award will or will not maintain the ranking of the bargaining units among comparable communities. However, it seems to be certain that by awarding an additional 1% over and above the Employer's offer, the ranking will more likely be maintained while having a relatively minor impact upon the Employer's finances.

D. LIGHT DUTY. As previously noted, the Panel members stipulated at the time of an Executive Panel meeting that in the event the determination of the Panel was to deny the Union's last best offer, which in effect would retain the status quo of no language in the collective bargaining agreement with respect to light duty, it would not be necessary to issue a determination on the procedural issue of whether or not light duty is a mandatory or permissive subject of collective bargaining. Since a majority of the Panel has determined that the Employer's last best offer will be awarded with regard to light duty, that is to say that there will be no language placed in the collective bargaining agreement with respect to light duty, no decision on the mandatory versus permissive subject of collective bargaining will be forthcoming. It should be noted that the Union Panel member dissents from this determination.

None of the comparables indicated that there was language pertaining to light duty in their collective bargaining agreements. This is true of both the internal and external comparables.

The Union asserted, in support of its proposal, that it was a reasonable request since police officers perform a job which require certain physical abilities and is physically more challenging than many other jobs. The Union further noted that any number of physical conditions can result in an officer being temporarily medically restricted in his/her ability to perform the normal functions of a police officer and that such temporary restrictions should not place the livelihood of a police officer in jeopardy. Since a police officer can only accumulate 180 days of sick leave, which, based upon the current formula would take 15 years, the Union alleges that an officer faces a loss of income if a temporary condition results in medical restrictions which last longer than 180 days. Accordingly, the Union maintains that such a proposal will allow an employee to maintain his/her livelihood for up to one year while on medical restrictions. The Union further noted that if after one year of limited duty, an officer was still unable to return to full duty, it would be unlikely that the individual would be able to return to full duty at all in the future, thus, the Union only requested the light duty for a maximum period of one year. The Union asserted that the benefit to the Employer would be by providing service from an employee in retaining a trained and otherwise competent officer as

opposed to having to replace the officer with a new employee or, in the alternative, operating the department short-handed.

In support of its position, the Employer noted that there was absolutely no evidence in the record to support the Panel's acceptance of the Union's last best offer. The Union submitted neither Exhibits nor witnesses in support of its proposal. The Employer noted that none of the comparable communities had language for light duty. The Employer notes that under the Union proposal, the Employer could not expect a light duty officer to fulfill the normal functions of his/her job, but would receive their regular hourly rate of pay and benefits for up to 12 months. The Employer further notes that there is no limitation on the number of personnel in either of the affected bargaining units who could, at the same time, conceivably claim a right to have the Township create and fund a light duty position for the officer while recovering from some illness or disability. The Employer noted that there was no limit on the number of officers who could apply for light duty in the event of an illness, injury or disability. The Employer states that it could not be expected to provide adequate police protection, let alone fund such a scenario, if a number of officers applied for light duty during the same time frame, since the bargaining units consists of only two supervisory and 11 non-supervisory officers. The Township further noted that there is nothing in the record which would indicate that the Township had failed to make a reasonable accommodation for its injured, ill or disabled officers. The Township notes that there are statutory requirements which require the Township to adhere to reasonable accommodations in the event that an officer is ill or injured, without doing violence to the Township's need to provide adequate police protection to its citizens.

It is the determination of a majority of the Panel that the Township would indeed suffer potential hardship if the proposal of the Union were to be awarded. It is a relatively small employer when one reviews the number of supervisory and non-supervisory police officers. There are only 13. Moreover, if the Township were required to place one or more officers on light duty, it would have to negatively impact the Township's financial condition. Either another officer or officer would have to be hired, or current officers would be required to work overtime in the event that the officer who is placed on light duty was a patrol officer and could not fulfill those functions relating to driving a vehicle and enforcing the ordinances and statutes of the Township and the State of Michigan. The overall financial impact on the Township could be disastrous. In fact, if two or more officers were to be placed on light duty at the same time, it is entirely conceivable that the overall cost of the Township would exceed the wage increases granted in this Award. Moreover, there is no indication in any of the Exhibits that the type of language requested by the Union is common among the comparable bargaining units or within the Township itself.

Accordingly, it is the decision of a majority of the Panel that the Township's last best offer of maintaining the status quo more nearly meets the statutory criteria and the last best offer of the Township is accordingly awarded by a majority of the Panel. It should be noted that the Union member of the Panel dissents from this determination.

E. SUMMARY. In summary, the Union's position and last best offer with respect to retroactivity is hereby granted. The Employer's wage increase of 1% is hereby granted effective January 1, 2006. The Union's last best offer of wages of 2.5% effective January 1, 2007 is

hereby granted. The Union's last best offer of 3.0% effective January 1, 2008 for wages is hereby granted. All of the wages shall be reflected as across the board wage increases and shall be applicable to both bargaining units.

The wages shall be applicable to all current bargaining unit employees and any bargaining unit employee who may have resigned or may have retired from employment provided that the employee qualified for health care benefits and further qualified for full vesting under the Township's defined contribution plan. No employee who is terminated for cause shall be eligible for a retroactive wage increase.

The Township's last best offer with regard to light duty assignments is hereby granted, thus maintaining the status quo of no language whatsoever.

Panel member LaFrinere dissents with regard to the wage increase for January 1, 2006 and the denial of the Union's last best offer on light duty assignments. Panel member Daher dissents on the issue of retroactivity for the wage increase effective January 1, 2006, and dissents on the issue of wage increases effective January 1, 2007 and January 1, 2008. Panel member Daher concurs with respect to the 1% wage increase while dissenting on the issue of retroactivity and further concurs on the award of the Township's last best offer with regard to light duty assignments.

Both Panel members concur on the issue on who is to be awarded retroactive wage payments.



ALLEN J. KOVINSKY, Panel Chairperson



HOMER LaFRINERE, Union Panel
Representative



JOHN DAHER, Township-Employer Panel
Representative