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Act 312 Arbitration

Between

The Charter Township of Chesterfield

And

The Police Officers Labor Council

(MERC Case No. DO4 H-1235)

Chairperson: Dr. Benjamin Wolkinson

Township Representative  
Robert Siebert, Attorney

Union Representative  
Mark Douma, Attorney

## **Background**

This is a statutory compulsory arbitration conducted pursuant to Act 312, Public Act of 1969 as amended. The Union filed a petition for Act 312 arbitration with MERC on January 13, 2005. The Chairperson was appointed via correspondence from the Employment Relations Commission.

The Chairperson and the parties held a pre-Act 312 conference on April 4, 2006 at which time the following Employer and Union issues in dispute were identified: wages, shift premiums, pensions, uniform allowance, health care benefits, scheduling of overtime (Letter of Understanding) and compensatory time off.

Hearings were held on October 6, October 13, and December 1, 2006. During the course of the arbitration proceeding, the parties reached agreement on a number of issues and placed settlements on the record. Specifically, the parties agreed that on the issue of wages, each year of the contract will be viewed as a separate issue. Additionally, the parties agreed that the arbitration award would become effective as of the date of the award and would apply to all members of the bargaining unit who are active employees as of the date of the award. The parties also resolved the issue of shift premiums, compensatory time off, uniform allowance, and the scheduling of overtime (Letter of Understanding).

During the hearings, the Union agreed to accept the Township's proposal for health care benefits with the exception of the Township's proposals for the inclusion of monthly co-payment by employees through payroll deduction. The parties exchanged last best offers of settlement on December 22, 2006. The Union submitted its briefs to the Chair on February 14, 2007 and the Employer with the Union's and Chairperson's

consent submitted its brief in support of its last offer on March 2, 2007. In its brief, the Union accepted the Employer's offer on health care co-payments. As a result, the only issues before the Panel are wages and pensions.

The Panel Delegates met with the Chairperson on April 24, 2007 to examine the issues in dispute and on June 18, 2007 to review the award.

### **Comparable Communities**

At the pre-arbitration conference conducted on April 4, 2003, the parties agreed that the following Townships were comparable: Pittsfield, Redford, and Plymouth. At this meeting, the parties also indicated that each may have a few other communities to add to this list. The parties further agreed to confer over the issue of comparables in an effort to reach agreement and that the parties would identify comparables by April 20, 2006.

The Union communicated in writing to the Employer that Roseville would be considered a comparable on October 3, 2006, when exhibits were exchanged. Furthermore, while there may have been some earlier telephone discussion between Mr. Klik and Mr. Siebert concerning the utilization of Roseville as a comparable, prior to October 3, 2006 the Union never provided a formal or written expression of its intent to do so. On October 6, 2006, the first day of the Act 312 hearing involving Chesterfield Township and the POLC, the Union indicated that it was using Roseville as a comparable. The Employer objected on the grounds that this information was first communicated to it well after the agreed upon time for the identification of comparables.

The Employer maintained that the use of Roseville as a comparable was unfair, as it breached the parties' agreement to identify all comparables by April 20, 2006.

Additionally, it noted that it prepared its case with the understanding that there would be only three and not four comparables. The Chair sustained the Employer's objections. Allowing one side to introduce a comparable months after the agreed upon date unfairly catches the other side by surprise and subjects it to significant disadvantages. For example, the other side may lack the time to check the accuracy of the information provided. Also, parties have prepared arguments and positions based on the prior understandings of the comparables and that these positions may be weakened or undermined by data drawn from the new comparable. Given these considerations, the Panel rejected the use of Roseville as a comparable.

#### **Statutory Criteria**

Section 9 (MCL 423.239) outlines the list of factors upon which the Panel should base its findings, opinions, and award. These include:

- (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 these 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 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 medical hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

(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.

**Wages**

The Union has requested a four year contract with the following across the board wage increases:

- Effective 2-1-05: 2.5%
- Effective 2-1-06: 3.0%
- Effective 2-1-07: 3.0%
- Effective 2-1-08: 3.0%

The Employer has offered a four year agreement with the following wage increases.

- Effective 2-1-05: 2.0%
- Effective 2-1-06: 3.0%
- Effective 2-1-07: 3.0%
- Effective 2-1-08: 3.0%

The parties are in agreement regarding wage increases for the second through the fourth year of the collective bargaining agreement. For each of these years, the parties agreed that there shall be a three percent across the board wage increase. Only wages for

the first year of the contract is in dispute, with the Union requesting a 2.5 percent across the board increase while the Employer has proposed a 2 percent across the board wage increase.

The Union has maintained that its proposal merits acceptance, because its adoption is needed to maintain the wage status of its bargaining unit employees relative to police officers in other comparable communities. It notes that as of 2004, patrol officers in Chesterfield received \$ 2218 less than the wages of patrol officers in Plymouth Township. Were the Employer's offer on wages adopted for 2005, patrol officers in the Township of Chesterfield would earn \$2863 less than those in Plymouth Township. The Union maintains that the disparity in wages between Plymouth and Chesterfield Townships would be exacerbated in the succeeding years of the contract, since Plymouth Township wages for the next three years would be equal to or greater than the raises received by employees of Chesterfield Township. Consequently, if the bargaining unit is to maintain its relative position among the comparable communities, the Union's proposal should be adopted. This would also aid in the recruitment and retention of quality police officers in Chesterfield.

The Employer maintains that its 2 percent proposal merits acceptance because it is reasonable and consistent with comparable communities. The base wages for the comparable communities indicate that Chesterfield Township patrol officers generally receive a greater base wage than unit members in comparable communities. In the rank of patrol officer, the comparisons demonstrate that for 2005 and 2006 Chesterfield Township patrol officers received a higher base rate than officers in Redford and Pittsfield Townships. The same is true of detectives. Finally dispatchers in Chesterfield

Township receive \$3000 more in base wages than the dispatchers in all three comparable communities. Consequently, with the Employer's proposal, bargaining unit employees will generally receive higher base wages than employees in comparable communities.

### **Discussion and Award**

Both parties have supported their respective positions by referencing comparability data. The Union has noted that acceptance of the Employer's proposal will continue and increase the disparity in wages between Plymouth and Chesterfield Township. The Panel does not find this consideration compelling, as historically wages in Chesterfield Township have been significantly lower than wages in Plymouth. At the same time, the Employer's offer would provide to employees wages that exceed wages provided employees in Pittsfield and Redford Township. Since the comparability data is more supportive of the Employer's position than the Union's, the Panel, with the Union delegate dissenting, adopts the Employer's last offer of 2 percent for wages in 2005.

### **Pensions**

The Union has requested that the following modifications be made to Article XXIII, Retirement:

Section 1. As soon as practicable (after date of award), the Employer shall discontinue the defined contribution pension plan and implement and offer the (MERS B-3, V10, FAC3, F50/25, D2) defined benefit pension plan with final average compensation based on W-2 wages and credit for all prior service. Each participating bargaining unit members shall contribute 4.5 percent of W-2 wages to the MERS plan through payroll deduction. Upon implementation of the MERS plan, in order to participate in the plan, a bargaining unit member shall be required to take the necessary action to allow the balance of his/her defined contribution account, excluding any voluntary contributions he/ she made to this account, to be assigned and paid to MERS. Participation in the MERS plan shall be a condition of continued employment unless otherwise mutually agreed in writing by the Employer and Union.

Section 2. An employee who retires from the Township under the MERS pension plan will be eligible for health, surgical and drug coverage from the Township. The

Employer will provide the same coverage to retirees as it provides to active employees until such time as the retiree is eligible for Medicare Benefits parts A and B.

The Employer has made the following changes to Article XXIII.

Section 1. Employer agrees to provide Employees Municipal Employees' Retirement System of Michigan (MERS) benefits as follows:

B2 ( 2.00% multiplier) calculated on base wages, V-6 ( years of service to vest), Retirement at age 60 , FAC -5 calculated on base wages, and the early retirement option at age 55 with 25 years of service with no reduction in benefits.

The above proposal does not include any MERS "add-ons" and Employees do not have the ability to purchase years of service. The current 2% employee contribution will continue to be deducted from employees' wages. Employees shall be responsible to pay 50% of the unfunded liability at the time of conversion from the current defined contribution plan to the MERS defined benefit plan.

Section 2. An employee who retires from the Township under the MERS Pension Plan will be eligible for health, surgical and drug coverage from the Township. Employer will provide the same coverage to retirees and his/her spouse as it provides to active employees until such time as the retiree is eligible for Medicare Benefits Parts A and B.

Section 3. Employer has fully funded a defined contribution pension plan 401(a) for employees. Employees agree to fund 50 percent of the unfunded liability under the MERS Plan out of the defined contribution plan to cover past credits or seniority. The Township will assume the remaining 50 % liability, as well as future funding.

Section 4. Upon eligibility for Social Security Medicare benefits, a retired employee must seek Medicare benefits and provide the Township with dates and coverage of Medicare. At such time the Township-provided medical benefits will revert to a complimentary/ supplemental benefit package, with Medicare becoming the primary insurance for the retired employee.

Section 5. A retired employee may receive a stipend pursuant to Article 22 Section 4 in lieu of receiving the Township provided medical benefits. This stipend shall be equal to that of a current employee covered under this contract. If the stipend exceeds the cost of the medical benefits for the affected retired employee, a stipend shall become half of the cost of the medical benefits.

### **Parties' Arguments**

Both the Union and the Employer are proposing to eliminate the current defined contribution retirement plan and implement a defined benefit pension plan. The plans



proposed by each party differ significantly in a number of areas. The Union's proposal is MERS B-3, V-10, FAC3, F50/25, and D2. This provides a 2.25 % multiplier, 10 year vesting, final average compensation calculated by dividing the highest consecutive 36 months of W-2 wages by 3, a normal retirement age of 60 or retirement age of 50 with 25 years of service, and an optional disability and death benefit which adds an additional 10 years of service credit to a maximum of 30 years in cases of duty related injury or death. The Employer's plan is the MERS B-2, V-6, FAC5, and F 55/25. This provides a 2 % multiplier, vesting after six years, final average compensation by dividing the highest consecutive 60 months of base wages by 5, normal retirement of 60 or retirement at age 55 with 25 years of service, and no additional service credit in cases of duty related disability or death. The Employer's proposal includes a 2 percent of base wages employee pension contribution while the Union's proposal includes a 4.5 percent of W-2 wages employee pension contribution. Both proposals provides for essentially identical retiree health coverage.

The Union maintains that its proposal merits adoption because it would provide bargaining unit employees with retirement benefits more comparable with benefits enjoyed under the prior plan than would be available under the Township's proposal. Under the old plan and the Union's proposal employees can retire at age 50. Under the Township's plan, employees could not retire until age 55. Additionally, the Union's proposal would provide a more comparable benefit than would be available under the Employer's plan. The Union contends that its proposal is also supported by comparability data that shows that other comparable communities are providing benefits similar to what the Union is currently seeking in Chesterfield Township.

The Employer's objection to the Union's proposal has primarily been based on cost considerations. It estimates a projected shortfall for fiscal year 2006 in the Police Fund of \$ 1,302,760. Additionally, were the Union's original proposal implemented, the Police Fund would absorb shortfalls of \$322, 470 in 2007, \$1,162,340 in 2008, \$1,161,000 in 2009, \$1,337,530 in 2010, and \$1,129,680 in 2011. While the police fund would be able to absorb the annual shortfalls until the end of fiscal year 2009, by drawing down its fund balance, the projected annual shortfalls in 2010 would result in a police fund deficit of approximately \$240, 000 in 2010 and over \$1,500,000 in fiscal year 2011.

The Employer also notes the Union's initial B-4 proposal would require the Township to contribute \$1,050,000 more than the Township's B-2 proposal for the five year period 2007- 2011. Additionally, the initial unfunded liability under the Union's original proposal is double that which would be generated by the Township's proposal. According to the Employer, the estimated liability for past services under the Union's original proposal is more than double the liability as proposed by the Township. Finally, while the MERS anticipated rate of return is 8%, a lower return would require contribution increases. Given these considerations, the Township maintains that its proposal is more reasonable.

### **Discussion**

Retirement benefits are among the most important assets employees can accumulate and considerations of equity and statutory criteria under Section 9 (f) supporting the continuity and stability of benefits dictate that employees should not be penalized when converting from a direct contribution to a defined benefit plan. The Union's proposal helps secure this objective, by enabling employees to receive the level

of benefits previously enjoyed under the direct contribution plan. As indicated by the Union's expert witness, under the current defined contribution plan, with a return rate of 6.5 percent, an officer who retires at age 55 with 30 years of service would receive a monthly benefit of \$5217. Under the Union's B3 plan that same officer would receive a monthly benefit of \$5053.

The Union has contended that the Employer's proposal would deny employees comparable benefits. It has maintained that under the Employer's B-2 plan, employees who retires at age 55 with 30 years of service would only receive a monthly benefit of \$4,404. Yet this conclusion is unreliable, given the Union's failure to consider that under the Employer's plan only one-half of the employees' former contributions will be allocated to the MERS plan. As a result, were the remaining assets in the individual accounts invested for purposes of pension accrual and added to the benefits available under the MERS B-2 plan, some level of comparability might well be attained under the Employer's proposal. Yet any meaningful determination of this matter is problematic as a result of the parties' failure to assess the monies the employees might accrue by their continued investment of their individual pension accounts. Given this omission, it appears that the Union's proposal would more likely enable employees to receive comparable retirement benefits following the conversion to a defined benefit plan.

Additionally, in one significant area, the Employer's proposal would not afford employees comparable benefits. Under the current defined contribution plan, employees are not penalized if they retire at age 50. Under the Union proposal, employees can retire at age 50 with 25 years of service. Under the Employer's plan, this option would not be available, as employees would suffer a significant financial penalty if they retired before

age 55. As a result, the Employer's proposal eliminates a significant benefit that employees previously enjoyed.

The Union's proposal also has the advantage of representing a total conversion. Thus all assets that employees currently have accumulated in the defined contribution plan would be used to help fund the defined benefit plan. On the other hand, under the Employer's proposal, only half of the assets that have been accumulated under the defined contribution plan would be allocated to fund its proposed B2 plan. The Employer's plan would thus force employees to continue to manage a sizeable portion of their own pension assets. This outcome is not particularly desirable, given the apparent employee disinterest in doing so, as reflected in the bargaining unit's objective to transfer all assets to the MERS B3 plan and the testimony of the Union's expert witness, Dr. Leon LaBrecque, that individually managed funds generally do not perform nearly as well as the professionally managed MERS funds.

The Union's proposal is also supported by comparability considerations, as two of the three comparable communities, Plymouth and Redford Township, provide similar or more beneficial retirement plans than what the Union is proposing. In both, employees can retire with 25 years of service regardless of age. This is more generous than the Union's proposal under which employees need to be at least 50 years of age to retire. Similar to the Union's proposal, the comparable communities all provide for final average compensation based on three years rather than the five years the Township has proposed. Finally, two of the three comparables have pension multipliers that exceed the 2.25 percent that the Union is seeking.

The cost and pension liability considerations raised by the Township are premised on the Union's initial B-4 proposal. However, the Union in its last offer abandoned this request and is currently seeking a reduced MERS B3 defined contribution plan. Yet the Employer has made no effort to calculate or estimate the costs of this reduced plan. This omission weakens the Employer's case for its proposal, for absent such cost considerations the Panel has no reliable basis for accepting the Employer's conclusions that the adoption of the Union's proposal would impose excessively high costs and liability upon the Township. Additionally, the Panel rejects the notion that the responsibility to provide cost estimates fell upon the Union rather than Township. It is the Township that is raising the concern over the Township's ability to fund and assume liability for the B3 plan and as a result it bore the burden of identifying the economic implications of implementing the Union's last offer.

The Panel also finds limitations in costs projections underlying the Township's conclusions that acceptance of the Union's proposal would augur in a period of continuous and dangerous police fund shortfalls. These projections are problematic, as they are entirely based on the B4 plan and health benefit proposal that the Union has abandoned and not the B3 plan it is requesting.

Additionally, the Panel has doubts over the reliability of some of the cost figures used by the Township in forecasting projected shortfalls. For 2006, the Township has projected a 16.7 percent increase in the "other" expenditure category. Testimony indicated that this increase reflected software upgrade expenditures and a lawsuit settlement of \$150,000. Yet these expenditures are recurring items and may well be mistakenly incorporated in the Township's projections for costs for this line item in 2007.

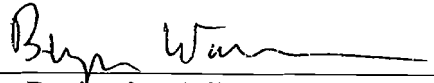
In 2008, the Township's projections include major capital expenditures of \$400,000 for lockers and building façade and \$200,000 for office equipment and the renovation of offices. Additionally, between 2007 and 2011, the Township has projected an increase in base pay and fringe benefits of approximately \$850,000 precipitated by staff increases of approximately 17 percent. Yet no evidence has been presented as to the need for such significant expenditure increases. As a result, these might well represent expenditures the Township could reduce or delay to avoid any serious budgetary shortfalls.

Finally, the Panel notes that much of the Employer's concerns on budgetary shortfalls focused on deficits that would potentially be created in 2009, 2010, and 2011. Thus in 2008, the Township's fund balance is \$ 2,078, 590 and assuming the validity of the Township's projections its first projected deficit would not occur until 2010. Yet this Panel has jurisdiction only over the contract period 2005 through 2008, and should be basing decisions on pensions under that contract and not on the basis of speculation or concerns about conditions that may or not exist beyond 2008. In effect, if future ability to pay or fund pensions becomes a problem, that matter can be addressed by the parties in future negotiations and if necessary by some other Act 312 Panel at the appropriate time.

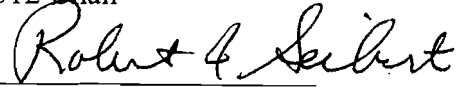
#### **Award**

In summary, comparability data and considerations under Section 9 (f) support the Union's proposal. As the Employer's cost concerns are not sufficiently persuasive, the Panel, with the Township's delegate dissenting, adopts the Union's last offer on the issue of pensions.

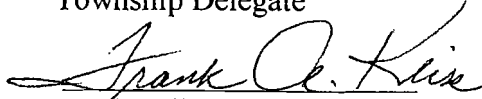
June 18, 2007



Benjamin Wolkinson  
Act 312 Chair



Robert Siebert, Attorney  
Township Delegate



Frank Klik, POLC Delegate