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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY COMPULSORY ARBITRATION TRIBUNAL

In the matter of Statutory Arbitration Between:

CHARTER TOWNSHIP OF WATERFORD,

Employer

Arising pursuant to Act 312,
PA 1969, as amended

-and-

MERC CASE NO. D04 B-0473

MICHIGAN ASSOCIATION OF POLICE,
WATERFORD TOWNSHIP DISPATCHERS ASSOCIATION

Union

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

FOR THE EMPLOYER

FOR THE UNION

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Dated: July 12th 2007

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. That agency maintains a panel for the resolution of contractual impasses in the collective bargaining process between municipalities and police or fire personnel.

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, Waterford Township Dispatchers Association (“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) were 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 parties’ proposed changes in Pensions, 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, In fact, in its “Final” Last Best Offer, the Township withdrew its objections to these determinations. 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	Canton Township
Clinton Township	Oakland County
City of Pontiac	City of Royal Oak
City of St. Clair Shores	Shelby Township
West Bloomfield Township	City of Westland¹
White Lake Township	

When the parties reached impasse, the Union timely filed a petition for interest arbitration pursuant to Act 312, which is part of the Public Employment Relations Act. Prearbitration meetings were held on August 16 and November 7, 2006. A Hearing was held on November 21, 2006, 312. at the offices of the Township of Waterford located in Oakland County, Michigan. The hearing panel consisting of the impartial chairman and two delegates, namely STANLEY KURZMAN for the Employer and FRED TIMPNER for the Union. Testimony and exhibits were provided, along with a full opportunity for direct and cross

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. One could discern the ebb and flow of settlements, although understanding them required an examination of the value of complete agreements, not just one item (*e.g.*, wages) at a time. A Union can opt to take increases in pensions in lieu of wages, or vice versa.

examination. A full transcript was made.² By and large, this was an exhibit case, that is, it rests upon large numbers of documents, including the transcripts of the hearings in the Waterford/MAP Patrol case dated December 2, 5 and 19, 2005. Hearings are concluded. Executive sessions of the panel were held on December 1, 2006 and May 1, 2007.

The parties duly executed a waiver of all statutory time limits regarding the proceedings.

Both before and after the expiration of the contract, 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 viable context in which this proceeding was conducted, and this opinion rendered. In fact, their existence has helped shape the panel's final determinations.³

Importantly, the immediate implementation of the health care changes immediately saved the Township many dollars, while preserving health care benefits for employees in this bargaining unit and all the others in the Township. Indeed, it extended to the non-organized bargaining unit, including supervisor personnel.

It is noteworthy that the Chairman also previously conducted the proceedings between this Union (representing the patrol officers, however) and the Township. Because of

²By Great Lakes Reporting, L.L.C., 5685 Highland Road Suite 4, Waterford, Michigan 48327 Office (248) 673-0200 Fax (248) 673-0700.

³All public safety units accepted the Township's health care proposal of changing the base health care plan to Community Blue 10. The Teamster's 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.

the substantial identity of much of the record, the parties wisely stipulated that the transcript from the prior proceeding would be received into evidence in the Dispatchers proceeding. This had the beneficent effect of eliminating the need to recreate days of testimony, which included the expensive and convoluted testimony of various expert witnesses. Otherwise, it would have cost the parties a lot of public and union funds, and that was minimized by this informed choice. Moreover, the Chairman wishes to publicly express his gratitude to the parties and their counsel for this wise and economical decision.⁴

Post hearing 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, 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); establishes methods and times of initiating the proceedings (MCLA 423.233); provides for the selection of delegates (MCLA 423.234); and establishes the method for selection of the Arbitrator (MCLA 423.235).

⁴The chairman notes that the Michigan Employment Relations Commission is responsible for a third of his fees. Like other parts of state government, MERC is under severe budgetary restraints due to the hard economic times which have befallen this state.

It also sets forth procedural timetables;⁵ has a provision for the acceptance of evidence;⁶ and allows that the panel may issue subpoenas and administer oaths. (MCLA 423.237). The dispute can be remanded for further collective bargaining. (MCLA 423.237a). (MCLA 423.239). Finally, the law provides for enforcement, judicial review, maintenance of conditions during the pendency of the proceedings. (MCLA 423.240-247).

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 423.238) Emphasis added.⁷

⁵The 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 waived all statutory time limits.

⁶“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)

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,

In other words, the panel must choose the more reasonable of the parties' two offers. Therefore, in many ways Act 312 proceedings, or at least particular issues, may not necessarily be "won"; they may be "lost" by a party making unreasonable demands in light of the facts established on the record. This is the mechanism which drives parties toward the middle, and through which compromises become possible. It is one of the best and most principled ways of making collective bargaining work, since strikes by public safety personnel are not legally or politically acceptable in this state.

On contested issues, the panel must base its findings on the statutory criteria, to the extent they are applicable. There are ten.⁸ MCLA 423.239 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

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).

⁸The existence of these criteria is critical to the constitutionality of this entire statutory framework.

benefits, the continuity and stability of employment, and all other benefits received.

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

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

IV. DISCUSSION

Preface

Act 312 Arbitration is first and foremost an extension of the collective bargaining process. Although the following determinations are not necessarily the only solutions to the problems the parties' mutually confront, the Arbitrator finds they are most in conformity with the terms of the statute. The Arbitrator has reviewed each of the statutory criteria as they may apply to the respective issues and the record made, and concluded that these criteria 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 public accountability, and the Union members' requirement for job and economic security. I find maintenance of internal comparability to be a persuasive factor. This resolution also takes into account settlements in comparable communities and bargaining units, and generally maintains the historical pattern and relationship these parties have freely bargained for in the past. As such, it reflects the parties' clear historical consensus of their relative worth.

Moreover, both the Township and the Michigan Association of Police dealt with this proceeding and contractual modifications in the mature and sophisticated way that is expected of labor relations professionals. As a personal note, the Arbitrator was greatly aided by the quality of the representatives' advocacy and the delegates' wise counsel and balanced input in the deliberation process. This proceeding epitomizes 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 commencing with January 1, 2004 with an expiration date of December 31, 2007.
2. The tentative agreements of the parties, as attached hereto, are incorporated as part of the award.
3. Each of the issues is identified as “economic.”⁹ Each year of the wage proposal is determined to be a separate economic issue.

The Merits of the Pension Proposal

Union last best offer: The Union’s last offer on pension is *status quo* as a counter to the employer proposal (to institute a defined contribution pension system – in lieu of a defined benefit plan --for crime scene investigators and dispatchers), and the following as its own proposal:

Pension. Effective July 1, 2007 - Final average salary (FAS) shall include overtime in the computation of the pension. The amount of overtime used in the calculation of FAS shall not exceed an average of three hundred (300) hours per year.

Current Language. Overtime is not included in Final Average Salary for purposes of computing overtime. There is a defined benefit plan, not a defined contribution plan.

Employer last best offer. The Employer’s last offer on pension is *status quo* as a counter to the Union’s offer on final average salary, and the following as an Employer Issue. Pension:

Add the following to pension article XXXII

Employees hired after July 1, 2006, including Crime Scene Investigators, shall be ineligible for the General Employees’ Retirement System and covered by a defined contribution pension system established by the Township. The Township’s contribution rate shall be set at 10% of base salary and the employee’s contribution rate shall be set at 5% of base salary.

⁹The sick time issue is an economic issue. The Arbitration Panel, over the objection of the Township, determined that this is an economic issue. The Township withdrew its objection with its final offer. 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.

The vesting schedule for the defined contribution system shall be as follows:

<u>Years of Service</u>	<u>% Vested</u>
After 3 Years	50%
After 4 Years	75%
After 5 Years	100%

During the course of the hearing, the parties agreed to give the panel jurisdiction on this issue over the Crime Scene Investigators as well as the Dispatchers.

Both classifications are represented by the Michigan Association of Police. Both classifications are in the Waterford Township General Employees Pension Plan and have been since the creation of the two classifications. Both classifications have employees who have retired under this plan and are currently drawing a pension from this system.

The pension system is a defined benefit system. Union exhibit 114 is the December 31, 2005 annual actuarial valuation, completed by pension actuaries, Gabriel Roeder Smith & Company, which shows the financial health of the general Employees Retirement System.

On page A-1 indicates that the Townships total cost for 2005 was 17.39% of payroll. This cost rose to 18.08% of payroll for 2006. This figure includes not just the dispatchers and the crime scene investigators but all Township and Court employees.¹⁰

Although the percentage went up for 2006, the actual dollar cost went down. In 2005 the Township funded the plan at a cost of \$1,696,164. In 2006, the actual total Township dollars spent on the General Employees Pension System went down to \$1,574,175. That is \$121,989 less in 2006 than in 2005.

On page A-5 of Union exhibit 114 is perhaps, the most telling comment in the entire report.

“Conclusion: The Waterford Township Employees Retirement System continues to be in sound financial condition in accordance with actuarial principles of level percent-of-payroll funding, presuming continued receipt of contributions when due...”

To be sure, a defined contribution plan is not a pension plan. It is not a promise to pay a pension. It is only a promise to pay 10% of employee base pay towards an investment vehicle that will grow tax free. Employees are penalized for early withdrawal if they retire and

¹⁰Sworn police and fire personnel are not in this plan but are members of the Waterford Township Police and Fire defined benefits system also known as Act 345.

draw from the plan prior to age 59 and 1/2. The current defined benefit plan does not have a penalty for any one who retires at an age earlier than 59 and 1/2. The current plan provides for normal retirement at twenty-five years of service regardless of age, or age 60 with eight years of service for dispatchers. Crime Scene Investigators are eligible to retire with 25 years of service regardless of age, or age 60 with 10 years of service.

Another glaring difference is the loss of a duty disability pension. A defined contribution plan is not a pension system and therefore carries no protection from a duty incurred permanent disability.

The current defined benefit pension plan has a duty disability provision.

"Payable upon the total and permanent disability of a member as a result of a job related injury. No age or service requirements. Must be in receipt of worker's compensation. Computed as a regular retirement with a minimum benefit of 10% of FAS. Based on service and FAS at time of disability." (See Union exhibit 114. Page B-2.)

The Union asserts that the potential loss of this benefit alone should be sufficient reason enough to deny the Employer's move to a defined contribution system. Both classifications are subject to the stress of a dangerous profession. Crime Scene Investigators have to be especially cognizant when processing a crime scene, of the dangers of blood borne pathogens. Serious, life altering diseases may be contracted by the CSI when exposed to the presence of blood borne pathogens. Diseases such as AIDS or more commonly Hepatitis may be career or worse, life ending for the CSI. The Employers proposal would eliminate this safety net for these employees.

It is significant that the Employer has already been successful in eliminating the pensions for new hires for the Teamsters and the non-union employees of the Township. New employees after 1/1/2005 for the court have lost their pension as well. The Employer argues that the internal comparables therefore support eliminating the defined benefit pension system for the dispatchers and CSI's as well.

The Union would note that none of the employees that have been eliminated from membership in the General Employees Pension System paid any money into the system. The only employees in this pension plan that paid into the system were the Dispatchers and CSI's. (See Union exhibit 114, page B-2.) The Employer bore 100% of all of the Township employees covered by the General Employees Pension System except for the Dispatchers and CSI's. The two classifications have paid five percent into the pension plan for many years.

This payment has offset, in part, the Employers cost of the pension. The Union

finds it incredible that the Employer now seeks this panel to save it some money by eliminating pensions.

The Employer proposal would require the Employer to pay 10% of an employee's base pay annually into the DC plan. This would be a reduction from the previously cited 18.08% for 2006 payment to the DB plan. This is not just a savings of 8.08%. As noted, the Employers proposal is on base pay only. The current Employer's cost is on base pay, and for the CSI's, overtime pay. This translates into more dollars going into the pension plan and that means a higher pension.

Moreover, there is an interesting footnote on page B-2 of Union exhibit 114,

"Death and disability benefits for CSI members are the same as those for Police members in the Waterford Township Policemen and Firemen Retirement System."

This has all been through negotiations. The current defined benefit pension plan and the current formula is the product of several years of negotiations. The original ordinance was passed by a vote of the citizens of the community.

Five of the eight comparable communities have a defined benefit plan. Shelby Township and Oakland County have a DC system. West Bloomfield has both a DB plan and a DC system.

The majority of the external comparables provide for a defined benefit pension plan for its employees.

Based upon the evidence in the record and the arguments made, the Union believes that the panel should award the Union's position on this issue and deny the Employer's last best offer.

The Union seeks to amend the current formula for computing the defined benefit pension for the employees in the bargaining unit by including overtime in the Final Average Salary. Under the current provisions, overtime is excluded from FAS.

On the other hand, police and firefighters are in a different pension system than the dispatchers. They are in the Act 345 public safety pension system.

In the General Employees Pension System for the Township, the only employees in that system that include overtime in FAS are the CSI's. This means that all the Public Safety personnel, both sworn and non-sworn, only the dispatchers exclude overtime in FAS.

The external comparables are mixed. Out of the eight comparables, fifty percent include overtime in FAS. This is a bit misleading. Oakland County does not have a defined benefit pension system. It is a defined contribution system and therefore does not compare to the

type of benefit system in place for the Dispatchers. When that is taken in to account, then it is four out of the remaining seven that include overtime in FAS. This is 57% of the comparables. (See Union exhibit #112.)

The Union submitted an actuarial valuation as to the cost of including overtime in FAS. Union exhibit 113 is the actuarial valuation compiled by the same actuarial firm that works for the current pension board.

On page two of this exhibit, the total cost is figured at 5.15% which translates in to first year dollar costs of \$31,431. This is hardly a break the bank proposition.

This cost figure is based upon an unlimited amount of overtime being included in FAS. The Union has placed a cap of three hundred hours per year on the amount of overtime that is to be included in FAS. This would dramatically reduce the costs.

On page one of this exhibit, the actuary indicates that certain assumptions were made in the performance of these calculations. One assumption is that the annual salary increases were 4.5%. In fact, the salary increases were nowhere near that amount. The fact that the salary increases were less than the assumption would also reduce the cost of this benefit.

On page three of this exhibit are the comments to the report by the actuary. These are important to the overall valuation of the Union's proposal and is considered by the panel.¹¹

The Union's position is untenable for the reason that the Dispatch employees are members of the General Employee's Pension system and, with the single exception of the Crime Scene Investigator,¹² none of the employees of the General Employee Pension system have Overtime included in their Final Average Compensation.¹³

It is clear that the continuing upward spiral of the Township's Pension Costs have to be controlled. Since 2002, the Pension costs as a percentage of payroll in the General Employee Pension system has almost doubled, moving from a 10.36% contribution in 2002 to an

¹¹The actuary notes that: "Using a 2080 hour work year and an overtime pay of 1- ½ times base pay, we determined that overtime resulted in an average increase of approximately 18.6% of pay over the last five years. For purposes of the valuation, we rounded down to 18% because of the large amount of overtime in 2004 which we understand to be related to special circumstances that are not expected to occur annually (such as extended sick leave and/or pregnancy leave.)" (See page three Union exhibit 113.)

¹²This anomaly will be corrected once the current Crime Scene Investigator retires and if the Panel adopts the Township's proposal for Pension benefits for newly hired employees.

¹³ Township Ex. 10a.

18.08% contribution in 2006.¹⁴

Notwithstanding, there are legitimate concerns about the ongoing fiscal health of Waterford and the state. That is discussed more fully hereafter. The panel is required to take into account the ability of the employer to pay its present and future obligations, and to look at factors such as prevailing wages and benefits. The economic climate is something that should be considered.

The chairman has also taken into account the resolution of the other issues, which have a reciprocal relationship to these issues. Ability to pay and good responsible stewardship is an overriding consideration.

Considerations of internal comparability and parity are entitled to great weight here. A majority of the membership of the Township's General Employee's Pension System are members of the Teamsters Unit and the proposal put forth by the Township was successfully negotiated with the Teamsters.

In addition, both the Police Patrol and Police Command units have a two-tier pension provisions in place for newly hired employees.

Therefore, a majority of the Panel makes the following award on the parties' respective pension proposals: The Waterford Twp. Last Best Offer on Pension is **APPROVED**; the Union request for Overtime in Final Average Compensation is **REJECTED**.

¹⁴ Employer Ex. 7

The Merits of the Sick Time and Long Term Disability Proposal

Employer Issue 1.

Employer's last best offer: *The employer proposes* the following regarding Sick Leave Short Term and Long Term Disability:

Replace current Article XV with the following:

ARTICLE XV **SICK LEAVE, SHORT TERM & LONG TERM DISABILITY**

15.1 Effective October 1, 2006 all current employees shall be granted forty-eight (48) hours of paid sick time. In addition to the initial 48 hours, current and new employees shall earn 2 hours of sick leave per pay period.

15.2 Sick time shall be for 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.

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

15.4 Any sick leave above 120 hours remaining after September 30th of each year 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.

15.5 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.

15.6 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.

15.7 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 (TBD).

15.8 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.

Union Last Best Offer

Sick Leave. Article XV- Sick Leave, Short Term & Long Term Disability.

Union's last best offer:

The Union proposes as its last best offer of settlement on this issue the following:

ARTICLE XV- SICK LEAVE

15.1: An employee may take sick time as needed.

15.2: Sick leave may be used when the employee is sick or injured (not work connected).

15.3: After five (5) consecutive days of illness, the employee may be requested to see a Township doctor. After approval of the Township doctor the Sick and Accident Policy will begin. The employee will receive 100% of their

pay for the first sixty (60) calendar days and 75% of their pay for the balance of one (1) year.

15.4: Benefit payments will be paid on regular employees payroll dates, and shall continue for a maximum of twelve (12) months from the last day the employee has worked, or until the employee returns to work, whichever is earlier.

15.5: No benefits shall be paid for any sickness or injury for which the employee is entitled to benefits under any Workers' Compensation or Occupational Disease Law.

15.6: No sick and accident benefits shall be provided for any loss caused by war or any act of war, whether declared or undeclared, while in the service of the National Guard, or any military or naval services of any country.

15.7: The Township shall continue to pay for the employee's hospitalization coverage for the first twelve (12) months during the employee's disability.

15.8: An employee shall not lose seniority while receiving benefits hereunder.

15.9: An employee who does not use any sick leave time in a calendar quarter shall be credited with one-half (1/2) day additional vacation time to a maximum of two (2) days per year.

15.10: (New) Serious illness of husband or wife or child shall warrant use of sick leave by the employee, after arrangements have been made with his/her immediate supervisor, provided that this is restricted to eight (8) working days in a calendar year.

15.11: (New) 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.

DISCUSSION OF SICK LEAVE AND SHORT AND LONG TERM DISABILITY

On the one hand, the Township has 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, and has been negotiated with the Teamster Unit¹⁵. Further, the sick-bank concept is consistent with *every* external comparable.

On the other hand, the Employer seeks a dramatic change in the sick time article. The current plan was negotiated. The agreed plan was originally the employer's issue.

As background, the Employer previously sought to eliminate the sick banks that employees had accumulated over their tenure. In exchange for the large sick banks the

¹⁵The proposal actually is more generous than that provided to Management and the Court Employees because the Township's LBO to the Dispatcher's includes an initial grant of 48 hours of paid sick time that is not included in the Management or Court Employees program, but is included in the negotiated agreement with the Teamsters. Furthermore, the Township's offer here allows for earning 6 ½ sick days per year, while Management and Court Employees earn only four.

Employees were allowed to accumulate, would be a plan that would provide for the first sixty days off with 100% pay. This was followed by 75% of pay for days 61 through one year.

The parties agreed to the plan which has worked well for over a decade. The Employer now comes before this panel seeking to revert to a plan that is not as generous as either the original or current plans. The Employer proposal would reinstate a sick time procedure that would create the accumulation of sick banks. Maximum accumulation is one hundred and twenty hours¹⁶ with anything over the cap being paid off annually every September 30th at the employee's rate of pay in effect on that date.

The Employer has now come full circle by offering this new policy. The Employer argues it needs this issue to eliminate sick time abuse. The crucial question is whether sick time is being abused. I hold the record does not currently support the employer's case.

Waterford Township Dispatchers Association Sick Leave Usage

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006 6mos</u>	<u>Per Person Avera ge</u>
Best	144.00	638.25	667.75	227.25	24.00	378.06
Zoltowski	254.75	781.00	183.50	63.00	16.00	288.50
Fritz	179.75	630.50	82.00	67.00	25.00	218.72
Metikosh	80	99.00	430.50	77.00	12.00	155.22
Wale	96.00	36.00	248.00	32.00	240.00	144.89
Ryner	101.75	101.00	27.00	65.00	21.00	70.17
Nick	74.50	61.50	32.00	72.00	56.00	65.78
Collier	16.00	87.00	36.00	91.00	52.00	62.67
Holland	96.00	92.00	21.00	32.00	0.00	53.56
Hall	18.50	24.00	16.00	16.00	40.00	25.44
Corbett	8	30	24	8.00	8.00	17.33
Weeks	0.00	24.00	8.00	8.00	16.00	12.44
Leonard			8.00	20.00	0.00	6.22
TOTAL	1,069.25	2,604.25	1,783.75	778.25	510.00	
ANNUAL UNIT AVERAGE	89.10	217.02	137.21	59.87	39.23	

¹⁶One hundred twenty hours equates to fifteen days per year for employees on an eight-hour schedule or twelve days per year for employees on a ten-hour work schedule.

Description: This exhibit examines sick leave usage by WTDA members from 2002 through June of 2006.

Source: Township payroll records

The foregoing exhibit does not indicate sick time abuse. In 2002, the average use was 89.10 hours. It peaked in 2003 at 217.02 hours and has declined every year since then to a six months low of 39.23 hours. This was even noted by the actuary in Union exhibit 113. At no time did the Employer produce evidence that any member of the unit had been disciplined for abuse of sick time.

Employer exhibit 16 also proves the point that sick time abuse is not present in this unit. In 2005, this unit by far had the lowest average use among all Township employees. This is hardly indicative of rampant abuse.

The Employer's proposal would provide for annual payouts of unused sick time for anything over the 120-hour maximum accumulation. Currently there is no sick bank and therefore no annual payout. The Employer would be required to pay employees for anything over the 120-hour cap. This could mean anything from a one to about two weeks additional pay – almost a 4% cost to the Employer for someone who used zero sick time in a year.

The establishment of sick banks with a payout will mandate the Employer under GASB to fund the future buyout of these banks. The Employer fought to avoid this years ago.

Unlike the other Township labor Units, where the issue was not so much one of economics, but rather of productivity and stabilization of the work force, the sick leave issue for the Dispatch Unit has a significant economic component. In other units, the Township rarely “back-fills” positions to cover for those employees on sick leave. However, that is not and cannot be the case in the operation of the Dispatch services. When a Dispatcher is off, another employee – always on an overtime basis – must be called in so that the Township can continue to provide the reasonable and necessary Dispatch services to the Township residents.

Until 2005, when the “threat” of a change in the sick time was proposed by the Township, the sick leave usage by the Dispatch Unit was horrific – arguably the worst of any employee group in the Township.¹⁷ – a factor taken into consideration by the Panel. In the case of regression, it is anticipated that the employer will reopen this issue in the next contract.

Employer exhibit 13 lists the comparable communities and the payout rate for each group. Under the current system in Waterford, there is no payout rate for sick time. Of the eight communities, only Oakland County has no payout rate. Of the remaining seven, six are paid out at retirement leaving open the issue of including these payouts in Final Average Salary.

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>
Clinton Township	12	20 days	50% of accumulated leave at retirement, 50% of leave in excess of 20 days	Yes
Oakland County	5	15 days	None	Yes
Pontiac	12	Primary Bank: 150 days, secondary bank unlimited	50% of accumulated leave in the primary bank	Yes
St. Clair Shores	9	10 days	100% at retirement, days in excess of 10 annually at the 100% rate.	Yes
Shelby Township	12	30 days	Hours in excess of 240 paid at 100% each year. All credit paid at 100% upon severance.	Yes
West Bloomfield Township	12	45 days	Days in excess of 45 days paid at 50% each year. All credit paid at 50% upon retirement only.	No
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 Twp.	12	Unlimited	50% of accumulated leave at retirement, maximum 50 days	Unknown

Description: This exhibit compares sick leave plans among the comparable group.¹⁸

Source: Collective bargaining agreements.

The panel adopts the Union's position. It will keep status quo as to the procedure except for two areas. (1) The first area would provide for some of the sick time to be used for family illness. This is a benefit that is allowed for other employee groups. Its inclusion would bring this group in parity with the other employee groups. (2) The other change would be to establish a joint labor management committee that would have the

¹⁷ Employer Ex. 14. The Panel notes, however, that one of the persons who was on long-term disability was recovering from the passing of her husband, who was a police officer in a neighboring city who was killed in the line of duty. Supervision encouraged her to take the time off. One of the real problems facing the Township is the seeming disconnect between first line supervision and upper management.

¹⁸ Employer exhibit 13.

purpose of monitoring the current sick policy to further protect against the possibility of the occurrence of sick time abuse. This approach makes more sense than revamping the entire system when widespread abuse does not exist.

The proponent of a contractual change has the burden of proof on the issue. Each party 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.

The panel believes that evolutionary change and contract administration is preferable to revolutionary rewrites.

Therefore, Based upon the evidence in the record and the arguments made, the panel **DENIES** the Employer's position on sick time and long term disability and **ADOPTS AS ITS AWARD** the Union's final offer.

Wage considerations

In evaluating wages, the panel must take into account many conflicting factors. Act 312 itself only hints at the possibilities, although it has an 'escape clause' that permits consideration of such other factors as are commonly considered by interest arbitrators. §(h) is broader than the rest of the factors, and is to be "liberally construed."

The mosaic may include, *inter alia*: 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; local, regional, state and national economic events and prediction; 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; hiring patterns; settlement patterns; and other factors applicable to the wage proposals.

The interest arbitration panel must try 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 dispatch unit.

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. 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 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 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 budgeted contingencies.

He also pointed that 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. 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.¹⁹

The other major factor referenced by Mr. Heffernan was 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.

It is also understood that decreased state revenue sharing is an everyday fact of life. Indeed, the utter unpredictability of state revenue sharing, where it is here promised

¹⁹As cities, these communities can levy up to 20 mills, while Waterford, as a Charter Township is limited to 5 mills. 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 Waterford's pension contribution comes directly from the general fund.

for the fiscal year, delivered late, and reduced without warning in mid-year, is a fiscal nightmare for the township.

On the expenditure side, perhaps the largest and essentially uncontrollable problem for the Township is the increased Health Care costs for pensioners.²⁰

Waterford's ability to pay for increased wages and additional benefits is extremely limited, if not impossible. Substantial lay-offs and the attendant reduction in services to residents loom on the horizon.

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 Security coverage, as does Waterford.

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.

²⁰Two 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 in the police case 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. 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.

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. Fiscal austerity over the last few years has enabled the Township to largely live within its budgetary constraints. However, the long term outlook is not so good.

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. At

the same time that expenditures were keeping pace with revenues, the staffing levels in the police department were dropping.

Mr. Heffernan, the Township's accountant, 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. Each succeeding year after 2000, the fund balance dropped, to a low in 2003 of \$764,000. However, 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 at about 1.3 million dollars.

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. In an unprecedented 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.

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.

To be sure, the record does 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.

This would seem to be supported by the pattern set by the other internal comparables for these proceedings. The Union is, of course, correct in its contention that this group of employees is unique. It was really undisputed that during this course of time the duties and the scope and breadth of dispatchers' responsibilities has, in fact, increased. This development singles out this group of employees for recognition in the form of

increased wages. On the other hand, there have been merit adjustments in their base wages, as the history indicates.

These increased duties and responsibilities are important. It is not a case of an increased work load due to an increase in the amount of 911 phone calls received. The dispatchers of Waterford Township are one of the few public safety dispatchers of all of the external comparables that are trained and certified in life support. They are the first line in life support for the citizens of the community in that they are the first ones receiving the call for help. Because of their increased training and certification, they are able to give assistance over the phone while the paramedics are on they way.

This is sometimes the difference between life and death. The critical minutes that pass before the ambulance arrives on the scene are put to productive use through the training of the dispatchers. Whether it is talking through the delivery of a baby, stopping a femoral artery from gushing, or reviving a heart attack victim, the Waterford dispatchers are trained to assist victims before help arrives on the scene.

The Union is also correct that external comparables do not support a wage freeze for 2004. All the external comparables except two have received pay increases for 2004. The two that did not, Oakland County and Pontiac did not have completed agreements by the time this record was closed. Six of the comparables did have settled agreements in place for 2004. The settlements in wages ranged from a low of 0.5% in Westland to a high of 4.5% in White Lake Township. The rest of the settlements were at 3.0% of payroll.

PAY COMPARISON – MAXIMUM BASE PAY RATES

<u>Comparable</u>	<u>Years to</u>	<u>Last Year of Contract</u>				<u>1st</u>	<u>2nd</u>	<u>3rd Year</u>
		<u>Jan-03</u>	<u>Rank</u>	<u>Jul-03</u>	<u>Ran</u>	<u>Year</u>	<u>Year</u>	
<u>Community</u>	<u>Full Pay</u>					<u>in</u>	<u>in</u>	<u>in Issue</u>
Clinton Township	4	41,144	2	42,378	1	3.0%	3.0%	†
Oakland County	5	41,610	1	42,234	2	†	†	†
Pontiac	3	38,750	6	38,750	7	†	†	†
St. Clair Shores	10	38,418	8	39,569	4	3.0%	3.0%	†
Shelby Township	3	37,469	7	37,469	8	3.0%	†	†
West Bloomfield								
Township	5	39,343	5	39,343	6	3.0%	†	†
Westland	5	39,432	4	39,432	5	0.5%	3.0%	3.25%
White Lake								
Township	3	35,463	9	35,463	9	4.5%	3.00%	†
		†				†	†	†
		\$38,95						
Mean:		4		\$39,330		†	†	†
		\$39,38						
Median:		8		\$39,501		†	†	†
		\$40,66						
Waterford	4	4	3	\$40,664	3			
	Mean							
	Differential	\$1,710		\$1,334				
	Median							
	Differential	\$1,276		\$1,163				

Description: This exhibit compares Waterford Township’s base pay rate to those within the comparable group.

Both January and July rates are used to account for the changes in contract year for the other communities.

Waterford ranks third in the January calculation, registering \$1,710 and \$1,276 above the mean and median respectively. In the July calculation, Waterford’s rank remains third, registering \$1,334 above the mean and \$1,163 above the median.

Source: Collective bargaining agreements

As the above exhibit indicates, the dispatchers are ranked number 3 from the top as of July 2003. Waterford is behind only Clinton Township and Oakland County in wages for that year. Only \$1,321 separates Waterford Township and the next three groups, Westland, West Bloomfield and St Clair Shores. That means that by granting Employer's

position as to the first year of wages, 2004, Waterford will slip some in the rankings among the external comparables.

In considering the wage proposals for 2004, and beyond, the Arbitration Panel should, as it must,²¹ pay close attention to how the Union has fared in its wages compared to the cost of living. Since 1994 through 2003, the cumulative cost of living has increased by 26.49%, while the base wages of each member of the Dispatch bargaining unit has increased by more than 54%.²² This demonstrates an extraordinary wage increase for this nine-year period – an increase that is nearly double the increase in cost of living. Perhaps even more astounding is that the Dispatcher's total compensation has outpaced the Cost of Living by 62.12% to 26.49%.²³ If this Panel is to give any meaning to the statutory requirement that it consider cost of living as it relates to the wage and benefits of the employees, it must reject the Union's proposal and adopt the Township's. In reviewing the wage increases granted the Dispatch Unit in the years 2001 through 2003, compared to the wage increases received by other Township employees, the records show that the Dispatchers received wage increases over those three years of 19.2% compared with 17% for the Firefighters, 12% for the Teamsters, 13.6% for Police Command; 14.5% for Police Patrol, 12% for Management & Administrative and 8.0% for the Township's court employees.²⁴

In 2004, none of the Township's collective bargaining units or its management received a wage increase. The Firefighters Union received no increase; the Police Command Unit received no increase; the Police Patrol Unit received no increase and the Teamsters received no increase. Internal comparables alone compel this Panel to award the Township's Last Best Offer of a wage freeze for 2004.

Again, when reviewing the Last Best Offers of the parties for the second and third years of the contract (2005 and 2006), the Township proposal is consistent with the pay increases awarded to or negotiated with other Units. Specifically the Firefighters negotiated

²¹ MCLA 423.239(e).

²² Township Ex. 3.

²³ Township Ex. 4.

²⁴ Township Ex. 5.

3% wage increases for those years 2005 and 2006, as did the Teamsters. Police Command received an award of 3% for 2006. The only unit that received more with the Police Patrol unit, but increases awarded to the Dispatchers in recent years --19.2% from 2000 through 2003, discussed supra, should mitigate against granting the Union's proposal. The Township does not believe there is any rationale for granting the Dispatchers any greater increase than that granted the Firefighters, Police Command and the Teamsters. In fact, even when outside comparables are considered, 3% wage increases appear to be the norm.²⁵

From a historical standpoint, in 1993 Waterford Township's Dispatchers base pay ranked third compared to the comparable communities.²⁶ Because of the lack of other pay increase comparisons with the comparable communities at the time of the hearings in this case, it is impossible to determine with any certainty how the 3% increases proposed by the Township will effect the Waterford Dispatcher's ranking, but based on the known factors, it is reasonable to assume that there will be minimal, if any, alteration of Waterford's Dispatcher's ranking with the comparable communities. The Township strongly believes that the Panel should award its wage proposals for 2005 and 2006.

The same rationale as presented for the Township's prior wage proposals applies equally to its 2007 proposal. The two 312 Arbitration awards affecting the 2007 wage rates was this Panel's Award in the Police Patrol 312 Arbitration and the Police Command award – both at 2½%. To quote from the Police Patrol Award, “Again, if we take into consideration the fact that this award will likely set a pattern for all public safety units....”²⁷ Given the concern expressed by that Panel, and its suggestion that the Award in that case could “set a pattern”, the Township suggests that to alter the pattern would be

²⁵ Township Ex. 4a.

²⁶ Township Ex. 4a.

²⁷ Panel's Final Opinion and Award MERC Case No. D05 B689, page 32.

contrary to the concern expressed. The Township opines that the pattern is established and its offer of 2½% for 2007 wages should be awarded.

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.

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.

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.

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

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 that has eluded both the parties.

Maintaining internal comparability and proportion is an important factor for the panel. Maintaining the long term fiscal integrity of this organization, while providing a fair wage for the work provided, has presented conflicting goals.

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:

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

Therefore, in light of all the foregoing considerations, a majority of the Panel makes the following award on increased base wages.

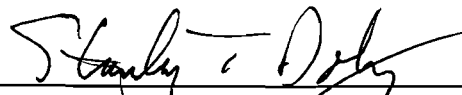
Township's first year wages - i.e. wage freeze is accepted.

Panel awards	0%	3.5%	3.0%	2.5%
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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 .

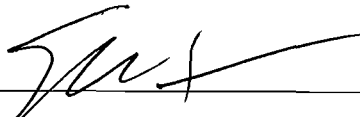
For all the foregoing reasons, the Panel hereby awards the foregoing provisions, adopts this statement as its complete award, and remands this matter to the parties for the drafting of a collective bargaining agreement in accordance with the determinations set forth above. The Arbitration Panel retains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



STANLEY T. DOBRY, Impartial Chairman

Dated: July 24th 2007

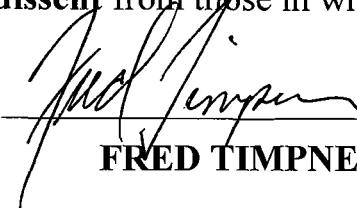
I **concur** on those issues and the reasoning on which the employer prevailed. I respectfully **dissent** from those in which it lost.



STANLEY KURZMAN, Employer Delegate

Dated: July 24th 2007

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: July 24th 2007