

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY COMPULSORY ARBITRATION TRIBUNAL

In the matter of Statutory Arbitration Between:

CHARTER TOWNSHIP OF WATERFORD,

Employer,

-and-

Arising pursuant to Act 312
PA 1969, as amended

MERC CASE NO. D-09-0091

MICHIGAN ASSOCIATION OF POLICE,
WATERFORD TOWNSHIP DISPATCHERS
ASSOCIATION,

Union.

PANEL'S FINAL OPINION AND AWARD

APPEARANCES

BEFORE THE COMPULSORY ARBITRATION PANEL

BARRY GOLDMAN, Impartial Chairman
STANLEY KURZMAN, Employer Delegate
FRED TIMPNER, Union Delegate

FOR THE EMPLOYER

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FOR THE UNION'

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Representing the Union
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INTRODUCTION

This Panel is created under the authority of the Michigan Employment Relations Commission ("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, 2007.

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. The Police Command unit's current contract expires on December 31, 2011; the Firefighter's union recently, through a Memorandum of Understanding, extended its contract that would have expired December 31, 2009, through the year 2011. The Police Patrol unit's contract expired December 31, 2007, and a petition for 312 Arbitration has been filed by that Union. The non-public safety unit, made up of the general employees of the Township, are represented by Teamster Local 214 and recently concluded negotiations on a contract that will expire on December 31, 2011. The primary issue raised by the Township with all of the bargaining units has been the Township's ability to pay; an issue that, according to the Township, has become critical with the significant

reductions, both actual and forecasted, in State Aid, along with substantial reductions in the taxable value of the Township's property, the basic primary source of the Township's revenue. Since the negotiation and arbitration proceedings with other units, there has been a more significant reduction in the Township's revenues, both current and anticipated future revenues. However, throughout the bargaining history of the Township with its various union units, the Township has had a basic policy of attempting to maintain parity among its employees – particularly with the public safety unions.

A pre-arbitration hearing was held on June 16, 2009, at the offices of the Township. Present were the Chair, the Employer and Employee Delegates, the Township's Director of Human Resources and the bargaining team for the Union. At that hearing the parties entered into several stipulations. The parties agreed to a waiver of all statutory time limits in regard to the proceedings.

At the time of the petition filing in this case there were only three issues outstanding that separated the parties: (I) Wages, (II) The Union's request for a pension improvement and (III) The Township's request to "cap" the annual use of compensatory time. The parties stipulated that all three issues were "economic" for purposes of these Act 312 proceedings. The parties further stipulated that the contract would be for a four-year period, with wages retroactive to January 1, 2008, and expiring on December 31, 2011. A further stipulation was that all previously reached tentative agreements during negotiations would be incorporated into this Award.¹ The Tentative Agreements are attached.

The Panel unanimously agreed that each year of the wage proposal would be

¹ This included three issues that the parties agreed were Tentative Agreements but there was some uncertainty if the parties had actually "signed off" on these issues: i) the Drop plan as provided for in the Police Command and Firefighters contracts; 2) Removal from the contract of extraneous health insurance options no longer offered, i.e. PPO, MET, Traditional Blue Cross/Blue Shield and BCBS CB 2; and (3) Change time off requests requiring overtime in Article 22.2D from 48 to 72 hours.

treated as a separate issue.

Following suggestion by the chair, it was stipulated by the parties that the following 11 communities 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 Westland
White Lake Township	

The parties stated their respective positions as preliminary "last best offers" as follows:

I - WAGES:

UNION: 2% for each of the four years, retroactive to January 1, 2009.

EMPLOYER:

2008 – 2% retroactive to January 1, 2008
2009 – Wage freeze.
2010 – Wage freeze.
2011 – Wage freeze

II - PENSION:

UNION: Include up to 300 hours of overtime in calculation of Final Average Compensation.

EMPLOYER: Status Quo

III - COMPENSATORY TIME USAGE:

UNION: Status Quo.

EMPLOYER: Cap of 80 hours annual use.

The Arbitration Panel conducted an informal discussion regarding the issues and the respective positions of the parties. Of particular note were the settlements with other Township unions² and the subsequent significant reduction in State Aid and Property Taxable Value that had a substantial impact in reducing the Township's ability to provide pay increases without reducing staff and services to the public. Although understanding the Township's concerns, the Union's perspective was that the Panel should consider the effect of the external comparables and the realistic expectations of its members. Under the guidance of the Impartial Chairman, the parties were instructed to reconsider their last best offers in hopes that full scale hearings would not be necessary for the Panel to arrive at a determination. The parties agreed to do so, hoping to avoid the significant expenditure of public and union funds and the resulting delay, all of which would be minimized if the parties could provide the Arbitration Panel with proposals that would be implemented by the Panel without the necessity of the presentation of exhibits and the testimony of witnesses. Furthermore, the parties agreed that the facts surrounding the open issues were not really in dispute and, as suggested by the Impartial Chairman, the Panel would learn little through exhibits and testimony that wasn't already obvious.³

In accordance with the stated purpose of an Act 312 proceeding and the fact that the statute is to be expressly liberally construed to achieve its legislative purpose, the Chair encouraged the parties, once they had reconsidered their respective positions, to informally present such evidence that would be anticipated by way of "offers of proof" in

² The contract settlements with all Unions were available to the Panel.

³ With that in mind, the parties stipulated that the Statutory requirement that all proceedings be recorded be waived because it was anticipated that if the parties were able to modify their positions to the satisfaction of the Panel, no formal proceedings would be conducted at the pre-arbitration hearing and no court reporter had been requested to be present.

lieu of formal testimony and exhibits.

In encouraging the parties to reconsider, the Chair emphasized that, although understandable considering the economic constraints, the Township's wage freeze proposals were inconsistent with at least some of the Statutory criteria that must be considered by the Panel, to wit: comparison of the wages with other employees in comparable communities performing similar services, as well as internal comparables. The Chair further noted, and the parties agreed, that neither side had any knowledge of wage freezes in future years for Dispatchers in any of the comparable communities.

The parties, at the instruction of the Chair, caucused separately and then returned to present their revised positions, if any.

REVISED LAST BEST OFFERS

I - WAGES:

UNION: 2% for each of the four years, retroactive to January 1, 2008.

EMPLOYER:

2008 – 2% retroactive to January 1, 2008
2009 – 30 cents per hour.
2010 – 30 cents per hour.
2011 – Wage freeze, but with a re-opener clause.⁴

II - PENSION:

UNION: Include up to 300 hours of overtime in calculation of Final Average Compensation.

EMPLOYER: Status Quo

⁴ The specific language of the re-opener clause was presented by the Employer.

III -COMPENSATORY TIME USAGE:

UNION: Status Quo.

EMPLOYER: Cap of 120 hours annual use.

**THE IMPARTIAL CHAIRMAN'S OBSERVATIONS
AND RECOMMENDATIONS**

Based upon the discussions of the parties and the representations of what the testimony and exhibits would show if formal hearings were to be conducted, the Chair indicated that he had sufficient information from which he could make a recommendation to the Employer and Employer delegates as to what his final recommendations would be.

The Chair observed that the Employer's revised Last Best Offer on wages was consistent with the more recent settlements with other Township employee Unions and, although might place a financial burden on the Township was not outside the ability of the Township's ability to pay without the need for lay-offs in the Dispatch operation. The Chair indicated that his recommendation on the Wage issue to the Panel would favor the Township's revised position.

On the issue of the Union's request to include 300 hours of overtime in Final Average Compensation in calculating Pension benefits, The Chair was presented with an actuarial report that showed that the initial annual cost would be in excess of \$40,000. The Chair observed that this cost was excessive and he would recommend that the Panel reject the Union's position.

The Chair also considered the Township's position on restricting annual use of Compensatory time and observed that while the Township's original position of an 80-hour limitation was understandable from an economic perspective, he believed that a

limitation of 120 hours of compensatory time use was more reasonable and would not create an undue burden on the Township's financial circumstances or create excessive overtime resulting from the need to back-fill positions when the employees took time off. He indicated that, based on the information presented by both parties, that he would recommend to the Panel that the Township's revised proposal on the annual limitation of compensatory time use to 120 hours be adopted.

THE DELEGATES' RESPONSE

Taking into consideration the observations and recommendations of the Chair, and agreeing that neither party could present any evidence that was likely to cause the Chair to modify his recommendations on the issues, although not in full agreement, the delegates did agree that further hearings at which testimony could be presented would be a waste of resources. Accordingly, the Panel was prepared to allow this matter to proceed without any further hearings or the presentation of further evidence.

FINAL AWARD

The Panel makes the following final Award on the issues before it:

I - WAGES:

2008 -- 2% retroactive to January 1, 2008
2009 -- 30 Cents per hour..
2010 -- 30 cents per hour..
2011 -- Wage freeze, but with a re-opener clause.⁵

⁵ The wage re-opener language will read as follows: The wages for the 2011 calendar year shall be subject to being reopened for negotiation at the request of the Union. If the Union desires to exercise its right to reopen to negotiate 2011 wages, the Union shall notify the Director of Fiscal and Human Resources in writing no later than September 1, 2010, that it intends to exercise its right to reopen negotiations for 2011 wages. Failure to timely do so will result in a continuation of the then current wages, with no increase. If the Union exercises its right to re-open the issue of 2011 wages, the issue shall be subject to Act 312 Interest Arbitration.

II - PENSION; Status Quo

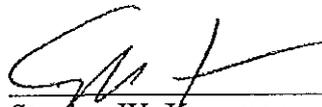
III - COMPENSATORY TIME USAGE:

Cap of 120 hours annual use.



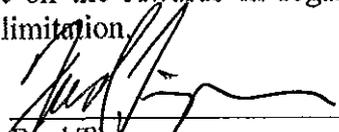
Barry Goldman, Chairman

I concur in the Award on all issues:



Stanley W. Kurzman
Employer Delegate

I concur in the Wage award for 2008. I respectfully dissent on the Wage Award for all other years and further dissent on the Awards in regard to the Pension issue and the Compensatory Time Use limitation.



Fred Timpner
Employee Delegate.

Dated: 9/9/09

Tentative Agreements reached 1-16-08

1. Change Article 20.3 to the following:

20.3: Breaks Employees may take up to 45 minutes in break time throughout their regular shift. Breaks may be split no more than three times in a work day. Employees working beyond 10 hours in a day shall be allowed an additional 15 minutes of break time.

This agreement was reached with the understanding that the employer's management rights, established in Article 36, allows the employer to direct the workforce including the control of break schedules. The removal of language which made breaks subject to supervisory approval, is intended to allow dispatchers the freedom to take breaks as necessary without requiring a supervisor to sanction the break.

2. Retiree health Change language in Article 29.2 to include the following:

All eligible employees retiring after January 1, 2008, shall have base retiree health benefits defined as Community Blue 1 PPO with a \$10/\$20 Rx and \$20 office visit. At social security Medicare eligibility the base coverage shall be BCBS M-65 2+1 or equivalent supplemental plan with a \$5/\$10 Rx Plan.

3. Add the following to the Loss of Seniority (7.4)

G. If the employee is unable to return to duty after 24 months from the first date of illness or injury.

4. Change the time limits for presenting and responding to the grievance in article 9.4, regarding discharge and discipline, from five (5) working days to seven (7) calendar days.

5. Add to maintenance of Standards Article:

In negotiating and executing this Agreement, it is the intention of the parties to bargain in respect to all wages, working conditions and all other mandatory subjects of collective bargaining between the Township and the employees covered by this Agreement.

SM

JAA

Ref 2
July 28-08

JAA

Tentative Agreements reached 5-28-08

1. Retiree health Change language in Article 29.2 to include the following:

All eligible employees retiring after January 1, 2008, shall have base retiree health benefits defined as Community Blue 1 PPO with a \$10/\$20 Rx and \$20 office visit. At social security Medicare eligibility the base coverage shall be BCBS M-65 2+1 or equivalent supplemental plan with a \$5/\$10 Rx Plan.

3. Add the following to the Loss of Seniority (7.4)

G. If the employee is unable to return to duty after 24 months from the first date of illness or injury.

4. Change the time limits for presenting and responding to the grievance in article 9.4, regarding discharge and discipline, from five (5) working days to seven (?) calendar days.

5. Add to maintenance of Standards Article:

In negotiating and executing this Agreement, it is the intention of the parties to bargain in respect to all wages, working conditions and all other mandatory subjects of collective bargaining between the Township and the employees covered by this Agreement.

6. Change the three month supplemental pay to 12 months. Change the 6 months of health insurance coverage to 12 months with no requirement of the employee to pay 1/2 the premium. Add new 30.5 as follows:

30.5 Employee shall attempt to schedule any doctor visits and therapy sessions during non-working hours. If doctor visits or therapy sessions can not be scheduled during non-working hours the employee will be allowed to attend during thier normal work schedule.

7. Now Article - Part Time Dispatcher Employees.

[NOTE: Part time Dispatcher Employees shall be members of the Waterford Township Dispatchers Association which will be clarified in Article 3 -- Recognition-employees covered]

7-2-08

FOR THE Union
Shelley Metekosh
Law J. Halko

FOR THE TOWNSHIP
Prot. J. Beck
J. Halko

The township shall be allowed to hire up to three (3) part time Dispatchers under the following provisions:

- 7.1 Probationary period: Part time Dispatchers shall serve a probationary period of 4,000 hours worked and during such probationary period they shall be "at-will" employees.
- 7.2 Work week limitation: Part time Dispatchers shall work no more than forty (40) hours per week, a work week being defined as 12:00 a.m. Monday through midnight of the following Sunday. Part time Dispatchers may work additional hours when filling in as a temporary replacement for a full-time Dispatcher who is off on STD/LTD or workers compensation leave.
- 7.3 Seniority: Part time Dispatchers shall earn one month's seniority for every 174 hours worked.
- 7.4 Layoff: In the event of a reduction in force, part time Dispatchers shall be laid off prior to any full time dispatcher lay-offs regardless of seniority.
- 7.5 Rate of Pay: Part time dispatchers shall be paid as follows:
- First 1,000 hours 85% of dispatcher I
 - 1,000 -- 2,000 hours - 90% of dispatcher I
 - 2,000 -- 3,000 hours - 95% of dispatcher I
 - 3,000 or more -100% of dispatcher I
- 7.6 Holiday Pay: Part time Dispatchers shall receive holiday pay at the rate of 1.5 times their regular pay if they work on any shift on any of the following nine (9) holidays: New Years Day, Easter Sunday, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve, Christmas Day and New Years Eve.
- 7.7 Conversion to full time Dispatcher status: Part time employees shall have no automatic right to fill full time Dispatcher openings but such conversion shall be at Management's sole discretion without regard to seniority.

Sm
an
A.J.
B.W.

R.J.S.

MEMORANDUM OF UNDERSTANDING

By and Between
The Township of Waterford
and the

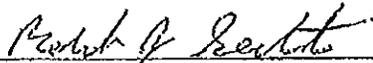
Michigan Association of Police
representing the
Waterford Township Dispatchers Association

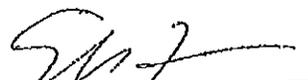
The Township of Waterford and the Michigan Association of Police hereby agree to the following:

Effective immediately, Communication Training Officers (CTOs) assigned to train newly hired dispatchers shall receive one hour of overtime for each day assigned as a CTO. The overtime shall be credited upon the completion of the Daily Observation Report.

Dated: May 28, 2008

THE TOWNSHIP OF WATERFORD


Robert J. Seeterlin, Director
Fiscal & Human Resources


Stanley Kurzman, Labor Attorney

UNION


Fred Timpner, Executive Director
MAP


Lori Holland, President
WTDA