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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. D08 J1281

**WATERFORD ASSOCIATION OF POLICE/  
MICHIGAN ASSOCIATION OF POLICE**

Union

**ACT 312 ARBITRATION PANEL'S OPINION AND AWARD**

STANLEY T. DOBRY, Impartial Chairman  
STANLEY W. KURZMAN, Employer Delegate  
FRED M. TIMPNER, Union Delegate

**I. APPEARANCES**

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*For the Union:*

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Dated: August 20<sup>TH</sup> 2010

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## I. 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 of Arbitrators to be appointed Chairman of the 312 Arbitration Panel for the resolution of contractual impasses in the collective bargaining process between municipalities and police or fire personnel.

The parties are the Township of Waterford ("Township" or "Employer") and the Michigan Association of Police, Waterford Association of Police ("MAP" or "Union").<sup>1</sup>

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 Chairperson, all but the disputed sections listed hereafter were resolved.

There was a full opportunity for direct and cross-examination. A full transcript was made.<sup>2</sup> During negotiations prior to the filing of the Act 312 petition and while the Act 312 proceedings were in process the parties reached several tentative agreements that the parties agreed would be incorporated by the Act 312 in the final Award. Those tentative agreements provide the context in which the rest of this proceeding and the determinations should be understood.

Among the agreements reached during these proceedings were: that each year of the wage proposals would be treated as separate issues and that the Collective Bargaining Agreement would be a five-year contract expiring on December 31, 2012. The comparables

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<sup>1</sup>Waterford Township has five bargaining units, four of which are public safety units. Trying to maintain historical relationships between these units is an important consideration for all concerned. Of course, the other bargaining units are not parties to this proceeding.

<sup>2</sup>By Metro Court Reporters for the first hearing and Maria Greenough, MERC Court recorder, for subsequent hearings.

agreed upon were the following six communities and their corresponding bargaining units:

Bloomfield Township  
Canton Township Clinton Township  
Clinton Township

Redford Township  
West Bloomfield Township  
White Lake Township

Left for the <sup>PAMH</sup> parties' consideration were the following issues:

1. **Wages. (Joint issue). [Economic]**
2. **Compensatory time use. (Township issue). [Non-economic]**
3. **Random drug testing. (Township issue). [Non-economic]**
4. **Health Insurance Premium Sharing. (Township issue). [Economic]**
5. **Deferred Retirement Option Plan ["DROP"]. (Union issue). [Economic]**

The parties duly executed a waiver of all statutory time limits regarding the proceedings. Post hearing briefs were duly filed.

## II. 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 selection of delegates (MCLA 423.234); and establishes a method to select the Arbitrator (MCLA 423.235).

It also sets forth procedural timetables;<sup>3</sup> has a provision for the acceptance of evidence;<sup>4</sup> 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 and 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 “non-economic.” The classification is critical. On a non-economic issue the Panel may adopt either party's offer or craft its own position. However, on an economic issue, the “arbitration Panel *shall* adopt the last offer of settlement which, in the opinion of the Panel, more nearly complies” with the factors set forth in the statute. (MCLA 423.238)

[Emphasis added.]<sup>5</sup>

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<sup>3</sup>The 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.

<sup>4</sup>“Any oral or documentary evidence and other data deemed relevant by the arbitration 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 works by majority rule. (MCLA 423.236)

<sup>5</sup>There are at least seven 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; (2) it constitutes an illegal delegation of legislative authority to a non-public person; (3) the statutes lack sufficient standards, so that there is an illegal delegation; (4) it is a delegation of the power to tax to the arbitration, which (5) therefore violates the equal protection clause's mandated principle of one-man one-vote; (6) the hearings do not comport with minimum due process standards; and (7) 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, effective and binding procedure for the resolution of disputes.” *City of Detroit vs Detroit Police*

In other words, the Panel must choose the more reasonable of the parties' two offers. Therefore, in many ways in Act 312 proceedings specific 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.<sup>6</sup>

On contested issues, the Panel must base its findings on the statutory criteria, to the extent they are applicable. There are ten.<sup>7</sup> MCLA 423.239 states in relevant part:

. . . the arbitration 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 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.

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*Officers Association*, 408 Mich 410, 461, 294 NW2d 68 (1980).

<sup>6</sup>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.

<sup>7</sup>The existence of these criteria is critical to the constitutionality of this entire statutory framework.

(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.

Although all factors enumerated in the statute are to be considered, they do not necessarily have to be given equal weight. As the Michigan Supreme Court has noted in *Detroit v. DPOA*, 408 Mich 410 (1980) at 484, that since the:

“factors are not intrinsically weighted, they cannot of themselves provide the arbitrators with an answer. It is the Panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all ‘applicable’ factors must be considered.”

### **III. INITIAL DETERMINATIONS**

Based upon a full and careful review of the exhibits and stipulations of the parties, the Panel unanimously made the following initial determinations:

1. This contract will be in effect for five-years, commencing January 1, 2008 and ending on December 31, 2012.

2. The tentative agreements of the parties, as attached hereto, are incorporated herein by reference as part of the award.<sup>8</sup>

3. Random Drug Testing and Compensatory Time are each determined as “non-economic.” Each of the remaining issues is identified as “economic.” Each year of the wage proposal is determined to be a separate economic issue.

4. Any issue not listed on Page 3 or in the Tentative Agreements was not the subject of a ‘final final offer’ and therefore is deemed abandoned.

5. Except as modified by this award (including the Tentative Agreements), the

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<sup>8</sup> There was some question as to whether the Union’s proposal on modification of the 4-40 shift proposal was tentatively agreed upon. Based upon the Panel’s post-hearings discussions, it was agreed that the language as proposed by the Union would be adopted, whether as a Tentative Agreement or by determination of the Panel noting that this was designated a non-economic issue.

and without interruption.

#### **IV. FINAL LAST BEST OFFERS**

It was agreed by the parties and accepted by the Panel that at the conclusion of the hearings the parties would be allowed to modify their original last best offers that were on the table at the initiation of the Act 312 proceedings and submit final last best offers at the conclusion of the hearings as the testimony and circumstances may well have changed during these extended proceedings. Indeed, the positions underwent metamorphosis, and some controversies were either settled or demands were dropped.

##### **1. WAGES**

###### **Township Last Best Offers:**

2008	\$.40 per hour increase
2009	\$.32 per hour increase
2010	-0-
2011	-0-
2012	-0-

###### **Union Last Best Offers:**

- Effective 1-1-08 2% increase.
- Effective 1-1-09 2% increase.
- Effective 1-1-10 2% increase.
- Effective 1-1-11 2% increase.
- Effective 1-1-12 2% increase.

All wage increases are to be applied to all steps of the wage scale and shall be applied to both the Police Officer and Crime Scene Investigator classifications. The wage increases are not to be applied to the Detention Officer wage scale or classification.

The five (5%) percent wage differential between the top paid Patrol Officer wage rate and the Patrol Investigator and the School Liaison Officer classification shall be maintained.

## 2. COMPENSATORY TIME

### Employer Last Best Offer:

#### Compensatory Time:

Employees working overtime have a choice of receiving pay or compensatory time. Compensatory time in excess of forty (40) hours must be taken within ninety (90) days or be paid. At no time can any compensatory time accumulation exceed eighty (80) hours. Compensatory time is to be used only with the prior approval of the Chief or Deputy Chief.

Commencing January 1, 2011, the maximum amount of compensatory time that an employee may use in a calendar year shall be limited to eighty (80) hours.

### Union Last Best Offer:

Keep the current contract language and current practice on compensatory time accrual and usage.

## 3. DRUG TESTING

### Employer Last Best Offer:

#### Drug Testing:

The drug testing policy for this unit shall be the same as the drug testing policy of the Association of Waterford Police Supervisors (COAM), which includes random drug testing.

### Union Last Best Offer:

Maintain the *status quo*. Keep the current reasonable suspicion language drug policy.

## 4. HEALTH INSURANCE PREMIUM SHARING

### Employer Last Best Offer:

Effective upon the issuance of the Award, employees for whom the Township is providing health insurance coverage shall pay fifteen (15%) per cent of the premium for the base coverage. Employees who elect other coverage than the base shall pay 85% of the difference in premium cost of the base coverage and the selected coverage.

Effective upon the issuance of the Award, employees for whom the Township is providing health insurance coverage shall pay fifteen (15%) per cent of the premium for the base coverage. Employees who elect other coverage than the base shall pay 85% of the difference in premium cost of the base coverage and the selected coverage.



**Union Last Best Offer:**

The Union emphatically requests the Panel refuse the Employer's issue on health insurance premium sharing and keep the status quo.

Article XIX of the current collective bargaining agreement lists all of the health care providers that are available from which the employees may choose during the annual open enrollment.

Option nine is the CB-10 base plan. For a more complete schedule of benefits outlining the deductibles and co-pays, see pages 57 and 58 of the current collective bargaining agreement.

**5. DEFERRED RETIREMENT OPTION PLAN ["DROP"]**

**Employer Last Best Offer:**

No DROP Plan to be offered.

**Union Last Best Offer:**

Add new article Deferred Retirement Option Plan (DROP).<sup>9</sup>

**V. 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 – especially when facing national, state and regional economic decline – and the Union members' requirement for job and economic security. The finds that often the maintenance of internal comparability to be a persuasive factor. These resolutions also take into account settlements in comparable communities and bargaining units,

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<sup>9</sup> The specific language proposed by the Union is added as an addendum to this Award.

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.

However, this Award is strongly tempered by the art of the possible, in light of the economic stresses facing government, the community, and the citizens.

Moreover, in a sophisticated way appropriate to their mature relationship, the Union and Township dealt with this proceeding and contractual modifications in a manner that is expected of labor relations professionals. As a personal note, the Panel Chairman was greatly aided by the quality of the representatives' zealous advocacy and the delegates' wise counsel and balanced input in the deliberation process. This epitomizes the way Act 312 was meant to work, and is a consequence of having a three person Panel in the process.

## 1. WAGES

As previously stated, the Panel decided that it would rule on each year separately as if it were a different issue.

Before beginning its discussion and its wage award the Panel will address the ability to pay issue raised by the Employer during the hearing.

The Employer portrayed a bleak financial backdrop for the purpose of arguing against any wage or economic award in favor of the Union.

As compared to several years ago, the State of Michigan is presently facing an economic downturn that is now prevalent throughout the State of Michigan. As a result, the Township of Waterford's financial situation has become unstable, through no fault of the administration. There are a number of factors that have destabilized the Township's financial position. The financial structure established by the State of Michigan for local governments including Waterford is hurting the Township and, in fact, is imposing significant hardships on

the Township's budget. The difficulty facing the Panel in crafting a fair award is the continued deterioration of the State of Michigan's economy and the estimates of continued deterioration of the Township's taxable value. The financial situation today is a far-cry from what it was in 2007 when the parties began their negotiations for a new Collective Bargaining Agreement. In addition, the many unfunded mandates imposed on municipalities by the State adds significantly to the economic burden placed upon Waterford Township.<sup>10</sup>

The current economic climate is in fact not good. Michigan seems to be in the forefront of those areas of the country that are bearing the brunt of the hard times. Many local communities have had an Emergency Financial Manager or even a Receiver assigned by the State of Michigan to help straighten out their fiscal problems.

Although not in the dire economic straits of some communities, Waterford is not immune to the fiscal problems experienced by the rest of the State. Declining taxable values coupled with declining revenue sharing does have an adverse impact upon the finances of the Employer. Inability to pay however is not necessarily *the* problem for this Employer. Rather, Waterford Township, because of good management and foresight, has, a limited ability to pay.

Waterford Township has done a lot to cut expenses over the last several years. Director of Human and Fiscal Services Robert J. Seeterlin was the principal witness for the Employer on its fiscal issues.

Mr. Seeterlin testified that the Township has been experiencing the same declining revenue issues as the rest of the public sector in Michigan. But unlike some, Waterford started making cuts years before in anticipation of declining revenue.

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<sup>10</sup> The *Final Report of the Legislative Commission on Statutory Mandates* released December 31, 2009, found that over \$2.2 billion dollars in unconstitutional unfunded state mandates existed. These are mandates made by the State which local governments are Constitutionally not required to bear, but do so because the State is emboldened by the disproportionately small number of suits to hold it accountable to the Constitution, Article 9, section 29. See <http://council.legislature.mi.gov/lcsm.html>

*Q. (Mr. Kurzman) Thank you, now, the Township, as you indicated, has had substantial decreases in revenues in the past year and anticipates substantial decreases in '11. Has the Township taken any steps at all to deal with these decreases?*

*A. (Mr. Seeterlin) We've made a number of steps going back to 2003 with regards to cost containment: reduction of staff, elimination of positions, layoffs; scaled back on capital improvements; made energy efficiency changes in some of the buildings.*

*A. (Mr. Seeterlin continuing) Like when employees leave, we evaluate whether we can do without that position, absorb work by other employees, work through reorganization, consolidation of the duties, reallocation of duties. You know, various departments - - it runs the spectrum as to what's happened in different departments. Some departments have been able to be reduced because of reduced workload - - in particular, the building and planning areas, where there's less development. And other departments have been reduced. (Tr. Volume 3, pages 70 and 71.)*

It is to the credit of the Employer that as far back as 2003, the Employer took steps to cut its costs with an eye toward the future.

Since 2003, with that same eye on the future, the Employer has negotiated with its other Unions wage and benefit increases. It has, until 2009, before the most recent decline in revenues, awarded pay and benefit increases to the non-union staff of Township employees. However, non-union personnel, consisting of management and administrative employees, including elected officials, have not received a pay or benefit increase since 2008.

Employer's exhibit 101 shows the wage increases for the comparable communities from 2005 through 2012 where applicable.<sup>11</sup> Employer's #101 also shows the wage increases given to the communities of Bloomfield Township, Clinton Township, Canton Township and West Bloomfield Township. Redford Township received a 3 percent increase in 2008, while White Lake Township received a 2 percent increase that same year. The Panel notes that these wage increases were granted prior to the significant decrease in revenues generated in each community by property taxes.

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<sup>11</sup> The Township's exhibit shows a 2.0% increase in 2008 for the Patrol unit. The Panel assumes the exhibit was prepared based on the Township's initial last best offer of a 2 percent increase for 2008. The offer subsequently was modified by the Township.

Employer's exhibit #114 shows the wage increases to all of the Township employee groups from 2006 through 2012. The Teamsters have a negotiated contract reaching out to 2011 providing for pay increases in each year and the firefighters have wage increases each year of a contract expiring at the end of 2010.<sup>12</sup> The Dispatchers have a contract that expires at the end of 2011 with pay increases through 2010 and a wage re-opener for 2011.

Despite the serious economic conditions, as previously stated, the Township has demonstrated fiscal responsibility and continues to carry a positive fund balance as testified to by Mr. Seeterlin:

*Q. (By Mr. Timpner) Is there currently a general fund surplus, or a balance, surplus balance?*

*A. (Mr. Seeterlin.) There's a fund balance. The fund is actually spending down that fund balance, so - - you use the term "surplus", most times that means that your revenues exceed your - - your current year revenues exceed your current year expenses. So, based on the 2010 budget, the expenses for the general fund exceed the projected revenue, so it's a - - declining budget.*

*Q. A declining budget?*

*A. Right.*

*Q. Well, isn't true, though, that for your fiscal year ended December 31<sup>st</sup> of 2008, that the Employer was actually able to increase the general fund balance by almost \$400,000?*

*A. I - I'm assuming you're reading off an audit report - -*

*Q. (Interposing.) Well, I'm looking at the - -*

*A. -- and if that's what it says - -*

*Q. (Interposing.) I'm looking at the - -*

*A. I don't doubt it, but ...*

*Q. I'm looking at the audit report. It's page 54, where it shows that the fund balance went from 1.67 million to over \$2 million, and that they were able to add \$400,000 to the general fund balance.*

*A. Yes. That sounds right.*

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<sup>12</sup> Although not part of the official record of these proceedings, the Panel does take "arbitral notice" that subsequent to the hearings, the Firefighters negotiated an extension to their contract that included a wage freeze for 2011 and 2012.

*Q. And that's money that can be used to pay wages and benefits as well, correct?*

*A. That's correct.*

*(Tr. Volume 3, pages 92 and 93.)*

The streets of Waterford Township may not be paved with gold, but the Employer has been able to add to its general fund surplus as its latest audit demonstrates over \$400,000 in 2008.

The general fund surplus, commonly called the "fund balance" is a significant figure to demonstrate the financial condition of many municipal governments, and represents the measure of its ability to provide wage and benefit enhancements to the employees. This is the kind of item to which auditors need to testify – the ebb and flow is important, and the general trend over the past few years can be telling -- as the municipality attempts to maintain adequate levels of services and continue to provide its employees with reasonable wages and benefits. Erosion of fund balance below a level of 10% of budget is an early indicator of problems. 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.

The Panel has also considered the following based upon the overall testimony of Mr. Seeterlin:

In 2010 Property taxes make up \$7,353,400 of the police fund. An additional \$6.2 million in police fund revenue will come from the General Fund. The remaining \$1.1 million in police revenue will come from fees for services, interest revenue and grant revenue. In 2011 police revenues will decline from \$14.6 million to \$12.5 million. This is primarily due to an estimated 15.6% decrease in township taxable values. Oakland County and SEMCOG are predicting an additional reduction in taxable values of up to 12% for the 2012 fiscal year. The 2012 drop will reduce police revenues by an additional \$1.7 million.

Expenses continue to rise, particularly in the area of health insurance premiums and pension contribution. In June 2010 the township experienced a 25% increase in Blue Cross rates. Pension costs in the police fund increased from \$1.6 million in 2008 to \$2.1 million in 2009.

The result of these decreasing revenues and increasing expenses will more likely than not force the police department to dramatically reduce staff. Any increase in wages or benefits can not be absorbed by the budget and will result in further staff cuts.

Since FY 2001, when Waterford experienced its highest level of state revenue sharing, revenue sharing payments from the state have declined from \$7.33 million in 2001 to \$5.0 million in 2010.

Police staffing has declined from 122 budget position in 2001 to 99 in 2010. Associated with the decline in staffing is a decline in District Court revenue due to less traffic enforcement. District court revenues peaked in 1999 at \$2.7 million. 2009 court revenues were \$1.7 million. Decreasing revenues in the court are also due to the economy as persons are electing community service over paying fees and fines.

### **2008 Wages:**

The current annual top base pay for a patrol officer is \$60,178. Based on annually working 2080 hours, a forty-hour work week, the current hourly rate for this step of the wage scale is \$28.93, a rate that went into effect on January 1, 2007. The Union's proposal of a two percent increase effective January 1, 2008 would change the hourly rate to \$29.51 and the annual pay to \$61,381.56.

The Employer's LBO for January 1, 2008 would add .40 cents to the current hourly rate bringing it to \$29.33 or an annual top base pay of \$61,000.64. This would amount to a 1.38% pay increase.

The employer's Last Best Offer for 2008 is not supported by the record, but the Union's proposal of a two percent increase effective January 1, 2008 is. The Township budgeted for this increase and the money "exists" in its fund balance. Furthermore, the Employer's own exhibits regarding the external and internal comparables support a two per cent increase for 2008. In fact, the Employer admitted it has set aside money for a 2% pay increase for the unit for 2008.

*Q. Well, Mr. Seeterlin, when they prepared the budget for 2008, did the Employer set aside wage increases for this unit?*

*A. Yes.*

*Q. Okay. About how much?*

*A. I don't know the specifics for this - - we budget them based on the entire department collectively, not by unit.*

*Q. They didn't get a wage increase, at least not yet, for 2008, correct?*

*A. No.*

*Q. No, it's not correct?*

*A. It's correct that they have not received - -*

*Q. (Interposing.) Okay.*

*A. - - a wage increase for 2008.*

*Q. Then what happened to the money?*

*A. The money is still in the Township's funds. A new auditing requirement that happened a couple years ago requires us to actually recognize an estimated amount for retroactive pay.*

*Q. Do you recall what the amount is that's recognized?*

*A. For 2008, it was two percent.*

*Q. Two percent. How about 2009?*

*A. 2009. It's two percent.*

*Q. And that's for this unit?*

*A. Yes.*

*Q. And how about 2010?*

*A. 2010 we haven't estimated yet.*

*Q. Okay.*

*A. Because it happens as part of the audit process. We have to tell the auditor what we assume.*

*(Tr. Volume 3 pages 103 and 104.)*

It appears to the Panel that the Township has the funds available to grant the Union's final last best offer for 2008.



**2009 Wages :**

The Union seeks a 2% increase. The Township offers .32 cents per hour.

Although the testimony of Mr. Seeterlin was that the Township had budgeted for a 2% increase in 2009; that was then and this is now. Unfortunately the Panel cannot turn the clock back and must consider the current economic situation. Had the parties reached agreement on 2009 wages in 2007, before the expiration of the prior Collective Bargaining Agreement, there is little doubt that the wage increase would have been 2% or greater. But the parties did not reach agreement and delay has unfortunately worked against the Union. Throughout the State, municipalities are attempting to (and succeeding) in re-negotiating collective bargaining agreements that were negotiated when financial circumstances were different.

**As a result of all of the foregoing, the Panel finds itself reluctantly granting the Townships wage proposal for 2009, an increase of .32 per hour.**

**2010, 2011 and 2012 wages:**

Although the parties agreed that each year of the wage proposals were to be treated as separate issues, the Panel notes that the wage proposals from each side are the same for 2010, 2011 and 2012. The Township proposes a wage freeze for each year and the Union seeks 2 per cent increases for each year. As earlier stated in this Award, one of the risks a party faces is "losing" an issue by making unreasonable demands in light of the facts established on the record.

It is clear to a majority of the Panel that the Township cannot afford the wage increases for 2010, 2011 and 2012 sought by the Union without significant lay-off of police personnel. This is absolutely contrary to one of the dictates of the factors to be considered, to wit: The interests and welfare of the public. Alternately, the significant increased costs that the

Union is seeking to impose on the Township will inevitably result in the Township being forced to consider contracting with the Oakland County Sheriff to provide police services to the Township – a result that the Township wishes to avoid and the Union certainly would undoubtedly consider tragic.

Essentially, the Union choose to “roll the dice” on its proposal for the last three years of the contract. It was a risky choice.

**For the years 2010, 2011 and 2012, the Panel grants the Township its proposal of a wage freeze for all three years.**

## **2. COMPENSATORY TIME:**

The Panel has ruled that for the purposes of this hearing, the Employer’s issue on compensatory time will be treated as a non-economic issue.

The Employer is asking the Panel to place restrictions on the usage of compensatory time for the employees covered by the bargaining unit. The Union believes that the current contract language and the resulting twenty-three year practice that has developed as a result is working and should not be disturbed. The Union is asking the Panel to reject the Employer’s proposal in favor of keeping the status quo.

The current collective bargaining agreement provides for police officers in the bargaining unit to receive compensation for overtime worked either by receiving pay or by taking compensatory time. There are restrictions, including a cap of ten days accumulation of compensatory time – 80 hours for an officer working an 8-hour shift and 100 hours for an officer working a 10-hour shift.

The Union claims that the current restrictions are sufficient for management to control the use of compensatory time. In support of this position was the un-rebutted testimony of Officers Biggs and Lippincott who, without equivocation, testified that officers do receive

denials of use of compensatory time when there are more than two officers off on compensatory time or vacation. The use of compensatory time is not an automatic approval process and management has the right of denial due to manpower shortages.

This is not an automatic approval process. Management has the discretion to deny compensatory time off requests as determined by the needs of the department.

Officer Lippincott is a twenty-three year veteran of the Waterford Township Police Department. He testified that when he was first hired, the size of a shift of patrol officers was five or six officers. The current practice regarding accumulation and use of compensatory time off was in effect when Officer Lippincott was first employed.

In addition, both Officers testified that bargaining unit members are often encouraged by administration to choose compensatory time rather than receive overtime in pay for economic reasons. Officers working the special details such as the motorcycle squad or the Special Response Team, are openly encouraged by supervision to choose compensatory time and not pay for the overtime compensation earned while in training.

It is the function of management to determine if there is going to be overtime. It is also a management right for the Employer to decide when, how long and how many officers will be working the overtime.

The external comparables do not support the Employer's position. All have caps on the amount of compensatory time off an officer in that department may accrue, but the majority do not place restrictions on the amount of compensatory time off an officer may take in a fiscal year.

Another restriction the Employer is seeking to have the Panel adopt is the requirement that Officers must use any compensatory time off within ninety days of earning it or be paid once they have accumulated in excess of forty hours in their bank.

The Panel believes, as the Union stated in its Post-Hearing Brief, that this would result in a scheduling nightmare for the administration of the Police Department. Officers would be clamoring for time off simply to avoid having those days at risk of being converted to pay. It would force more officers to actually take time off, something the Employer is trying to avoid. There would be increased pressure on management to amend their two off at one time rule to allowing more officers off at a time. Thus far the Union has not challenged management's right to deny time off because of staffing shortages, and it is anticipated they will not in the future do so.

The Panel has given consideration to the internal comparables where it found that only tow, the Dispatchers and Teamsters have the restrictions sought by the Employer. The dispatcher's language is a result of an Act 312 award. That determination was the result of the Employer being able to prove that dispatchers are replaced when they take a day off with employees who are compensated at overtime rates. Because in most instances, an employee of this unit who is granted compensatory time off by the Police Administration is not replaced, overtime is not an issue.

The Panel notes that the only Employer witness on this issue was the Mr. Seeterlin who based his argument for the employer's position on a "loss of productivity" theory. No one from the administration of the Police Department testified in favor of this argument. On the record is the testimony of Officer Biggs who testified that Chief McCaw had expressed to Officer Biggs reservations about the Township's position and the adverse effect it could have on the Police Department's overtime budget if the Panel adopted the Employer's position.

For the above stated reasons, the Panel finds for and Awards the Union position of "status quo".

### 3. DRUG TESTING:

The Employer seeks to change the negotiated drug testing policy from the reasonable suspicion standard currently in effect, to a random drug test standard.

The Union is opposed to this proposed change.

Of the internal comparables contained in Union exhibit 203, only the Command Officers Association contract permits random drug testing. The Police/Fire Dispatchers as well as the Fire Fighters Agreement do not permit random drug testing. The standard used for these two groups is reasonable suspicion.

The principal witness for the Employer on this issue was Chief McCaw who testified that he has been with the Waterford Police Department "...going on 23 years." He was appointed to the position of Chief in July of 2006.<sup>13</sup>

Chief McCaw stated under oath, "...but I want everybody here as well as you to understand my goal is not to catch somebody that's got drug or alcohol problem. The purpose and my concern is that if we have somebody that's doing something they shouldn't be doing, we need to identify that person and then make arrangements to get them some help. Under the ADA, it's clear that alcohol and other things, other drugs is identified as a disease and should be treated as a disease in some respects, and that's what I would like to do."<sup>14</sup> The record is clear that the Command Officers have agreed to random drug testing since 2003. Chief McCaw admitted that he has yet to send one member of that collective bargaining unit to be tested. For the past seven years, the last four of which McCaw has been the Chief, the Employer has failed to exercise its rights to randomly drug test members of the Command Officers Unit.

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<sup>13</sup> Tr. February 8, 2010, pg. 29.

<sup>14</sup> *Ibid*, pg. 46.

The Chief's prior actions overshadow his testimony. The Union produced two witnesses, Officer Charles Jeffrey Biggs, president of the local, and Officer Al Knapp, treasurer of the local. Both Officers testified to having a member approach them about a problem with alcohol use that the officer was battling. The officer, according to the testimony, self-reported himself to the Union President (Officer Biggs), utilized the Employee Assistance Program and, upon Officer Biggs' suggestion accompanied Officer Biggs and Officer Knapp to the Chief McCaw's office to inform the Chief of the situation. The Chief's response was to attempt to terminate the officer.

The Panel, however, in no way wants to suggest that Police officers should be without close scrutiny in regard to drug or alcohol use.

Admittedly, there are substantial rights to privacy that are unreasonably impinged by the employer's proposal. In effect, management is asking for the unchecked right to single out employees without recourse and without reason. If there is going to be random tests, they should include everyone. And should drug tests actually be implemented on a random basis, which does not appear to be the Township's proposal – or at least nothing in the Command drug testing policy, which the Employer seeks to have this unit adopt.

Even though urine testing – unlike blood testing – does not entail “surgical intrusions into the body, such drug tests are a search and not just a mere medical examination.<sup>15</sup> It intrudes upon an individual's reasonable expectation of privacy, and “must be deemed searches under the Fourth Amendment.”<sup>16</sup> Even without a warrant requirement, in cases not involving drug testing, searches cannot be performed without either probable cause or “some quantum” of individualized suspicion.

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<sup>15</sup>National Treasury Employees Union v. Von Raab, 816 F.2d 170, 2 IER Cases 15 (5th Cir. 1987) *affirmed in part, vacated in part*, 489 U.S. 656, 4 IER Cases 246 (1989).

<sup>16</sup>Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602 4 IER Cases 224 at 231 (1989).

However, for purposes of employee drug testing cases, the Court adopted a “simple balancing test” instead. “[W]here privacy interests implicated by the search are minimal and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion.

Urinalysis may be justified, if it relates to compelling interests. Indeed, that one is involved in public transportation or carrying a firearm might justify some lesser standard.<sup>17</sup> Nevertheless, police officers are not second-class citizens, and some individualized suspicion or triggering event is generally necessary.<sup>18</sup>

The current CBA calls for “reasonable suspicion,” “reasonable cause,” or “probable cause” for mandatory drug testing. There is no question here about the application of such language – and it may require much less than legal “probable cause.”<sup>19</sup>

“Random testing” is quite different. It may be random as to the individuals tested; it may be random as to timing; and it may be “random” as to lack of reason for testing.<sup>20</sup> Testing for anyone at any time for no reason at all is completely arbitrary, and is rife with the likelihood of harassment and improper tests for improper reasons. Adopting such a radical policy without negotiating it with the union is something that is revolutionary, not evolutionary.

To be sure, the Fourth Amendment is ordinarily considered to be a restraint on governmental officials. Nevertheless, even in the [public employee] circumstance, “rules and their application must meet the test of fundamental fairness if they are to be sustained.” Dow

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<sup>17</sup>Harmon v. Thornburgh, 878 F.2d 484, 4 IER Cases 1001 (D.C. Cir. 1989).

<sup>18</sup>See, Jackson v. Gates, 975 F.2d 648, 7 IER Cases 1249, 1252 (9th Cir. 1992). See generally, Marvin F. Hill, Jr. & James A Wright, *Employee Lifestyle and Off-Duty Conduct Regulation* (BNA, 1993) 147-166 ISBN 0-87179-778-X.

<sup>19</sup> See Frank Elkouri and Edna Asper Elkouri, *Resolving Drug Issues* BNA, 1993, pp. 296-301.

<sup>20</sup> See Frank Elkouri and Edna Asper Elkouri, *Resolving Drug Issues* BNA, 1993, pp. 302-307.

Chem. Co. 65 LA 1294, 1298 (Lipson, 1970).

The program the Chief refers to as random drug testing is in fact not random drug testing. An interesting exchange between the Arbitrator and the Chief takes place on pages 52 and 53.

Q. *(Mr. Dobry.) Okay. But the question I have is how were these particular individuals selected, not how did you effectuate it, but how did you determine - - You say it's random, but what's random about it if you pick out particular people?*

A. *Well, that particular part itself, but random as far as the dates, they don't know about the drug tests or the requests to go over to be drug tested.*

Q. *Okay. But it wasn't like you put their name in a hat. You're saying it was just random in the sense of timing, but it wasn't random in terms of identifying who?*

A. *That's correct...*

What the Chief really wants is a drug policy where he determines who is going to be tested, how often and when. The only "random" piece is the Officer doesn't know when the test is to be taken. The Chief tells the officer when to report for testing. The majority of the Panel finds that this is not random drug testing.

The Union's Last Best Offer of maintaining the current contract language containing the reasonable suspicion standard should be maintained.

**The Employer's proposal to change to a random drug testing standard is not supported by the majority of the internal comparables.**



#### 4. HEALTH INSURANCE PREMIUM SHARING

The Township's proposal seeks a 15% premium sharing for the plan selected by the member. The current base plan is Blue Cross/Blue Shield CB 10. That plan has been identified by the parties through negotiations to be the base plan or the plan that the Employer will pay 100% of the premium for the employee, spouse and dependents.

That same plan mandates deductibles and co-insurance that is the responsibility of the employee. A single person has an annual deductible of two hundred-fifty dollars per year and a 10% co-insurance up to an additional five hundred dollars per year. The total exposure in a calendar year for employees in this segment would be seven hundred fifty dollars per year. A married couple, or a family, would face an annual deductible of five hundred dollars per year with a 10% co-insurance up to an additional one thousand dollars. The maximum annual exposure for this segment would be one thousand-five hundred dollars per year. These costs would be in addition to any other co-pays the plan may have such as prescription drugs or office visits. These costs would be over and above the amounts in premium sharing mandated by the Employer's proposal.

Employer exhibit #120 demonstrates the economic impact of the 15% premium share on an employee with family coverage under the CB-10 base plan. Employees selecting this option with a family would bear an additional bi-weekly cost of \$87.86 based upon the current rates. As rates rise in the future, so would the employee's share of the premium.

This rate translates into an annual premium sharing cost of \$2,284.36, or over \$190.00 per month. This is in addition to the previous costs that the employee is required to pay for the deductibles or co-insurance. The total amount would be in excess of \$3,700.00 per year.

None of the internal or external comparables contain this severe cost shifting by the Employer.

However, the dramatically increased cost to the employers of maintaining health

care benefits is effectively a 'tax' on operations that has diminished the available resources. It is a fact that this employer has been constantly looking for ways to be more efficient, and 'to do more with less.' Thus, many employees who have quit or retired have not been replaced. The problems with such well-intentioned efforts are four-fold: (1) the quality and quantity of services does decline; (2) the notion that 'we are cutting away fat' is outmoded – we are well past that, and are 'cutting away sinew and muscle'; (3) decreased staffing levels and increased responsibilities have a predictable negative effect on employee morale and efficiency; and (4) to the extent that foreseeable emergencies develop, the work does not go away, and employees have to work more overtime. Overtime at time and one half under the Fair Labor Standards Act may be a relative bargain, given the 'roll-up' costs of salaries and the costs of benefits. It is a fact that the FLSA has been an increasingly less effective deterrent to overtime.

While it may be true that health insurance premium sharing is becoming more and more prevalent in the private sector, it generally has not yet been true in the public sector. Admittedly, the future may well find this to be the case, but the future is not now. Further, considering the panel's determinations on the wage issues, the Panel believes that the Union's request that premium sharing be denied at this time is the more fair and reasonable position. A caveat, however, is in order: Unless health insurance costs and health care expenses are reduced, there is no question that premium sharing in the public sector will become the rule rather than the exception.<sup>21</sup>

**The Panel rejects the Township's proposal and awards the Union its "status quo" proposal.**

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<sup>21</sup>E.g., Currently pending in the Michigan legislature is Senate Bill 1046 that provides, with certain exceptions, that a public employer may pay no more than 80% of the premium or other cost of an employee health insurance plan.

## **5. DEFERRED RETIREMENT OPTION PLAN [“DROP”]**

The Union proposes a Deferred Retirement Option Plan that is the same as provided the Command officers. The Township proposes that the Union’s proposal be denied.

While at first blush it might appear that internal comparables would support the Union’s position, there is more than simply looking at the internal comparables for the Panel to consider.

The Waterford Firefighters first obtained their DROP Plan through an Act 312 arbitration award. The command officers soon followed with a DROP plan patterned after the firefighters; a negotiated benefit that first appeared in their previous contract. The Dispatchers also have a DROP plan.

In “normal” economic times, the Employer wins under this arrangement in that it retains the service of an experienced employee while at the same time cutting their costs. The savings to the Employer are a result of the Employer no longer paying into the pension system for that employee. The employee in return saves since they also are no longer paying the required employee contribution to the pension system. The employee still enjoys continuing to receive all contractually negotiated wage improvements and contractual benefits except any future pension improvements. This is due to the fact that the employee is retired for purposes of the pension system.

By statute, before making any change in a public employer’s pension plan there is required an actuarial report so that the employer or, in this case, the Act 312 Arbitration Panel, can understand the economic impact of the change. In this case, because it was the Union that was requesting a change, the Union requested and paid for the actuarial report prepared by Gabriel, Roeder. Unfortunately this was a total waste of time and the Union’s money. The report was simply boiler-plate that told the Arbitration Panel absolutely nothing, concluding, as it did, that the DROP Plan for this unit could have a negative impact, a positive impact or be

neutral in its economic impact. What nonsense! Unfortunately this leaves this Arbitration Panel without the indispensable necessary information to make an informed decision on the issue. Given these stressful economic times now is not the time to blindly roll the economic dice.

But the lack of knowledge of the economic impact of the proposed DROP Plan is not the only reason for the Township's objections. As Mr. Seeterlin testified:

"The DROP plan is a program that encourages retention of senior officers who are eligible to retire. At this point in time we are looking to downsize operations based on budget constraints, and the goal of retaining employees is not something that we are looking to encourage."

Considering that the Township is in the process of reducing staff at this time, it would be incongruous to provide a program that encourages retention.

**Accordingly, the Panel grants the Township's request to deny a DROP Plan for this unit at this time.**

## VII. 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.

Otherwise, the Panel does not retain jurisdiction.

Dated: August 20<sup>th</sup> 2010

  
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**STANLEY T. DOBRY, Impartial Chairman**

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

Dated: August 20<sup>th</sup> 2010

  
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**STANLEY W. KURZMAN, Employer Delegate**

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

Dated: August 20<sup>th</sup> 2010

  
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**FRED TIMPNER, Union Delegate**

## APPENDIX A

### OFFERS REGARDING DEFERRED RETIREMENT OPTION PLAN ["DROP"]

*Union Last Best Offer:*

Add new article Deferred Retirement Option Plan (DROP). Add the following new article:

#### A. OVERVIEW

Effective upon date of the award, any Employee who is a member of the Michigan Association of Police/Waterford Township Police Officers Association may at any time voluntarily elect to participate in the Waterford Township Police and Fire Retirement System Deferred Retirement Option Plan (hereinafter "DROP") after attaining the minimum requirements for a normal service retirement/pension. Upon commencement of DROP participation, the Participant's DROP Benefit shall be the dollar amount of the Employee's monthly pension benefit computed by using the contractual guidelines and formula(s) that are in effect on the DROP date. During participation in the DROP, the Participant continues with full employment status, receives all future promotions and benefit/wage increases, and is considered an employee of the Township, not a retiree. The Participant's DROP Account, which shall be established within the Waterford Township Police and Fire Retirement System (the "Police and Fire Retirement System"). The Participant's DROP Account shall be maintained and managed by the Board of Trustees of the Police and Fire Retirement System (the "Retirement Board"). Upon termination of employment, the retiree shall begin to receive payment(s) from his/her individual DROP Account as described herein. The DROP payment(s) are in addition to all other contractual pension benefits. The Participant is solely responsible for analyzing the tax consequences of participation in the DROP.

#### B. ELIGIBILITY

Effective upon date of the award, any member of the bargaining unit may voluntarily elect to participate in the DROP at any time after attaining the minimum requirements for a normal service retirement/pension.

#### C. PARTICIPATION PERIOD

The maximum period for participation in the DROP is five (5) years (the "Participation Period"). There is no minimum time period for participation. An Employee shall cease DROP Participation within five (5) years from the date of their entering the DROP. Notwithstanding said five (5) year maximum participation period, it is expressly understood that DROP Participation shall be terminated no later than the first of the month following the DROP Participant's completion of his or her 33rd year of employment.

Upon expiration of the DROP Participation Period, the Participant's monthly pension benefit otherwise payable to their DROP Account shall be discontinued until termination of employment and they will accrue no additional retirement benefits in the Police and Fire Retirement System. Interest on the DROP Account however, will continue to accrue during such forfeiture period. Upon termination of employment, the retiree shall receive

the monthly retirement benefit previously credited to their DROP Account and shall be eligible for distribution of their DROP Account Balance in accordance with Section I herein.

D. ELECTION TO PARTICIPATE

Once commenced, participation in the DROP program is IRREVOCABLE (except as specifically provided in Subsection L herein). An Employee who wishes to participate in the DROP shall complete and sign such application form or forms, as shall be required by the Retirement Board. The Retirement Board shall review the application within a reasonable time period and make a determination as to the Employee's eligibility for participate in the DROP. On the Employee's effective DROP Date, he or she shall become a DROP Participant and shall cease to accrue additional benefits otherwise credited to active members of the Police and Fire Retirement System. The amount of credited service, multiplier and average final compensation shall be fixed as of the Participant's DROP Date. Increases in compensation and accrual of additional service during DROP Participation will NOT be factored into the pension benefits of active or former DROP Participants (except as specifically provided in Subsection L). Except with regard to the retirement benefits expressly provided herein, DROP Participants will continue with full employment status with all rights and privileges afforded to employees of the Fire Department and this bargaining unit, including, but not limited to, future promotions, benefit/wage increases, union membership and representation, as well as, retirement system membership and Board representation.

E. DROP BENEFIT

The Participant's DROP Benefit shall be the regular monthly retirement benefit to which the Employee would have been entitled if the Employee had actually terminated employment and retired on the DROP date (less the annuity withdrawal reduction as set forth in Subsection F and/or actuarial reductions as a result of the Employee electing an Optional form of benefit under the Plan, if applicable). The Participant's DROP Benefit shall be credited monthly to the Participant's individual DROP Account. A DROP Participant may at the time of DROP Election elect to receive his or her benefit in the form of the Plan's Option I or Option II Benefit and nominate a named beneficiary in accordance with the Police and Fire Retirement System provision.

The term "spouse" for purposes of benefit qualifications of DROP Participants, shall mean: (1) the person to whom the Participant was legally married to on the Participant's date of death if such death occurs during DROP Participation; or (2) the person to whom the retirant was legally married on both the effective date of termination of DROP Participation and the retirant's date of death provided such death occurs after termination of DROP Participation. The definition of "spouse" herein may be amended pursuant to an Eligible Domestic Relations Order entered pursuant to Michigan Public Act 46 of 1991, as amended (MCL §38.1701 et seq.).

F. ANNUITY WITHDRAWAL

An employee who elects to participate in the DROP (and correspondingly, cease to accrue additional retirement benefits otherwise credited to active members of the Police and Fire Retirement System) may elect the Annuity Withdrawal Option provided by the Police and Fire Retirement System at the time of electing DROP participation. The Annuity Withdrawal Option and all other retirement options under the Police and Fire

Retirement System which are available to Retirement System Members shall only be available to the DROP Participant at such time as he or she elects DROP Participation. The Annuity Withdrawal Option election shall be made commensurate with the Participant's DROP election, but not thereafter, and the Annuity Withdrawal amount at time of DROP will be utilized to compute the actuarial reduction of the Participant's DROP Benefit, as well as the Employee's monthly retirement benefit from the Police and Fire Retirement System after termination of employment. The Annuity Withdrawal amount (accumulated contributions) shall be withdrawn from the Police and Fire Retirement System at the time of termination of employment and shall not be subject to withdrawal by a DROP Participant at the time of DROP Election.

DROP Participants who do not elect the Annuity Withdrawal Option shall have their full, unreduced benefit credited to their DROP Account.

At the time of the Annuity Withdrawal Option election, if an Employee is electing a straight life form of benefit with no qualifying spouse, the annuity withdrawal reduction computation is based in-part upon the actuarial life expectancy of the Employee (rather than the life expectancies of both the Employee and qualified spouse). There shall be no adjustment to the benefits payable to the DROP Participant/Retiree upon the subsequent marriage of a qualifying spouse. In the event such spouse (i.e., qualified after calculation of the annuity withdrawal election) subsequently qualifies for benefits payable by the Police and Fire Retirement System, said benefits shall not be adjusted based upon the Employee's Annuity Withdrawal Option election.

#### G. DROP ACCOUNTS

For each DROP Participant, an individual DROP Account shall be created in which shall be accumulated at DROP Interest, the Participant's DROP Benefits. All individual DROP Accounts shall be maintained for the benefit of each DROP Participant and will be managed by the Retirement Board in the same manner as the primary pension fund. DROP Interest for each DROP Participant shall be based upon the prior calendar year's market rate of investment return on the total assets in the Police and Fire Retirement System portfolio but in no event shall DROP Interest be greater than 4.0% or less than 0% per annum compounded monthly. If the Retirement System earns between 0% and 4.0%, then the DROP Interest will be the actual market rate of investment return. If the Retirement System earns more than 4.0% then DROP Interest will be 4.0% and if the Retirement System earns less 0% then DROP Interest will be 0%. DROP Interest will be credited on the first day of each month on the prior months principal and interest balance. (By way of example, the following illustration is provided: The Retirement System's market rate of investment return for calendar year 2006 is 8.5%. The DROP Interest rate for calendar year 2007 will be 4.0% per annum compounded monthly (e.g., .3333% monthly). A member's DROP Account Balance on February 1, 2007 is \$12,500 (including principal and interest). On March 1, 2007, the member's DROP Account will be credited with \$41.66 in interest.)

The Retirement Board shall provide each participant with an annual statement of their account activity. The reference is individual DROP Accounts shall be interpreted to refer to the accounting records of the Police and Fire Retirement System and not to the actual segregation of monies in the funds of the Police and Fire Retirement System.

#### H. CONTRIBUTIONS

The employee's contributions to the Police and Fire Retirement System shall continue during DROP Participation for each employee entering the DROP irrespective as to



whether the Annuity Withdrawal Option is elected at the time of DROP. These employee contributions shall be in the same amount and shall be credited with interest in the same manner as non-DROP members of the Police and Fire Retirement System. For those DROP Participants that elected the Annuity Withdrawal Option at time of DROP, their total accumulated contributions (including employee contributions and interest paid during DROP Participation) shall be paid to the employee upon termination of employment. There shall be no further Annuity Withdrawal reduction applicable to the employee contributions and interest earnings thereon made during DROP Participation.

For those DROP Participants that did not elect the Annuity Withdrawal Option at the time of DROP Participation, the employee contributions and interest earnings thereon shall be paid to the employee upon termination of employment without any reduction in benefits.

The payroll of DROP Participants will be included in the covered compensation upon which regular Township employer contributions to the Police and Fire Retirement System are based. Employer contributions shall be credited to the Retirement System and not to any individual's DROP Account.

#### I. DISTRIBUTION OF DROP FUNDS

Upon termination of employment, the former DROP Participant must choose one, or a consistent combination of, the following distribution methods to receive payment(s) from his or her individual DROP Account.

8. A total lump sum distribution to the recipient.
9. A partial lump sum distribution to the recipient.
10. A lump sum direct rollover to another qualified plan to the extent allowed by federal law and in accordance with the Retirement Board's rollover procedures.
11. An annuity payable for the life of the recipient.
12. An optional form of annuity as established by Public Act 345 of 1937, as amended.
13. No distribution, in which case the accumulated balance, shall remain in the Plan to the extent allowed by federal law.

A former Participant may change their distribution method as may be applicable no more than once per annum prior to June 30th of each year in accordance with such procedures and time guidelines as adopted by the Retirement Board. A former Participant may elect a total lump sum distribution of any remaining balance in their DROP Account at any time after termination of employment, which will be paid within 90 days after receiving the member's request. All benefit payments under the Plan shall be made (or commence in the case of an annuity) as soon as practical after entitlement thereto, but in no event later than the April 1 following the later of:

- 1) The calendar year in which the Member attains age 70-1/2, or
- 2) The calendar year in which the Participant's employment terminated.

If the Accumulated Balance in any former Participant's account becomes less than \$5,000 (or such other amount as provided in Internal Revenue Code Section 411(a)(11)(A)), then the Retirement Board, in its sole discretion, shall have the option of distributing the former Participant's entire account, in the form of a lump sum, to the Former Participant.

Any and all distributions from Participant's DROP Account shall not be subject to offset by any workers compensation wage loss payments received by the Participant including

any redemption amounts.

J. DEATH DURING DROP PARTICIPATION

Except as otherwise provided in Subsection L, if an Employee participating in the DROP dies either: (i) before full retirement (i.e., before termination of service), or (ii) during full retirement (i.e., after termination of service) but before the DROP Account balance has been fully paid out, the Participant's designated beneficiary (ies) shall receive the remaining balance in the Participant's DROP Account in the manner in which they elect from the previously mentioned distribution methods (Subsection I). In the event the Participant has failed to name a beneficiary, the account balance shall be payable to the Participant's beneficiary of benefits from the Police and Fire Retirement System. If there is no such beneficiary, the account balance shall be paid in a lump sum to the Participant's estate. Benefits payable from the Police and Fire Retirement System shall be determined as though the DROP Participant had separated from service on the day prior to the Participant's date of death.

K. DISABILITY DURING DROP PARTICIPATION

Except as otherwise provided in Subsection L, in the event a DROP Participant becomes totally and permanently disabled from further performance of duty as Police Officer in accordance with the provisions of the Police and Fire Retirement System, the Participant's participation in the DROP shall cease and the member shall receive such benefits as if the member had retired and terminated employment during the Participation Period. Application and determination of disability shall be conducted in accordance with the Police and Fire Retirement System provisions; however, the Participant shall not be eligible for disability benefits from the Police and Fire Retirement System, except as specifically provided in Subsection L.

L. SPECIAL PROVISION FOR DUTY DISABILITY AND DUTY DEATH

A DROP Participant who is found by the Retirement Board, in accordance with Retirement System provisions, to be totally and permanently incapacitated for duty by reason of a personal injury or disease occurring as the natural and proximate result of causes arising out of and in the course of the Employee's employment with the Township, may retroactively revoke the Participant's DROP election if the revocation occurs before the payment of a distribution to the Employee from the Participant's DROP Account or payment of disability or retirement benefits to the Employee from the Retirement System. If a DROP Participant dies in the line of duty while in the employ of the Township, the DROP Participant's eligible survivors (i.e., survivors qualified under Section 6(2) of Public Act 345 of 1937, as amended, and the Participant's applicable collective bargaining agreement) and the Participant's eligible DROP beneficiary (ies) may, by unanimous agreement, retroactively revoke the Participant's DROP election if the revocation occurs before payment of a distribution from the Participant's DROP account or payment of benefits from the Police and Fire Retirement System. If a DROP election revocation is made as prescribed by this Subsection, the Participant's DROP Account is not distributed, and the Participant or the Participant's beneficiary (ies), as applicable, is entitled to all benefits provided by the Police and Fire Retirement System as if a DROP election had not been made. In the event of revocation of DROP participation as provided herein, there shall be no requirement for retroactive payment of employee contributions which would otherwise have been paid by the Employee to the Retirement System and the Employee shall receive service credit for all service rendered

during DROP participation or as otherwise provided in the applicable collective bargaining agreement.

M. PROMOTION

In the event a member of the Association is promoted to a position out of the bargaining unit, DROP Eligibility, DROP Participation and membership in the Police and Fire Retirement System shall continue. There shall be no further required employee contributions or accrual of any benefits in the Police and Fire Retirement System other than the crediting of applicable interest to the individual's DROP Account and employee contribution account. Payments of benefits from the Police and Fire Retirement System and distribution of DROP accounts and employee contributions shall only occur after termination of employment.

N. RE-EMPLOYMENT

In the event a former DROP participant is re-employed by the Township in the capacity of a sworn police officer or firefighter, they shall not be eligible for membership in the Police and Fire Retirement System or participation in the DROP. Retirement benefits payable from the Police and Fire Retirement System shall continue during such period of re-employment. The Township may extend participation in an alternative retirement plan (e.g., Defined Contribution Plan) during such period of re-employment.

O. DROP COST

The Township and those applicable collective bargaining associations who agree to adopt the DROP Program intend for the DROP program to be essentially cost neutral (i.e., + .2% of covered payroll). The parties recognize the complexity in estimating the actuarial cost impact of the DROP on the Police and Fire Retirement System. Accordingly, after a 10 year period from the establishment of the DROP, the Retirement Board will direct that the Retirement System's Actuary conduct an evaluation as to the cost impact of the DROP on the Retirement System. In the event that the actuary determines that the DROP has had a positive cost to the Retirement System (i.e., > .2% of covered payroll), the DROP shall be amended in such manner, as recommended by the Actuary and approved by the parties, to result in an essentially cost neutral program.

P. I.R.C. COMPLIANCE

The DROP is intended to operate in accordance with Section 415 and other applicable laws and regulations contained within the Internal Revenue Code of the United States. Any provision of the DROP, or portion thereof that is found by the Retirement Board to be in conflict with an applicable provision of the Internal Revenue Code of the United States is hereby declared null and void.

The Waterford Township Police and Fire Retirement System consist of a defined benefit plan. The DROP Account shall be established as part of the defined benefit plan of the Retirement System or such other plan as the Retirement Board and the unions shall agree upon (i.e., I.R.C. section 415(m) benefit plan) after consultation with appropriate legal counsel.

***Employer Last Best Offer:***

No DROP shall be available to the employees in this unit.

**OFFERS REGARDING RETIREE HEALTH INSURANCE AT  
DROP**

*Union Last Best Offer:*

Modify language to include health insurance in conjunction with DROP.

*Employer Last Best Offer:*

No DROP shall be available to the employees in this unit.

## APPENDIX B

### TENTATIVE AGREEMENTS

All of the Tentative Agreements are part of this award.

Among the Tentative Agreements, and including the modification of the 4-40 language as proposed by the Union, is the following, which is added to the contract as a new Article (See footnote 8, page 6 of the Opinion):

#### **10 Hour shifts – 4/40 work schedule**

The Police Department shall continue the 4-40 (10 hour) shift for all shifts and bureaus working that shift as of January 1, 2010 until either the Employer or the Union gives notice to discontinue the practice. Notice to end the 4-40 shift must be given prior to the beginning of the month of October, beginning in 2010, and each October thereafter. If notice is given, a three-person committee shall meet to discuss any reasonable alternatives to ending or maintaining a 4-40 shift.

The three-person committee shall consist of a Union designee, a Township Supervisor's designee, and one designee from the Chief's office. The committee, by majority vote, shall decide if any of the alternatives to the 4-40 shift is in the best interest of the Township. A final determination of shifts, by the committee, shall be made no later than November 15, prior to the January shift selection. The decision of the committee shall be subject to interest arbitration. The demand for interest arbitration shall be made no later than December 1.

If appealed to interest arbitration, the change from the 4-40 to the new shift shall be held in abeyance pending the arbitrator's award, but no later than the start of the April shift change selection process. If the arbitrator's award is made after the start of the April shift selection process, the award shall be implemented at the beginning of the next shift selection process.

*Revisions*

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1. Add the following as new 28.3 moving current 28.3 to 28.4

*28.3*

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.

*EB 7.1 9.11.11  
Doe  
GWT*

2. The current Letter of Understanding dated February 10, <sup>1999</sup>~~2000~~ on New hire pay shall be rescinded effective with the expiration of the current new hire list on 12-05-08.

*R. J. GWT  
7.1.00*

3. Modify Article 7 as follows:

7.6 Add "written" in second line between "that" and "notice".

*R. J. GWT  
9.11*

7.7 (New) **Voluntary Mediation** – Within 15 days after receipt by the Township of written notice from the Union of intent to arbitrate, the parties may mutually agree to non-binding mediation using the services of the Michigan Employment Relations Commission or Federal Mediation and Conciliation Service mediator(s). If agreement is reached to voluntarily mediate the issue, the arbitration shall be held in abeyance pending the completion of the mediation process. Offers or proposals made by either party during the mediation process shall not be used in subsequent arbitration proceedings.

*7.1.00  
GWT*

Re-number the balance of the provisions of Article 7.

Add the following as 31.9 and renumber the remainder of the article:

*R. J. GWT*

31.9 Survivor benefits eligibility shall be vested at ten (10) years of service.

31.10 Retiree Health Insurance

*R. J. GWT*

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 age the base coverage shall be BCBS M-65 2+1 or equivalent supplemental plan with a \$5/\$10 Rx Plan. Retiree coverage would be for eligible dependents between the ages of nineteen (19) and twenty-five (25) on an as needed basis.

*See TA 8-19-09*

*New*

*31.10*

*[Handwritten signature]*

TTA

8-19-08

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Tentative Agreement 5-20-08

1. Add the following as 31.9 and renumber the remainder of the article:

*[Handwritten initials and signature]*

31.9 Survivor Benefits. Eligibility for non-duty death survivor benefits shall be vested at ten (10) years of service.

2. Retiree Health Insurance

19.2 Retiree Health Insurance Medicare Supplement

A. Retirees who retired from the bargaining unit prior to January 1, 2001 shall be allowed to maintain, at no cost to the retiree, the health insurance coverage provided them at the time of their retirement.

B. All retirees who retired from the bargaining unit prior to June 1, 2008, shall be allowed to choose, at no cost to the retiree, from the same options as active employees.

C. All retirees who retired from the bargaining unit prior to June 1, 2008, at age 65, or upon becoming Medicare eligible, shall be provided Blue Cross/Blue Shield M-65 2 + 1 Complementary Coverage. Such coverage will also include the five dollar (\$5.00) co-pay preferred Rx prescription drug rider. (see Appendix G for description of the 2 + 1 Complementary Coverage).

D. All eligible employees retiring after June 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 age the base coverage shall be BCBS M-65 2+1 or equivalent supplemental plan with a \$5/\$10 Rx Plan.

E. The standard hospitalization insurance programs set forth in paragraphs A through D above shall be paid in full by the Township.

A Retiree who selects an optional health insurance plan that has a premium rate higher than their base coverage shall pay the difference, if any, between the Township's contribution toward the premium rate of the their base health plan and the option selected by the ~~employee~~. RETIREE.

F. All such coverage's will not be provided by the Township if available from another source.

G. The Employer shall pay for family continuation coverage for eligible dependents between the age of nineteen (19) and twenty-five (25) on an as needed basis.

*[Handwritten initials]*

*[Handwritten initials]*

8-19-08  
*[Handwritten signature]*

Add to Article 31

31.12 Employer Pick-Up Contributions. There is hereby created an employer "pick-up" program whereby employee contributions to the Retirement System shall be paid by the Township in lieu of contributions by the employees. The terms and conditions of such contributions shall be in accordance with the provisions of the Internal Revenue Code Section 414(h)(2) and related Treasury Regulations and applicable law.

Member Contributions. Upon implementation, the Township shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, all member contributions required by the Retirement System based upon a percentage of all salary earned by the member after implementation. The provisions of this section are mandatory, and the member shall have no option concerning the pick up or to receive the contributed amount directly instead of having them paid by the Township to the Retirement System. In no event may implementation occur other than at the beginning of a pay period.

Tax Treatment. Member contributions picked up under the provisions of this section shall be treated as Township contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked up member contributions shall be included in determination of the member's gross annual salary for all other purposes under federal and state laws. Members' contributions picked up under this section shall continue to be designated member contributions for all purposes of the Retirement System and shall be considered part of the member's salary for purposes of determining the amount of the member's contribution.

F.J. [Signature]  
A.R. [Signature] O.D. [Signature]  
CB 8/17/09  
Q.L. 8-17-09



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Tentative Agreement August 17, 2009

ARTICLE XII

*gmk*

SENIORITY, LOSS OF SENIORITY, TRANSFERS AND TRADING OF DAYS

12.1 (NEW) Seniority is defined as the length of continuous service from the employee's last hiring-in date. The relative seniority among employees hired on the same date shall be determined based on civil service score.

12.2 (NEW) An employee shall become a seniority employee upon completion of a probationary period of one year

12.3 (NEW) An employee shall lose all seniority rights in the event that:

- A. The employee voluntarily terminates his employment with the employer.
- B. The employee is discharged for just cause.
- C. The employee on being recalled from layoff fails to report for work within five (5) calendar days after notice has been sent to and received by the employee at their last known address by certified mail or the certified mail has been returned to the employer.
- D. The employee is laid off or suspended for a period greater than or equal to their length of service or a minimum of two (2) years, whichever is greater.

NOTE: THE BALANCE OF THE PRESENT ARTICLE XII SHALL REMAIN STATUS QUO BUT RE-NUMBERED.

Add to Current Article 15 (new 17)

17.10 Field training officers assigned to train newly hired officers shall receive additional compensation of 1 hour paid at overtime rates for each day assigned.

17.11 Crime Scene Investigators (CSIs) shall be paid stand-by pay of \$650 (six hundred and fifty dollars) per calendar year which shall be included in calculation of their FAC. Stand-By pay shall be paid the first pay of July of the year being paid. CSIs must be employed on July 1 in order to qualify for the annual payment. If there are 2 CSIs the duty week shall be rotated between the CSIs. In the event there is only one CSI, the CSI shall be allowed up to 2 weeks per month to decline standby duty. The declaration to not be on stand by must be in writing and known by the on duty Patrol Supervisor.

*J.J.*  
*OK gmk 8-17-09*  
*RPS*  
*OK 8/17/09*  
*OK 8-17-09*