

IN THE MATTER OF THE  
ARBITRATION BETWEEN:

**Grand Blanc Township**

And

MERC Case No. D 10 F-0695

**Police Officers Labor Council**

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COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

**Opinion and Award**

**Arbitration Panel**

Arbitrator/ Chair  
William E. Long

Employer Delegate:  
Richard W. Fanning Jr. Attorney

Union Delegate:  
Will Keizer, Police Officers Labor Council Representative

**Appearances**

Richard W. Fanning Jr. Attorney  
Grand Blanc Township

Thomas R. Zulch, Attorney  
Police Officers Labor Council

**Date of Award:** July 20, 2012

## **INTRODUCTION**

The Police Officers Labor Council (referred to as the Union in this Opinion and Award) is recognized as the exclusive representative for collective bargaining for all full time Sergeants in the Grand Blanc Township Police Department. The Union and the Charter Township of Grand Blanc (referred to as the Employer in this Opinion and Award) entered into a Collective Bargaining Agreement (CBA) for the period January 1, 2008 through December 31, 2010 (J-1).<sup>\*1</sup> The parties began negotiating a successor agreement prior to the expiration of the January 1, 2008 – December 31, 2010 CBA, but negotiation sessions resulted in no settlement. The Union petitioned for Act 312 Arbitration on September 21, 2011 (J-2). As required by Section 13 of Act 312, unless otherwise agreed to by the parties, the 2008-2010 agreement has continued in effect. This impartial Arbitrator was appointed by the Michigan Employment Relations Commission (MERC) December 2, 2011.

A pre-hearing conference was held December 11, 2011. The Union chose Will Keizer as its Arbitration Panel Delegate. The Employer chose Richard Fanning Jr. as its Panel Delegate. During the pre-hearing conference, the parties agreed to attempt to stipulate to the external comparables prior to the first hearing date. Prior to the hearing the parties were able to stipulate to the following external comparable communities: Brownstown Township, Flint Township, Genesee Township, Mundy Township, and White Lake Township.

At the pre-hearing conference a schedule was set for exchange of issues, exhibits, witness lists, last offers of settlement and a schedule for hearing dates. Last offers of settlement were submitted by the parties on April 9, 2012 (E-68, U-97). Hearings were held at the Grand Blanc Township offices on April 16 and April 17, 2012. The Employer was represented by Attorney Richard W. Fanning Jr. The Union was represented by Attorney Thomas R. Zulch. The record consists of 260 pages in two volumes. One hundred twenty-seven (127) Exhibits were accepted into the record, 10 Joint Exhibits, 30 Union Exhibits and 87 Employer Exhibits. Post-hearing briefs, at the request of and stipulation of the parties for extensions, were submitted June 8, 2012. The Panel delegates have placed their signatures on each specific Award in support of or in opposition to the finding and award on each issue and have also placed their signatures

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<sup>\*1</sup> Throughout this Opinion references will be made to Exhibits as (Exhibit J, U, E - #,) and Transcripts as (Tr., pg#).

at the conclusion of the Award along with the signature of the Independent Arbitrator to represent that there is a majority on each issue presented.

#### **ORGANIZATION OF OPINION AND AWARD**

The Opinion and Award first discusses the procedural issues including an identification of issues that were initially in dispute when last offers of settlement were made but were stipulated to and resolved prior to or during the course of the hearing. Next is an identification of the issues presented to the Panel for decision followed by the statutory criteria to be applied and then a brief discussion of the comparables, all of which were stipulated to by the parties. The ability to pay is then addressed under the economic issues heading followed by each of the issues presented to the Panel for decision. It has been determined that all of the issues presented to the Panel for consideration are economic issues.

#### **PROCEDURAL ISSUES**

Several issues that were initially identified as issues in dispute were resolved, withdrawn, or stipulated to by the parties. They are:

- Issue 1 - Duration of Contract (Sec. 45.01)
- Issue 7 – Dental Care – Carrier/Plan Changes (Sec. 29.01 (b))
- Issue 8 – Active Employee Health Care – Plan (Sec. 29.01 (a))
- Issue 9 – Active Employee Health Care – Premium Contributions (new language)
- Issue 11 – Sick/Personal Leave – Annual Accumulation (Sec.29.06 (a) & (b))
- Issue 12 – Sick/Personal Leave – Maximum Accumulation (Sec. 29.06(3))
- Issue 14 – Sick/Personal and Vacation – Accrual While on Leave (Sec. 29.07 & 36.08)

In addition, the parties have recognized and stipulated to the following State Statutory requirements:

The parties stipulate that compliance with the provisions of Section 5 (2) of PA 152 of 2011 is applicable to this CBA. Section 5 (2) states: “A collective bargaining agreement or other contract that is executed on or after September 15, 2011 shall not include terms that are inconsistent with the requirements of Sections 3 and 4.

The parties stipulate that compliance with the provisions of Section 15 (7) of the Public Employment Relations Act [MCL 423.215] is applicable to this CBA. Section 15 (7) states, each collective bargaining agreement entered into between a public employer and public employee under this Act after March 16, 2011 shall include a provision that allows an emergency manager appointed under the local government and school district Fiscal Accountability Act, 2011 PA 4, MCL 141.1501 to 141.1531, to reject, modify or terminate the collective bargaining agreement as provided in the local government

and school district Fiscal Accountability Act, 2011 PA 4, MCL 141.1501 to 141.1531. Provisions required by this subsection are prohibited subjects of bargaining under this Act.

The language specific to each of the above issues will be included in this Opinion and Order in the order they appear along with the remaining issues to be decided by the Panel. Issues which the parties reached agreement on through negotiation or a stipulated agreement will be incorporated into the new agreement. In addition to those issues agreed to by the parties during this proceeding and those decided by the Panel, contract provisions not before the Panel for determination, that are in the current collective bargaining agreement, will be advanced into the new agreement the same as under the old agreement.

The time period for issuing this written Opinion and Order is specified in Section 8 of Act 312. The required time period is "within 30 days of the conclusion of the hearing, or if the parties agree to an extension, within 90 days of the conclusion of the hearing." The parties in this matter have agreed to an extension.

## **IDENTIFICATION OF ISSUES FOR PANEL DECISION**

The issues remaining before the Panel for decision are:

- Issue 2 – Pension – Final Average Compensation (Sec. 26.02 (A) (3) (a))
- Issue 3 – Pension – Employee Contributions (Sec. 26.02)
- Issue 4 – Pension – Merger of Groups (Sec. 26.02 new language)
- Issue 5 – Pension – Eligibility (Sec. 26.02 (A) (3) (a))
- Issue 6 – Wages – Longevity (Sec. 37.01)
- Issue 10 – Retiree Health Care (Sec. 26.03)
- Issue 13 – Sick/Personal Leave – Cash Back (Sec.29.06 (a) & (b))
- Issue 15 – Past Practice Clause (Sec. 41.04)
- Issue 16 – Salary and Wages (Sec. 37.01 and 37.02)

All of the issues before the Panel for decision are deemed to be economic issues.

### **STATUTORY CRITERIA**

When considering the economic issues in this proceeding, the Panel was guided by Section 8 of Act 312. The section provides that “As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9.” Section 9(1) and (2) states “(1) the arbitration panel shall base its findings, opinions, and order upon the following factors:

- (a) *The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel’s determination of the ability of the unit of government to pay:*
  - (i) *The financial impact on the community of any award made by the arbitration panel.*
  - (ii) *The interests and welfare of the public*
  - (iii) *All liabilities, whether or not they appear on the balance sheet of the unit of government.*
  - (iv) *Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government’s expenditures or revenue collection.*
- (b) *The lawful authority of the employer*
- (c) *Stipulations of the parties.*
- (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 in both of the following:*
  - (i) *In public employment in comparable communities.*
  - (ii) *In private employment in comparable communities.*
- (e) *Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.*
- (f) *The average consumer prices for goods and services, commonly known as the cost of living.*
- (g) *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.*

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

*(i) Other factors that 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.*

*(2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence."*

Where not specifically referenced, the above factors were considered, but not discussed in the interest of brevity.

**COMPARABLE COMMUNITIES**

Section 9(d) of Act 312 directs the Panel to consider a comparison of 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 in public and private employment in comparable communities. As noted in the introduction, the parties have stipulated that in this proceeding the following communities are comparable to Grand Blanc Township: Brownstown Township, Flint Township, Genesee Township, Mundy Township, and White Lake Township.

Exhibits E-20 through E-29 provide general population and economic information comparing the comparable communities with Grand Blanc Township. This information is helpful when considering the Section 9 factors. Attachment A is a summary of some of the information provided in several of those exhibits. The Attachment A summary demonstrates that the communities selected and stipulated to by the parties as comparable communities are generally communities with populations, taxable values, and per capita incomes similar to Grand Blanc Township. Exhibits E-20 through E-29 and Attachment A may be referred to in the discussion and findings sections addressing the specific issues when section 9(1)(d) factors, external comparables, relate to the issue.

**Therefore, the Panel chooses the following communities as comparable to Grand Blanc Township in this proceeding: Brownstown Township, Flint Township, Genesee Township, Mundy Township, and White Lake Township.**

Employer: Agree  Disagree \_\_\_\_\_

Union: Agree  Disagree \_\_\_\_\_

## **ECONOMIC ISSUES**

### **ABILITY TO PAY**

#### **Employer Position**

The Employer has provided extensive evidence pertaining to ability to pay. It reviews much of that evidence and testimony in its post hearing brief. Township Finance Director Barriger was the primary witness who testified on this matter. She spoke to both the revenues and the expenditures.

In addressing the revenues, Ms. Barriger described the major source of revenues. She noted that non-major funds are restricted funds and can only be used for specific purposes. She focused primarily on the General Fund revenues because those are the only funds that can be used for the wages and benefits of this bargaining unit. However, she did note that there is a separate millage for police operations and the proceeds from that millage go into, and are accounted for in the General Fund. Funds from the millage for police operations help pay for the wages and benefits of employees of the police department. Employer Exhibit (E-45) indicates that in 2010, \$1,574,570 revenue was generated from the special police revenue millage and an additional \$4,981,610 came from the general fund to support police operations.

Exhibits (E-31) and (E-32), which display General Fund revenue and expenditures for the fiscal years 2007 to 2012 reveal that overall, revenues have declined about 14% from 2008 to 2012. Ms. Barriger testified that the Township addressed this decline primarily by cutting costs. She also testified that in 2005 or 2006 the Township instituted a policy to budget a General Fund balance of between 12-14% of expenditures. This balance is kept in reserve for emergencies and to handle cash flow. She testified that the Township has an AA bond rating in part because of this policy. She said that bond rating is pretty good and allows the Township to borrow money with a lower interest rate (Tr. 80).

She noted that at the end of 2010 the General Fund balance was \$1,825,704, which represented about 14.4% of expenditure consistent with the Township's policy (Tr. 41). It is noted that (E-41) estimates a fund balance of 15.68% of expenditures for the 2012 fiscal year. In its post hearing brief, the Employer argues that this fund balance level has been maintained by achieving concessions from other union groups and non-union employees. The Employer says this bargaining unit has not yet shared in the concessions made by other employee groups.



The Employer's post hearing brief addresses the revenue declines in more detail. Employer Exhibit (E-40) shows that total general revenue declined from a high of about \$12.7 million in 2008 to about \$12.4 million in 2011 and an estimated amount of \$11.5 million in 2012. It did increase from 2010 to 2011, but this was due in part as a result of the state revenue sharing payment timing. Employer Exhibit (E-37) describes major revenue sources and indicates that property taxes are a major source of revenue. Annual revenue from property taxes has declined from about \$8.2 million in 2010 to \$7.2 million in 2011 and an estimated \$6.7 million in 2012. Employer Exhibit (E-50) describes the Township's experience with property tax values for the period 2007 – 2012. It shows a 1.5% decline in taxable values from 2007 to 2008; a 3.39% decline from 2008 to 2009; an 11.72% decline from 2009 to 2010; a 7.87% decline from 2010 to 2011; and a 2.37% decline from 2011 to 2012. The Employer notes that even if property tax values begin to increase, under the provisions of the Headlee Amendment and Proposal A, there will be a slow rate of increase.

One bright spot in the revenue picture is the fact that there was an increase in 2011 constitutional state revenue sharing due to a 25% increase in population shown in the most recent census. This increase was paid in 2011 and therefore the 2011 amended budget showed an increase in state revenue sharing of about \$1.1 million more than the adopted budget for 2011. However, the estimated constitutional revenue sharing for 2012 is about \$2.5 million, which is about \$400,000 lower than the \$2.9 million in the amended 2011 budget (E-32).

Employer Exhibit (E-39) shows revenues from services. This Exhibit shows that revenues for these sources, primarily tied to building and inspection, rose slightly from 2009 to 2011, but are expected to decline in 2012. The projected revenue for 2012 from these sources is \$243,500. Employer Exhibit (E-38) reveals interest income is minimal at \$31,562 for 2011.

A series of Employer Exhibits describe the expenditures. (E-42) describes personnel costs declined slightly from 2008 to 2010, but increased in 2011 and are expected to increase further in 2012. (E-43) shows that overall General Fund expenditures also declined some from 2008 to 2009, but has increased from about \$12 million in 2009 to \$12.5 million in 2011, but is projected to decline to \$11.5 million in 2012. This decline is attributed primarily to cost cutting measures. The Employer, in its post hearing brief, points out that even with these cost cutting measures, personnel costs were 55.2% of the General Fund expenses in 2011 and public safety is the largest source of General Fund expenditures (E-44). With respect to cost cutting, (E-46) shows

that from 2002 to 2012 employees paid from the General Fund were reduced from 79 to 65 (a 14 staff reduction) and included in that number was a reduction in the police department from 51 to 45 employees (6 staff reduction). However, during this same time the average benefit cost per employee increased from \$10,243 in 2002 to \$21,851 in 2012. But, (E-46) also reveals that the average benefit cost per employee declined from \$23,468 in 2009 to \$18,880 in 2010 and to \$17,879 in 2011. It is estimated to increase again in 2012 to \$21,851.

One of the major costs in benefit increases is a result of the increase in contributions to the defined benefit pension plans of the police department. Employer Exhibit (E-34, pg 17) shows the unfunded accrued liability related to the defined benefit plan for the period 1996 to 2010. It shows the unfunded accrued liability has increased every year so that in 2010 it was \$6,294,577, which was 235% of annual payroll. However, the funded percentage has also increased nearly every year and increased from 49% funded in 2006 to 58% funded in 2010. The Employer's post hearing brief discusses the history of the payments toward this plan from the Employer and the Employee. This is also discussed in addressing Issue 3. The Employer notes that the amounts paid by the parties changed in 2011 following the negotiation of the current CBA. At that time the employee contributions were capped at 8%. Capping the employee rate at 8% increased the Employer contribution, as rates went up, from 14% in 2010 to 28.59% effective January 1, 2012 (E-34, pg 2).

The Employer says it faces even greater liabilities connected with retiree health care insurance. Employer Exhibit (E-36, pg 4) identifies the liabilities of the Employer for its retiree health care obligations. It shows an unfunded actuarial accrued liability of \$9.8 million as of December 31, 2010. The Employer says these liabilities, both for pension and retiree health care must be considered by the Panel. The Employer notes that the contribution required of the Employer is 23.43% of payroll or \$994,193 per year. Of that amount, \$524,156 is attributable to the police employees, more than half the overall contribution. Of course, this is somewhat understandable since in 2012 the employees in the police department made up more than half of the total number of employees of the Township (E-46).

In its post hearing brief, the Employer points out that Section 9(a)(ii) requires the Panel to consider the interests and welfare of the public and Section 9(a)(i) requires consideration of the financial impact on the community and Section 9(1)(iii) requires consideration of "all liabilities, whether or not they appear on the balance sheet of the unit of government." Additionally, the Panel takes note of Section 9(2), which requires

the Panel to “give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.” The Employer says the issues presented in this proceeding, all of which will impact upon the costs of maintaining the Department, as well as the efficiency and ability to respond to emergencies, ultimately will impact the public, the taxpayers, who are the ones who will benefit from the changes proposed by the Employer. The Employer says the interests and welfare of the public cannot be served by ignoring the economic realities faced by the Township.

**Union Position**

The Union’s post hearing brief focuses on record evidence in support of its position that the Employer has the ability to pay a status quo contract. The Union says several of the major economic issues advanced by the Employer in this proceeding, that have been agreed to by the Union, such as issue 8 (health care); issue 7, dental care; issue 9, premium contribution; issue 11 and 12, accumulation of sick and personal time; are economically beneficial to and save money for the Employer and will result in a reduction of compensation to the employees. The Union says the panel should take this factor into account, along with evidence showing the Employer is in a sound financial position, when considering the remaining issues before the panel.

The Union notes that the Employer, as a result of an approximate 25% increase in population from 2000 to 2010, has recently begun and will continue to receive some increase in State revenue sharing. The Union refers to (E-30) which states the Township has lower unemployment than its surrounding area; two General Motors facilities providing large tax revenue and has been upgraded to AA bond rating. The Union also points out that 2010 revenues were nearly \$200,000 more than expected; revenues have been fairly consistent over the past 10 years and total expenditures have decreased every year since 2007 and that it has not had to draw funds from its unreserved general fund balance. The Union says the Township is in a better financial position than most, if not all, other communities.

The Union argues that the overall ability to pay factor gives greater support to the Union position on the remaining issues and does not support the need for adoption of the issues remaining in dispute advanced by the Employer.

## **Discussion and Findings**

### **Discussion**

The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue includes subsections (1) (a), (d), (e), (f), (g) (i) and subsection (2). The panel believes it has given Section 9(2) appropriate significance based upon the evidence presented in this hearing.

There is no question that Grand Blanc Township has faced declining revenues during the past four years. The Township is to be commended for its response to this overall economic decline in Michigan's economy as it has impacted the Township. It was wise to establish a General Fund Balance Policy and has been generally successful in cutting costs to enable it to maintain a 14% general fund reserve. This has permitted it to maintain a AA bond rating. But, it has also required a reduction of personnel, which has meant fewer personnel available to maintain services to the community, which has included fewer personnel to provide police services.

With respect to revenues, the evidence shows that there were generally steep declines in revenues from property taxes during the period from 2010 to 2011 but a less steep decline is anticipated for the period from 2011 to 2012 (E-37). State Constitutional revenue sharing is also anticipated to decline from \$2.9 million in 2011 to \$2.5 million in 2012, but due to the population increase in the Township, it should still be about \$600,000 more in 2012 than was received in 2010 (E-37). And there is an indication that the worst of the decline in taxable property values is over as the decline from 2009 to 2010 was 11.72% and the decline from 2011 to 2012 had been reduced to a 2.37%. There is even the possibility, as the housing industry construction recovers, that there could be a slight increase in the revenues from services.

On the expenditure side, there is likely little more the Employer can cut in the number of personnel and still maintain adequate services to the public. Evidence demonstrates that personnel costs are a significant portion of the General Fund expenditures and the police department is a significant percentage of the personnel employed by the Township. And costs of benefits to employees are a significant percentage of overall personnel costs. Evidence shows those benefit costs increasing, but it is interesting to note that the average benefit cost per employee is less in 2012 than it was in 2009 (E-46).


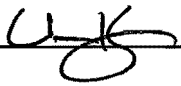
There is also clear evidence that a major cost in benefit increases is due to the increase in contributions by the Employer to the defined benefit pension plans of the police department and for retiree health care contributions required of the Employer. These are liabilities that the Panel has considered pursuant to Section 9(a)(iii). But the Employer's proposed solution to reduce these expenditures appears primarily to be a shift of the cost from the Employer to the employee. The Panel must, of course, consider and give significant weight to the financial ability of the Township to pay these costs. But it also must consider and balance this with the comparison of wages and benefits of members of the Union with employees performing similar duties in comparable communities - Section 9(1)(d) - and with other employees within the Township - Section 9(1) (e) along with the average consumer prices for goods and services - Section 9(1)(f).

When considering the ability to pay, it is valuable to consider the comparison of the Township demographics to that of comparable communities and compare the wage and benefits provided to the employees providing similar services to the benefits provided to members of this bargaining unit. As noted previously in the "comparable communities" section, Attachment A, accompanying this Opinion and Order, summarize Exhibits E-20 through E-29, which provide general population and economic information comparing the comparable communities with Grand Blanc Township. This information reveals that Grand Blanc Township ranked number one in comparison to comparable communities in taxable value in 2010 and its taxable value decline between 2008 and 2011 was about the same as most of the other comparable communities. Its taxable value per capita in 2011 and its median household income estimate for 2006-2010 ranked third among the comparable communities. Its per capita income ranked second highest among the comparable communities.

What this evidence, and much of the evidence presented by the Employer describes, is that while Grand Blanc Township is faced with declining revenues and rising costs associated with employee benefits, it is no different than most communities in this state and is as well, if not better, positioned to accommodate this situation when compared to comparable communities. It has a good bond rating. It has a reasonable reserve fund. It has demonstrated that it is able to institute cost cutting measures to balance its budget. And evidence indicates it, like other communities, may have gotten through the worst of the economic downturn. Perhaps, given the population growth experienced in the Township over the past decade, and the recent renewal of automobile manufacturing in the region, Grand Blanc Township may be better positioned than most communities for improvements in revenue.

**Findings**

Based on the evidence presented, and giving the financial ability of the unit of government to pay most significance, the Panel finds that the Township is able to pay the necessary costs ordered in this Opinion and Award without a significant financial impact on the Township and in the best interests and welfare of the public. The panel believes the financial impact, when considered in the context of the Panel's Award on the individual issues presented to the Panel for decision in this proceeding, coupled with the agreements made between the parties, will not result in a significant negative fiscal impact on the Employer.

Employer: Agree \_\_\_\_\_ Disagree   
Union: Agree  Disagree \_\_\_\_\_

**Issue 1 - Duration of Contract (Sec. 45.01, 45.02)**

**Employer Position**

The Employer accepted and stipulated to the Union's last offer of settlement (Tr. 149).

**Union Position**

The Union's last offer of settlement proposes the following language:

"Section 45.01: This Agreement shall become effective **January 1, 2011** and shall remain in full force and effect to and including the **31<sup>st</sup> day of December, 2013**, and shall continue in full force and effect from year to year thereafter unless either party desires to change or modify and of the terms or provisions of this Agreement. The party desiring the change or modification must notify the other party in writing not less than sixty (60) days nor more than **one hundred eighty (180) days** prior to the expiration date.

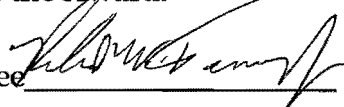
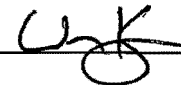
Section 45.02: This Agreement shall expire at midnight, December 31, 2013."

**Discussion and Findings**

As noted above, the duration of the agreement, as proposed in the Union's last offer of settlement, was stipulated to by the parties.

Therefore, on the issue of the duration of the CBA, the Panel accepts the language of the Union's last offer of settlement as stated above.

**Effective Date: Date of the Award.**

Employer: Agree  Disagree \_\_\_\_\_  
Union: Agree  Disagree \_\_\_\_\_

## **Issue 2 – Pension – Final Average Compensation (Sec. 26.02 (A) (3) (a))**

### **Employer Position**

The Employer's last offer of settlement proposes the following language:

“Section 26.02 (A) (3) (a): FAC-5 Effective [insert effective date of award], final average compensation shall not include any longevity or overtime.”

Employer witness Edwards testified in support of this proposal. He said the Employer views longevity pay as an incentive to remain employed with the Township. That benefits the public by having some experienced employees serving the public. The Employer's view is that once the employee retires the Employer no longer receives the value of retaining the employee. Therefore, the FAC calculation should not include longevity. Also, the Employer believes the FAC should not include wages earned as a result of overtime (Tr 151). The Employer notes that the three Employer AFSCME units and the non-represented employees FAC is calculated on base wages only (E-70).

In its post hearing brief, the Employer acknowledges that the intent of this proposal is to assist in controlling costs associated with the unit's defined benefit plan. It points out that in 2010, the employees in this bargaining unit were paying 15.69% of their payroll to the pension plan and the Employer was paying 14% (E-33). In 2012 the Employer was paying 28.59% and the employees were paying 8.00%. It also acknowledges that of the external comparable communities, only one of the five comparable community's police units do not include longevity and overtime in the FAC calculation. (E-69) and (E-70) reveals that currently the Command and Patrol Officers units within the Township, which also have a defined benefit plan, include longevity and overtime in the calculation of FAC for retirement (E-70).

The Employer notes that (E-71), which compares the current cost with the cost if the Employer's proposal is adopted, shows that the proposal would reduce the Employer's unfunded liability about 2% (increasing the funded amount from 60.4% to 62.3%) and reduce the annual cost of funding the plan by about \$14,000 if it also included the command unit. The Employer notes that the Command and Patrol Officer units are in current contract negotiations and that adoption of its proposal, while not changing their contract provisions, could have an influence on potential change. The Employer says it does not dispute that the defined benefit pension system needs to be changed, but its only recourse at present seems to be to address the issue in Act 312 proceedings. It says it is attempting to do this now because it cannot continue to cut

payments in other areas as a result of having to pay over 28% of its payroll to guarantee pension benefits for members of this unit.

### **Union Position**

The Union's last offer of settlement proposes the status quo with no changes to the current language. The Union says the Employer proposal to eliminate overtime and longevity from being included in the Final Average Compensation (FAC) will result in reduced pensions for bargaining unit members and that the internal and external comparables do not support making this change. The Union points out that members of this bargaining unit, like the command unit, tend to be older and have more seniority when compared to the members of the patrol bargaining unit. The Union refers to (E-12), which it says demonstrates that members of the unit have on average over 15 years of work experience. The Union says it is not proper to revise the manner of calculating FAC for employees who, for 15 years have relied upon inclusion of longevity and overtime being a part of that calculation.

The Union also argues that the internal and external comparables support its position. With respect to the internal comparables, the Union says the panel should consider the two other bargaining units, Command and Patrol, as being comparable to this unit and not consider the AFSCME bargaining units. It notes that the Command and Patrol units have a defined benefit pension, as do members of this unit, whereas the AFSCME units have a defined contribution plan. The Union also notes that the type of work of the law enforcement units differs both with respect to overtime and duties from the work of AFSCME represented employees and, therefore, this fact should be considered when reviewing the internal comparables. The Union says the two internal comparables that should be considered support the Union's position.

As for the external comparables, the Union notes that four of the five comparable communities include overtime and longevity in calculating FAC (E-69), which also supports the Union position of status quo. The Union says the annual cost savings to the Employer, estimated to be about \$14,000 (E-71, line 8c), is small in comparison to the estimated cost to each unit member of 6.5% of their expected pension (E-71, last paragraph). The Union says this is a significant loss over time to bargaining unit members and unreasonable to place on them in the twilight of their careers.



## **Discussion and Findings**

### **Discussion**

This issue, like all others, has to be viewed in the context of the overall compensation received by the employees. The panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue include subsections (1) (a), (c), (d), (e), and (g) and subsection (2). The financial ability of the Employer to maintain benefits has been addressed previously. The Panel has given this factor appropriate significance based on the evidence presented at this hearing as required by subsection (2).

The Panel believes the Union has provided stronger evidence in support of maintaining the status quo than has the Employer in support of its position to remove longevity and overtime from the calculation of FAC. The evidence reveals that only one of the five comparable community's police units do not include longevity and overtime in the FAC calculation (E-69). Of the internal comparables with a defined benefit plan, both include overtime and longevity in the FAC calculation.

Both parties agree that if this proposal were to be supported by the Panel it would save the Employer about \$14,000 per year in payments if it also included the Command Unit. But the Union says this savings is small in comparison to the estimated cost to each unit member of a 6.5% reduction in their expected pension benefits. The Employer acknowledges that the longer term goal would be to change the defined benefit pension system in more dramatic ways, but says now its only recourse is to seek these types of cost reductions in Act 312 proceedings.

The Panel recognizes that the fiscal impact on the Employee would not be immediate, but it would nevertheless impact the Employee negatively upon retirement. However, the evidence presented does not support the Employer's position at this time. And the Panel does not consider the Employer's inability to realize the cost savings from this proposal is of such significance that it will jeopardize its ability to serve the public.

The Panel is also not convinced that including the elimination of both overtime and longevity is appropriate in the context of the Employer's argument that these factors should not be included in FAC, because once the employee retires the Employer no longer receives the value of retaining the employee. The Employer recognizes that longevity pay can be an incentive resulting in more experienced and efficient employees remaining with the Employer. And overtime may be used by the Employer to save

hiring another employee. Both of these benefit the Employer in its ability to better serve the public at perhaps a lesser cost. Compensation to a retiree can be considered a benefit to the employee that is deferred until he/she retires. It could be viewed as a benefit to the employee in return for the service and value the employee provides to the Employer during employment. It is unclear why overtime and longevity would not also be considered as part of the mutual benefit to the employee and Employer.

**Findings**

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of Pension – Final Average Compensation (Sec 26.02(A)(3)(a) the more reasonable position. Therefore, there will be no change to Final Average Compensation Sec. 26.02 (A) (3) (a).

Employer: Agree _____	Disagree _____
Union: Agree _____	Disagree _____

**Issue 3 – Pension – Employee Contributions (Sec. 26.02)**

**Employer Position**

The Employer's last offer of settlement proposes the following language:

**“Add new language at the end of Section 26.02: Regardless of any language to the contrary elsewhere in the agreement, effective [insert date of award] all Employees in the bargaining unit shall be required to make a contribution toward the costs of the pension system equal to five (5%) percent of FAC wages. The Employer shall pay additional amounts up to a maximum employer contribution of twenty (20%) of FAC wages as required by the actuarial evaluation. The Employees shall pay any remaining contributions required by the actuarial evaluation. Employee contributions shall be made by payroll deductions from each payroll check.”**

The Employer's proposal is pretty straightforward. It would shift the costs of contributions to the defined benefit plan from the current percentage contribution of payroll of 8% from the employee and the remainder from the employer (which was 21.31% in 2011 and 28.59% in 2012) to a minimum of 5% from the employee and up to 20% from the employer with the employee paying anything above 25%. Currently that would mean, if the proposal had been in effect for 2012 the Employer would be paying 20% and the employee would be paying 16.59%.

The Employer points to (E-73) and notes that the Employer contributes only 15% to the internal AFSCME and non-union defined contribution plans and a maximum of 14% to the command and patrol officers plans. The Employer notes that the

contribution rates for external communities show that Employee contribution rates range from 3.5% to 10% (E-72). However, it should also be noted that (E-72) reveals that three of the external comparable communities require the employer to pay anything above the employee contribution and two communities do not specify in the contract who pays the remaining amount. The Employer says this proposal is necessary to control spiraling costs associated with employee retirement benefits and would leave these employees in a better position than many other township employees.

### **Union Position**

The Union's last offer of settlement proposes the status quo with no changes to the current language maintaining the current 8% employee contribution. The Union says the Employer's proposal would result in each bargaining unit member, given the most recent pension contribution requirement of 36.58%, having to pay 16.58% and the Employer paying 20%. The impact of this shift would save the Employer \$32,286 per year and result in each of the six Sergeants having to pay an additional \$5,381 per year. The Union says this would be financially devastating to the unit member, whereas the Employer could bear the increase of \$32,286 in its multi-million dollar budget. The Union says adding an additional 8.58% on the current 8 % paid by the employee is unconscionable.

The Union refers to (E-72, E-73) arguing that the internal and external comparables support its position. As for internal comparables, the Union says the command and patrol units are the most comparable of the internal comparables and says the command unit currently pays 8% and the patrol unit 5.11% (E-73). Employer exhibit (E-72, U-120) reveals that employees in external comparable communities pay from 3.5% to 10% and on average 6.5%. The Union says doubling the unit members' contribution by capping the Employer contribution at 20% is not reasonable under the current financial conditions of the Township and not supported by the comparables. It says the pension fund is in excellent shape for being in existence less than 10 years and has steadily increased from 45% in 2005 to 58% in 2010 (E-34, pg 17).

### **Discussion and Findings**

#### **Discussion**

This issue, like all others, has to be viewed in the context of the overall compensation received by the employees. The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue include subsections (1) (a), (c), (d), (e), and (g) and

subsection (2). The financial ability of the Employer to maintain benefits has been addressed previously. The Panel has given this factor appropriate significance based the evidence presented at this hearing as required by subsection (2).

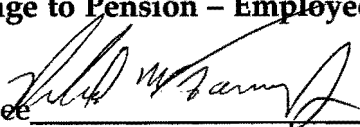
The evidence more strongly supports the Union's last offer of settlement. From a fiscal standpoint this proposal, if adopted by the panel, would save the Employer an annual cost of over \$32,000 given the current required pension contribution rate. This, in the Panel's view, is not an insignificant amount as the Union might argue. However, making this change, given the current pension contribution rate, would shift a significant cost burden on the individual employees in this unit who would have to contribute an additional \$5,381.00 from their pay to maintain pension benefit levels. This would more than double the current amount paid by the Employee. In the context of the other actions taken by this panel and the agreements reached by the parties in this proceeding, the Panel finds this shift is not appropriate when balancing the interests of the Employer and the employee and the impact on the community. It is the Panel's view that even though adoption of this proposal would result in a \$32,000 annual savings to the Employer, the Employer will be able to continue to pay this amount without jeopardizing its ability to provide services to its citizens or significantly damage its financial position.

Additionally, the record evidence supports the Union's proposal more than the Employer's. (E-72) reveals that none of the external comparables come close to requiring a 16% contribution from employees and (E-73) (E-15) reveals the highest employee contribution rate of the internal comparables with a defined benefit plan is 8.11%.

**Findings**

**Taking all of these factors into consideration the Panel finds the Union's last offer of settlement on the issue of Pension – Employee Contribution (Sec. 26.02) the more reasonable position. Therefore, there will be no change to Pension – Employee Contribution (Sec. 26.02).**

Employer: Agree \_\_\_\_\_

Disagree  \_\_\_\_\_

Union: Agree  \_\_\_\_\_

Disagree \_\_\_\_\_

**Issue 4 – Pension – Merger of Groups (Sec. 26.02 new language)**

**Employer Position**

The Employer's last offer of settlement proposes the following language:

**“Add new language at the end of Section 26.02: Regardless of any language to the contrary elsewhere in this agreement, effective [insert date of award] the Union agrees to allow the merger of their MERS**

**group with any other group or groups in the Township, subject to MERS approval and plan requirements."**

The Employer's proposed language would allow for the merger of this bargaining unit member group with the Patrol group as a single MERS group. The Employer points out that such a merger with the Patrol group, which has more members and younger members, would create a larger more diverse age group that would likely be beneficial to the cost the Employer may have to bear and would likely reduce the cost these bargaining unit members may have to pay into the system. The Employer acknowledges that such a merger would require the agreement of the Patrol and Command units, but urges that its proposal be adopted in this agreement so that if it gets approval from the other units it need not come back to this group again for approval. Employer Exhibit (E-77) reveals that a combined group would have a contribution rate of 22.45% whereas currently the contribution rate for Division 20 (the Sergeants & Command units) is 34.41 % and Division 21 (Patrol) is 18.53%.

The Employer notes that Union witness Ferguson said this bargaining unit had no problem with a merger so long as benefits would not be changed (Tr 182). He testified that it has been the Patrol unit that has been reluctant to merge. The Employer says its proposal, therefore, should be adopted.

#### **Union Position**

The Union's last offer of settlement proposes the status quo with no language allowing the merger of pension groups. However, the Union's post hearing brief points out that the Union provided testimony during the hearing that the Sergeants and Command units have never objected to a merger of B-4 pensions but the Patrol unit has always refused. Union witness Sgt. Ferguson testified, with respect to the Union's opposition to the Employer's proposed language, that if language was included so that "if the wording was that it's not going to decline any of our benefits or we pay the same or any of that, we don't have a problem" (Tr 181,182).

The Union's post hearing brief suggests the Employer's better option would be to gain Patrol's approval prior to bringing the issue to the Sergeants' unit. If the Patrol unit agrees to a merger the Employer could then bring it to this bargaining unit for agreement. The Union is concerned that agreeing to it now leaves the question of what the employee contribution might be as a result of the merger.

**Discussion and Findings**

**Discussion**


The Panel believes the Union’s position on this issue is the more reasonable. There is no immediate fiscal impact on either the Employer or Union members involved with this issue. However, as the Union has pointed out, there could be an impact on their benefits, either positively or negatively in the event of the merger of the MERS groups. Section 9(1) (g) and (i) apply to the factors the Panel has considered on this issue. Subsection (g) requires a consideration of the overall compensation, of which pension benefits and the manner of contributions to those benefits is a part. Subsection (i) addresses other factors normally or traditionally taken into consideration through voluntary collective bargaining.

In essence, the Employer’s proposal is seeking to preclude the Union from having a voice in any collective bargaining that may take place in the future relative to the implication for its members in the event of a merger of the MERS groups. Giving up the opportunity to discuss these implications, in conjunction with other employee units or independently with the Employer, is not consistent with the traditional voluntary collective bargaining process. The Panel is reluctant to give up that right on behalf of the Union through this Arbitration proceeding.

**Findings**

**Taking all of these factors into consideration the Panel finds the Union’s last offer of settlement on the issue of Pension – Merger of Groups (Sec. 26.02 new language) the more reasonable position. Therefore, there will be no language added to the CBA as proposed by the Employer involving change to Pension – Merger of Groups (Sec 26.02 new language).**

Employer: Agree \_\_\_\_\_

Disagree  \_\_\_\_\_

Union: Agree  \_\_\_\_\_

Disagree \_\_\_\_\_

**Issue 5 – Pension – Eligibility (Sec. 26.02 (A) (3) (a))**

**Employer Position**

The Employer’s last offer of settlement proposes the following language:

**“Section 26.02 (A) (3) (a) Minimum of 25 years of service – F/N (25) Effective [insert date of Award] employees shall also be required to obtain the age of fifty and the F/N (25) designation shall be changed with the MERS to reflect this change.”**

The Employer, in its post hearing brief, indicates this proposal, like the other pension proposals it advances, is an attempt to deal with the unfunded liabilities and

continually rising costs in funding its pension plans. It points to (E-80), which provides the MERS valuation related to the Employer's proposal. It shows that including the age requirement will reduce the Employer's required contribution to a rate of 28.09% of payroll, a reduction of .5%.

The Employer also argues that the external and internal comparables support its position. Exhibit (E-78) shows that four of the five external comparable communities have some combination of age and years of service for retirement eligibility. Exhibit (E-79) shows that each of the AFSCME units has an age 55/20 years of service requirement as does the Patrol Officers and Dispatchers. Only the Command unit has no age requirement. The Employer says an age requirement encourages Sergeants to remain employed at the Township and, therefore, provides more time for both employees and the Township to pay into the retirement system on behalf of the employee.

### **Union Position**

The Union's last offer of settlement proposes the status quo maintaining 25 years of service and no age requirement. The Union, in its post hearing brief, puts forth two major points in support of its position. First, it says the Employer's proposal would result in a small amount of savings for the Employer, but significantly impact its members. The Union says the Employer's proposal to switch from 25 and out to 25 and age 50 is only .5% of payroll, but would mean \$3,000 reduction per employee.

Second, and more importantly, the Union argues, is that the Panel should not accept the Employer's position because to do so would violate Article 9, Section 24 of the Michigan Constitution which states: "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." The Union notes that two of its current members could retire with 25 years of service but are not yet age 50. The Union says this issue was addressed in a Michigan Court of Appeals decision, 154 Mich App 440, which the Union says held that a delay caused by adding years before a pension can be collected is a diminished benefit. Based on that Court ruling, the Union argues the Act 312 Panel has no authority to impose an increased age requirement.

### **Discussion and Findings**

#### **Discussion**

The panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue

include subsections (1) (a), (d), (e), and (g) and subsection (2). The financial ability of the Employer to maintain benefits has been addressed previously. The Panel has given this factor appropriate significance based the evidence presented at this hearing as required by subsection (2). The external and internal comparables favor the Employer's position. This issue, like all others, has to be viewed in the context of the overall compensation received by the employees.

The evidence does indicate that if this proposal is adopted it will reduce the Employer's required contribution to support its pension fund obligations by about .5%. The Union says this results in a small reduction to the Employer in the context of its overall budget. On the other hand, the Union argues this change would mean a \$3,000 diminished benefit in pension to the employee. The Employer notes that the age requirement could result in additional contributions from both the Employer and employee, which could perhaps change the diminished benefit amount.

The Union also argues that the panel's adoption of this proposal would violate the State Constitution. In its post hearing brief, the Union notes the footnotes on (E-80) refers to two current sergeants who can retire with 25 years of service under the age of 50. The Union says this would violate the Constitution as interpreted by case law because it would diminish a contractual obligation. The evidence on this issue is somewhat conflicting. The statement at the bottom of page 7 of (E-80) states:

"There are two members in this division who would attain 25 years of service prior to age 50. As indicated by the Township, these members have agreed to forgo the F/N (25) benefit and will receive the F50 (25) benefit. As this may be considered a diminishment of benefits, it is our understanding that the Township is taking the necessary legal steps to allow this."

The Union's post hearing brief contains the following statement:

"MERS notes that these individual members must voluntarily agree to diminish their retirement. There has been no agreement from these bargaining unit members waiving the right to retire at age 50. The Panel does not have the authority to force these individuals into a diminished benefit."

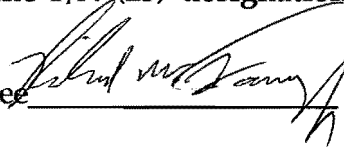

The Panel's view is that the Employer's proposal, which would take effect upon the effective date of this Opinion and Award, could be applied to current employees who would not attain 25 years of service prior to age 50 and to future employees. There is conflicting evidence as to whether there has been agreement reached between the Employer and the two current employees who would attain 25 years of service prior to age 50. With respect to those two employees, the Panel believes this issue has the



potential to be resolved between the parties. The proposal should not be rejected because of this lack of clarity; otherwise there may never be an opportunity to revise this provision to be applied prospectively, which would seem contrary to the intent of the collective bargaining process. The evidence on this issue supports the Employer's position in its last offer of settlement more than the Union's position in its last offer of settlement.

**Findings**

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on the issue of Pension – Eligibility (Sec. 26.02(A)(3)(a) the more reasonable position. Therefore, effective the date this Award is issued, or as immediately following that date as feasible, employees shall be required to obtain the age of fifty and the F/N (25) designation shall be changed with the MERS to reflect this change.

Employer: Agree  Disagree \_\_\_\_\_  
Union: Agree \_\_\_\_\_ Disagree 

**Issue 6 – Wages – Longevity (Sec. 37.01)**

**Employer Position**

The Employer's last offer of settlement proposes the following language:

"Section 37.01: Effective beginning January 1, 1993, employees covered by the Agreement shall receive a base hourly pay rate equal to one hundred and ten (110%) percent of the maximum base hourly rate of a patrol officer. The patrol officer base rate used for this computation shall also include the hourly equivalent of any extended service compensation paid to a patrol officer with ten (10) or more years of service, but shall not include any additional compensation paid to patrol officers assigned to the criminal investigation section.

Add new language to the end of section 37.01 as follows:

**Extended Service Compensation**

To be paid on the first regular payroll following an employee's anniversary date in lump sum:

- 6-7 years - \$500.00
- 8-9 years- \$1200.00
- 10 years + - \$2400.00

Employees hired after January 1, 2010 to be paid on the first regular payroll following employee's anniversary date in lump sum:

- 6-7 years - \$500.00
- 8-9 years - \$1200.00

The current method of establishing the wages of members of this unit is based on the highest paid Patrol Officer's salary, plus 10%. Included in the Patrol Officer's base salary calculation is a \$2,400.00 annual longevity payment. So, the base salary of the

highest paid patrolman, plus his longevity, plus 10%, establishes the base annual salary rate and, therefore, the base hourly rate for a member of this unit. The Employer says this unfairly skews the Sergeant's hourly rate and any benefit calculated using the hourly rate – such as overtime. The Employer notes that this same method of calculation is then used to establish the Command group wage as that group operates from a differential for the Sergeants (E-15. pg 35-36).

The Employer's proposal would, in effect, lower the current hourly rate for members of this unit from \$30.19 to \$28.92. This would result in an annual base wage reduction from the current \$66,720.61 to \$63,913.20 (a \$2,807.41 reduction). The Employer would then add the \$2,400.00 annual longevity payment to the \$63,913.20 for a total of \$66,313.00 (E-127). This would result in an actual reduction of \$407.41. But, as pointed out by the Union, a reduction in the hourly rate would also impact the amount the employee would earn in comp time, retirement, night shift premium, call in time, court time, and Holiday pay.

The Employer points out that the proposed longevity scale is the same as currently provided to the internal Patrol Officers, Command and AFSCME units (E-82). The Employer also refers to Employer Exhibits (E-55 – E-67) as evidence that the overall compensation of members of this unit is comparable to the overall compensation of Sergeants performing similar work in external comparable communities. In general, those exhibits reveal that the members of this unit rank about 3<sup>rd</sup> or 4<sup>th</sup> highest in overall general categories of wages and benefits when compared to the comparable communities. In other words, three of the comparable communities may provide slightly higher wage and benefit packages and two provide lower wage and benefit packages than those paid to members of this unit.

The Employer also points out that (E-81) provides evidence that the Employer's schedule for longevity payments is more generous than in 4 of the 5 comparable communities and that three of the comparable communities offer no longevity payments. The Employer argues that the current method of computing the Sergeant's base pay is skewed by the inclusion of longevity paid to Police Officers in the base wage rate. The Employer says this is not found anywhere else in the internal or external comparables and the result is that it unfairly skews the payment levels for overtime, shift differential, etc. The Employer says its proposal will not materially alter the standing of the unit in terms of overall compensation in comparison to the comparables. The Employer says the Township's finances and liabilities can no longer support the current method of calculation.

### **Union Position**

The Union's last offer of settlement proposes the status quo with no changes to the base wage formula and longevity. The Union points out in its post hearing brief that the impact of this proposal would be significant on the its members because it would result in a reduction in the hourly wage of its employees from the current base hourly wage rate of \$30.19 to \$28.92. Currently a bargaining unit member annual wage is calculated by adding \$2,400.00 (the annual longevity pay paid to a member with 10 plus years of service) to a member's base wage (which is 110% of the highest paid patrol officer) which added together, provides an overall annual base payment amount. This amount is divided by 2,080 hours per year to provide an hourly rate. The current hourly rate, using this calculation, is \$30.19 per hour. The hourly rate, using the calculation proposed by the Employer, would result in a \$28.92 hourly rate (E-127). The Union says this \$1.27 per hour reduction in a member hourly wage rate would not only reduce a member's annual wage by nearly \$3,000.00, but would also impact the amount of money earned from overtime, comp time, retirement, night shift premium, call in time, court time and Holiday pay, all of which are calculated on base hourly/annual pay amounts. The Union says the Employer's proposal would result in thousands of lost dollars to each member in multiple ways. The Union argues this proposal is unreasonable and not supported by the evidence. It notes that the current method of calculating how longevity is recognized within a part of the annual wage has been in place for a long period of time and there is no basis established for changing it.

### **Discussion and Findings**

#### **Discussion**

This issue, like all others, has to be viewed in the context of the overall compensation received by the employees. The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue include subsections (1) (a), (c), (d), (e), (f), (g), (i) and subsection (2). The financial ability of the Employer to maintain benefits has been addressed previously. The Panel has given this factor appropriate significance based the evidence presented at this hearing as required by subsection (2).

The Panel has considered this issue in conjunction with Issue 16, Salary and Wages. There is no question that the Employer's proposal would significantly impact the overall compensation of members of this unit. As pointed out by the Union, a reduction in the base hourly wage rate would result in a \$1.27 per hour reduction,

which would reduce the annual base wage by about \$2,800 and would also reduce undetermined additional amount earned from overtime, comp time, retirement, night shift premium, call in time, court time and Holiday pay, all of which are calculated on base hourly/annual pay amount. However, with the Panel's action on Issue 16, in which it supported the Union's position on wages, effective the date of this Order, the hourly base wage rate will increase. Employer Exhibit (E-127) is a good reference for this calculation. On the effective date of this order the hourly base wage rate will be \$29.35, which is an increase of 1.5% above the current hourly base wage rate of \$28.92 without the inclusion of longevity. Effective January 1, 2013, the hourly base rate will be \$29.79, which is an increase of 1.5% above the hourly base rate of \$29.35 without longevity. The hourly base wage rate, therefore, will have declined from \$30.19 prior to the Order in this case to a maximum of \$29.79 beginning January 2013 and for the duration of this CBA. That is about a 1.3% hourly base wage rate reduction. But longevity payments will be added to that base wage so that annual base wage of 2013 (\$29.79 per hr. x 2210 hrs. = \$65,835.90) plus longevity of \$2,400.00 will total \$68,235.90. That is about a 2.2% increase over the period 2008-2013. But, of course, that does not account for possible reduced earnings for overtime, etc., during the year as a result of the reduced hourly base wage rate.

But the Panel believes the evidence on this issue more strongly favors the Employer's position. As the Employer points out, no evidence was presented that demonstrated longevity pay being added to the base pay calculation in comparable communities. The Union's primary argument for its position is that this method of calculation has been long recognized in the CBA. The Panel recognizes this action may also impact the calculation of base pay for the Command Officers, but with that exception, none of the other internal comparables use this method of adding longevity into base pay calculations.

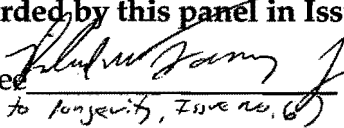
Additionally, given the current economic environment and the uncertainty of the revenues available to the Township in the immediate future, the Panel believes it would not be prudent to implement the pay increases ordered in this case and also adopt the Union's position of status quo on this issue. Evidence indicates that taken together, the actions on this issue and Issue 16 still result in the overall compensation for the members of this unit being in the mid range when compared with those in comparable communities. The Panel believes, in the long run, the removal of longevity from the calculation of base pay can be accommodated and adjusted to meet the needs of the parties in future negotiations by the modification, through collective bargaining, of base

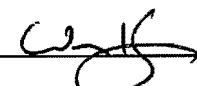
wages and longevity pay. It would appear that by removing the longevity pay from the base wage calculation may, in some respect, be a more equitable way to address the issue since a raise in the base wage would benefit all unit members equally regardless of seniority.

The Panel recognizes this is not an easy pill to swallow for the members of this Union in addition to several other issues decided in this case and the revisions the Union has already agreed to with the Employer that impacts their pocket book. On the other hand, the Panel recognizes these are stressful times for both Employees and Employers engaged in serving the public. Voluntary collective bargaining necessitates a balancing of the interests based on the facts at the time and Arbitration Panels, as a method of resolving issues not agreed upon by the parties, needs to do the same. That is what it has attempted to do in this Opinion and Order.

**Findings**

**Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on the issue of Wages – Longevity (Sec 37.01) the more reasonable position. Therefore, the proposed revision to Section 37.01 presented as the Employer's last offer of settlement will be incorporated into the agreement effective the date this Award is issued. It will take effect simultaneously with the Salary and Wages awarded by this panel in Issue 16.**

Employer: Agree  Disagree \_\_\_\_\_  
*(As to Longevity, Issue no. 6)*

Union: Agree \_\_\_\_\_ Disagree 

**Issue 7 – Dental Care – Carrier/Plan Changes (Sec. 29.01 (b))**

**Employer Position**

The Employer's last offer of settlement proposes the following language:

**"Section 29.01(b): The Employer agrees to provide Delta Dental, or its equivalent, with limits on both the current coverage and the orthodontics coverage at One Thousand Five Hundred (\$1,500.00) dollars. The parties agree that the aforementioned reference to "equivalent" coverage means that the benefits and out of pocket costs are, on the whole, substantially similar to the Delta Plan and do not adversely impact the bargaining unit."**

**Union Position**

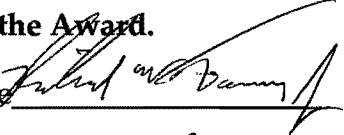
The Union accepted and stipulated to the Employer's last offer of settlement (Tr. 205).

**Discussion and Findings**


As noted above, the revisions to Section 29.01(b) of the agreement, as proposed in the Employer's last offer of settlement, was stipulated to by the parties.

Therefore, on the issue of Dental Care – Carrier/Plan Changes, the Panel accepts the language of the Employer's last offer of settlement as stated above.

Effective Date: Date of the Award.

Employer: Agree 

Disagree \_\_\_\_\_

Union: Agree 

Disagree \_\_\_\_\_

**Issue 8 – Active Employee Health Care – Plan (Sec. 29.01 (a))**

**Employer Position**

The Employer’s last offer of settlement proposes the following language:

~~“Section 29.01(a): Effective thirty (30) days after the contract is signed by the principal parties, or as soon thereafter as the Township has made the necessary arrangements with the carriers, Article 31—Health and Welfare, Section 31.01 shall provide as follows:~~

~~a. Eligible employees may choose annually one of the following health insurance packages OR equivalent coverage:~~

- ~~1. Blue Cross/Blue Shield Community Blue Option I with a \$10/\$20 drug co-pay.~~
- ~~2. Health plus NJ, \$10 drug co-pay.~~
- ~~3. Blue Care Network, Plan B, \$10 drug co-pay.~~

a. The Employer agrees to provide Blue Cross/Blue Shield Flex Blue 3 (as described by Blue Cross/Blue Shield as of April 16, 2012) hospital/medical insurance or equivalent coverage and Delta Dental insurance or equivalent coverage for full-time bargaining unit employees and for their eligible dependents. All benefits provided are subject to the terms and conditions of the applicable insurance policy.”

**Union Position**

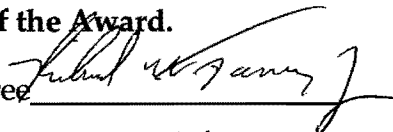
The Union accepted and stipulated to the Employer’s last offer of settlement (Tr. 205).


**Discussion and Findings**

As noted above, the revisions to Section 29.01(a) of the agreement, as proposed in the Employer’s last offer of settlement, was stipulated to by the parties.

Therefore, on the issue of Active Employee Health Care - Plan, the Panel accepts the language of the Employer’s last offer of settlement as stated above.

Effective Date: Date of the Award.

Employer: Agree  Disagree \_\_\_\_\_

Union: Agree  Disagree \_\_\_\_\_

**Issue 9 – Active Employee Health Care – Premium Contributions (new language)**

**Employer Position**

The Employer’s last offer of settlement proposes the following language be added to the CBA:

“In the event that the Township Board opts out of the cost-sharing requirements of PA 152 of 2011, employees will contribute 5.5% of the

cost of health care premiums through pretax payroll deductions for each medical benefit plan coverage year for which the Board opts out. Effective August 1, 2012, the amount of the employee contribution in the prior sentence will increase to 7.5% of the cost of health care premiums through pretax payroll deductions. Effective August 1, 2013, the amount of the employee contribution in the prior sentence will increase to 10% of the cost of health care premiums through pretax payroll deductions."

**Union Position**

The Union accepted and stipulated to the Employer's last offer of settlement (Tr. 206).

**Discussion and Findings**

As noted above, the addition of the language above, as proposed in the Employer's last offer of settlement, was stipulated to by the parties.

Therefore, on the issue of Active Employee Health Care – Premium Contributions, the Panel accepts the language of the Employer's last offer of settlement as stated above.

Effective Date: Date of the Award.

Employer: Agree *[Signature]* Disagree \_\_\_\_\_  
Subject to stipulation of parties from #4 152 of J-5 174 20222

Union: Agree *[Signature]* Disagree \_\_\_\_\_

**Issue 10 – Retiree Health Care (Sec. 26.03)**

**Employer Position**

The Employer's last offer of settlement proposes the following language:

"Section 26.03 Schedule-A  
~~The Employer shall continue to provide, in full, the then current health care program for any employee retiring with at least twenty five (25) years of actual service. Effective on the date of ratification and signing of the contract by principal parties, the twenty five (25) years of actual service eligibility requirement shall be changed to twenty five (25) years of actual service and age 50. This coverage shall include the Employee's spouse and children under 19 years of age.~~

~~For Employees hired on or after 1/1/97, coverage shall include the employee and his/her spouse.~~

The Employer will provide employees who retire with at least twenty-five (25) years of service and age 50 with the same health care provided to the active employees, as may be changed from time to time through negotiations or otherwise, except that retirees shall be required to make premium contributions of ten (10%) of the health care premiums. This



**coverage shall include the employee's spouse and/or dependants at the time of retirement. Effective Date: Date of Arbitration Award."**

The Employer proposes that retirees be covered by the same health care insurance provided to active employees, which could change with each CBA. It also proposes that, for those employees retiring after the effective date of this Award, the retiree would have to pay 10% of the cost of the health care premium (Tr 211). The Employer says the proposal is intended to address the continually increasing cost of providing retiree health insurance. The Employer says it is being crushed by legacy costs, including retiree medical coverage and that the Panel should consider this issue in the context of Section 9(1)(a)(iii) of Act 312, which is one of the factors the Panel is required to consider. Section (9)(a)(iii) calls upon the Panel to consider "All liabilities, whether or not they appear on the balance sheet of the unit of government." In its post hearing brief, the Employer references (E-36, pg 4) as evidence and says that the Employer is unable to make the payment needed each year necessary to keep the unfunded liability from continuing to grow.

Employer witnesses Edwards and Barriger testified on this issue. They explained that currently, when an employee retires, they get the coverage, in essence that was provided at the time of their retirement, locked in. This results in more cost to the Employer in premiums for these small "straggling" groups (Tr 207) (Tr 213). Witness Barriger testified that the AFSCME bargaining groups recently accepted the "mirroring" feature of the proposal – i.e., the retirees would be provided the same coverage as the active employees as it changed as a result of changes in the CBA. She also noted that the 10% retiree contribution was discussed during negotiations with the AFSCME group, but was not in the final agreement (Tr 215).

The Employer says the "mirroring" provision is a fair way to address these liabilities because it could reduce the cost of the small group's retiree health plans and let the active employees plan cover the retiree. It also argues that it is fair to require 10% of the premium to be paid by the retiree and notes that the police department employees represent the majority of the total liability for health care (E36, pg 4).

### **Union Position**

The Union's last offer of settlement proposes the status quo with no mirroring retiree health care to active health care and no retiree premium contribution. The Union notes that three of the five external communities do not have mirrored benefits (health care benefits for retirees are the same as those of active employees) and none require retirees to pay a percentage of the premium.

With respect to the internal comparables, the Union says the Executive Command and Patrol Police units are the only equal comparisons to the Sergeants and those units do not have mirroring (E-84). The Union also notes that while the AFSCME bargaining units recently agreed to the mirrored benefit, none of them have a 10% premium contribution. The Union says the internal and external comparables, along with the strong financial condition of the Employer, favor the Panel's adoption of the Union position.

### **Discussion and Findings**

#### **Discussion**

The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue include subsections (1) (a), (d), (e), and (g) and subsection (2). The financial ability of the Employer to maintain benefits has been addressed previously. The Panel has given this factor appropriate significance based the evidence presented at this hearing as required by subsection (2). The external and internal comparables favor the Union's position. This issue, like all others, has to be viewed in the context of the overall compensation received by the employees.

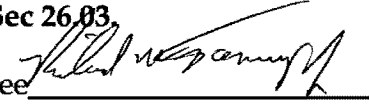
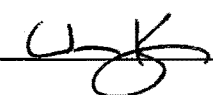
The Employer has noted the financial impact of these "legacy costs." The Panel recognizes the continuing cost of health care for both active employees and retirees is confronting all employers. However, there was not sufficient evidence presented to demonstrate what that cost savings would be if this proposal was to be adopted by the Panel as it pertains to the elimination of the small "straggling" groups. Of course, it is clear there would be a cost savings to the Employer if the requirement that 10% of the premium had to be paid by the retiree.

But the evidence presented comparing both the internal and external comparables does not support the Employer's position. Exhibit (U-126) reveals that none of the external comparable communities require retirees to pay any percentage of the health care premium and only two of the five communities apply "mirroring." Exhibit (E-85) reveals that none of the internal comparables require any percentage of the health care premiums to be paid by retirees. As noted above, there was testimony that the AFSCME groups recently agreed to "mirroring," but none of the other collective bargaining groups have mirroring and Employer witness Barriger stated the non-union employees have mirroring but none have the payment of 10% of premium.

The Employer refers to (E-36, pg 4) to point out the actuarial accrued liability and notes that a substantial portion of it is attributable to the police department. But of course this bargaining unit membership is only a small percentage of the police department. A review of Exhibit (E-36, pg 4) pertaining to the total Township computed contribution as a level of percentage of payroll from the various units within the Township shows that the police department percentage is the lowest among the units. The evidence on this issue supports the Union's position in its last offer of settlement more than the Employer's position in its last offer of settlement.

**Findings**

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of Retiree Health Care (Sec. 26.03) the more reasonable position. Therefore, there will be no change to Sec 26.03.

Employer: Agree _____	Disagree 
Union: Agree 	Disagree _____

**Issue 11 – Sick/Personal Leave – Annual Accumulation (Sec.29.06 (a) & (b))**

**Employer Position**

The Employer's last offer of settlement proposed the following language:

"Section 29.06 (a) and (b): Each full-time employee will have the use of fifteen (15) sick/personal days per year, subject to the conditions in Section 29.07:

- a. Ten (10) days (at 8.5 hours per day) shall be granted for whatever purpose the employee deems necessary providing prior approval has been obtained from the employee's supervisor. Such approval shall not be unreasonably withheld. ~~Unused days may either be banked or cashed in at one half (1/2) value.~~
- b. Five (5) days (at 8.5 hours per day) shall be used only for sickness or illness. Sick time will not require prior approval, however the employee will be required to notify his/her shift commander prior to the start of his shift. Unused days may ~~either be banked or cashed back for full value.~~

**Union Position**

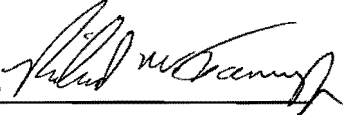

The Union accepted and stipulated to the Employer's last offer of settlement on this issue (Tr. 216). However, this issue relates to Issue 13. In essence, the Union seeks to retain the language in subsection a. that would permit unused days to be cashed out for half (1/2) value and language in subsection b. that would permit unused days to be cashed out for full value (Tr. 219-222).

**Discussion and Findings**

As noted above, the revisions to Section 29.01(b) of the agreement, as proposed in the Employer’s last offer of settlement, was stipulated to by the parties. However it was also noted that the Union wants to retain the language that would permit employees to annually cash out unused days. Because the parties agreed and stipulated to the Employers last offer of settlement language for Issue 11, the Panel will adopt that language here and the question of retaining or not retaining the language relative to the employees’ ability to receive cash for unused days will be addressed when the Panel addresses Issue 13.

Therefore, on the issue of Sick/Personal Leave – Annual Accumulation, the Panel accepts the language of the Employer’s last offer of settlement as stated above.

Effective Date: Date of the Award.

Employer: Agree  Disagree \_\_\_\_\_  
Union: Agree  Disagree \_\_\_\_\_

**Issue 12 – Sick/Personal Leave – Maximum Accumulation (Sec. 29.06(3))**

**Employer Position**

During the course of the hearing the Union and the Employer agreed to accept a modification of the Employer’s last offer of settlement (Tr. 216,217). The following language is the modified language agreed to by the parties:

“Section 29.06(3): Banked days may be accumulated ~~without limit~~ **up to a limit of 45 days (382.5 hours at 45 days x 8.5 hours per day);** however these days may be used only for sickness as stated in this section or to supplement worker’s compensation or sick and accident coverage to one hundred percent (100%) on an hour for hour basis. Banked days shall have no other cash value. **Employees who have more than 382.5 hours of banked time on the effective date of the 2011-2013 agreement shall retain their banked time, but may not bank additional time until they fall below the 382.5 hour limit.”**

**Union Position**

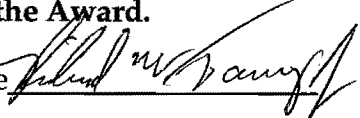

The Union accepted and stipulated to the Employer’s last offer of settlement as modified during the hearing (Tr. 216).

**Discussion and Findings**

As noted, the language above, as proposed in the Employer’s last offer of settlement as modified by the parties during the course of the hearing, was stipulated to by the parties.

Therefore, on the issue of Sick/Personal Leave – Annual Accumulation, the Panel accepts the language of the Employer’s last offer of settlement as modified by the parties during the course of the hearing.

Effective Date: Date of the Award.

Employer: Agree  Disagree \_\_\_\_\_  
Union: Agree  Disagree \_\_\_\_\_

**Issue 13 – Sick/Personal Leave – Cash Back (Sec.29.06 (a) & (b))**

**Employer Position**

The Employer’s last offer of settlement noted the relationship between this issue and Issue 11. Based on discussions by the parties during the course of the hearing the Employer proposes the following language:

“Section 29.06 (a) and (b): Each full-time employee will have the use of fifteen (15) sick/personal days per year, subject to the conditions in Section 29.07:

- a. Ten (10) days (at 8.5 hours per day) shall be granted for whatever purpose the employee deems necessary providing prior approval has been obtained from the employee’s supervisor. Such approval shall not be unreasonably withheld. ~~Unused days may either be banked or cashed in at one half (1/2) value.~~
- b. Five (5) days (at 8.5 hours per day) shall be used only for sickness or illness. Sick time will not require prior approval, however the employee will be required to notify his/her shift commander prior to the start of his shift. Unused days may ~~either be banked or cashed back for full value.~~

The Employer says, given the financial problems faced by the Township, it cannot continue to allow employees to convert unused sick and personal time to cash at the end of the year, nor can it allow employees to bank personal leave. The Employer says sick time is intended for employees to use when sick, not as a savings account. The Employer says it is mindful of the employees wish to accumulate sick leave to address cases of disability and, therefore, the Employer’s proposal would allow employees to continue to accumulate sick time.

**Union Position**

The Union’s last offer of settlement proposed the status quo for the language in Section 29.06 (a) and (b). However, during the course of the hearing the Union acknowledged that the difference between the parties was narrowed to the inclusion or exclusion of the language, which the Employer proposed to eliminate in both subsections (a) and (b) that would prohibit the employee from annually cashing out any

unused days. Therefore, the Union's position is that the language should read as follows:

"Section 29.06 (a) and (b): Each full-time employee will have the use of fifteen (15) sick/personal days per year, subject to the conditions in Section 29.07:

- a. Ten (10) days (at 8.5 hours per day) shall be granted for whatever purpose the employee deems necessary providing prior approval has been obtained from the employee's supervisor. Such approval shall not be unreasonably withheld. Unused days may either be banked or cashed in at one half (1/2) value.
- b. Five (5) days (at 8.5 hours per day) shall be used only for sickness or illness. Sick time will not require prior approval, however the employee will be required to notify his/her shift commander prior to the start of his shift. Unused days may either be banked or cashed back for full value.

The Union points out that: 1) during the course of the hearing the parties agreed to maintain ten personal days (8.5 hours each) in section 29.06(a) plus five sick days (8.5 hours each) in section 29.06(b). That settled Issue 11. 2) The Union accepted the limitations on accrual of sick, personal and vacation time as proposed by the Employer, which resolved Issue 14. 3) The Union agreed to a 45-day cap instead of unlimited accumulation for unused time, which resolved Issue 12. Given these changes, the Union argues this provision need not be adopted.

The Union says the comparables support the Union position, which is to maintain the language that permits a member to cash out unused sick/personal days. It notes that (E-92) reveals that three of the five external comparables provide payment for unused days and that the two other internal police units currently maintain the same payout policy as this unit. The Union also points to testimony from Employer witness Edwards that a reason the Employer is proposing this change is that if employees have a large number of accumulated sick/personal days when they leave employment it makes it difficult for the Employer to budget for and make that large payment (Tr. 220). The Union says that since the parties agreed to a specific cap on the number of sick/personal days that can be accumulated the Employer's exposure for payout when the Employee leaves are limited.

### **Discussion and Findings**

#### **Discussion**

The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue include subsections (1) (a), (d), (e), and (g) and subsection (2). The financial ability of the

Employer to maintain benefits has been addressed previously. The Panel has also considered Section 9 subsection 1(d) (i) – comparisons of public employment in comparable communities, and subsection 1(i) – other factors that are normally or traditionally taken into consideration – in reaching a decision on this particular issue.

With respect to the financial ability of the unit of government to pay, it would appear there is not a significant impact on the cost to the Township. If the employee does not take the maximum allowed personal leave or sick leave during the year she/he is on the job those days. If sick or personal leave is taken it is quite possible, given the number of employees in this unit, that someone else would need to be called in to replace the individual and, therefore, the employer would have to pay for that persons time in addition to the employee who was absent.

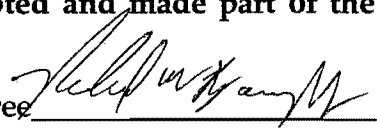
With respect to subsection (1) (d) (i), three of the five external comparable communities allow an annual cash payment for sick and personal unused days (E-92). And subsection (1) (i) permits the Panel to take into consideration other factors. The other factors in this particular issue involve the give and take that has already occurred between the parties resulting in agreement on other issues. Among the issues agreed to are the number of days to be available for the employee to use each year – Issue 11; the maximum number of days that can be accumulated – Issue 12, and the accumulation of accrued sick/personal and vacation time while on leave – Issue 14. Subsection (1) (i) permit arbitration panels to consider the give and take normally experienced through voluntary collective bargaining between the parties.

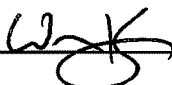
The Panel finds that the evidence favors the Union’s position on this issue and does not significantly impact the economic condition of the Employer. And in the normal give and take of bargaining, this issue could likely have been agreed to by the Employer in the context of other concessions by the Union on issues involving Sick/Personal leave.

**Findings**

**Taking all of these factors into consideration, the Panel finds the Union’s last offer of settlement on the issue of Sick/Personal Leave –Cash Back, (Section29.06 (a) & (b), the more reasonable position. Therefore, the language proposed by the Union, as described in the Union’s position above, will be adopted and made part of the CBA effective upon the date of this Award.**

Employer: Agree \_\_\_\_\_

Disagree  \_\_\_\_\_

Union: Agree  \_\_\_\_\_

Disagree \_\_\_\_\_

**Issue 14 – Sick/Personal and Vacation – Accrual While on Leave (Sec. 29.07 & 36.08)**

**Employer Position**

During the course of the hearing the Union and the Employer agreed to accept a modification of the Employer’s last offer of settlement (Tr. 224). The following language is the modified language agreed to by the parties:

“Section 29.07: Sick/Personal time earned on a weekly basis. Employees may only earn sick/personal time for weeks during which they receive payment for 100% of their base weekly wages through: 1) payment for hours worked; 2) the use of sick/personal time, vacation time, and/or compensatory time; or 3) the receipt of both workers’ compensation and accrued time. Any sick/personal time which is not so earned shall be deducted from the amount available to the employee [Rest of section remains as is].

Section 36.08: Vacation time is earned on a weekly basis. Employees may only earn vacation time for weeks during which they receive payment for 100% of their base weekly wages through: 1) payment for hours worked; 2) the use of sick/personal time, and/or compensatory time; or 3) the receipt of both workers’ compensation and accrued time. Any vacation time which is not so earned shall be deducted from the amount available to the employee [Rest of section remains as is].

**Union Position**

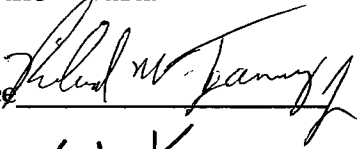

The Union accepted and stipulated to the Employer’s last offer of settlement as modified during the hearing (Tr. 224).

**Discussion and Findings**

As noted, the language above, as proposed in the Employer’s last offer of settlement as modified by the parties during the course of the hearing, was stipulated to by the parties.

**Therefore, on the issue of Sick/Personal Leave – Accrual While on Leave, the Panel accepts the language of the Employer’s last offer of settlement as modified by the parties during the course of the hearing.**

**Effective Date: Date of the Award.**

Employer:	Agree		Disagree	_____
Union:	Agree		Disagree	_____



## **Issue 15 – Past Practice Clause (Sec. 41.01)**

### **Employer Position**

The Employer's last offer of settlement proposes the following language:

**"Section 41.01: It is the intent of the parties hereto that the provisions of this Agreement, which supersedes all prior agreements, oral or written, expressed or implied, between such parties shall govern their relationship and shall be the sole source of any rights or claims which may be asserted in Arbitration or otherwise. The parties agree that there shall be no rights or claims established by any allegation of past practice which are not supported by the terms of this Agreement."**

Employer witness Edwards testified in support of this proposal. He stated the purpose of the proposal was to assure the certainty that both parties are subject to the specifications of a negotiated or arbitrated CBA and that any claims about past practice between the Employer and the Union "don't count" (Tr 225). In its post hearing brief, the Employer states the proposal is intended to clarify that the written document contains the parties' entire agreement, and that binding effect of any past practices have been removed by the issuance of the Award. The Employer argues the parties should be able to rely on the CBA meaning what it says, without alleged modifications through past practice. The Employer says the proposal provides certainty, enhances the meaning of the agreement, and will reduce areas of future dispute between the parties.

### **Union Position**

The Union's last offer of settlement proposes the status quo with no changes to the current language. In its post hearing brief, the Union says that past practice is important to both parties. It argues that collective bargaining agreements are usually unable to address every detail between an Employer and a collective bargaining unit and consideration of past practice when disputes arise, helps fill in the gaps when there may be an issue that requires some interpretation of ambiguous language in a collective bargaining agreement. The Union says the elimination of the ability to consider all past practices of any nature could impair either party. The Union also says the Employer has presented no evidence to indicate there has been a problem with the current language and that a review of the internal comparable contracts reveals that none contain language proposed by the Employer.

### **Discussion and Findings**

#### **Discussion**

As pointed out by the Union in its post hearing brief, there was no evidence presented that indicated that any of the internal or external comparables had similar

language in their collective bargaining agreements. The Panel also agrees with the Union's point that the Employer has not identified any particular problem that this language attempts to address. Additionally, it would seem that adoption of this language could undermine or weaken, not strengthen the value of the CBA. Would it not be possible that a provision of a CBA could be ignored by one or both of the parties and a practice not addressed or contrary to the CBA occur for some time until discovered by one or more of the parties? With this language in place, it would seem neither party could present evidence in a grievance procedure that would allow the party to demonstrate that the CBA provision was not being followed. The Panel finds insufficient evidence has been presented to support adoption of this proposal.

**Findings**

**Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of Past Practice Clause (Sec. 41.01) the more reasonable position. Therefore, there will be no change to Sec 41.01.**

Employer: Agree _____	Disagree <u><i>Richard W. Brannigan</i></u>
Union: Agree <u><i>U.K.</i></u>	Disagree _____

**Issue 16 – Salary and Wages (Sec. 37.01 and 37.02)**

**Union Position**

In its last offer of settlement the Union proposed the following revisions to Sections 37.01 and 37.02:

Section 37.01 Employees covered by this agreement shall receive a base hourly pay rate **no less than** one hundred and ten percent (110%) of the maximum base rate of a patrol officer **but subject to the below listed increases**. The patrol officer base rate used for this computation shall also include the hourly equivalent of any extended service compensation paid to a patrol officer with ten (ten) or more years of service, but shall not include any additional compensation paid to patrol officers assigned to the investigation section.

**January 1, 2011 – 1.5% (No retroactivity)**

**January 1, 2012 – 1.5% (No retroactivity)**

**January 1, 2013 – 1.5%**

~~Section 37.02: This wage rate differential shall be maintained for the term of this Agreement but the Employer will be under no obligation to adjust the salary or hourly wage rate under the terms of this differential formula following the expiration date of this Agreement as specified herein, or the expiration date of any written extension of this Agreement.~~

**Section 37.02: - The schedule of pay rates are as provided in Schedule A attached hereto.**

During the course of the hearing the Union and the Employer had an off-the-record discussion regarding the Union's last offer of settlement on the issue of wages. As a result of that discussion it was acknowledged by both parties that the Union's last offer of settlement proposes the following wage rates:

- a. Beginning January 1, 2011 = 0.0%
- b. Beginning January 1, 2012 effective on the date of the award = 1.5%
- c. Beginning January 1, 2013 = 1.5%

The Union submitted this last best offer with each year of the proposed contract as a separate issue (Tr. 230).

The Union points to several Exhibits in support of its position. It says a review of the external comparables reveals a history of its members slipping from the highest paid in 2005 to fourth in 2011 (U-100). It notes that (U-101) demonstrates that since 2009 the external comparable's average hourly wage has been above what its members have received. It points to (U-102) which, it says, reveals that while its members received no increase in base wages in 2007, 2008, 2009, 2010, the external comparables received, on average, a 3.2% increase in 2007, 2.4% increase in 2008, 1.7% increase in 2009 and a 1.61% increase in 2010.

The Union says while the Employer is seeking a wage freeze on the issue of wages, coupled with its proposal to revise the way longevity is calculated for members of this unit, if that proposal is adopted a wage freeze would actually result in an annual base wage reduction of \$2,804. That would result in a 4.39% decrease in base wage (U-102). The effect is a zero base wage increase from 2006 through 2011 and a negative 4.39% in 2012.

The Union notes that a loss in base wage affects retirement, overtime, comp time, holidays and other benefits. It points out that members also pay 8% of their pension, accepted a new health plan mid-term and, as a part of this negotiation, have accepted health premium sharing up to 10%. The Union acknowledges that internally, the Patrol and Command units have also received no base wage increases since 2006, but note that AFSCME S received 3% in 2006, 2.5% in 2007, 3% in 2008 and 3% in 2009 (U-114). AFSCME W received 3% for 2008, 2009, 2010, 2011 (U-115). AFSCME V received 3.5% in 2007, 3% in 2008, and 3% in 2009. The Union says the internal comparables support the reasonable wage proposal of the Union.

### **Employer Position**

The Employer's last offer of settlement is to oppose any pay increases. The Employer's position relative to wages is, in part, addressed within its proposal on issue 6 which would remove a Patrol Officer's longevity from the base wage calculation but provide it annually as a separate longevity payment based on years of service. The Employer's proposal in Issue 6, coupled with no wage increases, would result in an overall reduction in annual pay from \$66,720.61 to \$66,313.20 (E-127). The Employer states, however, that even without the pay raises sought by the Union, this would still result in the members of this unit in the middle of the external comparables in terms of overall compensation. The Employer says the Union's wage proposal would place it above four of the five comparables.

The Employer, in its post hearing brief, also views the Union's proposal to retain the differential provision, which requires members of this unit to receive a wage 10% above that of a police officer, and also seek a guaranteed raise of 1.5% each year as contradictory. The Employer says there is no other comparable that has a similar provision and should be rejected.

The Employer also argues that the Union's proposal to remove the language in Section 37.02, which currently states there will be no wage adjustment after the CBA expires, is contrary to the promotion of good faith bargaining and not supported by the internal comparables. More importantly, the Employer notes, removal of this language is in violation of language contained in Michigan Law P.A. 54 of 2011. That Act, which amended the Public Employment Relations Act, states:

"after the expiration date of collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wage and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement" MCLA 423.215b.

The Employer says an award from this Panel to allow an increase in wages for members of this unit after the expiration of the CBA resulting from an increase in Police Officers wages would violate the provisions of MCLA 423.215b. The Employer says this Panel cannot do that and, therefore, has no choice but to reject all of the Union's demands for a wage increase.

The Employer says even if the Panel chooses to consider the Union's proposal on wages, there is no justification for ordering an increase. The Employer refers to (E-94) as evidence that only two of the external comparable communities increased wages during the years 2010-2013. The Employer also refers to (E-95) as evidence that, with the

exception of AFSCME group W, there has been no increase in wages for the internal comparables since 2009.

Anticipating the Union's argument to be that its members have received no increase in wages since 2007, the Employer points out that the Union ignores the fact that each of its members received a lump sum of \$7,000 in 2009. The Employer says that while this was identified as a reimbursement for MERS contributions that was not attributable to wages (Tr 189-190) it still resulted in one time additional cash to these unit members. The Employer also discredits the validity of (U-112), which is described as a "net wage comparison with employee health insurance premium contribution" of Grand Blanc Township with the external comparable communities. The Employer says the Exhibit does not account for the \$2,400.00 in longevity pay these unit members would receive and is unrealistic in its estimate of non-use of sick or personal time.

The Employer says the record shows the Employer's position on Issue 6 and this issue, as it impacts wages, will put the members of this unit in the middle of the external comparables. The employer says it has made ever increasing payments to fund the benefits for this unit while faced with falling revenues and the Employer cannot be expected to pay out more while less is coming in.

### **Discussion and Findings**

#### **Discussion**

The Panel has reviewed the evidence and testimony provided in the context of the Act 312, Section 9 criteria. Section 9 criteria particularly applicable to this issue include subsections (1) (a), (c), (d), (e), (f), (g), (i) and subsection (2). The financial ability of the Employer to maintain benefits has been addressed previously. The Panel has given this factor appropriate significance based the evidence presented at this hearing as required by subsection (2). This issue, like all others, has to be viewed in the context of the overall compensation received by the employees.

Upon review of the above factors and giving proper weight to those factors, particularly the financial ability of the unit of government to pay, pursuant to Section 9(2), and in the context of other decisions made by the Panel in this proceeding, the Panel concludes it is more appropriate to adopt the Union's last offer of settlement than the Employer's. This is felt appropriate, particularly in light of the Panel's decision on Issue 6, which adopted the Employer's last offer and, thereby, reduced the base wage calculation.

With respect to Section 9 criteria, subsection (1) (a) requires a consideration of the financial impact on the community; the interests and welfare of the public; and all liabilities, whether they appear on the balance sheet or not. This Award, when all of the provisions awarded by this panel, coupled with those that were agreed and stipulated to by the parties, [subsection (1)(c)] result in little, if any cost increases to the Employer, and may actually reduce costs to the Employer.

Both parties presented evidence relating to subsection (1) (d) (e), comparison of wages and benefits to those in comparable communities and within the Township. The Employer says that adoption of the Union's proposal would place members of this unit above four of the five external comparables (U-102). But this does not take into consideration the adoption by this Panel of the Employer's proposal on Issue 6. The Employer also refers to (E-94) and says for the years 2011-2013 only one of the five comparable communities provided pay increases similar to those proposed by the Union. But it should also be noted that (E-94) reveals that three of the five comparable communities gave some increase, ranging from 2% to 6% over the period from 2008 2012 while members in this unit received no pay increase during that period.

Subsection (1) (f) requires Panel consideration of the average consumer prices for goods and services, commonly known as the cost of living. Exhibit (U-99) indicates that between 1999 and 2011 base wages increased 23.07% for members of this unit, but during that same period the CPI increased 34.41% resulting in an 11.34% increase in cost of living compared to wage increases. The Employer included a document in its post hearing brief presenting data on cost of living, which it argues is more accurate. This data from the U.S. Bureau of Labor Statistics provides the CPI for Urban Wage Earners and Clerical Workers – all items less medical care. The data reveals that from February 2008 to February 2012 the CPI rose approximately 14% or an average of 3.5% per year over that four year period. During this same time period (2008 to 2012 to date) the members of this unit received no pay increase. The Employer says the Panel should take into consideration the fact that the members of this unit received a lump sum payment for MERS contributions in 2009. But this was not attributable to wages and did not change the base wage.

Subsections (g) and (i) permit consideration of overall compensation including vacations, holidays, insurance and pensions, medical and hospitalization, the continuity and stability of employment and other factors normally or traditionally taken into consideration through voluntary collective bargaining. In the context of other decisions made by this panel, and the agreements of the parties made during negotiations in this

proceeding, the Panel believes the evidence favors the Union's last offer of settlement on this issue.

The Employer, in its post hearing brief, also argues that the Panel must reject the Union's proposal because its proposal to remove the language of Section 37.02 is contrary to MCLA 423.215b. The Panel disagrees. The Panel views the provisions of MCLA 423.215b as superseding the language in Section 37.02 and, therefore, the language in Section 37.02, even if stricken, as a result of this Order, would have no impact because the parties must abide by the provisions of MCL 423.215b.

The Employer also says it views the Union language in this proposal to retain the differential provision but also seek a specific percentage base wage increase as contradictory. The Panel does not view it as contradictory. The Panel interprets the language as merely specifying a specific percentage increase while assuring that at no time should the base hourly rate be less than 10% above the maximum base rate of a Patrol Officer. If it were to be interpreted as the Employer suggests it would seem to preclude any negotiations about wage increases other than to assure a 10% differential. The Panel does not believe that was the intent of Section 37. For all of the above reasons, the Panel concludes the evidence favors the Union's last offer of settlement.

**Findings**

**Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on the issue of wages the more reasonable position. The Panel also acknowledges that the parties have stipulated that each year of the proposed 2012 and 2013 increases are to be separate issues ruled on by the Panel (Tr 230) and that State law prohibits the panel from awarding wage rates retroactively. Therefore, The following wage rates will be revised as follows:**

- a. **Beginning effective the date this Award is issued, and effective for the remainder of 2012 = 1.5% increase in base wage.**
- b. **Beginning January 1, 2013 = 1.5% increase in base wage. The Schedule of pay rates in Schedule A will be revised to be consistent with this Order.**

Employer: Agree \_\_\_\_\_

Disagree *Richard W. Jammy*

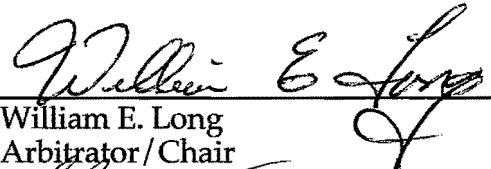
Union: Agree *ChK*

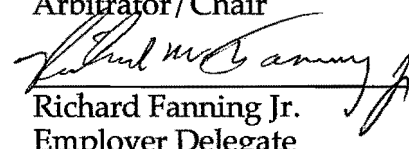
Disagree \_\_\_\_\_

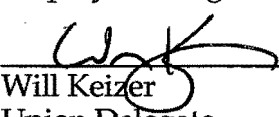
**SUMMARY**

This concludes the award of the Panel. The signature of the delegates herein and below along with the signature of the Independent Arbitrator below indicates that the Award as recited in this Opinion and Award is a true restatement of the Award. All agreements reached in negotiations during the course of this proceeding and within the submission of last offers of settlement and stipulated to by the parties as noted herein, as well as all mandatory subjects of bargaining contained in the prior contract, will be carried forward into the collective bargaining agreement reached by the Panel.

Re: The Charter Township of Grand Blanc & Police Officers Labor Council, Sergeants Unit  
MERC Case No. D10 F-0695(Act 312)

Date: July 30, 2012   
William E. Long  
Arbitrator/Chair

Date: 7-26-12   
Richard Fanning Jr.  
Employer Delegate

Date: JULY 23, 2012   
Will Keizer  
Union Delegate



**Attachment A****Grand Blanc Township POLC  
Act 312 Arbitration  
MERC Case D 10 F0695  
External Comparables**

	<b>E-21 Population 2010</b>	<b>E-22 Population Density 2010</b>	<b>E-23 Taxable Value 2011</b>	<b>E-24 Taxable Value % Change 2008- 2011</b>	<b>E-25 Taxable Value Per Capita 2011</b>	<b>E-27 Per Capita Income 2006-2010</b>	<b>E-28 Median Household Income 2006- 2010</b>
<b>Brownstown Township</b>	30,627	1,364	870,548,300	-21%	28,424	25,642	60,941
<b>Flint Township</b>	31,929	1,351	952,925,230	-19%	29,845	23,914	42,792
<b>Genesee Township</b>	21,581	734	331,239,413	-23%	15,349	19,378	38,817
<b>Mundy Township</b>	15,082	419	459,260,362	-19%	30,451	28,295	56,752
<b>White Lake Township</b>	30,019	892	965,422,440	-71%	32,160	30,651	70,485
<b>Grand Blanc Township</b>	37,508	1,150	1,139,051,263	-21%	30,368	28,730	60,542
<b>Grand Blanc Township Ranking Compared to Others</b>	1	3	1	3/4	3	2	3