

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

POLICE OFFICERS LABOR COUNCIL

NON-SUPERVISORY UNIT

and

DEWITT CHARTER TOWNSHIP

MERC CASE NO.: L 18 J 0914

COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq*]

Arbitration Panel

Chair: Eugene Lumberg
Employer Delegate: Helen Mills
Union Delegate: Brendan Canfield

Advocates

Employer Advocate: Helen Mills
Union Advocate: Brendan Canfield

PETITION(S) FILED: 11/06/2019

PANEL CHAIR APPOINTED: November 15, 2019

SCHEDULING CONFERENCE HELD: November 26, 2019 (Agreed by parties that it would be a joint schedule with the supervisory and non-supervisory units)

HEARING DATE(S) HELD: October 13, 2020 and October 26, 2020

AWARD ISSUED: March 16, 2021

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
BUREAU OF EMPLOYMENT RELATIONS

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WITNESS LIST

1. Nancy Ciccone
2. Bill Darnell
3. Andrew Dymczyk
4. Hal Telling
5. Marne Daggett
6. Julie Coleman
7. Duane Smith
8. Kyle Kokla
9. Mike Gute

EXHIBIT LIST

See Appendix A attached.

The parties submitted joint exhibits as well as union exhibits and employer exhibits at the beginning of the proceedings they were admitted and made a part of this decision.

1. INTRODUCTION AND BACKGROUND

Dewitt Charter Township is in Clinton County, Michigan, it is surrounded by several municipalities, *i.e.*, Lansing and the City of East Lansing, along with other townships that border Dewitt Township. The township itself has approximately 15,000 residents. It is basically township with a small commercial tax base. It serves the areas of Lansing and East Lansing as a residential area for professionals and university professors, administrators, et al. The township has 36 full time employees. The police department is composed of supervisory and non-supervisory officers and are represented by the Police Officers Labor Council.

The non-supervisory unit has 11 positions, and the supervisory unit consists of five positions. The supervisory positions are four sergeants, one of whom is off on some type of leave and a lieutenant.

With the growth of the area, there has been a rise in demand for municipal services. The township has some restrictions as to revenue because of limits set by State mandated caps.

There is no full-time fire department. The Dewitt police department is the most significant expense of the township. Approximately 1/3 of the township's budget is used for the maintenance of the police department.

The monies needed to support the police department have risen steadily since 2010 when the amount was \$461,000 to approximately \$640,000 in 2020, in millage revenue. The actual cost to operate the department has gone from 1.6 M in 2010 to 2.2 M in 2020, with the general fund subsidizing the police department in the amount of approximately 1.5 M annually.

One of the biggest increases in the cost to maintain the police department is the increased pension costs.

The township is not claiming an inability to pay at this time. What they are saying is they have some concern with future costs and ability to pay in the future.

2. STATUTORY CRITERIA

Michigan Public Act #312 of 1969, as amended, requires that the Act #312 Arbitration Panel issues its award and base its findings, opinions and order on the following factors contained in section nine of the act:

Sec. 9. (1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(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 financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the Township.

(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) Public employment in comparable communities.

(ii) 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 while the arbitration proceedings are pending.

(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.

(j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

(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.

3. STIPULATIONS AND PRELIMINARY RULINGS

The Parties have stipulated as follows:

1. That the parties agree that this arbitration panel would hear both the supervisory and the non-supervisory 312 Arbitration at the same time.
2. That all issues are economic.
3. That the parties agree that all the exhibits were made a part of the final opinion and decision. The exhibits will be subject to oral objections at the proper time.
4. The issue of wages can be taken one year at a time as to LBO.
5. The issue of wages is retroactive back to the end of last contract hence, starting on January 1, 2019.
6. The comparables have been stipulated to the following 1-6.
 1. Davison Township.
 2. Flushing Township.
 3. Fruitport Township.
 4. Granville.
 5. Saline.
 6. Thomas Township.
7. The union has entered into a stipulation with the township that the present pension plan being a defined benefit shall be closed to new hires and that the new pension plan shall be a defined contribution for new hires hired after the date of this award. (Flushing Township and Fruit Port Township, Granville, Saline and Thomas Township).
8. The contract years are based on the calendar years, thus, the contract would begin as of January 1, 2019 and run through to December 2023.

4. COMPARABLES

External Comparables

1. Davison Township.
2. Flushing Township.
3. Fruitport Township.
4. Granville.
5. Saline.
6. Thomas Township.
7. Internal comparables non-union employees.
8. Internal comparable union employees.

The parties rely on the wages, hours, terms, and conditions of employment of other Dewitt Township employees, both union and non-union.

5. ISSUES BEFORE THE PANEL

1. Duration, Article 40 of present contract.
2. Wages, Article 38.
3. Pension, Article 31.
4. Pension, employee contribution, Article 31, sections 2 and 3.
5. Defined contribution plan, Article 31, section 5.
6. Overtime equalization. New Article.
7. Vacation payout, Article 18, present contract.

Note there is one other bargaining unit in the township, but they are currently seeking a contract. All issues are economic.

6. SUMMARY OF AWARD [Use chart format]

ISSUE	AWARD
1. Duration	Union's Last Best Offer to be entered
2. Wages	Union's Last Best Offer to be entered
3. Pension Art. 31 FAC	Union's Proposal to be entered
4. Pension Employee Contribution	Employer's Last Best Offer to be entered
5. Defined Contribution Plan	Employer's Last Best Offer to be entered
6. Overtime Equalization	Employer's Last Best Offer to be entered
7. Vacation	Union's Last Best Offer to be entered

NON-SUPERVISORY UNIT

ISSUE 1. DURATION (Article 40) (Joint Economic Issue).

ARTICLE 40. DURATION.

The Union's Last Best Offer

This agreement shall become effective as of ~~January 1, 2016~~ January 1, 2019 and shall continue in full force and effect until December 31, 2023, and for successive annual periods thereafter unless not less than ninety (90) days prior to the end of its original term or of any annual period thereafter, either party shall serve upon the other written notice of their desire to terminate, revise, modify or change the provisions of the Agreement.

The Township's Last Best Offer

1. Duration [Mutual Issue] – four (4) years: January 1, 2019 – December 31, 2022.

ISSUES

Issue 1. Duration. Joint Economic Issue.

The Union's last best offer concerning duration was, that it be a five-year period effective January 1, 2019 and stay in full force and effect until December 31, 2023.

In the Township's last best offer, they request a four-year term beginning January 1, 2019 ending December 31, 2022. The previous contract expired on December 31, 2018, two years ago. The Union argues that their request for a five-year contract, with two years of it being retroactive is tantamount to now being less than a three-year contract which is common in labor negotiations. The Township argues that there are no internal comparables on this issue and that the external comparables as to non-supervisory police contracts range in the length from 2 years to 5 years. See Union Exhibit 7A.

Looking at the comparables disclosed that of the six communities, five have collective bargaining agreements of three years or longer and two of the communities have five-year contract. The average duration of the comparable community's contracts according to the Township brief is 3.83 years.

In essence, because of the timing, this would be a contract that would expire in less than three years from now. The Township argues the position that a four year contract would allow them to be more flexible and that they would be able to account for and adapting to unexpected costs, etc., that would negatively affect the Township. Over two years have expired since the ending of the last contract and a five-year contract would be called for. There would be less than three years remaining in the contract, and the Township should have no problem in adopting to any unexpected situations that may arise during that period of time.

For the above reasons, the arbitration panel selects the best offer of the Union of a five-year contract.

By: Helen E. R. Mills
Helen Mills
☐ Concur
☒ Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
☒ Concur
☐ Dissent

Dated: 3/16/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
☒ Concur
☐ Dissent

Dated: 3/16/21

ISSUE 2. Wages (Article 38) Join Economic Issue

The Union proposes the following wage increases and to modify the hourly and annual wage charts accordingly. The Panel agrees to treat each year as separate issues.

- 1.)
 - a. 2% increase for 2019;
 - b. 2.4% increase for 2020;
 - c. 2.5% increase 2021;
 - d. 2.5% increase 2022; and
 - e. 2.5% increase 2023.
2. Wages [Mutual Issue]
 - a. Year 1: Effective January 1, 2019, 2% increase
 - b. Year 2: Effective January 1, 2020, 2.5% increase
 - c. Year 3: Effective January 1, 2021 3% increase
 - d. Year 4: Effective January 1, 2022, increase at the State tax commissions 2021, inflation rate multiplier.

Issue 2. Wages. Joint Issue. Economic.

The parties have stipulated that the issue of wages will be retroactive back to the date of the expiration of the previous contract which was December 31, 2018. The parties submitted last best offers on this issue.

The Union's last best offer is as follows: Five years.

- 1.) 2% increase for 2019;
2.4% increase for 2020;
2.5% increase 2021;

2.5% increase 2022; and

2.5% increase 2023.

The Township's last best offer is as follows: Four years.

2% increase for 2019;

2.5% increase for 2020;

3.0% increase 2021;

In 2022, an increase at the State tax commissions;

2021, inflation rate multiplier.

Further, the parties agree that each year of the contract can be treated as a separate issue for wage purposes. The Dewitt patrol officers receive compensation that is approximately \$790 above the average compensation of the comparables. See Union Ex. 8H.

It appears from Township Exhibit 17, that the Township is offering more than the Union is asking for the years 2019 through 2022. The Union is asking for the wage increase to keep its officers in the middle of the comparables. The Township is asking that in the year 2022, that the wage increase be based on the State tax commission's inflation rate.

According to Nancy Ciccone, the Union's research analyst who has worked for the Union since 1984, she has never seen a single Comparable community use this method in determining wage increase. The Township presently ranks in the middle of compensation of the external comparables. The Township when asked to project what the raise might be in 2022 suggests that it might be in the vicinity of a 2.4% increase. Ms. Ciccone testified that the multiplier for 2019 was only 1.9% and has only averaged 1.83% in the past five years.

The ability to pay is not an issue in this arbitration. Again, it should be pointed out, that the ability to pay is not an issue in this arbitration. The parties have stipulated to that fact. The only issue, as to the ability to pay, is the ability to pay in the future that the Township is concerned about.

In reviewing the two proposals of the parties, and comparing apples to apples, the union's proposal for the first three years amounts to a 6.9% increase. The Township's proposal for the first three years amounts to a 7.5% raise. Hence, for the first three years, the Township's offer is more. In the 4th and 5th year, the proposal by the union, the union proposes a 2.5% each year. The Township, who is asking for a four-year contract, is proposing to use the State Commissions Inflation Rate, which according to the Township, its suggested raise might be near 2.4%. The union testified that past multipliers were less than 2% and only averaged 1.83%. Using a 2% factor, over the first four years, the union would be at 8.9%, and the Township would be at 9.5%. Going out five years, the Union would be at 11.9% and the Township would be at 11.4%. Again, it should be pointed out that ability to pay is not an issue in this arbitration.

Therefore, when looking at the last best offers of the parties, it would seem that the patrol officers' raise for the five-year period would be slightly more than the Township's offer. The numbers taken into account speculation as to what the State Commission Inflation Rate would be. Using a 2% factor for the last two years under the proposals, it is very close in the proposals, being one-half percent difference. Therefore, for those reasons, the majority of the panel agrees as follows.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. Mills
Helen Mills
☐ Concur
☒ Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
☒ Concur
☐ Dissent

Dated: 3/16/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
☒ Concur
☐ Dissent

Dated: 3/16/21

ISSUE 3. PENSION FAC ROLL-INS (Article 31, Section 1) (Employer Economic Issue)

The Union's Last Best Offer

The Union proposes to add the underlined language.

ARTICLE 31. RETIREMENT BENEFIT

(Section 1 removed per parties' agreement.)

Section 21. The Township shall provide the MERS B-4 retirement program with the MERS F-55 with twenty-five (25) years of service waiver program. Final Average Compensation shall include base wages, longevity, vacation payout, overtime, and holiday payout.

The Township's Last Best Offer

Pension – Current Employees (FAC Roll-Ins) [Township Issue] – The Township proposes to amend Article 31, Section 2 as follows:

The Township shall provide the MERS B-4 retirement program with the MERS F-55 with twenty-five (25) years of service waiver program. *Effective September 1, 2020, FAC shall be calculated using base wage only. Overtime compensation shall also be included in the FAC calculation if the Township's MERS Police Division (02) reaches 85% funded.*

ISSUE III. Current Employee Pension. Final Average Compensation.

Article 31. The Township proposes that the calculation for the final average compensation for pensions should be based on base wages only (Article 31 of present contract, also see patrol binder Tab 13). The Township goes on to state that in their offer that when the non-supervisory pension becomes 85% funded, then at that time, overtime shall be included in calculating FAC.

The Union points out that the present contract does not enumerate the types of compensation to be used in calculating the final average compensation for pension purposes, being the defined benefit pension plan. The Union further states that past practices are used for the purposes of FAC and that in the past, wages, longevity, vacation payout, overtime and holiday pay were included in the FACs.

The Union seeks to maintain the status quo by listing agreed upon FAC inclusions based on past practices. The Township wishes only to base the FAC on base wages and depending on circumstances in the future, include overtime if the pension reaches over 85%. The Union argues that when it agreed to close the defined benefit pension to new hires and begin a defined contribution for said new hires, they made concessions to the Township. The new pension system only affects new hires and not present patrol officers. Arguing that the union gave up something for new hires who have not even joined the police department as of this date, is not something to be considered normally for them to gain other benefits.

The bifurcation of pensions is a dangerous situation under normal circumstances. As to new hires in the patrol unit with a defined contribution, as opposed to the older officers with a defined benefit plan. Be that as it may, new officers have the option of joining a police force with a defined contribution plan. These situations are not unheard of and in the past the Unions have

even gone back to doing away with a defined contribution and having the defined benefit plan and of course is a point that helps bring members into the police force.

As to internal comparability, the non-union Township employees do not have a defined benefit plan, nor does it seem to include any items other than base wages in their retirement. As to external comparables, Davison Township still allows its employees to take advantage of multiple items for FAC, through its defined benefit plan. As to the other comparables, they have no defined benefit plan, or they have closed their defined benefit plan to new hires.

The Union further argues that some of the patrol officers have been paying approximately 6.7% of their wages into their pension in part to receive the benefit of the various FAC roll ins and that eliminating the items in the FAC would have a drastic effect on their pension benefits. In selecting which items to include in the FAC, this arbitrator is bound to pick either the Union's proposal or the Township's proposal. The Union points out that the offer by the Township to include overtime into the FAC, when the pension is 85% funded, would create a situation where the Township may not contribute more than the bare minimum to the pension contribution and in essence, keep the funding below 85%. This situation cannot be controlled by this arbitration.

In this current day, efforts to control spending by public entities, this issue is of great importance. It would seem the Township would save quite a bit of money by not including certain items in the FAC pension benefits. We are faced with difficult times financially, and the future is not something that can easily be foreseen when it comes down to future pension benefits. However, past practices would indicate that more than the base wages were used to calculate final average compensation for retiring officers. Based on the testimony of past practices, the arbitration panel would find that the Union's Last Best Offer meets the criteria of Section 9.

The Township has a higher-than-average fund balance in their budget. It is on the high end of the recommended State number on fund balances. For these reasons, the arbitration panel finds for the Union. That the union's proposal as to FACs would apply to present employees in the defined benefit program only and not to future hires who would be in the defined contribution pension.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. Mills

Dated: _____

Helen Mills

☐ Concur

☒ Dissent

By: Brendan Canfield

Dated: 3/16/21

Brendan Canfield

☒ Concur

☐ Dissent

Arbitrator
By: Eugene Lumberg

Dated: 3/16/21

Eugene Lumberg

☐ Concur

☐ Dissent

**ISSUE 4. EMPLOYEE PENSION CONTRIBUTION (Article 31, Sections 2 and 3)
(Joint Economic Issue).**

The Union's Last Best Offer

The Union proposes to delete the stricken language and to add the underlined language.

[Section 1 removed per parties' agreement].

Section 2. Effective January 1, 2006, a MERS E-2 post retirement escalator shall be added to the employees' pension plan. The cost of the E-2 benefit shall be paid by the employees through payroll deduction. If the cost of the E-2 benefit changes, either higher or lower, the employees

cost paid through payroll deduction will change using the formula and process spelled out in Appendix A attached to this agreement. The employee contribution shall not exceed seven percent (7.0%) of wages.

Section 3. Effective January 1, 2009, a MERS FAC-3 shall be added to the employees' pension plan. The cost of the FAC-3 benefit shall be paid ~~entirely~~ by the employees through payroll deduction. The cost to the employees shall be as stated in Appendix A, which may change from time to time to the actual cost. The employee contribution shall not exceed seven percent (7.0%) of wages. The Union agrees that no pension changes shall be proposed for the next contract cycle after this one expires on December 31, 2011.

The Township's Last Best Offer

Pension - Current Employees (Employee Contribution) [Joint Issue] - Status Quo.

Issue 4 of the Patrol Contract

Employee contribution, Article 31, Section 2 & 3, Union patrol binder tab 9.

Economic Issue. The union proposes the removal of Section I of the current Article 31. In section 2, the union wishes to add the following language as the last sentence in that section.

"The employee contribution shall not exceed 7% wages."

In Section 3, Article 31, the union wishes to remove the word entirely in the second section of the new section 3. Further, the union wishes to add a sentence stating, "The employee contribution shall not exceed 7% of wages."

On the other hand, the Township, wishes to maintain the status quo of Article 31, of the Employee Pension Contribution Clause.

The union states that the section that they wish to change in the patrol contract, to some degree mirrors the same issue in the command contract. The difference being what the employee contribution percentage is to be made (tab 9 of the union's patrol binder). Presently, the

employee contribution is 6.68% of the gross wages. There is no contribution cap. The union wishes to set a cap of 7%, and the Township's position is status quo.

The union states that the employee contribution has been going up each year. That since 2015, the rate has increased from 5.06% to 6.68%, a 1.5% increase since 2015. The union states that this bites into any employee wage increases each year.

The union feels that closing the defined benefit pension will cause the employee contribution rates to increase drastically.

Testimony was given by labor representative, Hal Telling, and Ms. Daggett, Mr. Telling testified that in his opinion, the closing of the defined benefit pension will cause the employee contribution rate to increase. Ms. Daggett testified that she does not expect an immediate impact on the contribution rates by the employees.

The union states that when a plan closes, there becomes a tipping point, when there are fewer active employees paying into the fund and a greater number of retirees which according to the union, would increase the costs for the active employees. The union further argues that by giving up the defined benefit pension; they should in return receive a cap on this issue.

Three comparables, Flushing Township, Granville and Saline have agreed to do away with an existing defined benefit pension systems. The union states that all three of these comparables have a pension contribution cap. See union exhibit 9b. The union would also like a cap so that the members would pay no more than 7% toward the pension in the future.

The township points out that the two issues in the union's position. 1) Capping of the contribution at 7% of the wages; 2) Elimination of the word entirely as far as other contributions

that are made. The Township states that it wishes to maintain the status quo and that the employee contributions presently are set by the contract in appendix a, and that, there is no cap on either parties' contributions. See joint exhibit c, Article 31, appendix a, section 3&4. By maintaining a status quo, the contract would retain the language that would require employees to bear the entire cost of the E-2 and the FAC-3 Pension riders. See joint exhibit 3, Article 31, section 3&4. There are no internal comparables on this issue at the present time as the nonunion employees do not participate in a defined benefit pension and the supervisory police officer's contract is presently under arbitration.

As to the external comparables that the township cites on this issue, only Davison Township provides its employees with an E-2 rider. Two of the comparable communities have never had a defined benefit plan. The remaining comparable communities except for one, has placed a cap on employee contributions. See union exhibit 9b, all three comparable communities who have a defined benefit program, and a cap on employee contributions, have closed their defined benefit plan to new hires. See union exhibit 9b.

Only Davison Township maintains a defined benefit plan for all their police officers and it provides an E-2 escalator, as does Dewitt Township. The township points out that pursuant to union exhibit 9b, Davison Township has not placed a cap on employee contributions. Township exhibit 22 indicates that between 2010 and 2018, Dewitt Township's contributions have increased by 5.5%. The employee contributions have risen just under 2%.

The township points out that the E-2 rider is an expensive benefit and that capping employee contributions is not something that the township calculated when it agreed to this in previous contracts. They agreed to add it with the understanding that the employees would bear the

additional costs of that additional benefit. Further, the union, once securing the two benefits, by promising to pay for it, is now attempting to have the township incur the costs of that program which it never had agreed to in the past to accept.

Ms. Daggett, regional manager for MERS, testified that MERS no longer accelerates amortization when a plan closes. She further testified that there would not be an immediate impact due to closing plans within the township. See trial transcript, volume 1, pages 214, 215. She did pose a caveat that while she does not believe the pension divisions in Dewitt Township would face acceleration, unless something unexpected takes place.

This panel is mindful of what is been happening with pension plans, *i.e.*, changing from defined benefit to defined contribution. That under the arguments of both parties we have heard in this matter, the panel is mindful what the future holds for the funding of pensions.

The majority of the panel concludes that the Township's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
☒ Concur
☐ Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
☐ Concur
☒ Dissent

Dated: 3/16/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
☒ Concur
☐ Dissent

Dated: 3/16/21

ISSUE 5. RETIREMENT FOR FUTURE MEMBERS (Article 31, Section 5) Joint Economic Issue

[Section 1 removed per the parties' agreement].

ARTICLE 31. RETIREMENT BENEFIT

The Union's Last Best Offer

The Union proposes to add the underlined language.

Section 5. For all employees hired after [date of the Act 312 Award], the Township shall provide the following defined contribution pension benefit through MERS:

a. The Township shall contribute 12% on all of the employee's gross W-2 earnings, minus sick time payouts.

b. The Employee shall contribute 7% on all of their gross W-2 earnings, minus sick time payouts.

c. Contributions of the Employee and Township shall be distributed evenly during each pay period during the course of the year.

d. New Employees shall have a vesting schedule of one year/20%, two years/40%, three years/60%, four years/80%, and full vesting after five years.

e. There shall be a one-time non-revocable window to allow for current members to transfer to the plan for new hires as described below. Current members that opt into this plan shall immediately be vested.

The Township's Last Best Offer

Pension – New Hires [Joint Issue] – The Township proposes to add a new section to Article 31 to read as follows:

Employees hired on or after September 1, 2020 shall participate in an ICMA Defined

Contribution Plan under the following terms:

a. Township contribution of 10% of base wage with no minimum employee contribution.

b. If an employee contributes 1% of base wage into the Defined Contribution Plan, the Township will contribute 1% of base wage into a Retiree Health Savings Account. If the employee contributes 2% of base wage into the Defined Contribution Plan, the Township will contribute 2% of base wage into a Retiree Health Savings Account. Employee contributions beyond 2% are not subject to any form of Township matching.

5. Retirement.

The non-union employees at the Township have a defined contribution retirement plan with a 10% contribution by the Township each year based on the based wages of the employees.

Presently the supervisory police officers are in 312 Arbitration. As for the external comparables, Davison Township and DeWitt Charter Township are the last of the comparable communities to remove new hires from a defined benefit system and put them into a defined contribution system.

The Township is offering, in essence, of 12% contribution to the program in the form of 10% base wages with up to 2% of matching amount for the employee health savings account. The union wants a flat 12% on all employees' gross W2 earnings minus sick time payouts. In addition, they want employees to have the right to contribute 7% of their gross earnings minus sick time payouts into the plan.

In addition, the Union proposes a five-year vesting plan, whereas the Employer does not have a proposal in their last best offer as to a vesting plan. One would consider the Township's offer as an immediate vesting of the pension contributions. Again, the comparables, other than Davison, have taken all new hires out of the defined benefit system and put them in a defined contribution system.

Therefore majority of the panel concludes that the Township's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
☒ Concur
☐ Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
☐ Concur
☒ Dissent

Dated: 3/16/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
☒ Concur
☐ Dissent

Dated: 3/16/21

Issue 6. OVERTIME EQUALIZATION (New Article) (Union Economic Issue)

The Union's Last Best Offer

The Union proposes that the following language be added into a new Article of the collective bargaining agreement.

OVERTIME.

The department may fill shift shortages and special events with overtime. Overtime shall be offered to the eligible employee with the highest seniority. In the even that this employee is not available or turns down the overtime, the next highest seniority employee shall be offered. In situations where no one is available or agrees to voluntarily work the overtime, the lowest available seniority employee will be ordered to work the overtime. The Township may use an employee that is already working to fill the shift until such time as the call list is utilized and a

replacement has come in to fill the needed vacancy. Employees shall not be offered overtime if the shift would cause them to work over 14 continuous hours, except for emergency. This Article may be waived in emergency events and call outs that require a more immediate response.

The Township's Last Best Offer

6. **Overtime [Union Issue]** – The Township proposes a new Article, entitled Overtime, to read as follows: A. General Procedure. Where a full or partial vacant shift is identified, the Township shall first request voluntary assistance from on-duty personnel (if time permits). If no on-duty personnel accept voluntary overtime, personnel scheduled to work shifts later in the same day will be offered overtime opportunity. If time permits, the overtime shall be offered to personnel not scheduled to work that same day on a seniority basis, with the highest seniority getting the first opportunity. If no volunteers are identified, the Township may mandate overtime. Consideration will be given to seniority (lowest seniority first) and the total number of hours an employee will be compelled to work.

B. Major Case, Special Situation, or Department Function. The Township will generally adhere to the above General Procedure for filling vacancies in the event of a major case, special situation, or Department function, unless the scenario requires qualification unique to a specific officer.

C. Emergency Schedule Reassignment. If an emergency shift reassignment has been identified that will cause overtime, it will be offered by seniority, beginning with the most senior employee, down the seniority list. If no volunteers are identified, the Township may mandate overtime by seniority, beginning with the least senior employee.

D. Errors. If an error occurs in filling an overtime vacancy and the Township is so notified within seven (7) calendar days, the error will be corrected by providing the impacted employee right of first refusal on the next vacancy. In no case will an error be resolved by payment of the overtime compensation for the missed opportunity.

ISSUE NO. 6.

The union states that this issue only concerns the non-supervisory bargaining unit and is not addressed in the supervisory unit's arbitration. The issue is the method for assigning overtime. There does not seem to be a contract provision in the present contract for the assignment overtime. As a matter of practice, overtime carries over from shift to shift and is offered by seniority. If nobody accepts the overtime, then the least senior employee is ordered to work the overtime. The union is asking that the past practice as stated above be incorporated into the new bargaining unit.

The union states that the township's last best offer departs from the current practice and will lead to confusion. There seems to be some confusion as to how much overtime an individual can work under the present system. Some officers work 12-hour shifts and there are policies in the department that an employee may not work more than 14 hours in any given day. Chief Gute clarified by stating that current employees can hold over until they can get somebody to come in and cover the rest of the shift.

The Township points out that internal comparability as far as non-union employees is not useful as overtime is not necessitated under normal circumstances. (The township discusses the external comparables. Starting with citing and discussing all six comparables). While the expired contract does not feature any language in overtime, there is testimony by Chief Gute that

there is a current practice for assigning overtime and that it offers partial shifts to those already on duty and to offer full shifts to those available starting with the highest seniority and if no one accepts, then the employees with the lowest seniority is assigned the overtime. (See transcript Volume II, page 57). According to Chief Gute, there is a current policy that includes an exception to the present policy where there is a need for people with certain expertise to work the overtime and the township's last best offer closely tracks what is the present policy.

The Township's last best offer features exceptions for major cases, special situations and other department functions. Further, it covers more situations than the Unions' last best offer.

There has to be provisions to provide for the proper management of the police department. The personal safety of citizens of a municipality, et al, is paramount and the coverage and quality of service, response time is of outmost importance. Having the correct officers on duty at the time needed is also of great importance.

In addition, the Township points out that its LBO has provisions to handle potential errors in assigning overtime. These would be certain built-in provisions if overtime was not correctly assigned under the township's last best offer.

The Township's Last Best Offer seems to be more specific and covers more areas that are important to the administration and running of the police department. Therefore, this panel selects the Township's Last Best Offer.

The majority of the panel concludes that the Township's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. Mills
Helen Mills
☒ Concur

Dated: _____

☐ Dissent

By: Brendan Canfield
Brendan Canfield

Dated: 3/14/21

☐ Concur
☒ Dissent

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
☒ Concur
☐ Dissent

Dated: 3/16/21

ISSUE 7. VACATION (Article 18, Section 4) (Joint Economic Issue)

The Union's Last Best Offer

The Union proposes to delete the stricken language and to add the underlined language.

ARTICLE 18. VACATIONS

Section 4. Vacation time will be paid to employees who separate employment for any reason, provided that the employee has who have successfully completed their probationary period and provides two (2) weeks written notice prior to resignation or retirement. If upon resignation two (2) weeks, prior written notice is given by the employee, using the following guidelines. Employees shall receive one hundred percent (100%) for all unused vacation time and will receive a one hundred percent (100%) prorated payment for vacation time earned since their last anniversary date.

a. ~~Employees shall receive payment for fifty percent (50%) of the unused balance of vacation time if the employee's notice of resignation is received and is effective within one hundred eighty (180) days of that employee's most recent anniversary date of hire.~~

b. ~~Employees shall receive payment for one hundred percent (100%) of the unused balance of vacation time in all situations other than above.~~

c. ~~Vacation time earned on the employee's last anniversary date is subject to paragraph a.~~

The Township's Last Best Offer

Vacation Payout [Joint Issue] - The Township proposes to amend in full Article 18, Section 4 to read as follows, with the subsection (c) specific to the new payout issue:

Section 4. Vacation days will be paid to employees who have successfully completed their probationary period using the following guidelines:

- a. Employees resigning or retiring with at least two (2) weeks' prior written notice will receive 100% payout of accumulated vacation hours, including prorated vacation time since the most recent anniversary date.*
- b. Employees resigning or retiring without proper notice are not entitled to any payout of accumulated vacation hours.*
- c. Employees terminated for cause shall receive 100% payout for accumulated vacation hours earned through the employee's most recent anniversary date. Vacation hours earned since the employee's most recent anniversary date shall not be paid out.*

The Township's proposal agrees that any employee who gives two-weeks written notice, and leaves employment by resigning or retiring, and has successfully completed its probationary period, would be paid unused accumulated vacation hours when they leave employment.

However, any employee terminated for cause, would only receive payment for accumulated vacation hours earned through the employees most recent anniversary date. Vacation hours earned since the employee's most recent anniversary date shall not be paid out, *i.e.*, if they were terminated in the middle of the year, they would receive 6 months of vacation time and not 12 months of vacation time. The proposal penalizes the employee for being terminated by eliminating the vacation pay for the year in which they are terminated per the Township's position. The Township argues that the non-union employees in the Township are treated exactly in the same manner as the non-supervisory police officers would be treated under the Township's proposal. The only other bargaining in unit in the Township has raised the same issue their Act 312 Arbitration. As to external comparables, the Township raises an issue that the Flushing Charter Township Contract provision on vacation time, shows that termination does

not entitle the employee to any unused vacation payout. The Fruit Port Charter Township Contract talks about termination in one part of the Contract section on Payouts and does not talk about Termination in other parts of the Contract. After reviewing both arguments on each side, I would agree with the Union that an employee who leaves employment with the Township, should receive their earned vacation time. An employee that has completed probation and gives two weeks' notice should receive all their unused vacation time in the form of payment at the time of separation from the Department. As to an employee who is terminated, this panel feels that the officer should receive his prorated payment for his vacation time from the last anniversary date of termination.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills Dated: _____
Helen Mills
☐ Concur
☒ Dissent

By: Brendan Canfield Dated: 3/14/21
Brendan Canfield
☒ Concur
☐ Dissent

Arbitrator
By: Eugene Lumberg Dated: 3/16/21
Eugene Lumberg
☒ Concur
☐ Dissent

Appendix A

U-1 312 Petition
 U-2 Pre-Hearing Conference Report
 U-3 Union's Last Best Offer
 U-4 Employer's Last Best Offer
 U-5 Comparability
 U-6 Current CSA
 U-7 Duration
 U-8 Wages/Retroactivity
 U-9 Retirement - Employee Contribution
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 U-11 Overtime Equalization
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 U-1 312 Petition
 U-2 Pre-Hearing Conference Report
 U-3 Union's Last Best Offer
 U-4 Employer's Last Best Offer
 U-5 Comparability
 U-6 Current CSA
 U-7 Duration
 U-8 Wages/Retroactivity
 U-9 Personal Leave Hours
 U-10 Personal Leave Use Increments
 U-11 Retirement - Employee Contribution
 U-12 Retirement - Future Members
 U-13 Promotions
 U-14 Vacations
 U-15 Retirement - FAC Roll-ins
 U-16 Ability to Pay

J-5 Comparability
 J-5a City of Grandville Supervisory
 J-5b City of Salina Supervisory
 J-5c Davison Twp. Lieutenant Contract
 J-5d Flushing Charter Twp. Contract
 J-5e Fruitport Charter Twp. Contract
 E-17 Millage Analysis
 E-18 Police Dept. Expenditures, '17-'21
 E-19 LEO Wage Comparison
 E-20 2019 Unit Gross Pay
 E-21 2018 Unit Gross Pay
 E-22 2017 Unit Gross Pay
 E-23 2019 MERS Annual Actuarial Valuation
 E-24 Employer/Employee MERS Contribution
 E-25 March 2020 MERS Ballpark Analysis
 E-26 MERS Ballpark Analysis, 9-18-20
 E-27 MERS Summary Report, 9-18-19
 E-28 Personal Leave Use
 J-5 Comparability
 J-5a City of Grandville Non-Supervisory
 J-5b City of Salina Non-Supervisory
 J-5c Davison Twp. Non-Supervisory
 J-5d Flushing Charter Non-Supervisory
 J-5e Fruitport Charter Twp. Contract
 E-17 Millage Analysis
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 E-26 MERS Ballpark Analysis, 9-18-20
 E-27 MERS Summary Report, 9-18-19