

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

In the Matter between:

TOWNSHIP OF MT. MORRIS COMMAND
OFFICERS ASSOCIATION and POLC

Case No. L95 J-2002

-and-

Chair: Elaine Frost
Issued: February 6, 1998

MT. MORRIS TOWNSHIP

//

Panel: Elaine Frost, Impartial Chair
Ruth E. Mason, Employer Designee
Richard Ziegler, Union Designee

Appearances:

For the Employer: Ruth E. Mason, Attorney
Larry Foster, Township Supervisor

For the Union: Barton J. Vincent, Attorney
Albert R. Ashley, Sergeant

Called by the Union:

Nancy Ciccone, Labor Research Analyst
Herman Robson, Lieutenant/Special Operations

Called by the Employer:

Leslie Pulver, CPA, Plante & Moran
Vicky Meier, Legal Assistant

INTRODUCTION

The hearing was conducted before the Arbitration Panel on July 25, 1997 at the Morris Government Center, 5447 Bicentennial, Mt. Morris, Michigan, pursuant to Act 312, Public Acts of 1969, as amended by Act 127, Public Acts of 1972 (MCLA 423.231 et seq.) ("the Act"). A verbatim transcription was taken.

The Petition for binding arbitration was filed as a result of a pension reopener in the 1993-1997 Agreement between the Mt. Morris Township ("Employer" or "Township") and the Labor Council, Michigan

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Fraternal Order of Police, Mt. Morris Township Police Department Command Officer's Unit ("Union").¹

At the beginning of the Act 312 proceeding, the parties stipulated that the following communities are comparable to the Township for this proceeding:² City of Burton, Flint Township, City of Flushing, Genesee Township and Grand Blanc Township.

Two pension issues were identified by the parties at the pre-hearing held on March 10, 1997.³ Informally thereafter, and at the beginning of the 312 hearing record on July 25, 1997, there was consideration of adding a third issue, to separately address the matter of health insurance costs for any retirees between the ages of 50 and 55. Given the lack of Union concurrence, the Chair ruled that two issues would be heard by the Panel, and health care costs would remain a matter to be weighed with respect to the question of retirement age.

The two issues presented to this Act 312 Panel are:

1. Retirement (E): Add eligibility at age 50 with 25 years of service. (MERS F-50 Waiver)
2. Retirement (E): Increase multiplier from 2.25% to 2.50% (MERS B-3 to MERS B-4)

Each issue is "economic," and under Section 8 of the Act (MCLA 423.238) the 312 Panel is directed to "adopt the last offer of settlement" ("Last Best Offer" or "LBO") which more nearly complies with the applicable factors prescribed in Section 9."⁴ Among the Section 9

¹ This Agreement expired March 31, 1997 and the parties are currently in negotiations for a new collective bargaining agreement.

² Three other stipulations were entered at the hearing as follows:

1. Timeliness - statutory time limits are waived to the extent consistent with the dates and schedules set forth in the pre-Hearing Report.
2. The Panel has Jurisdiction to hear all issues placed before it.
3. The April 1, 1993 to March 31, 1997 Agreement shall continue unchanged except to the extent modified by resolution of the two retirement issue placed before the panel.

³ The two issues, eligibility at 25 years of service and raising the multiplier to 2.5%, were two the three listed on the original Union petition for 312 arbitration, dated July 30, 1996. (The third issue, to change pension coverage to a FAC-3, was eliminated from the 312 process).

⁴ In City of Detroit v. DPOA, 408 Mich 410; 294 NW2d 68, 97 (1980), the Michigan Supreme Court explained: "The legislature has neither expressly nor implicitly evidenced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the

factors,⁵ the following are pertinent to the issues before the Panel:⁶

- (c) The interests and welfare of the public... and the financial ability of the unit of government to meet those costs.⁷

use of the word "shall" in Section 8 and 9. In effect, then, the Sec. 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Sec. 9. Since Sec. 9 factors are not intrinsically weighted, they cannot of themselves provide the arbiters with an answer. It is the panel which must make the difficult decision of determining which particular factors are most important in resolving a contested issue under the singular facts of a case, although, of course, all "applicable" factors must be considered."

⁵ Section 9 (MCLA 423.239) provides:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. (MCLA 423.239).

⁶ Factors not pertinent included "(a) The lawful authority of the employer," since the parties raised no question as to that authority nor was any otherwise apparent. Also, "(b) Stipulations of the parties" does not come into play since the parties stipulate only to the fact of a reopening and to the comparable communities. Further, the stipulated comparable communities all involve public employment, so 9(d)(ii) "In private employment in comparable communities" is not pertinent. And, there were no proofs on any relevant "(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings," and therefore none are addressed. The chair also finds that "(e)... cost of living," is not significant, although this issue was discussed tangentially by the Township, as mentioned later in this Decision.

⁷ Section 9(c) includes the phrase "and the financial ability of the unit of government to meet those costs." In this case the Township did not advance an ability to pay (more accurately an "inability to pay") argument. Thus, it did not claim it was financially incapable of paying the Union's economic demands.

Instead, the Township arguments are based on financial considerations -- including its contentions of declining revenues in comparison to the financially better-off comparable

- (d) Comparison of the wages, hours and conditions of employment of the employees... performing similar services and with other employees generally ... in comparable [public] communities.
- (f) The overall... 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) Such other factors... which are normally or traditionally taken into consideration in... voluntary collective bargaining...

BACKGROUND

There are seven members in this command unit and none are currently eligible to retire during this contract term, regardless of the choices this Panel makes.

For the Fiscal year ending March 31, 1996 the Township General Fund was constituted from these revenues sources and amounts:

\$2,136,000	-- Governmental Revenue ⁸
605,000	-- Property Taxes
<u>805,000</u>	-- Charges for Services, Interest, Others
\$3,546,000	-- TOTAL

Township citizens have passed two dedicated millages to subsidize the police department; these continue through the year 2003.⁹ For the Fiscal year ending March 31, 1996 the Police Department budget consisted of funds from:

\$1,198,000	-- Township general fund
599,000	-- Special millages
<u>343,000</u>	-- Governmental grants
\$2,140,000	-- TOTAL

Some general background information on the Township and the comparables, together with some overall compensation data reflects the following:

communities, which render it presently unfair for the Township to meet the Union demands. (And possibly jeopardize the Township's future financial well-being if an award of those demands is adopted by the 312 Panel).

The financial considerations of financial fairness and appropriateness are evaluated under a combination of Section 9 factors, namely 9(c), 9(d) (comparables) and 9(h) (other factors considered in collective bargaining).

⁸ Most of this (\$2,061.00) is State Revenue Sharing.

⁹ One was a millage adopted 10 or 12 years ago and then recently renewed and another was adopted in 1995.

<u>Community</u>	<u>1990 Population</u>	<u>1996 SEV</u>	<u>1996 Sergeants wages</u>	<u>1996 Lieutenants wages</u>	<u>Longevity Pay (After ser- vice year shown)</u>	<u>Separation Allowance For voluntary separation</u>
BURTON CITY	27,617	429	\$39,236	\$43,159	5:3% 10:3% + 5% 15:3%+5%+\$120 0	none
FLINT TWP	34,081	756	\$41,621	\$43,888	6:\$300 11:\$700 16:\$1200 21:\$1800	none
FLUSHING CITY	8,542	150	\$38,636	No Lts.	One day for each yr, up to 15. 1996 Max: \$2230	none
GENESEE TWP	24,093	299	no data	no data	7:19.5% 10: 4% 15:5%	none
GRAND BLANC TWP	25,392	638	\$48,478 as of 12/31/95	No Lts.	6/7:\$500 8/9:\$1200 10:\$2400 15 yr:5%	none
MT MORRIS TWP	<u>25,198</u>	<u>249</u>	<u>\$41,125*</u>	<u>\$44,925*</u>	<u>5:2%</u> <u>10:2% + 4%</u> <u>15:2%+4%+6%**</u>	<u>10 yr:\$2300</u> <u>+ \$305 @ yr.</u> <u>thru 15 &</u> <u>\$355 @ yr</u> <u>after 15</u>

* Based on 2184 hrs/yr; other comparables are 2,080 hrs/yr.

** Actual 1996 longevity: 3 Sgts earned \$829.92/yr; one Sgt - \$2,512; one Sgt - \$5,132; one Lt - \$5,591 and one Lt-\$5,460.

* * * * *

ISSUE 1. RETIREMENT - Add eligibility at age 50 with 25 years of service. (MERS F-50 Waiver)

* * * * *

ISSUE 2. RETIREMENT - Increase multiplier from 2.25% to 2.50% (MERS B-3 to MERS B-4)

* * * * *

Current

Language:

Retirement. Article 40

The pension program is to be the B-3 with the F-55/15 waiver. An employee may make application for retirement after attaining age fifty-five (55) years or older and

having fifteen (15) or more years of credited service. All contributions to the retirement plan shall be made by the Employer.

Union's LBO:

Retirement, Article 40

The pension program is to be the B-4 with the F-50 waiver. An employee may make application for retirement after attaining age fifty (50) years or older and having twenty five (25) or more years of credited service. The employees shall pay two (2%) in employee contribution. All other pension contributions to be made by the Employer. Retiree health insurance will not be provided by the Employer until age 55.

Township's LBO:

Status quo.

Findings:

Pensions for bargaining unit command officers are provided through the Municipal Employees' Retirement System ("MERS"). Pertinent data for the Township and the comparables shows:

<u>Community</u>	<u>Plan Type</u>	<u>Multiplier</u>	<u>Age/Service Eligibility</u>	<u>Years in FAC</u>	<u>Employee Contribution</u>	<u>Employer Contribution</u>	<u>Special notes</u>
BURTON CITY	MERS B-4	2.50%	25 & Out	3	0	29.40%	New hires after 7/1/94 are under MERS B-3
FLINT TWP	MERS B-4	2.50%	25 & Out	3	5.40%	5.19%*	Maximum Employer contribution = 7%; employee contribution varies ¹⁰
FLUSHING CITY	MERS B-4	2.50%	50/25	3	0	24.12%	
GENESEE TWP	MERS B-2	2.00%	55/15	3	0	14.82%	
GRAND BLANC TWP	Defined Contribution	N/A	N/A	N/A	0	15.00%	In 312, union seeking MERS B-4
MT MORRIS TWP	MERS B-3	2.25%	55/15	5	0	14.38%	

* Effective contributions shown; actual contributions would be balanced.

¹⁰ Union data shows 3.3% for the Flint Township employee contribution in 1995.

The Township provides health insurance for retirees as reflected below, in comparison to the coverage from the comparables:

<u>Community</u>	<u>Hospitalization for Retirees with Coverage</u>	<u>Employer-Paid % Premium*</u>
BURTON CITY	Yes (Retiree, spouse, dependents under 19)	\$100 per month
FLINT TWP	Yes (Retiree, spouse)	100% for 25 yrs, sliding scale for spouse for less service
FLUSHING CITY	Yes (Retiree, spouse)	100% for 20 yrs - sliding scale for spouse
GENESEE TWP	Yes (Retiree, spouse)	100% or 50% dependent on sliding scale based on service
GRAND BLANC TWP	Yes (Retiree, spouse, dependents)	100% for retiree with 20 yrs service
MT MORRIS TWP	Yes (Retiree)	100% for ages 55 to 65

* Employee pays the rest. (Age eligibility assumed).

** Actual 1996 Mt. Morris longevity: 3 Sgts earned \$829.92/yr; 1 Sgt - \$2,512; 1 Sgt - \$5,132; 1 Lt - \$5,591 and 1 Lt- \$5,460.

Comparison data for the command officers compared to other Township employees reveals:

<u>Township Internal Units</u>	<u>Type of Pension Plan</u>	<u>Years in FAC</u>	<u>Age/Service Eligibility</u>
GELC	MERS B-3	5	F55/15
Supervisory	MERS B-3	3	F55/15
FOP/Patrol	MERS B-3	5	F55/15
Command	MERS B-3	5	F55/15

Figures for the increased cost of the Union's two retirement proposals -- without consideration of any increased health insurance costs -- is provided by an April 4, 1997 actuarial valuation. In pertinent part the following results:

	<u>Multiplier</u>	<u>Age/Service Eligibility</u>	<u>Increased cost/Added % of Payroll¹¹</u>	<u>Employee Contribution</u>	<u>Employer Contribution</u>
Current Plan MERS B-3	2.25%	55/15	--	0	14.38%
Proposed increase to MERS B-4	2.5%	--	2.46% Annual contribution of \$9,867. ¹²	0	16.84% (increase of 2.46%)
Proposed Addition of F-50 (25 & Out)	--	25/Out	3.06% Annual contribution of \$12,235 ¹³	0	17.44% (increase of 3.06%)
Proposed Addition of F-50 (25 & Out) and MERS B-4	2.5%	25/Out	5.52% Annual contribution of \$22,102	2	17.90% (increase of 3.52%)

Retiree Health insurance costs for the bargaining unit were estimated by the Township to increase 20.80% with the Union's retirement proposals. (This assumes no employee contribution).

The Township in recent years has had an unfunded accrued liability to the pension fund. This liability for all Township employees in 1995 was \$1,164,078. (\$724,935 was attributed to Police employees, including patrol and the command unit). Because of this liability and its trend, the Township auditors informed the Board in 1996 that "the pension benefit obligation was growing faster than the amount that the Township had set aside to pay for this future obligation." (Graphs for 1996 demonstrate this trend, as well as those updated for the 312 arbitration).

Township pension contributions for the Police Department have risen in recent years, as shown by this data:

¹¹ The actuarial valuation places the total bargaining unit payroll at \$371,904.

¹² Of this total \$3,953 is "normal cost" and \$5,914 is unfunded accrued liability. (The contribution for the FY beginning January 1, 1997 would be \$9,747 with a \$120 accelerated funding credit).

¹³ Of this amount \$4,743 is "normal cost" and \$7,492 is unfunded accrued liability. (The contribution for FY beginning January 1, 1997 would be \$12,086 because of a \$149 accelerated funding credit).

ACTIVE MEMBERS			EMPLOYER CONTRIBUTIONS AS % OF PAYROLL	
Valuation Date December 31	Number	Annual Payroll	Regular Contribution	After Accelerated Funding Credit
1981	18	\$341,654	9.88%	
1983	15	336,989	12.46	6.29%
1990	23	709,859	16.00	9.50%
1995	27	983,530	14.38	14.20%

Lt. Herman Robson who has been an employee for 26 years and a member of the command unit for 11 years, testified that Township command normally settles before the patrol unit. But two contracts ago, after command settled, the patrol unit filed for Act 312 arbitration. As a result of that proceeding, the patrol officers received more in wages than the command had received. (The Union identified this differential as 4.5%). Robson testified that during the negotiations for the last command contract most of the issues were settled except for retirement, so the parties agreed to the reopener which is now in this 312 proceeding. Robson, who was not part of the bargaining team in the last negotiations, said he understood and expected that retirement improvements would be achieved as a result of this reopener.

Union's
Position:

The two pension improvements are fair and equitable as shown by the comparables. Thus, Burton, Flint Township, and Flushing City all have the 2.5% multiplier. Grand Blanc Township has a defined contribution plan, but is currently in Act 312 to upgrade their pension. Only Genesee Township has an annuity factor less than 2.5% and only Flint Township has an employee contribution.

As to age eligibility, Burton, Flint Township, and Flushing City all have 25 and out or out at 50 with 25 years. Only Genesee Township has an age requirement similar to the Township. Overall, the comparables support the Union's positions on the two issues.

The Union believes that its members deserve these two improvements and the Township is in excellent financial condition to meet the costs associated with these reasonable demands. The Union also points out that it is not uncommon for supervisory units to place more emphasis on retirement issues.

The Union continues that its LBO should be accepted to establish equity with its counterparts in the patrol unit. Thus, there is a 4.5% wage differential between the command and patrol units because patrol went to 312 arbitration in the preceding contract. Command now wants to establish economic parity by

increasing their pension instead of wage increases. Moreover, with a 2% contribution, the Union's proposals are modest and do not impose any financial hardship on the Township.

It continues that its proposals for this 7-member unit will have little, if any, effect on the pension system. And since there is a considerable amount of time before the majority of the members will be able to retire, unit members will have an opportunity to contribute into the system for a number of years.

The Union next argues that it has eliminated the Township's concern about the increased health care insurance for retirees from age 50 to 55, by making retiree health insurance available at age 55.

The Union highlights the view articulated by Arbitrator Theodore St. Antoine,¹⁴ that an Act 312 Chair has an important duty to render a decision that approximates the agreement the parties would have reached had their negotiations been successful. The Union maintains that its LBO should also be adopted because of this concept.

The Union concludes that its proposals allow the bargaining unit to maintain a respectable position among the comparables and establish equity with counterparts in the patrol unit. The Union respectfully requests that the Panel take into careful consideration all the evidence and render an award which gives the Township Command officers fair and equitable benefits.

Township's Position:

The Union has failed to demonstrate justification under §9 of Act 312 for any pension improvements. Instead the proofs show under §9(c) (interests & welfare of the public/financial ability to pay) that the Township's ability to fund current programs and benefits is stretched to the limit. Thus the Township is burdened by a diminishing tax base because a major funding is state revenue sharing which is based on population, and population has declined since 1970. Also, property tax revenue has been limited by Proposal A, by the Township's having the 2nd lowest SEV among the comparables, and by a SEV growth rate which has not even kept up with the Consumers Price Index ("CPI"). (And, the Union failed to offer any proofs on CPI under §9(e)). Other revenue, the Township continues, is uncertain because two dedicated police department millages will expire in 2003. And Township auditors have been concerned as early as 1993 that the "pension benefit obligation was growing faster than the amount that the Township had set aside to pay for this future obligation." The Township continues that its unfunded accrued pension liability is currently over a million dollars and this will increase if further pension improvements are granted. Therefore, it urges the Panel to reject new benefits which would cost 3.06% of the payroll (MERS B-4) and/or 2.46% of the payroll (F-50).

Next the Township argues that the external comparables, under §9(d), support its position and not the Union's. Thus, Burton City reduced pension benefits to new hires (to B-3) by eliminating the 2.5% multiplier, presumably because the cost was too high. While Flint Township has the B-4, the employee contributes to

¹⁴ The Union cites to Saginaw County and Michigan Labor Council, FOP, MERC Case No: L90 B-0797.

that benefit and the Flint Township's obligation is limited to 7% and the employees to currently pay 5.04% of the cost. (A level of contribution Mt. Morris has more than doubled for the current benefits). Grand Blanc Township does not have the B-4 multiplier nor does Genesee Township. Thus, only one external comparable has the B-4 multiplier without any employee contribution. So, an increase to a B-4 is not warranted.

As to the F-50 waiver, only one external comparable offers this with no employee contribution. And Flint Township offers this benefit subject to the same maximum liability of 7% and the employees are currently paying 5.04%. None of the other comparables offer this benefit. So, an increase to a F-50 waiver is not warranted.

Nor do the internal comparables support the Union's view since no other Township employees have the B-4 multiplier or the F-50 waiver.

Next the Employer argues that no evidence was offered by the Union to reflect overall compensation, a S9(f) factor. By contrast the Township demonstrated that Mt. Morris officers earn higher than average salaries among the comparables. In addition they receive an unusually generous amount of longevity and a unique "separation allowance" which will be substantial at retirement. Also favorable in overall compensation are the 13 days of holiday benefits paid to bargaining unit members, which is the highest number of holidays among the comparables.

The Employer discounts any Union expectations based on Lt. Robson's testimony to the effect that a reopener somehow guaranteed a new benefit. The Township insists that nothing more than negotiations was promised after October, 1995. The Township also points out that the pattern to which Robson testified, where the command sets the pattern, presents the Township with a serious financial dilemma if command receives a pension benefit the larger patrol unit does not.

The Township also argues that the Union's LBO should be rejected because it combines the two issues into a single LBO, and links them so as to force the 312 Panel to grant both or reject both. It also maintains the Union's LBO must be rejected because it includes health care, an issue the Chair excluded from this proceeding due to Union opposition. (The Employer relied, it claims, on the Union's representation that health care would not be part of the LBOs and it has been prejudiced by the Union's actions).

Even with the modification set forth in the Union's LBO, the Township maintains that overall cost is still extreme and its position, not the Union's, is supported by the evidence.

Analysis:

The background of this case generally supports improved pension benefits for this command unit. Thus, the Chair views the pension reopener as a general, mutual indicator that pension improvements are now appropriate for this supervisory unit.¹⁵ The question be

¹⁵ The Chair would add her view that good pensions for command officers are very important to a police department and a community. For that benefit fosters long-term employment of those officers who are or will become command leadership and supervision. The Chair also notes that the Township general supervisory unit has a pension program

fore the 312 Panel, however, concerns the specific Union formulation of proposed benefits and whether or not that formulation should be accepted.

The Union sets forth in its LBO the combined approach of granting the F-50 waiver (25 & Out) and MERS B-4 (2.5%) multiplier, modified with a health insurance limitation and a 2% employee contribution.¹⁶ It argues in substantial part that this formulation is what the parties would likely have achieved if they had bargained to conclusion.

The Union may well be right that its combined approach is a solution the parties might have accepted. And this could clearly weigh in favor of its proposal under §9(h).¹⁷ (And credence could be given the Union's parity argument, contending a 4.5% wage differential which when added to a 2% employee contribution could offset Employer concerns over increased pension benefit costs).¹⁸

Moreover, if the health insurance issue had been preserved, and if the question of employee pension contributions in Mt. Morris been addressed on the record, this Chair could have been persuaded to grant the unit "25 and Out," without employee contributions, and without retiree health insurance until age 55; or she could have been persuaded to grant both F-50 and the MERS B-4 multiplier given a sufficient employee contribution.

But essential features of the Union's LBO cause the Chair to conclude that the Employer's position of status quo on each benefit must be adopted.

improvement not afforded to other units (i.e. FAC-3 rather than FAC-5). And, it is not unusual for supervisory/command units to bargain improved pension benefits not enjoyed by a non-supervisory unit.

¹⁶ There is data on employee contributions percentages, and there is limited health insurance data on the record. But even extrapolating from these proofs does not, in the Chair's view, overcome the surprise and uncertainty to which the Employer rightfully objects. (By contrast, where a record develops positions on a wage increase, a union might shave or an employer enhance a percentage increase in their LBO, but the basic information and attention of the parties has been set forth on the record. The potential in such a case that the LBOs may vary from the hearing positions should not, therefore, come as a surprise).

¹⁷ Indeed, the St. Antoine view described by the Union appears to this Chair to be a fair evaluation of one factor to be considered under §9 (h) of the Act.

¹⁸ The Chair views the comparative evidence for the external comparables capable of analysis which could favor either party. Resolution of weight to be afforded the external comparables is not, however, reached in light of resolution on other grounds.

The form and content of the Union's LBO was apparently geared to make it more reasonable and appealing to the Panel for resolution of the two pension issues. As noted above, the 312 process should consider what the parties could have or likely would have agreed to on an issue, or on an entire contract. But the Panel lacks the freedom of negotiators and mediators to simply go to a reasonable and fair resolution; it must proceed to written justification under prescribed statutory criteria for its decision on each economic LBO.¹⁹ And the Panel must also ensure that the 312 hearing process provides each party a fair opportunity to participate in the process. (If, for example, the record had covered an employee pension contribution and retiree health benefits, the Township would have been afforded an opportunity to respond, and resolution of new pension benefits could have been accomplished through this 312 process for the 1993-97 contract term).

In this case, the possibility of a 2% employee contribution in Mt. Morris, as set forth in the Union's LBO, was never presented nor suggested by the proofs or arguments prior to the LBOs. And it appeared to the Chair and Township that the matter of health insurance for younger (50 to 55) retirees would only be a consideration for whether or not to grant or reject a pension improvement to 25 & out. Both of these unexpected features are part of the Union's LBO.

Also complicating evaluation of the Union's LBO under Act 312 is its combination of the two pension issues into a single LBO. The Panel should be presented with separate issues, consistent with the hearing record, and therefore have the option of rejecting or accepting each of the two pension improvements, but the Union's LBO renders this impossible. Thus, there is no plausible way in which to split the proposed 2% employee contribution between the issues, even if the Panel tried to issue separate awards on each issue.²⁰

Due to the LBO formulation the Union has chosen, the Chair is of the view that pension changes much await a later contract.

¹⁹ On non-economic issues where the Panel is free to select either LBO, parts of both LBOs, or fashion its own solution (provided guided by the §9 criteria and the record). In such cases, creativity in an LBO can be very helpful -- and in any event, creativity will not destroy the Panel's possible acceptance of a particular position. (Since such a LBO can be granted without the creative addition or condition). Such flexibility is clearly not the case for economic issues, due to the application of §8 of Act 312).

²⁰ For instance, if the F-50 Waiver (25 & Out) were considered separately, it would logically follow that the health insurance aspect of the Union's LBO would apply. But would there be a 0%, 1% or 2% employee contribution attached to this single benefit?

This Chair does not view an Act 312 proceeding as a forum for revealing creative formulations when those formulations lack an evidentiary basis and/or exceeded the scope of the defined issues to be presented to the Panel. Were LBO formulations exceeding the evidentiary record and scope of the defined issues permitted, the 312 process could become unworkable, clogged by new, creative bargaining positions initially revealed through LBOs.

Award: The Panel finds on Issue #1 to add eligibility at age 50 with 25 years of service (MERS F-50 Waiver), that adoption of the Township's LBO more nearly complies with applicable Section 9 factors.²¹ Article 40 (55/15) shall remain unchanged.

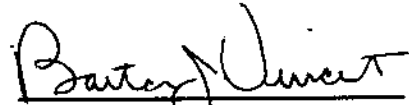


Ruth E. Mason
Employer Delegate

CONCUR
Dated: 2/10/98

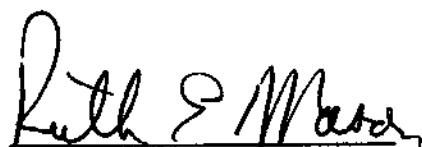


Elaine Frost
Impartial Chair
Dated: February 6, 1998



For Richard Ziegler
Union Delegate
DISSENT
Dated: 3/25/98

Award: The Panel finds on Issue #2 to increase the multiplier from 2.25% to 2.50% (MERS B-3 to MERS B-4), that adoption of the Township's LBO more nearly complies with applicable Section 9 factors. Article 40 (MERS B-3) shall remain unchanged.

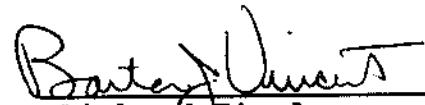


Ruth E. Mason
Employer Delegate

CONCUR
Dated: 2/10/98



Elaine Frost
Impartial Chair
Dated: February 6, 1998



For Richard Ziegler
Union Delegate
DISSENT
Dated: 3/25/98

²¹ The Chair concludes that the most important basis for resolution of Issues #1 and #2 is §8 of the Act, since its requirement to select the economic LBO which most nearly complies with the criteria under §9 implicitly requires that the LBOs submitted be consistent with the identification of issues to be submitted to the 312 Panel, and be supported by the record provided at hearing. The Chair also concludes, for the same reasons, that resolution of Issues #1 and #2 are supported predominantly by consideration of §9(h) of the Act because "factors... which are normally or traditionally taken into consideration in... voluntary collective bargaining..." include disclosure of positions in a fashion which does not work undue surprise on the other party.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

POLICE OFFICERS LABOR COUNCIL,

Union,

-and-

MERC Case No: L95 J-2002

TOWNSHIP OF MT. MORRIS,

Employer.

-----/
ELAINE FROST, Chairperson
RICHARD ZIEGLER, Union Delegate
RUTH MASON, Employer Delegate
-----/

UNION DISSENT

The two issues are clearly set forth in the Panel's Award on page 2. The two pension issues presented to the Panel are: (1) eligibility age of 50 with 25 years of service (MERS F-50 waiver) and (2) increase multiplier from 2.25% to 2.5% (MERS B-3 to MERS B-4).


As the Award clearly points out in the position of the parties, the two issues were to be decided by the Panel. The comparable communities fully supported these two issues. Furthermore, the evidence was clear that the patrol unit had received more in wages than the command group after a prior Act 312 arbitration. Therefore, through the testimony of Lt. Herman Robson, a differential was created between the command group and the patrol group of 4.5%. This differential was the reason that the parties agreed to a pension reopener.

The Chairperson's award acknowledges that the evidence in this case supports the pension improvements requested by the Union. (See Award, p. 11). The Chairperson also acknowledges that the Union approach may well be the right approach to resolving the pension issues between the parties. (See Award, p. 12). Again, the Chairperson acknowledges that this factor is a criteria under the Act.

Therefore, the overwhelming evidence in this case fully supports the Union position on both issues. There is no explanation by the Chairperson as to why both issues cannot be granted given this overwhelming evidence. Furthermore, as the Chairperson acknowledges throughout the Award, the Union last best offer is structured in a way so that the Act 312 Chair could approximate the agreement the parties would have reached had their negotiations been successful. The Union believes that the arbitration Chairperson, rather than following the act and weighing the evidence, chose to grant an award where form ruled over substance. Based on all of these reasons, the Union respectfully dissents from the Act 312 Award in this matter.

Respectfully submitted,

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Dated: March 25, 1998