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STATE OF MICHIGAN

COMPULSORY ARBITRATION

In the Matter of:
MT. MORRIS TOWNSHIP EMPLOYER and
LABOR COUNCIL, MICHIGAN FRATERNAL
ORDER OF POLICE, Union
Arising Pursuant to Act 312,
Public Acts of 1969, as amended,
_____/

Case No. L87K-789

OPINION AND AWARD IN ACT 312 PROCEEDINGS

Appearances:

For the Compulsory Arbitration Panel
ALLEN J. KOVINSKY, Chairman

RICHARD O'DELL, Employer Designee

RAYMOND WALLACE, Union Designee

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Appearing on behalf of the Employer

KENNETH W. ZATKOFF, Esquire
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Appearing on Behalf of the Union

Factual Background

On May 12, 1988, Labor Council, Michigan Fraternal Order of Police by Richard R. Weiler filed its Petition for arbitration pursuant to the provisions of Act 312 of the Public Acts of 1969, as amended. The Labor Council, Michigan Fraternal Order of Police (hereinafter referred to as "the Union") represents the members of the Mt. Morris Township Police Department (hereinafter referred to as "Employer"). The petition listed some 22 issues which the parties had been unable to resolve. On May 17, 1988, the Employer, by Michael R. Kluck, its attorney, filed its Answer to the Petition for Act 312. On August 5, 1988, the Employment Relations Commission of the State of Michigan appointed Allen J. Kovinsky as the impartial arbitrator and chairperson of the Act 312 arbitration panel. On September 26, 1988, the parties met with the Chairman at a pre-arbitration conference. It was agreed that December 20 and 21, 1989 would be scheduled as the dates for the hearing. The Union appointed Raymond Wallace as its panel member and the Employer appointed Chief Richard O'Dell as its panel member. Additional agreements were reached with respect to the exchange of last best offers, exhibits, issues to be litigated, the format of presentation, the place and location of the hearings. The parties were unable to agree upon a list of comparable communities. Subsequently, the Employer relied upon only one comparable community, Genesee Township. The Union relied upon the comparable communities of Genesee Township, Grand Blanc Township, the City of Flushing, the City of Burton, Flint Township and the City of Schwartz Creek.

Prior to the dates of hearing, the respective parties exchanged exhibits and evidenced satisfaction with the exchange of exhibits at the time of hearing. On or about March 10, 1989, after the conclusion of the hearing, the parties exchanged their last best offers. Subsequently, on or about April 24, 1989, the parties exchanged their briefs in support of their respective positions.

At the start of the hearing on December 20, 1988, it was stipulated that the following issues were withdrawn from the proceeding: Number 2 Management Rights; Number 3 Grievance Procedure; Number 5 Safety; Number 6 Leaves of Absence; Number 16 False Arrest Insurance; Number 19 Waiver; and Number 22 Classification Descriptions. These were all Union issues as set forth on the original petition, filed with the Michigan Department of Labor Employment Relations Commission. When the hearing commenced, the Employer agreed that its only comparable community would be Genesee Township. The Union agreed that the only comparable communities it would rely upon were Genesee Township, Grand Blanc Township, the City of Flushing, the City of Burton and Flint Township. The parties further agreed that their last best offers would be due within seven (7) days after receipt of the transcripts of the hearing. They further agreed that briefs would be filed within 21 days after the receipt of the transcripts. However, that was subsequently altered as hereinabove set forth.

It was agreed that within 21 days after the receipt of the briefs from the respective parties, the panel would convene for the purpose of issuing an award. The panel did in fact convene on May 12, 1989.

The parties also agreed that each issue would be taken up by the proponent of the issue, providing evidence in support of its position with the respondent then providing any rebuttal testimony or exhibits, which it felt to be relevant.

The following exhibits were introduced into evidence:

Union Exhibits 1a through 1c, 2, 3a and b, 4a and b, 5a through 5c, 6 through 45.

Subsequently, Union Exhibits 46 through 49 were received. Those exhibits were collective bargaining agreements for the Charter Township of Grand Blanc, the Burton City Police Officers, the City of Flushing, and the Charter Township of Flint. In addition, Employer Exhibits 1 through 31 were received in evidence. Those exhibits hereinabove referred to will be set forth in greater detail as they may be relevant with respect to each of the individual issues hereinafter decided. In addition to the exhibits hereinabove noted, Joint Exhibit 1 was agreed upon between the parties. Joint Exhibit 1 is the prior Collective Bargaining Agreement between the Employer and the Union.

At the outset of the arbitration hearing, the panel considered each issue and determined whether or not the issue was either economic or non-economic. The identification of those issues were set forth upon the record and further will be referred to on an issue by issue basis.

The panel's findings, opinions and order are based upon the following factors where applicable:

(a) The lawful authority of the Employer;

(b) Stipulations of the parties;

(c) The interest 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.

Nancy Ciccone testified on behalf of the Union that she has been a labor research analyst. She has a Bachelor's Degree in Industrial Psychology from Western Michigan University and a Master's Degree in Industrial Labor Relations from Wayne State University. She has been employed by the Union for four years. She had prepared the comparables utilized by the Union as Exhibits in the hearing. In order to arrive at the comparable communities, she compared 12 factors: population, land area, department composition, officers per square mile, officers per capita, state equalized valuation, per capita state equalized valuation, crime statistics, offenses per officer, taxes, housing and median household income. She only obtained comparable communities within Genesee County. She had utilized the same 12 factors in order to arrive at comparable communities in approximately 18 to 20 prior Act 312 proceedings. Based upon her criteria, she determined that the comparable communities listed in Union Exhibit 1a were those which were most comparable to the Employer, Mt. Morris Township. Those communities were Burton, Flint Township, Flushing, Genesee Township and Grand Blanc Township. She testified that Mt. Morris Township had a population of 27,928, based upon the 1980 census, and the comparable communities had populations from a low of 8,624 in Flushing to a high of 35,405 in Flint Township. Union Exhibit 1b is a comparison of various composite groups, including those over age 65, high

school graduates and individuals below the poverty level in the Union comparable communities. Union Exhibit 1c constitutes a comparison of population, land area and density in the comparable Union communities. Mt. Morris Township ranked third, first and fourth among the Union Exhibits identified 1a through 1c. Union Exhibit 2 compares departmental composition in which Mt. Morris ranked third, based upon a total of civilian and sworn officer employees. Union Exhibit 3a compares the communities based upon officers per square mile and Mt. Morris ranked fifth. However, in terms of land area, Mt. Morris would rank second. Thus, the relevant factor is that Mt. Morris has less officers per square mile of land area than any comparable community, with the exception of Genesee Township. Union 3b compares officers per capita with Mt. Morris ranking third, with one officer per 1,330 of population. The other communities vary from a low of one officer for every 856 persons to a high of one officer for every 2,089 persons. Union Exhibit 4a compared the communities, based upon state equalized valuation for the year 1987. It takes into account agricultural, commercial, industrial, residential and personal property. Mt. Morris ranked fourth in terms of total real and personal property evaluation. It had approximately $16 million dollars less of state equalized valuation than the overall average of the Union's comparable communities. Union Exhibit 4b represents a comparison of State equalized valuation per capita. Mt. Morris ranked sixth. It had a state equalized valuation of $7,377 per capita, while the comparable communities ranked from a low of $8,063 to a high of $14,050.

Union Exhibit 5a represents a comparison of total offenses, including indexed crimes (serious felonies) and non-indexed crimes (lesser felonies and misdemeanors). Mt. Morris ranked third in that category, with total offenses consisting of 1,958 index crimes and 731 non-index crimes, for a total of 2,689 offenses. The other communities had a total of a low of 626 to a high of 3,697 offenses, during the calendar year 1987.

Union Exhibit 5b is a comparison of total arrests, in which Mt. Morris ranks third, with a total of 740 made up of 548 index arrests and 187 non index arrests. The other communities had a low of 244 to a high of 1,273 total arrests. Union Exhibit 5c merely indicates an arbitrary determination of offenses per officer by dividing the total number of offenses by the officers per department. Mt. Morris ranked third with 128 offenses per officer as compared to a low of 63 to a high of 174, among the other comparable communities.

Union Exhibit 6 compares taxes among the comparable communities. It indicates that Mt. Morris ranks fourth, based upon total taxes collected, and second, based upon millage rate levied. Mt. Morris levies 9.57 mills, while the other communities levy from a low of 6.04 to a high of 10.95 mills. The taxes collected by Mt. Morris amount to the sum of $1,967,240.00, with the other communities collecting from a low of $1,007,485.00, to a high of $2,812,559.00.

Union Exhibit 7 represents a comparison of housing indicating occupied housing units, land area and occupied units per

square mile. Mt. Morris ranked fifth, with a total of 9,169 housing units, a land area of 28.8 square miles, and 318 occupied units per square mile. The comparable communities had a low of 264 occupied units per square mile to a high of 755.

Union Exhibit 8 represents a comparison of median home value and income. Mt. Morris ranked fourth, based upon a median home value of $29,500 in terms of median household income, which was $21,256. The median home value placed Mt. Morris sixth. The median home values among the comparable communities ranked from a low of $33,600 to a high of $58,800. The median household income ranked from a low of $20,664 to a high of $28,261.

Ms. Ciccone also considered other factors where applicable, however, she was not aware of any mutual aid pacts among the comparable communities, nor whether or not the communities were contiguous to Mt. Morris.

On cross-examination, she admitted that there would be substantial variances among the comparable communities, which she finally determined to be most comparable to Mt. Morris. For example, the Union Exhibit identified as 1a, indicated a population change of a decrease of 2% to an increase of 27%. A community with a declining population, such as Mt. Morris which experienced a reduction in population of 4.8% in the decade between 1970 and 1980 would also indicate a potential decline in the source of revenue. The only other community which experienced a decline in population which was Genesee Township, which experienced a 2% decline and which is the sole comparable relied upon by the Employer.

She admitted that there was no particular objective basis for selecting five comparable communities versus any other number. The population exhibit (1b) indicates the closest relationship would be between Genesee Township and Mt. Morris Township. Union Exhibit 1c was indicated as being a rather important factor. She indicated that again, Mt. Morris Township and Genesee Township were the two closest communities in terms of population density. She further opined that the greater the density, the more individuals would be available to generate revenues to pay the salaries of police officers.

With respect to Union Exhibit 2, she indicated that she was not certain whether or not it included part-time police officers. However, she admitted that both Mt. Morris Township and Genesee Township had a compliment of part time police officers. She admitted that with respect to Exhibit 3a, she was unaware of any arbitration award establishing an acceptable variance between officers per square mile, in order to establish an appropriate level for comparability. However, the Exhibit clearly indicates that the two communities closest to each other in terms of officers per square mile would be Genesee Township and Mt. Morris Township. However, Grand Blanc Township was closer to Mt. Morris, although it had more officers per square mile.

Union Exhibit 3b indicates that the two communities closest to each other in terms of officers per capita, would be Flushing and Burton, with a difference of six individuals per officer, while the closest community to Mt. Morris would be Flint Township.

With respect to Exhibit 4b on cross-examination, Ms. Ciccone admitted that Grand Blanc Township had almost twice the S.E.V. of Mt. Morris Township. She further indicated that as an indication of wealth, that would mean that Grand Blanc was twice as wealthy as Mt. Morris.

She admitted that with respect to Union Exhibit 6, she was unaware of whether or not there were differences between the various taxing authorities, cities and townships. She also admitted that she did not know whether a Charter Township had the right to levy an income tax. Nor whether or not a Charter Township has the right to levy taxes in excess of those which are provided by statute. She also admitted that she was not aware of whether or not Mt. Morris Township had any additional lawful authority to levy an increased rate over and above that currently being levied. She also admitted that she was aware of the fact that there were differences in the method by which the government of a city versus a township was run, but could not specify what, if any, those differences were.

With respect to Exhibit No. 7, she admitted that Mt. Morris Township and Genesee Township were the closest in terms of occupied units per square mile. She also admitted that if the number of occupied units decreased, this would result in a decrease of state equalized valuation. Further, with respect to Union Exhibit 8, that Mt. Morris having the lowest median home value, and the fourth lowest median household income, would be indicative of a lesser ability to raise revenue.

On re-direct examination, Ms. Ciccone indicated that it was her belief that Flint Township also had part-time police officers. Ms. Ciccone also indicated that when looking at all of the Union

comparable exhibits, the closeness of one community to another varied from Exhibit to Exhibit.

In support of the Employer's position that only Genesee Township should be used as a comparable community, the Employer introduced the following Exhibits:

Employer Exhibit 7, 8, 9, 27, 28, 29 and 30

Employer Exhibit 7 indicates that on a crime's per officer basis, Genesee Township has 110 and Mt. Morris Township has 122. Genesee Township has nine full-time and ten part-time officers and Mt. Morris had 15 full-time and seven part-time officers. Employer Exhibit 8 establishes a relationship in state equalized valuation between Genesee Township and Mt. Morris Township, based upon a total of $202,114,034.00 for Genesee Township and $206,020.112.00 for Mt. Morris Township. Exhibit 9 indicates that Genesee Township had a total revenue of $2.6 million and Mt. Morris had a total revenue in 1987 of $3.16 million. Genesee had police department revenue of $716,000.00 and Mt. Morris had $908,000.00. Genesee Township expended 27.5% of its total revenue for police department expenditures, and Mt. Morris expended 29%.

Employer Exhibit 28 is a bar graph indicating the total real and personal state equalized valuation of the following communities: Flint Township, Grand Blanc Township, Burton, Mt. Morris Township, Genesee Township, and Flushing. The figures are identical to those in Union Exhibit 4a.

Employer Exhibit 29 is a bar graph, based upon population and has identical information contained in that as is set forth in Union Exhibit 1c.

Employer Exhibit 30 indicates the number of sworn officers and total police expenditures for each of the communities claimed to be comparable by either the Employer or the Union. It indicates that Mt. Morris Township spends the fourth highest total among the six communities. It also indicates that combining full-time and part-time police officers only Genesee Township has fewer. However, based upon full-time police officers, both Genesee Township and Flushing have fewer officers.

Employer Exhibit 31 is a bar graph setting forth the same information as is contained in Employer Exhibit 30.

Based upon the Exhibits introduced by the parties, as well as the testimony of Ms. Ciccone, I believe that the comparable communities to Mt. Morris Township should include Genesee Township, Grand Blanc Township, Flint Township and the City of Burton. These communities are all relatively comparable in terms of population, percentage of population over the age of 65, and land area. They are also the communities closest to Mt. Morris Township, in terms of density of population. Their departmental composition of sworn officers, full-time and part-time are also relatively comparable to that of Mt. Morris. This also is true of officers per square mile. While there is a great variance between the total real and personal state equalized valuation between all of the comparable communities, it is clearly a greater discrepancy between the City of Flushing, which has approximately $91,980,000.00 of state equalized valuation and the next lowest community, Genesee Township, which has $202,114,000.00 of state equalized valuation. In terms of total offenses, the difference between the lowest of the Townships Genesee

of 2,092 and the highest of the Townships, Flint of 3,561 is substantial. It is even a more substantial difference with respect to the City of Burton, which had 3,697 offenses. However, the City of Flushing, clearly only has 1/3 or less of the total offenses of the next lowest community. In terms of total arrests, the City of Flushing only has 244, while the next lowest community, Genesee Township had 400. In terms of offenses per officer, the City of Flushing only had 63, while Mt. Morris had 128. The City of Flushing also only had a taxable revenue of $1,007,000.00, compared to the next lowest community of Genesee Township, which had $1,522,000.00, and as further compared to Mt. Morris Township which had $1,967,000.00. The other five comparable communities have land areas of 23.5 to 32.6 square miles, whereas the City of Flushing only had a land area of 4 square miles. The density of population, based upon occupied units per square mile, in the City of Flushing is 755, while the next highest is only 585. The median household income of the City of Flushing is the second highest, but is approximately 1/3 higher than the Townships of Mt. Morris, Genesee and Flint.

Accordingly, I do not find that the City of Flushing is a comparable community. I do believe that the City of Burton, as well as the Townships of Flint, Genesee and Grand Blanc do represent comparable communities, although, I do recognize that there are differences, based upon the evidence submitted between those communities and the Township of Mt. Morris. Thus, for purposes of this decision, I have rejected the comparable figures offered by the Union on behalf of the City of Flushing. I have accepted for

purposes of this decision, the comparable figures offered by the Employer and the Union with respect to Genesee Township and the comparable figures offered by the Union with respect to Flint Township, Grand Blanc Township and the City of Burton.

Issues, Discussion and Decision

A. Introduction

The panel, pursuant to Section 8 of Act 312 of the Public Acts of 1969, has identified each of the issues before it, as either an economic or non-economic issue. It has further received, the last best offers of the respective parties. The panel, with respect to each issue hereinafter set forth, has adopted the last best offer, with respect to economic issues, which in the opinion of the panel most nearly complies with the applicable factors prescribed in Section 9 of Act 312 of the Public Acts of 1969 as hereinabove set forth. Further, with respect to those issues which have been defined as non-economic, the findings, opinions and orders of the panel have been based upon the applicable factors prescribed in Section 9 of Act 312 of the Public Acts of 1969. The panel has taken into consideration, in addition to the factors set forth in Section 9, the Exhibits introduced by the parties, the testimony and the arguments of the parties set forth in their Briefs, as well as their last best offers.

It is the belief of the panel that each of the issues, as decided by the panel has been supported by competent, material and substantial evidence on the whole record. In addition, the panel has taken into account the fact that ability to pay or a claim of

poverty, as it is commonly known, has not been raised as an issue before the panel.

The panel further, by way of stipulation of the parties incorporates, as though fully set forth herein, all provisions of the prior collective bargaining agreement, which had not been modified, or were modified by tentative agreement between the parties, prior to the initiation of the Act 312 proceeding. Those provisions shall be incorporated into any new collective bargaining agreement between the parties.

It was further agreed that the parties, due to the delay in holding hearings, obtaining transcripts and filing Briefs, have specifically waived the six month time requirement for the filing of the Act 312 award. The date for filing of the award has been stipulated to as May 15, 1989.

It should further be noted that the panel has taken into consideration, in particular, Employer Exhibit 6, which is related to the cost of living, which is one of the factors set forth in Section 9(e) of Act 312 of the Public Acts of 1969. The cost of living index changes from January, 1985 to January, 1988 indicate annual changes of 3.7%, 1% and 4.1%. The index increased from 312.6 to 341. This represents a change of approximately 8.8%. In addition, the index increased from January, 1988 to September, 1988 from 341 to 353 for a percentage change of approximately 3.5%. Overall, the index, during the relevant period of time, increased from 312.6 to 353.0 for a change of 40.4 index points. This represents an overall change of approximately 12.6% over a period of three years and nine months. During the same relevant periods of

time, the bargaining unit experienced a 4.5% increase in base compensation for calendar year 1985. In addition, the base salary of a police officer for calendar year 1986 increased by an additional $985.00, which represents an increase of approximately 4.5% and an additional increase for calendar year 1987 of $1,143.00, which represents an additional increase of approximately 4.8%.

B. Issues, Decision and Discussion

1. Union Representation. The panel has determined that the Union proposal with respect to Section 5.1 of the collective bargaining agreement, as well as Section 5.2, are non-economic in nature. The panel has further determined that Sections 5.4 and 5.5, as proposed by the Union, are economic in nature. The Union proposed to delete Section 5.1, which provides that an employee may be subject to disciplinary procedure for taking an unreasonable or unnecessary amount of time in the grievance procedure. It further proposed to delete language which provided that the steward had the right to represent employees, and further had the authority to resolve grievances on behalf of the employees, which resolution would be final and binding upon the employees and the Union. The Union did not offer any testimony with respect to that issue. The Union offered Exhibit 9, which represented a synopsis of its position, as well as Union Exhibit 10, which was the comparable language from the collective bargaining agreements of the comparable communities. The Employer offered Employer Exhibit 10, which merely is a synopsis of the contractual language, the Union proposal and comparable language from the Genesee Township Collective Bargaining

Agreement. The Union attempts to support its position by indicating in its brief that the language of Section 5.1 subjects an employee to arbitrary discipline. The Union is incorrect. The employee still has the right to grieve any discipline, which the employee perceives to be for less than just cause. The burden of proof would still be upon the Employer to prove to the satisfaction of an arbitrator that an employee acted in an unreasonable or unnecessary manner during a grievance adjustment. Accordingly, the Union proposal, with respect to Section 5.1 is rejected and the current contract language shall be continued.

Section 5.2 has also been set forth by the Union as a burdensome provision. The Union's rationale is that the language of Section 5.2 could conceivably prohibit a Union staff representative from participating in the grievance resolution. It further indicates that an employee may be bound by a resolution entered into without his consent. Once again, the Union's emphasis is misplaced. The grievance procedure set forth in the contract, clearly allows a Union staff representative to participate in the grievance procedure. Moreover, it is difficult to imagine that a steward would resolve a grievance without the concurrence of the individual. Accordingly, the Union's request is denied. The status quo shall be maintained with respect to Section 5.2 of the Collective Bargaining Agreement.

It should be noted that the Employer has also submitted a last best offer with respect to Section 5.1 and 5.2, which provide for the status quo.

The Union proposed a new Section 5.4, which would allow its steward to have use of the departmental typewriter, copy machine and telephone. The Employer opposes that position. The indication on the record was that the costs associated with the use of the copy machine and the telephone were not intended to be reimbursed by the Union. Section 5.4 has been deemed to be an economic issue by the panel. Accordingly, the issue may not be fragmented, nor may it be modified by the panel. The Union maintains that it is necessary for its stewards to disseminate information to its membership. This is true. However, there is nothing which prevents the Union from supplying the necessary equipment to its steward. The Employer has indicated that it not only opposes the Union position, but also does not believe that the subjects are appropriate as a mandatory subject of bargaining. The Employer points out that it is the owner of the machines in question. The Union and its stewards, when acting as agents of the Union are not the agents of the Employer, and the Employer maintains that it cannot be compelled to provide economic support to the Union. I do not find it necessary to rule upon the Employer's argument with respect to Section 5.4 as proposed by the Union, either being a mandatory or non-mandatory subject of bargaining. Since the Union has not evidenced an interest in compensating the Employer for the use of the equipment in question, I find that the Union's proposal does not conform to the statutory standards, and accordingly, Section 5.4 as proposed by the Union, is hereby denied.

The Union has also proposed language with respect to Section 5.5 which has also been found to be an economic issue by the panel. The proposal would provide for a bargaining committee of

three employees of the Township and two non-employee representatives of the Union. It further provides for compensating the Township employees when meetings are held during normal working hours. It further provides for the computation of overtime for such employees by utilizing the hours spent in negotiations in the overall computation of hours worked, either on that day or during that week. Finally, it provides for a non-discrimination clause against any employee because of their Union affiliation or as a result of the duties which they may perform, as a member of the bargaining committee or as a Union steward or alternate.

The Union's rationale for this proposal is based upon the fact that often during the collective bargaining process employees have to take time off of work. It would result in a severe financial loss to the employees if they are not to be compensated for those lost working hours as a result of engaging in the collective bargaining process. The Union further points out that Genesee Township, which is the comparable relied upon by the employer, provides for the compensation of members of the bargaining committee.

The Employer points out that the unit of non-police officers represented by AFSCME does not compensate employees during the collective bargaining process. It further points out that in its belief, whether or not Union negotiators are paid during the collective bargaining process should not be a mandatory subject of bargaining. Among the comparables, the Employer notes that the City of Burton does not pay its representatives, Flint Township compensates its representatives, Grand Blanc Township does not pay

its bargaining committee and the Employer does not believe that the Genesee Township contractual provision should be foisted upon it.

While there is an obvious difference among the comparable communities with respect to the compensation of members of the bargaining committee, nevertheless, as a general principle in labor management relations, it is not unusual to find provisions which provide for the compensation of members of the bargaining committee. Otherwise, it would be most difficult for the Union to obtain membership on the bargaining committee unless the Union were forced to compensate the members for their lost time. Based upon the statutory standards and the comparables hereinabove set forth, it is my belief that the proposal of the Union with respect to Section 5.5 most nearly complies with the statutory standards. Accordingly, Section 5.5 of the Union proposal shall be incorporated in the new collective bargaining agreement.

2. Loss of Seniority. The current collective bargaining agreement provides for the loss of seniority in Section 17.0 in 12 separate sections. The Union proposes to delete Sections 11 and 12, which provide that if it is proved that an employee participated in any strike, sit-down, stay-in, slow down, curtailment of work restriction of production, interference with the operation of the Employer during the terms of this agreement or No. 12, the federal funds through which they were employed are terminated. The comparables indicate that in the City of Burton, there is a provision for participation in a strike, sit-down, etc., there are no provisions in the Townships of Flint or Grand Blanc, nor are

there comparable provisions in Genesee Township. The panel has designated this issue as a non-economic issue. The Employer's last best offer is to maintain the status quo.

The Employer further relied upon Exhibit No. 12 which simply sets forth the contractual language contained in the Genesee Township collective bargaining agreement. The Employer asserts that since public strikes are prohibited by Michigan law, and the bargaining unit members have the right to compulsory interest arbitration, as well as a contractual binding grievance arbitration to resolve disputes with the Employer, it is not inappropriate to provide for the right of the Employer to terminate an employee who has engaged in unlawful conserted activity. Employer further asserts that there is no logical reason for the deletion of Section 12, which allows the Employer to terminate an employee who has been placed in the department through a federally funded program if in fact the funding is discontinued.

I find no logical reason for the Union's position with respect to the deletion of either Section 11 or Section 12 of Section 17.0. In either event, the Union would have the right to file a grievance protesting the actions of the Employer under the normal grievance procedure. The employee would only lose his/her seniority in the event that an arbitrator found that the employee had in fact violated the provisions of Section 11 in the case of concerted employee activity, or that the federal funds through which an employee was employed had been terminated in the case of Section 12. In either event, the burden of proof would be upon the Employer in accordance with the normal just cause standard. In the event

that an arbitrator found that there was no just cause, or in the case of Section 11, that the penalty was too harsh, the arbitrator would be free to either reverse or modify the decision of the Employer. Accordingly, the Union proposals with regard to loss of seniority are hereby rejected and the status quo of the current collective bargaining agreement is to be maintained.

3. Holidays. The Union position on holidays was determined to be an economic issue by the panel. The Union offered no testimony. The Union did place into evidence Union Exhibits 15 and 16. Union Exhibit 15 consisted of the currrent collective bargaining agreement language, plus the Union's proposal to amend the language as follows: In Section 30.0 the Union proposed to add three additional holidays, consisting of Veteran's Day, the Friday after Thanksgiving and the employee's birthday. The Union further proposed to amend Section 30.7 to essentially provide that based upon a 72 hour notice, an employee would automatically be guaranteed time off for compensatory time. Finally, the Union proposed to delete subparagraph (b) of Section 30.8, which provided that holiday pay would not be granted unless an employee has worked at least 100 hours during the month of the holiday.

The Employer proposed no change in the number of holidays. Employer further proposed that Section 30.7 be amended to read that an employee seeking to utilize compensatory time off must, unless he is excused by the Employer, submit a written request therefore at least 72 hours prior to the desired time off. The Employer opposed the automatic granting of the time off as proposed by the Union. Further, the Employer opposed the deletion of subparagraph (b) of Section 30.8.

Union Exhibit 16 indicates that the comparable communities vary between 9 and 12 holidays. None of the comparable communities have language similar to Section 30.8(b). Three of the comparable communities had language which either denied compensatory time in lieu of holiday pay or provided that they must be used in the next calendar year or provided for the accumulation of a certain amount of compensatory time in addition to holiday pay. None are indicated as automatically allowing an employee to take time off for compensatory time, based upon a notice without the prior approval of the Employer.

The employees currently receive 13 paid holidays, which is more than any of the comparable communities. Moreover, there has been nothing offered beyond the demand by way of justification for an increase in the number of holidays. Accordingly, I find that there is no substantial evidence to support the Union request with respect to Section 30.0, and accordingly, the Union request is denied.

The employer has proposed to add to Section 30.7 the additional requirement that "an employee seeking to utilize compensatory time off must, unless excused by the Employer, submit a written request therefore at least 72 hours prior to the desired time off." The Union, in its last best offer has concurred with respect to that portion of the Employer's proposal. Accordingly, the language as hereinabove set forth by the Employer shall be adopted into the new collective bargaining agreement. However, the Union additionally requests that the 72 hour notice guarantees the employee the time off requested. It has offered no language from

any community in support of that language. In addition, it could conceivably be an unreasonable burden upon the Employer to automatically grant time off merely because the employee submits a request 72 hours in advance of the desired day off. Accordingly, the Union request for the automatic time off is hereby denied.

With respect to the Union's proposal to delete Section 30.8(b), the Employer points out that the same language is contained in the collective bargaining agreement for the other organized employees of the Township. It further points out that Grand Blanc Township has an eligibility requirement providing that the employee must work the last scheduled day before and the next scheduled day after the holiday in order to be entitled to holiday pay.

It is not unreasonable for the Employer to urge a uniformity with respect to all of its employees in this area. Since its other employees are subject to the same restriction, as are the police officers with respect to holiday pay, and since no compelling evidence was offered in support of the Union position to strike Section 30.8(b), I find that the Employer's position is more reasonable under the standards set forth in the statute. Accordingly, the Union position with respect to Section 30.8(b) is hereby denied.

4. Vacations. Vacations were determined to be an economic issue by the panel. The Union seeks to modify Section 31.1 of the collective bargaining agreement by adding language prohibiting the carry over of vacation from one year to the next and mandating that if vacation is not utilized, the employee is to be paid by separate check for all vacation accrued in the previous year and not utilized.

The Employer has proposed an amendment of Section 31.1 which would provide that there shall be no carry over of vacation from one year to the next and if the vacation allowance is not utilized, it will be lost. Union Exhibit 17 and 18 on vacations, indicates that in the comparable communities, the City of Burton provides for the payment of unused vacation days, Flint Township prohibits the accumulation of vacation days, unless it is as a result of emergency scheduling, in which event the officer is paid for those days that he did not take off, or he is allowed upon the approval of the Chief, to carry those days over, Genesee Township allows for the accumulation up to 1 1/2 times the employees current annual vacation accrual, and Grand Blanc Township does not allow, under ordinary circumstances for vacation accrual, unless due to scheduling or other circumstances, which prevent the taking of vacation in the current year. A request to carry over vacation in Grand Blanc must be submitted to the Employer in writing at least 60 days prior to the end of the current contract year. The Union points out that an officer at the current time is not able to carry over vacation from one year to the next. If he fails to utilize all of his vacation within the year of accrual, it is lost. The Union views this as a penalty which should be rectified.

Officer Michael Caldwell testified on behalf of the Union that currently an officer would lose his vacation and pay if he did not utilize it within the year of accrual. The days could not be carried over to the following year. He indicated that under the Union proposal, there would still be a restriction upon the carry over of days, but that the employees would be paid for the unused

days. He indicated that he was unaware of any instance in which an employee actually lost his vacation, however, employees were worried that this could arise in the future. This was based upon the fact that only two members of the department are allowed to be on vacation at any given time. Accordingly, officers cannot always select the desired vacation periods. He further testified that the normal method of obtaining a vacation is by putting in a request 30 days in advance of the time that the officer wished to take off. Officer Caldwell was unaware of whether or not any other Township employee had the right to either carry over vacations or be paid in lieu of vacation time. However, he did reiterate on redirect examination, that it was not the intention of the police officers to seek a carry over of vacation time. He admitted that the Employer's proposal was nothing more than what the current practice had been with respect to employees either utilizing their vacation in the year after accrual, or in the alternative, loosing it without compensation.

The Employer has maintained throughout the proceedings that the proposal of the Union was generated as a counterproposal to one which the Employer proposed during the collective bargaining process. The Employer's proposal was merely to memorialize the then existing past practice which was essentially, that employees either use their vacation in the year following the year of accrual, or lose it. The Township has never compensated any bargaining unit employees in lieu of vacation, nor have they allowed employees to carry over vacations from one year to the next.

The Employer's proposal is consistent not only with its prior past practice as it pertains to the police department, but also with respect to the way it treats its other Township employees. In addition, there is a mixed practice with regard to the comparable communities. There is merit to both the proposal of the Union and the proposal of the Employer. Unfortunately, this is an economic proposal, and accordingly, the panel is obligated to accept either the last best offer of the Union or the last best offer of the Employer. The Union appeals to an equitable conscience that in the event an employee does not take off all of his vacation time within a given year, the employee should not lose the compensation attributable to that time. On the other hand, the Employer takes the position that the Union proposal would in effect require the Employer to pay the employee more than 52 weeks of salary in a given year if the employee worked all 52 weeks. The Employer would then be obligated in the case of an employee with more than 10 years of service to pay the employee an additional four weeks of salary, based upon the fact that the employee had not taken his vacation. In balancing the respective positions of the parties, I am constrained to find that the Union position is less likely to be supported by the evidence and the comparables. While, the lose it or use it provision advocated by the Employer may be harsh on its face, the Union provision of penalizing the Employer by requiring the payment of more than 52 weeks of salary in a given year without any restrictions upon the employee in determining whether or not to utilize vacation time would be even harsher. The evidence indicates that employees have not to this point in time ever been denied

vacation to the extent that they actually lost days off in a given year. Accordingly, the panel hereby adopts the Employer's last best offer with respect to vacations and orders that Section 31.1 of the collective bargaining agreement be amended to read as set forth in the Employer's last best offer.

5. Longevity Compensation. The panel has ruled that this is an economic issue. Both the Union and the Employer have proposals with respect to longevity compensation. The Union's last best offer provides for a new Section 32.4, which provides that if an employee leaves the employment of Mt. Morris Township for any reason, the Employer will pay the employee eight hours of pay for each completed year of employment, in addition, the proposal provides for the payment to be made within 30 days of the last day worked. It also excludes employees who have been terminated for just cause. In support of its position in addition to testimony, the Union introduced Exhibits 19 and 20. Exhibit 20 indicates that none of the comparable communities provide for the payment of longevity pay upon separation.

The Employer originally proposed to delete Sections 32.0 through 32.3 from the collective bargaining agreement. In its last best offer, it proposed to maintain the status quo. Accordingly, the only issue for determination by the panel is the Union's proposal with respect to a new Section 32.4 as hereinabove set forth.

The current contractual language provides for longevity payments of 2%-12%, based upon an employee's length of seniority. The Employer believes that based upon the amount of longevity currently paid, the plan is extremely generous. It further points

out that none of the comparable communities have a provision similar to that which is being proposed by the Union.

The Union points out that the current Township employees have a similar separation provision. It further points out that an officer with 25 years of service would receive approximately $2,596.00 upon separation, whereas a current Township AFSCME employee receives $7,375.00 for the same period of time. Thus, the Union is attempting to seek some measure of equity as is received by other Township employees. However, it should also be noted that the Union's last best offer differs in part from its original position, in that under the original position, an exception was made for retirement. That is to say an employee who retired would not be eligible for the separation of monies. In addition, the Union has added an exception which would not require the payment for an employee terminated for just cause. The AFSCME employees receive the payment, whether or not they have retired.

Although no other comparable community has a separation provision, it is undisputed that the other Township employees do have a much more lucrative separation provision than that which is proposed by the Union in this case. Accordingly, based upon the factors set forth in the statute, the Exhibits and testimony, we find that the Union's proposal and last best offer more nearly comply with the statutory provisions. Accordingly, it is hereby ordered, that the Union's provision with respect to a new Section 32.4 be incorporated into the collective bargaining agreement.

6. Paid Days Allowance. The panel has determined that the issue of paid days allowance is economic. The Union has introduced Exhibits 21 and 22 in support of its position. In addition, the

Union offered the testimony of Officer Caldwell. The Employer offered Exhibit 18 in opposition to the Union's proposal. The Employer, both at the hearing and in its last best offer, urged maintaining the status quo. The Union in Section 33.0, sought an increased from 8 to 12 days of annual accrual in lieu of sick and personal days, and an increase in the maximum accumulation from 60 to 72 days. It also sought in Section 33.0(d), to place a period after the words personal or business matters, thus deleting additional language, which provided, "which cannot be handled outside the regular working hours, such as doctor or dental appointment, handling business, etc."

The Union also sought to amend Section 33.4 to provide for the payment of 100% of accumulated time upon death, retirement or resignation, rather than the current one-half.

With respect to Section 33.5, the Union sought to insert the words "if possible" in a provision which requires daily notification to the Employer of an employee's inability to work. Finally, in Section 33.8, the Union sought to amend that language, which provides for the payment of a full days' pay to an employee who is injured while on the job and required to leave the job by medical authority to further provide that the time would not be deducted from the employee's paid days' allowance.

The comparable communities allow 16 days in the case of Burton, with unused time paid off at the end of the calendar year, 13 days in the case of Flint Township, which are paid off at the end of the calendar year, six hours per month, which can accumulate up to 80 hours in the case of Genesee Township, and 15 sick and

personal days in the case of Grand Blanc Township, with an additional short-term disability insurance policy for up to 26 weeks of coverage. With respect to notification, Burton requires no notification on sick days and 48 hours on personal leave days. Flint Township requires prior approval from the Chief of Police for reasons other than illness. Genesee Township requires 48 hours notice, unless ill. Grand Blanc allows 10 days for whatever purpose the employee deems necessary, providing prior approval has been obtained from the employee's supervisor, and further provides that unused days may either be banked or cashed in at one-half of value. It further provides that five days may be used only for sickness or illness, which does not require prior approval, however, it does require the employee to notify his shift commander prior to the start of the shift. Unused days may either be banked or cashed back for full value. Bank days may be accumulated without limit, however, they may only be used for sickness or to supplement workers' compensation or sickness and accident coverage up to 100% of the employee's hourly rate. With respect to pay at its separation, the City of Burton provides for a total payoff upon termination, there is no contractual requirement in Flint Township, nor Genesee Township, and Grand Blanc is as hereinabove set forth.

Officer Caldwell testified on behalf of the Union that it was requesting a change from 8 and 60 to 12 and 72 days of sick leave/personal leave accumulated time. He further testified that the current contractual language in Section 33.0(d) had been interpreted by management to only allow employees to take time off for personal and business matters for those items which couldn't be

handled during the regular working hours, and further that the Employer had confined it to doctor/dental appointments and handling personal business. He further indicated that the Employer had required an explanation in detail, as to the use of the officer of a personal day. He indicated that it was the officers' feeling that a personal day meant exactly that it was personal, and therefore, not subject to question or explanation by the Employer. He indicated that several officers had been denied personal days after the fact, even though they had called in indicating that they were going to take a personal day, because they hadn't given an appropriate advance notification in writing, and therefore, it had not been approved or disapproved by the Chief in advance. He felt that 72 hours' notification was an unreasonable amount of time for notifying management of an officer's intent to utilize a personal day, since often matters come up less than 72 hours before the officer is required to take off. Officer Caldwell also originally testified in support of the deletion of Section 33.3, however, in its last best offer, the Union did not request the deletion of Section 33.3, and accordingly, it shall remain in the collective bargaining agreement. In support of the Union's position on Section 33.5, Officer Caldwell indicated that there might be a situation which would arise by which the employee could not notify the Employer daily when they were unable to work or ill. Thus, the Union was requesting the insertion of the words "if possible."

In support of the Union's position on Section 33.8, Officer Caldwell indicated that the employee should be paid for the entire day, when they were injured on the job and required to take a

portion of the day off by a medical authority, rather than having the time charged against their sick and personal days, or as it is called in the contract paid days' allowance.

Lieutenant Herman Robson testified on behalf of the Employer that in the absence of the Chief, it was his responsibility to administer requests for personal leave and sick leave. He indicated that employees are expected to notify the department ahead of time in writing, if possible, as to the time which they wished to take off. This is with respect to personal time. Further, that with respect to personal time, it must meet the standards as set forth in the collective bargaining agreement, which require the appointment to be outside the normal work hours, such as a dentist, doctor and certain other types of appointments. Lt. Robson identified Employer Exhibit 18(a) which was a request for leave time by Officer Garhart. Officer Garhart had been denied a personal day off, which he requested as a result of problems with his family. However, the request was dated May 30, 1988 and submitted one day after the Officer had actually taken the time off. In addition, the Officer did not have any accumulated personal time. Lt. Robson also testified with respect to Employer Exhibit 18(b) involving Officer Caldwell, who did not request a personal day off, until February 1, 1988, even though he had taken off January 31, 1988. This request had been approved since it had been explained to Lt. Robson on January 30, 1988. The request was due to personal problems at home. Lt. Robson indicated that he did not require the Officer to go into any great detail, but merely enough to let him know that a problem existed.

Lt. Robson indicated that it was desirable from the standpoint of the department to receive as much notification as possible in advance of a request for personal time off, based upon the department's utilization of part-time employees. Since there is a low compliment of part time employees, it makes it difficult to find a replacement for a full-time officer, and accordingly, the department needs as much advance notice as possible. The shorter the notice, the more difficult it is to find a replacement. He further indicated that while it was desirable to have a 72 hour notification, nothing officially had ever been enforced requiring an absolute fixed 72 hours' notification for the granting of personal leave time. The contract only requires 48 hours, and in appropriate circumstances, even that has not been applied when an officer has an emergency situation requiring personal leave time and allowing for less than 48 hours' notification.

Officers are expected to call in no later than 15 minutes before the start of their shift, if they are ill. Moreover, if a doctor had indicated that the officer will be off for more than one day, and the officer relays that information to the department, he is not expected to call in on a daily basis. A doctor's statement is deemed sufficient to cover time off, even if it exceeds one day. An officer who is ill is always replaced by a full-time officer. In almost every situation, the officer who comes in to replace an ill officer, is on an overtime basis.

On cross-examination, Lt. Robson indicated that the personal business situations included not only doctors and dentists, but matters which could only be taken up during the shift by a

police officer, such as if he were working on a day shift, having a banking problem or buying a home or something of that nature. Lt. Robson also indicated that he wouldn't merely accept "personal business" as being a valid excuse for taking time off. However, if the officer were to indicate that he was having a problem with his family, that would be sufficient, all he wanted was a general idea of what the problem was. He does not require specific details.

The comparable communities indicate that the number of sick and personal days in Mt. Morris is substantially less, with the exception of Genesee Township. On the other hand, the number of days that the police officers receive is the same as that received by other Township employees. It is the finding of the panel that in light of all of the statutory standards, the Union's proposal with respect to Section 33.0 more nearly conforms to the statutory standards. Accordingly, it is ordered that the Union's last best offer on Section 33.0 be incorporated into the collective bargaining agreement. However, the Union's last best offer with respect to Section 33.0(d), is not supported by any of the outside comparables, nor the other contract covering Township employees. Moreover, in light of the testimony set forth hereinabove, it would appear that the Township and its supervision has interpreted the language of the current collective bargaining agreement in an appropriate and reasonable fashion. Accordingly, the Union proposal with respect to Section 33.0(d) is rejected, and the current language of the collective bargaining agreement shall be maintained.

The Union proposal with respect to Section 33.4 is likewise deficient. It is not supported by the comparable community Exhibits, nor by the internal Exhibits. It would appear to be

merely a proposal to obtain additional monies without any basis in fact. It is totally unsupported by any credible evidence. Accordingly, the Union proposal with respect to Section 33.4 is hereby rejected. The Employer's proposal of maintaining the status quo is hereby accepted and directed to be entered into the new collective bargaining agreement.

With respect to Section 33.5, again the testimony would indicate that the Employer has interpreted the current language in the collective bargaining agreement in a reasonable and appropriate manner. Moreover, the insertion of the words, if possible, would not alleviate the problem which was initially raised by the Union. It would not alter the daily notification requirement contained in Section 33.5. It would only serve to further muddy the waters and create additional differences of opinion as to the clear meaning of the current language. Accordingly, the Union's proposal with respect to Section 33.5 is found to be inappropriate and hereby rejected. The Employer's proposal to maintain the status quo is hereby accepted and ordered to be entered into the collective bargaining agreement.

With respect to Section 33.8, there is no question that employees are currently paid for the time lost, due to an injury while on duty with respect to the day of the injury. The only difference is that the Employer deducts the time from the employee's paid days' bank and the Union wishes the employee to be compensated for the lost time on that day, without an equivalent deduction to the bank time. It would appear that the Union's proposal is reasonable. It is only seeking payment for the balance of the shift

and only based upon a medical determination that the officer cannot work. It is not expecting too much to have the Township compensate the officer for that lost time on the date of a work incurred injury without making an equivalent offset to the employees' paid days' bank. It would not appear that the Employer has offered any reasonable evidence to contravene the Union's position. Accordingly, based upon the statutory standards, it is found that the Union's last best offer with respect to Section 33.8 more nearly conforms to the statutory standards. It is therefore ordered that the Union's proposal with respect to Section 33.8 be incorporated into the collective bargaining agreement.

7. Health Insurance. The Union introduced Exhibits 23, 23(a), 24, 25 and 26 in support of its position. In addition, the Union offered testimony as hereinafter set forth. The Employer offered Exhibit 19 in support of its position. The issue is determined to be economic. In their last best offers, with regard to Section 34, both the Union and the Employer agree that the current Blue Cross health insurance coverage with a $2.00 prescription rider will be maintained until as soon as reasonably practicable after ratification of the agreement, when the coverage will be modified to include the Blue Cross/Blue Shield Preferred Care Plan or equivalent. Both last best offers also provide that the policy is to be fully paid by the Employer for the employees. Since both last offers with respect to the items hereinabove set forth are identical, it is so ordered.

However, the Union seeks to delete additional language in Section 34.0, which provides for an election by employees of an

H.M.O. It further provides that the Employer will not be required to contribute any more for the H.M.O. coverage than it is required to pay for the Blue Cross/Blue Shield coverage. It also provides that the employee electing to be covered by an H.M.O. must present to the Employer a signed authorization authorizing the Employer to transmit the appropriate premium to the health care provider. It also provides that in the event that the H.M.O. premium is less than the Blue Cross/Blue Shield premium, the Employer is not obligated to pay the difference to the employee. Finally it provides for a notification of at least two weeks by an employee who is transferring his coverage prior to the next open period.

There is no indication in the Union Exhibits as to why the Union would propose to eliminate the additional language with respect to the second and third paragraphs proposed by the Employer in its last best offer under Section 34.0. The Union offered no testimony as to why that language should be deleted, nor did it raise the issue in its Brief. Accordingly, it is the decision of the panel, that the Employer's last best offer with respect to Section 34.0, including those paragraphs hereinabove referred to more nearly complies with the statutory standards. Thus, Section 34.0 as proposed by the Employer's last best offer, shall be incorporated into the current collective bargaining agreement.

The Union has also submitted a last best offer with respect to Section 34.2, which would provide that the Employer would provide and pay the premiums for a Blue Cross family dental plan with a 25/75 coverage for Class 1 and 2 benefits, as well as Class 3, with a $2,000.00 maximum benefit paid at 50/50. Class 1 and 2 benefit

coverage would be limited to a maximum of $1,000.00 per year. The Employer has proposed to continue, during the life of the agreement, a Blue Cross family dental plan, which provides for 50% coverage for all Class 1, 2 and 3 benefits. The comparable communities indicate that the City of Burton has a 75/50/50 plan with a $600.00 yearly maximum for Class 1 and 2, and a $1,500.00 life time maximum for Class 3. Flint Township has a 50/50 co-paid plan. Genesee Township has a 60% Class 1 benefit and 50% Class 2 benefits with no indication as to their Class 3 benefits. Grand Blanc Township has Delta dental coverage and orthodontics coverage with a $1,000.00 limitation. The balance of the Township employees are covered by the current 50/50/50 Blue Cross dental plan, which the police officers currently have as well. No costs were submitted with respect to the Union's proposal for increasing the dental coverage. Accordingly, based upon the statutory criteria, it would appear that neither the comparables on an external, nor an internal basis support the Union's position. Accordingly, the Employer's last best offer with respect to Section 34.2 shall be incorporated into the new collective bargaining agreement.

With respect to Section 34.5, the Union proposed a new Blue Cross/Blue Shield optical insurance plan. The plan would provide basic coverage, with a 50% co-pay provision. The external comparables indicate that the City of Burton provides a maximum of $125.00 per year, for optical coverage. Neither Flint Township nor Genesee Township provide optical coverage. Grand Blanc Township provides for optical coverage in a sum of a maximum of $200.00 per family per year, with the appropriate substantiation. No other

Mt. Morris Township employees are covered by an optical plan. The cost of Blue Cross/Blue Shield insurance alone has increased from the 1988 budget to the 1989 budget by a sum of $24,000.00. In the preceding three years, the monthly coverage for a family increased from the sum of $243.12 per month to the sum of $352.88 per month. The expenditures for the Police Department and the Township as of the date of hearing, were estimated to be $937,399.00 versus revenue estimated in the sum of $858,842.00. Accordingly, based upon the statutory criteria, it is found that the Union's proposal with respect to Section 34.5 does not conform to the statutory criteria. Accordingly, the Union's last best offer on Section 34.5 is rejected.

With respect to Section 34.4, the Union in its last best offer would maintain the status quo. That section requires the Employer to pay premiums for Blue Cross hospitalization insurance to age 65, provided the employee retires under conditions of the Township retirement programs, or in the alternative, the employee becomes permanently and totally disabled. The Employer, with respect to Section 34.4, would maintain the current language, but add additional language providing for the election of an H.M.O. and also providing for language regarding an employee who elects to transfer from the Blue Cross/Blue Shield coverage to the H.M.O. coverage, and further providing a two week notification provision. This language is similar to that which the Employer proposed with respect to Section 34.0. For the reasons stated with respect to the Employer's last best offer on Section 34.0, it is hereby ordered that the Employer's last best offer with respect to Section 34.4 shall be incorporated into the new collective bargaining agreement.

8. Workers' Compensation. The Union in support of its issue on Workers' Compensation introduced Union Exhibits 27 and 28. The Employer offered Exhibit 20. It is determined by the panel to be an economic issue.

The current contract language, Section 35.3 provides for a supplement to Workers' Compensation benefits, which will make up the difference between the amount of money paid by Workers' Compensation and the employees' regular weekly salary through a deduction of the employees' accumulated sick time. The Union wishes to continue all of the current contract language, with the exception of deleting that language which provides that the supplement shall be charged against the employees' accumulated sick time. The Employer maintains the status quo. No testimony was offered by the Union in support of its position. It is the position of the Union that an officer injured in the line of duty should not suffer a deduction of his accumulated sick time. The Union further alleges that an officer should feel secure in knowing that in the event that he is injured in the course of performing his duties, that he and his family will be provided for and will suffer no loss of benefits. The external comparables, both support and negate the Union's position. The City of Burton supplements Workers' Compensation benefits with charges against accrued sick/personal days. Flint Township supplements Workers' Compensation for a period of 52 weeks. The first week is not chargeable, but it would appear that the remaining weeks are chargeable. Genesee Township provides for a supplement for the first 52 weeks. There is no indication that there is a charge against accumulated sick time. The Union proposal

has no limitation. Accordingly, if an employee were to be injured, and disabled for the next 20 years under the Union proposal, the Employer would be required to supplement the difference between the employee's salary and the Workers' Compensation benefits, without any charge against accumulated sick leave or personal time.

The Employer through testimony, indicated that the cost of Workers' Compensation coverage between the 1985/1986 fiscal year and the 1987/1988 fiscal year more than doubled.

Since Workers' Compensation pays approximately 2/3's of an employees' average weekly wage, with certain minimum and maximum statutory floors and ceilings, and since an employee who is on workers' compensation will not have the same expenses attributable to work as does an employee who is not on workers' compensation, it would seem that the Union's proposal is unreasonable. Moreover, none of the Union comparables indicate that an Employer is required to pay a supplement to Workers' Compensation benefits forever. That would be the result, if the Union's last best offer were to be accepted. This would undoubtedly create a burden upon the employees' budget, which could hamper it in terms of effectively replacing the injured employee. Accordingly, it is found that the Union has not met the statutory criteria. It is thus the order of the panel that the current language of Section 35.3 be incorporated into the new collective bargaining agreement.

9. Retirement. Retirement was determined to be an economic issue. The Union was seeking an increase in its last best offer from the current retirement plan to the MERS Retirement Plan B-3 with the F-55 Waiver. The F-55 Waiver provides that an employee

may make application for retirement after attaining the age of 55, and having at least 15 or more years of credited service. The Union also sought a non-contributory plan requiring the Employer to make all contributions.

The Employer has agreed to the B-3 Plan, effective January 1, 1989. The Employer has also agreed to the F-55 Waiver. The Employer indicated that an employee may make application for retirement after attaining 55 years of age and having 15 or more years of credited service. The Employer further agreed that all contributions to the retirement plan shall be made by the Employer.

Accordingly, it is the panel's understanding that the last best offers of both the Union and the Employer are identical. Accordingly, it is the decision of the panel that the Union's last best offer requiring the implementation of the B-3 Plan, effective January 1, 1989 or as soon thereafter as it may be effectuated, along with the F-55 Rider and the non-contributory features shall be incorporated into the new collective bargaining agreement.

10. Shift Preference. The panel determined that the issues regarding shift preference were to be considered non-economic. The Union introduced Exhibits 32 and 33 and the Employer introduced Exhibit 22. The parties also indicated that there were related issues involving hours of work and Appendix A. The parties in their last best offers with respect to Section 37.0, agree on the first paragraph, and it will be so ordered and incorporated in the new collective bargaining agreement. With respect to the second paragraph, the Union has indicated that employees, may in their sole discretion by seniority, select their

first choice of shifts for two of any four (4) month periods of any year. The Union also provides that employees may not select their first choice of shift for consecutive four months in any given year. The Employer agrees that employees may not select their first choice of shift for consecutive four month periods. The Employer also agrees that the employees, may by seniority, select their first choice of shifts for two of any three of the four periods of the year. The Employer did not include the words "in their sole discretion in its proposal." In reviewing the two proposals, as well as the Exhibits introduced by the parties, it is the decision of the panel that the Employer's language more nearly complies with the statutory standards, and has greater clarity. Accordingly, the second paragraph of Employer's last best offer on Section 37.0 is hereby ordered to be incorporated into the collective bargaining agreement.

The third paragraphs in the last best offers of the Union and the Employer read virtually identical with respect to the substance. However, again the Employer's language appears to contain greater clarity. Accordingly, the Employer's last best offer with regard to the third paragraph of Section 37.0 is hereby ordered to be incorporated into the collective bargaining agreement. With respect to the fourth paragraph of Section 37.0, the parties' last best offers again appear to be nearly identical, however, again the Employer's last best offer appears to be somewhat clearer, and accordingly, it is ordered that the Employer's last best offer on the fourth paragraph of Section 37.0 shall be incorporated into the new collective bargaining agreement. The

proposals of the Union and the Employer on their last best offers with respect to Section 37.0, fifth paragraph are identical. Accordingly, it is ordered that the Employer's proposal for the fifth paragraph shall be incorporated into the collective bargaining agreement. The sixth paragraph contains, what I perceive to be a substantial difference. The Union would require the employees to register their shift preferences during the first two weeks of the months stated in the prior paragraphs or else they would lose their seniority right of preference. The Employer would require the employees to register their shift preference during the first two weeks of November. Thus, the Union seeks a right of shift preference selection three times a year, and the Employer would limit it to once a year. Since it is clear that circumstances can and do change, and an employee may not be able to foresee a year in advance changes and circumstances, it would appear that the Union's proposal with regard to the time period for the selection of shifts is more reasonable. Accordingly, it is hereby ordered that the sixth paragraph of Section 37.0 shall incorporate the last best offer of the Union.

The parties agree on the first sentence of the seventh paragraph of Section 37.0. However, the Union would add "the Chief of Police shall not deny employees shift trades arbitrarily, and must have a valid and reasonable reason for the denial. The Employer does not seek to incorporate that language in its last best offer. I see no harm with respect to the Union's proposal. Certainly, if employees are willing to trade shifts, the Chief is entitled to notification and also the trade should be subject to his

approval. However, the Chief should have the right to deny the shift trade so long as his denial does not constitute an arbitrary or capricious action. Accordingly, it is found that the Union's position and last best offer with respect to the seventh paragraph of Section 37.0 more nearly conforms to the statutory criteria. Accordingly, it is ordered that the Union's last best offer on the seventh paragraph of Section 37.0 shall be incorporated into the new collective bargaining agreement.

Finally, the Union proposes an eighth paragraph, which the Employer does not propose in any form. The Union would propose to give its representatives super seniority in regard to shift selection. The Union has offered no testimony, nor Exhibits in support of its proposed language. While it is not unusual that a Union representative shall have super seniority with regard to layoffs in order to assure Union representation, the proposal by the Union would add another layer on to that preference given to Union representatives. That is to say that a newly hired employee, who happens to within a short period of time be elected or appointed a Union representative, would be given preferential rights over and above those enjoyed by long term seniority employees with respect to shift selection. It would not appear that there is any reasonable basis for that proposition. Accordingly, the Union's last best offer with respect to that language and the incorporation of a paragraph eight in Section 37.0 is hereby rejected and the Employer's position and last best offer with respect to having no language regarding super seniority on shift selection is hereby adopted.

11. Hours of Work. The panel has directed that this issue is an economic issue. The Union introduced Exhibits 34, 35 and 36 in support of its position. The Employer introduced Employer Exhibit 23 in support of its position.

The parties, at the suggestion of the panel, based upon the number of issues and potential for different rulings affecting different portions of the contract, have submitted alternative proposals at the suggestion of the panel.

The Union, in its first last best offer has indicated that it would support the status quo on Section 42.0, which provides for five different shift starting times, at 7:00 a.m., 11:00 a.m., 3:00 p.m., 7:00 p.m. and 11:00 p.m. The Union proposes to amend Section 42.1 which currently provides that employees will be entitled to a shift premium in the amount of 5% for any shift which begins between 3:00 p.m. and 7:00 a.m. to the following proposals. The Union would propose a 5% premium for the shifts starting at 11:00 a.m., a 5% premium for the shift starting at 3:00 p.m., a 7% premium for the shift starting at 7:00 p.m., and an 8% premium for the shift starting at 11:00 p.m. The Union would maintain the status quo on Section 42.2 through 42.5. In Section 42.6, the Union proposes to increase from two to three hours the payment for an officer when subpoenaed to appear in court on a day off. In addition, the Union would change the guarantee in the last sentence of Section 42.6 from two hours to three hours. Finally, the Union proposes a new Section 42.7, which would provide that when employees are put on call by the prosecutor's office for court or formal hearings, they shall be paid their regular straight time rate for all hours they are put on call.

The Union's alternate proposal is based upon the adoption by the panel of a three shift system. In that event, the Union would propose to change Section 42.0 to three shifts beginning at 7:00 a.m., 3:00 p.m. and 11:00 p.m. It further would propose to amend Section 42.1 to provide for a 5% premium for the 3:00 p.m. shift and an 8% premium for the 11:00 p.m. shift. The Union would still maintain the status quo on Section 42.2 through 42.5. The Union also would propose to change the two hour payments in Section 42.6 to three hours, and finally, to provide for a new Section 42.7, as hereinabove set forth.

The Employer's last best offer provides for three shifts in Section 42.0 beginning at 7:00 a.m., 3:00 p.m. and 11:00 p.m. It would provide in Section 42.1 for a shift premium in the amount of 5% for the 3:00 p.m. and 11:00 p.m. shifts. It provides for no changes in Sections 42.2 through 42.5. It further would maintain the status quo with respect to Section 42.6 and in addition, opposes the Union's proposal with respect to a new Section 42.7.

The Employer's alternative last best offer provides for five shifts, beginning at 7:00 a.m., 11:00 a.m., 3:00 p.m., 7:00 p.m. and 11:00 p.m. It would provide for a shift premium in Section 42.1 of 5% for any shift which begins between 3:00 p.m. and 7:00 a.m. It provides for no changes in Sections 42.2 through 42.6 and opposes the Union's proposal of a new Section 42.7.

Eric King testified on behalf of the Union and indicated that under the current collective bargaining agreement, there was no shift premium for the two shifts which begin at 7:00 a.m. and 11:00 a.m. He further indicated that the contract calls for a premium of

5% for shifts which begin at 3:00 p.m., 7:00 p.m. and 11:00 p.m. He then testified that it was the desire of the membership to obtain five shifts insofar as starting times were concerned, as are currently provided in Section 42.0, but rather than having one premium for three of the shifts, the Union desired a 5% premium for shifts beginning at 11:00 a.m. and 3:00 p.m., a 7% premium for shifts beginning at 7:00 p.m., and an 8% premium for shifts beginning at 11:00 p.m. His rationale for a shift premium for the shift beginning at 11 00 a.m. was based upon the fact that it was a swing shift, which covered parts of both the morning and afternoon shifts. Further, it was the busiest shift in terms of calls, especially between 3:00 p.m. and 7:00 p.m., insofar as that shift was concerned. Insofar as the other shifts were concerned, he testified that these were the shifts which took the officers out of their homes in the evening, and accordingly, they should be compensated. He offered no reason why Section 42.6 should be changed from two to three hours. With respect to the new language advocated by the Union (Section 42.7) he indicated that once an officer was put on call, as a result of a subpoena, it was necessary to remain at home, so that they could be contacted by telephone. This situation could also occur on the officer's day off, if he happened to be subpoenaed that day. Thus, the officer would be tied to his home, awaiting a phone call, which may or may not occur. He further indicated that when this situation occurred, the officers were not being compensated in any amount.

On cross-examination, Officer King indicated that both the County prosecutor and the Township attorney have placed officers on

call. He further indicated that it is understood to be a part of an officer's job to be available to give testimony. Further, that the Employer had no control over whether or not the Township attorney or the County prosecutor requested a police witness to be available. The officers had met with the Chief of Police in order to try to change the current practice of being placed on call. Officers have contacted the court officer in order to determine whether or not their testimony would be required on a specific day. Officers who actually appear in court do receive a minimum of two hours of straight time pay. In addition, if the subpoena falls on a day off, and the officer has 40 hours of straight time, he will be compensated at the rate of time and one-half for a minimum of two hours when he appears in court pursuant to a subpoena. This is also true if the officer has already worked or will work on the same day eight hours in addition to the time spent in court. If the officer is required to be in court on a day of work for at least two hours, he would receive three hours pay. If he were in court for less than one and two-thirds hours, he would still receive the minimum two hours pay.

He indicated that during the hours of 8:00 p.m. to 4:00 a.m., there could be as many as 125 calls in Mt. Morris, whereas during the other hours, a shift would average about 40 calls of which 10 or 12 would be in Mt. Morris. Of the 125 previously mentioned, approximately 30 to 35 would be in Mt. Morris. This data was based upon his recollection as a dispatcher with the State Police for calls throughout the county. He admitted that when an individual hires in to be a police officer, he is aware of the fact

that it is a 24 hour operation, and thus requires an officer to work outside of the normal daylight hours. He further testified that it was his opinion that the Township needed five shifts spread over four hour intervals in order to assure that fresh officers were coming in to work at those intervals. This reduces the strain on the officers in his opinion, and increases productivity. On re direct examination, he indicated that it was his opinion that the Employer was proposing three shifts in order to place more officers on the evening shifts, and less on the day shifts. He also assumed that everyone would be placed in a one man car. Currently, the Township operates two-man cars on the night shifts.

Chief Richard O'Dell testified on behalf of the Employer that it was his responsibility to assign personnel to the various shifts. He further indicated that the Employer was advocating a three shift system in place of the current five shift system. The Township wished to eliminate the shift beginning at 11:00 a.m., and the shift beginning at 7:00 p.m. He testified that the five shifts had been in place since the middle seventies, and were originally utilized for the purpose of keeping a car on the road during shift changes for the original three shifts beginning at 7:00 a.m., 3:00 p.m. and 11:00 p.m. Thus, even during those shift changes, the Township would have been afforded a certain amount of protection since there would still be cars on the road for emergency situations. In addition, officers off of the three regular shifts could come in to the department before the end of the shift in order to complete their reports.

The officers are no longer required to remain within the department in order to complete reports, due to a computerized program. The officer may now record his reports during the course of his shift. In addition, the amount of time that it takes for a shift change has been reduced. Now, officers can come into the station 10 or 15 minutes prior to quitting time, place the tape recording in an envelope and leave. There is no longer a manual writing of their reports, as had occurred in the past. A typist now prepares the report based upon the dictation of the officer which has been placed upon the tape during the course of the officer's shift.

In a normal 30 day month, based upon the Township's proposal, three cars would be available on 26 of the days, and a minimum of two cars on four of the days on the 7:00 a.m. shift. Under the current system, only two cars are on the road on the 7:00 a.m. shift. On the second shift beginning at 3:00 p.m., on four of the afternoon shifts, three cars would be available, on 18 of the afternoon shifts, four cars would be available, and on eight of the afternoon shifts, five cars would be available. Currently, a maximum of two cars are on the shift beginning at 3:00 p.m. With respect to the 11:00 p.m. shift, three cars would be available every night. Currently, there is only one car available after 3:00 a.m., and two cars available until 3:00 a.m.

In addition, a supervisor would be available on all three shifts. Currently, there are some nights after the second shift leaves when no supervisor is on duty. In addition, according to the Chief, supervisors would be available at all shift changes for a

role call, a time at which information is passed from one shift to another. Currently, this is not always possible, due to the lack of supervision.

Chief O'Dell also indicated that by going to a three shift system, this would not present any difficulty with respect to modifying shift preferences from the old three month to four month system. He indicated that in his opinion, during the prime time hours, the three shift system would allow him to double the number of cars on the road.

He indicated that his shift proposal would allow four vehicles on the road during the evening hours, but that they would be one-man vehicles, as opposed to the current safety language, which provides for two-man vehicles on the second and third shifts, when manpower permits. He indicated that Genesee Township does not have a provision which requires officers to be paired up on the evening shifts. The sole exception is if a reserve officer rides with a regular police officer. A reserve officer in Genesee Township cannot ride in a one-man car. Genesee Township also on the third shift, has two one-man cars on duty.

Chief O'Dell also testified that he had been warned as of December, that he was very nearly going into the red with respect to his 1988 budget. Overtime was a chief concern. He testified that changing the mandatory minimum call-in time from two to three hours would further adversely impact his overtime budget. The same would be true with respect to the Union proposal on Section 42.7, requiring stand-by pay. If an officer were to be placed upon call by the prosecutor at the conclusion of the officer's normal shift,

the Township would be required to pay time and one-half for all hours that the officer was "on call."

On cross-examination, Chief O'Dell testified that the prime time hours occur between 3:00 p.m. and 3:00 a.m. This is the so-called high crime time. It also represents a high traffic accident and violation time. The Township was rated third in Genesee County on the last crime index. The Chief admitted that on the third shift, where there are currently 2 two-man cars, for a total of four officers, it was his intent to have three one-man cars. Thus, there would be a reduction of one officer, even though there would be one more car on the road. The Chief emphasized the point that while there may be an equivalent number of officers, or even on occasion, a lesser number of officers, there would be more vehicles on the road, thus allowing broader coverage. The Chief also testified that the entire plan and proposal of the Township was premised upon the elimination of the two-man car requirement under the safety clause, which will be discussed at a later point in this opinion. However, he indicated that even if the safety clause were to be placed upon a status quo by the panel, he would still be better off with a three shift schedule, than the current schedule of five shifts. He indicated that under those circumstances, he still could obtain broader coverage, than that which he currently has. The Chief admitted that when officers travel in pairs, they are less likely to be injured or taken advantage of. However, he did indicate that the dispatch system currently in place allows cars to get to the scene in order to back-up a fellow officer in an extremely short amount of time. In addition, officers are

instructed whenever the circumstances indicate danger, to refrain from going onto the scene until they receive proper back-up. The back-up is available not only from within the Township, but also from surrounding communities, and the Genesee County Sheriff. In addition, the State Police will provide back-up. He indicated that under the current system with a two man car, even though a routine traffic stop is called in to the dispatch, normally back-up would not be provided. However, he did indicate that with respect to a one-man car, policies would be adopted regarding recognizing dangerous situations, providing for back-up and other procedures.

On re-direct examination, the Chief indicated that even on the second and third shifts, it was his understanding that it was the prerogative of management to determine whether or not to utilize a one-man or a two-man car. In addition, the Union, as early as 1985, had sought to provide mandatory language with respect to two men in cars on the second and third shifts at all times. Those grievances were denied.

Upon the conclusion of the testimony, it was agreed that the testimony and Exhibits of the respective parties would not only cover the hours of work issue, but also the issue regarding safety and the issue regarding Appendix A. It should be noted that the issue regarding safety was determined to be an economic issue, while the issue involving Appendix A was deemed to be a non-economic issue. Those two issues will be dealt with in a later portion of this opinion. However, much of what has been said already and what will follow, will be utilized for purposes of determining those issues as well.

The Union comparables on Exhibit 35 indicate that the City of Burton has five different shift starting times, Flint Township has none listed, Genesee Township has three shifts, plus two additional shifts, which begin in the middle of the first shift, and in the middle of the second shift. Grand Blanc Township has no specific hours of work listed. Insofar as off-duty court time is indicated, Burton has a three hour minimum, Flint Township a two hour minimum, Genesee Township a two hour minimum at time and one-half, and Grand Blanc Township has three hours' straight time up to the first four hours and time and one-half beyond four hours for certain proceedings, and four hours straight time for the first four hours and time and one-half above four hours for certain other proceedings. Burton, Flint Township and Grand Blanc do not have any contractual language for being placed on call by a prosecutor. Genesee Township has a provision, but it is not clear that this provision applies to being placed on call.

Union Exhibit 36 indicates that the maximum premium payable in Burton is 5%, there is no contractual language in Flint Township, Genesee Township pays a maximum of 5%, and Grand Blanc Township pays a maximum of 5%.

With respect to Section 42.0, the panel adopts the Employer's last best offer, setting forth three shifts beginning at 7:00 a.m., 3:00 p.m. and 11:00 p.m. While the Union argues that the current five shifts provide fresh bodies every four hours, nevertheless, those bodies still work eight hours, and accordingly, become fatigued at the end of their shift as well. In addition, the testimony of Chief O'Dell was persuasive with regard to the

utilization of manpower. The interests of the community certainly outweigh the interests of the officer in terms of maximizing manpower on the streets of the Township. The officers no longer are required to utilize as much time at the end of the shift in the preparation of reports as they formerly did, which was one of the principle reasons for instituting the five different shifts in the first place. Moreover, based upon the Chief's testimony, it would appear that the department will undoubtedly become more efficient in terms of having supervision available for all three shifts, and in terms of having supervision available for role call training. In addition, it would appear irrespective of the panel's decision with regard to the safety issue, which will be determined subsequently, that the Chief still will be in a position to have more vehicles on the road even if the current safety language were to be retained in the collective bargaining agreement. Moreover, at least the Townships of Flint and Grand Blanc have no restrictions whatsoever with regard to the shifts and schedules, which may be initiated by the Employer. Thus at best, there is a mix among the comparables, and not a consensus. Accordingly, as hereinabove noted, the Employer's last best offer of three shifts shall be incorporated as a new Section 42.0 in the collective bargaining agreement.

With respect to Section 42.1, the panel adopts the Employer's last best offer, which provides for the premium of 5% for shifts which start between 3:00 p.m. and 7:00 a.m. There are simply no comparables either of an internal or external nature, which would justify the utilization of an 8% premium for the 11:00 p.m. shift. No other community pays a premium as high as that amount. In

addition, it would call for an increase of 60% in the current premium. The proposal by the Union simply does not meet any of the statutory criteria. Accordingly, the Employer's last best offer on Section 42.1 shall be incorporated into the collective bargaining agreement.

Sections 42.2 through 42.5 shall be retained as they currently appear in the collective bargaining agreement, based upon the fact that both parties provided for the status quo.

Insofar as Section 42.6 is concerned, the external comparables clearly favor the position of the Union. The City of Burton provides for a three hour minimum. The Township of Flint provides for a minimum of two hours at time and one-half, which is the equivalent of a three hour minimum. Genesee Township provides for a minimum of two hours, at time and one-half, which again is a three hour minimum. Finally, Grand Blanc Township provides for a minimum of either three or four hours, depending upon the circumstances. The three hour minimum seems to be reasonable under the circumstances. Moreover, it is designed to compensate officers who are being inconvenienced on their off day by being required to report to court, or some other agency as a result of either a subpoena or an order requiring the officer's attendance. It would not appear from the record that there is any testimony to support the position of the Employer. Accordingly, the Union's last best offer with respect to Section 42.6 meets the statutory criteria more nearly than the Employer's last best offer. It is ordered that the Union's last best offer on Section 42.6 shall be incorporated in the new collective bargaining agreement.

Finally, with respect to the Union's proposal regarding a new Section 42.7, the comparables indicate that there is no contractual language in the City of Burton, the Township of Flint, nor Grand Blanc Township. Moreover, the contractual language set forth by the Union with regard to Genesee Township does not indicate that it relates to being on an on-call basis by a prosecutor. In short, none of the external comparables support the position of the Union. Moreover, the contention by the Union that an officer must remain at home in order to be on call, simply need not be the case. In this modern day and age, an officer can either acquire a car telephone, a beeper, or simply be in another location whereby his phone number is made known to the prosecutor or Township attorney who may require his presence at some point during the day. While, it is true, that an officer may not have total freedom in terms of being able to leave the general vicinity, nevertheless, it is equally true that he is not tied to his telephone. In addition, the Township would be at the mercy of the prosecutor or Township attorney in terms of the number of hours to which the officer would be entitled. A forgetful prosecutor or Township attorney could cost the Employer eight hours of payment, simply because he forgot to call the officer and tell him that his services would not be required, when in fact the prosecutor or Township attorney may have known that early in the day. This type of vicarious burden would be grossly unfair to be placed upon the back of the Township. Accordingly, the panel, finds no basis in the statutory criteria for the Union proposal, and it is hereby denied.

11(b) Appendix A. Both the Union and the Employer, in light of their last best offers, have proposed that Appendix A be deleted. it so ordered.

11(c) Safety. The parties agree that Sections 23.1, 23.2 and 23.3 of the current collective bargaining agreement shall be maintained. Since they have so stipulated, it is so ordered. However, with respect to Sections 23.0 and 23.0.a, there is a wide disparity. The current language provides that the parties to the agreement will establish a joint safety committee, all ideas and complaints will be handled by the safety committee, a written safety code shall contain the following safety regulations to take immediate effect upon ratification of the agreement:

(a) On the second and third shifts, when manpower permits, officers will ride in pairs.

The Union wishes to maintain the language of Section 23.0.a. The Employer wishes to eliminate the language of Section 23.0.a. In addition, the Employer would limit the new language of Section 23.0 to the following:

> "The parties to this agreement shall establish a joint safety committee. All ideas and complaints will be handled by the safety committee."

The Union would propose that the following language be incorporated into the collective bargaining agreement:

> "The parties to this agreement shall establish a joint safety committee consisting of two (2) Union representatives and two (2) Employer representatives.
>
> The safety committee shall meet at least twice a year during working hours. Union representatives shall be paid for all time, while meeting with

the committee. The committee shall handle all safety complaints and shall recommend safety ideas to be implemented by the board. The safety code shall contain the following safety regulations."

Based upon the testimony and Exhibits introduced by the respective parties, it is the decision of the panel that the Union's proposal and last best offer with regard to Section 23.0 and 23.0.a, shall be adopted. The Employer, in its proposal, makes no provision for either the compensation of the members who make up the safety committee, nor for periodic meetings. Accordingly, the Union proposal with respect to paragraphs 1 and 2 of Section 23.0 more nearly meets the statutory criteria. In addition, while there is no contractual language in either the City of Burton or Flint Township, there is extensive language contained in the collective bargaining agreements of Genesee and Grand Blanc Townships. Accordingly, it is ordered that the Union's last best offer on Section 23.0 be incorporated in the new collective bargaining agreement.

Section 23.0.a presents an entirely different problem. The Employer has in the past, agreed on the second and third shifts, that when manpower permits, officers will ride in pairs. The Chief has maintained, in the course of his testimony, that this provision allows a measure of discretion whereby, in appropriate situations, he has in the past, utilized one man cars. The Township further has indicated in testimony, that the elimination of that provision will in fact allow a greater utilization of manpower in terms of putting more vehicles on the road. However, Chief O'Dell has also candidly admitted that the likelihood of serious injury is lessened when two

officers are in the same vehicle. He has also indicated that the prime time or high crime times fall within the times of the second and third shifts. The panel has previously awarded the Township the three shifts requested by the Township, based upon the Township's testimony that the three shifts would allow a greater utilization of manpower, even if the two-man car language were to be retained. I have serious misgivings concerning the elimination of language which clearly, in my judgment, provides a greater measure of safety and protection for the officers. Especially, in light of the fact that the Chief admitted that the three shift proposal could stand on its own, even if the two-man car language were to be retained. I would not feel comfortable awarding a provision or the deletion of a provision to the Employer, which in any way jeopardizes the health and safety of the Township officers. In addition, as noted by the Chief, since he does have some degree of discretion, he would not be required to utilize two-man cars in every single situation, merely because it happens to fall on a second or third shift. Accordingly, the statutory criteria is more nearly met by the retention of the status quo, which in effect is the last best offer of the Union on Section 23.0.a. Therefore, Section 23.0.a shall be retained in the new collective bargaining agreement, based upon the Union's last best offer.

12. General Provisions. The proposals with respect to the general provisions Section of the collective bargaining agreement have been deemed to be economic. The Union, in support of its position, introduced Exhibits No. 37 and 38, without any testimony. The Employer introduced Exhibit No. 24. The parties have stipulated

that Sections 44.0 through 44.2 shall be retained as they currently exist in the collective bargaining agreement. Accordingly, the status quo shall be maintained on those Sections. The Union proposes to change Section 44.3.2. In the current contract, that provision provides for a denial of benefits when an employee is on a leave of absence. The Union seeks to change that to read:

"On an unpaid leave of absence."

The Employer maintains that the status quo should be incorporated into a new collective bargaining agreement. The Union argument may be summarized as follows. An employee who continues to receive wages, while on a leave of absence, should not be denied his benefits. An officer is required to lay his life on the line every day, accordingly, when an officer is on a paid leave of absence, he should be assured that he and his family will be provided for. Fairness and equity require that the Union demand in that area be granted. Union Exhibit 38 indicates that there is no specific contract language dealing with this issue in the City of Burton, the Township of Flint, nor the Township of Grand Blanc. In Genesee Township, there is a provision that fringe benefits will not be paid or earned during a personal leave of absence. The Employer introduced the testimony of Chief O'Dell. However, the Chief's testimony basically was confined to Section 44.5. The Employer maintains that there is neither any testimony, nor any documentary evidence in the record to support the Union's request to modify Section 44.3. The Employer is correct in its assertion. I find that the Union proposal is without basis and accordingly, does not meet the statutory criteria. Accordingly, the Employer's last best

offer with regard to Section 44.3 shall be incorporated in the new collective bargaining agreement.

The parties have stipulated that Section 44.4 shall be retained in its current form and it is so ordered.

With respect to the Union's proposal on Section 44.5, the current contract language provides that the Employer pays tuition, expenses and provides proper transportation for schools to which employees are assigned. It further provides that employees will receive mileage, according to current Township travel allowance, if the classes are held outside of Genesee County, and if transportation is not otherwise available. The Union seeks to change the current contract language to provide that the Chief of Police shall allow employees to attend schools and training through the M.L.E.O.T.C. without loss of pay upon a request from the employee. It further provides that where manpower allows, the employee shall be allowed time off on a school and seniority basis. Thus, there would be no discretion left in management, based upon the Union's proposal. The Chief would have to allow employees to attend the schooling, based not upon the Chief's determination that schooling is desirable, but rather based upon a request from the employee. Likewise, whenever manpower allowed, an employee would automatically be allowed to take time off on a school and seniority basis. The initial determination as to whether or not an employee requires additional schooling, should always be a management prerogative, not that of the employee. Moreover, when and where an employee shall attend school, or when and where an employee shall be allowed time off to attend school, has to lie within the good

discretion of management. Based upon the Union's proposal, a senior employee could literally attend school on a year-round basis, provided they offered different courses. This is not feasible, nor reasonable. None of the comparables offered by the Union indicate any language which remotely approaches that proposed by the Union. The Chief of the Department indicated that he always has and always will encourage schooling. However, he indicated, that the proposal offered by the Union was simply unworkable, based upon manpower needs. In addition, the Chief indicated that the proposal would place an intolerable economic burden upon the Township.

The Union proposal for Section 44.5 simply is unsupported by any competent or material evidence, and accordingly fails to meet the statutory criteria. Accordingly, it is ordered that the status quo in the current collective bargaining agreement be incorporated in the new collective bargaining agreement, insofar as Section 44.5 is concerned.

The parties have stipulated that the status quo shall be maintained on Section 44.6 and it is so ordered.

13. Wages. Wages has been determined to be an economic issue. The Union introduced Exhibits 39 through 45 in support of its proposals. The Employer introduced Exhibit No. 24 in support of its proposal. The Union's last best offer seeks wage increases of 7% across the board, effective January 1, 1988 and 7% across the board, effective January 1, 1989. In addition, it requests a rate of $9.66 per hour for part-time officers, effective January 1, 1988 and $10.33 per hour, effective January 1, 1989. Finally, it requests that all wage increases shall be retroactive. The Union's

demand would provide for an annual wage for a third year patrolman of $25,689.10 on January 1, 1988 and $27,487.33 on January 1, 1989.

The Employer has offered an effective rate for a third year patrolman of $24,968.85 on January 1, 1988 and $25,842.76 on January 1, 1989. In addition, the Employer has offered a rate of $9.03 per hour for part-time officers for the entire two year period of the agreement. Finally, the Employer offers retroactive benefits, but only as to those employees who are on the active payroll, as of the date of the Act 312 arbitration panel's award. Thus, any employee who has left the service of the Employer, prior to the date of the 312 award, would not be eligible for any retroactive benefits.

Currently, part-time police officers are compensated at the rate of $9.03 per hour. The salary of a three year patrolman for the calendar year 1987 was in the sum of $24,008.51. There are additional salaries provided for those patrolmen in a starting category, a one year and a two year category. In short, the Employer has offered a 4% increase, effective January 1, 1988 and a 3@% increase, effective January 1, 1989.

The Union Exhibit 40 indicates that for 1987, only Genesee Township paid less than Mt. Morris. The salary in Burton was $28,509.00 per year, in Flint Township, $27,643.00 per year and in Grand Blanc Township, $27,316.00 per year. In 1988, the only information available indicated that the salary in Genesee Township would have been $24,011.00 per year, in Grand Blanc Township, $29,634.00 per year. In 1989, the salary in Genesee Township was scheduled to be $24,972.00 per year, and in Grand Blanc Township, $32,362.00 per year. No salary schedules were available for either

Burton or Flint Township in 1988 or 1989. In Genesee Township, the police officers either received or are scheduled to receive increases of 4% in salary on July 1, 1988 and July 1, 1989. In Grand Blanc Township, the officers received increases in salary on July 1, 1988 of 8.5% and are scheduled to receive a 9.2% increase on July 1, 1989. In addition, while Mt. Morris Township does not receive a cost of living allowance, neither does the City of Burton. However, Flint Township does have a cost of living index, with a 10% ceiling per year, and Genesee Township receives cost of living if it increases by more than 4%. In addition, Grand Blanc Township provides that if the cost of living index increases by a percentage greater than the percentage by which salaries have been increased, then the difference between the two figures will be included in the annual improvement factor for that year.

It should be noted that both parties have filed their wages, based upon a two year period, and accordingly, the length of the contract, based upon the last best offers shall be for two years. The difference in the positions of the Union and the Employer amount to $720.25 in the first year, and $924.33 in the second year in actual dollars. However, based upon the Union proposals, the second year differential between the offer of the Employer and the offer of the Union would be more than $1,644.00. The Union maintains that Mt. Morris currently ranks fifth among the comparable communities, based upon Exhibit 40. However, that Exhibit included the City of Flushing, which has been rejected as a comparable community. Accordingly, Mt. Morris ranks fourth among the five communities. The Union also maintains that Mt. Morris in

1987, was $2,297.00 below the average pay for patrolmen among the comparable communities, and will be $2,906.00 below the average in 1988 and $4,406.00 below the average in 1989. However, the numbers utilized by the Union for 1988 and 1989 assumed no increase in the salary of a Mt. Morris Township police officer. Accordingly, whether the Employer's last best offer or the Union's last best offer is utilized, the differential will be substantially reduced. The Union urges that the most important factor in terms of weight, should be the comparable increases and wages in the comparable communities. The Union has cited opinions of arbitrators, Sugerman and St. Antoine in support of that proposition. However, certainly with all due respect to those arbitrators, one must not only give weight to the external comparables, but also certainly must take notice of and give weight to the internal comparables as well. In addition, to only give weight to the external comparables when there is other competent, material and substantial evidence in the record, would do violence to the statutory criteria hereinabove set forth. Indeed, having rejected the City of Flushing as a comparable community, based upon the figures set forth in the Union's brief, it would appear that the Township wage proposal for 1988 would establish a wage of $957.00 more than Genesee Township, but some $4,666.00 less than Grand Blanc Township. As far as 1989 is concerned, the Township wage proposal would be $870.00 more than the wages being paid in Genesee Township and $6,520.00 less than Grand Blanc Township. In addition, however, in support of the wage demands of the Union, its brief points out that the City of Burton's salary, which could not be calculated for 1988 or 1989, was already

some $2,667.00 more in 1987 than Township's offer for 1989. With respect to Flint Township, its 1987 salary likewise is greater by some $1,800.00 than the Mt. Morris wage proposal for 1989. Accordingly, the Union argues that the Township's proposal is "ridiculously below the average." The Union states that its demands more nearly maintain the officers' relative status among the comparable communities, and that it believes its position to be realistic, as well as being more appropriate than that of the Township. The Union also indicates the Township has the financial ability to pay the demand and the demand is consistent with the standard of comparability.

The Township notes that its offer compounded is the equivalent of a 7.64% increase. It observes that the Union's offer compounded represents a 14.49% increase. In addition, the Employer notes that the wages may not be viewed in isolation from other economic benefits provided by the Employer, including the increases and improvements attributable to the change in the pension benefits, the continued absorption of tremendous increases in the cost of health care and other fringe benefits, and the continuation of the favorable longevity bonus. The Employer notes that its 4% wage increase offered, effective January 1, 1988 is identical to that enjoyed by the comparable community of Genesee Township. It further observes that its offer of 3.5%, effective January 1, 1989 would result in Mt. Morris Township police officers being paid $871.00 more in base compensation than Genesee Township officers. It further notes that in three of the five comparable communities proposed by the Union, employees contribute substantial portions of

their wages toward pension benefits. Actually, the observation by the Employer is incorrect with respect to employee contributions, based upon Union Exhibit 30. That Exhibit indicates that only Flint Township has an employee contribution. The Employer notes that based upon the lack of availability of wage data for 1988 and 1989, it is difficult to determine what wages are appropriate. It notes that the Union's attempt to average wage and percentage increases with only two or three comparables is inappropriate and unjustifiably skews the figures in its favor. There is some truth to this observation by the Employer, however, it should be noted that the Employer wished to confine the comparable communities to one, which would allow for no average whatsoever. The Employer notes that Grand Blanc Township seems to be in a class by itself in terms of its salaries and annual wage increases. Finally, the Employer notes that the Township's other employees, under a collective bargaining agreement, received wage increases of 4% and 3-1/2% respectively, for the years 1988 and 1989. Thus, on an internal comparable basis, the Employer is offering the police officers exactly what the other employees in the Township received.

With respect to the issue of wages for part-time officers, Chief O'Dell testified that Mt. Morris currently ranks number 1 among the surrounding Townships and communities. However, the Union observes that the Chief never specified which communities he was referring to. Thus, the Union observes that the Employer had failed to sustain its position, with respect to maintaining the status quo on part-time salaries. The Union seeks an annual increase of 7% in both years for part-time police officers.

On the other hand, the Employer also notes that there is no record evidence to support any increase for part time officers. It notes that there is no rebuttal for Chief O'Dell's testimony that part-time officers are being utilized by all of the surrounding communities, and that Mt. Morris ranked number 1 in terms of compensation paid. In addition, the Employer notes that according to Chief O'Dell, the part-timers were receiving approximately $2.50 per hour more than any other surrounding police department. Finally, the Employer notes that the Union's last best offer cannot be granted by the panel by disregarding the only record evidence before it.

The testimony in the record indicates that the Mt. Morris officers neither receive a cola benefit nor a gun allowance. The Genesee Township officers receive a cost of living allowance, if the cost of living exceeds 4% annually. On cross-examination, the Union witness indicated that the Employer pays social security for members of the bargaining unit, as well as the other wages and benefits set forth throughout the course of this opinion and which are contained in the collective bargaining agreement. The patrol officers also receive a quarterly check in the sum of $125.00, which constitutes a reimbursement for cleaning uniforms and gas. They do not receive a uniform allowance. However, pursuant to the collective bargaining agreement, the Township does provide uniforms as set forth therein.

With respect to the issue concerning retroactivity, the language supplied by the employers last best offer is deemed to be more nearly within the statutory criteria. It provides for retroactive benefits to those employees who are currently on the

payroll. There is no reason why the Employer should be burdened with respect to retroactive payments to employees who are no longer on the active payroll of the Employer. The Union proposal fails to deal with that issue. Accordingly, it is ordered that the Employer's last best offer with respect to retroactive benefits shall be incorporated in the new collective bargaining agreement.

With respect to part-time officers, the Employer has correctly pointed out that there is absolutely no evidentary support for a wage increase for part-time officers. No comparables have been offered by the Union. In addition, the unrebutted testimony of Chief O'Dell indicates that the part-time officers are currently the highest paid among the surrounding communities and may be earning as much as $2.50 per hour more than other part-time officers. Since there is no competent, material or substantial evidence to support the position of the Union, the panel is constrained to deny the Union request, and accept the Employer's last best offer with respect to part-time employees. Accordingly, it is ordered that the Employer's offer with respect to the rate paid part-time employees in the sum of $9.03 per hour shall be included in the new collective bargaining agreement.

This then leaves the issue of whether the employees who are full-time officers shall receive those percentages for January 1, 1988 and January 1, 1989, as set forth in the Union's last best offer, or in the alternative, in the Employer's last best offer. It should be noted that during the hearing, both parties were made aware of the fact that each year constitutes a separate issue insofar as wages are concerned. Accordingly, each of the offers of

the respective parties have been submitted on that basis. There is no question that the offers of the Union, if granted, could not meet the wage and salary levels established in either the City of Burton or the Township of Grand Blanc. On the other hand, it is equally obvious that if the offers of the Employer were to be awarded, the officers in Mt. Morris would still receive more money than the officers in the neighboring community of Genesee Township. According to Employer Exhibit 6, the cost of living increased by the sum of 4.1% between January 1, 1987 and December 31, 1988. In addition, in the nine months between January and September of 1988, the cost of living index increased by an additional 3.5%. Accordingly, it would appear that the Employer's offer would maintain the current buying power of the officers, but would add no real dollars in their pocket. In short, the offers of the Employer would merely offset the increases in the cost of living. No Exhibits were introduced which constitute a comparison of the overall wage and benefits paid to Mt. Morris Township officers versus the overall wage and benefits paid to officers in other communities. It is clear that based upon other issues, which have either been awarded or stipulated to, the Employer will incur substantial additional increases in expenditures. However, it is also clear that the employees should be able to look forward to increasing their standard of living, as long as they perform in a capable manner. The Employer's offer would not meet that criteria. However, that is not to say that the last best offer of the Union necessarily meets that criteria, without becoming excessive.

Frankly, the opinion "relied upon in the Union brief from arbitrator St. Antoine, which apparently was concurred in by arbitrator Sugerman, does not represent my view of the 312 process. I do not understand how, in an ideal arbitration award setting a new contract, the terms should not reflect the arbitrator's views or values primarily, but rather should approximate as closely as possible, the agreement that the parties themselves would have reached had their negotiations borne fruit. I concur that no award should necessarily reflect the arbitrator's views or values, but it is obviously unrealistic to attempt to approximate an agreement that the parties would have reached, had their negotiations borne fruit, when in fact, their negotiations did not bare fruit, otherwise there would be no necessity for a 312 proceeding. In addition, the best measure of the hypothetical settlement may be the actual contracts concluded in comparable communities, but it may not be, since the statute also requires an arbitrator to pay heed to the settlements internally within the community itself. In addition, merely giving obedience to the comparable communities' contracts would in effect, violate the arbitrator's duty to apply all of the statutory criteria when able. For example, in the instant case, one would have to ignore the cost of living index, the interests and welfare of the public and the financial ability of the unit of government to meet the costs of a wage increase, the wages received in private employment in the case of a public employer, if in fact comparables are introduced, the overall compensation received by the employees, including not only wages, but other fringe benefits, as well, and the other statutory criteria. In addition, if one is to merely pay

attention to the contracts in comparable communities, which contracts does one merely pay attention to. I am certain that the Union would urge that I should only pay attention to those contracts in the City of Burton, Flint Township and Grand Blanc Township, because they obviously contain salaries above those being paid the Mt. Morris employees. On the other hand, the Employer would urge that I should only pay attention to the Genesee Township rates, which are clearly less than those currently being paid their neighboring Mt. Morris officers.

I also do not concur that percentages are necessarily the best method of establishing new wages. This is due to the fact that if a community is substantially below those of its neighbors, it may grant a much higher wage increase percentage-wise in order to be able to bring their employees to a relatively equal base to that of the neighboring community. However, in the instant case, since both the Union and the Employer have set forth their last best offers on the basis of percentage increases, it is the duty of the panel to award the wage increases, based upon a percentage, rather than a flat dollar amount. Having taken all of the evidence into consideration, and having looked not only at the comparable communities, but the overall wages and fringe benefits received by the officers within Mt. Morris, as well as those wages which have been paid to other Township employees, I find that the Township's offer of 4% for January 1, 1988 more nearly meets the statutory criteria than the last best offer of the Union. Accordingly, it is ordered that the last best offer for January 1, 1988 of the Employer be incorporated in the new collective bargaining agreement by

raising the salaries of all of the officers across the board in the relevant categories in the sum of 4%.

However, I find that the Employer's offer of 3.5%, effective January 1, 1989 is grossly inadequate. If the 3.5% were to be combined with the prior 4%, the employees would not even achieve a status quo basis under the cost of living increases established in Employer Exhibit 6. Moreover, the employees have a reasonable right to expect that they will be able to either maintain or increase their standard of living, as they attain their seniority on the force. The 7% figure offered by the Union in the context of the other fringe benefits, and in the context of the Employer's last best offer of 4% on January 1, 1988 is not unreasonable with respect to January 1, 1989. Accordingly, it is hereby ordered that effective January 1, 1989, the 1988 salaries for police officers shall be increased by the sum of 7% across the board in the new collective bargaining agreement.

14. Discipline and Discharge. Discipline and discharge has been determined to be a non-economic issue. The parties have stipulated that there is no change in Section 11.0 of the current collective bargaining agreement. Accordingly, it is ordered that Section 11.0 be incorporated in the new collective bargaining agreement. The same is true with respect to Section 11.1 and accordingly, that Section also will be incorporated into the new collective bargaining agreement, based upon the stipulation and last best offers of the respective parties.

The difference between the parties with respect to Section 11.2 is that the Union wishes to initiate a discipline discharge or suspension grievance at the level of the Township supervisor, while

the Employer wishes to have the grievance when it is reduced to writing initiated at the level of the employees' immediate supervisor. The current collective bargaining agreement provides for initiating the grievance at the level of the immediate supervisor. No evidence has been offered in support of the Union position, nor any indication as to why it would be preferable to start a grievance at the Township supervisor level, rather than at the supervisory level within the department. It seems to me to make sense to establish the procedure within the department initially with the individual's who are most familiar with the incident. Accordingly, based upon the statutory criteria and the lack of evidence of any nature supplied by the Union, it is hereby ordered that the last best offer of the Employer with respect to Section 11.2 be incorporated in the new collective bargaining agreement.

Section 11.3 of the current collective bargaining agreement prohibits the Employer from taking into account any unrelated infractions which occurred more than 12 months previous to the incident which is currently the subject matter of a disciplinary action. The Employer seeks to increase the period to 24 months. The Union wishes to maintain the status quo, but in addition offers to include the following language:

> "In no event, however, will the Employer take into account any infraction, related or unrelated to the current charge which occurred more than 24 months previously.

Thus, the Union seeks to tighten the noose even further by not only maintaining the status quo with regard to not being able to introduce unrelated infractions, which occurred more than 12 months

previously, but also would add that no related infraction could be utilized by the Employer, which occurred more than 24 months previously. The Employer notes that the comparable community of Genesee Township has a 21 month limitation for similar infractions. It further notes that the Union often refers to the length of an employee's seniority, but without referring more than 12 months back in time to an employee's disciplinary record, one is not able to balance an employee who has a good record and a long term of seniority, with an employee who has a lengthy term of seniority, but a poor record, which happens to have occurred more than 12 months in the past. The Employer further notes that in the City of Burton contract, there is no restriction upon the past disciplinary record of an employee to be utilized by the City, the Flint Township contract provides for four years with the exception of disciplinary matters of five days or less, which are deleted after two years. Finally, the Employer wishes to impress upon the panel the fact that it would need to be able to defend itself against litigation or administrative action in forums other than arbitration, and accordingly, would need the employees' disciplinary records. The Employer's statement with respect to the utilization of the employees' disciplinary records and other forums is admittedly somewhat puzzling. The mere fact that a labor agreement restricts the use of a disciplinary record in grievance and/or arbitration does not mean that this record is necessarily barred in another forum. Accordingly, insofar as that particular contention is concerned, I find little or no merit in the Employer's position.

However, I find little or no merit also with respect to the additional language proposed by the Union. It would place an absolute restriction of no more than two years on any type of offense, whether related or unrelated. Unfortunately, neither side chose to introduce any evidence whatsoever to indicate that the current language has resulted in an inequitable situation. This seems to be a case of "if it ain't broke don't fix it." Accordingly, I find that neither the Union's last best offer, nor the Employer's last best offer should be adopted by the panel. It would appear to be in the best interests of the parties that the status quo be maintained. Accordingly, it is hereby ordered that the current language appearing in Section 11.3 of the collective bargaining agreement be continued in the new collective bargaining agreement.

15. Promotions. The issue of promotions has been determined to be a non-economic issue. It is an Employer issue. The Union is requesting status quo with respect to the issue of promotions. The Employer seeks to modify Section 28.0(e) and Section 28.9 of the current collective bargaining agreement. Accordingly, it is hereby ordered that all other sections of the promotional language of the current collective bargaining agreement be incorporated in the new collective bargaining agreement.

Currently Section 28.0(e) provides that vacancies must be filled within 60 days of the final testing. This refers to when promotions are to take place. The Employer believes that there may be a time when it will not be possible for economic reasons, to fill

a vacancy within 60 days. Accordingly, the Employer has proposed that the language of Section 28.0(e) read as follows:

> "When the Employer determines that a vacancy is to be filled, it will normally fill the vacancy within 60 days after making the determination to fill the vacancy."

The Union, although it requests status quo, set forth no arguments against the Employer's position in its brief, nor did it offer any testimony or exhibits in support of its position to maintain the status quo.

Based upon the statutory criteria, it would not seem to be unreasonable that an Employer will fill a vacancy within 60 days after it makes the determination as to whether or not to fill a vacancy in the first place. There is a great deal of arbitral authority that even where the language does not read as proposed by the Employer, nevertheless, the Employer is not required to fill a vacancy until such time as it determines that the vacancy needs to be filled. Accordingly, it is hereby ordered that the Employer's last best offer with respect to Section 28.0(e) more nearly meets the statutory criteria and shall be incorporated within the new collective bargaining agreement.

Section 28.9 of the current collective bargaining agreement provides that employees who have completed written and oral examinations shall be ranked in ascending order, with the highest scorer listed at the top of the list. It further provides that scores shall be weighted, based upon 60% for the written exam, 30% for the oral exam, 5% for administration evaluation and 5% for seniority with an employee being given 1/12th of 1% for each month

of completed service. The Employer seeks to change the weighting formula to 30% for a written exam, 30% for the oral exam, 30% for administrative evaluation and 10% for seniority. Chief O'Dell in support of the Employer's position testified that the administrative evaluation is based upon the employees' past work record, his productivity, his loyalty and his attendance. The administrative evaluation is performed by Chief O'Dell and his assistant, Lt. Robson. The oral exam is conducted by administrators from other Townships. It is the position of Chief O'Dell that greater emphasis should be placed upon the factors which are contained within the administrative evaluation, since those factors are equally as important as the ability of an officer to pass a written examination. In addition, Chief O'Dell indicated that the formula being proposed by Mt. Morris Township was the same as that which is currently utilized in Genesee Township. On cross-examination, Chief O'Dell admitted that the persons who conduct the oral examination portion, are qualified to perform an adequate evaluation of the officer. He further admitted that the administrative evaluation could determine whether or not an officer did extremely well or extremely poorly on an examination, if it were to be given equal weight to that of the written examination and oral examination. Thus, the administrative evaluation could deny an officer a promotion that he otherwise might receive on the basis of his written and oral examinations.

The Union points out that the written examination is neutral, in preference to applicants for promotions. The Union further notes that Section 28.2 of the collective bargaining

agreement requires a passing score of 70% on the written examination. It would, in the Union's opinion, reduce the value of the written examination by placing equal emphasis on the administrative evaluation, thus turning an objective procedure into a subjective procedure, or as the Union phrased it, "a popularity contest." What the Union really has reference to is the fact that the administrative evaluation could in fact not only effect who receives a promotion, but also could allow the personal prejudices of either the Chief of the department or any other administrative officers who conduct the evaluation determine the future progress of a particular officer or officers. The Union also points out that the Township failed to offer any evidence which would indicate that individuals had been promoted who should not otherwise have been promoted. In addition, the Union has indicated that three of the comparable communities do not allow points for administrative evaluation. The City of Burton gives a 70% weight to the written examinations. Flint Township utilizes the provisions of Act 78, which are the police and fire civil service provisions. Grand Blanc Township gives 40% weight to written examinations for promotions.

There undoubtedly is merit to the respective positions of both parties. On the one hand, a written examination, assuming that it is not otherwise biased, based upon sex, race or national origin, usually results in the most objective determination of an employee's ability, and accordingly, acts as the most objective determining factor with respect to an employee's promotion. However, it is equally true that a written examination will not indicate an employee's attitude, attendance record, disciplinary record and

other factors, which may be of equal importance. It is also true that giving greater weight to an administrative evaluation may necessarily result in charges of favoritism by employees who receive a low evaluation. It can indeed also result in actual favoritism by those administrative officials who cannot maintain a solely objective point of view. Since this is a non economic issue, it is not necessary to adopt the position of either party. Accordingly, in order to weigh the respective positions of both parties, and arrive at a fair and equitable conclusion, I find that the following formula should be utilized. 50% for the written examination, 20% for the oral examination, 20% for the administrative evaluation and 10% for seniority. In addition, the language, as contained in Section 28.9 shall be continued in the new collective bargaining agreement with respect to the first paragraph and shall reflect the change in the seniority status, and therefore shall provide "Employees shall be credited with 1/12th% for each month of completed service, not to exceed 10%."

CHAIRMAN OF THE COMPULSORY
ARBITRATION PANEL

Allen J. Kovinsky 5-12-89
ALLEN J. KOVINSKY

Richard G. O'Dell
RICHARD O'DELL, Employer Designee

Raymond Wallace
RAYMOND WALLACE, Union Designee

The Employer Designee dissents on the following issues:

5.5-32.4-33.0-33.8-37.0 Par 6-37.0 Par 7

42.6-23.0-23.0 A-Wage 1989

The Union Designee dissents on the following issues:

5.1, 5.2, 5.4, 11, 12, 30.0, 30.7, 30.8, 31.1, 33.0 d, 33.4, 33.5, 34.0, 34.2, 34.5, 34.4

35.3, 37.0 para 8, 42.0, 42.1, 42.7, 44.3.2, 44.5, Wages PT, Wages 1988, 11.2, 11.3

28.0 E

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