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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

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MUSKEGON TOWNSHIP

-and-

AFSCME Council 25

MERC Arbitration Act 312

Case Number G82-B29

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APPEARANCES:

Michael R. Kluck, Esq. Attorney for the Township

Gary Patterson Union Staff Representative

OPINION AND AWARD:

The undersigned arbitrator, Robert A. McCormick, was appointed Chairman of the Arbitration Panel by letter dated August 31, 1983 from the Employment Relations Commission pursuant to its authority under Public Act 312 of 1969, as amended. The parties held a pre-hearing conference on November 14, 1983 at the offices of the Union in Lansing, Michigan. All unresolved issues were identified by the respective parties. The results of this pre-hearing conference were made part of a letter dated November 14, 1983 addressed to the parties. The summary which included the schedule of outstanding issues was accepted by the parties. A hearing was conducted on this matter in Muskegon, Michigan on February 22, and 23, 1984. Of the 25 issues listed on the

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original petition, six were settled or withdrawn and 19 remained outstanding as of the time of the hearing.

At the commencement of the hearing, certain objections were made: The Employer objected to the Union's tardiness in submitting the list of comparable communities it intended to use. The Township also objected to the Union's delay in exchanging exhibits. Because no prejudice was shown, those objections were denied. The Employer further objected to the Union's presentation of the agreement between the Employer and the Union representing the police in Muskegon Township. That objection was also denied, the panel having found that evidence regarding the contractual relationship between the Township and the police was relevant to this proceeding.

The Employer submitted 46 exhibits and the Union submitted 12 exhibits. These exhibits are appended to this Opinion and Award.

At the pre-hearing conference in this matter the parties stipulated to the following matters:

1. The matter is properly before the Arbitration panel.
2. The statutory time limitations are waived.
3. The contract is of a duration of three years.

4. The parties also agreed on a schedule for the exchange of certain materials and as to a method of proceeding with the hearing. These stipulations were made part of the pre-hearing summary prepared by the chairman.

Section 9 of Act 312 sets forth factors to be used by the panel in findings, opinions, and orders.

The factor of "The lawful authority of the Employer" is satisfied by the stipulation of the parties.

The second factor, "stipulation of the parties" will be recognized, where applicable, especially in reference to issues resolved by stipulation during the hearing.

The factor of "the interests and welfare of the public and the financial ability of the unit of government to meet those costs" will be considered in connection with individual issues.

The factor of "comparison of wages, hours, and conditions of employment, etal., is frequently referred to as comparability.

It was established that Muskegon Township is a community with a population of approximately 14,577 with an S.E.V. of $100,984,430. There are six persons serving in the bargaining unit.

The delegates to the panel were Mr. Dale Latta on behalf of the Union and Mrs. Diane Patton on behalf of the Township.

During the course of the hearing several objections were lodged by the Employer. Three of these have already been addressed above in this opinion. On June 20, 1984 by letter to

the undersigned chairman from Mr. Kluck, the Employer objected to the Union's tardy submission of brief and to the Union's submission, by Appendix to its brief, of a Decision and Order of the Michigan Employment Relations Commission concerning a unit clarification and unfair labor practice charge held under the auspices of the Commission. The Employer's objection to chairman's consideration of the Union's brief in general is overruled because no prejudice has been shown. However, with respect to the Union's appending of the Michigan Employment Relations Commission Opinion, the chairman has concluded that the Opinion is neither relevant nor material to this proceeding and has disregarded the Opinion in its entirety.

The parties submitted evidence regarding the communities which they urged the panel to consider as comparable. For those communities, the parties provided the population, unit size, state equalized valuation for each of the communities. As regards communities comparable to that of the Township, the panel has concluded that Emmett Township is comparable to Muskegon Township based upon comparisons of population, unit size, and S.E.V. Leoni Township is similarly comparable particularly when population and S.E.V. are compared with that of the Employer here. The panel accepts the offer by both parties of Grand Haven as a comparable community. The City of Cadillac, offered by the Township as comparable, is smaller than this Employer in terms of

population, S.E.V., and unit size. While this fact may diminish its value, the differences between the City of Cadillac and Muskegon Township are not deemed to be of sufficient degree so as to wholly exclude the City of Cadillac from consideration by the panel. The City of Big Rapids is comparable to Muskegon township on the bases, particularly, of population as well as on unit size. The Union offered the City of Holland as a community comparable to that of the Employer here. During the course of the hearing however little evidence was proffered regarding the experience in Holland. Accordingly, the panel has given virtually no weight to the City of Holland. The Union also offered the City of Muskegon as comparable to that of Muskegon Township. While the City of Muskegon is, of course, geographically proximate to this Employer, the greatly larger population, S.E.V., and unit size make it a community whose employment experience is not one the panel considered comparable to that of Muskegon Township. Finally, Muskegon Heights was deemed to be comparable to Muskegon Township particularly on the basis of population but also on the basis of geographical proximity and unit size. The City of Norton Shores, also contiguous with the Township of Muskegon, is also comparable based primarily upon population and geographical location.

Act 312 also lists as criteria upon which the panel must base its award, "The interests and the welfare of the public and

the financial ability of the unit of government to meet those costs". This issue, commonly referred to as "ability to pay" is addressed as it applies to various of the economic issues before the panel, especially wages and overtime.

Section 9 of the Statute requires the panel to consider the "cost of living" in its deliberations. The panel has examined, in particular, documentary evidence in the form of Consumer Price Indexes for 1981, 1982, 1983, and 1984. The panel's findings accompany discussion of economic issues, especially wages. Finally, the parties disagreed as to whether the terms of this Award should be applied retroactively. The Union argued that where appropriate, the Award should apply to the employees in this matter retroactive to the date of the expiration of the prior collective bargaining contract. The Employer proposes that wages should apply retroactively but that all other terms of the contract should be prospective only. Retroactivity is discussed separately in the issues of this case. Except where the Award makes its terms retroactive, the terms will apply prospectively.

I. Gender

The parties agree that this issue, proposed by the Employer, is noneconomic in nature.

The Employer proposes the following language: "reference to the male gender shall apply equally to the female gender and vice versa". The Union proposes that wherever appropriate, double pronouns such as his/her or he/she should be used.

The Employer argues that it wishes to refer to males and females equally but wants to do so in an efficient manner. Moreover, the Employer states that for Federal Revenue Sharing the Employer must acknowledge that it is an equaly opportunity employer. The Employer supports its proposal by looking at the contract in Emmett Township and Grand Haven, comparable communities with similar language to that proposed by the Employer.

The Union sets forth its willingness to make whatever amendments are necessary to make the contract gender neutral.

The parties are in complete agreement in principle that the contract apply equally to males and females. The only issue, then, is as to how to most efficiently and forthrightly carry out that mutual goal. In the panel's judgement, the Employer's proposal accomplishes in one short sentence the parties' intent. The proposed language has been adopted in comparable communities and is appropriate here.

The panel adopts the Employer's proposed language regarding gender.

II. EMPLOYMENT APPLICATION

The parties agree that this issue is noneconomic in character. The Employer proposes that the contract include the following language:

> **Section I:** The Employment Application is an important phase of the hiring procedure and becomes a part of the employees permanent record.
>
> **Section II:** The Employer reserves the right of dismissal upon finding omission for intentional falsification of fact on the Employment Application.

The Union, on the other hand, urges "that the Employer's proposed language not be included in the agreement".

The Employer notes that the Employment Application calls for detailed information on the applicant all of which is relevant to the employment relationship. The evidence also reveals that the current application form contains a warning that the presentation of fraudulent information or misstatement of fact could result in discharge or removal from consideration for appointment.

The Employer's witness persuasively testified that the information requested was important to the Employer not only to assure the appointment of qualified personnel but to also comply with requirements of State and Federal agencies and, in some cases, to minimize exposure to liability.

The Union, in contrast, argues that the proposed language is overly broad and appears to permit the Employer to discharge

employees for any omission regardless of the nature of the misstatement and the time elapsed since the application was completed. The Union argues that the issue of employment application should be treated by Employer--promulgated rules. The rules and their alleged individual violations could then be reviewed under the contractual standard of resonableness.

The parties each set forth grievance arbitration opinions, predictably showing that, depending on the circumstances, employment application falsification can work a serious hardship to the Employer, and that discharge for application falsification can be abusive and improper. More persuasive, in this context, is the fact that in only one of the Employers' proposed comparable communities Emmett Township, is similar language called for and even that community's contract does not call for dismissal.

The current employment application, to which the Union does not apparently object, contains a sufficiently explicit warning to candidates for employment that the information provided must be complete and accurate. Willful violations of this reasonable rule fall within the authority of the Employer to discipline. Further amendment of the contract is unnecessary.

The panel has concluded that the Union proposal--that the current language of the contract not be amended--is adopted.

III. CHANGES IN PERSONAL STATUS

The third issue, Changes in Personal Status, is a noneconomic proposal offered by the Employer. The Employer proposes to amend the contract by including the following language:

> "Employee shall notify the Personnel Department of any change of address and telephone number within three (3) days after such change has been made. Changes in name, marital status or number of dependants will be promptly given and within five (5) working days after such change has been made".

The Union offers "that the Employer's proposed language not be included in the agreement".

The witness for the Township testified that it is important for the Employer to have current information regarding employees--particularly for purposes of facilitating communication with employees. Mr. Wood testified that short notice of absence due to illness, weather conditions, and the like, make it important for the Employer to be able to reach employees quickly. This is particularly important where, as here, there are relatively few employees in the unit. Moreover, the personnel status information must be accurately supplied to insurance carriers and the failure to do so may, in certain circumstances, result in an unnecessary expense to the Township.

The Employer has experienced one problem in this area. The Assistant Chief had an unlisted telephone number creating a substantial difficulty in reaching him. The Employer further points out that the Union, over the Employer's objection, offered

the agreement between the Township and the Fraternal Order of Police. This agreement has similar language with time requirements of five and seven days.

The Union, on the other hand, argues that the Employer's proposal is unnecessarily narrow and requires notification within an unreasonablly short period. Moreover, the Union points out, the penalty for violation of the rule is uncertain.

The Union argues that the only difficulty that the Employer has experienced was that of the Assistant Chief and that that problem was ultimately resolved. Thus, in the Union's view, the language is unnecessary.

Finally, the Union appears to argue that the Employer may unilaterally promulgate a reasonable rule regarding changes in pesonnel status and that such changes as well as discipline imposed due to the rules violation could be made subject to the grievance procedure.

As the Township noted in its excellent brief to the Chairman, there is little guidance on this issue in the comparable communities. Emmett Township does have a provision requiring employees to notify the Employer of changes in name, address, telephone number, marital status or number of dependants within five days after such change. No other comparable community has a notification requirement.

While the practice of requiring timely notice of change in personal status does not appear widespread, the panel is persuaded that as regards certain aspects of personal status, it is important and sometimes critical that the Employer have up-to-date information on employees. Moreover, while the Employer has experienced difficulty reaching an employee on only one occasion, for obvious reasons, it is imperative that the Employer be able to maintain communication with fire fighting employees. Accordingly, a requirement of swift reporting of change in telephone number and address is appropriate. In all other respects, the need for current information is less critical. The Award on this issue is fashioned to reflect these conclusions.

The panel Awards as follows:

> "Employees shall notify the Personnel Department of any change in address or telephone number within five (5) working days after such change has been made. Changes in name, marital status, or number of dependants will be promptly given and within thirty (30) days after such change has been made."

IV. DUES CHECKOFF

The parties stipulated that the issue of dues checkoff is an economic issue requiring the panel to adopt the last best offer of either the Employer or the Union.

As regards the form itself, the Employer witness, Mr. Wood, indicated the Township's concern that the form used for dues

checkoff conform with the law since the Employer is deducting monies from earned wages. Mr. Wood also testified that uniformity in the form would facilitate the Employer's task in deducting dues. The Employer seeks a limitation on the period of time within which the Union may challenge the amount of the remittance in order to avoid having to rectify problems continuing over a lengthy period of time. Finally, the Employer seeks indemnification from the Union so as to place potential liability on the party for whom the service is rendered. The Union, for its part, argues that the form currently used and attached hereto conforms to state law. The Union further argues that the second part of the Employer's proposal is satisfied in that "If the form is not properly completed, then the employee has failed to execute the authorization form . . . ".

As regards indemnification, the Union argues that notwithstanding the fact that no evidence was proffered showing that the Employer proposal was justified, the Union, nevertheless, has agreed to limit the Township's exposure to liability.

In Section IV of its proposal, the Employer seeks to limit, to thirty days, the time period within which the Union may challenge the Employer's deduction. The Union argues that the Employer has not shown evidence that any remittance was incorrect. More importantly, the Union points out that testimony reflected that a thirty-day limitation on correcting mistakes in

dues checkoff would be unworkable. As regards Section VI of the Employer's proposal, the Union agrees to append the checkoff form to the contract.

Finally, the Employer seeks to limit the number of dues increases or decreases during any fiscal year. The Employer, again, is concerned primarily with notification of the change and the administrative burden that frequent changes would place upon the Township. At the same time , the Union argues that no evidence has been presented indicating that, in fact, the Employer has not received notification or that the number of changes in dues amounts has been excessive.

The Employer presented strong evidence that changes in the present language were necessary in the area of dues checkoff. Most importantly, in the panel's judgement, is the requirement that the Employer be saved harmless from legal liability arising from the performance of this service for the Union. The Union's proposal, in Section V, appears to provide for indemnification beyond the remittance of dues and fees thereby satisfying the Employer's need.

The deficiency in the Employer proposal is twofold: First, the Employer seeks a time limitation on the Union's right to change the dues remitted despite the fact that no evidence was offered showing such a need. Of the comparable communities suggested by the Union and the Employer only one, Leoni Township, contains such a provision. Moreover, the Union agrees, in

Section IV of its proposal, to notify the Employer within thirty (30) days of a change in the dues to be deducted. This conforms to the requirements of the contracts in the vast majority of the comparable communities.

Finally, the Employer's proposal to limit the number of dues changes is an intrusion into the internal affairs of the Union without evidence that excessive changes have worked a hardship upon the Employer.

In short, the Union proposal meets the needs of the Employer in that it: 1) implicitly requires a correct form; 2) limits the Township's exposure to liability; 3) agrees to make the checkoff form a part of the agreement; 4) requires the Union to notify the Employer of dues changes within thirty (30) days of such change.

For the foregoing reasons the Union's proposal on dues checkoff is adopted by the panel.

V. MANAGEMENT RIGHTS

The parties could not agree as to whether the issue of management rights was economic or noneconomic in character. The Employer argues that management rights are economic while the Union contends they are essentially noneconomic.

The Employer appears to argue that the decisions the Township seeks to reserve include those with direct economic consequences. The Union, on the other hand, argues that the

economic consequences of management rights are peripheral. The Employer has certain reserved rights to manage its operation subject only to the requirements of the law or the contract. In the Union's view, the extent of the management rights clause determines only the subjects about which the Employer may make unilateral decisions without negotiations.

Act 312, in Section 8, dictates that the panel "shall identify the economic issues in dispute". Neither the statute or case law assist in identifying what factors distinguish economic from noneconomic issues. Of course, an argument may be made that all decisions have economic consequences. The panel has concluded, however, as the parties appear to argue, that the character of the issue depends upon how direct and substantial the economic consequences are.

The Township looks to decisions contained in its proposal, such as the ability to introduce new equipment, determine the number, location, and type of facility, determine the size of the work force, as having obvious economic consequences. This, however, is too facile an analysis. The decisions set forth in the Employer's proposal are, as the Union points out, inherently within management's prerogratives or, otherwise, mandatory subjects of bargaining. Enumerating them in a detailed Management Rights Clause, then, removes those subjects that would otherwise be a part of the negotiation process putting them within the sole discretion of management. The witness for the

Township testified that the Employer's purpose was to eliminate "situations where we're being challenged whether or not we have the authority or the right to make some of the decisions we make from day to day".

The placing within management's discretion of certain otherwise mandatory subjects of bargaining would have ultimate economic consequences. But those consequences are too attenuated to characterize them as economic at this point. Now, enumerating certain management rights simply removes them from the bargaining process. Therefore, the panel has concluded that management rights is a noneconomic issue.

Muskegon Township's contract does not now have a management right clause. The parties in this matter agree that some management rights clause should be included in the contract. They differ widely as to that clause's content. The panel has determined the following management rights clause to be most appropriate in light of the needs and concerns of the Township and the Union as well as the dictates of the statute:

MANAGEMENT RIGHTS

Section I.

The Township on its own behalf and on behalf of its electors, hereby retains and reserves unto itself all powers, rights, authority, duties and responsiblities

conferred upon and vested in it by the laws and Constitutions of the State of Michigan and of the United States, subject to the provisions of this Agreement. Further, all rights which ordinarily vest in and are exercised by employers, except such as are specifically relinquished herein, are reserved to and remain vested in the Township, including, but without limiting the generality of the foregoing:

(a) To manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered; or the control of material, tools and equipment to be used.

(b) To introduce new equipment, methods, machinery or processes; change or eliminate existing equipment, and institute technological changes; decide on materials, supplies, equipment and tools to be purchased and to discontinue any service, material or method of operation.

(c) To determine the number, location, and type of facilities and installations.

(d) To determine the size of the work force and increase or decrease its size, subject to the provisions of this agreement.

(e) To hire, assign, promote, layoff, transfer, suspend, discipline, discharge, and recall employees, subject to the provisions of this Agreement.

(f) To assign work and determine the number of employees assigned to operations.

(g) To select employees for promotion or transfer to supervisory or other positions and to determine the qualifications and competencey

of employees to perform available work subject to the provisions of this Agreement.

The panel has concluded that it would be inappropriate to include the Employer's proposed Subsection (g) regarding the job classifications and job duties inasmuch as the proposed language conflicts with Article XI of the Agreement. Furthermore, the panel has determined that the Employer's proposed Section (H) regarding certain scheduling matters ought, also, to be excluded from the Management Rights Clause. That provision appears to, at least, overlap with a detailed schedule in Appendix B. Moreover, such a provision is not generally supported by the experience in the comparable communities.

The panel has determined that the Employer's proposed Section (J) regarding Contracting and Subcontracting should also be excluded from the Management Rights Clause. This proposed provision conflicts with Article XII of the current Agreement. More importantly, such a provision is not supported by even a majority of the comparable communities offered by the Employer and no need has been established by the Employer for the inclusion of such a provision.

The Union argues that Subsection (E) of the Employer's proposal regarding the right to hire, assign, etc. personnel, should be excluded because the Employer's proposal does not suggest that such a right is subject to the provisions of this Agreement. At the same time, the panel has observed that the

Employer's proposal in Section I specifically sets forth that the powers of the Employer are subject to the provisions of the Agreement. The "just cause" provision is already contained within the Agreement.

Finally, the panel has determined that the language in Section II of the Employer's proposed language is superfluous and ought not to be included within the Agreement. The principles set forth in Section II are already set forth in Section I and are not additionally necessary.

VI UNION REPRESENTATION

The parties have agreed that the issue of union representation is a noneconomic issue. The panel has determined that the following will constitute an appropriate union representation provision:

Section I

The Employer agrees to recognize a Chapter Chairperson, a Chapter Secretary, a Chief Steward and (1) Steward from each of the following areas:

1. Fire Department
2. Department of Pulic Works
3. Township Hall

Section II

The Union may also designate an alternate Steward for each Steward listed above. An alternate shall function only in the absence of the Steward.

Section III

(a) When requested by an aggrieved employee, a Steward shall be allowed time to investigate the alledged grievance(s). Before leaving his work area, the Steward shall notify his immediate supervisor.

(b) Employees involved in the investigation and/or processing of grievances, as otherwise provided for in this Agreement, shall not lose time or pay for time spent, provided the employee would have otherwise been working his regularly scheduled shift.

Section IV

(a) Employees covered by this Agreement shall be represented by three (3) bargaining committee members including the Chapter Chairperson, in addition to Michigan Council 25 and/or International Representatives.

(b) Members of the bargaining committee shall not lose time or pay for hours spent in negotiations which occur during normal working hours.

The Union shall furnish the Employer with a current written roster listing the names of its officers, stewards, and alternates.

The panel has determined that the Union Representation Clause in the contract should continue to contain a recognition of the Union officers. The Employer complains that such recognition will be overly cumbersome for the grievance procedure. The panel, however, concluded that simple recognition of the Union officers will not, by itself, necessarily encumber the grievance procedure. The panel has further determined that the Employer's request that an alternate steward be designated is appropriate.

Perhaps most importantly, the panel has determined that the current practice of paying union officals for their time spent in investigating grievances should be continued. The Employer, through Mr. Wood, argued that much time was spent by Union officials in investigating grievances. At same time, Mr. Klinger, on behalf of the Union, testified that on only five or six occasions has he actually left his post for the investigation of Union grievances. As a result, the panel has concluded that the Employer's proposed change in the grievance procedure is not warranted by the relations between the parties.

Finally, the parties differ as to the composition of the bargaining committee. The Employer seeks a limitation on the bargaining committee of three employees while the Union suggests a bargaining committee consisting of four employees. The panel has determined that a bargaining committee of three employees including the Chapter Chairperson ought to be sufficient to

represent the six members of the bargaining unit. At the same time, the panel is unwilling to limit the involvement of Michigan Council 25 or their representatives.

VII GRIEVANCE PROCEDURES

The parties seek changes in the grievance procedure now in effect. The parties agree that this issue is noneconomic.

While the parties' proposals are the same in many respects, they differ in relatively minor detail. The Employer proposes that the time limitation for filing grievances should be shortened to five (5) working days. The Union urges the panel to adopt a proposal calling for a Statute of Limitations of fifteen (15) working days as is provided in the current Agreement.

The Employer's proffered justification for the reduction relates to the unusual work week of the professional fire fighter. The Employer argued that inasmuch as the fire fighter works nine, 24-hour days in a 28-day cycle, the fifteen (15) working day requirement could result in a grievance being timely filed more than one month after the incident giving rise to the grievance.

The Union, on the other hand, argued that "working days" as contained in the Agreement were Monday through Friday. The Union stated that the occasion had never arisen where the Union had filed a grievance more than a month after the occurrence arguing that the grievance was timely because of the peculiar nature of the fire fighter's working day.

The panel concludes that a change in the current provision regarding the time limitation within which a grievance may be filed is unwarranted. The Employer presents a plausible scenario in which the contract might be interpreted to give an aggrieved employee an extraordinarily lengthy period of time to file. There is, however, no evidence showing that this approach has ever been urged by the Union. Moreover, the contract defines working day as Monday through Friday. This would appear to preclude an argument of the sort envisioned by the Employer.

The Employer next seeks to add language to define a "grievance" in the contract. Mr. Wood, on behalf of the Employer, testified that such a definition is necessary because grievances have been filed which apparently are not founded upon the contract, but upon some "policy" of the Employer.

The Union argues that such an addition is unnecessary because the current contract language limits the authority of the Arbitrator to the express terms of the contract. Short of the arbitration step of the grievance procedure, employees should be permitted to lodge grievances for the "therapeutic" value of this process.

The panel is of the view that defining a grievance in the contract is not only common practice but that it has practical value as well. It puts the Employer, the Union, and the employees on notice as to what matters may be grieved. In

addition, the inclusion of such a definition will not prevent the filing of grievances; it will only give the Employer and the Union specific bases upon which to answer.

The third disagreement between the parties regarding the grievance procedure is as to the number of steps involved and the respective rights and responsibilities at each step.

Step 1:

The Union proposes that the Employee and or the Union Steward be permitted to present the initial grievance. The Employer's proposalappears to limit that initial presentation to the aggrieved employee. If, indeed, there is a disagreement regarding this, the panel sees no reason why the Union Steward as well as the employee should not be empowered to bring forth grievances of unit employees.

Step 2:

The Union proposes to remove, at this step, any requirement that the Department Head answer the grievance in writing. The Union points out that the Township's response at this stage will be from the same person who responded at step 1 and,therefore, represents an unecessary encumbrance. The Employer suggests the current practice is important and should remain.

The panel is of the opinion that requiring a written response from the Department Head may be qualitatively different from the initial, oral response. Oftentimes putting a response and rationale in writing will bring about, at least, a thorough evaluation of the grievance. Thus, the requirement that this step be in writing may have its own "therapeutic" value. In any event, the Union has not shown that the current procedure has lead to abuses on the part of the Employer or that the grievance procedure has been protracted.

Step 4/5:

The Union proposes that the Township and the Union meet a final time to attempt a settlement of the grievance and to explore the possibility of selecting a mutually acceptable neutral to resolve a dispute before invoking the procedures of the American Arbitration Association. The Employer argues that this final step is unnecessary arguing that, at this point, the parties have had ample opportunity to resolve the dispute. The panel takes the view that the parties should make every effort to amicably resolve disputes arising under the contract. Moreover, if the parties can mutually agree upon an arbitrator without using the services of the American Arbitration Association, time and money can be saved. Accordingly, the panel adopts the approach offered by the Union. Finally, the parties disagree as

to the propriety of continuing the provisions of Section 3 of the Grievance Procedure. The Union urges that it be retained while the Employer argues that the Township should not be deemed to have acquiesced in the demand for relief if the time limitations for answering a grievance are missed. The Employer argues that this change is supported by the fact that only one of the comparables offered, Emmett Township, and none of the comparable communities offered by the Union provide for Employer default in the event the Employer fails to timely respond to a grievance.

The panel is persuaded that the current provision should remain notwithstanding the fact that other comparable communities have not so provided. As a matter of simple equity, the Employer should be bound by the time limitations just as is the Union with significant sanctions available if the requirements are missed. Moreover, the Employer has provided no evidence that the current provision has worked a hardship upon the Township.

For the foregoing reasons the panel awards as follows:

It is the intent of the parties to this Agreement that the grievance procedure herein set forth shall serve as a means for a settlement of disputes that may arise during the terms of this Agreement. In order to be a proper matter for the grievance procedure, the grievance must be presented within fifteen (15) working days from knowledge of its occurrence.

A grievance is defined as an alleged violation of a specific section or paragraph of this Agreement. Any grievance filed shall refer to the specific provision alleged to have been violated and shall adequately set forth the facts pertaining to the alleged violation. Any claims not conforming to the provisions of this definition shall be automatically defined as not constituting a valid grievance.

Section 1:

Any employee or the Union having a grievance shall proceed as follows:

Step 1:

The employee and/or the steward shall discuss the grievance with the department supervisor. The supervisor shall give an oral answer to the employee, and the steward, within three (3) working days following the presentation of the grievance to the immediate supervisor.

Step 2:

If the grievance is not settled at Step 1, it may be reduced to writing within five (5) working days of the immediate supervisor's answer and submitted to the Department Head on the grievance form stating the facts giving rise to the grievance, identifying all the provisions of the Agreement alleged to have been violated, state the contention of the employee(s) and of the

Union with respect ot these provisions, indicate the relief requested, and be signed by the Grievant and an authorized Union representative. The Department Head shall write his disposition to the grievance and return it to the steward within two (2) working days. The steward shall sign and date the grievance upon receipt.

Step 3:

If the grievance is not settled at Step 2, it may be submitted by the Steward to the Township Supervisor within five (5) working days of the Department Head's answer. The Township Supervisor shall sign and date the grievance upon receipt and thereafter schedule a meeting with the Steward, Chapter Chairman, and Department Head within five (5) working days to discuss the grievance. The Township Supervisor shall write his disposition to the grievance and return it to the Chapter Chairman within five (5) working days after the meeting. The Chapter Chairman, shall sign and date the grievance upon receipt.

Step 4:

If the grievance is not settled at Step 3, it may be submitted by the Chapter Chairman to the Chairman of the Labor Relations committee within five (5) working days of the Township Supervisor's answer. The Chairman of the Labor Relations committee shall sign and date the grievance upon receipt and

thereafter within five (5) working days schedule a meeting with the Union's Chapter Chairman for the Labor Relations Committee and the Union to discuss the grievance. The Chairman of the Labor Relations committee shall write a disposition to the grievance and return it to the Union's Chapter Chairman within five (5) working days after the meeting. The Chapter Chairman shall sign and date the grievance upon receipt.

Step 5:

If the grievance is not settled at Step 3, and the Union wants to carry the dispute(s) further, Michigan Council 25 shall, within thirty (30) calendar days, give written notice to the Employer, requesting arbitration. Upon receipt of the Union's request for arbitration, the Employer and the Union shall meet to attempt to resolve the dispute(s) and/or mutually select an arbitrator.

If, after such meeting, the parties are unable to resolve the dispute(s) and the Union wishes to carry the matter further, Michigan Council 25 shall, within sixty (60) calendar days of receipt of the Step 3 answer, file the Demand for Arbitration in accordance with the rules of the American Arbitration Association; and thereafter it shall be conducted in accordance with the rules and regulations of the American Arbitration Association.

There shall be no appeal from any arbitrator's decision; each such decision shall be final and binding on the Union, its members, the employee or employees involved, and the Employer.

The arbitrator shall make his judgment based upon the express terms of this Agreement and shall have no power or authority to add to or subtract from any of the terms of this Agreement.

The expenses of the arbitrator shall be shared equally between the Employer and the Union.

Section 2:

For the purpose of defining working days as herein provided shall be Monday through Friday, excluding Saturday, Sunday and holidays.

Section 3:

Any grievance not appealed by the Union within the time limits shall be considered withdrawn. Any grievance not answered within the time limits by the Employer shall be considered settled in accordance with the written relief sought at Step 2.

Section 4:

(a) The Employer agrees that no employee will be disciplined or discharged without just cause.

(b) The Employer agrees, immediately upon the discipline or discharge of any employee, to provide written notice of said discipline or discharge to the employee with

a copy to the Chapter Chairperson. Said notice shall contain the specific reasons for the discharge or discipline.

(c) A discharged or suspended employee will be allowed to discuss their discharge or suspension with the Union representative(s), and the Employer will make available a meeting room where they may do so before they are required to leave the property fo the Employer. Upon request, the Employer, or his/her designated representative, will discuss the discharge or suspension improper, it shall be submitted as a grievance beginning at Step 3 of the grievance procedure.

(e) In imposing any discipline or discharge on a current charge, the Employer will not take into account any prior infractions which occurred more than twenty-four (24) months previously.

VIII SENIORITY

The parties have agreed that their disagreement over the seniority provision is a noneconomic one. In essence, the parties agree that the language in the expired agreement is too vague and needs specificity. The Employer proposes that the contract in this section apply seniority principles to shift assignments and vacation scheduling. The Employer also recognizes that seniority applies in layoff and recall in Article 9 of the expired contract--an article the parties have agreed should be continued. Likewise, Article 10 provides for seniority as a factor in promotions and transfers.

The Union proposes to detail, in the seniority provision, the following situations in which seniority should apply: shift

assignment, layoff and recall, promotions and transfers, vacation scheduling, and assignment of work or change of work from one building to another.

It appears that but for the Union's urging that seniority apply to assignment of work, or change of work from one building to another, the parties agree as to the application of seniority principles.

The panel agrees with the Employer that the contract should not be amended to apply seniority to situations involving assignment and transfer of work. None of the comparable communities contains such limits on the Employer's authority and no reason has been offered by the Union why such a limitation is important here. At the same time, it is important to point out that other provisions of the contract refer to seniority and the section dealing with seniority should make that clear.

Inasmuch as only Section V of the seniority article is in dispute, the remainder of the seniority article shall continue. Section V shall read:

Section V:

> Employee's seniority shall be continuous and employees shall hold all seniority rights except as such seniority is lost or limited by other provisions of this agreement. The highest seniority employees shall have preference for shift assignment and vacation leave as well as in other areas provided for elsewhere in this agreement.

IX LOSS OF SENIORITY:

The parties have agreed that the disagreement over the loss of seniority provision is an economic issue.

The Employer proposes the following language: (f) He is laid off greater than his seniority or twenty-four (24) months whichever is less.

The Union proposes: (f) He is laid off greater than his seniority or twelve (12) months, whichever is greater.

The current agreement in Section (e) appears to provide that a laid-off employee shall retain his seniority indefinitely. Both proposals would limit the retention of seniority for laid-off employees.

Grand Haven has a provision identical to that of the Employer proposal here. Norton Shores, offered by the Union as a comparable community provides for the retention of seniority for thirty-six (36) months. Emmett Township and Big Rapids have provisions equivalent to that offered by the Union while Cadillac and Muskegon Heights appear to have no limitation on the retention of seniority.

The panel has concluded that it is in the best interest of the Employer, the Union, and the Employees that employees retain seniority during layoff. The testimony reveals the mutually held belief that experienced employees are a valuable resource and no important reason has been offered by the Employer as to why experienced employees should not, as a matter of right, be

preferred to new hires after a lengthy layoff. Moreover, the experience in the comparable communities supports the position taken by the Union here. For the foregoing reasons the Union's proposal regarding Subsection (f) is adopted by the panel. In all other respects the new contract shall be the same as the expired contract in this section.

X UNPAID LEAVES OF ABSENCE:

At the prehearing conference in this matter, the parties agreed that the issue of unpaid leaves of absence was an economic issue.

The Employer's position would modify the existing provision in the following respects:

1. Give the Township discretion to grant an unpaid leave of absence for any reason.
2. Remove leaves of absence for service in public elected or appointed positions.
3. Define "immediate family" as "spouse, children, and step-children".
4. Retain seniority for employees during unpaid leaves of absence but eliminate the opportunity of such employees to accumulate such seniority.
5. Require physician's verification when a leave of absence is requested for illnesses of an employee or an immediate family member.

The Union's proposal would retain the current language but add language permitting the employer to secure medical verification.

Both of the proposals have elements which commend them. Thus, as both parties recognize, the Township must have the authority to obtain professional, medical verification of illness to avoid abuse of the leave of absence benefit.

Although the record does not reveal any use of, let alone abuse of, the unpaid leave of absence provision, the panel finds, on balance, that the Township's proposal more closely accords with the pattern in comparable communities. Thus, for example, the comparable communities make the granting of unpaid leaves of absence discretionary with the Employer and, by and large, preclude the continued accumulation of seniority during the period of absence. Moreover, the "internal" comparable relationship between the Township and the Fraternal Order of Police more closely reflects the Employer's proposal than that of the Union. Accordingly, although the matter is hardly beyond debate, the proposal of the Employer is adopted.

VIII MATERNITY LEAVE

The Employer seeks to add language to the Collective Bargaining Agreement to cover maternity leave--an issue the parties have agreed is economic in nature.

There are, currently, no female members of the Fire Department although the possibility is real that there may be females hired. In addition, there is scant guidance from comparable communities to aid the panel on this issue. Finally,

the Union has underscored, in its thorough brief to the panel, the fact that maternity leaves are generally provided for under the unpaid leave of absence provision in the contract. The proposal of the Employer adds little in substance to the rules provided for in the unpaid leave of absence section of the contract.

Generally, it is not this panel's duty to add substantive provisions to the contract where there appears to be no immediate need for the provision--particularly where other communities have found no similar need.

The Union proposal on maternity leave is adopted. No language shall be added to the contract regarding this issue.

IX JURY DUTY AND MILITARY RESERVE

The parties have characterized the issue of jury duty and military reserve as an economic issue.

As with several other issues, e.g. unpaid leaves of absence and maternity leave, the panel is called upon to add a provision to the contract to address a situation that has never arisen and for which, therefore, there appears no need. As indicated earlier, the panel is unwilling to create such contract language particularly where, as here, the majority of the comparable communities make no such provision.

The proposal of the Employer is adopted. No additional language shall be included in this portion of the contract.

X SICK LEAVE

The dispute between the parties over the sick leave provisions in the contract is economic in nature.

The last best offers of the parties differ in several material and important respects: 1) The Township seeks to place a cap of 720 hours (30 duty days) on the accumulation of sick leave. The Union seeks to continue the unlimited accumulation of seek leave. 2) The Township seeks to modify the payout provisions to provide for sick leave compensation only for employees who retire and not for those employees who quit or are discharged. The Union proposes to continue the language of the expired Agreement providing for payout to employees for unused sick leave "upon separation". 3) The Employer seeks the authority to require medical verification of illness in all cases while the Union proposes to continue the provision of the expired contract providing for medical verification only in the case of suspected abuse of sick leave.

In all other respects, the differences between the Township and the Union appear to be over "bookkeeping" matters such as whether to compute sick leave on the basis of hours or half days.

As regards the accumulation disagreement, the Township is concerned with escalating unfunded liability associated with the unlimited accumulation of sick leave. Mr. Wood testified that

within the budget year an employee unexpectedly quit requiring a substantial payout that had not been budgeted. The Union points out, however, that this Employer's police enjoy an unlimited accumulation of sick leave as have the fire fighters since 1967. Moreover, the Union points out, all of the comparable communities including those offered by the Employer appear to provide for substantially greater accumulation of sick leave than that proposed by the Township.

With respect to the situations in which sick leave payout may be awarded, the Township argues that it may not be prepared to pay the accumulated sick leave benefit to an employee who quits without substantial notice and that it should not be required to accord this benefit to employees whose employment is terminated for cause. The Township further points out that in comparable communities, only Cadillac provides for payout to an employee who terminates for any reason while all other communities provide no similar payout to the discharged employee.

The Union notes that, again, payout upon "separation" has existed for fire fighters since 1957 and police employed by the Township enjoy a similar benefit. Moreover, the Union argues that although fire fighters work on a twenty-four hour day basis, accumulated sick day is only worth six hours toward the payout.

Finally, the Employer seeks the right to obtain medical verification from employees who request sick leave in all circumstances while the Union seeks to maintain the current practice of permitting the Employer to obtain medical verification when the pattern of sick leave use indicates the Employee may be abusing the sick leave benefit. Here, the Employer argues that comparable communities give the Employer the unfettered right to secure medical verification of illness while the Union points out that the Employer has offered no evidence that this portion of the contract has given rise to a problem for the Township.

This is another area in which both proposals have elements which support and detract from them. In the panel's view, it makes fiscal sense to place a limit upon the amount of sick leave an employee may accrue for purposes of the payout provision. Each of the comparable communities and the Unions representing their employees have recognized as much. At the same time, the Employer seeks a ceiling which is substantially lower that any provided in any of the comparable communities. Similarly, the Employer's proposal to limit the availability of the sick leave payout benefit to employees who retire or die is fiscally responsible. By and large, the experience in the comparable communities support the Employer's position on this issue although it must be noted that Grand Haven pays employees a

fractional share during the course of their employ for sick leave accumulated in excess of the maximum amount. Cadillac provides a reduced amount for employees who are terminated or voluntarily quit.

Moreover, the Union points out that there is no evidence from which to conclude that this provision has, in reality, worked a hardship for the Township.

Finally, the Union's proposal to continue the current provision giving the Employer the right to obtain medical verification of illness only when abuse is suspected makes substantial sense to the panel. There is no evidence whatsoever that this provision has been abused or that fire fighters have conducted themselves unprofessionally in their use of sick leave. Moreover, although the Employer argues that contracts in comparable communities support the Township's proposal, close inspection reveals that Emmett Township and the city of Cadillac, both comparable communities offered by the Township, give the Employer the authority to obtain medical verification only after two consecutive days of absence while the city of Grand Haven has the right to seek proof of illness when an employee is absent two consecutive days or on a day prior to a scheduled vacation.

As with unpaid leaves of absence, this appears to be an area in which further compromise is warranted. The authority of the panel, however, is limited to choosing the proposal of one

party or the other. On balance, the panel has concluded that the exisiting provisions of the contract have not worked a hardship upon the Employer. The proposal of the Union is adopted.

XI OCCUPATIONAL DISABILITY

The summary of the prehearing conference held in this matter reflects that the parties have agreed that this issue is economic in nature.

Under the expired Agreement, employees injured or rendered ill by a work related event receive full pay not including overtime for the first twenty-one (21) days of incapacition less workers' compensation benefits. Thereafter, such employees may receive an amount deducted from sick leave, to make up the difference between workers compensation and the employees regular income until the accumulated sick leave is exhausted.

The Union seeks to continue this arrangement arguing that it comports with the provisions in comparable communites. The Township seeks to modify the Agreement in two ways: 1) Reduce to seven days the Employer's obligation to give full pay without deduction from sick leave and give the employee the option of supplementing workers' compensation with accumulated sick leave after the seven days is exhausted. 2) Sets forth that employees shall not accumulate sick leave or vacation time while receiving

workers' compensation and that all other benefits terminate after an employee has received workers' compensation for sixty (60) days.

The Township argues that the proposed limitations are necessary to discourage emloyees from malingering and to avoid having vacation and sick leave benefits accrue while employees are, in fact, not working.

A review of the comparable communities reveals that a slim majority provide a period of time during which employees receive full pay without deduction from sick leave. Of those communities providing such benefits, only Norton Shores provides seven days while the others provide for a greater period. The greatest period of compensation is provided by the city of Cadillac--twenty-six weeks. As regards the right of employees to accrue other benefits while on occupational disability, most of the comparable communities' contracts are silent.

The panel recognizes that a benefit such as that accorded by this contract might encourage employees to malinger. At the same time, however, there is no evidence that abuse of this benefit has ever, in fact occurred or been suspected. Moreover, the panel recognizes that a lengthy disability might result in an employee accumulating contractual benefits while not actually working and that such an accrual might work a financial hardship for the Employer. Nevertheless, the panel shares the view that

employees who are injured or rendered ill in the line of duty ought, to an extent possible and reasonable, suffer no detriment as a result of such disability. Obviously, fire fighting can be a dangerous occupation. The panel seeks to avoid situations arising wherein fire fighters, realizing that taking a risk might work to their financial detriment, are influenced not to undertake a dangerous but necessary task.

As importantly for statutory purposes, the benefit accorded under the expired contract is consistent with the benefits in a majority of comparable communities and the question of whether other benefits are paid in those communities is largely unanswered.

For the foregoing reasons, the proposal of the Union on this issue is adopted.

XII FUNERAL LEAVE

In this issue--characterized as economic by the parties--the disagreement is narrow.

The Township proposes to provide the maximum funeral leave for the death of an employee's "step-parent" while the Union seeks to provide maximum funeral leave for the death of an employee's "grandparent". The parties reverse their proposal to provide for

the lesser funeral leave. The Township proposes to include "grandparents" and the Union "step-parent" in the lesser sick leave provision.

In the comparable communities, Norton Shores, Grand Haven, and Muskegon Heights as well as in the contract between the Township and the Fraternal Order of Police, employees are entitled to take the lesser funeral leave for the death of a grandparent.

Based on this experience, the Employer's proposal regarding funeral leave is adopted.

XIII HOLIDAYS

The parties disagree as to the character of this issue. The Township argues that it is economic while the Union argues it is noneconomic in nature .

As regards the substance of the holiday provisions, the Township proposes a contract provision which, in Section 3, would exclude fire fighters who regularly work on a shift basis. The justification, presumably, is that fire fighters do not celebrate holdays as do other, non-shift emloyees, and therefore the contract should be amended to reflect the difference. The Union objects to this modification. The Union looks to the language "in computing overtime, holidays shall be counted as a day

worked". The Union argues that the effect of this deletion is unexplained in the record and, as a result, should be rejected. In addition, in Section 4, the Township seeks to modify the contract to require employees to work the last scheduled day before and the first scheduled day after a holiday in order to be eligible for holiday pay and to restrict the eligibility of employees returning from layoff. Mr. Wood, on behalf of the Township, recounted two situations in which laid off fire fighters were recalled to work shortly before a holiday and thereafter claimed the benefit of the holiday pay. The Union argues that the current contract provisions have been in effect since 1957 and have worked well since then.

The experience in the comparable communites lends considerable support to the Township's proposal. Virtually every contract in those communities restricts holiday pay, at least, to those who work the day before and the day after a holiday. Inasmuch as fire fighters are considered salaried personnel for the purposes of holiday pay, it follows that employees should be on the payroll some reasonable time before a holiday in order to be eligible for the extra compensation. Thus, the Employer's additional proposal that employees be on the payroll two weeks before a scheduled holiday is also supported by the record.

The panel has concluded that the holiday pay proposal has direct immediate economic consequences and has determined that proposal of the Township regarding holiday pay should be adopted.

XIV HOSPITALIZATION AND LIFE INSURANCE

The hospitalization and life insurance provisions of the contract are economic in character.

The Union seeks to raise the life insurance benefit from $20,000 to $25,000. Of all the comparable communites only Leoni Township, offers a benefit as great as that sought by the Union. All other communities provide life insurance coveage in lesser amounts and seven of the remaining communities provide coverage in an amount less than that already provided by the Township.

The recently expired contract, in Section 3, appears to have provided for improved benefits. The proposed Township contract makes no reference to these benefits. Inasmuch as the panel has determined that the coverage of the prior contract should be continued, the new contract should reflect this improvement in dental insurance.

The proposal of the Township is adopted. The insurance coverage shall remain the same as in the recently expired contract.

XV TIME AND ONE-HALF

The issue of overtime or time one-half, is an economic issue initially undertaken by the Union during negotiations, mediation and through the prehearing conference prior to the hearing in this matter. At the commencement of the hearing, however, the Union sought to withdraw this matter and the Employer sought to retain the issue as its own. The Union argues that the panel is now without authority to render an award while the Employer argues that the issue is still appropriately before this tribunal. The Employer, in its brief to the panel, has pointed out that the language of the statute (MCLA 423.233; MSA 17.4555) (33) empowers the panel to decide issues raised during the course of mediation and not "resolved to the agreement of both parties". The issue of overtime was clearly raised during the mediation stage of this proceeding and remained unresolved at the time of the hearing. Accordingly, the panel is of the opinion that it must, by the provisions of state law resolve this contractual dispute.

As regards the substance of the parties' disagreement, the Township seeks to amend the contract to provide overtime for fire fighters whose hours exceed that provided for by Act 604 i.e., 216 hours in a 28-day cycle. Currently, fire fighters are compensated at time and one-half for hours worked beyond an individual's regular work schedule. Moreover, the Employer seeks

to delete the provision by which vacation and holidays are considered as time worked in computing overtime. Finally, the Township proposes to remove the requirement that changes in shift hours be negotiated. Here, the Employer first offers simply to remove the language making changes in shift hours "negotiable" and, alternatively, offers to have changes in shift hours "discussed at a special conference between the Union Representatives and the Township".

The Township seeks to justify its proposed changes on the grounds that overtime costs to the Township have been substantial and burdensome beyond its ability to pay. In addition, the Employer points out that unnamed employees have taken unfair advantage of the policy permitting employees to be on vacation and return to work for one day thereby becoming entitled to overtime.

The comparable communities treat the issue of overtime in a variety of ways: In Emmett and Leoni Townships, for example, overtime is based on hours worked greater than a prescribed number of hours per week. Norton Shores bases overtime upon hours worked in excess of a daily or weekly amount while Big Rapids awards overtime for hours worked in excess of a duty day. Grand Haven, Holland, and Muskegon Heights, on the other hand, compensate employees for overtime as the Employer has proposed here.

With respect to the computation of vacation and sick leave for purposes of overtime, the contracts in comparable communities reveal the following: Leoni Township appears to count any hours actually worked. Grand Haven and Norton Shores contracts talk in terms of "hours worked". The other contracts are silent on the matter or are so ambiguous as to render it inappropriate to draw conclusions therefrom.

As regards the Townships' proposal on the authority to change shifts, an examination of the contract in comparable communities is similarly equivocal. Emmett Township requires negotiation; Big Rapids and Norton Shores provide for a "special conference" or "discussion".

In the panel's view the question of which last best offer most closely accords with the requirements of Section 9 is an extremely close one.

Again, each of the proposals has beneficial elements. For example, the Township seeks to remove hours spent on vacation or during a holiday from the computation of hours toward overtime. By itself, this element of the Employer's proposal is sound. Overtime, at least theoretically, is designed to reward employees for excessive hours worked.

The issue is economic and, therefore, the panel must select the last best offer of one party or the other. For the following reasons, the offer of the Union is adopted:

A majority of the comparable communites pay employees at time and one-half for hours worked in excess of regular work day and/or a regular work week.

The Employer's proposal would give the Township the unilateral right to implement shift changes without prior negotiation. While it is true that only one of the comparable communities requires negotiation prior to shift changes and two others have meet--confer provisions, this tells only a part of the story. The contracts in the other communities are silent on the issue. What, then, are the respective rights and responsibilities in these communities regarding the establishment of shifts and shift change? In the Chairman's view, shift changes are "working conditions" and therefore a madatory subject of bargaining in the absence of contractual language altering that status.[1] Thus, in the majority of comparable communities the public employer and the Union representing its fire fighters would be required to negotiate shift changes.

The Township has argued that the payment of overtime costs has constituted a significant part of its already strained budget. The panel has careful reviewed the evidence regarding the Townships ability to pay defense. As is described also in

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[1]See Sec. M.C.L.A Sec. 423.215. c.f. R. Gorman, Labor Law, at 503. "Most work rules or plant rules the employer would promulgate unilaterally in the absense of a union must be bargained about when the employees have designated a majority union".

the section regarding Appendix B, the panel has observed that the fund balance of the Township has diminished from $129,452 in 1981 to $30,171 in 1983. Moreover, the Township has suffered an extended period of high unemployment. At the same time, the projected fund balance for the Township in 1984 was nearly $50,000. While, obviously, this does not constitute an optimum situation, the panel has concluded that the Township's economic condition has recently improved. Moreover, employees in this unit have not enjoyed a wage increase in over three years. At the same time, the relevant Consumer Price Index has risen more than 14 percent.

Finally, the issue of overtime compensation, while properly before the panel, apparently reached this arbitration without "'bona-fide, arms-length bargaining"[2] over the subject. In the Chairman's view, it would be unwise to precipitously alter the overtime arrangement without the parties having had the benefit of bargaining.

Accordingly, the proposal of the Union regarding time and one-half is adopted.

XVI APPENDIX B

The final issues before the panel are economic proposals by the Union to be contained in Appendix B to the Agreement.

2Mackey v Nation Footbal League 543 F.2d. at 614

Section 1 Wages:

The Union seeks a wage increase of 12 percent (12.5 percent compounded) over the three years of the contract resulting in a pay rate of $19,337 effective April 1, 1984. The Employer offers an increase of approximately 8 percent by the end of the contract, resulting in a pay rate of $18,490 effective October 1, 1984.

In the comparable communities of Big Rapids and Cadillac, the maximum fire fighter pay is $19,416 and $18,929 respectively. In Grand Haven the maximum rate of pay is $21,062. In Emmett Township, the top paid fire fighter was paid $17,406.48 as of April 1, 1984. Counsel for the Township has informed the panel that on May 16, 1984, Emmett Township executed a new Agreement providing a 4 percent wage increase retroactive to April 1, 1984. This increase raises the wage for the top paid fire fighter in Emmett Township to $18,102.

The Union has offered the community of Norton Shores as comparable to that of Muskegon Township. The issue of comparability of Norton Shores and Muskegon has been already addressed in this decision. Norton Shores has a population of approximately one-third greater than Muskegon Township and enjoys a state equalized value more than double that of this Employer.

While this lessens the weight to be accorded the experience in Norton Shores, the panel has noted that a top paid fire fighter in Norton Shores receives a salary of $21,920.

The panel has also found persuasive the wages earned by the police officers employed by this Township. As of October 1, 1984, a top-paid police officer will earn $20,800. As of January 1, 1985, that figure will rise to $21,008. Thus, the wages earned by the police personnel in Muskegon Township will rise at a greater rate, in both absolute and percent terms, than will the wages of the fire fighters even under the Union's proposal. The rise in the cost of living index also supports the Union's demand. As is pointed out in the Union's brief, between March 1981 and October 1983, the Consumer Price Index for urban wage earners and clerical workers rose 13.6 percent. By March 1984 that figure became 14.4 percent. As is noted earlier in this Opinion, the Union's wage increase proposal amounts to approximately 12.5 percent, thus leaving the wage increase trailing the cost of living increase by 2 percentage points.

The panel is aware of, and sensitive to, the fiscal position of the Township. The panel finds, nevertheless, that the wage proposal of the Union is within the ability of the Employer to pay. Mr. Ruthkowski, auditor for the Township, testified that the fund balance of the Township has declined from $129,452 in April 1981 to $99,735 in March 1982 to $30,171 in March 1983.

At the same time, Mr. Ruthkowski testified that the projected fund balance for March 1984 would increase approximately $20,000 to $49,971. While this is certaining less than an optimum amount, the record shows that the Township has never enjoyed that optimum condition.

The panel has concluded that the employees in this unit who have not received a wage increase in more than three years are entitled to an increase in the amount proposed by the Union. This increase shall also be retroactive as proposed by the Union.

b. Rank Adjustments:

The Union has proposed additional increases to compensate fire fighter officers in the amounts as follows:

Assistant Chief:	$750
Captain:	$500
First Lieutenant:	$250
Second Lieutenant:	$250

The Employer's last best offer would provide additional increases of $603.85 for the Assistant Chief, and $301.93 for the Captain with no additional increases for the Lieutenants.

Under the Union proposal, four of the six bargaining unit numbers would have a different rank and two-thirds of the personnel would have officer rank and additional benefits accompanying that rank.

The panel is persuaded that the record evidence does not show that the duties and responsibilities of lieutenants differ

sufficiently from those of fire fighters to warrant the distinction requested. Mr. Klinger, on behalf of the Union, testified that lieutenants perform certain equipment maintenance but that regular fire fighters also require the knowledge to perform these routine maintenance functions by way of on-the-job training. Therefore, while the Union's request may be in line with the differences in compensation offered in comparable communites, the distinctions requested by the Union are not supported by the Union's purpose, to wit: to "(compensate) lieutenants for the added responsibilities".

Accordingly, the proposed wage differentials of the Employer are adopted by the panel.

c. Uniform Allowance:

The Union seeks an increase in uniform allowance from $150 to $200 annually. The Township provides an initial clothing issue and then issues additional amounts up to $150 to replace worn clothing. The $150 clothing allowance is not additional compensation.

Other comparable communitities such as Emmett and Leoni Townships award $200 per year annually while Cadillac provides $150 per year for cleaning and $150 per year for the allowance. At the same time, the testimony of the Union witness did not persuade the panel that employees have been unable to live within

the $150 maximum provided. Nor was there evidence that the Township has ever refused to provide clothing allowance for an employee whose needs exceeded the $150 amount allowed.

The Township proposes to continue the current clothing allowance provision and the panel has decided to adopt the last best offer of the Township.

d. Overtime Provision:

The Township proposes to delete language in the contract providing that fire fighters called in outside their regular shift will be paid according to the number of hours worked and not in accordance with the minimum two hour call-in-pay affecting other employees.

The panel has been offered no evidence supporting the Township's proposal and therefore, the proposal of the Union is adopted.

e. Provisions for Day Man:

The Union in this proposal seeks to add contractual language to set forth the duties of the so-called "day man". The testimony of Mr. Klinger, however, was that no employees are currently surviving as "day men" and that all employees are on 24-hour shifts.

The panel, in keeping with its stated philosophy of changing the contract only where warranted, finds no need to amend the

contract to provide for day men at this time. Accordingly, the last best offer of the Employer is adopted.

f. Trading Shifts:

The Union has proposed language which would permit unit employees to trade shifts subject to the approval of the Chief. While the panel sees no apparent problem with a reasonable proposal to permit shift trading, there is insufficient evidence in this record to warrant such an amendment to the contract. Accordingly, the proposal of the Employer is adopted.

In closing, The Chairman would like to thank the panel members and especially Counsel for the parties for their thorough and highly professional presentation of this case.

Robert A. Mccormick
Impartial Chairman

Diane Patton

Dale Latta

Dated:
Detroit, Michigan

"The Union . . . that cares!"

MICHIGAN AFSCME
COUNCIL 25

American Federation of State, County and Municipal Employees, AFL-CIO

Headquarters Office
1034 N. Washington • Lansing, MI 48906 • Phone: (517) 487-5081

October 17, 1984

Mr. Roberg McCormick
Detroit College of Law
130 East Elizabeth Street
Detroit, MI 48201

Re: Muskegon Township
-and-
AFSCME Council #25

MERC Arbitration Case No. G82-B29

Dear Mr. McCormick:

Please find enclosed the Opinion and Award in the above-captioned case to which I have affixed my signature.

The Union concurs with all areas and issues except for the following issues on which we continue our dissent:

Issue #VII - Grievance Procedure (Step 1 only)
Issue #X - Leaves of Absence
Issue #XIII - Holidays

If you need anything additional from me, please feel free to contact me. I remain

Very truly yours,

Dale D. Latta

Dale D. Latta
STAFF COORDINATOR

cc: Charles Klinger
Gary Patterson

Enclosure

DDL:mgopeiu459aflcio

To: _____
EMPLOYER

I hereby request and authorize you to deduct from my earnings, one of the following:

[ ] An amount established by the Union as monthly dues.
or
[ ] An amount equivalent to monthly union dues, which is established as a service fee.

The amount deducted shall be paid to Michigan Council 25, AFSCME, AFL-CIO in behalf of Local _____

By: PLEASE PRINT

FIRST NAME | INITIAL

LAST NAME

STREET NUMBER | STREET NAME AND DIRECTION

CITY | ZIP CODE

AREA CODE | TELEPHONE | CLASSIFICATION

SIGNATURE | DATE

EMPLOYER'S COPY

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

STATUTORY ARBITRATION

MUSKEGON TOWNSHIP,

Employer,

Before Impartial Arbitrator
Robert McCormick

-and-

MERC Act 312 Case No: G82 B-29

MUSKEGON TOWNSHIP EMPLOYEES CHAPTER
OF LOCAL #201, COUNCIL 25, AFSCME,
AFL-CIO,

Labor Organization.

DELEGATE PATTON'S RESPONSE TO IMPARTIAL CHAIRMAN'S RECOMMENDATION

On Monday, September 17, 1984, the Employer's Act 312 Delegate, Diane Patton, received a proposed Opinion and Award of the Panel from Chairman Robert A. McCormick. Mr. McCormick has provided the Delegate ten (10) days within which to respond to the proposed Opinion and Award, and this constitutes Member Patton's response.

Panel Member Patton, the Township's delegate, strongly disagrees with the Chairman's conclusion on page two of the proposed Opinion and Award that infers since no prejudice was shown by the Union's untimely submission of comparable communities and its delay in exchanging exhibits that the Employer's objections should be denied. The Panel Chairman has imposed no sanction against the Union for the following substantial breaches

of the rules established by the Chairman which were to have applied to both parties:

1. The date for exchange of exhibits.
2. The date for exchange of comparables.
3. The unauthorized late submission of the Union's Post Arbitration Brief.

This Panel Member is of the opinion that rules of conduct established by the Chairman apply equally to both parties. There should be no need to show actual prejudice, even though such prejudice can easily be inferred from the Union's absolute disregard for the rules. The fact that the Employer's representative did not anticipate the introduction of certain evidence received by the Impartial Chairman during the proceeding and the fact that the Impartial Chairman relied heavily upon this evidence in reaching a portion of his award, prejudice in the introduction of such evidence is obvious.

Panel Member Patton accepts the Chairman's conclusion that the following communities are comparable to Muskegon Township:

1. Emmett Township
2. Leoni Township
3. Grand Haven
4. Cadillac
5. Big Rapids

Further, Panel Member Patton agrees that neither Holland nor Muskegon are comparable to Muskegon Township.

Member Patton does not agree that Muskegon Heights or Norton Shores are comparable.

With respect to the Chairman's proposed findings on the issues before the panel, Member Patton reflects her opinion as follows:

1. GENDER: Member Patton accepts the Chairman's recommendation.

2. EMPLOYMENT APPLICATION: Member Patton disagrees with the Chairman's recommendation.

3. CHANGES IN PERSONAL STATUS: Member Patton accepts the Chairman's recommendation.

4. DUES CHECKOFF: Member Patton stongly rejects the recommendation of the Chairman and contends that Section 5 of the Union's last best offer does not clearly and adequately indemnify the Employer against suits commenced by bargaining unit members for their discharge. The provision broadly limits the Employer's liability to "the Union" with respect to the remittance.

5. MANAGEMENT RIGHTS: Panel Member Patton disagrees in part with the Chairman's recommendation. Specifically, Member Patton submits the issue should be economic and that insofar as the Chairman's award differs from the Employer's last best offer it is unacceptable.

   Employer's subparagraph (g) does not "conflict" with Article 11. Article 11 merely requires the Employer to negotiate wage rates for a "new job". The decision to create a classification, change it, combine or discontinue it is solely the right of management.

6. UNION REPRESENTATION: Member Patton disagrees with the recommendation of the Chairman. Specifically, the Chairman has expanded, not retracted, the rights of the Union. The expired Agreement provided for one steward "from each department, including bargaining committes (not to exceed one from each unit)". The Chairman has unbelievingly allowed fifty percent of the firefighters to appear in negotiations with absolutely no evidenciary support and in total disregard of the fact that the Union's "three (3) bargaining committee members" referred to in Section 3 of its last best offer dealt with a committee for not just the Fire Department but the Department of Public Works and Township Hall.

7. GRIEVANCE PROCEDURE: Insofar as the Chairman's recommendation differs from the Last Best Offer of the Employer, it is rejected. Further, Member Patton strongly urges the Chairman to reconsider his recommendation on Section 3. The potential liability to the

public Employer for a missed time limit is not "a matter of simple equity". The Union is the moving party, not the Employer. The Employer should not be harnessed with a default provision with potentially devastating consequences. Muskegon Township should not have to be harmed before a forseeable consequence is avoided. The Chairman has chosen to disregard overwhelming evidence that defaults are not favored in public sector agreements. If the Chairman truely believes that a default by a party is a "matter of simple equity" then certainly the Union's failure to file its brief in a timely fashion should have been deemed a default warranting a sanction by the Chairman. It appears that two standards are being applied.

7. SENIORITY: Member Patton accepts the Chairman's recommendation.

8. LOSS OF SENIORITY: Member Patton rejects the Chairman's recommendation.

9. UNPAID LEAVES OF ABSENCE: Member Patton accepts the Chairman's recommendation.

10. MATERNITY LEAVE: Member Patton rejects the Recommendation of the Chairman.

11. JURY DUTY AND MILITARY RESERVE: Member Patton accepts the Chairman's recommendation.

12. SICK LEAVE: Member Patton rejects the Chairman's recommendation.

13. OCCUPATIONAL DISABILITY: Member Patton rejects the Chairman's recommendation.

14. FUNERAL LEAVE: Member Patton accepts the Chairman's recommendation.

15. HOLIDAYS: Member Patton accepts the Chairman's recommendation.

16. HOSPITALIZATION AND LIFE INSURANCE: Member Patton accepts the Chairman's recommendation.

17. TIME AND ONE-HALF: Member Patton rejects the Chairman's recommendation and submits that the Chairman should adopt the Last Best Offer of the Employer.

18. APPENDIX "B", WAGES: Member Patton rejects the Chairman's recommendation.

The Chairman, who allowed the Union at the eleventh hour to introduce the police contract, seeks to support his

inflationary rationale for firefighters wages on the basis of police officer wages "will rise at a greater rate, in both absolute and percent terms, than will the wages of the firefighters ..." An examination of the record evidence demonstrates that there has never been parity in the wage rates of these positions. Further, the police voluntarily took a twenty-two month wage freeze. Did the Impartial Chairman here impose such a sanction against the firefighters for equality's sake? Absolutely not.

Further, Member Patton contends that the Chairman has ignored the persuasive argument of the Employer on the cost of living as presented in pages twenty-five through twenty-seven of its brief. The Township has in fact kept the firefighters increases in wages abreast and above the cost of living and its wage offer would do likewise. The Chairman has ignored substantial evidence and given lip service only to the unrebutted inability to pay evidence and rewarded the Union for its dilatory tactics. There will never be agreement from this panel member to such a recommendation.

19. RANK ADJUSTMENTS: Member Patton accepts the recommendation of the Chairman.

20. UNIFORM ALLOWANCE: Member Patton accepts the recommendation of the Chairman.

21. OVERTIME ALLOWANCE: Member Patton rejects the Chairman's recommendation. The Chairman has chosen to ignore the record evidence of the Employer's inability to pay.

22. PROVISIONS FOR DAY MAN: Member Patton accepts the Chairman's recommendation.

23. TRADING SHIFTS: Member Patton accepts the recommendation of the Chairman.

Respectfully submitted,

Dated: SEPT. 25, 1984 By: Diane M. Patton
Diane Patton, Employer Delegate

MICHAEL R. KLUCK & ASSOCIATES
ATTORNEYS AND COUNSELORS AT LAW
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TELEPHONE
(517) 349-7610

October 29, 1984

Mr. Robert McCormick
c/o Detroit College of Law
130 Elizabeth Street
Detroit, MI 48204

Re: Muskegon Township
-and- AFSCME, Michigan Council 25
MERC Act 312 Case No: G82 B-29

Dear Mr. McCormick:

Enclosed please find the Opinion and Award forwarded to Diane Patton. The Opinion and Award only provided for a signature line on the last page and as you correctly stated in your October 12, 1984, correspondence, Member Patton wishes to dissent from the Chairman's award on various issues.

Member Patton's position with respect to each issue may be reflected to the Michigan Employment Relations Commission as follows:

1. Gender, Member Patton concurs.

2. Employment Application, Member Patton dissents.

3. Change in Personal Status, Member Patton concurs.

4. Dues Checkoff, Member Patton dissents.

5. Management Rights, Member Patton dissents.

6. Union Representation, Member Patton dissents.

7. Grievance Procedure, Member Patton dissents.

8. Seniority, Member Patton concurs.

9. Loss of Seniority, Member Patton dissents.

10. Unpaid Leaves of Absence, Member Patton concurs.

VIII.(sic), Maternity Leave, Member Patton dissents.

IX.(sic), Jury Duty and Military Reserve, Member Patton concurs.

X.(sic), Sick Leave, Member Patton dissents.

XI.(sic), Occupational Disability, Member Patton dissents.

XII.(sic), Funeral Leave, Member Patton concurs.

XIII.(sic), Holidays, Member Patton concurs.

XIV.(sic), Hospitalization and Life Insurance, Member Patton concurs.

XV.(sic), Time and One-Half, Member Patton dissents.

XVI.(sic), Appendix "B", Section 1, Wages, Member Patton dissents.

(b) Rank Adjustments, Member Patton concurs.

(c) Uniform Allowance, Member Patton concurs.

(d) Overtime Provision, Member Patton dissents.

(e) Provisions for Day Man, Member Patton concurs.

(f) Trading Shifts, Member Patton concurs.

Would you please provide the undersigned with a complete executed copy of the Final Opinion and Award in relation to the above matter.

Very truly yours,

MICHAEL R. KLUCK & ASSOCIATES

Michael R. Kluck

MRK/djp

cc: Diane Patton
Dale Latta
James Wood

"The Union . . . that cares!"

MICHIGAN AFSCME
COUNCIL 25

American Federation of State, County and Municipal Employees, AFL-CIO

Headquarters Office
1034 N. Washington • Lansing, MI 48906 • Phone: (517) 487-5081

November 8, 1984

Mr. Robert McCormick
c/o Detroit College of Law
130 Elizabeth Street
Detroit, MI 48204

Re: Muskegon Township
-and-
AFSCME, Michigan Council 25
MERC Act 312 Case No: G82 B-29

Dear Mr. McCormick:

Upon receipt of the Employer's position with respect to each issue of the opinion and award, I notice that likewise they have dissented in regard to Issue #7 -- Grievance Procedure.

Therefore, be advised the Union is withdrawing its dissent and accepts the opinion as set forth which should provide resolution and majority panel determination in regard to all of the issues and bring the matter to a conclusion.

If you need any additional information from me, feel free to contact me.

Sincerely,

Dale D. Latta

Dale D. Latta
STAFF COORDINATOR

cc: Gary Patterson

DDL:mgopeiu459aflcio