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Sub. 11/28/95

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION  
COMPULSORY ARBITRATION UNDER ACT 312  
PUBLIC ACTS OF 1969, AS AMENDED

In the Matter of the  
Arbitration Between:

TOWNSHIP OF BLACKMAN,  
MICHIGAN

MERC Case No. L95 B-1020

-and-

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN (POAM)

OPINION AND AWARD

ARBITRATION PANEL

George T. Roumell, Jr., Chairman  
Michael F. Ward, Township Delegate  
Kenneth E. Grabowski, POAM Delegate

APPEARANCES:

FOR THE TOWNSHIP OF  
BLACKMAN:

Michael F. Ward, Attorney  
Allan G. Weatherwax, Jr., Attorney

FOR THE POLICE OFFICERS  
ASSOCIATION OF MICHIGAN:

Kenneth E. Grabowski, Business Agent

INTRODUCTION

The Police Officers Association of Michigan and Blackman Township have had a collective bargaining relationship for a number of years in a unit consisting, as set forth in Article II, "Recognition," of the 1993-1995 Agreement, "of all regular, full-time public

Blackman Township

safety officers and police officers of the rank of Sergeants and below, excluding all supervisory personnel."

The most recent Agreement was effective April 1, 1993 to March 31, 1995. The parties engaged in collective bargaining in an attempt to reach a successor Agreement to the Agreement expiring March 31, 1995. The parties were unable to reach agreement and, after mediation, reached impasse.

The Police Officers Association of Michigan thereupon filed a Petition seeking the appointment of an Act 312 Panel. The parties submitted the name of the undersigned as their mutually selected, proposed neutral Chairman. The Michigan Employment Relations Commission accepted this proposal and the undersigned, by letter dated July 21, 1995, signed by C. Barry Ott, Commission Member, was appointed Chairman of the Act 312 Panel.

By the time the Chairman arrived to meet with the parties, there were 13 issues plus the duration of the Agreement that required resolution, namely:

1. Employee personnel files
2. Performance of bargaining unit work by the Director and/or Deputy Director
3. Callback
4. Representation
5. Bereavement
6. Accumulation of sick leave time
7. Eligibility for holiday pay
8. Disability insurance
9. Employees charged with crime
10. Classification work of employees
11. Pension contribution
12. Health insurance
13. Wages

With the exception of the personnel file issue, the representation issue, and the employees charged with crime issue, all the issues set forth above seemed to be economic, either directly or having economic impact.

### STIPULATIONS

The parties have stipulated that all time lines provided for in Act 312 have been met by virtue of the fact that the parties have extended the appropriate time lines. This Opinion and Award is being issued in accordance with the applicable time lines as extended by mutual agreement of the parties.

The parties have stipulated that the Chairman of the Panel will write and sign the Opinion and Award; that the parties have waived participation in the process of their respective Delegates, taking the position that the Awards that follow as to each proposal or issue would have been supported by a majority of the Panel if the Delegate had participated; that the signature of the Chairman to this Opinion and Awards will represent the majority opinion as to each Award; that the parties have waived the presenting of last best offers on the economic issues, having been satisfied that, through discussions with the Chairman and presenting the necessary evidence, the Chairman was fully aware of their respective positions on each issue. The parties have also stipulated to be bound by the Award, pursuant to Act 312.

### THE CRITERIA

The Chairman, in preparing this Opinion and Awards, applied the applicable statutory criteria, particularly as it applied to the economic issues.

Panel is to apply in reaching an award. Section 9 reads in its entirety:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

The lawful authority of the employer.

Stipulations of the parties.

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

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.

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.

Sections 9(c) and (d) represent the basic economic driving force in any collective bargaining for a contract, whether it be in the public or private sector. Section 9(c) addresses financial ability. Section 9(d) addresses comparables. In negotiations, an employer (in this case Blackman Township), in providing wages and other economic benefits to employees, is driven by its financial ability to do so. A union, here the Association, is driven by its desire to receive wages and other economic benefits comparable with other similarly-situated employees employed by other employers, particularly among public employees in the geographical area involved.

The Section 9(e) criteria, the consumer cost of living, also drives negotiations, with the employer assessing whether its revenues, and therefore its financial ability, are rising consistent with the cost of living, and the employees assessing whether they are being offered wages and economic benefits consistent with the cost of living.

Section 9(f), overall compensation, is always a factor, coupled with a point very

carefully noted in that section, "the continuity and stability of employment." In Blackman Township, the Chairman must recognize that there has been stability of employment in the Public Safety Department.

Section 9(h) is a "catch-all" criteria. It recognizes that in reaching collective bargaining agreements, parties have developed certain guides or criteria in mutually arriving at collective bargaining agreements, grounded in the application of the common sense approach. One of such criteria is the bargaining history of the parties. Collective bargaining is not done in a vacuum, but against a historical background. Such history can guide the parties toward a current agreement.

The bargaining history would also include considering over the years, either through collective bargaining or through Act 312, the relationship that has emerged between wages and economic benefits provided the Blackman Township public safety officers as compared to certain comparables in the geographical area involved. This gives some indication of where bargaining history, if applied, would lead the parties in resolving the contract now under dispute.

Negotiators in collective bargaining apply common sense in arriving at collective bargaining agreements. This concept of "common sense" includes the "art of the possible" criteria. What is possible under the given circumstances of the negotiation situation? The aim is to reach a collective bargaining agreement. The "art of the possible" is a criteria encompassed in Section 9(h).

Encompassed in Section 9(h) is the strike criteria. Strikes in the geographical area which have been settled may offer some clue of what a settlement might be in a

given situation, if one recognizes that interest arbitration is a substitute for a strike.

Thus, settlements following strikes in the area can give some guidance. The strike criteria can be utilized in assessing whether the parties, if a strike was an option, would permit an issue to cause a strike, particularly if all other issues were settled. Such an assessment can be a guide to resolving the dispute.

Section 9(h) as well as Section 9(c), "the interests and welfare of the public," encompass the concept that bargainers consider the nature of the work of the employees involved in arriving at collective bargaining agreements. This concept is a factor here because of the nature of police/fire work and the public's expectations as to police/fire performance.

The Chairman has applied the above criteria, after consulting with the parties, in reaching the Awards here. There is a limitation on Blackman Township's finances. There is likewise a historical relationship between the Blackman Township Public Safety Officers' wages and that of wages for similarly situated employees in surrounding communities. There also have been some concerns about health insurance and pensions. All these have been factored into the Awards, as well as the history of bargaining concerning the issues that have been listed above that were pending at the time the Chairman met with the parties.

### THE OPINION

The Chairman has suggested that most of the issues between the parties have economic impact. However, there were three economic issues of major concern to the

parties, namely, wages, pension contributions and health care. In attempting to formulate Awards, the duration of the Agreement became an issue.

The Chairman, in consultation with the parties, concluded that under the criteria of the art of the possible, in order to provide for a comparable wage increase, as well as pension benefits, consistent with the Township's financial ability to pay, it was necessary that there be a four year contract, with the contract as to wages being retroactive to April 1, 1995, and the contract in total expiring March 31, 1999. This is the only way that the Township could appropriately budget and review its finances and still be able to provide for comparable wages.

Resolving the major financial issues, wages and pensions, the Chairman was aware that the Township wished to obtain health insurance cost containment because of the effect of increasing health care insurance premiums on the budget. The Association resisted these changes, concerned with the effect of same on its members. In addition, the Association raised concerns about a reasonable wage increase consistent with the cost of living and for increased pension benefits.

In balancing these concerns, the Chairman opted to make some changes in health insurance; that said changes shall be implemented as soon as possible following the date of this Award, and will provide some cost containment. This will therefore allow for consideration of a reasonable wage increase, which shall be set forth in the Awards, as well as some change in pension contributions. The wage increase, consistent with the ability to pay, for the first three years of the contract, has been factored in on a six month basis with increased contributions to pension incurring in



last three years of a four year agreement. This result is based on the art of the possible -- balancing the interests of the respective parties.

The other changes that will be set forth in the Awards recognize clarifications in the Agreement, as well as a change in sick leave accumulation, by putting a cap on sick leave accumulation, and providing for long term disability insurance. Such matters as union representation, employee files, and statements as to charges concerning criminal activities are matters that needed clarification in the Agreement. Likewise, provisions as to performance of work of PSO II's and the work week were needed to be clarified. The same can be said as to callback time and bereavement leave. In reaching Awards as to these items, the Chairman has followed the statutory criteria, after consultation with the parties.

There is one issue that requires a brief discussion. The Chairman has agreed that the present Section 27.4, as to the accumulation of sick leave time, should be capped in conjunction with the Township providing employees with a long-term disability insurance plan. Therefore, the Chairman has opted for such a provision, as represented in the Awards under Item 6, namely, a replacement of the previous Section 27.4. There was in particular, as to this issue, a dispute between the parties as to the payoff of accumulated sick leave time under this plan for employees leaving the employment of the Township prior to retirement. The Township was emphasizing that one-half of accumulated sick leave time would not be paid off unless the employee retired under the retirement plan. The Association, on this particular point, argued that employees who leave the employment of the Township for any reason should be

entitled to payment for one-half of the accumulated sick leave under the capped plan.

The 27.4 language of the Agreement expiring on March 31, 1995 provided "Employees leaving employment with the Township for any reason except termination by the Township for discipline reasons shall be entitled to payment for one-half of their accrued sick time." When one considers the collective bargaining history, it would seem that the appropriate provision on this point would be to continue the current language. Therefore, the Award on this issue as to the payment of accrued sick time for employees leaving the employment of the Township prior to retirement shall be a continuation of the current language as just noted. Otherwise, Section 27.4 will be replaced with the provision in the Awards.

The wages will be retroactive. All other provisions will be effective as of the date of the Awards, with the recognition that the provisions for health insurance and long-term disability will be implemented as soon as possible. There will also be a provision in the Award as to health insurance that if there is any error in the description of the plan set forth therein, which the Chairman believes reflects the changes the Award provides, the Chairman shall retain jurisdiction for the purposes of addressing any such error. Likewise, as to wages, the Chairman has attached Appendix A, which he believes reflects the Award as to wages. The Chairman will retain jurisdiction solely for the purposes of correcting any errors in Appendix A in the event there is any dispute as to whether the figures reflect the Award as to wages.

The duration of the Agreement will be for four years, beginning April 1, 1995 and expiring March 31, 1999.

Except as set forth in the Awards, all other provisions existing in the just expired

Agreement will be carried forward as set forth unless the parties agreed or agree otherwise.

The Chairman enters the following Awards:

### A W A R D S

1. Change Section 7.3 to read as follows:

7.3: Union members' Public Safety Department personnel files may be kept at the Township Hall. Union members shall be allowed reasonable access, upon their request, to review the contents of their personnel file. The Township will not allow anyone other than authorized Township personnel and officials to read, view, have a copy of, or in any way pursue in whole or in part a Union member's personnel file or any document which may become a part of his file. The Township agrees not to divulge the contents of the officer's file to non-Township persons without the written release form of the officer concerned. An officer's file shall be released by the Township only in accordance with Michigan law and/or an order of the Court.

2. Add a subsection to Section 8.1, which shall read:

L. The Director and/or the Deputy Directors may perform bargaining unit work in the case of an emergency or as a fill-in, not to exceed three (3) hours.

3. Change Section 18.1 to read as follows:

18.2 Call-back Time: Call-back time will be payable at time and one-half (1 and ½) with a minimum of two (2) hours. Providing further, that call-back shall not include Court appearances, driver improvement appearances, or any other appearances before the Secretary of State. Call-back time is restricted to recall of an off-duty officer wherein he shall be in uniform and perform the regular duties of a uniformed officer on behalf of the Township. Provided, however, uniforms shall not be required if the call-back is for the purpose of answering a fire call, and the officer called back has his/her fire gear.

4. Section 17.10 will be deleted from the contract.
5. Change Section 25.2 to read as follows:

25.2: Bereavement Leave: Any employee who has a death in the immediate family shall be entitled to three (3) days off without loss of pay. An employee's immediate family is defined as: husband, wife, child, mother, father, brother, sister, brother-in-law, and sister-in-law, grandparents of either spouse, mother-in-law and father-in-law. The affected employee will be permitted, upon request, to be absent from work without loss of his straight-time pay any three consecutive scheduled work days from the time of the death until seven (7) calendar days following the death, provided the employee attends the funeral.

6. Delete Section 27.4 of the existing contract and replace said Section with the following Section 27.4:

27.4: The Township will credit each employee with eight (8) hours of sick leave for each month that the employee actually works fifty (50%) percent or more of their regular scheduled shifts with a maximum accumulation of eleven hundred (1,100) hours. Employees who do not work fifty (50%) percent or more of their regular scheduled shifts during any given month shall not be entitled to sick leave accumulation during that month unless their failure to work the required shifts resulted from use of scheduled vacation time or use of compensatory time off. Employees who leave employment with the Township for any reason except termination by the Township for disciplinary reasons shall be entitled to payment for one-half (½) of their accrued sick time. Employees who, on the effective date of this contract have accumulated more than eleven hundred (1,100) hours of sick leave, shall have one-half (½) said excess days paid off. This payoff shall cancel any accrued sick leave in excess of eleven hundred (1,100) hours and the Employer shall have no further liability for these excess days. Employees who have accrued sick leave of less than eleven hundred (1,100) hours at the end of each calendar year may elect to receive a payoff of one-half (½) of the sick leave accrued during that calendar year. The remaining one-half (½) shall accrue in the employee's sick leave bank subject to eleven hundred (1,100) hour cap.

7. Add a Section 24.3 to Article XXIV, which shall read as follows:

24.3: To be eligible to receive holiday pay, an employee must work his last regularly scheduled shift immediately preceding the holiday or his first regularly scheduled shift immediately succeeding the holiday, unless said employee is on approved leave.

8. Add a Section 27.7 to the contract, which shall read:

27.7: All full-time bargaining unit employees shall be included in the long term

disability insurance coverage as provided on September 13, 1995 to non-bargaining unit employees of the Township.

9. Change Section 17.13 to read as follows:

17.13: If an employee is charged with a commission of a crime, which has a penalty in excess of one year in jail or prison, the Employer may suspend the employee without pay or benefits.

10. Change Section 10.7 A-2 to read as follows:

2. Public Safety Officer II (PSO II) - Employees assigned to this classification must have all necessary training and certification allowing them to function as firefighters. Employees occupying this classification shall not be required to perform the police duties of a PSO I, but will be allowed to share in the PSO I overtime if properly certified to function as a police officer. Overtime work performed by PSO II's in a PSO I classification shall be paid at the PSO II rate. In addition, the Employer may establish a 24 hour-per-day shift for these employees with an average work week up to fifty-four (54) hours. It is further agreed that the Employer shall have the right to have up to four (4) PSO II's working the twenty-four (24) hour shift schedule. If at any time the Employer does not have four (4) PSO II's working the twenty-four (24) hour shift schedule, it may obtain four (4) employees by first requesting voluntary transfer from employees occupying the classification of PSO I. Request shall be honored on a seniority basis. If the Employer does not obtain the necessary employees by voluntary transfer from the PSO I classification, it may transfer the low seniority PSO I's into the PSO II classification. Employees who occupy this classification, whether through voluntary transfer, involuntary transfer, layoff or hire, shall be paid the PSO II rate of pay. Further openings in the PSO II classification shall be filled in the same manner as outlined above.

11. Change Section 29.3 to read:

Effective April 1, 1996, the Employer shall contribute a total of 13% to the pension plan on behalf of the employee. Effective April 1, 1997, the total shall increase to 14%. Effective April 1, 1998, the total shall increase to 15%.

12. The Blue Cross/Blue Shield coverage will continue as set forth in the April 1, 1993 - March 31, 1995 Agreement, except that the coverage will be changed to Option V with elimination of PPNV-1, and that the prescription coverage will be the Blue Cross Preferred RX with a \$5.00 co-pay, the plan being known as Plan L with MM Option V with MMCCR 50/MMCLCP1500 with ML Rider. These changes will be effective as

soon as they can be implemented following the date of this Award. In the event that the description of the plan does not reflect the intent of this Award, the matter shall be returned to the Chairman for clarification.

13. Wages:

Effective April 1, 1995, the wage rates shall be increased by 2% over wage rates existing on March 31, 1995.

Effective October 1, 1995, the wage rates shall be increased an additional 2%, based upon wage rates existing on March 31, 1995.

Effective April 1, 1996, there shall be a 2% increase over wages existing on March 31, 1996.

Effective October 1, 1996, wage rates shall be increased an additional 2%, based upon wage rates existing on March 31, 1996.

Effective April 1, 1997, the wage rates shall be increased 2% over the wage rates existing on March 31, 1997.

Effective October 1, 1997, the wage rates shall be increased an additional 2% based upon wage rates existing on March 31, 1997.

Effective April 1, 1998, the wage rates shall be increased 3% over the wage rates existing on March 31, 1998.

The wage increases set forth above in each classification shall apply across-the-board, namely, to each classification, based upon applicable years of service.

The rates of pay consistent with the above provisions are set in Appendix A attached hereto.

Appendix A is intended to reflect the above Award. The intent of the above Award is that, for the first three years of the contract (1995, 1996 and 1997), there shall be two wage increases (2% on April 1 of each year, and 2% on October 1 of each year), except that the 2% increase in October is not cumulative. The Chairman will keep jurisdiction to resolve any disputes as to whether or not the attached Appendix A reflects the Award, which the Chairman believes it does.

The wages are to be paid, fully retroactive, within thirty (30) days of this Award.

14. Duration: As set forth in the Opinion, the duration of the Agreement will be from

April 1, 1995 through March 31, 1999, with wages being retroactive to April 1, 1995, and all other provisions being effective as of the date of these Awards, and that the medical insurance provisions being effective as soon as same can be implemented following the date of this Award, and likewise provisions for disability insurance shall be effective as soon as same can be implemented following the date of these Awards.

15. Except as set forth in the Awards, all other provisions existing in the just expired Agreement will be carried forward as set forth unless the parties agreed or agree otherwise.

  
GEORGE T. ROUMELL, JR.  
Chairman

November 28, 1995

Blackman Township/POAM  
ARTICLE XX  
WAGES

20.1: Public Safety Officer II (PSO II)

	4/1/95	10/1/95	4/1/96	10/1/96	4/1/97	10/1/97	4/1/98
Start	\$27,662.93	\$28,205.34	\$28,769.45	\$29,333.55	\$29,920.23	\$30,506.90	\$31,422.10
Year I	28,683.47	29,245.89	29,830.81	30,415.73	31,024.04	31,632.36	32,581.33
Year II	29,379.65	29,955.72	30,554.84	31,153.95	31,777.03	32,400.11	33,372.11
Year III	30,088.51	30,678.48	31,292.05	31,905.62	32,543.73	33,181.85	34,177.30
Year IV	31,001.43	31,609.30	32,241.49	32,873.67	33,531.15	34,188.62	35,214.28
Year V	31,938.52	32,564.76	33,216.06	33,867.35	34,544.70	35,222.05	36,278.71

20.1: Public Safety Officer I (PSO I)

	4/1/95	10/1/95	4/1/96	10/1/96	4/1/97	10/1/97	4/1/98
Start	\$29,417.52	\$29,994.34	\$30,594.23	\$31,194.11	\$31,817.99	\$32,441.88	\$33,415.13
Year I	30,438.06	31,034.89	31,655.59	32,276.29	32,921.81	33,567.34	34,574.36
Year II	31,134.24	31,744.71	32,379.60	33,014.50	33,674.79	34,335.08	35,365.13
Year III	31,843.10	32,467.48	33,116.83	33,766.18	34,441.50	35,116.83	36,170.33
Year IV	32,756.03	33,398.30	34,066.27	34,734.23	35,428.92	36,123.60	37,207.31
Year V	33,693.11	34,353.76	35,040.83	35,727.91	36,442.47	37,157.03	38,271.74

Wages to be paid fully retroactive within thirty (30) days of award.