827

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ACT 312 ARBITRATION

CHARTER TOWNSHIP OF WATERFORD

August 21, 1987

-and-

Case No. D86 A-189

WATERFORD PROFESSIONAL FIRE FIGHTERS ASSOCIATION, Local Union No. 1335

Panel of Arbitrators

Jack Swiatkowski, Union Delegate
Judith Ettinger, Employer Delegate
Ruth E. Kahn, Impartial Chairman

OPINION AND AWARD OF THE ARBITRATION PANEL

I. Introduction and Background

The Charter Township of Waterford has recognized and bargained with the Waterford Professional Fire Fighters for a number of years. A three-year Agreement, executed to be effective January 1, 1983 expired on December 31, 1985. The parties were unable to agree to all terms of a successor contract. Following petition to the Michigan Employment Relations Committee, by a filing dated April 17, 1986, the above-named panel was established pursuant to Michigan Public Act 312 of 1969, as amended.

The issues to be arbitrated were identified in a pre-hearing conference held July 24, 1986. It was established that the parties would exchange exhibits prior to commencement of hearings, as well as a brief pre-hearing statement of their positions. Hearings were held on the following dates: October 26, October 31, December 3, December 22, 1986; February 10 and February 25, 1987. Final offers were exchanged on March 13, 1987, following which time the parties submitted written briefs in support of their positions. The panel met in executive sessions on April 20, July 24, and August 18, 1987. Statutory time

limits were waived by the parties as to all aspects of the proceedings.

As part of this general background portion, the issues submitted to the Panel will be briefly identified.

1. Wages. It was agreed in their final offers the parties would sever each year's offer, permitting selection from the parties' final offers for each year separately.

2. Paramedic Allowance. The Union seeks an increase in the allowance and to have the entire allowance rolled into the employee's base pay. The Employer's final offer contains a different structure of increase, and also language stating "when working EMS".

3. Dental/Optical Insurance for Retirees. Currently employed workers have this insurance. The Union seeks to add it for retirees. The Employer opposes such expansion.

4. Food Allowance. The parties disagree on the amount such allowance should be increased.

5. Vacation Scheduling. The Union seeks a contractual assurance that two men per shift will be allowed off for vacations. The Employer opposes such change and asserts an economic cost.

6. Annual Sick Leave Earnings. The Employer seeks to change the rate at which sick days are earned. The Union opposes the change as a reduction of present benefits.

7. Rate of Pay for Promotion. Promotional classifications in this Unit are the Lieutenant and Captain positions. Currently a promotee receives one-half the pay increase upon promotion, and the remaining half in ninety days. The Employer proposes to award that second step raise after six months. The Union opposes any change.

8. Tuition and Textbook Reimbursement. The Employer seeks to limit such reimbursement to seniority employees whereas currently there is no such limitation. The Union opposes the change.

9. Holiday Pay. The Employer seeks a limitation of this benefit to seniority employees except in circumstances when the probationary employee is scheduled and works the holiday. The Union opposes the limitation.

An additional matter raised by the Union concerns its request that all wage increases for 1986 be paid with interest "at the

current prime rate". The Employer raised the matter of when the first year wage increase would be paid claiming no increase should be paid for the time prior to the Union's filing for Act 312 arbitration, which was April 17, 1986.

II. The Statutory Criteria

Section 9 of Act 312 requires that the findings and orders of this Panel be based upon the "...following factors, as applicable".

423.239 Findings and orders; factors considered.

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:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

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

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

HISTORY: New 1969, p. 604, Act 312, Eff. Oct. 1.

The parties' presentations and arguments and the Panel's considerations have examined the record established in this case with respect to the Section 9 applicable factors. Plainly, such factors are not precisely measurable. The relative weight and/or

relevance of each factor varies according to the particular issue under scrutiny. The Panel makes the following general commentary on the Article 9 factors as set forth above.

(a) No dispute exists concerning the "lawful authority of the employer".

(b) The parties have stipulated to certain procedural matters with which the Panel has complied and to certain substantive matters which will be noted where pertinent.

(c) The Employer makes no claim that it lacks "financial ability..." to meet the costs of the improvement sought in this proceeding but notes it must assess priorities to various expenditures.

(d) The parties stipulated to the use of Birmingham as a comparable community. The City submitted eight additional communities that it believed to be "comparable": Charter Township of West Bloomfield, Bloomfield Township, Township of Independence, Charter Township of Canton, City of Royal Oak, Madison Heights, Farmington Hills and Township of White Lake. The Association submitted Bloomfield Township, Canton Township, Clinton Township, Livonia, Pontiac, Royal Oak, Southfield, St. Clair Shores, and Sterling Heights.

Thus the parties agree that four communities are "comparable": Birmingham, Bloomfield Township, Canton Township, and Royal Oak, and they differ on the remaining ones.

In its selections, the Union chose communities with population higher than 50,000 (Waterford Township has 64,446), apart from Birmingham. They confined the communities to the tri-county area of Southeastern Michigan. They also considered the size of the fire department, square miles, SEV, number of fire alarms, number and type of EMS units.

The Employer cited millage rates, geographical location, the more rural-suburban character of its selected communities, and for the most part chose those in nearby areas. It is clear, however, that for the most part, the comparable factor which the Employer relies upon is the collective bargaining agreement with the Waterford Police Officers.

(e) The cost of living factor was addressed principally by the Employer, with exhibits of the Consumer Price Index for all Urban Consumers, and for Urban Wage Earners and Clerical Workers, July 1985, June 1986, July 1986. It urges that the Urban Wage Earner and Clerical Workers index is the more

relevant. The Union did not challenge the Employer's data on this factor.

(f) "Overall compensation" includes many items -- wages, vacations, holiday pay, pensions, insurance, "and all other benefits received". In the instant proceeding, some of the "other benefits" which are in dispute include food allowance, tuition/book reimbursement, certain health protection for retirees, and others. It is not disputed this bargaining unit has had stable employment with no recorded layoffs.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. The only change noted on the record -- apart from updating statistical information -- was the passage of a millage increase. The ballot for that increase stated it was:

> "...for the purpose of providing a second para-medical life support unit, employing additional fulltime fire fighters, purchasing fire equipment, building new and expanding...fire stations ..."

No time table for effectuating the purposes of the increased millage is provided.

(h) The final criteria mandated by Section 9 are broad: all "other factors...normally...taken into consideration" when a new contract is being bargained, mediated, or arbitrated.

Certain background factors were noted by the parties which may properly fall within this broad category of item (h). The bargaining unit consists of approximately thirty people: two Captains, four Lieutenants, and the rest are Driver-Engineers. There is a main station which houses the advanced life support equipment, and four outlying stations. The Driver-Engineer classification drives the engine to the scene, operates pumps -- puts the pumps in gear, maintains proper pressure, maintains the lines. Volunteer fire fighters fight the fire, holding the hose and nozzle. It was stated the latter group is comparable to the pipeman classification in a department which employs fire fighters to do that work.

Assignment to the Advanced Life Support unit(ALS) is voluntary. Currently there are ten or eleven persons trained and certified for ALS who have agreed to provide that service for the Department. To meet the contingency that the Department may not be able to answer an ALS call, it has an arrangement with a private provider to supplement its services.

The Union notes that within the Township there is a very busy airport, many lakes, busy shopping strips, and generally evidence of a growing community. The Employer emphasizes the non-industrial character of the community, characterizing it as essentially a bedroom suburban-rural area.

III. Discussion and Findings

1. Wages. This is an economic issue for which the parties submitted final offers. The Statute confines the Panel to a choice between the final offers made, without modification or change by the Panel. It was stipulated by the parties that the offers are severable for each year of the contract, that the Panel may choose one party's offer for the first year, for example, possibly one from the other party for the second year, and, similarly for the third year. The following are the offers for Driver-Engineer. (Lieutenant and Captain are structured in a fixed relationship above Driver-Engineer.) The following states the parties' final offers:

Employer Offer:	Effective Date	Increase
	4/17/86	$28,860 ($710 - 2.52%)
	1/1/87	$29,870 ($1010 - 3.5%)
	1/1/88	$30,467 ($597 - 2.0%)
Union Offer:	1/1/86	5.0%
	1/1/87	5.0%
	1/1/88	4.0%

The Employer states that the police officers and the fire fighters units have been in parity for a number of years. It urges that such relationship should be given great weight by the Panel and continued. The Union, for its part, discounts the importance of parity and insists its wages should be higher, pointing to the higher wages that are paid in many of its comparable communities, as well as the increased workload of these fire fighters.

According to the evidence submitted on this record, covering the period 1975 through 1984, the police officers and driver-engineers received the same base pay in seven of those ten years. Their contracts do not run for the same calendar periods, and hence the three years in which their pay differs is explained on the basis that one or the other contract is or has been renegotiated during that time. In the time period covered by this Panel's award, the police officers' contract runs concurrently only in 1986 and 1987.

Currently the top base rate for the fire fighter is $28,150.00. That is the pay rate under the expired Agreement. According to the Employer's data, in 1986, the top police officer base rate was $28,860.00; for 1987, it was $29,870.00.

Turning to the four communities which both parties have agreed are "comparable", the Engineer's base wage in 1986 is as follows:

Birmingham	$32,000.00 (July)
Bloomfield	$29,693.00
Canton	$30,400.00 (July)
Royal Oak	$31,831.00

For all but one of the remaining Union comparable communities, their base wage rate for Engineer is as high or higher. With respect to the remaining Employer-selected comparables, the question of true comparability must be raised. The Employer has selected some communities for which it presents only the fire fighter wage but not the driver-engineer. It contends that the former is more appropriate because it is the entry level. This contention refers to the situation in Waterford, where the driver-engineer is also "entry level". The Township urges that in communities where there are both fire fighter (pipeman) and driver-engineer classifications, that the driver-engineer position is a promotable one and therefore should not be considered for comparison purposes with the driver-engineer in Waterford.

The parties also submitted a number of exhibits pertaining to total compensation, including longevity pay, holiday pay, overtime, as well as calculations regarding the costs of the various improvements sought and offered. It is clear that the Employer relies mainly on the parity argument. For the past ten years, as shown by Employer's exhibit F, with respect to base wages, police officers and the fire fighters have been approximately in parity, the differences arising only in years of renegotiation, with one or the other of the units behind or ahead, as the case may be.

The parity argument ordinarily deserves much weight. The statute implicitly recognizes the principle, in paragraphs (d) and (h). More crucial, the parties have accorded it to have significance, for the history is that this principle has decided settlements in the past. Stability mitigates against disrupting such rationale. However, in the present instance, for the first year of the Agreement, true parity is not presented by either party's offer. The Employer links the proffered 2.52 increase -- the police rate, more or less -- to a limitation that the increment begin not on January 1, 1986, but April 17, some three and one-half months into the first year.

It is necessary, at this point, to discuss the Employer's proffered limitation on retroactivity. The panel is persuaded that the April 17, 1986 retroactivity date refers only to the wages and not to all other economic issues. There was some ambiguity as to that point in the statement of the offer and to the extent that it was mentioned during the proceedings. However, that ambiguity was resolved by the Employer's Brief in support of the Township's position. At page three of the Brief, it states:

> "...We urge this panel to adopt the last best offer concerning economic issues offered by the Employer to-wit: base wage for 1986 - $28,860.00 commencing April 1, 1986..." [*]

That is the only reference to an April 1 (or 17), 1986 starting date for an improvement. The conclusion is inescapable that the matter of retroactivity is not a general limitation and by itself an Employer "offer". It is an integral part of the Employer's final offer for the first year of the Contract.

The Employer's proffered limitation on retroactivity is unacceptable for two principal reasons. First, in terms of public policy it would seem that if a Union's gain under an Act 312 arbitration were to be limited to the date it applies for arbitration, such a policy would vitiate any serious effort to negotiate a contract. The Union, seeking to avoid diminution of its gains, would file for arbitration immediately upon expiration of the existing contract. Of course, that does necessarily exclude further efforts at bargaining, but such a policy of linking retroactivity to the date of petition would unnecessarily burden the State agency and could undermine genuine collective bargaining. Second, in this particular situation, it is the Employer's stated view that the Union is employing arbitration "as a free ride" to obtain additional benefits, beyond those offered to other employees in the Township. That is a conclusory statement, but no facts other than the settlements achieved with the other unions are on this record to substantiate the charge. There is no evidence of the Union's refusing to bargain in good faith. Had the Association accepted the Employer's offers during its negotiations, the bargaining unit would have received a wage increase commencing January 1, 1986. Now, some eighteen months, and more, later, they will receive an increase. That prolonged postponement of their improved wages would seem to be a sufficient burden.

The April 17 starting date reduces the value of the offer by three and a half months, or almost by thirty percent. Hence, true parity is not encompassed in the Township's offer for 1986. Because the Panel finds the Employer's 1986 wage offer, including the limit on retroactivity, to be unacceptable, the Panel will award the Union's demand for 1986, namely, five percent. Accordingly, the annual wage for 1986 will be approximately $29,558.

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[*] The text of the Final Offer refers to April 17, 1986. It is inferred the April 1 date from the Brief is in error.

With respect to wages for 1987, the second year of the Agreement, the Employer insists that only its annual wage figure is the "Final Offer", that the Panel must ignore the increment figure ($1010.) and the percentage figure (3.5%). All three figures are presented in the Final Offer, but, because the Employer's offer for 1986 was rejected, the increment of $1010. and the 3.5 percent figure, applied to $29,558. yield a figure higher than the Employer's proffered $29,870. That is, the increment and percentage figures, calculated upon the awarded 1986 wage, yield an annual 1987 wage that is higher than the dollar wage offered by the Employer.

This view of its Final Offer was not asserted by the Employer until the third executive session of the Panel. The Panel has rejected it for two principal reasons. First, it had been agreed by the parties that each year of the Agreement, for purposes of the wage issue, was to be severable. If, now, the Employer's view were to prevail, each year cannot truly be severed, but the dollar cap figure eminates out of the prior year(s). Second, in order to award the Employer's salary figure for either 1987 or 1988, the Panel would necessarily be required to modify the Employer's Final Offer and, in effect, change the increment and percentage figures for each of those years. That is an impermissible action, for under the statute, the Panel must adopt, in economic issues which this plainly is, one offer or the other. Accordingly, because the Panel deemed the increment/percentage figures as an integral part of the Final Offer, the Panel awards, for 1987, an increase of 3.5 percent, the percentage offered by the Employer. That is the percentage increase by which the Police Officers' wages were raised for 1987, and to that extent, is consistent with the weight to be given the parity argument.

For the third year of the Agreement, 1988, this is the time during which the police will be bargaining on new contract terms. No true parity argument applies, for it could be based only on speculation. At the same time, it cannot be overlooked that wages for this bargaining unit, the Fire Fighters, have exceeded those of the police in each of the two overlapping contract years, 1986 and 1987, because of the "go-ahead" in the first year.

If the Union's four percent demand for 1988 were awarded, the average increase for each year of this Agreement would exceed four percent. If the Employer's offer of 2 percent is awarded, the average percentage increase would be 3.5 percent. Examination of patterns among the comparables provided the Panel -- to the extent such data is available -- reveals, on the average, an annual increment of approximately three percent. After considering all of the evidence -- patterns of increases in comparable districts, disposition of other economic issues covered in this Opinion, discussed ahead, as well as the awards for the earlier two years of the Agreement, the Panel concludes that the Employer's offer of two percent for 1988 is awarded.

Interest Payment. The Union's demand for interest on the retroactive wage payment is rejected. The Panel is mindful of the question of statutory authority to issue such relief absent a showing that the matter was bargained to impasse. While this aspect of the issue was not fully argued by the parties, the Panel on its own motion is aware of this factor. Accordingly, the relief sought by the Union will not be awarded.

Paramedic Wages.

	Township Offer	Union Offer
1986	$1600.00 when working EMS	$1500.00 rolled into base pay
1987	$1700.00 when working EMS	$1750.00 as part of base
1988	$1800.00 when working EMS	$2000.00 as part of base

The prior Agreement, at page 36, provided an annual EMT allowance of $1500.00 in 1985 to "[t]hose employees who are state certified advanced EMT's". The Township's Brief supporting its Final Offer requests "that the languageof the Agreement created continue to require the payment of paramedic supplements...only for that portion of the firefighter's time during which he is assigned to and works in the paramedics unit...". (Underlining added).

No mention whatsoever of the Township's proposal to limit the allowance to "when working EMS" had been raised in the proceedings, not in the prehearing statements, nor by testimony, nor exhibits. The only evidence on administration of the allowance was testimony from the Union in response to inquiry from the Panel Chairperson, who was told essentially that a licensed paramedic Driver-Engineer is rotated out of the rescue unit once or twice a month, "[but] they still draw their $29.00 per pay check for carrying their license". (Vol. II, Page 169-170).

The Panel will not consider as a permissible Final Offer an issue not ever before the Panel. The Panel has no basis on which to award or deny the Employer's proferred contract language change. This conclusion is not inconsistent with the statute, §423.238, which states:

> "The determination of the arbitration panel as to the issues in dispute...shall be conclusive."

Accordingly, the Panel's determination is that the matter of the administration of the EMT allowance is not before the Panel and may not be considered in determining the paramedic supplement.

Turning to the merits of the respective economic offers, the following comments are appropriate. Paramedic service is voluntary. Approximately ten members currently provide the service.

Payment for such service is not a part of the employee's base rate. The record demonstrates that these paramedics respond to a greater number of calls than probably any other comparable public service. However, neither workload nor manning is at issue here.

The Employer emphasizes the voluntariness of the assignment; it offers evidence of a much lower hourly pay rate to employees in private emergency services. Evidence is scant from both the Employer's and the Union's comparable communities that there are similarly situated circumstances -- that service is/is not voluntary, that pay is/is not rolled into base, etc. I do not believe the voluntary character of the work performed should determine the mrits of the pay level dispute but I do believe the voluntary factor mitigates against the allowance being rolled into base pay. The Panel accordingly adopts the money final offer from the Employer, an increase of $100 in each of the three years of the new agreement. No change in the contract language, other than the calendar date and money figure is awarded.

3. Dental/Optical Insurance for Retirees. Active employees receive dental and optical insurance benefits but such coverage does not continue upon retirement. The Union seeks such protection for retirees; the Township opposes it. Neither party provided evidence with respect to whether this benefit is currently enjoyed by retirees of fire departments in comparable communities. There is evidence on this record that the parties have improved the pension plan by agreements reached in their pre-arbitration negotiations. Given that consideration and the absence of compelling reasons to allocate additional monies to retirement benefits at the present time, the Union's demand with respect to dental/optical insurance will be rejected. No change is to be made.

4. Food Allowance. Currently members receive $300.00 a year for a food allowance. The Employer offers $325.00 per year. The Union seeks $500.00. The Township's principal argument for its lower figure is the small increase that has occurred in the "Food and Beverage" component of the Consumer Price Index. Between January 1983 and January 1986, according to Employer Exhibit S -- and not refuted by the Union -- the cumulative increase is 4.6 percent. Acting on the view that a food allowance is for that purpose, and not a wage increase in disguise, it would seem that the Employer's offer remedies the increase in food costs. It is true that many of the Union-selected comparable communities pay larger food allowances. However, the more appropriate measure of adequacy is the criterion of cost-of-living, i.e. inflationary impact on the existing allotment.

The Employer's offer as to this issue will be awarded. The food allowance for each of the three calendar years of the Agreement is to be $325.00.

5. Vacation Scheduling. Article X of the expired Agreement states:

> "Employees shall be allowed unlimited splitting of vacation days provided that only one employee per shift is to be on vacation at any time." (Underlining added).

The Union seeks to change this provision and allow two employees per shift to be on vacation. According to the Union's evidence, apparently the policy is to require certain manning: four men at outlying stations and a minimum of four at Station One. Absences for any reason may require the Department to go to overtime, in order to fill its personnel needs. The Department has an overtime budget figure of $20,000. The Union states that for a number of years those funds were used to cover overtime created by vacations; now, the Union contends, the funds are being used to finance fire inspection, arson investigation, school.

It was further the Union's testimony that the "Chief has tried to work with us on getting two men off as much as possible because he realizes the problem we are having." The 'problem' referred to concerns not being able to obtain vacation during the most desirable times of the year and the fact that there is a restriction on carrying over vacation time from one year to the next. This latter circumstance has caused at least one man to lose some vacation time. Another 'problem' has been the Department's cancellation of approved vacations and personal leave days which the Union said had occurred about once a month. At times the Department has required the second person with approved vacation time to obtain a stand-by, that is, a person who agrees to come in if another (a third) absence occurs during the vac ation period. That date then converts to a 'trade day". Also, the Union maintains that its comparable communities permit more men off, either by policy or contract, than the current entitlement for this bargaining unit.

The Employer opposes imposition of a contractual requirement to permit two men to be off on vacation. It estimates an added cost of $20,000 would be incurred by such a change.

Several factors persuade me that no contractual language obligating the Department to allow two men off at a time should be adopted in this Agreement. First, it appears that many of the comparable communities offered by both parties contain their relevant vacation allotments within departmental policy rather than precise contract language. The meaning of 'policy' in the Union's testimony about its Exhibit 22 (on this issue) is not at all clear. It could well be a current practice that is similar to this Department's "trying to work with us". Second, as alluded to in the just-preceding sentence, is the Department's effort to accommodate to a recognized wish of the personnel to have two men off at the most desirable times of the year. This "effort" demonstrates good faith; the various changes made in

Department policy evidenced by several memoranda about vacations in early 1986 (Union Exhibit 29) simply reflect that good faith. They may also evidence currently the need for some flexibility by management. It is altogether possible, with the increased millage and the stated proposal to add personnel, that the Department may be able to meet the men's vacation wishes.

In light of the foregoing considerations, imposing a contractual mandate requiring two men off at a time does not appear, at this stage, to have merit. The Union's demand will be rejected.

6. Annual sick leave earnings. Currently, Firefighters (24-hour personnel) are earning one-half day sick leave per pay period; this amounts to 13 days or 312 hours per year. The Employer seeks to change the rate to one-half day per month, or 12 days, 144 hours per year. (Eight-hour personnel earn a half-day per pay period. The Employer would change that to one day per month.)

The Employer urges that the Firefighter sick leave accrual rate should be the same as the police officers'. It notes that after 25 years, the total sick leave that could be earned by a police officer is one year and two months; the Firefighter, in that same time, could accumulate two years, eight months. The Employer further contends that sick leave earnings amount to a bonanza, resulting in large payouts at the time of retirement.

The Union notes that sick leave earnings for Firefighters have always been geared to their work day, namely twenty-four hours, and it is that difference which explains the higher accumulation.

It should be noted that the just-expired Agreement sets a cap on payout at the time of retirement, of 1200 hours. That provision would continue.

The evidence is that Firefighter utilization of sick leave has shown a diminishing trend. The Union's testimony suggests that the Chief has described utilization as "'exemplary'". Firefighters are subject to the ordinary kinds of restrictions on the use of sick leave, namely, that sickness/disability must be established. The mere circumstance that a large number of hours may be accumulated has not resulted in large numbers of hours being used.

Given these factors --that parity with the police officers on this point has never existed, that utilization does not appear to be affected by the hours available, and the existence of a cap substantially below the possible accrual at time of retirement -- I can find no persuasive basis to take away what is a valuable protection for this bargaining unit. While the chance

of a long-term disability is remote, clearly the disabled Firefighter who loses "a day" uses not eight but twenty-four hours for each work day lost. The cap on total payout protects against the so-called "bonanza". These various positive factors greatly outweigh the Employer's reasons to reduce the benefit. The Employer's offer/demand with respect to sick leave accumulation is denied.

7. Rate of pay upon promotion. Currently a promotee gets one-half of the increment at the time of promotion and the second half of the increment ninety days later. The Employer would defer the second half of the increment attributable to promotion for six months.

The Employer notes the police officers attain the maximum rate after six months and it restates its argument in favor of parity. The Employer further states that because the probation period for a promotional position is six months, the remainder increment should be deferred until completion of probation. (The period of probation is fixed by statute.)

The parity argument essentially relies on history. It says the parties have been in parity with respect to the particular issue under scrutiny and that this settled manner of arriving at an agreed-upon pay rate/benefit should continue in the interest of stability. No such argument holds with respect to this factor, where the comparable unit is police supervisors. The record does not support a conclusion that Lieutenants and Captains in the Firefighting unit have been in parity with the police supervisors unit, consisting of four promotional classifications. In fact, the information adduced in this hearing shows no relationship whatsoever as to these two units. (See Transcript Volume IV, pages 143-150.)

A number of the Employer's comparable communities pay the total increase immediately upon promotion; others spread it out to six months. In some communities it is suggested there is a relationship to the probationary period, but no contract language is shown to support the inference.

The Union opposes the lengthened period and it notes the anomaly that a person may transfer temporarily into a Lieutenant vacancy and earn the full amount, whereas under the Employer's demand, the promotee must wait six months for the full benefit of the promotion. It notes that the difference between top Firefighter and Lieutenant is five percent; Captain over Lieutenant is also five percent.

I can find no compelling reason in the Employer's arguments to diminish a benefit which has been in the Agreement. The Employer has not seen fit to link the pay increase to successful completion of probation in the past. It presents no persuasive reasons to institute such a relationship for the future. Accordingly, the Employer's offer/demand with respect to this issue will be rejected.

8. Tuition and textbook reimbursement. The Employer would allow this benefit to be paid only to persons who are seniority employees, namely persons who have completed their probationary period after being newly hired into the department. Its reasons are first, the newly hired Firefighter should be concentrating on preparing himself for his firefighter career and not taking on additional schooling responsibilities until he is "somewhat solidified". Second, the Employer believes it should be expending these monies on persons who have proven their capacity to be Firefighters and are now committed to their career with the Department.

The testimony established that this provision would apply only to persons newly hired and not to those who are "probationary" promotees. Further, it is understood that if the Employer required a non-seniority employee to take classes, for example, paramedic training, fire science, the Department will reimburse for those costs.

It occurs to the Panel that there may well be newly hired employees who have gained firefighting experience in other departments and elect to transfer to this community. Such persons might well be able to take on classwork beyond that required for the true beginner. The Department could well lose the benefit of that person's gaining such training. At the same time, the second argument of the Employer, that the person should have passed probation and made a commitment to the Department before the Department makes this kind of investment in that employee's future has appeal.

It would seem the better method for handling this issue would be to make payment during the probationary period discretionary. Because the Panel is required to choose between the final offers, when an issue is economic as this is, the Employer's demand as to this issue is awarded.

9. Holiday pay. There are twelve designated holidays for this bargaining unit. According to the Employer, pay for these holidays is calculated on a formula. The base pay is divided by 121 and 1/2; that figure is multiplied by 6, and that sum is paid. It is paid bi-weekly in each pay period. The Firefighter gets it as a fixed percentage paid each pay period. Pursuant to the Employer's proposal, probationary employees would be paid only if they in fact work the designated holiday. During the probationary period, the holiday pay "supplement" would not routinely be added to their pay.

Essentially the Employer's argument is that probationary employees should not be benefiting from the full benefits accorded under the Agreement until they have proven themselves and become regular seniority employees. It has incorporated this provision in the police contract and believes the firefighter unit should have the same limitation.

As is discussed in relation to the sick leave benefit, there has been no historical parity for holiday pay demonstrated on this record. It would appear that the diminution of holiday pay benefits for police officers is a new provision in that Agreement. There is no evidence before this Panel that parity with respect to wages requires parity on all benefits. The Panel is not persuaded of the validity of a different holiday benefit for probationary employees from that which obtains for seniority employees. Very different considerations operate with respect to the textbook/course work reimbursement where the Department is incurring expenditures which are essentially an investment in a long term employee. Holiday pay here is really an add-on to the wage. I see no compelling reason to not allow the add-on to probationary employees. The Employer's demand/offer is denied.

SUMMARY OF AWARD

Each and all of the rulings set forth in this Award constitute a decision by the majority of the Panel. Except for the issues submitted to the Panel, the parties agree that no dispute exists as to any or all of the provisions of their Collective Bargaining Agreement for the term stated, January 1, 1986 through December 31, 1988.

The following is a statement of the Award with the concurrence/dissent of each party as to each issue.

1. Wages.

   Calendar 1986: 5 percent increase
   Employer dissents, with appended comment.
   Union concurs.

   Calendar 1987: 3.5 percent increase
   Employer concurs, with appended comment.
   Union dissents.

   Calendar 1988: 2 percent increase
   Employer concurs, with appended comment.
   Union dissents.

   Interest Payment. Denied.
   Employer concurs, with appended comment.
   Union dissents.

2. Paramedic Wages.

   1986: $1600.00
   1987: $1700.00
   1988: $1800.00

   Employer concurs, with appended comment.
   Union dissents.

3. Dental/Optical Insurance for Retirees. Denied.

   Employer concurs.
   Union dissents.

4. Food Allowance. $325 per year is awarded.

   Employer Concurs.
   Union dissents.

5. Vacation Scheduling. No change in contract language.

   Employer concurs.
   Union dissents.

6. Annual Sick Leave Earnings. No change in the contract language is awarded.

   Employer dissents.
   Union concurs.

7. Rate of Pay upon Promotion. No change in the contract language is awarded.

   Employer dissents.
   Union concurs.

8. Tuition and Textbook Reimbursement. Newly hired probationary employees will be excluded from this benefit unless required by Employer to take such studies.

   Employer concurs.
   Union dissents.

9. Holiday Pay. No change in the contract language is awarded.

   Employer dissents.
   Union concurs.

Dated this 21st day of August, 1987
at Southfield, Michigan

RUTH E. KAHN, IMPARTIAL CHAIRMAN

JACK SWIATOWSKI, UNION DELEGATE

JUDITH ETTINGER, EMPLOYER DELEGATE

[APPENDIX]

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ACT 312 ARBITRATION

CHARTER TOWNSHIP OF WATERFORD

-and-

WATERFORD PROFESSIONAL FIRE FIGHTERS ASSOCIATION, Local Union No. 1335

August 27, 1987
Case No. D86-A-189

Panel of Arbitrators

Jack Swiatkowski, Union Delegate
Judith Ettinger, Employer Delegate
Ruth E. Kahn, Impartial Chairman

DESCENTING OPINION OF JUDITH ETTINGER, EMPLOYER DELEGATE

As Employer Delegate to the Act 312 Arbitration Panel, I must offer a written descent as to the opinion and award of the panel relative to this Arbitration. First, that the panel has not determined the date upon which this Agreement would commence. The Aribration was filed for April 17, 1986 and no agreement between the parties as to the effective date was stipulated in the record. As a result the Employer predicated its offers upon a beginning date level with that date upon which arbitration was filed for. The panel did not request or hear any argument or requested a testimony relative to the effective beginning date of this Contract. The majority then used an arbitrary beginning date of January 1, 1986, to misconstrue the offer of the Employer, for the purpose of finding that the offer was not in keeping with the parity argument which was the cornerstone of its presentation. It is clear from the presentation of the Employer, that their last best offer for entry level firefighters was $28,860.00, and the percentage was offered solely as a measure to be used in determining wage rates for the Lieutenants and Captains whose wage must be figured in increments above the firefighters' wage. Since the parties have not set the date upon which their contract is to commence, it is up to this panel to choose the date upon which the contract is to commence, and interpret the parties last best offers within that framework. Since the parties did not agree to a beginning contract date, and the panel did not request the parties to address the issue of effective date, it is my belief that the panel has an obligation to reopen the hearing and take testimony relative to effective date of the contract to insure that both parties are playing on the same level field. To misinterpret the Employer's offer for the purpose of rejecting it,

is blatently in violation of the responsibilities of this panel, and in this writer's judgment, in the arbitration act itself.

For these reasons, I must reject the opinion of the panel and its interpretation of the Employer's offer, and further point out that while I would agree to the acceptance of the Employer's offer for the second and third year, point out that even accepting the Employer's offer for the second and third year, that the panel has greatly distorted that offer by applying it to a substantially higher base, than the base to which it was offered. The Employer's offer of 3.5% in the second year was predicated upon a base of $28,860.00 not the $29,558.00 awarded by this panel. The same can be seen in the third year. As a result, the firefighters are granted wage increases under the auspicious of being the Employer's offer while the resulting wage is actually closer to that sought by the firefighters. Thus, under the guise of accepting the Employer's offer, this panel is actually awarding the wages sought by the Union.

The confusion that has been created relative to the starting date of this contract required that this panel reopen the hearing to permit evidence to be taken as to the date this contract ought to be effective, and permit the parties to make their offers predicated upon the date which the panel determines to be the effective date of this agreement. The inequity of the award of the majority can particularly be seen in its strict application in the "April 1" offer of the Employer as being a limitation on the amount offered by the Employer, and at the same time, in awarding the Employer's offer relative to paramedic allowance, the panel accepts the Employer's offer but declines to include the fundamental limitation contained in that offer which is "while working EMS". It appears the majority would hold the Employer strictly to the terms of its offer for the purpose of determining that its first year wage offer is not "parity" with the police, while ignoring that same strict interpretation in accepting the Employer's offer relative to the paramedic's wage.

This writer further takes great exception to the panel's apparent rejection of Waterford Firefighters as entry level positions, ignoring previous arbitration rulings which specifically found that Waterford's "driver engineer" is an entry level position and not a promoted position as it is the "comparable" communities. This writer believes that the position of this panel in ignoring previous precedent has again, made it impossible for the parties to understand the parameters in which they are making their offers, and substantially distorts the offers made by the parties.

[APPENDIX]

In rejecting previous arbitrated precedent relative to the "driver engineer" issue, the panel has again distorted the parties comparables for purpose of supporting its award.

Finally, on the issue of wages, I note that the majority indicates that "it will not consider as a permissable final offer an issue not ever before the panel". The majority makes that statement while severing the Employer's offer relative to paramedic supplement, yet in rejecting the Employer's offer on the basis that there is a presumed January 1 beginning date for this Contract, the panel does exactly what it says it will not do, to-wit: permit a final offer to include an issue which was never presented before the panel. It would appear the consistency would require that if we reject the Employer's limitation on paramedic wages, that the panel must also reject the Employer's limitation as to the commencement date of the agreement.

It is this writer's opinion that until the commencement date of the contract is determined and the parties have an opportunity to make their final offers in relationship to that commencement date, that this panel's arbitrary acceptance of an effective date of an offer for the purpose of rejecting that offer, but rejecting a limitation on an offer for purposes of accepting that offer, is clearly in violation of the rules set down by Public Act 312.

For these reasons, I descent from the actions of the panel and state that I vote to reopen the hearing for the purpose of assuring that the parties making their last best offers for the same time period, after the panel has determined the beginning date for the three year contract agreed to by the parties.

Respectfully submitted,

Judith Ettinger
Employer Delegate