

4/5/94
JMSH
Arb.

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS

In the matter of Act 312
Arbitration between:

WATERFORD CHARTER TOWNSHIP,

Employer,

and

WATERFORD PROFESSIONAL FIRE
FIGHTERS ASSOCIATION, LOCAL
1335,

Labor Organization.

Case No. D92 D-0864

Arbitration Panel:

~~Jerold Lax~~, Chairperson
Stanley W. Kurzman,
Employer Delegate
Dennis Storrs, Labor
Organization Delegate

Appearances:

For the Employer:

Stanley W. Kurzman
Kurzman & Associates, P.C.
1263 W. Square Lake Rd.
Bloomfield Hills, MI 48302-2037

For the Labor Organization:

Gordon A. Gregory
Gregory, Moore, Jeakle,
Heinen, Ellison & Brooks
3727 Cadillac Tower
Detroit, MI 48226-2822

OPINION AND AWARD

I. Introduction

This Act 312 arbitration proceeding involves Waterford Charter Township (hereinafter "Township") and the Waterford Professional Fire Fighters Association (hereinafter "Association"), representing the approximately 50 employees employed by the Township's Fire Department in all classifications except Chief and Assistant Chief.

The last contract between the Township and the Association covered the period January 1, 1989 - December 31, 1991, and, by agreement of the parties, was extended for an additional year

through December 31, 1992. Negotiations for a new agreement, with ultimate participation by a state mediator, failed to produce an agreement, and the Association thereupon filed a Petition for Arbitration under Act 312 of the Public Acts of 1969 (MCL 423.201 et seq).

Jerold Lax was appointed as the impartial chairman of the arbitration panel on November 12, 1992. Stanley W. Kurzman and Dennis Storrs were selected by the Township and Association, respectively, to serve as panel representatives. A prehearing conference was held on January 5, 1993, and hearing dates of March 18, 23 and 25 were scheduled. The commencement of formal proceedings was delayed at the request of the parties because it appeared that further negotiations might result in a new contract.

The further negotiations did not result in agreement, and formal hearings were held on August 18, 1993, August 30, 1993, September 23, 1993, and October 7, 1993. During the hearings, each party was given full opportunity to present testimony and evidence, with some 139 exhibits being presented to the panel for its consideration.

The offers of the parties concerning outstanding economic and non-economic issues were exchanged on October 5, 1993, and briefs in support of the positions of the parties were submitted on November 30, 1993.

A number of contractual issues have been tentatively resolved through negotiation, and will, by agreement of the parties, be included as part of this arbitration award. The disputed issues to be resolved in this award (which are economic, unless otherwise indicated) are the following:

- 1 - Comparables
- 2 - Vacations
- 3 - Food allowance
- 4 - Disability insurance
- 5 - Health insurance
- 6 - Optical
- 7 - Pay for acting in a higher classification
- 8 - Pay for fire prevention classification
- 9 - Retirement
- 10 - Volunteer service credit
- 11 - Holidays
- 12 - Length of contract
- 13 - Wages
- 14 - Sick bank
- 15 - Compensatory time

The panel met in executive session on February 24, 1994 to discuss the proposed award, and the following discussion summarizes the conclusions of the panel. All panel members are in agreement that this award shall be regarded as timely under Act 312. In rendering this award, the panel has adhered to the

directive of Section 9 of Act 312 that it base its findings, opinion and order upon the following factors, as applicable:

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

Further, with regard to economic issues, the panel has adhered to the directive of Section 8 of the statute that it adopt the best offer of settlement which, in the opinion of the panel, more nearly complies with the applicable factors prescribed in Section

9. The panel notes, however, that with regard to any particular issue, each Section 9 factor need not be accorded equal weight. City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980).

II. Resolution of disputed issues

(1) Comparables

The Township proposed that the following communities be regarded as comparables for purposes of evaluating the positions of the parties on the disputed issues in this case: Canton Township, Clinton Township, Dearborn Heights, Redford Township, Roseville, Royal Oak, Shelby Township, St. Clair Shores, Taylor, and Westland. While the Association agreed that most of these communities could appropriately be regarded as comparables, it objected to the inclusion of Dearborn Heights, Redford Township, Roseville, and Taylor, contending that the Township's evidence did not demonstrate that firefighters in the disputed communities performed services comparable to those performed by Association members.

It is the view of the majority of the panel that all of the communities proposed by the Township can appropriately be considered as comparables, taking into account such factors as size, location, population, and assessed valuation. While there may be some differences in the services provided by firefighters in the various communities, there is no evidence demonstrating that any such differences would invalidate comparisons among the

proffered communities and Waterford Township. It should also be noted that although inclusion of the disputed communities may, in certain instances, lower the average of the economic benefits at issue, the relative position of the Association's members does not appear to be affected in any significant way.

The Township delegate concurs; the Association delegate dissents.

(2) Vacations

The Association proposes that employees in the fire prevention division (fire marshall and fire inspector) who have served for over 15 years be permitted 28 vacation days per year, rather than the 24 days currently available to employees with that length of service, and proposes that this increase become effective January 1, 1994. The Township has made no final offer regarding this issue.

A review of the evidence indicates that the benefit sought by the Association would bring the employees in the fire prevention division into line with other Township employees, and no basis exists in the record for denying this equivalence.

The Association delegate concurs; the Township delegate dissents.

(3) Food allowance

The most recent collective bargaining agreement provides an annual food allowance of \$350 for fire suppression employees (commonly referred to by the parties as "24-hour"

employees), and no food allowance for fire prevention personnel (referred to as "40-hour" employees). The Association proposes that both classes of employees receive an annual food allowance of \$450 commencing January 1, 1993, an allowance of \$525 commencing January 1, 1994, and an allowance of \$600 commencing January 1, 1995. The Township proposes an increase for fire suppression personnel to \$450, presumably commencing January 1, 1993, and no further increase thereafter.

While the Association is correct in noting that the food allowance is greater in several of the comparable communities, it is the conclusion of a majority of the panel that the proposal of the Township, taking into account the wage award of the panel, most adequately accounts for the legitimate interests of the employees in regard to food allowance.

The Township delegate concurs; the Association delegate dissents.

(4) Disability insurance

The Association proposes that employees who become disabled be paid $\frac{2}{3}$ of their regular pay commencing at the exhaustion of sick leave or the expiration of 60 days, whichever is later, and that these benefits continue for the entire duration of the disability. The Township offers no disability pay as such, contending that sick leave would adequately cover situations of disability.

In support of its position, the Association argues that police officers as well as management employees of the Township are accorded disability pay. In these instances, however, such payments are limited to one year, and are not unlimited as proposed by the Association. It is the conclusion of a majority of the panel that while some enhancement of disability pay may be justified, the unlimited form requested by the Association is not supported by the evidence and the Township's position on the issue of disability pay should therefore be adopted.

The Township delegate concurs; the Association delegate dissents.

(5) Health insurance; mandatory overtime

The Association proposes that the present contractual provision requiring 50-50 sharing by employees of increases in premiums for conventional Blue Cross-Blue Shield be eliminated. The Township offers two alternatives: (1) if the panel eliminates a mandatory 3 hours of overtime pay, co-pay of premium increases may be eliminated; employees may obtain insurance through a fully-paid Blue Cross-Blue Shield preferred provider plan or may, by paying the premium differential, continue conventional Blue Cross-Blue Shield coverage; employees may decline Township-provided coverage and receive a \$1,500 annual payment; (2) if the panel does not eliminate the mandatory 3 hours of overtime, employees may obtain insurance through the fully-paid preferred provider plan, or may continue traditional coverage by paying the premium differential, with co-pay of

subsequent premium increases and credit for premium decreases; employees may decline Township-provided coverage and receive a \$1,500 annual payment.

It appears from the evidence that co-pay of premium increases was earlier accepted by the Association as a quid pro quo for a mandatory 3 hours of overtime. It is the view of a majority of the panel that the offer which most appropriately resolves the insurance and overtime issues is the Township's second alternative, which maintains the prior understanding of the parties concerning co-pay and mandatory overtime, and which incorporates the possibility of obtaining less costly preferred provider coverage. This approach is utilized for the Township's police unit and for many of its other employees, and provides a reasonable range of options to the employees in the present unit.

The Township delegate concurs; the Association delegate concurs in the retention of mandatory overtime and dissents from the remainder of the health insurance award.

(6) Optical coverage

The present contract provides for optical expense reimbursement of a maximum of \$100 every 24 months for the employee, as well as for the employee's spouse and each child. The Association proposes that this benefit be available every 12 months, while the Township offers no change to the existing provision.

Taking into account the fact that this benefit covers not only the employee, but also his dependents, and in light of the panel's wage award, it is the conclusion of a majority of the panel that the Township's position deals adequately with the issue of optical insurance.

The Township delegate concurs; the Association delegate dissents.

(7) Pay for acting in a higher classification

The Association proposes that a new section be added to the contract providing that if an employee is required to assume the duties of a higher-ranking employee for a period of greater than 3 hours, the employee will be compensated at the rate of the higher-ranking employee. The Township proposes to maintain the status quo.

The majority of the panel concludes that the evidence supports the Township view that temporary assumption of higher-level responsibilities does not warrant higher pay, both because of difficulty in determining whether all the functions of the higher-level employee have in fact been assumed and because the pay of the higher-level employee is likely to reflect an experience level which is not matched by an employee who assumes duties on a sporadic and temporary basis.

The Township delegate concurs; the Association delegate dissents.

(8) Pay for fire prevention classifications

The Association proposes that the pay of the fire marshall and fire prevention inspector be increased, effective July 1, 1993, to what the Association characterizes as the equivalent rank of line officers--captain in the case of the fire marshall, lieutenant in the case of the inspector. The Township proposes to equalize and increase the base pay of the fire marshall and line captain effective January 1, 1994 to a lesser amount than proposed by the Association, and proposes that the pay of inspector and line lieutenant not be equalized.

While there is some force in the contention of the Township that the fire prevention personnel receive certain paid holidays off not available to line personnel, and that line lieutenants have some supervisory responsibilities beyond those of a fire prevention inspector, a review of fire marshall and fire inspector compensation in comparable communities persuades the majority of the panel that the proposal of the Association should be accepted, with base pay for fire marshall and fire prevention inspector, as of July 1, 1993, to be set, respectively, at \$48,317.00 and \$45,389.00.

The Association delegate concurs; the Township delegate dissents.

(9) Retirement

The Association proposes that employees be permitted early retirement if they have at least 20 years of credited service, and that they be permitted to acquire additional service

credit up to a maximum of 25 years upon payment of one-half the cost of the additional service credit. The Township proposes that this provision not be included in the contract.

While the evidence supports the contention of the Association that employees in the unit are subjected to serious hazards in the performance of their job responsibilities, the majority of the panel concludes that the requested benefit is not justified either by the working conditions of the employees or by comparison with benefits received either by Township employees or employees in comparable municipalities. Hence, the position of the Township is adopted.

The Township delegate concurs; the Association delegate dissents.

(10) Volunteer service credit

As an additional aspect of its retirement proposal, the Association requests that firefighters who have served as volunteers prior to entering the bargaining unit be permitted to acquire up to 6 years of service credit for volunteer time upon payment to the retirement system of 5% of their full time compensation for each year of volunteer service credit purchased. The Township proposes that this provision not be included.

The Association is correct in noting that the formula it proposes is equivalent to the contractual formula for purchasing credit for military service. It is also the case, however, that the Township's volunteers are unpaid, and the legal

authorities cited by the Association for the proposition that credit must be provided for volunteer time are relevant only in the case of paid volunteers. Further, the contribution proposed by the Association for purchasing volunteer credit appears to be significantly lower than the contribution for paid employees. It is the conclusion of the majority of the panel that the position of the Township on this issue should be adopted.

The Township delegate concurs; the Association delegate dissents.

(11) Holidays

The Association proposes that, effective January 1, 1994, Martin Luther King Day and Easter be added as paid holidays. As the Township appears not to oppose this request, and as it provides equality among Township employees, the panel unanimously adopts the proposal of the Association.

(12) Length of contract

The Association proposes a 3-year contract, while the Township proposes a 2-year contract. In support of its request for a contract of shorter duration, the Township contends that the bargaining process is made more effective if most contracts expire simultaneously, and that the award of a 3-year contract involves an excess degree of speculation as to the economic conditions which will prevail in the third year, both as to ability to pay and as to the level of benefits which will be made available in comparable communities. The Association contends that requiring a number of contracts to expire simultaneously

would result in the ability of the Township to bargain an agreement favorable to the employer for a weak unit and thereby establish a pattern for reducing benefits in other units; further, the Association contends that it would be more economical for both parties to accept a longer agreement and reduce the necessity for additional bargaining after two years.

While mindful of the fact that a shorter agreement may result in additional bargaining time and expense, the majority of the panel, particularly in light of the panel's award concerning wages (see below), concludes that it would be inappropriate to award a 3-year agreement which would necessarily involve significant speculation concerning the third year at a time when a number of issues regarding such factors as state funding remain uncertain. It is therefore the award of the panel that the contract expire December 31, 1994.

The Township delegate concurs; the Association delegate dissents.

(13) Wages

As a result of the panel's award with regard to the length of the contract, the position of the parties with regard to proposed wages for 1995 need not be evaluated. Further, the positions of the parties are identical for 1994--a 3% increase effective January 1, and a 2% increase effective July 1. Hence, with regard to 1994, it is the unanimous conclusion of the panel that these increases be awarded.

The parties do differ significantly in their positions concerning 1993. The Township proposes no increase, while the Association requests a 3% increase effective July 1, 1993. The Township attempts to justify its position both because of limited ability to pay and because the recent Act 312 award relating to Township police officers contained no 1993 increase. The Township's position concerning ability to pay is not that insufficient funds are available to fund the requested benefit, but rather that sound fiscal management requires maintenance of a substantial fund balance to account for uncertainties in municipal revenues and potential cost increases in a variety of municipal purchasing areas. While the panel concurs with the Township's view, supported by the courts, that inability to pay should not be construed so narrowly as to require a showing of near-bankruptcy to justify a wage freeze, it is nonetheless the view of the panel that the evidence does not support the conclusion that the increase sought by the Association would result in serious financial difficulty for the Township. Further, despite the award in the Act 312 arbitration dealing with the Township's police officers, the Township's command officers were awarded a 1993 increase, and such an increase will better enable the employees in the present unit to maintain their relative position in relation to comparable communities.

The Association delegate concurs; the Township delegate concurs with regard to 1994 and dissents with regard to 1993.

(14) Sick bank

The Township proposes that as of January 1, 1994, a sick bank be established to replace the existing contractual language concerning sick leave, with a pro rata portion of unused sick bank time paid on an annual basis to employees who have not used sick leave and with no accumulation of unused post-1993 sick leave paid upon termination of employment. The Township's proposal includes payment of 2/3 of an employee's wages for up to 12 months for employees on sick leave for more than 60 consecutive calendar days. The Association proposes no change in the current sick leave provisions, contending that the issue was not properly mediated in advance of the Act 312 hearing and that substantively, no adequate justification was provided for modifying the prior sick leave provisions.

While the record raises some question as to the adequacy of mediation relating both to the sick leave issue and the issue of compensatory time (see below), the panel regards it as appropriate to resolve each of these issues on the merits. With regard to sick leave, the Township's proposal does deal with disabilities of up to one year, and, in light of the panel's rejection of the Association's proposal concerning disability, would provide at least some coverage for such situations. Aside from this advantage of the Township's proposal, however, and aside from the overall cost saving which may result to the Township from its position, the evidence provides no compelling justification for deviating from the sick leave arrangement which

has prevailed between the parties. Hence, it is the conclusion of a majority of the panel that the proposal of the Association should be adopted.

The Association delegate concurs; the Township delegate dissents.

(15) Compensatory time

The Township proposes that earned compensatory time must be used or converted to overtime pay within 90 days, while the Association proposes to continue the present practice of imposing no specific time restriction on the ability of an employee to accumulate earned compensatory time. It is the view of a majority of the panel that no justification appears in the record for modification of the current practice, and the position of the Association is therefore adopted.

The Association delegate concurs; the Township delegate dissents.

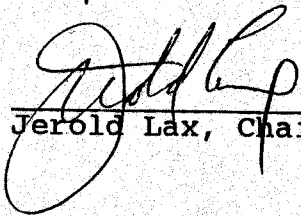
(16) Tentative agreements

By stipulation of the parties, the panel unanimously awards as part of the contract the tentative agreements of the parties on the following issues, which are attached hereto as exhibits:

- (a) Promotions
- (b) Seniority
- (c) Vacations

- (d) Civil leave
- (e) Tuition reimbursement
- (f) Funeral leave

This award is issued April 5, 1994.



Jerold Lax, Chairman

Dennis Storrs, Association Delegate,
concurring in part and dissenting in
part

Stanley W. Kurzman, Township Delegate,
concurring in part and dissenting in
part

- (d) Civil leave
- (e) Tuition reimbursement
- (f) Funeral leave

This award is issued _____, 1994.

Jerold Lax, Chairman

Dennis K. Storrs 3-30-94
Dennis Storrs, Association Delegate,
concurring in part and dissenting in
part

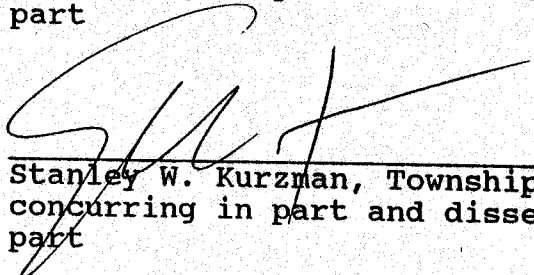
Stanley W. Kurzman, Township Delegate,
concurring in part and dissenting in
part

- (d) Civil leave
- (e) Tuition reimbursement
- (f) Funeral leave

This award is issued _____, 1994.

Jerold Lax, Chairman

Dennis Storrs, Association Delegate,
concurring in part and dissenting in
part



Stanley W. Kurzman, Township Delegate,
concurring in part and dissenting in
part

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Seniority

SECTION 1 - General

1. Seniority and its application shall be governed by the provisions of Act 78, Public Acts of 1935, or Section 3 of this Article.

2. Seniority shall be adjusted for all non paid leaves and a single disciplinary action of five (5) days or more for 24 hour employee or ten (10) days or more for a 40 hour employee.

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Sec 1
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ARTICLE X, SECTION 1, PARAGRAPH C: VACATIONS

Employees shall be allowed unlimited splitting of vacation days provided at least one hour at a time is taken. Two (2) employees will be allowed off on vacation per shift. Additional men off on vacation will be granted, with a standby man, at the Chief's, or his designees', discretion. A maximum of one (1) year of earned vacation may be carried over provided that at least one-half (1/2) of each year's earned vacation is used each year, and that vacation time carried over will not be entitled to seniority preference.

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ARTICLE XXV: PROMOTIONS

In order to be eligible for promotion to Fire Inspector, both seniority and Fire Officer I are required.

In order to be eligible for promotion to Fire Marshal, seniority in the rank of Fire Inspector-Lieutenant and successful completion of the State Certified Fire Inspector school are required. Only in the event of the discontinuation of the State Certified Fire Inspector school will Fire Officer I and II combined be accepted as a requirement.

ARTICLE XI, SECTION 3, PARAGRAPH F: SENIORITY

Lieutenants and Advanced EMTs shall be given the opportunity to choose their station, within their Kelly group and shift, based on their seniority. Station choices will be at the discretion of the shift Captains and/or the Chief.

ADDED LANGUAGE.

ARTICLE XXV: Promotions

In order to be eligible form promotion to Fire Inspector both seniority, regardless of rank, and Fire Officer I are required.

In order to be eligible for promotion to Fire Marshal, seniority in rank of Fire Inspector-Lieutenant and successful completion of the State Certified Fire Inspector school are required. Only in the event of the discontinuation of the State Certified Fire Inspector school are required. Only in the event of the discontinuation of the State Certified Fire Inspector school will Fire Officer I and II combined be accepted as a requirement. If only one person is qualified, the next senior person, regardless of rank, will be eligible.

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ARTICLE XIII- OTHER LEAVE

SECTION 3 - Civil Leave

Leave with full pay shall be granted for jury duty, ~~(appearance in court as a witness, pursuant to a duly authorized subpoena)~~ and similar official assignments; all fees received for the aforesaid leave period shall be paid to the Township forthwith upon receipt by an employee. *DKS*

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Add to Article XIII, Section 4 - FUNERAL LEAVE:

Mother-in-law and Father-in-law

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ARTICLE XVII - Tuition - Reimbursement

9. Employee shall repay the Township for any tuition reimbursement received from the Township if the employee's employment with the Township is voluntarily terminated or is terminated as a result of the employee ~~disability~~. Reimbursement shall be in accordance with the following schedule:

discipline. *for*
DKS

TERMINATION
PRIOR TO END OF YEAR

REIMBURSEMENT

1	100%
2	80%
3	60%
4	40%
5	20%

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