

STANLEY T. DOBRY  
ARBITRATOR

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MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
STATUTORY ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

WEST BLOOMFIELD TOWNSHIP,

Employer,

MERC ACT 312

Case No: D 83 B608

-and-

POLICE OFFICERS ASSOCIATION OF  
MICHIGAN (PATROL),

Union.

PANEL'S OPINION AND AWARD

I. APPEARANCES:

For the Employer:

Keller, Thoma, Schwarze, Schwarze, DuBay & Katz, P.C.

By: Dennis B. DuBay, Esq.

Attorneys

For the Union:

William Birdseye

Treasurer and Representative

II. PRELIMINARY STATEMENT

This Panel is created under the authority of the Michigan Employment Relations Commission (hereinafter MERC), pursuant to the authority of Act 312 of the Public Acts of 1969, as amended. That agency maintains a panel for the resolution of contractual impasses in the collective bargaining

Dobry, Stanley T.

West Bloomfield Township

process between municipalities and police or fire personnel. The chairman of this panel was appointed to this dispute by letter dated September 13, 1983.

The parties' designated delegates: Frederick B. Schwarze, Esq., for the Township, and William Birdseye, for the Union.

The parties' labor agreement expired on March 30, 1983. The bargaining unit was formerly represented by the Teamsters National Law Enforcement Union, Local 129. Since this is the first contract between these parties, many substantial issues were raised. At the commencement of the matter, 20 issues were outstanding.

Pre-arbitration hearings were held at the West Bloomfield Township offices on November 8 and December 21, 1983. The tangible results were summarized in the Chairman's letter dated February 1, 1984, to MERC.

Hearings were held on February 15 and 16, 1984. All witnesses were sworn, and a verbatim record made.

### III. INTRODUCTION

#### A. Purpose and Procedure

The purpose of an Act 312 Arbitration is the peaceful resolution of labor disputes in the public sector. To this end, the Act provides for "compulsory arbitration of labor

disputes in municipal police and fire departments." The general statement of statutory policy is enlightening. Found at Michigan Compiled Laws Annotated (MCLA) 423.231, and Michigan Statutes Annotated (MSA) 17.455(31), it states:

Sec. 1. It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provision of this act, providing for compulsory arbitration, shall be liberally construed."

The law further defines policemen and firefighters [MCLA 423.232; MSA 17.455(32)]; establishes methods and times of initiating the proceedings [MCLA 423.233; MSA 17.455(33)]; provides for the selection of delegates [MCLA 423.234; MSA 17.455(34)]; and establishes the method for selection of the Arbitrator [MCLA 423.235; MSA 17.455(35)].

It also sets forth procedural timetables;<sup>1\*</sup> has a provision for the acceptance of evidence;<sup>2</sup> and allows that the panel may issue subpoenas and administer oaths. [MCLA 423.237; MSA 17.455(37)]. The dispute can be remanded for further collective bargaining. [MCLA 423.237a; MSA 17.455(37a)]<sup>3</sup> [MCLA 423.239; MSA 17.455(3a)]. Finally, the law provides for enforcement, judicial review, maintenance

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\*Footnotes appear on pages 14 and 15.

of conditions during the pendency of the proceedings. [MCLA 423.240-247; MSA 17.455(47)].

Finally, at or before the conclusion of the hearing, the panel is required to identify each issue as "economic" or "noneconomic". The classification is critical. The panel may adopt either party's offer or its own position on a non-economic issue. However, on an economic issue, the "arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies" with the factors set forth in the statute. [MCLA 423.238; MSA 17.455(38)]; (emphasis added). In other words, the panel must choose the more reasonable of the parties' two offers. Therefore, in a very real sense, Act 312 proceedings are not "won" by a party; they are "lost" by the party making unreasonable demands in light of the facts confronting them.

On contested issues, the panel must base its findings on the statutory criteria. There are ten.<sup>4</sup> MCLA 423.239; MSA 17.455(39) states in relevant part:

. . .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.

#### **IV. OPINION**

Act 312 Arbitration is an extension of the collective bargaining process. Although the following determinations are not necessarily the only solution to the problems confronting the parties, the Arbitrator is convinced they are closest in conformity with the terms of the statute. The Arbitrator has reviewed each of the statutory criteria as they apply to the respective issues and has concluded that those criteria, as applied to the record before the Arbitrator, virtually command these determinations. On the economic issues, it is respectfully submitted that this disposition represents

a fair compromise between the needs of the Township for fiscal responsibility, and the Union members' requirement of economic security. This settlement is plainly within the parameters of settlements in comparable communities. It maintains the historical pattern and relationship these parties have freely bargained for in the past. As such, it reflects the parties' clear consensus of their relative worth. On the non-economic issues, some compromise was indispensable.

Moreover, the Police Officers Association of Michigan dealt with its new contract in the mature and sophisticated way that is to be expected of real professionals.

As a personal note, the Arbitrator was greatly aided by the quality of the representatives' advocacy and the wise counsel of both delegates. This proceeding is a classic example of the way Act 312 was meant to work.

#### **V. DETERMINATIONS**

Based upon a full and careful review of the exhibits and stipulations of the parties, the Panel unanimously makes the following determinations:

1. This contract will be in effect for two (2) years and nine (9) months from April 1, 1983 through December 31, 1985.<sup>5</sup>

2. All designations in the contract shall be changed from Teamsters National Law Enforcement Union, Local 129, to the "Police Officers Association of Michigan".

3. Article XXIV, "SALARIES", Section A, shall be revised in light of the following schedule:

Section A.

(1) The annual rates of compensation for those employees employed prior to January 1, 1984 will be:

Effective April 1, 1983 - December 31, 1983

Start	\$20,587
1 year	\$23,015
2 years	\$24,571
3 years	\$26,126

Effective January 1, 1984 - December 31, 1984

Start	\$21,205
1 year	\$23,705
2 years	\$25,308
3 years	\$26,910

Effective January 1, 1985 - December 31, 1985

Start	\$22,212
1 year	\$24,831
2 years	\$26,510
3 years	\$28,188

All hours compensated after January 1, 1984 shall be paid retroactively in light of this above Paragraph 3.

(2) The annual rates of compensation for those employees employed after January 1, 1984 will be as follows:

Effective January 1, 1984 - December 31, 1984

Start	\$17,000
1 year	\$19,500
2 years	\$22,000
3 years	\$24,500
4 years	\$26,910

Effective January 1, 1985 - December 31, 1985

Start	\$17,807
1 year	\$20,426
2 years	\$23,045
3 years	\$25,664
4 years	\$28,188

4. Article VI, Section O, "GRIEVANCE PROCEDURE"

shall be revised to read as follows:

Section O. In cases of disciplinary action which result in the loss of time or money, the employee may appeal from the Police Trial Board or the Police Chief's decision, whichever is later, to either the Police Appeal Board as provided by the Township code or to binding arbitration as set forth in this Article at the employee's option. An employee may select only one option.

5. Article XIV, "RETIREMENT" shall be revised as

follows:

SECTION A. Employees included within the bargaining unit shall be entitled, as a condition of their employment, to the benefits of the retirement program approved by the West Bloomfield Township Board (the basic plan) and presently in effect for this bargaining unit which retirement plan is incorporated herein by reference. Effective April 1, 1982, the pension formula will be changed from one (1%) percent of final average earnings to one and one-half (1½%) percent of final average earnings.

SECTION B. The mandatory retirement age will be sixty-five (65) years of age and the employee will normally retire on the first day of the month following the employee's sixty-fifth (65th)



birthday. Upon written application and good cause shown, the Township Board may, in its sole discretion, grant an exception to this requirement for such periods of time as it deems appropriate. The normal retirement age will be as set forth in the retirement plan, i.e., age sixty (60). Effective January 1, 1985, the normal retirement age will be age fifty-nine (59). Effective December 31, 1985, the normal retirement age will be age fifty-eight (58).

SECTION C. The Township will provide a voluntary employee contribution qualified plan for deferred compensation.

SECTION D. Effective April 1, 1979, the Township will establish a defined contribution pension plan to which the Township will contribute an amount equal to five (5%) percent of each employee's aggregate total earnings for each fiscal year with full vesting in the employee after ten (10) years of service with the employer.

SECTION E. The Township reserves the right to select the carrier(s), to change carrier(s), and to become self-insured, provided that the dollar amount and/or benefits of such coverage is not reduced and the eligibility requirements under such contracts are not increased.

6.. Article XIX, "INSURANCE", Section H,

Sub-Section D, shall be revised to read:

D. The Township reserves the right to select the carrier(s), to change carrier(s), and to become self-insured, provided that the dollar amount and/or benefits of such coverage is not reduced and the eligibility requirements under such contracts are not increased.

7. Article XV, "VACATIONS", Section A, shall be revised to read as follows:

<u>Seniority</u>	<u>Maximum Vacation</u>
After one (1) year, to and including after four (4) years	Ten (10) days
After five (5) years, to and including after ten (10) years	Fifteen (15) days
After ten (10) years, to and including after fifteen (15) years	Nineteen (19) days
After sixteen (16) years and over	Twenty-one (21) days

8. Within thirty (30) days after the date of this Arbitration Award, each member of the bargaining unit on the date of this Arbitration Award will receive a one-time only lump sum payment of Five Hundred (\$500.00) Dollars for reimbursement of expenses for equipment update. Only those in the unit on the date of this Award are eligible for this payment.

9. Article XIII, "HOURS OF WORK AND OVERTIME", shall be amended by adding the following new Section:

SECTION J. Permanent Shifts - A transfer of shifts, if any, shall take place semi-annually on November 1 and May 1. The following guidelines shall apply:

- a. Employees with three (3) or more years of seniority shall have the right to select shift preference by seniority subject to maintaining a satisfactory performance level. An employee desiring a transfer of shifts shall file a request thirty (30) calendar days prior to November 1 or May 1.

b. Procedures:

1. The Department will post a seniority list of all confirmed members of the Department.
2. Officers will make their selection of shifts based upon Departmental seniority. Officers will submit their 1st and 2nd preference.
3. Members of the bargaining unit who may be on vacation, sick leave, or other approved leave at the time of the posting and shift selection process shall assume responsibility for their shift selection, in writing, through a union representative.

c. Bumping. "Bumping", i.e., preempting another officer's position after selection period, based on superior seniority shall not be permitted. Shift selections shall remain in force for the full period.

d. Premium Pay Exclusion. There shall be no shift differential pay for midnights, afternoons, or support shifts for members who work such shifts as a result of the provisions of this Article.

e. Nothing in this Article shall restrict the Department's practice of rotating two (2) officers selected by the Department to rotate into and work on the day shift. Such rotation to take place, at the discretion of the Department, at each six (6) month interval (November 1 and May 1). Two (2) positions shall be held open (and exempted from this section) for purposes of this rotation practice. The positions will be filled by volunteers.

10. Article XVI, "HOLIDAYS" shall be amended to add the following new section:

Section \_\_\_\_\_. Employees may take, subject to the provisions of this Section, up to three (3) days off with regular straight-time pay in lieu of the paid holiday time set forth in this Article. Each day so taken shall be deducted from the twelve (12) days allotted to each employee. No more than three (3) days

may be taken in any one (1) calendar year (December 1 to November 30). Days off must be scheduled in advance and the employee must receive advance approval from the Department. Effective January 1, 1985, employees with at least five (5) years of service may use up to five (5) days as set forth in this Section.

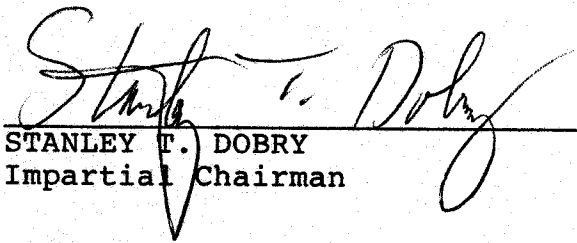
11. Article XIII, Section B, shall be revised to provide for three (3) days per year, rather than two (2) days, effective January 1, 1984.

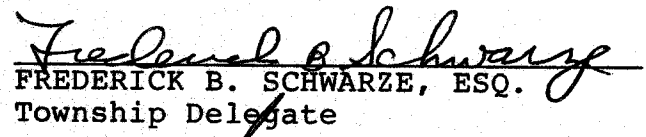
12. The Arbitrator expressly determines that all other requests for changes in the current collective bargaining agreement are not supported by competent and substantial evidence, and therefore, those requests are denied.

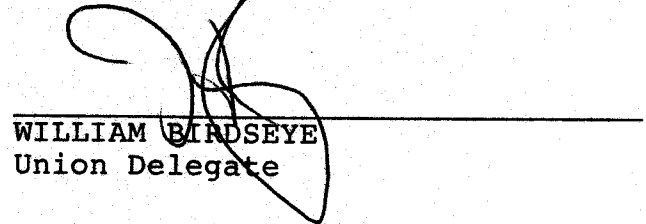
13. All other provisions in the parties' collective bargaining agreement shall be as set forth in the previous contract between the Township and the Teamsters, Michigan Law Enforcement Local No 129.

#### **V. CONCLUSION AND AWARD**

For all the foregoing reasons, the Panel hereby awards the foregoing provisions, adopts this statement as its complete award, and remands this matter to the parties for the drafting of a collective bargaining agreement in accordance with the determinations set forth above. The Arbitration Panel retains no further jurisdiction.

  
STANLEY T. DOBRY  
Impartial Chairman

  
FREDERICK B. SCHWARZE, ESQ.  
Township Delegate

  
WILLIAM BIRDSEYE  
Union Delegate

Dated: February 28, 1984

## FOOTNOTES

<sup>1</sup>The Arbitrator is supposed to "call a hearing to begin within 15 days" of his appointment. The deadline seems virtually impossible, or at least severely impracticable, to meet. Fortunately, these parties had the good sense to waive that time limit.

<sup>2</sup>"Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired." A verbatim record is required. The panel works by majority rule. (MCLA 423.236)

<sup>3</sup>Here the parties continued bargaining, at least through the hearing date. However, the parties did agree at the pre-trial that further efforts by a mediator would not materially assist in getting a settlement. The Commission was so informed by letter after the pre-trial.

<sup>4</sup>The existence of these criteria is critical to the constitutionality of this entire statutory scheme.

There are at least six identifiable arguments that have been made against the legality of compulsory public sector arbitration. They are: it interferes with constitutional and home rule power; it constitutes an illegal delegation of legislative authority to a non-public person; the statutes lack sufficient standards, so that there is an illegal delegation; it is a delegation of the power to tax to the arbitration panel, and therefore violates the equal protection clause's mandated principle of one-man one-vote; the hearings do not comport with minimum due process standards; and there is a constitutional violation because there was no appropriate scope of judicial review. See "Constitutionality of Compulsory Public Sector Interest Arbitration Legislation: a 1976 Perspective," Labor Relations Law in the Public Sector, Andrea Knapp, Ed., ABA Section of Labor Relations Law. The standards set forth in this law pass constitutional muster. The Michigan Supreme Court recently stated:

"It is generally acknowledge that the instant and similar statutory schemes are directed toward the resolution of complex contractual problems which are as disparate as the towns and cities comprising the locations for these critical-service labor disputes. The Legislature, through Act 312, has sought to address this complicated subject through the promulgation of express and detailed standards to guide the decisional operations."

FOOTNOTES (cont'd)

"We must conclude that the eight factors listed in Section 9 of the act provide standards at least as, if not more than as, 'reasonably precise as the subject matter requires or permits' in effectuating the act's stated purpose 'to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes.'" City of Detroit vs Detroit Police Officers Association, 408 Mich 410, 461, 294 NW2d 68 (1980).

<sup>5</sup>This change will make the contract term synchronous with the Township's new fiscal year.