2156

IN THE MATTER OF THE
ARBITRATION BETWEEN:

COMMERCE TOWNSHIP

AND / MERC Case No. D05 A-0065

COMMERCE TOWNSHIP FIREFIGHTERS LOCAL 2154
_____/

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

FINAL OPINION AND AWARD

Arbitration Panel

William E. Long
Arbitrator/Chair

Dennis DuBay, Attorney
Employer Delegate

Kirk Werner, Union Vice-President
Union Delegate

Date: January 23, 2007

INTRODUCTION

These proceedings were initiated by petition for arbitration dated January 24, 2006 pursuant to Act 312 of the Public Acts of 1979, as amended. The arbitration panel is comprised of Independent Arbitrator William E. Long, Attorney Dennis DuBay for the Employer and Union Vice-President Kirk Werner for the Union.

A pre-hearing telephone conference was held by telephone conference March 23, 2006. It was agreed that each party would present evidence relying on proposed comparables in the course of the hearing and make arguments in support of comparables in final briefs and that the determination of comparables would be a part of the final opinion and award.

Four days of hearings on the issues in dispute were held August 22, August 24, August 29 and August 30, 2006 at Commerce Township. Attorney Dennis DuBay represented Commerce Township and Attorney James Moore represented the Union. The record consists of 249 pages of record testimony in four volumes; sixteen Joint Exhibits (J-1 through J-16) one hundred and thirty Employer Exhibits (E-1 through E-130); and fifty-six Union exhibits, (U-1 through U-57) [U-55 proposed exhibit was not entered into the record]. References to record testimony will be identified as TR - page number and references to exhibits will be: J-1, E-1, U-1, etc.

Last offers of settlement were exchanged on September 27, 2006. Post-hearing briefs were exchanged on December 21, 2006. The parties agreed there would be no reply briefs (TR 4, 242).

By written stipulation, which is contained in the case file, the parties waived all time limits applicable to this proceeding, both statutory and administrative.

During the pre-hearing conference the parties agreed to submit the proposed issues in dispute to be addressed by this panel. The employer submitted 6 issues. The Union submitted 16 issues. During the course of this proceeding several of those issues were resolved. Following is an identification of those resolved issues and the manner in which they were resolved: (TR 4, 244-245). Issues which the parties reached agreement on will be incorporated into the new agreement.

Issues which the parties reached agreement on during the course of the proceeding:

U-2 - Art. V - Life Insurance benefit

Article V, Section D - Life Insurance, *modify as follows:*

"The Board shall provide each employee with a term life insurance policy or policies in the amount of $50,000. The Board will provide, upon request, a description of the policy or policies to the requesting employee."
[Effective date: April 1, 2005]

U-8 - New Article - Hours of work

Add new Article XXIII - Hours of Work

"All fire fighters assigned to work a 24-hour shift shall work an average 56-hour work week per twenty-eight (28) day work cycle."
[Effective date: Date of Award]

U-9 - Art. XXI - Duration of Agreement (4/1/05 - 3/31/08)

Article XXI, Section A - Duration of Agreement, *Modify as follows*:

"The duration of this agreement shall be April 1, 2005 through March 31, 2008."
[Effective date: April 1, 2005]

U-11 - Schedule B - Longevity

Schedule B - Longevity

"An employee shall be paid longevity according to the following:

6 full years through 9 full years	2%
10 full years through 14 full years	4%
15 full years through 19 full years	6%
20 full years and over	8%"

Modify schedule to incorporate the annual wage increases awarded by the Panel.
[Effective date: April 1, 2005]

Issues which were withdrawn during the course of the proceeding:

- U-1 - Art. V - Coordination of Benefits (withdrawn with submission of LOS)

- U-14 - Art. XIV - Grievance Procedure
- U-15 - New Language - Fire Marshall position rights & responsibilities

Issues which a party agreed to within submission of Last offer of Settlement (LOS):

E-2 - Art. V - Insurance Coverage (Health Insurance)

Article V - Health Care, *strike the existing language and insert the following:*

"A. Fire Fighters will be offered Blue Cross/Blue Shield Community Blue Option 1 with a $10 generic/$20 brand name prescription drug rider for healthcare coverage at Township expense, for each full-time employee, as a single subscriber, or married with spouse and family."
[Effective date: Date of Award]

E-4 - Art. VIII - Funeral Leave

Article VIII - Leaves, *modify as follows:*

"C. FUNERAL LEAVE: Upon notification to the Fire Chief, an employee shall be allowed up to two (2) consecutive working days, with pay, as may be required for a death in the immediate family. The immediate family is defined as: Wife/Husband, Parents, Grandparents, Children, Aunts, Uncles, Step-parents, Brothers, Sisters, Grandchildren of her or his spouse. If any additional day is required or requested and if approved, it shall be deducted from the employee's sick leave time."
[Effective date: Date of Award]

The above agreements result in the following thirteen (13) issues, in addition to the issue of comparable communities, to be addressed by this panel. They are grouped separately as economic (7 issues) and non-economic (6 issues).

Economic Issues

1. E-5B (Art. XIII) & U-3B (Art. VI) - Payment for attendance upon call back
2. U-4 - Art. VIII - Personal Time
3. U-5 - Art. XI - Retirement Benefit
4. U-6 - Art. XI - Health Care for Retirees
5. U-7 - New Article - Bonus Payment
6. U-10 - Schedule B - Wages
7. U-12 - Art. VIII(C) - Uniform Allowance

Non- Economic Issues

8. E-1 - Art. IV, Sec A&B - management rights
9. E-3 - Art. VIII(5) - Sick Leave
10. E-5A (Art. XIII) & U-3A (Art. VI) - Call Back Procedure
11. E-6 - Art. XIII (new F) - Physical condition & report on medications
12. U-13 - Art. X - Notice Re: Vacation Day
13. U-16 - New Article - Station & Shift Preference

The parties agreed that the panel would address issues relative to wages individually for each year of the three-year contract (TR 4, 248). In addition to those issues agreed to by the parties during this proceeding, contract provisions not before the panel for determination that are in the current collective bargaining agreement will be advanced into the new agreement the same as under the old agreement.

When considering the economic issues in this proceeding, the panel was guided by Section 8 of Act 312. Section 8 provides that "as to each 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 applicable factors prescribed in Section 9."

The applicable factors to be considered as set forth in Section 9 are as follows:

(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.

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

COMPARABLE COMMUNITIES

As noted above, it was agreed that each party would present evidence in support of their proposed comparables in the course of the hearing, make arguments in support of comparables in final briefs, and that the determination of comparables would be a part of this final opinion and award.

COMPARABLES PROPOSED BY THE PARTIES

Both parties proposed that the communities of Independence Township and White Lake Township were comparable communities. The Employer proposed that Brandon, Groveland, Oakland and Oxford Townships also be considered as communities comparable to Commerce Township. The Union proposed that Harrison and Plymouth Townships be considered as communities comparable to Commerce Township.

Section 9(b) of Act 312 requires the panel to adopt the last offer of settlement, which more nearly complies with 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 employees generally in public and private employment in comparable communities. Act 312 and the rules governing the Act do not prescribe specific factors the panel must consider when determining comparability. Generally, factors commonly considered include size of the community to be served, form of government, SEV and taxing authority, tax effort and other economic factors, scope of duties, the location of the comparable communities as they relate to the local labor market and population demographics. In short, the parties advancing proposed comparable communities or employers within the communities have the responsibility to make the case for comparability. The following exhibits entered by the parties were among those most helpful in analyzing the issue of communities comparable to Commerce Township: Union exhibits U-8, U-9, U-10, U-11, U-12 and Employer exhibits E-32, E-33, E-34, E-35, E-36, E-37, E-38, E-39, E-40, E-42, E-43.

Union Position

The Union urged the panel to recognize the stipulated communities and the Union's proposed communities as comparable and to reject the Employer's proposed comparables. The Union recognizes Act 312 does not specify what community attributes should be considered for the purpose of determining comparability under Section 9(d) but urges in this case that particular emphasis be given to the following factors: 1) the relatively rapid growth in population in recent years, 2) whether fire fighters in proposed comparable communities are organized and represented by a union for purposes of collective bargaining, 3) the population of the communities, 4) the number of housing units and home values of the community, 5) household income, and 6) the amount of state shared revenue. The Union says comparing these factors for Commerce Township with those of the two communities agreed to by the parties as comparable; White Lake and Independence Townships, shows the similarity among the communities and the Union's proposed comparable communities share many of those similarities while the Employer's proposed comparable communities do not. The Union points out that Plymouth and Harrison township fire fighters are represented by a union for purposes of collective bargaining, as are the agreed upon comparables but none of the fire fighters within the Employer's proposed comparable communities are represented by a union for purposes of collective bargaining. The Union notes that the majority of factors normally considered in arbitration proceedings offered in the Union's proposed comparables fall within a +/- 50% range of the community under consideration, which is a common determiner of comparables, and that the majority of those same factors within the communities offered by the Employer do not.

Employer Position

The Employer, in support of its' proposed comparable communities and in opposition to the Union's proposed comparable communities also points out that arbitration panels generally require the proposed comparables to fall within some uniform range (e.g., 50%) to be considered comparable. The Employer says other factors, such as location within the same County and the existence of mutual aid pacts with proposed comparable communities, may be considered. The Employer points out

that in this case all of the communities proposed by the Employer as comparable have a mutual aid pact with Commerce Township and all are within Oakland County.

The Employer says it chose its proposed comparable communities using a specific methodology. It chose all Townships in Oakland County with a full-time fire department with population/taxable value no more than 50% greater than Commerce Township (E-8). The Employer says, unlike the Union, it did not "pick and choose" communities within the criteria it established and that the Union used no such methodology in its selection of proposed comparable communities.

In arguments in opposition to including the Unions proposed comparable communities the Employer points out that Plymouth Township should be excluded because it's industrial and personal property tax value is much higher than that of Commerce Township. The Employer also says that whether a comparable community does or does not have fire fighters represented in a collective bargaining unit is irrelevant and not a criteria established under Section 9 (d) of Act 312. The Employer says one of the Unions arguments in support of its proposals is for the panel to consider growing communities because Commerce Township is a growing community, but that evidence (E-37) shows that Plymouth Township's population increased only 0.7% and Harrison Township's population increased by 4.1% between 2000 and 2005 while Commerce Township's population increased by 16.5% during that time period. The Employer says this evidence does not support inclusion of Plymouth or Harrison Townships on the criteria of comparable growing communities.

The evidence also reveals that Plymouth Township, while outside of Oakland County, is in closer proximity to Commerce Township than the comparable communities proposed by the Employer. But the Employer argues that proximity alone does not make a community comparable. The Employer also acknowledges that in a prior Act 312 case involving these parties (E-43), the Panel considered all of the comparable communities proposed in this case, but points out that this panel is not bound by the action of that Panel. The Employer urges the panel to reject the Unions proposed comparables and accept the Employers comparables as more comparable communities. The Employer also points out that Section 9 (d) of Act 312 allows the

panel to consider a comparison of the wages, hours and conditions of employment with other employees generally, which includes other Commerce Township employees. The Employer urges the Panel to place great weight on the relationship between the Employer and other Township employees (internal comparables) when considering its decision on each particular issue.

Discussion and Findings

Both parties have presented evidence and testimony that relate to the community attributes commonly considered by arbitration panels. Both have recognized that it is common for panels to use some method of comparison guide (e.g. some +/- percentage range) or variance in key factors when considering comparable communities. And both parties are aware that the panel can use these as a general guide, not an absolute cut off point, and can give differing weights to factors. In this case the parties, not unlike parties in other cases, argue that the panel should consider one factor more or less important than another.

Attached to and included as part of this opinion and order is a chart, (Chart A), that lists the Townships agreed to by the parties as comparable communities and the Townships proposed as comparables by each party. The following data, extracted from the parties evidence—the exhibit from which information is taken is identified in each column—is listed for each Township: 1) Population 2005; 2) Population May 2006; 3) Population percentage change: 2000-2005/2005-May 2006; 4) Geographic Proximity to Commerce Township; 5) Housing Units 2000 6) Median Household Income 2000; 7) State Shared Revenue 2005; 8) Taxable Value 2005; 9) Fulltime Fire Fighters 2000; 10) Union Contract; 11) SEV 2005; 12) Median Home Value 2000. This chart will be referred to in addressing the comparables proposed by the parties.

Using a +/- 50% range as a guide for each of the factors listed in Chart A - *Excluding factors of Population Percentage Change, Geographic Proximity, Fulltime Fire Fighters and Union Contract* - which will be addressed separately, reveals that each one of the factors listed for the two townships agreed upon by the parties; Independence and White Lake Townships, falls within +/- 50% of Commerce Township factors. Each one of the factors for Plymouth Township also fall within the +/- 50% range of

Commerce Township and those of Harrison Township, with the exception of SEV 2005 and Taxable Value 2005 are within +/- 50% of Commerce Township factors. The Taxable Value 2005 for Harrison Township is approximately 47% of that of Commerce Township and the SEV 2005 is approximately 48% of that of Commerce Township.

A review of these factors for Brandon and Groveland Townships compared with Commerce Township reveals that, with the exception of the factors of Median Household Income and Median Home Value, the factors fail to come close to +/- 50% of comparable factors for Commerce, Independence, or White Lake Township's. Of particular note are the factors of Taxable Value and SEV, which are important when considering a communities ability to pay.

A review of these comparative factors for Oakland and Oxford Townships require a more focused analysis. For Oakland Township the Taxable Value and SEV factors are within +/- 50% of Commerce Township but Oxford Townships Taxable Value and SEV is approximately 42% of that for Commerce Township. On the other hand, while neither Oxford nor Oakland Township's factors pertaining to State Shared Revenue, Number of Housing Units, and Population fall within +/- 50% of Commerce Township, Oxford Township's population for May 2006 is 48% of Commerce Township and Oxford Township Housing Units and State Shared Revenue is closer to Commerce Township than that of Oakland Township. Oxford Townships Population Percentage Change for the period 2005 - May 2006 was greater than Oakland Townships and even exceeded Commerce Townships and its Median Household Income was closer to that of Commerce Township than was Oakland or White Lake Townships. Considering the factors for Oakland and Oxford Townships as a whole, it is the Independent Arbitrator's conclusion that they come within a reasonable range of comparability to Commerce Township.

With respect to population change, only Plymouth and Oxford Township appear to be growing at a rate similar to Commerce Township. The Employer urged use of Comparable communities that were all located within Oakland County. But a comparison of geographic proximity to Commerce Township reveals that all of the proposed comparable communities are within a reasonable labor market distance from

Commerce Township. Exhibits U-12 and E-42 were used to identify and compare the full time fire fighter staffing levels of the comparable communities. Those exhibits were difficult to compare but the data reveals reasonable levels of comparability. As pointed out by the Employer in its closing brief, while the fact that some communities have fire fighters within a collective bargaining agreement and others do not, Act 312 does not require employees subject to Act 312 be compared only with employees performing similar services subject to a collective bargaining agreement.

Considering the comparable factors contained in the exhibits and the arguments offered by the parties as a whole, the panel finds the following communities comparable to Commerce Township: The Townships of Independence, White Lake, Harrison, Plymouth, Oakland and Oxford. Therefore the panel chooses the following communities as comparable to Commerce Township:

The Townships of Independence and White Lake

Employer: Agree DBD Disagree _____

Union: Agree Ewww Disagree _____

The Townships of Harrison and Plymouth

Employer: Agree _____ Disagree DBD

Union: Agree Ewww Disagree _____

The Townships of Oakland and Oxford

Employer: Agree DBD Disagree _____

Union: Agree _____ Disagree Ewww

Interests and Welfare of the public and the financial ability of the unit of government to meet those costs

Section 9(c) of Act 312 requires the panel to consider the interests and welfare of the public and the financial ability of the unit of government to meet those costs when reaching its conclusions. The Employer does not claim inability to pay reasonable costs related to its proposals in this case but does take the position that the record shows the Employer will face revenue challenges during the course of this contract and must carefully allocate its resources. The panel has benefited from exhibits U-13, E-28, E-29

and E-30 and record testimony in assessing this issue. There is no question that Commerce Township is a growing community. It is also clear that its citizens view the fire department and fire fighter services as an important component of Township services. This is demonstrated by passage of two bond issues since 1990 in support of specific fire services, building and equipment, including a current special millage to support the fire department which generated $1, 134,023 in 2005. The Township also appropriated and additional $1,213,483 from the General Fund to support the Fire Department in 2005 (U-13). On the other hand, while the revenue from the special millage fire fund shows modest growth each year from 2004 through 2006, their has also been a need for additional funding from the Township's General fund each of those years (E-28). The Employer in this case, like most local government employers, will face some uncertainty in the level of State Shared Revenue and local tax revenue due to Michigan's overall economy. The panel has taken these facts into consideration in reaching its decision on the economic issues in this case.

ECONOMIC ISSUES

The panel will address the seven economic issues in the order they were identified above.

Issue 1 (economic): issue E-5B (Art. XIII) & U-3B (Art. VI) - Payment for attendance upon call back

Issue 10 (non-economic): E-5A (Art. XIII) & U-3A (Art. VI) - Call Back Procedure

When addressing this particular economic issue the panel will also address issue 10, a non-economic issue, because they are related.

Record testimony from both parties established that current policy followed by the Employer is that the Employer uses a "tone alert" system, operated by Oakland County dispatchers, which alerts both paid on call fire fighters and full time off duty fire fighters when an emergency occurs, the type of emergency, and where it is located. Once alerted, full time off duty fire fighters may, but are not mandated to, respond to the call. Full time fire fighters responding to a call get paid at a rate of time and a half

beginning from the time the tone alarm alerts them to the incident and ending when they have completed the follow up work back at the station to prepare the equipment for a future run (TR-1, pg 129). There is no language in the current contract that addresses this policy. The Union and the Employer have each proposed language that addresses two aspects of this issue: 1) the payment provided a full time fire fighter during a call back (economic issue) and 2) the circumstances, or authority given the employer, to determine when to call back full time fire fighters (non-economic issue).

The Parties Proposals

Union Proposal

The Union proposes that new language be added to Article VI (Compensation) by adding a new section G to read:

1. The present practice of the parties regarding responses to all tone alerted incidents shall continue (non-economic).
2. Employees responding to tone alerted incidents shall be paid a minimum of one hour at the overtime rate of pay for each incident with subsequent 15 minute increments for all incidents over one hour (economic).

Employer Proposal

The Employer proposes that no change be made to language in Article VI and that new language be added to Article XIII (Miscellaneous) by adding a new section G – Call Backs to read:

1. The Department shall have the continued right to determine whether and in what circumstances it desires to call-back full-time personnel (non-economic).
2. Full-time personnel who respond to a Department Call-Back will be compensated at the applicable overtime rate for actual time spent on such call by such personnel (economic).

Union Position

With respect to the non-economic proposal the Union says its proposal addressing the procedure for responses by full time fire fighters to call back tone alerts just places the current practice into the contract. The Union argues that there is no reason the practice of allowing off duty fire fighters to decide when and if they will respond to emergency incidents should not be allowed to continue. The Union says the

Employer's counter-proposal language is unnecessary and it is unclear whether the Employer, either directly or through Oakland County Dispatch, would be able to have the technical capability of sending a tone alert to only selective employees. The Union says the current practice ensures there will be a sufficient number of experienced full-time fire fighters on the scene of an incident.

With respect to the economic proposal the Union says its proposal seeks to equitably compensate off duty full-time fire fighters who choose to respond to emergency incidents. The Union points out that paid on-call fire fighters, when responding to an emergency incident, receive compensation for a minimum of one hour, and in fifteen minute increments thereafter. This is what the Union is asking for its members. The Union says there is no justification for compensating the paid-on-call fire fighters differently than their professional counterparts. The Employer, during cross-examination, pointed out the difference in compensation between full-time and paid-on-call fire fighters. The Employer calculated that paying a full time fire-fighter for a 45 minute call back time period and a paid-on-call fire fighter for one hour would still result in more pay for the full-time fire fighter (TR-1, pg 140). The Union argues that full-time fire fighters assume greater responsibilities than the paid-on-call fire fighters at the emergency scene and at the station house. The Union also notes that a review of how comparable communities address this issue supports the Unions position. Union exhibit U-35 and Employer Exhibit E-55 indicate that three of the six comparable communities—three of the four with collective bargaining agreements—pay full-time fire fighters who respond to call backs a minimum of one hour or more.

Employer Position

The Employer, in support of its proposal and in opposition to the Union's proposal on the non-economic portion of this issue argues that the Union proposal would strip the Township of an existing contractual management right. The Employer refers to Article IV, Section B of the current contract between the parties (J-10) which states in part:

> It is further recognized that it is the responsibility of the Board .... to determine the amount of overtime to be worked, subject to the seniority rules, grievance procedure and other express provisions of this agreement as herein set forth.

The Employer acknowledges that it has chosen to allow full-time fire fighters to respond to all tone-alerted calls currently and that has generally been its past practice. But the Employer says that does not mean the Employer wants to give up its traditional management right to make future changes relative to who might be alerted or toned out based on the type of incident or geographic area.

The Employer says the language proposed by the Union would require the Employer to offer the opportunity for all full-time firefighters to respond to all tone alerted incidents. The Employer, through the testimony of Fire Chief Schornack, says that blanket callbacks are not necessary. Chief Schornack presented several examples where it would be impractical or inefficient to "tone out" all off duty full-time fire fighters, i.e. offer the opportunity to respond to the incident. Examples included the need for only HAZMAT team members to respond to a HAZMAT incident in response to a mutual aid request (TR-3, pg. 63) or limiting the number of those responding to a medical call (TR-3, pg. 64).

The Employer says its proposed language maintains the status quo. The Employer says it was the Union, through its proposal, which sought to change the status quo by removing the right of the Employer to determine the amount of overtime to be worked and the Township responded with its proposal during negotiations (TR-4, pg. 196).

With respect to the economic portion of this issue, the Employer acknowledges that several of the comparable communities provide a one hour minimum payment for callbacks. But the Employer argues that not all employers find it necessary to pay that minimum as an incentive to respond and points out that Commerce Township has 34 paid-on-call personnel while testimony revealed that at least four of the comparable communities have fewer paid-on-call personnel (TR-1, pg. 135,136). The Employer says if the Union's proposal is adopted it will impose additional costs on the Township. The Employer refers to testimony of Union witness Hall that most callbacks last between 40 and 45 minutes (TR-1, pg. 139) and says that additional personnel may respond if the minimum payment for one hour is established and that medical incidents, which are

quite frequent, do not require numerous personnel and are often brief in duration. The Employer urges the panel to adopt its final proposal on this economic issue.

Discussion and Findings

This portion of this Opinion and Award will discuss both the economic and the non-economic positions involved in this issue. The Findings and Award will address the economic issue (Issue 1) and the Findings and Award for the non-economic issue (Issue 10) will be presented in the portion of the award addressing Issue 10.

With respect to the economic issue involved, the Independent Arbitrator finds the Union's last offer of settlement on this issue more nearly complies with the applicable factors prescribed in Section 9; particularly when considered in the context of the Independent Arbitrator's finding and award in favor of the Employer on the non-economic aspect of this issue. Record testimony established that the estimated average time a full-time fire fighter is involved in a call back situation is 40 to 45 minutes. The additional 15 minutes that a fire fighter would be paid by adoption of the Union's proposal should not be significant, especially in light of the Employer's ability to determine and manage call back policy. The Union's proposal is consistent with 50% of the comparable communities and 75% of the comparable communities with collective bargaining agreements. It is also consistent with the Employer's policy of payment to paid-on-call fire fighters. It is true, as the Employer points out, that full-time fire fighters earn more per hour on a call back than the paid-on-call fire fighter but there is also some validity to the Union's position that the full-time fire fighter has more experience and takes more responsibility than does the paid-on-call fire fighter.

The Employer argues additional personnel may respond if the Union's proposal is awarded. The Independent Arbitrator questions the validity of that premise. If that were the case, why are Fire Fighters responding now? And if the Union's proposal were not awarded would that mean fewer full-time Fire Fighters would respond? The Independent Arbitrator does not think so. Fire Fighters, including the Fire Chief, recognize their primary responsibility is the safety of their citizens and their fellow fire fighters. Fire Chief Schornack demonstrated this commitment in response to a question of whether nearly every fire fighter could be called to a major fire by responding,

"Yeah. Most fires we need as many people as we can get" (TR-3, pg. 65). The Independent Arbitrator has faith in both the Fire Fighters and the Employer that while determination of response policy is left with the Employer in this Award, it will be managed in a manner that balances the taxpayers' interest in efficiency and wise use of public funds and the best interest of safety to both the citizens and fire fighters. Awarding the Union's position on the minimum call back payment is consistent with the importance of public safety.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on Issue 1 (economic): issue E-5B and U-3B - payment for attendance upon call back, to more nearly comply with the applicable factors in Section 9. Therefore, Article VI (Compensation) will be amended by adding a new Section G to read:

> **Employees responding to tone alerted incidents shall be paid a minimum of one hour at the overtime rate of pay for each incident with subsequent 15 minute increments for all incidents over one hour.**
> [Effective date: Date of the Award]

Employer: Agree_____ Disagree DMD

Union: Agree KWW Disagree_____

Issue 2 (economic): issue U-4 - Art. VIII - Personal Time

The Parties Proposals

Union Proposal

The Union proposes that new language be added to Article VIII (Leaves) by adding a new Section F to read:

> Personal Time
> Members shall accrue 72 hours of personal time on April 1 of each year.
> Members shall provide the Department 24 hours advance notice of the use of personal time. Leaves requested with less than 24 hours notice shall be granted at the discretion of the Township.
> Personal leave may be taken in 4 hour blocks.

Employer Proposal

The Employer proposes that new language be added to Article VIII by adding a new Section F to read:

Personal Leave

Each year (April 1 - March 31), each employee will have the option of converting one earned and accumulated 24-hour sick day into one 24-hour personal day which shall be deducted from the employee's sick leave accumulation. Requests to use such personal leave are to be submitted to the Chief as soon as the need is known but in all events at least 24 hours prior to the time that such leave is to become effective. Such timely requests will be granted except in the case of emergency requiring the presence of the employee. Leaves requested with less than 24 hour notice shall be granted at the discretion of the Township.

Union Position

Exhibits and testimony presented in the record reveal that the current contract provides no personal leave time. Fire fighters are provided 3 to 10 days annual paid vacation days depending on seniority and earn 12 sick days a year accumulative to a maximum of 24 days. Vacation days must be scheduled at least 30 days in advance and the vacation schedule is set by April 1 of each year. The minimum increment for use of vacation and sick time is one 24 hour day.

Union President Hall testified that the current contract, which provides for no personal time, is inadequate because it does not allow employees to deal with common or last minute needs for time off. He pointed out that if an employee uses sick time it should be a result of illness or illness related. Use of vacation time requires substantial advance notice. President Hall said there are often situations, which do not involve illness, like attending school events or adjusting to a spouse's schedule that may have to work unanticipated hours, which cannot be anticipated when scheduling vacation. He also said allowing increments of personal time to be taken in a minimum of 4 hour blocks instead of 24 hours is practical, since often an employee only needs that amount of time to attend to a personal situation, and may save overtime costs if another fire fighter had to fill in, or perhaps leave the position vacant for that brief period of time. On cross-examination, President Hall acknowledged that it has been the practice of the Chief to allow fire fighters to trade shifts in order to permit time off for unexpected situations (TR-1, pg. 214). But President Hall said that is not a substitute for the personal time proposed by the Union because it necessitates an employee trying to find

another employee willing to trade and of course the time traded must be worked at some point in the future.

The Union argues the contracts of the proposed comparable communities support the Union's position. The Union notes that of the eight proposed comparables, seven provide employees personal leave separate from sick leave and vacation (U-51). Of course this panel is using only six of those communities as comparable but of those six, five provide for personal days separate from sick leave and vacation. It is also noted that of those five that do have separate personal days, all five allow personal leave to be taken in 4 hour increments or less (U-51). The Union says the Employer's last offer of settlement is inadequate because it does not allow use of personal time in less than 24 hour increments and that it merely allows use of one day of sick time as personal time. The Union argues its proposal is fair, reasonable and supported by the comparables and urges the panel to adopt it.

Employer Position

The Employer opposes the Union's proposal arguing that it is both excessive and unnecessary. Fire Chief Schornack testified on behalf of the Employer that in compliance with Article XIII (D) of the contract employees may trade work days with prior approval of the chief (TR-3, pg. 95). He also said that he has allowed fire fighters to trade one hour, three hours and partial days and to his knowledge he has never refused a request for a trade day (TR-3, pg. 95). This testimony addressed the Employer's position that the proposal was unnecessary. Chief Schornack also testified that the Union's proposal would impact the Employers cost of overtime and scheduling. He said that the provision requiring the granting of personal time off so long as 24 hours advance notice was given, with minimum manning, would result in having to schedule overtime to replace that person (TR-3, pg. 91).

The Employer provided Employer exhibit E-56 which displayed personal time, vacation time and total time off for members of this bargaining organization and full time fire fighters in proposed comparable communities. In its final brief the Employer prepared Appendix B which consists of information taken from each proposed

comparable community contract on the sick leave, vacation, personal leave and total paid time off for full time fire fighters in each community compared to those in Commerce Township. This is an update of E-56. The Employer points out that the average total amount of paid leave in all of the proposed comparables is 23.75 days and 22 days for employees in Commerce Township. The Employer notes that under its proposal the Commerce Township employees would continue to have 22 days. Of course under the Union's proposal this would increase to 25 days.

The Employer points out that other non-union Township employees do not receive personal days off and that the AFSCME unit does receive up to three personal days but only for specific purposes (J-15, pg.21). The Employer urges the panel to adopt its proposal. On this particular issue, the Independent Arbitrator believes it is appropriate to give a little more weight to the external comparable communities' employees performing similar services than to the other Township employees.

Discussion and Findings

The Independent Arbitrator finds the Unions last offer of settlement on this issue the more reasonable. That doesn't mean the Union's proposal is not without flaws or that the Employer's last offer is not reasonable; but given the record evidence, the Independent Arbitrator finds the Union's proposal more nearly complies with the applicable factors in Section 9.

The Union's proposal compares more closely with Section 9 (d) standards than does the Employer's. A review of appendix B of the Employer's closing brief reveals that four of the six comparable communities considered in this proceeding provide a minimum of 2 personal leave days separate from sick leave or vacation days. The Employer, in its argument, compared an average of the proposed comparable communities' total days to that of Commerce Township fire fighters. Appendix B reveals that comparison to be 23.75 avg. v 22 for Commerce Township. But when a comparison of the average total days of those comparable communities actually used in this proceeding is compared with those of Commerce Township the figures are 25.5 avg. v 22 for Commerce Township. Adding an additional 3 days by adopting the

Union's proposal would make the comparison 25.5 v 25 which is more comparable than the Employer's proposal. The Employer's argument that the Union's proposal is excessive does not comport with this comparison.

The Employer also argues that the Union's proposal is unnecessary. While there is testimony that the Employer customarily allows employees to trade time for personal reasons this is not the same as having a recognized number of personal hours available in the contract. There is no guarantee that future administrators will allow that practice and it does require having to depend on the cooperation and accommodation of other fire fighters to work. Again, a review of other comparable communities practice indicates recognition in the contract of a specific number of personal days, whether independent from or combined with sick days, is the norm (Appendix B).

The Union's proposal also includes the ability of employees to take personal time off in increments of 4 hours and the Employer's proposal requires 24 hours. Five of the six Comparable communities allow 4 hours or less. It would appear, as the Union argues, allowing increments of less than 24 hours would assist in reducing the need for more overtime and therefore be of benefit to both the Employer and the Employee. The Employer says it will have trouble scheduling with only 24 hours advance notice but a review of the comparable communities contracts reveals none that require more than that and most do not specify even that amount of advance notice for personal time off. This holds true regardless of the number of fire fighters in the bargaining unit.

The Employer's proposal is not totally inconsistent with evidence provided in this proceeding. Oakland and Plymouth Townships combine personal days with sick days as the Employer proposes here. However, both of those townships also permit employees to take personal time off in increments of 4 hours or less.

It was noted that the Union's proposal is not without flaws. For example, it does not address the issue of what happens to personal time not taken in a year. A review of comparable community contracts reveals most address this in some way. Some prohibit personal days to be carried over from one year to the next while others allow days to be banked to a maximum and/or paid out. The Independent Arbitrator believes while this is important to address, the parties can do that in a subsequent contract and

given the choice, as this panel is, of accepting one or the other of the parties' proposals, choosing the Union's proposal, even with this omission, is the more reasonable course.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on Issue 2: issue 2, U- 4 - Article VIII - Personal Time, to more nearly comply with the applicable factors in Section 9. Therefore, Article VIII (Leaves) will be amended by adding a new Section F to incorporate the language contained in the Union's last offer of settlement.

[Effective date: Date of Award]

Employer: Agree_____ Disagree DMSD

Union: Agree CWA Disagree_____

Issue 3 (economic): issue U-5 - Article XI - Retirement Benefit

The Parties Proposals

Union Proposal

The current contract calls for the Employer and Employees to participate in a defined contribution group retirement program. The Employer contributes thirteen (13%) percent of the employee's base yearly salary to the program (Article XI, paragraph B). The Union proposes to amend Article XI, paragraph B to omit the language establishing the defined contribution program and replace it with a defined benefit program offered by Municipal Employees Retirement System (MERS), Plan B-3 (U-19). Additionally, language would be added to provide that 1) all members receive credit for all previous years of service with Commerce Township, 2) the plan would be established conditional on all members of the unit agreeing to irrevocably transfer all funds in the Township's current Defined Contribution Plan except for those funds of fire fighter J. Granville's that were from a previous employer, 3) members be required to contribute 3% of their gross pay, pre-tax, into their MERS defined Benefit retirement plan.

Employer Proposal

The Employer proposes to amend Article XI, Section B by adding the following:

"In addition, the Board will contribute one (1%) percent to the current 457 plan for each participating employee on a one-to-one matching basis. The Board will match the employee's 457 contribution up to one (1%) percent of base yearly salary."

Union Position

The Union says it has proposed the Defined Benefit (DB) Plan because the current Defined Contribution (DC) Plan is inadequate and the Union's proposed plan offers greater advantages. The Union presented exhibits (U-21-22) and (U-25) which identified some of the advantages and disadvantages of both plans. In addition to benefits of a DB plan to employees the Union says benefits of this plan to the Employer include the value of a secure retirement package when recruiting employees and that the specific plan proposed by the Union will likely result in at least initially costing the Employer equal or less than its cost for the current DC plan (U-23, U-53, E-66).

The Union argues the great advantage of a DB plan to Employees is its certainty and the ability to be free from the risks of investment decisions and market fluctuations. In contrast, the Union says the DC plan presents greater risks and responsibilities for employees and retirees; including the possibility of outliving the assets in the account, the responsibility for making decisions about investments and the risk of making poor investment decisions. The Union points to Union witness fire fighter Kabzinski testimony as evidence that with the Employer's current DC plan, even a knowledgeable individual investor may risk exhausting all of his/her retirement account before reaching average life expectancy age (U-33). The Union notes that under various annual withdrawal scenarios, fire fighter Kabzinski's annual withdrawal as a retiree is substantially less than his earnings would be as a fire fighter.

The Union says a review of the comparable communities supports adoption of the Union's proposal noting that the majority of the eight proposed comparable communities (four of the six comparables used in this proceeding) have a DB retirement plan. The union points out that one of the comparable communities, Plymouth Township, converted from a DC to a DB plan for its retirees in 2005 (J-13, J-14).

The Union argues that the Employer's estimated future costs associated with the proposed DB plan is not accurate. In fact, the Union says, at least initially, the Employer's costs should decrease. The Union refers to (E-66) as evidence that the initial cost will be less. The Union acknowledges its final offer of settlement differs somewhat from the data used in (E-66) but says such changes as employees contributing 3% to the plan, requiring a 100% rollover of employee DC funds into the plan and calculating final average compensation on 5 years as opposed to 3 years will significantly decrease the cost. The Union also acknowledges that its final proposal differs from (E-66) assumptions in that it proposes a retirement age of 55 years as opposed to 60 years in (E-66) which will increase the cost but says even with that cost increase it can reasonably be concluded that the initial cost to the Employer of providing the DB plan will be less than what it presently pays for the DC plan.

The Union acknowledges that there can be no clear certainty of what the Employer's future costs will be, primarily because of the natural uncertainty of the investment market. The Union points out that this uncertainty is equally true for the Employees under the DC plan and argues that the Employer is better situated, with its superior financial and other resources, than the Employee, to bear the risk of that uncertainty and its impact on any future costs.

Finally, the Union Attorney presents several legal arguments in response to the Employer's arguments that the Panel is prohibited from addressing this issue for various legal reasons. The Union Attorney says the Employer's arguments have no basis in law or fact. Those legal arguments and the party's positions on them will be discussed in the Discussion and Findings section on this issue. The Union urges the panel to adopt its proposal.

Employer Position

The Employer urges the panel to reject the Union's proposal based on both legal and economic arguments. The Employer says its proposed change to have the Employer make a one-to-one contribution to the employee's 457 plan of up to one (1%) percent of the employee's base yearly salary should be supported by the panel.

The Employer's Attorney put forth several legal reasons, on the record and in the Employer's closing brief, why the panel could not adopt the Union's proposal. Those arguments included: 1) it would be contrary to Article IX, Section 24 of the State Constitution, 2) it is not within the panel's jurisdiction pursuant to Section 10 of Act 312, 3) it is not within the panel's jurisdiction because it is not accompanied by an Actuarial analysis of Long-Term costs associated with the change pursuant to MCLA 38.1120h (3) – the Public Employee Retirement Systems Improvement Act. As noted above, these arguments and the Union's response to them will be discussed in the Discussion and Findings below.

The Employer raises numerous objections to the Union's proposal separate from its legal arguments. The Employer points out that the parties have never had a DB plan and the DC method of providing Employer contribution to Employee retirement benefits has been in place for at least 30 years. The Employer says the proponent of a change in an Act 312 proceeding bears the burden of proof and the Union has failed to do that on this issue. The Employer says Union witness Underwood, a MERS sales representative, is not an actuary and her opinions should be given little if any weight. In response to the Union's position that a negative feature of the DC plan is that the participants must make investment choices among options provided, i.e. self manage their own portfolio, the Employer says a simple solution would be for the parties to employ an investment manager. In response to the Union's criticism that the current DB plan contributions are too low the Employer points out that the Employer's contribution is higher than that of the average comparable MERS DC plan and that the average employee contribution to a MERS plan is 4.25% contrasted with no required contribution by Employees to the current Employer DB plan. The Employer says the solution to addressing alleged inadequate amounts in the DB plan account is for the Union to propose more funds be contributed by the Employer and funds be contributed by the Employees.

The Employer, in addition to challenging the credentials of the Union's witness on the MERS assumptions, challenged their accuracy. Through the testimony of Employer witness Esuchanko and a series of Employer exhibits (E-66, E-83) the

Employer argues the MERS assumptions are unrealistic. For example witness Esuchanko stated he would urge a 30 year amortization period for the unfunded accrued liability not be used. Using data from (E-83) reveals that for a MERS B-3 plan, as proposed by the Union, the effect of using a 25 year amortization period would be 5.43% and using a 15 year period would be 7.8%. Witness Esuchanko testified that he viewed the MERS plan assumptions regarding the rate at which employees resign from employment as too high (TR-4, pg 22); the assumptions regarding the age at which people would retire is too low (TR-4, pg 25); the assumptions regarding the disability rate are unpredictable in a small group of employees like this (TR-4, pg 27) and Witness Esuchanko testified he would lower the estimated rate of return on investment from 8% that MERS estimates to 7% (TR-4, pg 31). Witness Esuchanko acknowledged that some of MERS assumptions he disagreed with; mortality and wage assumptions, that he substituted his assumptions for, would actually lower the contribution rate (TR-4, pg 34, 35).

Employer Witness Esuchanko prepared (E-83), an analysis of the required contribution rate for the DB plan. Page 3 of that exhibit listed the various MERS plans and provided the Union's estimated contribution rate based on the assumptions contained in its exhibits and witnesses' testimony with the Employer's estimated contribution rate based on its exhibits and witness testimony. Page 3 reveals that for MERS plan B-3, the plan put forth in the Union's last offer of settlement, the Union's estimated contribution rate is 11.95% and the Employer's is 16.43%. These percentages do not take into consideration the amortization cost of the unfunded accrued liability.

The Employer argues there is too much uncertainty with adoption of the Union's proposal. The Employer says that even with the 3% employee contribution proposed in the Union's last offer of settlement, there is no actuarial valuation showing the contribution that would be required to pay the cost of the unfunded accrued liability and each year there would need to be a re-evaluation, comparing experience with the initial assumptions, to establish a new required contribution. The Employer points out that unlike the DB plans in two of the comparable communities, Independence and Plymouth Townships, which require the employees to pay costs above a certain

percentage, the Union's proposed plan does not establish any cap on the Employer's required contribution (U-32). The Employer also says there is uncertainty involving when, if the Employer was to enter the MERS system, it could withdraw from the system. The Employer points to Union Witness Underwood's testimony that the plan would have to be 120% funded in order to leave the MERS system (TR-2, pg 80) and it is uncertain when the plan would, if ever, reach that percentage.

The Employer says a comparison with the comparable communities does not support adoption of the Union's proposal (U-32). The Employer points out that only one of the comparables, White Lake, is close to the Union's proposal and the employees contribute 5%. It notes that both Independence and Plymouth Townships have a cap on the Employer's contribution.

The Employer points out that its DC plan is uniform for all Township Employees. In addition to the DC plan it maintains a 457 plan into which all employees, including those in this bargaining unit, may make voluntary pre-tax contributions up to $15,000 annually to save for retirement. The Employer says its final offer of settlement proposal to make up to a 1% one-to-one match of an employee's contribution to the 457 plan is a more certain and predictable cost. The Employer says the panel should adopt its proposal.

Discussion and Findings

The Independent Arbitrator finds the Employer's last offer of settlement on this issue more nearly complies with the applicable factors prescribed in Section 9. The Employer's legal arguments will be discussed, as will both parties' non-legal positions and arguments. But, to be clear, it is the Independent Arbitrator's finding that the Employer's last offer of settlement is the more reasonable regardless of the discussion or findings on the legal arguments.

The legal arguments will be addressed first. The Employer's Attorney put forth several legal reasons, why the panel could not adopt the Union's proposal. Each will be addressed. The Employer says it would be contrary to Article IX, Section 24 of the State Constitution. The Employer quotes a portion of Section 24 which states:

"The accrued financial benefits of each pension plan in a retirement system of the state and its political subdivisions shall be a contractual obligation thereof and shall not be diminished or impaired thereby."

The Employer argues that under prior contracts the unit members were entitled to a 13% payment for each year of service and that under the MERS DB plan, some unit members will receive less than 13% per year, particularly if the unfunded accrued liability is amortized over a period of years (E-84). The Employer says even if it were not initially, but later, to be determined that some employees were to receive less than 13 % payments on their behalf it could be challenged by the individual employee and that nothing in the Union's proposal indicate that individual members agree to waive that right.

The Union, in response, says the fact that the Employer contributes (currently) 13% of an employees base salary to a DC plan does not guarantee the employee will receive a like or set amount back, plus earnings, upon retirement. The Employer has promised nothing more than a set amount contribution, with uncertain returns. The Union says the Employer's contention that the present retirement benefit will be diminished or impaired in violation of the Constitution because less senior members of the bargaining unit will have to contribute disproportionately to the cost of funding the DB plan than will a more senior member is faulty because the employee contribution does not diminish the benefit itself. The Union says this is no different than if the Employer and Union agreed to require employees to contribute 3% to a DC plan.

The Independent Arbitrator questions the merit of the Employer's argument. The Union's point that one member's contribution may differ from another member's contribution but that does not diminish the benefit itself seems the stronger argument. What about the situation where two members of a bargaining unit who retire after 25 years of service with one having paid into a DB plan at a contribution rate of 3% for 15 years and 5% for 10 years and the other having paid 3% for 5 years and 5% for 20 years? The accrued financial benefit for each is not diminished or impaired for either even though the contribution of the individual plan members may have been unequal. Additionally, record evidence shows that the Employer's obligation to contribute to the

DC plan has varied over the years from 10% per year to the current 13% per year. Is it the Employer's contention that those employees receiving credit for less than 13% per year for each year under MERS for their entire employment period with the Employer would have a claim under the proposed Constitutional provision, even though contractual obligations for many of those years did not require the Employer to contribute 13%?

The Employer also argues that this issue is not within the panel's jurisdiction pursuant to Section 10 of Act 312. The Employer says Section 10 of Act 312 limits the Panel to address increases in rates of compensation or other benefits only for the period in dispute, which in this case would be the beginning of the new contract which would be April 1, 2005. The Employer says if the Panel were to award the Union's proposal, each unit member would be given prior service credit retroactively to the date of the unit member's hire. When an employee retires, he/she would receive credit for prior years under a DB plan which did not exist at that time. Record evidence reveals that retroactive crediting of service does create an unfunded accrued liability of approximately $671,346 (E-83). The Employer acknowledges pensions are a mandatory bargaining subject but says they are mandatory only for the applicable contract period. Anything outside that period is a permissive bargaining subject which can be within the jurisdiction of the Panel only if agreed to by both parties.

The Union acknowledges the fact that the Employer will have to assume some cost within its proposal to account for member's accumulated service, which of course extends backward from April 1, 2005. The Union says, however, that the more accurate view of this situation is that that obligation is a necessary start up cost and part of the Employer's obligation to fund the plan going forward from April 1, 2005. The Union argues this is no different than if an Arbitration Panel were to issue an award allowing employees to purchase prior city or military service for credit for retirement or from ordering an increased multiplier in a DB plan. In the later example there would be an associated increase in cost to the Employer for those employees yet to retire even though prior contracts did not call for that level of contribution.

The Independent Arbitrator is inclined, again, to view the Union's argument as the stronger. As the Employer has acknowledged, Act 312 provides Panel jurisdiction over wage rates "or other conditions of employment" which clearly includes provisions involving pension benefits. The purpose of Act 312 is to afford an alternate, binding, procedure for the resolution of disputes between Employer's and Employees who, by law, are prohibited from striking (Sec. 1, Act 312). It seems contrary to the intent and purpose of Act 312 to prohibit an Act 312 panel from considering changes to a pension plan that proposed to increase the multiplier in a DB plan or proposed to provide years of credit for prior military service. It would seem such an interpretation would make it more difficult for the parties to reach agreement outside of the Act 312 process in give and take negotiations on other mandatory subjects of bargaining if the parties could not also expect these type issues involved in pension benefits to be considered by an Arbitration Panel in the event the give and take process failed.

The Employer's final legal argument is that the issue is not within the panel's jurisdiction because it is not accompanied by and Actuarial analysis of Long-Term costs associated with the change pursuant to MCLA 38.1120h(3) - the Public Employee Retirement Systems Improvement Act. The Employer says the Panel has not been provided with an actuarial analysis of the long-term costs associated with the Union's final offer and therefore must be provided with that analysis before it can order such a change. The Employer sites provisions of MCLA 38.1140h (3), Section 20h which reads in part:

> "The supplemental actuarial analysis shall be provided to the board of the particular system and to the decision-making body that will approve the proposed pension change at least 7 days before the proposed benefit change is adopted."

The Employer points out that neither MERS nor the Union presented an actuarial valuation of the cost of the Union's final offer to the Panel and therefore the Panel cannot approve the Union's proposal—a pension change—prior to receiving the actuarial analysis for that specific proposal in the Union's last offer of settlement.

The Union did not address this issue in its closing brief because it was not raised by the Employer during the hearing. Of course it could not have been raised by the Employer during the hearing because it arose after the hearing was concluded as a result of the Union's change in its final offer of settlement from a proposed MERS plan B-4 to a MERS plan B-3. The Union's final offer of settlement also differed from the one presented at the hearing in that the one presented at the hearing specified members would contribute 50% of the funds attributable to the unit members in the DC plan to the MERS system and the final offer of settlement proposed 100% contribution, with the exception of a portion of fire fighter Gravelle's funds.

The Independent Arbitrator agrees with the Employer's argument. Record testimony established that most of the evidence before the Panel pertaining to the actuarial analysis and potential costs of the Union's proposal not only related to a different proposal but also was preliminary. Union witness Underwood testified that numbers and costs can change between a preliminary document or analysis and a final document, depending on the time between them and other factors that can change the figures (TR-2, pgs 99-105). The Independent Arbitrator views the Panel's role, in this case, as standing in for the decision making body referred to in Section 20h(3) quoted above. The Independent Arbitrator finds the information before the Panel does not satisfy the requirements of an actuarial analysis as intended in Section 20h(3) of the Public Employee Retirement System Improvement Act.

With respect to the record evidence and testimony on the proposals of the parties the Independent Arbitrator finds the Employer's last offer of settlement more nearly complies with the applicable factors prescribed in Section 9. The Independent Arbitrator believes the Union made a good faith effort to present a reasonable proposal for the Panel's consideration. Union Exhibits (U-21, U-22) properly list some of the advantages and disadvantages of both DB and DC plans. But in this case the disadvantages to the Employer appear to outweigh the advantages to the Employees. There is no question that the DC plan presents greater risks and responsibilities for employees and retirees. The Union's proposal would shift that risk and responsibility to the Employer. The Employer is not a large unit of government and the uncertainties of the investment

market can have a significant impact on required contributions to pension plans, particularly for smaller units of government.

Record evidence also reveals uncertainties in the actual costs of the Union's final offer of settlement. Employer Witness Esuchanko's testimony and related exhibits revealed the uncertainties involved in the various actuarial assumptions. The record did not provide the Panel with a very clear picture of estimated costs to the Employer. Employer Exhibit (E-83) revealed an estimated annual cost of between 11.95% and 16.43% and that exhibit did not take into account all of the changes made between the Union's proposal during the hearing and its last offer of settlement proposal. The Employer's last offer of settlement has a much higher level of predictable costs.

Record evidence also points out that even though the Union may view the current DC plan as inadequately funded to provide sufficient benefits to Union members upon retirement, there are ways to address that issue within the DC approach. The Employer, in its last offer of settlement, has established a method of sharing the cost of adding to an employee's retirement portfolio by contributing a matching amount to the 457 plan. There is nothing to prevent the parties from considering the amount of this contribution in future contractual negotiations.

The evidence presented relating to the Comparable communities tended to support the Union's proposal but upon closer examination, did not significantly do so. Two of the Comparable communities DB plans have percentage caps on the Employer contribution and while all five of the comparable communities have a higher annuity factor than that proposed by the Union, two of the five also have a higher employee pension contribution than that proposed by the Union (U-32).

The Independent Arbitrator agrees with the Employer's point made in its closing brief relative to the Panel's role under Act 312. The Independent Arbitrator does view the Panel's role as one of trying to provide arbitration awards "which approximate agreements that would have been reached in the normal course of collective bargaining" *Warren Police Officers Association v. City of Warren*, 89 Mich. App. 400, 280 NW2nd 545,547 (1979). It is doubtful the parties, and particularly the Employer, would have reached agreement on the Union's last offer of settlement given the lack of clarity

on what the actual costs of the proposal would be and the potential risk that those costs could change dramatically in the future as a result of factors outside either parties control.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Issue 3: U- 5 - Article XI - Retirement, to more nearly comply with the applicable factors in Section 9. Therefore, Article XI (Retirement) will be amended by adding the language contained in the Employer's last offer of settlement to Article XI, Section B.

[Effective date: Date of Award]

Employer: Agree DSW Disagree _____

Union: Agree _____ Disagree KWW

Issue 4 (economic): issue U-6 (Art. XI) - Health Care for Retirees

The Parties Proposals

Both parties have proposed revisions to the current contract provision in Article XI involving the amount of money the Employer will pay for retiree health care. Both have proposed an increase in the Employer payment but they differ in the amount and qualifications for those payments. The current contract specifies that the Employer will pay 50% of the health care cost of a fire fighter for health insurance coverage provided by the Employer provided the retiree is 55 years of age with 25 years of seniority.

Union Proposal

The Union's proposal would make the following changes to the amount and qualifications:

Age	Years of Service		% Amount Employer Pays
55	10 - 14	=	50%
55	15 - 19	=	60%
55	20 - 24	=	80%
55	25 plus	=	100%

Employer Proposal

The Employer's proposal would make the following changes to the amount and qualifications:

Age	Years of Service		% Amount Employer Pays
55	15	=	50%
62	15	=	55%
55	20	=	60%
62	20	=	65%
55	25	=	70%
62	25	=	75%

Union Position

The Union says the majority of comparable communities support adoption of the Union's proposal. Union exhibit (U-17) describes the eligibility and Employer payment of the comparable communities. Of the six comparable communities considered by this panel, two employers pay 100% of the retiree's premium at age 55 with 25 years of service and one pays 100 % at age 55 and 20 years of service. Another pays 100% with 25 years of service. Two comparable communities provide no retiree health benefits. The Union says Commerce Township retirees lag behind retirees from comparable communities because they must absorb half of the cost of their health insurance coverage, which has been increasing at a rate of 8-15% annually in recent years (TR-3, pg 149). The Union argues that increasing the amount of the Employer's contribution toward retiree health insurance based on years of service, as its proposal does, provides an incentive for the employees to remain with the Township for the duration of their careers.

Employer Position

The Employer urges the panel to adopt its proposal and points out it is identical to the health insurance payment the Employer makes for non-union and AFCSME member Township employee retirees (U-18, J-15). The Employer says the Union's proposal presents problems because it would permit someone to work for the Department for as little as 10 years, say from age 45 to 55, and be entitled to have the Employer pay 50% of his/her health care upon retirement. The Employer says the

Union's proposal would be too costly. In its closing brief, the Employer prepared Appendix A which describes the effect of projected health care premium cost increases and the change in the health care benefit plan agreed to by the parties in this proceeding will have on the Employer costs of retiree health care premiums comparing the Union and Employer proposals. Columns 4 and 5 of Appendix A compare the costs of both proposals for a retiree aged 55 with 25 years of service. For the first year the annual cost of the premium for the Employer under the current contract would be $3,052; under the Employer's proposal it would be $4,273; and under the Union's proposal it would be $6,105. The Employer points out these costs will rise substantially with the increase in health insurance premiums.

Discussion and Findings

The Independent Arbitrator finds the Employer's proposal on this issue to more nearly comply with the applicable factors in Section 9. It is consistent with the employee retiree health paid premium the Employer pays to other Township employees. It also adopts the same concept of graduated benefits based on years of service as the Union's proposal does and as the Union supported.

It is true that a majority of the comparable communities pay 100% of the premium for a retiree who is age 55 with 25 years of service but a review of the contracts for those communities reveals that none of them have provisions for paying retirees anything at 10 or even 19 years of service. Both proposals establish a greater benefit than the current contract and set in place a reasonable approach to providing that benefit. The Independent Arbitrator recognizes the current number of employees eligible for this benefit in the near term is not large under the Employer's proposal; perhaps three presently based on Employer exhibit (E-84). Nevertheless, the additional cost to the Employer, even under its proposal, is not insignificant and certainly could be potentially much more under the Union's proposal.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Issue 4: U- 6 - Article XI - Health Care for Retirees, to more nearly comply with the applicable factors in Section 9. Therefore, Article XI

(Retirement) will be amended by revising the language in Article XI, E 1 as proposed in the Employer's last offer of settlement.

[Effective date: Date of Award]

Employer: Agree DMSD Disagree_____

Union: Agree_____ Disagree Cww

Issue 5 (economic): issue U-7 - New Article - Bonus Payment

The Parties Proposals

There is currently no contract provision addressing Bonus Payments.

Union Proposal

The Union proposes a new article be added to the contract to require payment to those members of the Union who posses the following certifications to be paid an annual bonus as follows:

Basic EMT	$250
Paramedic	$500
EMS Instructor/Coordinator	$500
MFFTC Fire Instructor	$500
Hazardous Materials Tech	$500

The maximum payout for any one fire fighter would be $1,500.00 annually and the Bonuses would be paid to eligible members starting April 1, 2007.

Employer Proposal

The Employer proposes to maintain the status quo.

Union Position

The Union urges adoption of its proposal arguing that the Employer receives added value from fire fighters with these additional training and skills. The Union says these certifications require additional training and result in the fire fighter taking on additional responsibility. The EMS coordinator/instructor, for example, is responsible for training employees and additional paperwork.

The Union says certification bonuses are common practice in the proposed comparable communities. Union exhibit (U-38) displays how comparable communities

address this issue. It reveals that of the six comparable communities considered in this proceeding, two provide a bonus for basic EMT; 4 for Paramedic; 2 for EMS Instructor/Coordinator; 1 for Fire Instructor; none for Hazmat; and one for Fire Inspector. The Union argues that it is appropriate to adopt the Union's proposal because fire fighters in Commerce Township do not have an opportunity to advance professionally with more skills because Commerce Township does not have a rank structure, unlike most other fire departments. The Union says the Union's proposal would have the effect of encouraging fire fighters to obtain additional advance training.

Employer Position

The Employer points out that all full time fire fighters are required by law to hold a basic EMT license. Therefore, under the Union's proposal, everyone in the bargaining unit would receive at least a $250 bonus. The Employer says that with the exception of the EMS coordinator being appointed by the Chief, the rest of the certificates can be earned by unit members through additional training which means members could decide to qualify for a certificate and thereby be eligible for the bonus whether or not the Department needs or would actually use them in ways that demanded those skills.

The Employer argues that the comparable communities do not necessarily support the Union's proposal. The Employer says that those communities paying a paramedic bonus have a licensed and actually run a paramedic program. The Employer says while it is true that seven fire fighters hold a paramedic license and the Township is licensed to provide basic life support services, the Department does not currently provide those services, so fire fighters are not performing those services. The Employer points out that the Union's proposal does not condition the payment for employees with this certification upon whether the Department provides the service or not. The Employer says this proposal would result in nothing more than a pay increase.

Discussion and Findings

The Independent Arbitrator finds the Employer's proposal on this issue to more nearly comply with the applicable factors in Section 9. It is recognized that having highly skilled fire fighters is a value to the community and should be encouraged. And

as the Union points out, the fire fighters in this Department are limited in their ability to advance and get rewarded for additional skills, experience and responsibility because the Department does not have a ranking structure for its employees. However the proposal put forth by the Union does not present a reasonable method of addressing this issue and is not supported by the comparables.

As noted by the Employer, among the comparables, the four that pay a bonus for paramedics have paramedic program. Commerce Township currently does not. None of the comparables pay a bonus to all of the categories of licensed fire fighters to the extent proposed in the Union's proposal. It is noted from a review of Harrison Township's contract, for example, that it specifies that there shall be no payment for more than one license. The Union's proposal would allow a fire fighter to get up to $1500 annually for multiple licenses. A calculation using data from (U-37) describing unit members eligibility for this bonus reveals the annual cost to the Employer is estimated to be somewhere between $8500 to possibly as much as $10,500. This does not consider the possibility that additional fire fighters would seek certifications to be eligible for a bonus. While the objective of rewarding fire fighters for additional skills and taking on additional responsibilities is of value, there should be other, more reasonable means of achieving it. The parties may choose to review other options in future contract negotiations, particularly if the Department chooses to activate its license to provide life support services. The Union's proposal is not one the Independent Arbitrator feels is appropriate to incorporate into this contract.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Issue 5: U- 7 - New Article - Bonus Payment, to more nearly comply with the applicable factors in Section 9. Therefore, there shall be no change in the contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Issue 6 (economic): issue U-10 - Schedule B - Wages

The Parties Proposals

The parties stipulated that each year of the new collective bargaining agreement will be treated separately by the panel for determining wage increases. The parties also stipulated that the period of this contract will be three years from April 1, 2005 to March 31, 2008.

The Union Proposal

The Union proposed the following increases:

2005 - 2006 = 3%
2006 - 2007 = 2.5%
2007 - 2008 = 2.5%

The Employer Proposal

The Employer proposed the following increases:
2005 - 2006 = 2%
2006 - 2007 = 2%
2007 - 2008 = 2%

The Union Position

The Union says (U-42), which identifies the consumer price index for the Detroit/Ann Arbor/Flint metropolitan statistical area for 1996 through the first half of 2005 reveals the panel adoption of the Union's proposal is more closely aligned with the CPI rate than is the Employer's. The Union argues that adoption of the Employer's proposal for 2005 - 2006 would amount to a pay cut when adjusted for inflation. Also, for the year 2006 - 2007 the Union says its proposal, if the balance of the year is similar to the first 6 months, will fall slightly below the rate of inflation but not as much as the Employer's. The Union says it should be expected that the CPI will continue to increase for the 2007 - 2008 period and its proposal is likely to be more in line with that increase than the Employer's. The Union says its proposals on wages are modest and reasonable in today's economy.

The Employer Position

The Employer says the panel should consider the wage increases for Union members from 2002 through 2007 when considering this issue. It points out that except

for Plymouth Township; Commerce Township paid the highest wage in 2004 - 2005 among the comparable communities (E- 78). It is noted that the unit members received a 4% wage increase each year for the years beginning April 1 2002, 2003 and 2004 but so did all other non-elected employees of Commerce Township. The Employer says its proposal is in line with wage adjustments of 2%for 2006 for the Township Supervisor, Clerk and Treasurer (E-80).

Discussion and Findings

The Independent Arbitrator finds the Union's last offer of settlement on this issue for the years 2005 - 2006; 2006 - 2007; and 2007 - 2008 to more nearly comply with the applicable factors in Section 9.

Considering the wages for the period April 2005 - April 2006 the Independent Arbitrator reviewed the data in (E-78) to compare the party's proposals with comparable communities. The average wage for the six comparable communities considered by the panel for 2005 is $58,835. Neither party's proposed wage adjustments for Commerce Township unit employees for that period result in the employees' wages reaching that level. Under the Employer's proposal Commerce Township fire fighters would be paid $56,615 and under the Union's proposal $57,180. The Union's proposal is more in line with wages paid comparable communities for 2005 than is the Employer's. The Union's proposal is also more in line with the CPI increase for that period (U-42). The Employer points out that its proposal for this period is consistent with increases given to the Supervisor, Clerk and Treasurer (E-80). The Employer neglects to point out that the wage increases from 2005 to 2006 for other management employees identified on (E-80) ranged from 3.2% to 6%. A review of the wage increases from 2005 to 2006 for the three comparable communities reported on (E-78) reveals that the increases ranged from 3% to 3.5%.

For the period 2006 - 2007 there is less to compare among the comparable communities. However, adding an increase based on the Union's proposed 2.5% increase for this period reveals that it still would be less than the 2005 average wage among the comparables: i.e. Unit member wages for 2006 = $58,599 v $58,835 for the

2005 average wage among the comparables (E-78). Again, the Union's proposal is also more in line with the projected CPI for this period (E-42).

The Independent Arbitrator also agrees with the Union's assessment of the likely CPI increase for the 2007 - 2008 period. Even though Michigan's economy may be somewhat depressed the national economy continues to grow and it is reasonable to expect that the CPI increase for this period will be close to, if not greater than, the average annual CPI over the period 1997 - to the first half of 2006 as reflected in (U-42). That percentage is 2.56%, which results in the Union's proposal being closer to that figure than the Employer's.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on Issue 6: U- 10 - Schedule B - Wages, to more nearly comply with the applicable factors in Section 9. Therefore, Schedule B will be modified to reflect the Union's last offer of settlement by increasing the wages as follows:

For the period April 1, 2005 - March 31, 2006 = 3% [effective date: April 1, 2005]

Employer: Agree_____ Disagree DMD

Union: Agree CWW Disagree_____

For the period April 1, 2006 - March 31, 2007 = 2.5% [effective date: April 1, 2006]

Employer: Agree_____ Disagree DMD

Union: Agree CWW Disagree_____

For the period April 1, 2007 - March 31, 2008 = 2.5% [effective date: April 1, 2007]

Employer: Agree_____ Disagree DMD

Union: Agree CWW Disagree_____

Issue 7 (economic): issue U-12 (Art. XIII(C) - Uniform Allowance

The Parties Proposals

The Current contract at Article XIII (Miscellaneous), paragraph C provides that the Employer will pay fire fighters for the cleaning, replacing and pressing of uniforms and for bedding and food allowance according to Schedule C. The annual allowance is to be paid on the first pay in April. Schedule C specifies the amount to be paid as: $1000 from 04/01/01 to 03/31/02.

$1025 from 04/01/02 to 03/31/03
$1050 from 04/01/03 to 03/31/04
$1075 from 04/01/04 to 03/31/05

Union Proposal

The Union's last offer of settlement proposes schedule C be revised to read: "An employee shall be paid on the first pay in April each year, an annual allowance according to the following schedule:

$1125 from 04/01/05 to 03/31/06
$1175 from 04/01/06 to 03/31/07
$1225 from 04/01/06 to 03/31/08"

Employer Proposal

The Employer's last offer of settlement is to "Maintain the status quo and continue the current contract language."

Union Position

The Union points out that the purpose of this allowance is to reimburse employees for the purchase of cleaning and replacement costs of bedding and uniforms and to compensate them for the cost of on-duty meals. The Union says its proposed increase is in recognition of the annual increases in the cost of living. The Union says this payment for these costs incurred by the employees are consistent with how the comparable communities pay employees or provide these benefits to fire fighters (E-76, U-46). These exhibits reveal that three of the six comparable communities provide some payment for meals; two provide uniform cleaning and replacement as needed and the other four provide payment for replacement and cleaning. The average payment by

those three communities that pay for both replacement and cleaning of uniforms and meals is $1358 (U-46).

The Union says its proposed increases for the years of this contract account for recent inflationary trends. It recognizes that its proposed increases range from 4.6% to 4.2% each year but it says that considering the wage proposals for the second year of the agreement are less than inflation the Union's proposal is appropriate. The Union points out that the Employer's proposal to maintain the status quo, in light of CPI increases; results in diminishing the employees net take home pay.

Employer Position

The Employer says that while Union Witness Hall testified that the cost of food and uniform replacement and maintenance has increased there was no supporting documentation offered. The Employer points out that the Union's proposal is to increase the allowance by $50 each year whereas the current contract increased the allowance by $25 each year. There was no explanation for the difference.

Discussion and Findings

The Independent Arbitrator finds the Union's last offer of settlement on this issue more nearly complies with the applicable factors in Section 9. The Independent Arbitrator recognizes the Union's last offer of settlement results in adjustments to this payment for costs incurred by the employees slightly above the increase in CPI or projected increase in CPI for each of those years. But as the Union points out, the wage increases for the first two years of the agreement barely keep up with inflation. Granting the Union's proposal still results in only a $50 per year increase for each employee and a total annual increase in cost to the Employer of $800. This is not an amount that should excessively burden the Employer.

Granting the Employer's last offer of settlement is unclear. At best it would result in no increase in this payment for employee costs for the period of this contract which is not consistent with the CPI data in (U-42). At worst is could be interpreted to result in the employees receiving no payment for these costs. The wording of the Employer's last offer of settlement says, "Maintain the status quo and continue the current contract language." If the current contract language is continued it would address the payment

and amount of payment only to 03/31/05. Does the Employer propose no money be paid after that period? Regardless of the interpretation, the Union's last offer is more closely aligned with the reasonable expectations of increased costs for the services and supplies involved in this issue than is the Employer's.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue to more nearly comply with the applicable factors in Section 9. Therefore Schedule C associated with Article XIII C (Miscellaneous) of the Contract will be modified to incorporate the language in the Union's last offer of settlement. [Effective date: April 1, 2005]

Employer: Agree_____ Disagree DSD

Union: Agree CWW Disagree_____

NON-ECONOMIC ISSUES

Issue 8 (non-economic): issue E-1 (Art. IV, Sec. A&B - Management Rights

The Parties Proposals

Article IV of the current contract contains language recognizing management rights.

Employer Proposal

The Employer proposes to delete the current language in Article IV and replace it with new language describing management rights. The new language proposed is identical to the language currently within the Employer's contract with AFSCME represented employees (E-105).

Union Proposal

The Union proposes the status quo - no change from the current contract language.

Employer Position

The Employer, through the testimony of Township Supervisor Zoner, indicated the Employer was seeking this change because it wants to create uniformity within the system for all Township employees. It points out that adoption of this language would make it the same as that contained in the contract with AFSCME employees. The Employer says it is easier to work with all employees on an equal basis. The Employer points out that the proposed language contains a broader statement of management rights which is more consistent with contract language in several of the comparable communities. The Employer presented excerpts from contracts of several of the comparable communities in exhibits (E- 101 through E-104). The Employer presented evidence and testimony involving a grievance over the right of management to assign personnel as an indication of the value of clarifying management rights.

Union Position

The Union argues that the Employer has failed to offer any compelling reason why a change in the current language should be made. The Union points out that the party seeking change has the burden of demonstrating why the change is needed and the Employer has failed to do so. The Union says the Employer's example of the Grievance and how it was resolved demonstrates that the current contract language is working and sufficient and notes that grievances, including challenges to management rights, are a normal part of any collective bargaining relationship.

The Union points to testimony of Chief Schornack in which he acknowledges that he has no reason for a change in the management rights language other than the request by Township Supervisor Zoner for uniformity in contract language (TR-4, pg 148). The Union argues that comparing management rights language within contracts from other comparable communities should be irrelevant to the panel's determination on this issue because each community's operating needs are unique.

Discussion and Findings

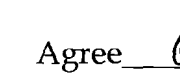
The Independent Arbitrator finds the Union's last offer of settlement on this issue more nearly complies with the applicable factors in Section 9. The Employer, as the party seeking the change, has failed to demonstrate the need for or value in making the change. It may be true that from the Employer's view it would be easier to have the

same management rights language in all contracts with its employees under collective bargaining agreements but making it easier is not a compelling reason to alter the language. As was noted by the Union in its closing brief, the current language has been used by the parties to this contract since its inception and inserting new language through a process in which the parties themselves have not agreed upon could result in or invite disputes over scope and meaning. Additionally, it must be recognized that the duties and responsibilities of fire fighters differ from that of AFSCME represented employees. It may not be that valuable or practical to adopt the same management rights language for each.

The Independent Arbitrator does not agree with the Union's argument that the contract language from other comparable communities should be given no consideration. There are similarities in management rights in Employer and Fire Fighters relationships even though operating needs may differ among communities. A review of the comparable communities' contract language presented in this case does not convince the Independent Arbitrator that they support either the Employer's or the Union's position. The language of Independence (E-101) and Harrison (E-103) Township seems more similar to the current contract language; the Plymouth (E-104) contract language seems more similar to the proposed language; and the White Lake (E-102) Township language doesn't appear similar to either.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue to more nearly comply with the applicable factors in Section 9. Therefore, there shall be no change to Article IV (Management) rights section of the Contract.

Employer: Agree_____ Disagree 

Union: Agree  Disagree_____

Issue 9 (non-economic): issue E-3 - Art. VIII (5) - Sick Leave Verification

The Parties Proposals

Article VIII (5) of the current contract specifies the procedure for verification of use of sick leave. It states:

> "Any employee absent because of illness for two (2) consecutive working days, or the working day before or after a holiday or vacation period, may be required to verify the absence was due to illness. When a fire fighter is placed off duty for sickness or injury by the Fire Chief or his designate, either in the line of duty or on leave, or calls the department advising that he will be off duty for sickness or injury he shall be expected to conduct himself in a manner consistent with his inability to perform his duty with the Commerce Township Fire Department."

Employer Proposal

The Employer's last offer of settlement proposes to modify the first sentence of the existing language by omitting the words "for two (2) consecutive working days" and by breaking the rest of the sentence into two sentences. The last sentence would remain unchanged. The Employer's proposes the first two sentences read:

> "Any employee absent because of illness may be required to verify the absence was due to illness. Any employee absent because of illness the working day before or after a holiday or vacation period may be required to verify the absence was due to illness."

Union Proposal

The Union proposes the status quo – no change.

Employer Position

The Employer presented the testimony of Fire Chief Schornack and exhibits (E-111 through E-113) in support of its position. Chief Schornack testified that some fire fighters use more sick days than others and some seem to use their sick leave time as it accumulates. The Employer feels the proposed change to allow the Employer to require verification of illness if a fire fighter misses one day, as opposed to allowing the employer to require verification only after two days as specified in the current contract, would aide the Employer in monitoring potential abuse of use of sick leave.

Chief Schornack testified that there is particular concern with personnel who repeatedly take sick days which are adjacent to scheduled days off. Employer exhibit (E-112) indicates the percentage of time that a sick day was used by members of the unit on the front or end of a scheduled 4 day leave. When employees use a sick day on the

front or end of a 4 day leave it results in a 6 day leave. Chief Schornack testified this presents a problem because if there is not a swing fire fighter to cover the day it must be filled with 24 hours of overtime (TR-4, pg 161). Chief Schornack testified that if someone failed to verify an illness the general department rules provide a means of discipline for falsification of records (TR-4, pg 164).

Union Position

The Union says the Employer has failed to demonstrate why this proposed change is necessary. The Union points out that (E-111) shows the number of sick days used by each member of the unit for the years 2001-2005, which show some variance, it does not show how many were used adjacent to a holiday, vacation day, or regularly scheduled leave day. The Union says (E-112), which does show the percentage of use with a regularly scheduled day, does not show a pattern of abuse.

Union Vice President Werner testified that the Employer's proposal would cause employees to be concerned whether or not to see a doctor in order to verify every sick leave absence because use of a single day sick leave without such verification could result in discipline (TR-4, pg 227). The Union argues that lack of an objective standard for determining when the Employer might require verification or not could lead to abuse. The Union acknowledges that the existing contract language does not establish a standard but that by limiting the Employer's ability to request verification after two consecutive working days it provides a better safeguard against abuse than the Employer's proposed language.

The Union also says the comparable communities and the internal comparables treatment of this issue do not support the Employer's proposal. Employer exhibit (E-113) summarizes the comparable communities' contract provisions. It reveals that four of the six communities authorize the employer to seek sick leave verification only after two of more consecutive days. The contract for the AFSCME represented employees in Commerce Township is also similar to the current contract language and establishes two consecutive days as the time at which the Employer may seek sick leave verification. (E-113).

Discussion and Findings

The Independent Arbitrator finds the Union's last offer of settlement on this issue more nearly complies with the applicable factors in Section 9. The Employer's evidence and testimony in support of this proposal is not compelling. The Comparable's do not support a change. Employer testimony in support of the proposed change placed emphasis on the problem with a sick day being used on the front or end of a scheduled four day leave but (E-112) did not establish the overall percentage of time this was occurring was increasing, in fact it showed the percentage decreased in 2005 from previous years. It is also noted that the language in the current contract allows the Employer to require verification if a sick day is taken before or after a vacation or holiday period. There was no evidence or testimony presented to document how frequently that provision had been used by the Employer.

The Union, on the other hand, points out that allowing the ability of the Employer to seek verification after one sick day may cause unnecessary and costly use of medical verification. The existing language allowing the Employer to require verification appears to be a better balance of allowing some ability for the Employer to guard against abuse with the practical ability of the employees to take at least one sick day even when medical attention is not needed.

The Independent Arbitrator does find the Employer's proposed language separating the first sentence of the current contact language in to two sentences makes the policy clearer. Therefore the language in the new contract in the first two sentences of Article VIII (5) will read:

> "Any employee absent because of illness for two (2) consecutive working days may be required to verify the absence was due to illness. Any employee absent because of illness the working day before or after a holiday or vacation period may be required to verify the absence was due to illness."

The last sentence will remain the same as in the current contract.

> **Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue, as modified by the Panel, to more nearly comply with the applicable factors in Section 9. Therefore, Article VIII (5) of the contract will be revised to incorporate the language as modified by the Panel.** [Effective date: Date of Award]

Employer: Agree_____ Disagree DSD

Union: Agree CW Disagree_____

Issue 10 (non-economic): E-5A (Art. XIII) & U-3A (Art. VI) - Call Back Procedure

The background, proposals from the parties and position of the parties on this issue was presented in this Opinion and Award in the context of addressing Issue 1 (economic) involving payment for attendance upon call back. It will not be repeated here.

Discussion and Findings

The Independent Arbitrator finds the Employer's last offer of settlement on this issue the more reasonable. Both parties acknowledge there is no language in the current contract addressing this issue. Both also acknowledge that the present practice for alerting off-duty full-time fire fighters of the opportunity to respond to an incident is to generally broadcast a tone alert to all off-duty fire fighters and allow them to decide when and if they will respond to the incident.

The Employer argues that if the Union proposal is adopted the result would be to strip the Employer of an existing contractual management right. The Independent Arbitrator agrees. The Employer points to Article IV, Section B of the current contract which was quoted previously in this Opinion and Award. In part it states: "It is further recognized that it is the responsibility of the Board ... to determine the amount of overtime to be worked, *subject to --- other express provisions of this agreement as herein set forth.*" Adoption of the Union's proposed language in Article V would be an express provision in this agreement which, in the opinion of the Independent Arbitrator, would limit the Employer's ability to manage the amount of overtime to be worked. A review of the contracts of the comparable communities reveals they have generally the same degree of management rights as that contained in Article IV of the parties current

contract, and they do not have limitations on those rights similar to that contained in the language proposed by the Union.

The Union argues its proposed language just places the current practice into the contract. That may be so, but circumstances can change and new technology may evolve that makes if feasible to alter the current practice and still provide an appropriate level of safety and protection to the citizens and fire fighters while gaining efficiencies. This is what taxpayers expect, and adoption of the Union's proposal could impact the Employer's ability to respond to those changed circumstances. As noted previously in this Opinion and Order when addressing issue one, the Independent Arbitrator has confidence that the Employer and the Union members have the safety of the citizens and their fellow fire fighters foremost in mind and that if the Employer chooses to alter the current practice it will be done so with those goals as a guide.

The Employer says its proposed language maintains the status quo. The Independent Arbitrator agrees. One might question then why any language need be added to the contract. Since the issue was raised, and the parties acknowledged the current contract is silent on the issue, the Independent Arbitrator finds it of value to add the language proposed by the Employer if for nothing more than clarity.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on Issue 10 (non-economic): issue E-5A (Art. XIII) and U-3A (Art. VI) - Call Back Procedure, to more nearly comply with the applicable factors in Section 9. Therefore, Article XIII (Miscellaneous) will be amended by adding a new Section G - Call Backs to read:

> **The Department shall have the continued right to determine whether and in what circumstances it desires to call-back full-time personnel.** [Effective date: Date of Award]

Employer: Agree DBD Disagree_____

Union: Agree_____ Disagree Dww

Issue 11(non-economic): issue E-6 (Art. XIII-Miscellaneous - Physical Condition and Report on Medications

The Parties Proposals

The current contract does not address fitness for duty standards. The Employer proposes adding a new section, Section F, to Article XIII that would address this issue. Proposed Section F has two paragraphs. The first paragraph addresses the procedure involving the determination of the employee's physical condition and ability to perform normal duties. The Union has no objection to this paragraph. The second paragraph addresses the employee's use of prescribed medications and the Employer's ability to be informed of such use. The Union objects to this portion of the Employer's proposal.

Employer Proposal

The Employer's proposed language of Article XIII, Section F, paragraph 2 states:

> "The employee is required to notify the Fire Chief whenever he/she is taking prescribed medication, (confidential information to be maintained in employee's medical file)."

Union Proposal

The Union proposes the second paragraph of Section F of the Employer's proposed language not be included in Article XIII.

Employer Position

The Employer presented the testimony of Chief Schornack and exhibits (E-120 through 123 and E-130) in support of its proposal. The Employer notes the Employer handbook relating to drug and alcohol use reads in part:

> "The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not engager other individuals in the workplace"(E-130).

The Employer says some prescribed drugs can impair an employee's ability to perform normal work duties. The Employer says it needs to know if an Employee is taking any prescribed medicine that may impair the employee's ability to do the job or put others in danger. Chief Schornack testified that under the proposed language it was the intention that he could contact the Employer's physician to determine whether the prescribed medication would impair or alter the employee's ability to perform work (TR-4, pg 217). Chief Schornack testified that information obtained from the employees

under this policy would be included in the employee's medical file and kept in a secure location separate from the personnel file and only the Chief and administrative secretary would have access to it.

The Employer says other comparable communities have provisions dealing with this and provided excerpts from three of the six comparable communities contracts. (E-121, E-122, E-123). A review of those exhibits reveals no language similar to that proposed by the Employer. The Employer says its language provides a means for the Employer to assure safety of its employees and citizens and compliance with its drug and alcohol use policy.

Union Position

The Union says the Employer's proposal is intrusive on the privacy rights of employees since it requires the employee to notify the Employer of any and all prescribed medications being taken regardless of whether it has any effect on job performance. The Union also says it has concerns about the Employer's ability to maintain confidentiality of this information which is even more stringent in light of HIPPA requirements.

The Union challenged the need for this provision and Union Vice President Werner testified that union members can adhere to labels on prescriptions and would not put Township citizens or other fire fighters in jeopardy by working when taking a prescription medicine that would impair the ability to perform the job (TR-4, pg 233).

Discussion and Findings

The Independent Arbitrator finds the Union's last offer of settlement on this issue more nearly complies with the applicable factors in Section 9. The evidence from the Comparable communities does not indicate other communities have such a policy and the Employer presented no evidence that it was applying this policy to other Township Employees. The Independent Arbitrator recognizes that the Township's citizens are relying on the Employer to have fire fighters capable of performing their duties but this proposal is too broad in scope in that it seeks private information unrelated to the ability of the fire fighter to perform his/her duties. The Independent Arbitrator recognizes that this is a non-economic issue and therefore modifications to

the proposed language could be made by the panel. The Independent Arbitrator was initially inclined to attempt to develop language, perhaps modifying the language contained in Plymouth Township's drug policy requiring notification only in those circumstances when an employee is taking prescribed medication that a physician has determined could effect the employee's ability to perform his/her duties. But upon further thought, it seems such a task is better left to the parties in future negotiations if they choose to address it.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue to more nearly comply with the applicable factors in Section 9. Therefore, Article XIII (Miscellaneous) of the Contract will be modified to include Section F, paragraph 1 as proposed by the Employer and will not include paragraph 2 as proposed by the Employer. [Effective date: Date of Award]

Employer: Agree_____ Disagree DdeD

Union: Agree CWW Disagree_____

Issue 12 (non-economic): U-13 (Art. X - Notice re: Vacation Day

The Parties Proposals

Article X of the current contract deals with Vacations. Section B states:

"Vacations shall be taken from seniority date to seniority date with thirty (30) day prior notice to the Fire Chief and with the Fire Chief's approval."

Union Proposal

The Union proposes adding a sentence to Section B to state:

"Members may take a single vacation day with fourteen (14) days prior notice to the Fire Chief."

Employer Proposal

The Employer proposes to maintain the status quo and continue the current contract language.

Union Position

In its closing brief the Union says under the current contract Employees don't have the flexibility to use leave time to deal with unexpected circumstances. In its closing brief it says unlike nearly all of the comparable communities, Commerce Township does not offer personal leave to its fire fighters. Of course, pursuant to the Panel's decision on issue 2, the new contract will offer that opportunity. Under that provision members will have three personal days each year and need only provide the Department with 24 hours advance notice for use of that time. Personal time may be taken in four hour blocks.

Employer Position

The Employer says, in its closing brief, there are two significant problems with the Union's proposal. It says the first problem is an entire shift could be on a vacation day with fourteen days advance notice to the Fire Chief because the proposal does not permit the Chief to deny a request for a single vacation day provided it is requested fourteen days in advance. Second, the Employer points out that this is inconsistent with the requirement that employees provide thirty day prior notice *and obtain the approval of the fire chief* in the current contract language which would be retained with this proposal. The Employer says approval of this proposal would present problems if the Chief had approved vacation for certain fire fighters who had submitted requests thirty days prior to the date of vacation and then had no discretion in approving of not approving subsequent requests from another fire fighter for that same vacation day that was requested provided it was requested fourteen days in advance.

Discussion and Findings

The Independent Arbitrator finds the Employer's last offer of settlement on this issue more nearly complies with the applicable factors in Section 9. The fact that this Panel is awarding the Union's proposal that each member be provided 72 hours of personal time each year and that that time be granted provided the employee provides the Department with 24 hours advance notice makes the Union's proposal unnecessary. In addition, the problem the Employer points out relative to mandating approval of a

single vacation day provided fourteen days prior notice is given is problematic as discussed above.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue to more nearly comply with the applicable factors in Section 9. Therefore, there will be no change to the language in Article X, (Vacations), Section B of the Contract.

Employer: Agree DWD Disagree_____

Union: Agree_____ Disagree AWW

Issue 13 (non-economic): issue U-16 - New Article - Station and Shift Preference

The Parties Proposals

The current contract does not address shift and station assignments. The parties acknowledge that assignment to a station and shift is currently within the discretion of the Department pursuant to the authority given it in the management rights clause of the current contract (J-10).

Union Proposal

The Union proposes a new article be added to the contract to read:

A. "Once the department has determined manpower requirements for each shift and station, members of the bargaining unit shall have the right to select the shift and station they wish to work on the basis of seniority.

B. Shift selection shall be made bi-annually (2 years) in April each year with the most senior member having first choice of shift and station.

C. The Fire Chief may, for good cause demonstrated, abrogate shift selection by seniority for a member of the bargaining unit for any 24 month period provided that his decision shall not be retaliatory, arbitrary or capricious. The Chief's decision may be appealed through the grievance procedure."

Employer Proposal

The Employer proposes to maintain the status quo and add no new language.

Union Position

The Union says its proposal fairly balances the employee needs for predictability in their shift and station assignments with the Employer's right to assign employees.

Testimony by both Union and Employer witnesses established that the current practice with respect to shift and station assignments is that the Fire Chief determines them once a year (TR-1, pgs 215-216). The practice has been in place for the last four or five years. The Union says its proposal provides predictability in station and shift preferences for up to two years. There are no monetary costs associated with it and the Chief may abrogate seniority selections for good cause.

Employer Position

The Employer points out that under the Union's proposal all of the more senior personnel could be located at one station or on the same shift. The Department has an interest in sometimes putting a more senior person with a less senior person to gain experience. The Employer says the provision allowing the Fire Chief to abrogate shift selection by seniority if "good cause" is demonstrated is not a reasonable means of retaining some Employer management authority. The Employer says no Employer should be required to arbitrate a grievance under such a murky standard in order to exercise its right to make a work assignment. The Employer also points out that no other comparable community has such a contract provision (E-82).

Discussion and Findings

The Independent Arbitrator finds the Employer's last offer of settlement on this issue more nearly complies with the applicable factors in Section 9. None of the comparable communities, regardless of size, have this policy. Record testimony revealed there is a legitimate reason for rotating staff from time to time to serve at different stations so they can be more familiar with the location they are to serve and gain experience at all locations within the Township. Union Witness Hall testified that he was not claiming that the Fire Chief has been retaliatory, arbitrary or capricious in making the assignments (TR-1, pg 221). The size of this Department at the current time would make it difficult to manage such a policy and could lead to acrimony among staff and increased grievance litigation. The Union did not present compelling evidence to justify changing the method of station and shift assignments.

Taking all of these factors into consideration, the panel finds the Employer's last offer of settlement on this issue to more nearly comply with the applicable

factors in Section 9. Therefore, the language proposed by the Union addressing station and shift assignments will not be included in the contract.

Employer: Agree DBD Disagree _____

Union: Agree _____ Disagree CWW

SUMMARY

This concludes the award of the panel. The signature of the delegates herein and below along with the signature of the Independent Arbitrator below indicates that the award as recited in this opinion and award is a true restatement of the award. All agreements reached in negotiations during the course of this proceeding and within the submission of last offers of settlement and stipulated to by the parties as noted herein, as well as all mandatory subjects of bargaining contained in the prior contract, will be carried forward into the collective bargaining agreement reached by the panel.

Re: Commerce Township & Commerce Township Firefighters Local 2154
MERC Case No. D05 A-0065(Act 312)

Date: 1-23-07 William E. Long

William E. Long
Arbitrator/Chair

Date: 1-23-07 DBD

Dennis B. DuBay
Employer Delegate

Date: 1/23/07 CWW

Kirk Werner
Union Delegate

Commerce Township Act 312
MERC Case D05 A-0065
External Comparables

Chart A

Unit of Government (Twp.)	Population 2005 (E-34)	Population May 2006 (U-9)	Population % Change 2000-2005 (E-37)/2005-May 2006	Geographic Proximity to Commerce Twp. (E-33)	Housing Units 2000 (U-8)	Median Household Income 2000 (U-8)	State Shared Revenue 2005 (U-8)	Taxable Value 2005 (E-36)	Full time Fire Fighters 2000 (U-12)/(E-42)	Union Contract (U-12)	SEV 2005 (E-34)	Median Home Value 2000 (U-8)
Commerce	35,364	40,158	16.5/13.5%		11,191	74,440	2,142,437	1,903,056,340	15	yes	2,409,930,060	206,900
Independence	34,612	34,707	6.2/0.2%	14	12,375	74,993	2,480,000	1,541,421,590	32/35	yes	1,969,072,600	203,600
White Lake	30,384	30,597	7.7/0.7%	5	10,616	65,894	2,116,719	1,093,627,530	13	yes	1,368,499,180	190,900
Harrison	25,453	25,684	4.1/1.7%	33	11,486	51,892	1,926,099	902,248,776	27	yes	1,160,567,276	166,600
Plymouth	27,980	36,765	0.7/31.4%	13	11,043	74,738	2,164,246	1,892,781,920	22/26	yes	2,213,080,740	218,500
Brandon	13,973	14,001	5.6/0.2%	20	4,718	66,895	1,002,677	506,072,890	12/10	no	650,855,260	195,000
Groveland	6,381	6,366	3.8/-0.2%	20	2,199	72,188	424,523	230,765,900	3/5	no	318,104,320	197,300
Oakland	16,093	16,188	23.1/0.5%	23	4,529	102,034	892,958	1,181,933,420	6	no	1,428,779,745	315,700
Oxford	15,324	19,447	3.2/26.9%	22	4,675	66,725	943,940	787,119,250	3/11	no	1,023,889,190	182,400