2199

IN THE MATTER OF THE
ARBITRATION BETWEEN:

PLAINFIELD CHARTER TOWNSHIP

AND MERC Case No. L04 B-7005

PLAINFIELD TOWNSHIP FIRE FIGHTERS
IAFF LOCAL 3890
_____/

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

FINAL OPINION AND AWARD

Arbitration Panel

William E. Long
Arbitrator/Chair

Steve Girard, Attorney
Employer Delegate

Alison Paton, Attorney
Union Delegate

Date: August 8, 2007

INTRODUCTION

These proceedings were initiated by petition for arbitration dated March 28, 2005 pursuant to Act 312 of the Public Acts of 1979, as amended. The arbitration panel is comprised of Independent Arbitrator William E. Long, Township Delegate Steven Girard and Union Delegate Alison Paton.

A pre-hearing telephone conference was held July 26, 2005. It was agreed by the parties that if they were unable to reach agreement on external comparable communities the parties would identify proposed comparables and submit briefs and supporting documentation to the independent arbitrator and the independent arbitrator would issue a separate decision on comparability prior to beginning the hearing on other issues. The parties were unable to agree on all comparable communities. The parties submitted briefs and evidence in support of their respective proposed comparables November 1, 2005. A partial opinion on comparability was issued by the Independent Arbitrator November 14, 2005. The parties agreed that the partial opinion and order on comparable communities will be considered incorporated in and part of this final order and opinion. Communities found to be comparable to Plainfield Township in this proceeding are: the City of Norton Shores, Grand Haven Township, Muskegon Township, the City of Grandville, the City of Holland, and the city of Jackson.

Five days of hearings on the issues in dispute were held March 13, March 15, July 12, July 13, and October 24, 2006 at the Plainfield Township Fire Hall, Grand Rapids, Michigan. Plainfield Township was represented by Attorney Steve Girard. The Union was represented by Attorney Alison Paton. The record consists of 958 pages of record testimony in five volumes six Joint Exhibits (J-1 through J-6); 85 (E-1 through E-85) Township Exhibits; and 62 (U-1 through U-62) Union exhibits. References to record testimony will be identified as T- page number and references to exhibits will be: (J-1, E-10, U-40), etc.

Last offers of settlement were submitted by the parties on February 22 and 26, 2007. Post-hearing briefs were submitted by the parties on June 18, 2007. The parties agreed there would be no reply briefs.

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

At the beginning of the hearing stage of this proceeding, March 13, 2006, the parties identified 39 separate issues for the panel's consideration (J-1). During the course of the proceeding the following issues were withdrawn:

- Issue # 3 – proposed by the Employer to add a new paragraph to Article 8, section 2
- Issue # 18 – proposed by the Union to delete Article 21, section 2(1)
- Issue# 22- proposed by the Employer to modify Article 31, section 3
- Issue# 37 – proposed by the Union to add a new article addressing emergency medical certification

In addition, during the course of the proceeding the parties addressed the following issues by way of stipulation:

1) "The parties agree to delete Article 9, Section 9 which states: "The President of the Union shall be retained in the Township service in the event of layoff, regardless of their position on the seniority list, so long as there is work that they have the ability to do." (J-3)

2) The parties agree to modify Article 21, Holidays, Section 4 as follows: "Section 4. Holiday Pay. Eligible regular full-time employees shall receive ten (10) hours pay for each recognized full day holiday. Five (5) hours pay for each half-day holiday. Holiday pay shall be at the employee's straight time rate. The person who actually works the holiday gets paid at time and a half for holiday hours worked. An employee who works holiday hours that are not his regularly scheduled shift shall receive double time for such holiday hours worked.
   (a) Non-24-hour shift employees receive the day or half-day (1/2) off with pay.
   (b) All 24-hour shift employees work regularly scheduled days (including holidays) and receive holiday pay. (J-3)

In exchange for Employer's Agreement to # 2 above, the Union withdraws its uniform cleaning allowance proposal.

3) The Parties agree to add a new section to Article 31 regarding payment in lieu of insurance:

   "Employees furnishing proof of insurance coverage under the policy of a spouse shall receive an annual cash benefit of $2500 in lieu of coverage offered under this contract. This amount will in future years be increased as the Board determines to increase the amount applicable to other Township employees." (J-4)

4) Stipulation of the Parties re: MERC Case No. L04 B-7005:

1) The Union and the Township hereby agree that, effective January 1, 2007 or as soon thereafter as administratively possible, the Priority Health plan will be replaced by the BCN Plan E health plan (including BCBS $10/$40 prescription coverage with 1xMOPD) as is set forth in Township Exhibit 83, *except* that the Durable Medical Equipment coverage will be 80% (not 50%) and the plan will include students under family coverage. This change is without prejudice to any proposals or last best offers that either party may make in thi8s Act 312 proceeding.
2) The Union and the Township further agree to supplement the record with the following:
    a) The Union's primary reason for agreeing to this change is to lessen the premium costs for the PPO and POS plans by way of eliminating the 'participation factor' since, as of January 2007, all Township employees including the bargaining unit will be covered only by plans offered by BCBSM.
    b) The Municipal Worker (Water) bargaining unit employees in the Township will have the BCN plan E in place of the Priority Health Plan effective January 1, 2007. The Township's non-union employees will have the BCN Health Living Plan in place of the Priority Health Plan effective January 1, 2007. Regarding the non-union out-of-state retirees who have in the past been covered under the PPO Plan 1 (which plan is also currently available to the IAFF bargaining unit), they will continue to have the PPO Plan I available to them after January 2007 (as testified by Township Supervisor Homan) the Township reserves the right to change their plan.
    c) Township Exhibit 85 (currently a two-page exhibit) shall be replaced with the attached one-page document.
    d) The attached document entitled "January 2007 PPO Plan I and POS Plan 4 Premium Rates" shall be added as Joint Exhibit 6.
    e) This stipulation shall be added as Joint Exhibit 5. (J-5)

The Panel discussed and determined that of the thirty-four (34) issues remaining to be addressed by the Panel, thirty-one (31) are economic issues and three (3) are non-economic issues. The non-economic issues are issues: #1, #6, and #38. The issues will be addressed in this Final Opinion and Award in the order in which they were addressed by the Parties in their post-hearing briefs which generally follows the numerical order of the Articles in the Contract. Issues will be identified as economic or non-economic as each is addressed.

The Employer took the position on several issues that the issue was a permissive subject of bargaining and therefore not within the jurisdiction of the Panel to address. The Union took the position that these issues are a mandatory subject of bargaining.

During pre-hearing conferences it was agreed that the parties would submit arguments on the issue of mandatory v permissive subject of bargaining on each issue in which that position was raised and the Arbitrator would issue a ruling on the question of permissive v mandatory subject of bargaining on an issue-by-issue basis. There are five issues in which the Employer argues the proposed change is a permissive subject of bargaining. Those issues are issues 4, 5, 11, 33 and 34. The Arbitrator will address the question of permissive v mandatory subject of bargaining in the discussion and findings on each issue but in so doing may refer to a previous issue discussion when the basis for the findings of whether the proposed change is a permissive or mandatory subject of bargaining is basically the same.

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, a partial opinion on comparability was issued by the Independent Arbitrator on November 14, 2005. The findings and support for that opinion and partial order, which is part of this file, are incorporated by reference into this opinion and award. The Independent Arbitrator found the following communities comparable to Plainfield Township: the City of Norton Shores, Grand Haven Township, Muskegon Township, the City of Grandville, the City of Holland, and the city of Jackson. Therefore the panel chooses the following communities as comparable to Plainfield Township:

The City of Norton Shores

Employer: Agree Steven K. Ziesel Disagree _____

Union: Agree _____ Disagree [signature]

The Cities of Holland and Jackson

Employer: Agree _____ Disagree Steven K. Ziesel

Union: Agree [signature] Disagree Steven K. Ziesel

The City of Grandville and the Townships of Grand Haven and Muskegon

Employer: Agree Steven K. Ziesel Disagree _____

Union: Agree _____ Disagree [signature]

The Independent Arbitrator acknowledges the arguments advanced by the Union in its post-hearing brief. The Union argues that of the six comparable communities, greater weight should be given to the four comparables which, like Plainfield Township, have an established union/employer labor relationship. The Union points out that Grandville's fire employees are non-union employees and therefore not in a position to collectively bargain and that Grand Haven Township's fire employees just recently organized and its current contract is the first that was collectively bargained and not necessarily reflective of "everything that fairness and comparatives support."

The Union also argues that no reliance should be made in this proceeding upon the wages or other employment conditions of other Plainfield Township employees. The Union points to County of Wexford v POAM, Mich App No.108033 (7/19/89, unpub), lv den Sup Ct No. 86823 (2/26/90) in support of its argument. That decision stated: "We agree with the circuit court that Sec 9 does not require wage comparison with other Wexdford County employees." The Union argues that in this case even the

Plainfield Township's current contract with the Municipal Employees Association, the only other group of Township Employees who bargain collectively with the Employer, was imposed unilaterally by the Employer and therefore not reflective of a true collectively bargained for agreement. (U-51) The Union says that in light of the County of Wexford decision and the lack of any other Act 312-covered units within the Township, the appropriate analysis of all issues mandates that where Section 9(d) evidence is deemed relevant, exclusive reliance be placed on the fire department comparables.

On the issue of the weight given to the external comparables, the Arbitrator will give such weight as he deems appropriate to each of the Comparable Communities based on the evidence in the record on an issue-by-issue basis. Section 9(d) directs the arbitration panel to base its findings, opinions and order upon a comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees *performing similar services and with other employees generally: (i) In public employment in comparable communities, (ii) In private employment in comparable communities.* The Arbitrator does not interpret Section 9(d) as limiting consideration of comparables to only those employee groups who have entered in to collective bargaining agreements or whose collective bargaining agreements are a result of Act 312 proceedings. Such a limitation would prohibit consideration of employees in private employment in comparable communities pursuant to Section 9(c)(ii). Also, Section 9(c)(i) permits a comparison with other employees generally in public employment in comparable communities. It does not limit the comparison to only those public employees who perform similar services. And certainly one would conclude that public employees employed by Plainfield Township would be employed in a community comparable to that of the employees involved in this arbitration proceeding.

Additionally, Section 9(h) directs the arbitration panel to consider "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." The Independent Arbitrator finds nothing in Act 312 that mandates that only those wages, hours, and conditions of employment of employees performing similar services and/or whose wages, hours, and conditions of employment are a result of collectively bargained for

agreements can be among the factors considered by the panel when determining its findings, opinions and order. Act 312 does not set out a strict formula for what weight should be given to each factor identified in Section 9 and indeed subsection (h) allows the panel to consider other factors, not specified. The Independent Arbitrator will consider and give such weight to these factors as deemed appropriate on an issue-by-issue basis.

Sec. 9(c) 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 acknowledges in its post-hearing brief that the Township is not in imminent financial crisis but it does point out that its budget projections for 2005 and 2006 would require drawing funds from its general fund reserve account in order to balance its budget. (E-71) It notes that its second largest source of income, state revenue sharing, has declined each of the past five years. (T-793) The Employer says now is not the time for the panel to impose an expensive contract.

The Union, in its post-hearing brief, argues that the Employer is able to pay for all of the improvements proposed by the Union in this proceeding. The Union points to evidence it presented at the proceeding that shows the Township growth in housing units of 28% from 1990 to 2000. (U-1) The Employer testified however that in 2006 the Township had 70 % fewer housing starts than in the previous year. The Union presented evidence that Plainfield Township's total taxable value per capita, based on the 2000 census, was 9% above the average of the comparable communities in 2005. (U-3) and that its total general fund revenues increased by 16.2% from FY 2003 to FY 2005 while its expenditures for the Fire Department during that time increased only 3.8%. (U-4) The Union also points out that the total millage assessed by the Township is the lowest of all the comparables (U-5, U-6) and noted the Township had a General Fund balance at the end of FY 2005 exceeding $2 million (E- 71) which the Union says is large compared to the approximately $7 million General Fund expenditures for FY 2005.

The community has been and continues to be supportive of its fire services and fire department as evidenced by a recent special millage to support a bond for construction of a new fire station. (U-6) It is also noted that the Fire Department is the largest department and largest single expenditure in the Township's annual budget. (E-71) The Township also has experienced steady growth during the past few years and has vacant land upon which additional growth can occur. On the other hand, Michigan's overall economy, which is experiencing high unemployment and a slow down in construction and capital investment, will likely have some dampening impact on the rate of growth in the Township during the period of this contract. The panel has taken all of these facts into consideration when considering the interests and welfare of

the public and the financial ability of the Employer to pay for the costs to provide fire protection and prevention services to its residents.

ISSUES

Issue #1 Article 6—Discipline and Discharge (Non-Economic)

The Parties Proposals

Union Proposal

Article 6 of the current contract consists of one paragraph addressing Discipline and Discharge. The Union proposes deleting the current language and replacing it with new language consisting of three sections. The Union says its proposed changes rest upon consideration of fairness and due process. The proposed language is more detailed and specific regarding the policies and procedures applicable to employee discipline.

The Union's proposed language specifies that "no employee shall be reprimanded, transferred, discharged, reduced in rank or pay, suspended, or otherwise disciplined, without just cause." This would replace current language which states: "Except as otherwise provided in this Agreement, discipline or discharge shall be for just cause." The Union also proposes new language which would 1) require that "All disciplinary charges shall be brought within ten (10) business days of the Employer's knowledge of the alleged occurrence, unless there are extenuating circumstances necessitating a longer period for the Employer to complete its investigation." 2) Require that the employee and the union representative be provided with a written statement of charges and reason for the charges prior to a disciplinary hearing or investigatory interview, 3) render the discipline or discharge null and void if the Employer fails to comply with the requirements of this Article, 4) require the employees personnel records be purged of all references to prior disciplinary action after twenty-four (24) months following any disciplinary action and that disciplinary action occurring 24 months prior to a new discipline action not be considered in connection with the new discipline action, 5) employee evaluations/appraisals not be used in the disciplinary process unless the parties have bargained and reached agreement on its use.

Employer Proposal

The Employer proposes no change to the current contract language.

Union Position

The Union says there is no written disciplinary procedure beyond what is set forth in Article 6 and as a result there is a lack of consistency in how discipline is handled. (T-347) The Union says its proposed language will more clearly describe the Employer's obligations in the disciplinary process and reduce the possibility of litigation between the parties by providing clearer contract language.

Employer Position

The Employer says the current language has served the parties well over the years and the Union has failed to demonstrate a need for change. The Employer argues that the proposed language is not supported by the comparables and, in its post-hearing brief, points to several specific words or phrases in the proposed language that may confuse, rather than clarify the application of the language to disciplinary proceedings, particularly when considered in the context of other provisions in the contract, which could lead to more, not less litigation between the parties. The Employer points to several proposed language changes that it says is in conflict with provisions in Article 4 of the current contract dealing with Management Rights. The Employer's position is that language in Article 4 gives it the right to unilaterally establish rules and policies, including policies and procedures relating to discipline and discharge. The Employer, in its post-hearing brief, says it believes the language in Article 4 constitutes a waiver of the normal duty to bargain over such rules and policies. The Employer urges the panel to refrain from crafting language for the parties saying the current language has served the parties; administration of discipline has not been a problem, and the proposed language is not supported by the comparables.

Discussion and Findings

The independent arbitrator finds that some modification of the current language of Article 6 addressing discipline and discharge is merited but not to the extent proposed by the Union. Testimony during the proceeding and arguments in post-hearing briefs leads the arbitrator to conclude: 1) this issue is before the panel primarily because the parties differ upon whether the current contract requires the parties to bargain on discipline policies and procedures (T-339), 2) because of those differing views the parties have not cooperated in discussing and developing mutually acceptable policies and procedures addressing disciplinary matters, 3) the Union's attempt to fashion language addressing these issues, while successful in bringing it to the attention of the panel, does contain language that could be interpreted as in conflict

with other provisions of the contract and therefore could result in more, not less, clarity and more, not less, litigation, 4) there are several provisions in the proposed language that are mutually recognized by the parties as current procedure or legally required and inclusion of these provisions would aid in clarifying the policy and procedure.

One of the difficulties presented in this issue is distinguishing: (a)the Employer's authority to establish "reasonable rules, regulations, policies and procedures not inconsistent with the provisions of this agreement" and making them "available for inspection and review by employees if such rules, regulations, policies and procedures concern *working conditions*" as provided in Article 4, Section 2 of the contract dealing with Management Rights from: (b)the question of the panel's role in addressing the Employer's responsibility to collectively bargain in the development of rules, regulations, policies and procedures involving discipline and discharge because those particular rules and policies fall within the scope of *"conditions of employment"* in dispute under Act 312, Section 9. (T-341)

The record reflects there was discussion between the parties about adopting fire department rules and regulations but it is unclear to what extent those proposed rules and regulations addressed discipline and discharge policies and procedures. (T-338, U-46) What was clear was the Union's interest in bargaining over rules pertaining to employee conduct and discipline. (T-344) In any event, there was no evidence presented demonstrating that the parties negotiated on the issue of policies and procedures involving discipline and discharge. (T-338, 339)

The Union, by putting forth its proposed substitute language, has attempted to address specific policies and procedures impacting disciplinary actions that would better be addressed in mutually agreed upon rules and regulations. The Employer, in its post-hearing brief, has pointed to several potential conflicts in language proposed by the Union with other sections of the contract such as restrictions on "transfers" or "reductions in pay" without just cause. Given the complexity of the issues involved in development of policies and procedures addressing discipline, particularly as it relates to other contract provisions, the panel is reluctant to undertake the task of developing language that is better left to the parties to develop. The panel does not want to develop language that would potentially result in more grievances or litigation.

On the other hand, there was record testimony revealing certain recognized standards or acceptance on behalf of the Employer on this issue. Employer witness, Fire Chief Peterson, testified that he would not object to a provision requiring automatic

removal of references to prior disciplinary actions after a period of time. (T-387). Fire Chief Peterson also testified that the Employer strives to put in writing a statement of the charges and reason for the charges regarding a proposed disciplinary action and present that statement to the employee prior to a disciplinary hearing but acknowledged that there may have been an occasion when that procedure wasn't followed the way it should have been. (T-389) With respect to the opportunity for employees to have union representation during meetings with the Employer involving disciplinary proceedings, the Employer, in its post-hearing brief, says language addressing this is unnecessary in the contract because the Michigan Employment Relations Commission (MERC) has already provided due process rights for employees in investigatory interviews. The Employer says failure to provide such rights would be an unfair labor practice and MERC has full authority to fashion a remedy. The panel finds that incorporating language addressing these rights as currently interpreted by MERC and the courts would help clarify to the parties what those rights are and perhaps avoid unnecessary grievances or litigation.

Taking all of these factors into consideration the panel finds it appropriate to modify current contract language in Article 6 addressing Discipline and Discharge by clarifying some policies and procedures and to direct the parties to engage in discussions involving development of rules, regulations and procedures relating to Employee evaluation, appraisal, discipline and discharge as those rules, regulations and procedures impact conditions of employment.

Therefore, Article 6 will be modified as follows to be effective on the date this arbitration award is issued:

"Except as otherwise provided in this Agreement, discipline or discharge shall be for just cause. The Employer and the Union subscribe to basic principles of progressive discipline; however the Employer may summarily impose discipline up to and including discharge in appropriate cases. Incidents, which occur beyond three (3) years previously, will not be considered in evaluating discipline or discharge of an employee. The Employee's personnel record shall be purged of all references in connection with any prior disciplinary action which occurred beyond three (3) years previously.

Any disciplinary hearing, or any investigatory interview conducted by the employer with the employee which could result in discipline of the employee, shall be conducted in conformance with the legal and procedural requirements required by the Public Employment Relations Act, (PA 336 of 1947) and the Compulsory Arbitration Of Labor Disputes in Police and Fire Departments Act, (PA 312 of 1969).

Within three (3) months of the issuance of the Act 312 Award in MERC Case No. L04 B-7005 the Employer shall appoint three persons and the Union shall appoint three persons to participate in one or more special conferences as provided in Article 33, Section 4 of this contract and shall convene the initial special conference. The purpose of and agenda for the special conference(s) will be to discuss and determine whether the Union and Employer can develop mutually agreed upon rules, regulations and procedures relating to employee evaluation, appraisal, discipline and discharge as those rules, regulations and procedures impact conditions of employment and to develop and agree upon such rules, regulations and procedures if possible." [Effective upon issuance of the Award.]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

The Employer delegate disagrees with the Panels' Award in Issue No. 1 and specifically reserves all its contractual and statutory rights with respect to its right to promulgate and revise policies and procedures including, but not limited to, those involving disciplinary matters.

The Union delegate agrees with the Award, but specifically reserves all of its contractual and statutory rights, including but not limited to its rights under the Article 32 Maintenance of Standards provision, as well as its bargaining rights under PERA and interest arbitration rights under Act 312. In addition, the Union further reserves all constitutional due process rights on behalf of its individual members.

Issue #2 Article 8—Seniority, Section 2 loss of seniority (Economic)

The Parties Proposals

Employer Proposal

The Employer proposes to amend language in the second sentence of Article 8, Section 2 which refers to a series of reasons seniority shall be terminated. Currently the language reads: "Seniority shall terminate for the following reasons:" The Employer proposes the language be amended to read: "Seniority *and employment* shall terminate for the following reasons:."

Union Proposal

The Union proposes no change to the current language.

Employer Position

Employer witness Homan testified that the Employer advanced this proposal to clarify what he believed to be the obvious intent, that it's not just seniority that is lost for the listed reasons, but employment is also lost for those listed reasons. (T-616) In its post-hearing brief the Employer argues that it is commonly held that termination of

employees is concomitant with the loss of seniority even in the absence of an express provision. The Employer also points to the language in the contracts of the internal and external comparables in support of its position.

Union Position

The Union argues that adoption of the Employer's proposed change would result in a significant reduction in employee rights and is not just a simple clarification of intent. The Union acknowledges that the first two reasons listed for loss of seniority: A. by voluntary termination or retirement, and B. if the employee is discharged for cause, will effectively mean both loss of seniority and employment. However the Union points out that the other reasons listed in sub-paragraphs C through H resulting in loss of seniority are not intended to automatically result in termination of employment. The Union says under the current language the employee may lose seniority associated with the stated reasons but termination of employment would require the Employer to demonstrate the employee was discharged for just cause. If the panel were to adopt the Employer's language the Union member would lose his/her ability to challenge the "just cause" basis for the termination in a grievance proceeding.

The Union also points out in particular sub-paragraph G of Article 8, Section 2 which the Union says would conflict with language in Article 12, Section 6(B) dealing with leaves of absence for injury or illness. The Union also argues that relying on other internal or external comparables for this particular issue is inappropriate because even though some of those contracts may include the phrase "loss of seniority and employment" that phrase must be considered in the context of other provisions in the contract on an individual contract by contract basis just as in this contract.

Discussion and Findings

The Panel finds the Union's position on this issue convincing. The Employer may view this as a simple clarification of language but upon further review it does appear to have much broader implications and could result in confusion and conflict with other provisions in the Contract. It should also be noted that upon questioning, Employer witness Homan acknowledged that the Employer had not experienced any administrative difficulties as a result of the absence of the words "and employment" in this section of the Contract. (T-617)

Additionally, the Union's argument about viewing this language in the comparable contracts in the context of other language in those contracts is supported by a brief review of just two of those comparable contracts. The City of Holland contract

language at Article VII, section 5 e) addresses the subject of loss of seniority and the employment relationship involving an employee on sick leave different from the way it is addressed in Article 8, section 2G of this contract. (E-67) The City of Jackson contract addresses the issue of loss of seniority and employment in Section 24.4 but its list of reasons for such loss differ greatly from those in Article 8, section 2G of this contract. (E-68) The comparables reveal there is much difference as to how each comparable has addressed this issue as it relates to loss of seniority and termination and the simple insertion of the words "and employment" would not lead to more clarity and could lead to much more litigation.

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 on the issue of revising the language in Article 8, section 2 there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #3 — This issue was withdrawn

Issue # 4 – Article 9, LAYOFF AND RECALL, Section 8 – Work by non-bargaining unit employees (economic)

The Parties Proposals

Employer Proposal

The Employer proposes to modify Article 9, Section 8 by deleting the second sentence of the section, *highlighted*, below. The current language reads:

"Non-bargaining unit employees may continue to perform such work, as was the normal custom prior to the time this agreement was executed, and in the future, in the manner and to the extent as may be determined by the employer. *The Employer agrees, however, that it will not assign bargaining unit work of more than five (5) workdays duration to any non-bargaining unit employees while a qualified bargaining unit member is on layoff.* Non-bargaining unit employees will in no way be used to delay the recall of a bargaining unit employee. Recall pursuant to this section shall be in accordance with this agreement, except in extraordinary situations where the Employer shall be permitted to

contact laid off employees by telephone or by certified mail, return receipt requested, to the employee's last known address."

Union Proposal

The Union proposes the 'status quo', no change from the current contract.

Employer Position

The Employer, in addition to arguing the merits of its proposal, takes the position that its proposed deletion of this sentence is a *permissive* subject of bargaining and therefore outside the jurisdiction of this Act 312 panel to address. The Arbitrator will address the question of permissive v mandatory subject of bargaining in the discussion and findings.

The Employer presented the testimony of Fire Chief Peterson in support of this proposal. Chief Peterson stated that the purpose of this proposal was to permit the Department to continue to operate close to the way it currently operates in the event it had to lay off a full time firefighter. (T-853) The Employer says that with the current full time bargaining unit staff of 10, if it had to lay off a full time fire-fighter it would have to reduce the staff from the current five people on 24/7 to three people 24/7 because it wouldn't be able to offer that work to non-bargaining unit part time people while the bargaining unit employee was on layoff. The Chief testified that by using part time staff under the current arrangement it has been able to increase the number of staff on 24/7 from 2 staff in 1999 to 5 staff currently and that has allowed lieutenants to be on 24/7, increased efficiency and permitted the Employer to more easily comply with two in, two out and several other things. (T-855)

The Employer provided its arguments, in its post-hearing brief, in support of its position that its proposal is a permissive subject of bargaining. The Employer argued that the following MERC and/or Court decisions supported its position: 1) Oak Park Public Safety Officers Association and City of Oak Park, No. CU03 A-005, 19 MPER, pg 50 (June 27, 2006); Southfield Police Officer's Association v City of Southfield, 445 NW2d 98 (1989) and Local 1227 AFSCME v City of Center Line, 414 Mich 642; 327 NW2d 822 (1982). In the Oak Park Public Safety Officers Association case the MERC upheld the Administrative Law Judge decision, which stated in part:

> "While Respondent has the right to demand bargaining over the impact of a decision to lay off bargaining unit members, including the safety and workload of the remaining Public Safety Officers, seniority, and bumping rights, the Union may not demand to bargain over and take to impasse a proposal conditioning the layoff of its members on the layoff of non-union employees."

The Employer points out the ALJ, in the Oak Park decision relied on the AFSCME v City of Centerline Michigan Supreme Court case. The Court in the AFSCME v City of Centerline case found that an Act 312 Panel did not have the authority to compel inclusion of a no-layoff provision in a collective bargaining agreement. In the AFSCME case the word 'layoff' meant a reduction in the working force of the bargaining unit due to a decrease of work or general lack of funds and provided that bargaining unit members could only be laid off in conjunction with layoffs or cutbacks in other departments. The State Supreme Court held that such a provision restricted the city's ability to make decisions regarding the size and scope of municipal services and to base its decisions on factors such as need, available revenues, or public interest. The Court said this clause is a mild restriction but it speaks to the very essence of the city's decision making process.

The ALJ in the Oak Park decision found the Centerline case to be controlling on the layoff and recall language in the Oak Park case. The Contract language in the Oak Park case prohibited the department from laying off any bargaining unit member until all non-members who performed police and fire duties – defined as work presently or previously performed by public safety officers - were laid off first and required that all laid off public safety officers be rehired before non public safety officers who perform such duties be recalled from lay off.

The Employer argues that the language it proposes to eliminate has a similar impact as the language in the Oak Park case in that it would require the Employer to lay off all part time employees if even a single bargaining unit employee is laid off for a period of more than five days. The Employer says the language it proposes to eliminate deprives the employer of the ability to make policy decisions regarding the number of firefighters needed to operate the Department. The Employer says this language is a permissive subject of bargaining and not within the jurisdiction of this Act 312 panel.

Union Position

The Union says the language the Employer proposes to delete is a result of an agreement reached by the parties in the prior contract negotiations. Prior to those negotiations there were no part time personnel, only paid on call personnel who responded to fire calls to supplement the full-time firefighters at the scene of the fire. During negotiations, the Union says it proposed the Employer increase the number of full-time personnel from the then eight (8) to twelve (12) to allow a minimum of two

full-time employees on duty at each of the two fire stations. The Employer proposed that instead of staffing these positions with full-time personnel they be permitted to staff them with part-time personnel. The parties agreed to a letter of understanding (E-64, pg 49-50) which was part of the current contract. The letter of understanding stated in part "it is the Township's intention for the term of this Agreement to continue the process of increasing staffing at the fire stations so that by the end of the term of this agreement, a minimum of two employees are scheduled at each station on a 24-hour, seven day per week, basis. The type of staffing utilized shall be at the discretion of the Fire Chief." The Union points out that the letter of understanding also contains a provision which states: "The Union's desire to increase staffing at the Fire stations can be accomplished on and interim basis without the full complement of additional full-time staffing by more extensive utilization by the Department of non-bargaining unit employees." The Union, through the testimony of Union President Duvall, stated its understanding was that it would allow the Employer to use part-time personnel on an interim basis only until the Employer could move to hiring an additional four full-time personnel for a total of twelve full-time personnel. Union President Duvall testified, "it was never the Union's intent to permanently fill the firefighter positions with part-time firefighters. We never would have agreed to that." (T-876-877) The Union argues that the parties agreement to permit use of non-bargaining unit employees on an interim basis as provided in the letter of understanding No 1 would be completely undermined were the Employer to be allowed to continue to use part-time employees to work shifts while a full-time firefighter was on layoff, which would be permitted if the panel were to accept the Employer's proposal to delete the language contained in the second sentence of Article 9, Section 8. The Union says the Employer has failed to demonstrate a need for change and points to the Fire Chief's testimony that the current language has not impaired the Employer's ability to manage. (T-858) The Union also argues that bargaining history and factors "traditionally taken into consideration" under Section 9(h) of Act 312 support its position that the Employer's proposal should be rejected.

The Union, in its post-hearing brief, also puts forth its arguments on whether the Employer's proposal is a permissive or mandatory subject of bargaining. The Union, in addition to referring to some of the cases relied on by the Employer, cites several cases in support of its position that the Employer's proposed deletion of this sentence is a mandatory subject of bargaining. Those cases include: City of Manistee v Manistee Fire Fighters Ass'n, 174 Mich App 118 (1989) lv den, 434 Mich 864 (1990); Southfield Police

Officers Ass'n v Southfield, 433 Mich 168 (1989); and InterUrban Transit Partnership v ATU, MERC Case No. C01 K-220 (issued 6/30/04).

The Union argues that the Employer's reliance on the City of Centerline case is misplaced. The Union distinguishes that case from the facts in this case saying that in Centerline the Court held the language the Union argued was the subject of mandatory bargaining deprived the city of its ability to make a policy decision of whether to layoff police officers because it could only be done in conjunction with reductions in other departments, whereas in this case, inclusion of the language that the Employer wants to delete does not interfere with the Employer's decision to layoff members of the bargaining unit. Instead, it only limits the Employer from using non-bargaining unit members to perform bargaining unit work while a bargaining unit member is laid off. The Union says the language is not a limitation on the right to layoff personnel but rather a limit on the Employer's use of non-bargaining unit persons to perform bargaining unit work, which, the Union says, Michigan courts have continually recognized as a mandatory subject of bargaining. The Union points to the City of Manistee v Manistee Fire Fighters Ass'n case in support of this position. In that case the Michigan Court of Appeals upheld a MERC decision saying "There is a duty to bargain over management's decision to subcontract bargaining unit work to nonunion members. --- Because petitioner sought to bring in volunteers to perform bargaining unit work, it, in effect attempted to subcontract the unit's work by using nonunion members to perform the same job as respondent's members. --- Therefore, this was a mandatory subject for bargaining." The Union also cites the Michigan Supreme Court decision in Southfield Police Officers Ass'n which states: "The Michigan Courts have held, in varying contexts, that the duty to bargain extends to a public employer's diversion of unit work to non-unit employees or to the subcontracting of the unit work to independent contractors."

The Union says that any reliance by the Employer related to the 'exclusivity rule' as adopted by the Michigan Supreme Court in the Southfield Police Officers Ass'n, supra, must be limited to situations where the work is performed by members of the bargaining unit as well as by another set of unionized employees of the same employer. The Union says the exclusivity rule does not apply in situations, as in this case, where the work is performed by members of the bargaining unit and other non-organized employees of the employer. The Union points to the Commission decision in Oak Park

Public Safety Officers Ass'n v City of Oak Park, supra, in support of its position on the exclusivity rule. In that case the Commission said:

> "A union has a legitimate interest in whether and when the work of its members may be assigned outside of the bargaining unit, and employers generally have the duty to bargain the diversion of work to non-unit employees and the subcontracting of work to others. [citation omitted] However, when the work at issue historically has been performed by members of more that one bargaining unit, assignment of that work to other bargaining units whose members already perform that work is not a mandatory subject of bargaining. [citations omitted] Because the work sought to be preserved has also historically been performed by City employees belonging to another bargaining unit, we hold that the Union violated PERA by submitting its proposal to compulsory arbitration under Act 312."

The Union also cites a Michigan Court of Appeals case issued March 9, 2006 (Docket No. 256796, unpub upholding a MERC decision in InterUrban Transit Partnership v ATU, MERC Case No. C01 K-220 (issued 6/30/04). The Michigan Court of Appeals stated:

> "We have found no authority to extend the exclusivity rule beyond disputes over work claimed to be exclusive to one of at least two bargaining units. In addition, the recognized rational underlying MERC's exclusivity rule does not support its application beyond disputes involving at least two bargaining units."

The Union says these cases support the Union's position that the exclusivity rule, i.e. "Where particular job functions have been assigned interchangeably to both represented and non-represented employees, or to members of different bargaining units, and the unions involved have had an opportunity to demand bargaining over these assignments in the past, the mere fact that an employer assigns more of the work to one of these groups should not give rise to a bargaining obligation." Southfield Police Officer's Ass'n, supra, does not apply in this case because neither the Employer's paid-on-call or part-time employees are organized in a bargaining unit. The Union says the panel should determine this issue to be a mandatory subject of bargaining within the panel's jurisdiction and the panel should maintain the status quo.

Discussion and Findings

The Independent Arbitrator will first address the subject of whether the Employer's proposal is a permissive or mandatory subject of bargaining. The Arbitrator finds the arguments put forth by the Union more consistent with current case law and MERC decisions. The relatively recent MERC decision in Oak Park Public Safety Officers Ass'n and the City of Oak Park, supra, stated: "Here, the work sought to be

preserved has been performed by members of the Union's bargaining unit, by members of a command officers bargaining unit, and by personnel furnished through mutual aid from other communities with whose employees the City has no collective bargaining relationship. Because the work sought to be preserved has also historically been performed by City employees *belonging to another bargaining unit*, we hold that the Union violated PERA by submitting its proposal to compulsory arbitration under Act 312." Similarly, the Michigan Supreme Court in the Southfield Police Officers Ass'n, supra, spoke to the exclusivity rule. It stated:

"Under the exclusivity rule, if particular work has been performed interchangeably *by employees in several bargaining units*, and the public employer has not been limited by the terms of a collective bargaining agreement, the public employer is able to assign according to the expertise required by the work.... The MERC standard, unlike the federal "adverse impact" rule, takes into account the significant differences in the statutory schemes regarding the resolution of disputes and provides for the efficient allocation of scarce public resources by minimizing the time-consuming and expensive challenges to the transfer of work where there has been an overlap in the performance of job duties *by a multiplicity of bargaining units.*" (emphasis added). These cases support the Union's position that the exclusivity rule removing this issue from a mandatory subject of bargaining does not apply in this case because the work involved in this case has not been performed interchangeably *by employees in several bargaining units* nor is there an overlap of job duties *by a multiplicity of bargaining units.*

The Arbitrator also finds the facts in this case differ from the facts in the Oak Park and AFSCME v City of Centerline cases cited by the Employer in support of its position. In the Oak Park case the ALJ relied on the Michigan Supreme Court decision in the City of Centerline Case but the result of the provisions sought by the Union in the Centerline case would have conditioned lay offs of bargaining unit members on similar lay offs or cut backs in other city departments. That is not the case here since the language the Employer proposes to delete would not require the Employer to make any change in any other department. Neither would it require the Employer to lay off any non-union employees as in the Oak Park case. The Employer argues that by retaining the language it proposes to delete the Employer could not schedule part time personnel to work more than five workdays and it would have to lay off part time employees if it had a full-time employee on lay off. (T-858) But Chief Peterson also had difficulty explaining the meaning and application of the third sentence in Article 9, Section 8

which states, "Non-bargaining unit employees will in no way be used to delay the recall of a bargaining unit employee." (T-859) Retaining that sentence appears to require the Employer to do the same thing the Employer argues it wants to avoid doing and as its reason for urging the deletion of the language it proposes be deleted.

The ALJ decision, supported by the Commission, in the Oak Park case refers to the Centerline Case with respect to Layoff and Recall. In that decision the ALJ referred to the Employer's position that Sections 33.4 and 33.5 of the parties' contract which had been previously negotiated should be eliminated because they were permissive subjects of bargaining. Section 33.4 stated, "No layoffs of Public Safety Officers shall occur until all non-public Safety Officers or civilians who perform police and fire duties are laid off first. Said duties are to be defined as work presently or previously performed by Public Safety Officers." Section 33.5 stated, " Public Safety Officers who have been laid off shall be rehired before non-Public Safety Officers or civilians who perform police and fire duties." The ALJ said: " I find Center Line to be controlling with respect to this issue. Because PSOs have performed and continue to perform dispatch work for the department, the layoff and recall provision at issue in this case would clearly prohibit the City from laying off a single PSO until each and every civilian dispatcher is laid-off first. I conclude that the layoff and recall language which Respondent submitted to the Act 312 panel in the instant case, like the clause at issue in Center Line, deprives Charging Party of its ability to make policy decisions regarding the number of PSOs needed to operate the department and the level of fire and law enforcement services to offer its citizens. While Respondent has the right to demand bargaining over the impact of a decision to layoff bargaining unit members, including the safety and workload of the remaining PSOs, seniority, and "bumping" rights, the Union may not demand to bargain over and take to impasse a proposal conditioning the layoff of its members on the layoff of non-unit employees."

The Employer's argument that the language it proposes to eliminate deprives the Employer of the ability to make policy decisions regarding the number of firefighters needed to operate the department is not completely true. The language still permits the Employer to determine the number of firefighters it needs to provide public safety, it just limits the Employer to employing all of its full-time firefighters before it employs a part time firefighter to perform the duties of a full-time firefighter. It should be noted that the letter of understanding No. 1, which was made part of the agreement and upon which there was extensive testimony of its relationship to the crafting of language in

Article 9, Section 8, states "it is the intention for the term of this Agreement to continue the process of increasing staffing at the fire stations so that by the end of the term of this agreement, a minimum of two employees are scheduled at each station on a 24-hour, seven day per week, basis. *The type of staffing utilized shall be at the discretion of the Fire Chief."* (emphasis added) This language authorizes the Employer to determine the number of full-time and the number of part time employees that would be utilized to staff the fire stations. The Arbitrator finds that as long as this language remains as part of this agreement the Employer is not deprived of its ability to make policy decisions regarding the number and type of staff needed to operate the department and the level of services to offer its citizens, unlike the findings of MERC and the Court in the Center Line and Oak Park cases. The language in Article 9, Section 8 proposed to be deleted by the Employer, when viewed in the context of the authority given the Employer in the letter of understanding #1, does not significantly impact the Employer's ability to make policy decisions regarding staffing.

Additionally, the evidence and testimony in this case reveals that the language proposed by the Employer to be deleted in Article 9, Section 8 is one of a series of inter-related provisions in the contract, some of which were negotiated by the parties leading to the current agreement. Those inter-related provisions include the language in Article 9, Section 8, (issues 4 and 5), language in Article 18, Section 1 (D) and (E), (issue 11), Article 18, Section 1 (F), (issue 12), Article 33, Section 7, (issue 33), Article 33, proposed new section, (issue 34) and the content of a grievance settlement agreement (U-18); the letter of understanding No. 1 made part of the current agreement (E-64) and appendix A of a document authored by Chief Peterson prior to and discussed during the negotiations between the parties leading to the current contract. (U-62)(T-923) Also, testimony by Employer witness, Chief Peterson and Union Witness, Union President Pat Duvall (T- 852-953) supports the inter-relatedness of these issues and their relevance to the Employer's general duty to bargain the diversion of work to non-unit employees and the subcontracting of work to others. [citations omitted] There was also testimony by Chief Peterson on staffing which supports the relationship of these issues to safety and compliance with MIOSHA standards: "Back in 1999 during contract negotiations we were in the awkward position of wanting to increase staffing and agreeing to do that. The Township actually acknowledged that we needed to increase staffing. Actually, there were two people on 24/7. We came to the bargaining table saying that if we could put on part-time people, we would do so. And if we were able to operate

under the part-time – with those part time people, we would add full-time positions 'til we got to the point where we had increased the staffing level. The part-time staffing has been – we've been able to maintain that. And we actually put on – put lieutenants on 24/7 as a result of that as well. So it's increased our efficiency, *makes us more easily able to comply with two in, two out* and several other things. *It was perceived as a safety issue.*" [emphasis added] (T– 854-855)

Excerpts from the ALJ decision and recommended order and the MERC order upholding the ALJ recommended order in Oak Park Public Safety Officers case is instructive here. The ALJ referred to the "two-in/two-out" rule as required by MIOSHA. "This rule states that when officers enter a burning structure, they do so in teams of at least two and remain in constant visual or voice contact with one another. In addition, a team of at least two officers must remain outside the structure ready to initiate an immediate rescue should one be necessary. General Order No. 104 states that one of the two individuals located outside the structure may be assigned an additional role during that time, such as incident commander, so long as this individual is able to perform assistance or rescue activities without jeopardizing the safety or health of any firefighter working at the incident." The Commission, in its Order, stated: "The utilization of personnel at the fire scene has an impact upon the risk of injury or harm to members of the bargaining unit, and we find this type of manning proposal would ordinarily constitute a mandatory subject of bargaining. However, in this case, because the Union's proposal additionally seeks to limit the personnel at the scene to PSOs, we reach a different conclusion." Of course in this proceeding the Union does not seek to limit the personnel to be assigned at a scene of a fire or limit the Employer's authority to determine the type of staffing.

The facts and evidence in this case, including but not limited to the above stated findings, support the Union's position that the language addressing layoff and recall and work by non-bargaining unit employees (issues 4 and 5); allocation of overtime for bargaining unit employees and use of non-bargaining unit employees to fill any full-time vacancies (Issue 11); procedures involving assignment of mandatory overtime (Issue 12) [the question of mandatory or permissive subject of bargaining is not presented in issue 12]; the use of part-time employees to fill in for absences of full-time employees (issue 33); and the training required of non-bargaining unit employees (issue 34) do involve the assignment of work outside the bargaining unit and/or matters that involve safety and potential impact upon the risk of injury or harm to members of the

bargaining unit and as such are mandatory subjects of bargaining. Therefore the panel finds issue No. 4 is within the jurisdiction of this Arbitration Panel.

On the merits of the Employers proposal, the panel finds insufficient support for the need to delete the language it proposes be deleted. The Employer says its purpose in seeking the deletion of the language is so it can continue to operate close to the way it currently operates in the event it had to lay off a full-time firefighter. Yet, testimony revealed that the Employer has never had to lay off a full-time firefighter and no factual evidence was presented that would lead one to conclude that lay offs of full-time firefighters are likely to occur during the period of this agreement. Speculation on reduced state revenue sharing or reduction in local revenues resulting from an economic slow down was just that, speculation. Fire Chief Peterson acknowledged that the current language had not impaired the Employers ability to manage in any way. (T-858) Also, the Employer and the Union entered into an agreement which was made part of the current contract that the Township's intention for the term of the agreement was to increase staffing at the two fire stations so that a minimum of two employees are scheduled at each station on a 24-hour, seven day per week basis. That is the current staffing pattern. The agreement also stated "The type of staffing utilized shall be at the discretion of the Fire Chief." The Fire Chief also testified that that staffing level has helped the Employer meet the two in/two out standards required by MIOSHA. It is highly unlikely the Employer would be able to maintain that standard without retaining full-time firefighters at the current level.

On the other hand, there was testimony that financial reasons were a factor in why the Employer sought the ability to use part-time employees during the negotiations leading to the current contract. The Fire Chief testified, " during the contract negotiations we were able to sell the board on adding extra positions, based on the cost of the amount of money that part-time was going to cost us. We pay them less hourly, and they're part-time employees so they don't receive the same benefits." (T-865) Certainly the Employer's desire to keep costs down while meeting its obligation to provide safe, adequate fire protection services to its citizens is understandable, but it must attempt to meet that obligation in the context of its duty to negotiate an agreement with the Union on wages and other conditions of employment. That balance appears to be what the parties attempted to address during the most recent negotiations leading to the current agreement. The language the Employer seeks to delete was part of the negotiations to achieve that balance. The Arbitrator finds it is a better course to try to

retain or make any clarifying modifications to current language that leaves, as much as possible, that current balance in place, and let the parties continue to work within the parameters of that balance, gain experience with it, and determine what changes, if any, may be mutually agreed upon.

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 on the issue of revising the language in Article 9, section 1 as proposed by the Employer there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

The Employer delegate disagrees with both the Panels' Award in Issue No. 4, as well as the Panels' determination that Issue No. 4 involves a mandatory subject of bargaining.

Issue #5 – Article 9, LAYOFF AND RECALL, Section 8 – Work by non-bargaining unit employees (economic)

The Parties Proposal

Union Proposal

The Union proposes to modify the first sentence of Article 9, Section 8. Currently that sentence states:

"Non-bargaining unit employees may continue to perform such work, as was the normal custom prior to the time this agreement was executed, and in the future, in the manner and to the extent as may be determined by the employer."

The Union proposes to modify that sentence to read:

"Non-bargaining unit employees may continue to perform such work, as was the normal custom prior to the time this agreement was executed, *except as may be specifically provided otherwise in this agreement."*

Employer Proposal

The Employer proposes to maintain the current contract language.

Union Position

The Union, in its post hearing brief, addresses both the merits and the issue of the panel's jurisdiction in this matter. Like issue #4, the Employer takes the position that the proposed change sought by the Union is a permissive, not mandatory, subject of bargaining and, therefore, outside the jurisdiction of this panel to address. The Union restates much of its same arguments used in addressing Issue 4 to support its position that this matter is within the jurisdiction of the Act 312 panel. The Union's arguments will not be restated here. The Union argues that work by non-bargaining unit employees in the current contract language is improper because it contains language that purports to waive the Union's statutory right to bargain under PERA. Therefore, the Union argues in order to prevent the parties from having to engage in future litigation over the Union's right to bargain on these issues the language should simply be deleted.

The Union further argues on the merits of this proposed language that it makes it clear that other provisions of the contract that specifically address use of non-bargaining versus bargaining unit members, such as Article 18 Section 1 (D) and (E) must be abided by, not withstanding the language of Article 9 Section 8. The Union says its language makes that clear.

Employer Position

The Employer, as with Issue 4, takes the position that the Union's proposed change in language is a permissive subject of bargaining and, therefore, not in the jurisdiction of the Act 312 panel to address. In the event the panel determines it is a mandatory subject of bargaining the Employer's position is that the current contract language be maintained.

On the question of the panel's jurisdiction to address this issue the Employer advances arguments similar to the arguments presented by the Employer in addressing Issue 4. The Employer argues that the Union's proposal seems to restrict the Employer's use of non-bargaining unit employees who have been historically and traditionally performing bargaining unit work and, based on the cases cited in arguing Issue 4, the Employer says courts and MERC cases have held that this is a permissive, non-mandatory bargaining issue.

On the merits, the Employer says the phrase "and in the future, in the manner and to the extent as may be determined by the Employer" has been in every collective

bargaining agreement with unit employees and its elimination would restrict the chief's management rights in the future. The Employer says that one of the arguments advanced by the Union in support of the proposed change is that it is more consistent with language already contained in Article 33 Section 7 which states "non-bargaining unit employees will not be used to permanently replace full-time bargaining unit employees." The Employer disagrees with that rational and says that the language in Article 33, Section 7 is not as expansive with respect to the language sought to be removed by the Union. The Employer says Article 9, Section 8 effects more than just part time employees because it includes all "non-bargaining unit employees" which encompasses the fire chief, deputy chief and other administrative officers not in the bargaining unit.

Discussion and Findings

The arbitrator finds that this is a mandatory subject of bargaining and, therefore, within the panel's jurisdiction to address. The basis for this finding is previously stated in the discussion and finding section addressing Issue 4. Citation of case law and MERC decisions are contained in Issue 4 and constitute the same basis for a similar finding on this issue. On the merits of the proposed language change the independent arbitrator finds the Union's proposed language does assist in clarifying the provisions of the contract and, therefore, should be adopted. Given the choice between the current language and adopting the Union's proposed language, it is the independent arbitrator's view that the Union's proposed language is more consistent with other provisions in the contract and hopefully could reduce the potential for further litigation. The current language, without reference to any other portions of the contract, states that the non-bargaining unit employees may continue to perform such work as was the normal custom prior to the time of this agreement "in the manner and to the extent as may be determined by the Employer." However, Article 33, Section 7 specifically states, "Non-bargaining unit employees will not be used to permanently replace full-time bargaining unit employees." The grievance settlement agreement entered into by the parties on 12/22/04 (U-18) states "the township agrees it will not use part time employees to fill in for absences of full-time employees, and will instead use only off-duty full-time employees and paid on call employees to fill in for absences for full-time employees in accordance with the prior practice of the parties." Both of these examples point out that the parties have agreed to limit the manner and the extent of use of non-bargaining unit employees to perform work as was the normal custom prior to the time

the current agreement was executed and to limit the Employer's determination of what that work may be in the future. The Union's proposed language, on the other hand, does not totally prohibit non-bargaining unit employees from continuing to perform such work as was the normal custom prior to the time of this agreement, but merely indicates that will be allowed, except as may be specifically provided otherwise in this agreement. Both parties, in their post-hearing briefs take the position that evidence involving comparability is either not relevant or not useful in addressing this issue. The Union points out that given the parties' bargaining history and unique way of addressing the use of non-bargaining unit personnel, language involving this issue is unique to these particular parties in this particular contract. Review of the comparable community contracts reveals that it is not unusual to have contracts address and, in some instances, restrict work by non-bargaining unit employees, but the manner in which that is dealt with is unique to each contract. The arbitrator finds that the Union's proposed clarifying language does assist in promoting the current balance and leaving that in place may result in less conflict of interpretation between separate sections of the contract.

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, the language in the first sentence of Article 9, section 8 will be modified as proposed by the Union. [Effective upon issuance of the award.]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

The Employer delegate disagrees with both the Panels' Award in Issue No. 5, as well as the Panels' determination that Issue No. 5 involves a mandatory subject of bargaining.

Issue #6 – Article 11, Work Assignment, Section 1 A and B Station Bids (non-economic)

The Parties Proposals

Employer Proposal

The Employer proposed to delete Section 1 A and B of Article 11 –station bids

Union Proposal

The Union proposed the 'status quo', no change.

Employer Position

The Employer proposes to delete Section 1, paragraphs A and B of Article 11, which currently specifies that employees in the bargaining unit will be offered the opportunity to bid for station assignments based on seniority each year. The current language states, "The Employer reserves the right to assign the employee to another station for training purposes or when the needs of the department, as determined by the chief, exist. Under normal circumstances, assignments to another station for training purposes will not exceed a 28 day duty cycle." Employer witness Chief Peterson testified that the principle reason the Employer proposed deletion of Section 1 was to ensure firefighters are familiar with the service areas and for efficiency purposes. With respect to the familiarity with the service areas, the Employer points out that there are currently two fire stations. One serves the area north of Grand River, which bisects the township, and the other serves the geographic area south of the river. Both Union and Employer witnesses testified that there was value in firefighters being as familiar as possible with the geographic area to be served, such as knowing where fire hydrants are located, driveway and road clearances.

On the issue of efficiency, Chief Peterson testified that there are times when a particular employee, for example the current employee doing mechanical work on an apparatus, would be better utilized in a particular location and if in fact that employee, by seniority, chose to work in a different location that would not be the most efficient way to manage employee capabilities with duties. The Employer acknowledges that the majority of external comparables do contain some language either specifically authorizing employees to bid on stations by seniority or at least acknowledging some consideration of seniority when making station assignments. The Employer does point out that at least the City of Jackson language authorizes the management to temporarily assign employees to various shifts, stations and equipment as determined by the fire chief. In summary, the Employer states that the purpose of the proposal is to give the chief the flexibility to make station assignments based on the skill and ability of the employees and the needs of the department and the ability to potentially rotate employees so that they can become familiar and proficient with both station's geographic areas.

Union Position

The Union points out that the current provision was a result of a volunteer agreement by the parties in the most recent negotiations leading to the current contract. The Union says the Employer has not met the burden of proof necessary to demonstrate a legitimate and substantial need for this change. The Union says the Employer's testimony did not reveal that any significant problems have arisen as a result of this language and the Employer could not identify any specific inefficiency that has resulted from inclusion of this language. The Union says the comparability data also supports its position in that the majority of the comparable communities do contain language authorizing station bids based on seniority.

Discussion and Findings

The arbitrator finds that total elimination of this language, as proposed by the Employer, is not justified by evidence in the record. On the other hand, since this is a non-economic issue, some slight modification of the current language can assist the Employer and the bargaining unit members in fulfilling their responsibility to the citizens and ensure safety of firefighters. During testimony, the chief did acknowledge that total deletion of the language would permit the Employer to make assignments any time and for any duration that the Employer chose. Such assignments could be made for purely legitimate management reasons but on the other hand such flexibility could be abused as well.

Testimony at the hearing by the Employer did not reveal a strong and substantial basis for making this change for efficiency purposes. On the other hand, the arbitrator does find some justification for ensuring that most of the firefighters, particularly in such a small unit as this, have some exposure from time-to-time to the different locations within the township that they may have to serve. Chief Peterson, during cross examination testified "One of the other advantages to occasionally moving people and assigning them to another station is that if they did an overtime shift as that station and worked there, and they haven't worked there in two, three years, there is a little bit of loss of familiarity. And they are the lead person on the apparatus, they have to get us there and we need to make sure they are familiar with the districts. It would allow that to occur." (T-621) The arbitrator does see value in attempting to allow enough flexibility for assignments for this purpose.

Additionally, the Union position is supported to a larger degree than the Employer's position upon review of the language in the comparable community contracts.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue, with modifications to the language in paragraph A of Article 11, Section 1, as specified below, to more nearly comply with the applicable factors in Section 9. Therefore the language in Article 11, Section 1 A will be revised as specified below and the language in Article 11, Section 1 B will remain unchanged. [Effective upon issuance of the Award.]

A. "Employees that bid a respective station will be assigned to that station for a period of one (1) year. The employer reserves the right to assign the employee to another station *temporarily* for training purposes *or for the purpose of becoming familiar and proficient with the geographic area served by the station*, or when the needs of the Department, as determined by the Fire Chief, exist. Under normal circumstances, assignments to another station for training purposes will not exceed a 28 day duty cycle."

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #7 – Article 12, Types of Leave, Section 1 D, payment for unused sick leave benefits (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 12, Section 1 D. The proposed revised language would read:

"Upon separation from employment (payable to beneficiary in event of death), employees shall be paid one-half of their accrued but unused sick benefits, provided the employee has at least eight (8) years seniority with the Township. Upon separation from employment (payable to beneficiary in event of death), employees shall be paid for all (100%) of their unused sick benefits, provided the employee has at least fifteen (15) years seniority with the Township. At the end of each calendar year, each employee shall be paid for one-half (1/2) accrued but unused sick leave in excess of the ninety (90) day/forty-five ((45) day maximums defined above."

Employer Proposal

The Employer proposes to maintain the 'status quo", continue the current language.

Union Position

Article 12, Section 1 deals with sick leave. The current contract language provides that all regular full-time employees will be eligible for sick leave and accrue sick leave at a rate of twelve (12) hours per month for 24-hour employees. Employees can have a maximum accumulation determined by multiplying the employee's sick leave rate by 90 for employees hired before September 1, 1999. For those employees hired after September 1, 1999 the maximum accumulation rate is 45 days times the employee's sick leave rate provided the Employer institutes that policy for all Township employees. Subsection D authorizes payment, upon separation from employment of one-half of the employee's accrued but unused sick benefits, provided that the employee has at least eight years seniority with the township. Therefore, currently an employee with eight years seniority can receive a maximum payout for unused sick leave upon separation of 50% times 1,080 hours for a maximum payout of 540 hours. Subsection D also currently provides that at the end of each calendar year, each employee shall be paid one-half of the accrued but unused sick leave in excess of the 90 day maximum defined above.

The Union's proposed change would do two things. First, it would clarify that in the event of the death of the employee, payment for unused sick leave would be made to the employee's beneficiary. Second, it would add language that would provide a new category for payment upon separation. That payment would be 100% of all accrued but unused sick time up to the maximum for those employees with at least 15 years seniority. That would result in the potential for maximum payout of 1,080 hours.

The Union states that it seeks its first change merely to make it clear that a beneficiary would be eligible for this accrued payment on behalf of the employee upon an employee's death. The Union believes this is already required, but this would clarify any question should a dispute arise in the future. As for the second proposed change, the Union says that employees who use less sick time than others, therefore providing more productive work hours for the township, should be rewarded at separation for sick time they did not use and this proposal does that.

The Union argues that a review of comparable community contracts, while revealing, on average, fewer hours of maximum payout as proposed by the Union, differs from the other comparables in that it would only apply to those employees who

have at least 15 years of seniority; whereas employees in the other comparable communities receive the maximum payout regardless of years of seniority.

Employer Position

The Employer argues that the purpose of sick leave benefits is not to add to the income of the employee. The Employer acknowledges that most contracts do have some provisions for rewarding employees who do not overuse sick leave benefits. The Employer notes that the current benefit of payment of one-half of accrued but unused sick leave up to a maximum for those employees who have at least eight years seniority is exactly the same as provided to the township's non-union employees and the other unionized group in the township. The township states that the Union's proposal would be too costly and is unwarranted and far exceeds the payouts of most of the comparable communities. The Employer points out that of the comparable communities, only the City of Grandville has the benefits similar to this, and even that benefit would pay the maximum of 1,080 hours only after 20 years of service. The Employer points out that the remainder of the comparables all pay out less than the Union's proposal.

Discussion and Findings

The arbitrator finds the evidence presented does not support the Union's proposal. Both parties post-hearing briefs provided a summary of the comparable communities' treatment of this matter in their contracts. Both acknowledged that the City of Holland provides no payout of sick leave upon separation from employment. The arbitrator has calculated the average payout for sick leave accrual upon separation of employment of the remaining five comparable communities taking the most liberal approach, including calculating in the 1,080 hours for the City of Grandville, and finds that the average maximum hours paid would be 805 hours. None of the comparable community provisions provide for 100% of unused sick benefits up to a maximum as this proposal does. Additionally, if this proposal were adopted it would immediately apply to three of the four current employees who have 15 years plus seniority and who currently qualify for the 90 day maximum accrual. In two years, the fourth employee who qualifies for the 90 day maximum accrual would also have 15 years seniority. These employees would benefit greatly from this proposal in that they would qualify for a maximum of 2,160 hours (90 days times 24-hours). This is far in excess of what the average comparable communities provide.

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, on the issue of revising the language in Article 12, section 1 D as proposed by the Union there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #8 – Article 17, Hours of Work, Section 1 C, alternate schedules (economic)

The Parties Proposals

Employer Proposal

The Employer proposed to revise the language in Article 17, Section 1 C to read as follows: (proposed new language is *italicized,* proposed deleted language is bracketed[ ])

C. Alternate schedules, such as ten (10) hours, may be used by the Fire Chief [for training purposes]. When assigned to a ten (10) hour shift for training purposes, the employee will continue to be paid his *or her* 24-hour salary for the duration of the training period.

All of the provisions of this Section are subject to management rights retained by the Township, including but not limited to, the right to determine the hours of work, work week, work period, pay period, tours of duty and work schedules. The exercise of such management rights shall not be deemed a violation of the Maintenance of Standards clause of this Agreement. The Fire Chief shall provide affected employees 30 days notice prior to any planned change in shift schedules. As much notification as possible will be given when unplanned changes occur due to absences or other emergencies."

Union Proposal

The Union proposed the 'status quo', no change in the current language

Employer Position

The language proposed by the Employer would, in essence, negate all of the provisions specified in Section 1 and give to management, the right to determine the hours of work, work week, work period, pay period, tours of duty and work schedules.

The Employer presented its support for this proposal through Chief Peterson's testimony. Chief Peterson testified the township sought this language to permit flexibility in assigning work schedules and hours in the event of changing circumstances and budgets. He indicated that with this flexibility the township might be able to avoid scheduling layoffs or could hire more people to fill in for 12-hour shift periods to cover for vacations and other time off. (T-656)

The Employer points out that the internal comparables that involve the non-union township employees and the employees of the other bargaining unit within the township allow management to determine the number of hours in each employee work schedule and to establish and change employee work schedules. (E-65) The Employer acknowledges that the external comparables vary. The City of Jackson and Township of Muskegon both require any change from the traditionally 24-hour shift schedule to be negotiated between the Employer and the Union. The Employer said that its proposal is based largely on the language of the recently finished collective bargaining agreement of Grand Haven Township. (E-81) The language the Employer advances in this proposal is quite similar to the language contained in the Grand Haven Township collective bargaining agreement.

Union Position

The Union's view is that the language put forth by the Township is basically seeking agreement by the Union to give up its statutory right to bargain over all matters pertaining to work hours and work schedules. The Union says bargaining over these issues are clearly authorized as mandatory subjects of bargaining under PERA and that it is unreasonable to believe the Union would voluntarily give these rights up. The Union also says the Township has failed to meet its burden of proof in providing evidence of any real need for change. The Union points out that under the current language in Subsection D of Section 1 of Article 17 the Employer has the authority to establish additional schedules and starting times for bargaining unit employees hired after April 26, 2000. (U-49) Therefore, the Union says the Employer already has quite a bit of flexibility. The Union says that the external comparables demonstrate that the 24-hour schedule is by far the most common work schedule in fire departments and it is not uncommon to establish that schedule within the collective bargaining agreement.

Discussion and Findings

This issue and Issue 9 are interrelated. Both address the subject of establishing work schedules and the authority of the Employer to establish schedules other than the

24-hour shift schedule for certain purposes. The arbitrator finds that the proposal put forth by the Employer for change in language on Issue 8 and the proposal put forth by the Union for change in language in Issue 9 are not supported by substantial evidence sufficient enough to merit a change. The arbitrator's general view of the role and responsibility of an Act 312 panel is to attempt to fashion an agreement that the parties would most likely fashion in the normal give and take of bargaining. It is highly unlikely the Union would agree to give up its traditional right to bargain on such matters as the determination of the hours of work, work week, work period, pay period, tours of duty and work schedules as proposed by the Employer in this proposal. Additionally, the arbitrator agrees with the Union's views that, in this instance, the Employer has not demonstrated a strong need to have the wide discretion it seeks in this proposal in order to obtain flexibility or address emerging budget needs. Union Exhibit 49 reveals that five of the 10 current employees in the bargaining unit have been hired after April 26, 2000. That means, with retention of the current language in Subsection D of Section 1 of Article 17, the Employer already has the authority to establish schedules and starting times other than the 24-hour shift schedules and starting times for 5 out of the 10 bargaining unit employees. Also, language in Section D currently allows for bargaining unit employees hired on April 26, 2000 to be scheduled other than a 24-hour tour if agreed to by the employee and the Union. There was no evidence that the chief has ever approached the employees and the Union seeking to alter that schedule for employees hired on April 26, 2000.

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, on the issue of adding the language in Article 17, section 1, paragraphs B and C as proposed by the Employer there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #9 – Article 17, Hours of Work, Section 1 D, work schedules (economic)

The Parties Proposals

Union Proposal

The Union proposed to revise Article 17, Section 1 D to read as follows:

"Except as provided in Paragraph C of this Section, no bargaining unit employee shall be placed on a work schedule other than the 24-hour normal work schedule set forth in Paragraph B of this Section, unless mutually agreed otherwise by the Township and the Union."

Employer Proposal

The Employer proposed to maintain the 'status quo', no change in the current language.

Union Position

The Union, in its post-hearing brief, acknowledges that the purpose of this proposal is to do away with provisions in the current contract that were agreed to in the last negotiations between the parties, which permitted those employees hired after April 26, 2000 to be scheduled other than a 24-hour tour of duty without having to negotiating it with the Union. Union President Duvall testified that the Union didn't like the provision then, but found it necessary to agree to it in order to resolve the last contract. (T-677) President Duvall stated that at least that agreement secured the 24-hour shift for those members that were currently in the bargaining unit at that time. Testimony at the hearing also revealed that currently there is only one bargaining unit employee, John Denemy, (T-671) who is scheduled on shifts other than the 24-hour work schedule. The Union argues that since the Employer used only one employee for a schedule other than 24-hour schedule, it would not be that difficult to mandate that all employees be scheduled the 24-hour tour of duty unless mutually agreed to by the parties. Much of the testimony offered by the Union and the argument advanced in its post-hearing brief revolved around the manner in which the Employer has scheduled the employee that is not scheduled the 24 tour of duty. The Union says the manner in which the Employer has implemented this provision has resulted in uncertainty; absence of advance notice of schedule, and this has resulted in an inability to plan vacations, among other things. Basically, the Union seeks a return to requiring all bargaining unit employees to be scheduled on the 24-hour tour of duty unless agreed to by the Union so that, if the Employer does seek to schedule someone other than 24-hour tour of duty the Union will have some leverage to establish within the agreement the

necessity of the different schedule, protective features for the employees on that schedule, such as adequate advanced notice, and some degree of time frame of the permanency of that schedule. The Union, referring to the external comparables, uses basically the same arguments it did in Issue 8, pointing out that the majority of the external comparables use 24-hours schedules and schedules other than that are the exceptions.

Employer Position

The Employer, in its post-hearing brief, says that if the panel awards the Employer's last best offer on Issue 8 it would provide the Employer the flexibility it chooses on this issue. If the panel grants the Union's last best offer on Issue 8, then the Employer would have less flexibility but would at least retain some flexibility under the current paragraph D. Therefore, the Employer urges the current language in paragraph D be retained.

The Employer presented testimony of Deputy Chief Bigger to rebut some of the testimony of Union witness Duvall relative to the manner in which the Employer has implemented this provision in the current contract. The Employer says the Township's flexibility in scheduling Officer Denemy has been an advantage to the employee permitting him to work around a college schedule of classes. The Employer uses basically the same arguments relative to the external and internal comparables on this issue as it advanced for Issue 8. It acknowledges that the external comparable communities vary in how they permit or do not permit other than 24-hour shifts and whether or not establishing other than 24-hour shifts must be agreed to by the Union or not. The Employer seeks to retain as least the flexibility granted to it currently in Subsection D of Section 1 of Article 17.

Discussion and Findings

As indicated in the discussion and findings on Issue 8, the arbitrator views the Act 312 procedure and panel as a vehicle to attempt to promote the parties to negotiate and reach voluntary agreement on as many issues as possible involving wages and conditions of employment. The process should not be viewed as one that allows either party to attempt to achieve through the Act 312 procedure what they were unable to achieve or conceded to in a previously voluntary negotiated agreement. On this issue, the arbitrator finds the better course is to maintain the status quo.

There is sufficient evidence to demonstrate that the employer has not overly used the current provision in the contract to alter the traditional 24 hour tour of duty

schedule. The arbitrator can understand the Union's position that the current language provides the Employer great latitude in determining how to implement the authority given it to establish schedules other than the 24 tour of duty for employees hired after April 26, 2000, but believes there are other ways to approach that issue such as proposing in future negotiations provisions that would require adequate advance notice to employees of what their schedules would be and how long they would remain on that schedule. These are matters than can be brought up in future negotiations. In the meantime, the Arbitrator finds the current language in Article 17, Section 1, as negotiated by the parties in there most recent negotiated agreement, serves to balance the interest of both the Union and the Employer better than attempting to adopt either the Employer's proposed language in Issue 8 or the Union's proposed language in this issue.

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, on the issue of revising the language in Article 17, section 1 D as proposed by the Union there will be no change from the current contract.

Employer: Agree Steven K. Grivna Disagree_____

Union: Agree_____ Disagree

Issue #10 – Article 17, Hours of Work, Section 2, work hours (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 17, Section 2 to read as follows:

"The shift starting time for personnel assigned to 24-hour shifts shall be 0700 hours to 0700 hours the next day, unless mutually agreed otherwise by the Township and the Union."

Employer Proposal

The Employer proposed to modify Article Section 2 to read as follows:

"The shift starting time shall be determined by the Fire Chief. However the shift starting time for employees assigned to 24-hour shifts shall not begin before 0600 hours or after 0800 hours without the agreement of the Union."

Union Position

As can be seen above, each of the parties have proposed language change to the current language of Article 17, Section 2 which states, "the shift starting time for personnel assigned to 24-hours shifts shall be 0700 hours to 0700 hours the next day." The Union in its post-hearing brief, argues its proposal represents a reasonable attempt at compromise to permit the shift starting for the 24-hour personnel to be modified if mutually agreed to by the Township and the Union. Through the testimony of Union President Duvall, the Union's position is that absent a mutually agreed upon change in the shift starting times, employees would be uncertain as to what their start or quit hours would be on a long term basis and it would be difficult to manage their time for non-employee related functions, such as childcare and other family obligations. (T-651) The Union says the Township's language would give the Township the right to make changes unilaterally for shift starts between 0600 and 0800 hours and even single out certain employees for different starting times if it so chose. The Union argues its proposed language allows for flexibility but only in the context of retention of the Union's right to bargain over such changes in work hours and conditions of employment.

Employer Position

The Employer advanced its purpose of its change through the testimony of Chief Peterson. The chief testified that its proposed language would give flexibility of the start and end time of the 24-hour shifts, which the chief said could allow the stations to have staggered time that would allow the lieutenant to be at both of the stations at the start time of their respective shifts. (T-647) The chief also testified that an analysis may show that the department is having a larger number of alarms at a certain time of the day and a small change in times could result in ensuring a sufficient number of staff during shift changes. The Employer says its proposal, limiting the flexibility for shift starts, only between 0600 and 0800 hours provides some flexibility but certainly is not so open ended that it would have a significant impact on employees. Both the Union and the

Employer point to the external comparables and advance their arguments relative to the external comparables similar to their arguments on Issues 8 and 9.

Discussion and Findings

The arbitrator finds the Union's last offer of settlement on this issue to more adequately address the parties' needs than the Employer's last offer of settlement. Both parties proposals provide some degree of additional flexibility in the language but the Union's proposal retains the current language that the shift starting times for personnel assigned to 24-hour shifts shall be 0700 to 0700 the next day and then provides for an alternative schedule if agreed to by the Township and the Union. The Employer's proposed language provides a little more flexibility, but also provides the fire chief the authority to make those changes unilaterally relative to frequency and selectivity without agreement of the Union. Chief Peterson's testimony as to the purpose of needing the flexibility to change the starting times of the 24 shifts was not strongly supported by the additional evidence and under the Union's proposed language, if there is such evidence, it can be presented to the Union in a negotiation on the question of changing shift starting times. Nothing precludes the parties from agreeing to that change if it can be demonstrated that it is beneficial to both the employees and the Employer and necessary to providing better services to the citizens.

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, the language in Article 17, section 2 will be revised as proposed by the Union in its last offer of settlement. [Effective upon issuance of the Award.]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #11 – Article 18, Overtime and Callback, Section 1 D and E, overtime (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 18, Section 1 (D) and (E):

"D. In the event there is a need to fill an absence or vacancy of a full-time bargaining unit employee, it shall be filled first by offering it as overtime to bargaining unit members. The overtime shall first be offered to those employees in the job classification in which the overtime has arisen who are off on their four-day leave period, then to other off-duty employees in the job classification, and then to other off-duty employees in other job classifications. Reasonable efforts shall be made to contact off-duty bargaining unit members for purposes of offering overtime. The existing overtime equalization procedure shall continue to be utilized; each time a bargaining unit member either accepts or rejects offered overtime, it shall be counted for overtime equalization purposes. Employees can voluntarily work overtime not to exceed forty-eight (48) consecutive hours on-duty."

E. Provided that bargaining unit employees are first afforded the opportunity to work overtime as set forth in (D) above, the Township may utilize non-bargaining unit employees to work the hours in lieu of mandating bargaining unit employees to work the overtime."

Employer Proposal

The Employer proposed the 'status quo', to maintain the current language and challenged the jurisdiction of the panel to address this issue.

Union Position

The parties advanced arguments on this issue in support of their positions of permissive or mandatory subject of bargaining similar to the arguments advanced previously on Issues 4 and 5.

The Union points out in its post-hearing brief that it advances this proposal to rectify an injustice that the Union members continue to suffer as a result of the Township's continuing failure to hire a sufficient number of full-time employees so that the "interim" use of part-time employees under the letter of understanding can be terminated. The Union points out that, until the most recent negotiation between the parties leading to the current contract, there were no part-time employees and there were only paid on call used only to respond to emergency scenes. Union President Duvall testified that it was only because of the Union's desire to make it financially easier for the Township to hire additional full-time employees, to bring the number of

full-time employees up to 12, that the Union agreed to allow the Township to create the part-time employee program and to the current language in Article 18, Section 1 (D) and (E) that allows the Township to use paid on call employees to fill in for absences of full-time employees after a certain number of hours of overtime opportunities are provided to full-time employees. The Union's position is that is it only fair that full-time employees be provided the opportunity to fill the bargaining unit position when overtime opportunities arise and earn additional overtime pay for doing so.

The Union points to the external comparables and notes that three of the five comparable community contracts offer overtime to bargaining unit members first.

Employer Position

The Employer argues that this is a permissive subject of bargaining and not within the panel's jurisdiction. The Employer advances the same basic arguments advanced in Issues 4 and 5 in support of its position that this is a permissive subject of bargaining. The Employer's position is that if the arbitrator determines that this issue is a mandatory subject of bargaining, the Employer reserves the right to challenge the determination in appropriate forums. The Employer proposed that the current contract language be maintained.

On the specifics of the proposed language the Employer points out that this was carefully crafted compromise language agreed to by the parties during the last negotiations and should not be altered by the panel. The Employer also points out that, in practice, bargaining unit employees have been offered overtime opportunities in excess of the minimum number of hours guaranteed by this section of the contract. (E-73-74) The Employer says adopting the Union's proposed language in this contract would require the Employer to always fill the vacancies with overtime first before they could seek any non-bargaining unit employees to fill in for absences and this would be totally contrary to good management and efficiency with tax dollars.

The Employer also points to comparable community contracts and notes that only the Muskegon Township contract specifically requires that overtime be offered first to bargaining unit employees. The Employer does acknowledge, however, the absence of this language in some of the contracts may also be due in part because no part-time or paid on call staff are employed.

Discussion and Findings

The arbitrator will first address the issue of whether the Union's proposed language is a permissive or mandatory subject of bargaining. The arbitrator finds the

Union's proposed language is an appropriate subject for panel consideration and is a mandatory subject of bargaining. The arbitrator's basis for this finding is described in detail in the discussion and findings section addressing Issue 4. The arbitrator finds the proposed language on this issue a mandatory subject of bargaining on the same basis of the findings on Issue 4.

On the specifies of the proposed language, the arbitrator finds that the better course is to retain the current contract language rather than adopt the language proposed by the Union. There is clear evidence that this language was arrived at through compromise by the parties during the last negotiating session leading to the current contract. The basis for this compromise was to balance the interests of safety and staffing levels necessary to provide adequate service to the community with the financial considerations faced by the Employer. Union witness Duvall testified "we felt it was very important to increase our staffing levels, because we felt that firefighter's safety was – or should be our most important goal. And we wanted to do that with full-time personnel. And in order to get there, we were willing to lessen the burden on the Township to pay overtime. So we allowed them to use the paid on call in this expanded role." (T-881) There is no record evidence that the financial situation of the Employer has changed significantly from the time this negotiated language was agreed to. In fact, if anything, the financial situation of the Employer may be less certain currently than at the time this language was agreed to.

The arbitrator believes that maintaining the current language will better provide the opportunities for the parties to continue to discuss and decide the appropriate use of full-time versus part-time or on call employees along with the financial considerations. The arbitrator notes, for example, that Article 33, Section 7 states "non-bargaining unit employees will not be used to permanently replace full-time bargaining unit employees. In the event a non-bargaining unit employee averages more than 48-hours per week, over a six month period, the Union and Township will meet and confer on the bargaining unit status of that individual." The arbitrator reads this to provide an opportunity for a monitoring of the number of overtime hours necessitated and filled by non-bargaining unit employees and have the parties analyze whether, in fact, it improves both safety and is financially more feasible to hire an additional full-time employee than to continue to use overtime or full-time or part-time employees.

There was also testimony by both representatives for the Employer and the Union that the language in the Union's proposal relative to procedure in offering

overtime among the bargaining unit employees was being followed currently. There was no evidence that this procedure would substantially change.

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, on the issue of revising the language in Article 18, section 1 (D) and (E) as proposed by the Union there will be no change from the current contract.

Employer: Agree Steven K Zeidl Disagree_____

Union: Agree_____ Disagree

The Employer delegate agrees with the Panels' Award in Issue No. 11, but disagrees with the Panels' determination that Issue No. 11 involves a mandatory subject of bargaining.

The Union delegate agrees with the Panel's determination that the issue is a mandatory subject of bargaining, but disagrees with the Award on the merits.

Issue #12 – Article 18, Overtime and Callback, Section 1 F (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 18, Section 1(F).

"F. If there are insufficient bargaining unit employees who volunteer for the overtime opportunity, the Employer may, in lieu of utilizing a non-bargaining unit employee to work the hours, assign mandatory overtime to the bargaining unit employee with the least seniority in the job classification in which the overtime has arisen who is off on his four-day leave period, provided, however that no employee who has previously been approved vacation will be mandated to work overtime during the vacation period, inclusive of those off-duty days immediately prior to and following the vacation days. Employees who are on-duty are also subject to mandatory holdover until a replacement can be found in accordance with this Article."

Employer Proposal

The Employer proposed the 'status quo', maintain the current language

Union Position

The Union states that its purpose in advancing this proposed language change is to primarily codify current procedure. The current language states "if there are

insufficient full-time employees who volunteer to perform the work, the Employer shall assign the least senior employee in the bargaining unit in which case the assignment shall be mandatory."

The Union says its proposed language would clarify that if there is not a sufficient number of bargaining unit employees who volunteer for the overtime, then the Employer can either mandate overtime within the bargaining unit or utilize a non-bargaining unit employee to work the needed hours. The Union says its proposed language describes what the actual practice is in describing the order in which the Employer will consider whom, within the bargaining unit, to mandate overtime. The Union says the actual practice is to mandate overtime in the "pecking order" of first choosing the bargaining unit employee with the least seniority in the job classification in which the overtime has arisen who is off on a four-day leave period. The Union also says that exempting those who are on an approved vacation from mandatory overtime has been the way the policy has been implemented and the proposed language referring to the practice of mandating on duty employees to work hold over overtime until a replacement can be found does reflect current practice.

Both the Union and the Employer acknowledge, in their post-hearing briefs, that this particular provision in the contract does not lend itself to comparability with other external bargaining units and fashioning the language is unique to the parties in this contract.

The Union says the language it proposes is intended to fully and correctly state the actual practice of the parties and as such will serve to facilitate labor peace and enhance employee moral.

Employer Position

The Employer urges that the current language be retained. The Employer says the proposed language is complicated and unclear and could lead to more, not less, confusion and potential grievances. For example, the Employer questions the first sentence of the Union's proposal and inquires whether the reference to "in lieu of utilizing a non-bargaining employee to work the hours," could be interpreted that it would prohibit the Employer from using non-bargaining unit employees to avoid overtime all together. The Employer says it should not be interpreted to mean that it could not use the floating full-time employee or lieutenants or others to fill vacancies on occasion and avoid overtime altogether. The Employer notes that it was these and other ambiguities and issues that led the parties to be unable to come to an agreement on a

memorandum of understanding addressing this issue previously. (T-948) The Employer says that there was testimony by both Union and Employer representatives that their interest was to maintain the status quo on this issue. The Employer says there is no better way to maintain the status quo than to maintain the current language.

Discussion and Findings

The arbitrator found it difficult to reach a conclusion on this issue. On the one hand, there was substantial testimony that the intent behind the Union's proposal was to merely clarify what the existing practice has been. The Employer did not dispute, in many instances, what the Union proposed in this language has been the current practice. There is no question that the current language leaves more to interpretation than the language proposed by the Union. One might also argue that the current language could be interpreted to be in direct conflict with the language in Subsection E of Section 1 in that Subsection E allows the Employer to use non-bargaining unit employees to fill vacancies provided the bargaining unit employees are afforded the guaranteed overtime opportunities of Subsection D, but language in Subsection F says the Employer "shall" assign the least senior employee in the bargaining unit to mandatory overtime if there are insufficient full-time employees who volunteer to perform the work. Obviously this has not been the past practice.

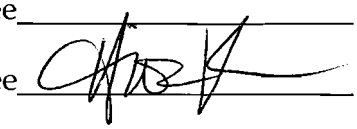
The Union's attempt to clarify what is current practice, however, may also result in further ambiguities. For example, the Union's proposed language in its first sentence says "the Employer <u>may</u>, in lieu of utilizing a non-bargaining unit employee to work the hours, assign mandatory overtime to the bargaining unit employee. The Union's use of the word "may" instead of "shall" that appears in the current language, is apparently intended to recognize that the Employer can use non-bargaining unit employees to work these hours or may mandate bargaining unit employees to work these hours provided the Employer follows the procedure in selecting the employee for that mandated overtime as described in the Union's proposed language. However, one might conclude that the "may" also applies to the reference to assigning mandatory overtime to the bargaining unit employee with the least seniority in the job classification and, therefore, be interpreted to mean that the Employer has discretion as to whether to use this particular process in assigning mandatory overtime. The arbitrator believes that the inclusion of the last sentence in the Union's proposed language is of little value in that it recognizes that employees who are on duty can be held over to provide service until a replacement can be found. There was testimony

indicating that both the Employer and the Union recognized that an employee could be held over but not be held over to a point that would result in working in excess of the 48 consecutive hours on duty limitation.

To summarize, the independent arbitrator saw positives and negatives in choosing the proposed language the Union puts forth, rather than the current language. On the whole, however, particularly in light of testimony by both the Union and Employer that there has evolved a general procedure and practice both Union and Employer have recognized as satisfactory in fulfilling the requirements of the current language, that it is the better course of action to retain the current language than to insert this new language, which could lead to potential further confusion. There was testimony that the parties were close to agreement on a memorandum of understanding describing the practices to be carried out under the current language. Perhaps, with further discussion around the ambiguities within both the current language and the proposed language, the parties can come to agree on a memorandum of understanding or at least reaffirm use of the current practices.

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, on the issue of revising the language in Article 18, section 1 (F) as proposed by the Union there will be no change from the current contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Issue #13, #14, #15, #16, #17 – Article 20, Wages, Appendices A-1 through A-3 (economic)

The Parties Proposals

Union Proposal

The Union proposed across-the-board wage increases beginning as follows:

April 1, 2004 = 4%
April 1, 2005 = 4%
April 1, 2006 = 4%
April 1, 2007 = 4%
April 1, 2008 = 4% extending through March 31, 2009

Employer Proposal

The Employer proposed across-the-board wage increases as follows:

April 1, 2004 = 2.75%
April 1, 2005 = 3.0 %
April 1, 2006 = 3.25%
April 1, 2007 = 3.0 %
April 1, 2008 = contract not to be extended beyond March 31, 2008 but if it is then 3.0% through March 31, 2009.

Union Position

The Union, in its post-hearing brief, takes the position that the best way to analyze wage rates is to compare hourly wage rates of firefighter wages among the external comparable communities. The Union says it is a more accurate comparison than using the annual pay amount because hours of work differ among the comparables. The Union also says it is best to use the firefighter wage for comparison because it is the most similar position to compare. Several of the other positions differ in description and duties.

The Union urges the panel to give greater weight to the four external comparable communities that have established wage rates through the collective bargaining process as Plainfield has done and give lesser emphasis on Grandville because wages for Grandville firefighters are not established through a collective bargaining process and on Grand Haven which has just negotiated its first contract under a collective bargaining process. The Union also says consideration should be given to the fact that 9 out of 10 of the bargaining unit employees obtain the basic EMT license and even though the Department is not licensed at the Basic EMT level, the Township residents benefit from the EMT skills of the firefighters.

The Union says little weight should be given to the wages or pattern of wage increases of other Township employees because the wages of those employees has been established unilaterally by the Employer. The Union suggests the panel use the CPI-U (All Urban Consumers) data for the Detroit/Ann Arbor/Flint SMSA when considering the cost of living factor (Sec. 9(e)) as exhibited in Union exhibit (U-13C) because that data reflects the area nearest to Plainfield Township and points out that Employer exhibit (E-9) only provided data for Midwest. Additionally, the Union provided an analysis in its post-hearing brief on cost of living which described the CPI-U increases for the period April 2004 to April 2007, using the 2006-2007 data from the BLS website. The Union says the external comparable data and the CPI-U data support its position on wages.

Employer Position

The Employer says one of the most critical factors the panel should consider when addressing wages is the internal consistency of wage increases for other employees of the Employer. The Employer urges the panel to consider the wages given to non-union elected and administrative employees and the non-supervisory employees represented by the Plainfield Township Municipal Employees Association. The Employer notes these groups received wage increases ranging from 2.0% to 3.5% for the years 2004-2006. (E-10, E-11, U-60) With respect to CPI-U consideration, the Employer says the panel should look more to Midwest data as more reflective of the State of Michigan during the relevant time periods.

The Employer, in its post-hearing brief, uses the same base wage data as used by the Union in its analysis of external comparables. Both parties have used the Firefighter with five years seniority as the base data for wage comparisons. The Employer says, however, that Plainfield Township firefighters may be getting more overtime than firefighters in some of the other comparable communities because some communities don't include the "Kelly" day in the work schedule as does Plainfield Township. The Employer says this should be taken into consideration when assessing overall wage comparisons.

Discussion and Findings

The Arbitrator has analyzed the very helpful data submitted by the parties during the hearing and in their post-hearing briefs and carefully considered the arguments to reach a decision on the issue of wages. Outlined below is a summary of that data which is intended to describe the relationship between the Arbitrator's

findings and the data that those findings are based on. The summary data is based on the following findings. First, the external comparables primarily used in comparing wages are Holland, Jackson, Muskegon Township and Norton Shores. The Arbitrator generally agrees with the Union's view that Grandville is not as comparable on this issue because wages are not set through a collective bargaining process and Grand Haven Township has just recently engaged in that process. Additionally, the Employer, in its post-hearing brief analysis has excluded Grand Haven Township in some of its analysis recognizing that its "market adjustment" rate does not compare with the others. The Employer has also excluded Grandville in some of its analysis.

Second, internal comparables have been considered. The Arbitrator does view internal comparables as relevant to the overall picture of wages in public employment in the community, including the wages of other employees of the Employer. In the data below the Arbitrator has used exhibits (U-13B, (E-11) to calculate average percentage increases for some of the groupings of these employees over the period 2004-2006. It is recognized that the wages of individual employees may vary greatly but this data gives some indication of internal wage decisions made by the Employer.

Third, with respect to the cost of living/CPI-U data, both parties used the same information but each argued for emphasis on a different set of that information. The summary reflects a average percentage increase for the years noted by calculating the average of the combined data for the Detroit/Ann Arbor/Flint SMSA, as urged by the Union, and the Midwest SMSA, as urged by the Employer.

The remaining information in the summary merely uses the data contained in the exhibits and presented by the parties in their post-hearing briefs to compare the hourly wage, annual wage and average annual increase in firefighters base wages in comparable communities with those that will be received by the bargaining unit members in this proceeding as a result of the panel's decision. The summary reveals for example that with the increases ordered by the panel the Plainfield firefighters hourly wage will increase over the period 2004-2007 to slightly close the gap between Plainfield firefighters and the average of the comparables but will still be slightly less than the average of the comparables in 2007. The summary shows the Plainfield Township firefighters annual wage as slightly more in 2007 than the average of the comparables but this may be due to having fewer number of comparables data to compare for 2007. The CPI/cost of living comparison shows the CPI/cost of living increase over the period 05-07 was 10.81%; the percentage increase in wages among the comparables over

that same time period was 10.22%, and the percentage increase in wages for the Plainfield Township firefighters over that same time period as a result of this panel's decision will be 10%.

The Arbitrator has also concluded that it more consistent with the intent of PERA that the contract period be extended to end March 31, 2009. As a result, the Arbitrator finds the wage rates should encompass that period between April 1, 2008 and March 31, 2009 and finds the Employer's last offer of settlement the more reasonable given the pattern of wage increases of comparable communities and the CPI/cost of living pattern.

External comparables used for wage comparison: Jackson, Muskegon Township, Holland, Norton Shores

- Internal comparables using (U-13 B) (E-11)

Plainfield Township non-bargaining unit:	2004	2005	2006
General employees average percent increase	4.84	5.1	3.5
Non-bargaining fire average percent increase	3.67	4.3	
Non-bargaining water average percent increase	3.05	2.76	3.5
AVERAGE	3.85	4.05	3.5

- Cost of living/CPI average of Detroit/Ann Arbor/Flint SMSA and Mid-West area (U-13 C)

	2004/05	2005/06	2006/07	
Average percent increase	3.08	3.35	4.38	=10.81% over 3 years

- Average hourly wage among comparables for full paid firefighter (E-6) (U-10)

2004	2005	2006	2007
15.99	16.53	17.20	17.54

- Average annual wage among comparables for full paid firefighter

2004	2005	2006	2007
45,337	47,117	48,814	49,323

- Average annual percentage increase in base wage among comparables

2004	2005	2006	2007	
2.96	3.41	3.56	3.25	=13.18% over 4 years

- Plainfield Township Firefighters base hourly and annual wage; percentage of increase over 4 years as result of panel award

	2004	2005	2006	2007	
Hourly	15.53	16.00	16.64	17.13	
Annual	45,215	46,571	48,434	49,887	
% increase	4%	3%	4%	3%	=14% over 4 years

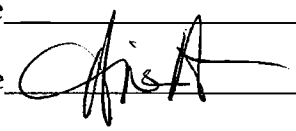
Based on the entirety of the evidence and analysis the Arbitrator finds that modifications to the wage appendixes in Article 20, Section 1 should be revised to reflect the following percentage increases for all classifications: beginning April 1, 2004 = 4%; beginning April 1, 2005 = 3%; beginning April 1, 2006 = 4%; beginning April 1, 2007 = 3%; beginning April 1, 2008 = 3%.

Taking all of these factors into consideration, the panel finds:

The Union's last offer of settlement on Issue 13; the Employer last offer of settlement on Issue 14; the Union's last offer of settlement on Issue 15; the Employer's last offer of settlement on Issue 16; the Employer's last offer of settlement on Issue 17 to more nearly comply with the applicable factors in Section 9; Therefore, Appendix A will be modified to reflect the wage percentage increases for all classifications as follows:

For the period April 1, 2004 – March 31, 2005 = 4% [retroactive to April 1, 2004]

Employer: Agree_____ Disagree Steven K Hirsch

Union: Agree  Disagree_____

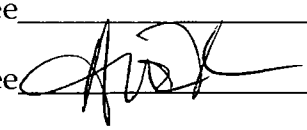
For the period April 1, 2005 – March 31, 2006 = 3 % [retroactive to April 1, 2005]

Employer: Agree Steven K Hirsch Disagree_____

Union: Agree_____ Disagree_____

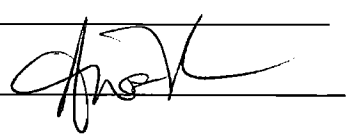
For the period April 1, 2006 – March 31, 2007 = 4% [retroactive to April 1, 2006]

Employer: Agree_____ Disagree Steven K Hirsch

Union: Agree  Disagree_____

For the period April 1, 2007 – March 31, 2008 = 3% [retroactive to April 1, 2007]

Employer: Agree Steven K Hirsch Disagree_____

Union: Agree_____ Disagree 

For the period April 1, 2008 – March 31, 2009 = 3%[effective date: April 1, 2008]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #18 – Withdrawn

Issue #19 – Article 23, Uniforms, Section 3, Boot/Shoe Allowance (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 23, Section 3 by adding the following language (noted in *italic*) to the current language so the Section would read: " A one hundred fifty ($150) dollar per year allowance for shoes and boots and essential items will be paid by the second Monday in April of each year. *Effective April 1, 2004, the allowance shall be increased to two hundred fifty ($250.00) per year.*"

Employer Proposal

The Employer proposed the 'status quo', no change in current contract

Union Position

Union Witness Duvall testified that the current shoe/boot allowance has not been increased since 1996. (T-407) He also testified, in response to how the figure of $250.00 was arrived at, that it was approximately the cost of a pair of boots today ($220) equivalent to what the same pair would have been able to be purchased for in 1996 ($80.00). (T407-408) The Union provided exhibit (U-25) which identified four of the comparable community contracts reference to the manner in which those Employers provide clothing or boot/shoe allowances. The Union says this evidence, along with the fact that cost of living has increased since 1996 supports its position that the allowance amount should be raised as proposed by the Union.

Employer Position

The Employer says the Employer does not require specific boots or shoes as part of the uniform and does provide "turnout" boots for use at emergency and fire scenes. The Employer recognizes that adequate boots and shoes are a necessity and therefore

has provided this allowance. The Employer points to its contract with the employees represented by the Municipal Employees Association as an example of what it provides to those employees which includes replacement of footwear every 12 to 18 months. The Employer says only one of the comparable external community contracts specifically provides a clothing allowance similar to this which may include boots and shoes. (Muskegon Township with a $350 annual clothing allowance. (E-69) The Employer says it opposes this change because of the increased cost and its unfairness with respect to other Township groups.

Discussion and Findings

The Arbitrator has reviewed the language in several of the external contracts and in the contract between to Employer and the PTMEA in an attempt to get a better sense of how other groups treat this issue. It is noted that while the Employer argues that granting this proposal would be unfair to other Township groups, the only other group who would need such clothing items, the employees of the PTMEA, are provided with uniforms, including industrial footwear every 12 to 18 months. The external community contracts reviewed by the Arbitrator revealed that Holland merely states "All uniforms, protective clothing, or protective devices required of regular, full-time employees in the performance of their duties, shall be furnished without cost to the employee." (E-67, Art. 23) It is not clear whether this includes boots and shoes. Jackson has similar language (E-68, Art. 12) and it too is unclear whether it includes boots and shoes. Muskegon Township specifies a $350 annual clothing allowance (E-69) and Norton Shores specifies that "Employees shall wear a work uniform provided by the Employer" and specifies the work items to include dress shoes, work boots and over boots. (E-70, Art. 25) Grand Haven provides "uniforms and equipment as the Township shall determine is necessary – the items provided by the Township will include: leather structure fire boots, approved station boots." (E-81, Art 22) Grandville's policy does not reference this. So the external comparisons are mixed. The trend however appears to be that the Employer will either provide shoes and boots as part of the clothing provided or will provide some compensation for purchase of clothing, including the purchase of shoes and boots.

The Employer's stated second objection to the Union's proposal was that it would increase costs but it did not address the question of whether the costs to the Employee would have risen since the $150 amount was established in 1996. A review of the Bureau of Labor Statistics data (E-9) reveals that cost of living increased

approximately 41% from May 1996 to May 2006. That would mean boots costing $80 in 1996 may cost at least $113 in May of 2006. Of course using just the inflation as a consideration for some increase would result in an increase of about $61 to a $211 amount rather than to $250. This being an economic issue the panel is forced to choose between one of the parties last offers of settlement. One of the dilemmas is that the Union's last offer of settlement would make this provision effective April 1, 2004. Exhibit (E-9) indicates the percentage increase in inflation between April 1996 and April 2004 was approximately 30% which would perhaps justify a $45 increase at that time. On the other hand, this contract will cover a period extending to March of 2009 so it is expected inflation will continue to impact buying power through that period.

Considering all of the evidence the Arbitrator finds the Union's last offer of settlement is the more acceptable. A primary consideration in reaching that finding is the fact that the Employer currently provides industrial footwear to the employees represented by the PTMEA. While the increase of $100 may be higher than needed on a retroactive basis it will bring the allowance "for shoes and boots and other essential items" more in line with inflationary costs over the life of the contract period than would the Employer's proposal of no change. It also may prompt the parties to consider, in their next round of negotiations, whether adopting a policy similar to that used in the contract with PTMEA is a more reasonable approach.

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, the language in Article 23, section 3 will be revised to add the language proposed by the Union in its last offer of settlement [effective upon issuance of this opinion and award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #20 – Article 31, Group Benefits, Section 1(a) Group Insurance (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 31, Section 1(a) as follows:

"(a) Employees shall be eligible to participate in *the existing* Blue Cross/Blue Shield Point of Service Plan 4, the existing Blue Cross/Blue Shield PPO Plan 1, or the existing Blue Cross/Blue Shield BCN Plan E. The Township reserves the right to change insurance carriers or plans, provided benefit coverage is substantially similar."

Employer Proposal

The Employer proposed to modify Article 31, Section 1(a) as follows:

"(a) Employees shall, upon proper written application, be eligible to participate in one (1) of the following health care plans offered for employees and their dependents, *subject to the availability of said plans: Blue Cross/Blue Shield Point of Service Plan 4, The Blue Cross/Blue Shield PPO Plan 1, or the Blue Care Network Plan E.* The Township reserves the right to change insurance carriers or plans, provided benefit coverage is substantially similar."

Union Position

Both the Union and the Employer acknowledge in their post-hearing briefs that the parties have agreed that the Employer will offer the three health care plans referenced in their respective proposals. This is further reinforced by the stipulation entered into by the parties replacing the Priority Health plan referred to in the current contract with the Blue Care Network Plan E referred to in the proposed language. (Joint exhibit 5) The key point of difference for the Union in the proposed languages is the Union's urging the inclusion of the phrase "the existing" modifying the reference to the three specified plans and its opposition to the Employer's proposed inclusion of "subject to the availability of said plans."

The Union says including the term "the existing" is important because within each type of plan offered there can be different optional features including riders to each plan and the Union wants the language to be interpreted that the coverage remains the same, or at least substantially similar, to the coverage covered by these plans as it exists when the agreement is entered into through the issuance of this order. The Union says its language provides greater clarity on that point.

As for the Employer's proposed language, the Union says it questions the meaning of the proposal. The question the Union poses is if one or more of the three

plans was no longer offered what would the Employer be required to do? The Union says the answer under the current language – without the phrase proposed by the Employer – is found in the last sentence whereby the Employer would be allowed to change insurance carriers or plans provided benefit coverage is substantially similar. The Union says if the Employers language is adopted it may be interpreted that the Employer would not be required to replace the no longer available plan given that it was offered "subject to its availability" and of course it now is no longer available. The Union says the Employers retention of language "upon written application" is not necessary and was not something the parties discussed when coming to agreement on the plans that would be offered.

Employer Position

The Employer says it proposes this language because the Township has had a recent experience during the term of the expired contract when one of the companies sponsoring one of the plans specified in the contract went out of business. The Employer says it doesn't want to be contractually bound to offer a plan that is no longer available. The Employer, in its post hearing brief stated that "The Township is willing to continue to offer the existing three plans for the duration of this agreement. However, it would be unreasonable to expect the Employer to continue to offer a plan that is no longer made available by the carrier."

Discussion and Findings

The Arbitrator believes the parties may be seeing some ghosts that don't exist. The objective of the language is to give some clarity and assurance that the parties know what health care coverage (the general scope and extent of that coverage) the Employer will be expected to provide and the Employees can be expected to be provided during the period of the agreement. The last sentence of the section obligates the Employer to do that. The Union raises a good question, i.e. what would occur if all three of the existing plans offered were no longer offered? Would the Employer not be obligated to provide any coverage? The Arbitrator is of the opinion that the Employer's proposed language does not add to the clarity of the language and in fact may add confusion. On the other hand, the Union's proposed language merely clarifies and modifies what the Employer is obligated to do through the last sentence of the section, which is to ensure that it seeks and obtains coverage "substantially similar" to the coverage provided by the "existing" plans specified in the language in the event one or more of those plans are no longer available.

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, on the issue of revising the language in Article 31, section 1(a), the language proposed by the Union in its last offer of settlement will become the language of Article 31, section 1(a). [Effective upon issuance of this Opinion and Award]

Employer: Agree_____ Disagree Steven K Zack

Union: Agree [signature] Disagree_____

Issue #21 – Article 31, Group Benefits, Section 2,employee contributions (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 31, Section 2 as follows:

"Effective retroactive to April 1, 2004, employees having family coverage under any plan shall contribute $60 per month to the premium by way of an appropriate payroll deduction; the Township shall pay the remainder of the premium for family coverage. The retroactive adjustment due to employees for the difference between what the employee paid for the family premium on and after April 1, 2004, and the new contribution rate of $60 per month, shall be paid by the Township to such employees by no later than 30 days after issuance of the Act 312 Award in MERC Case No. L04 B-7005."

Effective immediately upon the issuance of the Act 312 Award in MERC Case No. L04 B-7005, employees having single (1-person) or double (2-person) coverage under any plan shall contribute to the premium by way of an appropriate payroll deduction as follows: $50 per month for double (2-person); $25.00 per month for single (1-person)."

Employer Proposal

The Employer proposed to modify Article 31, Section 2 as follows:

"(a) The township will pay *ninety-seven percent (97%)* of the premium for regular full-time individual employee, spousal coverage, and dependant coverage under the hospitalization and medical insurance programs set forth in Section 1. Employees shall, during the term of this Agreement, contribute three percent *(3%) of the premium applicable to the coverage selected by the employee (single, two person or family)*, by payroll deduction of equal installments from each *biweekly* payroll for a total *of twenty-six (26)* times in each calendar year. *If the premium increases during the term of this Agreement, the*

Township and the employees shall continue to pay the same proportions of the increased premium (97%/3%).

(b) In addition to the 3% contribution in (a) above, employees choosing an available health care insurance plan whose premiums are higher than a lower cost plan offered shall pay the dollar amount difference between the chosen plan and the lowest cost plan offered through payroll deductions."

Union Position

Both the Union and the Employer seek to modify the provisions in the current contract involving Employee contributions to payment of health insurance premiums. They disagree on what that contribution should be and how it should be distributed among the Employees. The current contract provides that employees with individual or spousal coverage pay no share of the premium cost and those employees with family coverage pay 100% of the difference between the two person and the family plan, currently ranging from approximately $185 to $188 per month. The Union, in its post hearing brief states eight of the ten current bargaining unit employees has family plan coverage.

The parties have agreed upon the health plans that will be offered. (Jt. Ex. 5,6) Under the Union's proposed language Employees would pay a set amount toward the premium payment for the period of the agreement regardless of the plan chosen by the Employee. That monthly contribution would be $25 for single, $50 for double and $60 for family coverage. Based on the current cost of the three plans offered the employee payment amount would range between approximately 5.3% to 7.5% of the total premium costs, depending upon the plan chosen and whether it was for single, two party or family coverage. Of course if premium costs rose, the employee contribution amount would not change. The other feature of the Union' proposal is to require the Employer to reimburse employees who have had family coverage and been paying the difference between the two person and family plan the amount of that difference (less the $60 amount per month the Employee would pay for the family plan) paid since April 1, 2004 – the expiration date of the current contract. The Union says this would provide relief to those employees who have been paying these excessive amounts while this contract has been pending.

The Union says its proposal is supported by a review of the external comparables and the Employers proposal is not. The Union says its proposal, as opposed to the Employers, would require an employee monthly contribution equivalent to the highest of the comparables, pointing out that only two of the comparable communities

(Muskegon Township and Norton Shores) require any employee contribution at all at $35 and $22 per month for family coverage respectively. The Union says only one of the comparable communities – Grand Haven Township – offers a HMO plan similar to the BCN-E plan offered by the Employer. Five comparables offer plans similar to the PPO-1 plan and POS-4 plan offered by the Employer but only two of those five require employees to share in the premium cost of those plans. The Union says none of the comparables require anything near the employee share of premium cost that the Employers proposal would require. The Union also says if the Employers proposal is adopted, which requires 3% of the cost of any increase in the premium to be paid by the Union members, it will put the members at risk of paying a much higher amount if the Employer unilaterally chooses to offer non-BCBS plans to its other employees in the future. The Union notes, in its post hearing brief, that the Employers costs for health care have already been reduced as a result of the parties agreement involving the specific plans that will be offered (Jt. Ex. 5-6) (E-85) and the Employer can afford to bear the cost of the Union's proposal.

Employer Position

The Employer, in its post hearing brief, notes that both proposals require all unit member employees to share in the cost of health care premiums, unlike the current contract which only requires cost sharing of those choosing the family coverage. The Employer objects to the Unions proposal that would permit the Employee to select the highest cost plan and pay nothing more for it than for the lowest cost BCN-E plan. The result of offering this choice would likely be that most employees would select the higher cost, i.e. better coverage, plan which would result in the Employer having to pay 100% of the balance of the higher cost.

The Employer notes that under its proposal if the Employees choose the BCN-E plan the employee's total premium contribution will be 3% of the premium. Based on current costs, that would be approximately $10.25 for single, $22.56 for two person coverage and $28.20 for family coverage per month. For those currently under the family plan, if they chose to retain or to switch to the BCN-E coverage, they would pay substantially less per month, i.e. a reduction from $188.00 to $28.20. The Employer says the BCN-E plan is one of the better HMO plans in that there is no annual deductible; no annual co-insurance and a reasonable co- pay for office visits and ER use.

Where the Employer and the Union proposals differ most is how the cost would be shared if the Employee chooses coverage under one of the other two plans offered.

Under the Union's proposal the Employer would pay the additional premium cost of the difference between the cost of the BCN-E plan and the other two plans. Under the Employer's proposal the Employee would pay that additional premium cost. The Employer says it is willing to pay the majority of the cost for coverage of a reasonable health care plan but it does not believe it should be obligated to pay for the additional costs of the highest plans available when a negotiated lower cost plan, which it believes provides quality coverage, is available. The Employer says it would be unreasonable to place this cost on the Employer, particularly since all other Township employees are either covered by the BCN-E plan or the Healthy Blue Living plan. The Employer also notes that its plan, based on a shared percentage, would maintain the ratio of cost sharing, at least for those on the BCN-E plan in the event of premium increases whereas the Union's set amount proposal would not. The Employer says its proposal would result in the Employee having an interest in keeping costs down whereas the Union's proposal would not.

The Employer notes that the other major difference in the proposals is that the Union is seeking to have its proposal for the cost of family coverage to be retroactive to April 1, 2004 and for reimbursement of the difference in premium cost sharing by employees to be refunded to employees who have paid those costs since that time. The Employer says this would cost the Employer approximately $20,000.00. With respect to the external comparables, the Employer says they lag somewhat in the national trend towards employees paying a higher portion of health care premiums. The Employer also notes that some of the plans offered by the comparable community Employers do not provide the same level of coverage, meaning not as good a coverage, or coverage requiring more employee co-pay or deductibles. (U-29)(E-26) The Employer says the comparables demonstrate a trend where employers who pay 100% of the premium have either a less expensive HMO plan or reduced benefits by adding deductibles and co-pays and where optional plans are offered, employees must pay the difference to receive the higher benefit plans.

Discussion and Findings

The Arbitrator finds the Employers last offer of settlement to be the more appropriate for inclusion in this contract at this time. The Arbitrator finds the Union's proposal is perhaps more supported by the current contract provisions in the majority of external comparable contracts than is the Employers proposal, but comparison of what health care benefits are offered and how employers and employees share those

costs for employees performing similar services in other comparable communities (Sec. 9(d) of Act 312) is only one of several factors to be considered by the panel when reaching decisions. For example, in this case, the parties negotiated a stipulation and agreed on contract language that specified the health plans that will be made available. (Jt. Ex. 5,6) [Sec. 9(c) of Act 312] One of those plans was BCN-E which, if chosen by the Employees, will substantially reduce the costs of health care for eight out of the 10 current members of the bargaining unit.

On the other hand, if the Union's proposal were to be adopted, one would presume that those employees who would have considered choosing the BCN-E plan under the Employers proposal would see no advantage in doing so because they would pay the same amount whether they chose that plan or one of the two more expensive plans since it would only be more expensive to the Employer. Another factor to consider is the internal comparables and those support the Employers proposal because the rest of the Township employees are provided a plan the same as or similar to the BCN-E plan provided here. One of the Union's concerns expressed in the post hearing brief was that if the Employer chooses to offer other than non-BCBS plans to other Township employees it would result in dramatic increase in costs to its members because of the percentage cost sharing approach of the Employers proposal. That is highly unlikely to occur given the fact that the Employer and the Union just agreed to offer only BCBS plans (Jt. Ex. 5,6) and if that were to occur the Employer's costs would increase dramatically also.

It may be somewhat unfortunate that the parties were not able to devise a method of premium cost sharing for the two plans offered in addition to the HMO plan BCN-E that could have shared the cost a little more proportionately. Under the Unions proposal the Employer shares the majority of the additional costs for those two plans. Under the Employers proposal the employee shares the additional costs for those two plans. The record reflects, however, that compared to what the majority of the current unit members (8 out of 10) were paying for the family member coverage, if they choose to continue that coverage under a plan other than the BCN-E plan, they will not be paying significantly more than they have been paying and of course if they choose the BCN-E plan they will be paying substantially less. (Sec. 9 (d) of Act 312)

Another major difference in the proposals is the inclusion of the language in the Union's proposal that would require the Employer to reimburse those employees who were paying a share of the cost under the family plan retroactive to April 1, 2004. The

average monthly payment from April 1, 2004 ranged from $41 per month to nearly $188.00 per month. Even if the $60 per month contribution were deducted from this reimbursement the Employer estimates the cost of that reimbursement would be $20,000. Even though the Employer might technically have the financial ability to pay this lump sum amount, along with its payment of retroactive wages granted in this Award, it would not be in the interests of the welfare and the public that it be ordered to do so. An additional fact to consider relevant to this aspect of the Union's proposal is that the parties negotiated and voluntarily agreed to these payments in this manner as part of the current contract, and that the parties have had the opportunity to negotiate and agree to a successor contract long before this point in time. Had they done so the impact on the Employer of the retroactivity aspect of this proposal would not have been as great.

Taking all of these factors into consideration, the panel finds the Employers last offer of settlement on this issue to more nearly comply with the applicable factors in Section 9. Therefore, on the issue of revising the language in Article 31, section 2, the language proposed by the Employer in its last offer of settlement will be incorporated into the contract. In addition, so that employees may make decisions on health care given the requirements of this Award, the Township and Blue Cross/Blue Shield are directed to offer an appropriate open enrollment period to bargaining unit employees after issuance of this Award. [Effective upon the issuance of this Award]

Employer: Agree Steven K Ziner Disagree_____

Union: Agree_____ Disagree

Issue #22—Withdrawn

Issue #23—Article 31, Group Benefits, Section 4, Continuation of Insurance Coverage (economic)

The Parties Proposals

Union Proposal

The Union proposed modifications to Article 31, Section 4. The proposed modifications are in the first and third sentences of Section 4 as follows:

(First Sentence) "Group health care insurance benefits shall be paid by the Employer, *less the employee premium contribution amount as provided for in this agreement,* for a period of three (3) months following the date on which an employee is laid off or is placed on an unpaid medical leave of absence. The Township will continue coverage during the period an employee is on approved workers' compensation leave. In all other cases where an employee begins an unpaid leave of absence, group health care insurance benefits shall be paid by the Employer, *less the employee premium contribution amount as provided for in this agreement,* to the end of the month in which the leave begins."

Employer Proposal

The Employer proposed modifications to Article 31, Section 4. The proposed modification are in the first and third sentences of Section 4 as follows:

"Group health care insurance benefits shall be paid by the Employer *and employee in the agreed upon proportions* for a period of three (3) months following the date on which an employee is laid off or is placed on an unpaid medical leave of absence. The Township will continue coverage during the period an employee is on approved workers' compensation leave. In all other cases where an employee begins an unpaid leave of absence, group health care insurance benefits shall be paid by the Employer *and employee in the agreed upon proportions* to the end of the month in which the leave begins."

Union Position

The Union acknowledges that both parties language attempts to accomplish the same thing but believes its language is more specific and clear and therefore urges its adoption.

Employer Position

The Employer also acknowledges that both parties language attempts to clarify that when an employee is laid off or on a leave of absence, both employee and Employer will continue to pay their agreed upon contributions to continue health care. The Employer prefers its language because is says it more clearly specifies that both will continue to contribute whereas the Unions proposal does not mention the employee's obligation to continue.

Discussion and Findings

The Arbitrator finds the Union's proposed language is preferable. The Union's proposed language makes it clear, by referring to "the employee premium contribution amount" that the employee does have an obligation to pay some amount. In addition, the Union's language states the amount as "as provided for in this agreement" which is specific. The Employers language statement "in the agreed upon proportions" may leave the impression that the parties could agree to some other proportion outside of this agreement. If it is the desire of the parties, at some future time, to agree to some proportion of shared payment other than what is in this agreement, the Union's language makes clear that they must agree to do so as a modification to this agreement.

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, on the issue of revising the language in Article 31, section 4, the language proposed by the Union in its last offer of settlement will be incorporated into the contract. [Effective upon issuance of this Award.]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #24 – Article 31, Group Benefits, Section 5, Retiree Hospitalization Insurance (economic)

The Parties Proposals

Employer Proposal

The Employer proposed modifications to Article 31, Section 5. The Employer's proposed modifications are to sub-sections 2 and 3 of Section 5. The Employer proposes to modify the language in sub-section 2 **from**: "Employees who have reached age 50 (age 55 if date of hire is after 4/27/00) with 15-19 years of regular full-time employment..." **to** "Employees who have reached age 55 with 15-19 years of full-time employment..." The Employer proposes to modify the language in sub-section 3 **from:** "Employees (who have reached age 55 if date of hire is after 4/27/00) with 20 years or more of regular full-time employment...." **to** "Employees who have reached age 55 with 20 years or more of regular full-time employment..."

Union Proposal

The Union proposed maintaining the 'status quo", no change

Employer Position

The Employer says that during the negotiations leading to the current contract the Employer proposed this change in coverage for retiree hospitalization insurance. Record testimony and evidence revealed that under the 1996-1999 contract there was no age requirement related to receipt of retired employees eligibility for Employer paid hospitalization benefits. (U-45) The parties reached a compromise during the negotiations leading to the current contract language. That compromise was that the age 55 requirement would apply to those with 10 – 14 years seniority; those with 15 to 19 years seniority (if hired after 4/27/00); and to those with 20 or more years seniority (if hired after 4/27/00). Employees hired before 4/27/00 with 15 to 19 years of seniority can retire at age 50 and those with 20 or more years of seniority can retire regardless of age. Currently there are five employees that were hired before 4/27/00.

The Employer points to internal comparables to support its proposal. Evidence was presented that the 55 minimum age requirement is the requirement for all non-union Township employees (E-63) and for the PTMEA bargaining unit (E-65). The Employer says the age 55 requirement it proposes here is now applicable to all Township employees except the five firefighter employees exempt as a result of the previous negotiated contract and that it should apply to them also.

The Employer says the external comparables support its position noting that two have a minimum age of 60 to qualify for retiree health benefits and two others with a minimum age of 50. One has a minimum age of 55 and one has no minimum age. (E-43)

Union Position

The Union, in its post hearing brief, provides the same general background as the Employer relating how the current language came to be and says the Employer has failed to provide sufficient evidence justifying a change. The Union also points to the external comparables in support of the status quo and notes that four of the six comparables provide retiree health insurance at ages lower than 55. (U-43, E-43) The Union says since the language that was agreed to in the last negotiations applied the age 55 requirement to all but five of the current employees, over time, the age 55 requirement will apply to everyone.

Discussion and Findings

The Arbitrator finds the evidence does not justify making this change at this time. There was undisputed evidence that the parties reached a compromise on the existing language during negotiations leading to the current contract. The external comparables do not strongly favor the Employers proposal. A review of the language in those contracts on this issue reveals that they vary to some degree in the level of benefits offered at different age levels or different seniority levels. What that review does reveal is that these provisions are somewhat individually crafted to meet the particular parties needs, just as the current provisions were crafted in the current contract between these parties.

The Employer, in its post hearing brief, and by presentation of evidence and testimony at hearing, noted that new governmental accounting standards require public employers to secure an annual actuarial statement of its unfunded liability for retiree health care and that the report the Employer received for fiscal year ending 2005 showed an unfunded accrued liability of over $5 million. (E-77) But as the Union points out in its post hearing brief, there is no requirement that the Employer pre- fund its health liability. Based on the review of other external comparable community contracts it appears the parties have a number of options for modification of the current language if the Employer continues to feel strongly that some modification is necessary for economic reasons. That is the better course for the parties than for this panel to make the modification the Employer seeks without more justification.

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, on the issue of revising the language in Article 31, section 5 as proposed by the Employer there will be no change from the current contract.

Employer: Agree_____ Disagree Steven K Siegel

Union: Agree_____ Disagree_____

Issue #25 – Article 31, Group Benefits, Section 5, Retiree Hospitalization Insurance (economic)

The Parties Proposals

Employer Proposal

The Employer proposed to modify Article 31, Section 5 by adding the following new language:

"Retirees receiving health care insurance benefits under the terms of this agreement will be covered by the lowest cost plan available to and offered by the Township to current bargaining unit members. The level of benefits to be received by retirees under that plan is subject to the terms of that plan. If a retiree resides outside the area covered by that plan and therefore cannot take advantage of all of the benefits available to current bargaining unit members, s/he may elect to receive cash in lieu of coverage in the amount of the monthly premium or portion thereof paid by the Township under the terms of this agreement. Such election shall be made in writing and may be made at any time during the period of eligibility to receive this benefit. If the retiree receiving the benefit is deceased, the spouse, if eligible, may also make an election if it had not been exercised.

In the alternative, if allowed by the carrier, a retiree may continue in a higher cost plan by paying the dollar amount difference in premiums between the chosen plan and the lowest cost plan offered."

Union Proposal

The Union proposed maintaining the 'status quo', no change

Employer Position

The language the Employer proposes to add to this section addressing retiree health care coverage would specify that the Employer would be responsible for providing the retiree with the lowest cost plan available to and offered by the Township to current bargaining unit members. The retiree would be allowed to receive cash in lieu of coverage if the retiree lived outside the area covered by the plan or continue to be covered by a higher cost plan offered by the carrier provided the employee paid the difference in cost between the lowest cost plan and the plan chosen. This language would be added to the current language in Article 31, Section 5. The current language specifies various criteria for eligibility for coverage based on age, years of service and specifies how much would be paid by the Employer and the employee dependent upon age and years of service at retirement.

The Employer says the current language is, or has the potential to be, costly to the Employer because of the eligibility criteria that requires payment by the Employer or at least some shared payment by the Employer of plans offered and perhaps chosen by the retiree that may cost more than the lowest cost plan. The Employer basically puts forth the same argument here as it did in support of its modification to Section 2 of this Article that the current lowest cost plan offered, BCN-E, has excellent benefits and the retiree should be adequately covered by it.

The Employer also says the external comparables support its proposal and points to the various methods the comparable community contracts address this issue. Those contracts, like the current contract between the parties in this proceeding, provide a variety of methods of determining eligibility for retirees and sharing costs between the Employer and retiree for health care coverage. The Employer says its proposal represents reasonable steps to reduce increasing costs of retiree health insurance without imposing an undue burden on the retiree. It says its proposal to allow retirees who move out of state to either take the cash amount the Employer pays for the least cost plan and buy their own insurance or take pay the difference in cost for a higher cost plan, if available, is a reasonable compromise.

Union Position

The Union points out that of the current plans offered, only the BCBS PPO 1 plan can cover a retiree who moves out of Michigan. (U-26K) Additionally, the Union says the premium difference between the lowest cost plan and the other plans currently offered is tremendously costly for a retiree – nearly $175 per month for two person coverage. The Union says a review of the comparable community contracts does not reveal any language comparable to the Employers proposed language requiring retirees to take the least cost health plan offered and be reimbursed only at the level of the Employers cost of the least cost plan. The Union notes that only one of the five contracts in which there is a collective bargaining agreement contains language that links the retiree health plan to a plan "available to and offered by the Township to current bargaining unit members." The Union says under this language the Employer could offer a terribly inadequate plan to its employees along with better plans and even though none of the employees chose to be covered by the inadequate plan it still would be the applicable plan for coverage for the retiree health benefit. The Union expresses concern that application of this language could be abused by the Employer.

Discussion and Findings

The Arbitrator views the proposal put forth by the Employer on this issue similar to the proposal put forth on issue 24. As discussed in issue 24, there was undisputed evidence that the parties reached a compromise on the existing language in Section 5 during negotiations leading to the current contract. Also, there is evidence in this record that the parties agreed to certain changes in health care coverage for employees (Jt. Ex, 5, 6) and agreed upon plans in Section 1(a) of this Article. If the parties had wanted to address the issue of retiree health care coverage differently they had ample opportunity to do so. As with issue 24, the Arbitrator does not view the external comparables as strongly favoring the Employers proposal. A review of the language in those contracts reveals, just as in issue 24, provisions addressing retiree health benefits are individually crafted to meet the particular parties needs, just as the current provisions were crafted in the current contract between these parties.

Not unlike the discussion and findings in issue 24, it appears the parties have a number of options for modification of the current language addressing retiree health care if the Employer continues to feel strongly that some modification is necessary for economic reasons. The Arbitrator finds the evidence does not support an immediate need for this change at this time for economic reasons.

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, on the issue of revising the language in Article 31, section 5 as proposed by the Employer there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #26—Article 31, Group Benefits, new section re: office visit employee co-payments (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 31 by adding a new Section as follows:

"The employee co-pay for office visits under all plans shall continue to be twenty dollars ($20.00); the Township will reimburse the employee for ten dollars ($10.00), and the employee may opt to be reimbursed for the remaining ten dollars ($10.00) from his flexible benefit account provided funds are available."

Employer Proposal

The Employer proposed to modify Article 31 by adding a new Section as follows:

"Employees shall be responsible to pay $20 for doctor's office visits (as required by the carrier's plan). This $20 co-pay shall be paid by the employee or from his/her flexible spending account."

Union Position

Both parties, during the hearing and in post hearing briefs, acknowledged that prior to January 2005 the Employer had a $20 office visit co-pay requirement for its employees and the Employer reimbursed the employee $10 or allowed the employee to be reimbursed the $10 from his/her flexible benefit account. In January 2005 the Employer ceased reimbursing the $10 for all employees, including those in this bargaining unit, although the employees could continue to be reimbursed by drawing funds from their flexible benefit plan. The Union says the Employer acted contrary to the Maintenance of Standards clause of the contract by unilaterally changing this benefit and the Unions proposal is to return to what had been the practice prior to the expiration of this contract.

The Union says the external comparables support its proposal pointing out that four of the six comparables have office co-pays of $10 and none have co-pay of $20 as proposed by the Employer. (E-37) The Union also argues that establishing the co-pay at $10 is justified when the panel takes into consideration that the bargaining unit members receive no dental or optical benefits provided by the Employer and uses its flexible benefit account to pay for those services. The Union says this is unlike four of the six comparable community employers who provide some form of dental and optical coverage. (U-33)

Employer Position

The Employer says its proposal maintains the status quo because at least since January of 2005 all Township employees have been paying $20 co-pay for office visits. The Employer says the Unions proposal to return to the $10 co-pay is unreasonable given the Employers proposal to increase the Employers contribution to the employees flexible benefit account from the current $900 to $1300 per year. The Employer says that

even though the majority of the external comparable communities may have co-pay for office visits below $20, (E – 37) only two of them have flexible benefit accounts the employees can draw from and those two have employer account contributions below the Employers current $900 annual amount. The Employer says if the Employees were required to pay only $10 co-pay per office visit this would differ from all other Township employees' required payment of $20 co-pay per office visit.

Discussion and Findings

The Arbitrator finds the Union's position on this issue is supported by the evidence more so than the Employers. It is recognized that all other Township employees currently pay the $20 per office visit co-pay but that is in large part because they had no choice when the Employer unilaterally changed to require that amount in January 2005. Also, the external comparables do reveal that no other employer in comparable communities requires employees performing similar services to pay a $20 office visit co-pay. (E-37) The Union's position is also favored when considering that the Employer does not offer Dental or Optical health care coverage as does a majority of the other employers in comparable communities as part of the overall compensation received by employees. (Sec. 9(f) of Act 312) Lastly, the Arbitrator does not believe this will impose a significant cost on the Employer because it is unlikely the Employees would purposely initiate more office visits, with the accompanying additional time and travel expense, just because they only had to pay $10 rather than $20.

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, on the issue of inserting the language in Article 31 as proposed by the parties, the new language proposed by the Union will be inserted in Article 31. [Effective upon issuance of the Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #27 – Article 31, Group Benefits, new section re: employee prescription co-payments (economic)

The Parties Proposals

Union Proposal

The Union proposed to add a new section to Article 31 as follows:

"For brand name prescription drugs under all plans, the employee co-pay shall continue to be forty dollars ($40.00); the Township will reimburse the employee for twenty-five dollars ($25.00), and the employee may opt to be reimbursed for the remaining fifteen dollars ($15.00) from his flexible benefit account provided funds are available.

For generic prescription drugs under all plans, the employee co-pay shall continue to be ten dollars ($10.00); the employee may opt to be reimbursed for the ten ($10.00) from his flexible benefit account provided funds are available."

Employer Proposal

The Employer proposed to add a new section to Article 31 as follows:

"Employees shall be responsible to pay $10 for generic drug prescriptions (as defined and required by the carrier's plan) and shall be responsible for the first $20 for non-generic drug prescriptions, with the Township reimbursing the employee for the balance of the co-payment if the co-payment is greater than $20."

Union Position

Similar to the office visit co-pay issue, there currently is no contract provision that specifies what the employee prescription co-pay will be. Both parties proposed language to address this. Both proposals provide language that would result in the Employee paying $10 for generic prescription drugs. The Union's proposed language would result in the Employee paying $15 for brand name prescription drugs. The Employers proposal would result in the Employee paying $20 for brand name prescription drugs.

The Union says its proposal would maintain the status quo in that $15 dollars of the $40 dollars for brand name drugs that is not paid by the insurer is paid by the Employee out of the Employee's flexible benefit account (or in cash if the Employee doesn't have sufficient funds in the flexible benefit account) and the other $25 is paid by the Employer. The Union says the Employer has failed to provide sufficient justification for its proposed reduction in this benefit and notes that due to the changes in health providers the Employers costs for prescription coverage has actually decreased from 2006 to 2007. (Jt. Ex. 6, U-26I) The Union also says a review of the external comparables

reveals that the Unions proposed co-payment of $15 for brand name prescription drugs is in the mid- range of the comparables. (U-26, E-38) As it pointed out in addressing the office visit co-pay issue, the Union says the panel should take into consideration the fact that the Employer does not provide Dental and Optical coverage as several of the other comparable communities do.

Lastly, the Union says it questions why the Employers proposed language does not specifically state that the employee can receive reimbursement from the employees flexible benefit account in this proposal as it did in the office co-pay proposal. The Union says its inclusion in the office benefit provision and not in this provision could create ambiguity and it might be construed that reimbursement from the employees flexible benefit account for prescription drugs is not permitted.

Employer Position

The Employer says it makes this proposal because of its proposal to increase its annual contribution to the employees' flexible benefit account from $900 to $1300. The Employer says as a result it believes the $20/$20 split between the Employer and the employee is more equitable. The Employer says the external comparables support its position and points to (E-38) which indicates that four out of the six comparable community employers require employee brand name prescription drug co-pays of $20 or more.

Discussion and Findings

The external comparables support the Employers position slightly more that the Unions position. On the other hand, the Union does point out that its members are much more likely to have to draw a larger amount of funds from their flexible benefit accounts to pay for dental and optical care than employees performing similar services in the majority of the other comparable communities because employers in those communities provide some form of optical and dental coverage. Additionally, there is the question of why the Employer omitted the language in this proposal allowing the employee payment to be made from the flexible benefit account. That omission, coupled with the inclusion of such language in the Section addressing office co-pay, could lead to some confusion. It should also be remembered that the Employee already has some incentive to secure generic prescription drugs at $10 cost to the employee rather than at $15 or $20 for brand name drugs. It is questionable how much a $5 or $10 difference in cost to the employee will make in the employees' decision whether to purchase a brand name or a generic drug if given the choice. The Employer presented no evidence to

demonstrate what it estimated its cost savings would be as a result of this change which would occur prospectively during the remaining term of this contract. Considering the evidence as a whole the Arbitrator finds the insufficient evidence to justify a change from the current practice.

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, on the issue of the parties proposed new language in Article 31, the language proposed by the Union in its last offer of settlement shall be incorporated into Article 31. [Effective upon issuance of the Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #28 – Article 31, Group Benefits, new section re: mail order prescriptions and employee co-pay

The Parties Proposals

Union Proposal

The Union proposed to add a new Section to Article 31 as follows:

"Employees shall have the option of obtaining eligible maintenance prescription drugs by mail order; a single co-payment shall apply to a 90-day supply."

Employer Proposal

The Employer proposed to add a new Section to Article 31 as follows:

"As long as allowed by the carrier, employees shall have the option of obtaining maintenance prescription drugs by mail order; at least a single co-payment shall apply to a three-month supply, or the lowest co-payment that is offered by the carrier for a three-month supply."

Union Position

The current contract contains no language that specifically addresses the mail order prescription benefit. The Union says its proposed language is consistent with the current plans offered by BCBS because they offer a mail order benefit that provides a 90

day supply with just one co-payment. The Union says the Employers proposed language goes beyond just addressing the current benefit by including language "as long as allowed by the carrier" and "at least a single co-payment shall apply to a three-month supply, or the lowest co-payment that is offered by the carrier for a three-month supply." The Union says the inclusion of the "as long as allowed by the carrier" language would permit the Employer to change carriers and if the new carrier didn't offer a mail order benefit the Employee would lose the benefit entirely. As for the second phrase the Union says it could permit the Employer to choose a carrier that requires three co-pays for a 90-day supply. The Union says its proposed language provides certainty to its members of what the benefit will be at least for the duration of this contract.

Employer Position

The Employer, in its post hearing brief, acknowledged that the language the Union proposes is what the current carrier provides and poses no problem so long as the current carrier continues to provide that option. But the Employer says what if the carrier no longer provided that option or revised it to require two co-pays for a 90 day supply? The Employer says it has crafted its language to avoid a potential union grievance in the event the carrier changed this provision and the Union demanded the Employer pay any additional cost as a result of that change.

Discussion and Findings

The Arbitrator believes again, both parties may be seeing potential problems that are unlikely to occur during the remaining term of this agreement. The record reflects that the parties participated in fashioning an agreement on health care coverage that resulted in a recent contract with one carrier, BCBS. That carrier has every incentive to retain the Employer as a customer and is unlikely to change the one co-payment per 90 day supply during the course of the remainder of this agreement. The Employer is unlikely to seek another carrier during the course of this agreement.

Both parties, in their post hearing briefs pointed to external comparable community contracts to note which ones currently provide one or two co-pays for a 90 day supply. Neither party, however, addressed whether the contracts of those comparable communities had specific language addressing the number of co-pays required for a 90 day supply, as proposed by the Union, or more general language, as proposed by the Employer. A cursory review by the Arbitrator of the contracts revealed nothing specific either way.

Based on the fact that the Employer has just recently entered into the current agreement with the carrier and that this agreement will be effective for only about 20 months from the issuance of this order, the Arbitrator finds the more specific language proposed by the Union is clearer and not likely to result in the problems envisioned by the Employer. If a situation arises that results in a change in carrier coverage involving the co-payment necessary for a 90 day supply the parties can meet and discuss how best 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, on the issue of the new language proposed by the parties for inclusion in Article 31, the language proposed by the Union in its last offer of settlement will be incorporated into Article 31. [Effective upon issuance of the Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #29 – Article 31, Group Benefits, Section 7, flexible benefit program (economic)

The Parties Proposals

Union Proposal

The Union proposed to modify Article 31, Section 7 as follows:

"All bargaining unit employees shall continue to be covered by the existing Flexible Benefit Program, with the Township contributing thirteen hundred dollars ($1,300.00) annually into each employee's flexible benefit account."

Employer Proposal

The Employer proposed to modify Article 31, Section 7 as follows:

"Bargaining Unit employees will be covered under the Township's Flexible Benefit Program, and the Employer will contribute $1,300.00 annually to the account of each employee."

Union Position

The Union's proposed language differs from the Employers proposed language in that it includes the term "the existing" Flexible Benefit Program and the Employers language does not. The Union says while the Employers proposed language would lock in the amount contributed, there are other important aspects of the Program, such as the purposes for which it can be used and other procedural aspects, that the Unions proposed language would assure would remain the same. The Union says it fears the Employer, under the Employers proposed language, might change the program and then the Union would have to challenge the unilateral change.

Employer Position

The Employer says it prefers its proposed language over the Unions because the phrase "existing" implies inflexibility in the program that may not be warranted. The Employer says Flexible Benefit Programs are impacted by IRS code and plans frequently change. The Employer says it has no desire to get into a dispute with the Union just because the program changes. The Employer also notes that the language in the current contract merely states, "employees will be covered under the Flexible Benefit Program."

Discussion and Findings

The Arbitrator finds the Employers proposed language to be the more practical in this situation. The Employer makes a valid point in noting that programs of this nature could change as a result of policy set by the IRS. Surely, the Union would not want to miss out on an opportunity for even more uses of the flexible benefit funds in their account if the IRS expanded the purposes for which the funds could be used during the term of this contract. Also, the parties have worked with the current language which merely refers to the Flexible Benefit Program and not the "existing" program for some time with no apparent problems. There was no evidence presented that indicated a greater possibility of problems than in the past.

Taking all of these factors into consideration, the panel finds the Employers last offer of settlement on this issue to more nearly comply with the applicable factors in Section 9. Therefore, on the issue of revising the language in Article 31, section 7, the language proposed by the Employer in its last offer of settlement will replace the current language in Article 31, section 7. [Effective upon issuance of the Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #30 – Article 31, Group Benefits, new section re: Short and Long term disability program

The Parties Proposals

Union Proposal

The Union proposed to add a new Section to Article 31 as follows:

"All bargaining unit members shall continue to be covered by the existing Long Term Disability Insurance program, providing benefits of 50% of the employee's monthly earnings (overtime excluded) up to $1,000/month commencing after 90 days of disability. All bargaining unit members shall also continue to be covered by the existing Short Term Disability Insurance program, providing benefits of 66% of the employee's weekly earning (overtime excluded) during the first 90 days of disability (must use sick days first)."

Employer Proposal

The Employer proposed to add a new Section to Article 31 as follows:

"For the duration of this Agreement, bargaining unit employees shall continue to be covered by the same Short Term and Long Term Disability insurance programs as existed at the execution of this Agreement."

Union Position

The Union says its proposed language is superior because it specifies the basic features of the long and short term disability benefits, allowing members to be better informed about the benefits. The Union also says the Employers proposed language could lead to litigation because of the Employers use of the phrase "for the duration of the agreement." The Union questions whether that means only until the last day of the

contract term and questions how that term would be interpreted in contrast with the section 13 status quo provision of Act 312. The Union also questions what the phrase the programs will be maintained as they existed "at the execution of this agreement" means. The Union says the time at which this agreement is executed is uncertain and this language would allow the Employer to make a unilateral change in the program any time up to the time the agreement was executed.

Employer Position

The Employer says it attempted to respond to the Unions concern expressed in the hearing over whether it could unilaterally change the short or long term benefit if it did so for other Township employees by inserting the language that the bargaining unit employees would "continue to be covered by the same Short Term and Long Term Disability insurance programs as existed at the execution of this Agreement."

Discussion and Findings

The Arbitrator views the proposals as equal in practical effect. If the Employer tried to change the program or benefits the Union would likely turn to the Article 32 Maintenance of Standards clause in the agreement to challenge the change or to Act 312 Section 13 status quo provision if applicable. On the other hand the Employer has demonstrated through its last offer of settlement language that its intent is to continue to provide the current long and short term benefit *program* during the period of this contract. As a result of the Employers apparent agreement to continue the existing program the Arbitrator finds no harm, and perhaps more, clarity, in incorporating the Union's proposed language into the agreement.

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, on the issue of adding language to Article 31 addressing the long and short term disability program, the language proposed by the Union in its last best offer of settlement will be added to Article 31. [Effective upon issuance of the Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #31 – Article 31, Group Benefits, Section 8, Health Insurance for Surviving Spouse (economic)

The Parties Proposals

Union Proposal

The Union proposed to add the following to Article 31, Section 8:

"Effective immediately upon issuance of the Act 312 Award in MERC Case No. L04 B-7005, the twenty-four (24) month period shall be increased to a forty-eight (48) month period."

Employer Proposal

The Employer proposed the 'status quo', no change.

Union Position

Language in Article 31, Section 8 currently reads: " The Township shall provide health insurance coverage for the surviving spouse in the event of the employee death or retiree death for a period of twenty-four (24) months or remarriage whichever occurs first." The Union's proposal would increase the period from 24 to 48 months. The Union points to external comparable community contracts in support of its position. Four of the comparables with collective bargaining relationships have a defined contribution pension plan. The Union says under these plans the surviving spouse of a deceased employee or retiree will receive a defined retirement benefit and that in turn means that the employer paid retirement health insurance benefit will also apply to the spouse. (U-21) The Union says unlike these comparables, Plainfield Township has a defined contribution plan and therefore there is no link between the defined benefit and continuation of health care coverage for the spouse of a deceased employee or retiree. The Union says there is a substantial likelihood a surviving spouse will live beyond two years of their spouse's death and even more than four years, which makes the Union's proposed change not nearly as generous as those of the comparable communities.

Employer Position

The Employer says the Employer is trying to restrain cost increases in its health care costs and this extension of coverage for spouses of deceased employees or retirees would add to the Employer's health care costs. The Employer also says, in its post hearing brief, that the Union reliance on (U-21) linking health benefits with survivor pension benefits is flawed. The Employer says MERS does not include a spousal health

insurance component upon the employee's death. The Employer says if the contractual agreement between the Employer and the Union in the comparable communities does not contain the spousal benefit it does not exist and the Employer points to (E-41) which reveals that none of the comparable contracts provide such a benefit. The Employer also says the internal comparables are consistent with retaining the status quo.

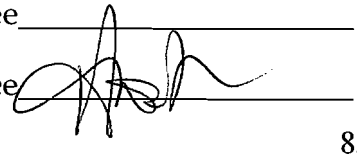
Discussion and Findings

The Arbitrator finds there is insufficient and conflicting evidence in this record to support the Union's proposed change. The parties, in their post hearing briefs, have presented directly opposite positions on the relationship of the MERS pension benefit to the continuation of health care coverage for a surviving spouse. The Union has presented exhibit U-21 in support of its position but little more than the statement in U-21 to support that link. Additionally, the Union refers to (U-43) which refers to external comparable contract provisions for retiree health benefits but this evidence merely reveals that the extent of employer paid health care coverage varies among the comparables and does not reveal whether the spouse of a deceased employee or retiree receives health care coverage and if so, for how long. The Union attorney, during the hearing testified, "The difference is that the organized external comparables, all four of them, have a defined benefit plan and has, you know, a duty death, a non-duty death, retirement benefit. And then from that flows the retiree health which, you, know, may or may not include spouse."

Additionally, neither the Union nor the Employer presented reliable evidence of what the actual anticipated cost of this change would be and the Union did not address the significance of this proposed change to its members or how the proposed extension from two to four years was determined. The Arbitrator finds insufficient evidence to support the Union's proposal at this time.

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, on the issue of adding the language to Article 31, Section 8 as proposed by the Union in its last offer of settlement, there will be no change from the current contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

Issue #32 – Settled by stipulation – Joint Exhibit #4

Issue #33 – Article 33, Miscellaneous, Section 7, Work by Non-Bargaining Unit Employees (economic)

The Parties Proposals

Union Proposal

The Union proposed, in its last offer of settlement, the following:

"If the Union's last best offer on Issue #11 is awarded, the Union agrees that the Grievance Settlement Agreement dated 12/22/04 is null and void effective immediately upon issuance of the Award.

If the Union's last best offer on Issue #11 is not awarded, the following language shall be added at the end of Article 33, Section 7 effective immediately upon issuance of the Award:

The Township agrees that it will not use Part-Time employees to fill-in for absences of Full-Time employees, and will instead use only off-duty Full-Time employees and/or Paid-On-Call Employees to fill in for absences of Full-Time employees in accordance with the prior practice of the parties."

Employer Proposal

The Employer proposed to delete the Grievance Settlement Agreement dated 12-22-04.

Union Position

The Union says this issue involves and is related to the issues involving use of part time v. fulltime personnel, allocation of overtime, layoff and recall, etc. embodied in issues 4, 5, 11 and 12 addressed previously in this opinion and award. This issue, like issues 4, 5, and 11 involves the question of whether the subject is a mandatory or permissive subject of bargaining. The Union argues that it is a mandatory subject of bargaining and puts forth substantially the same arguments in support of that position as put forth in its position and addressed in the related issues.

On the merits of the Union's proposal the Union provides the background that led to the Letter of Understanding No. 1, made part of this agreement and the Grievance settlement agreement entered into by the parties on 12/22/04. (U-18) The Union says that if the Union's last best offer on issue #11 is not awarded then the substance of the Grievance settlement agreement should be added to the end of Article 33 for clarity and to maintain the status quo. The Union says if the panel awards the Employer's status quo proposal on issue 11, then equity demands that the status quo be

maintained with respect to the Grievance settlement agreement. That's what its proposal does.

Employer Position

The Employer takes the position that this issue is a permissive subject of bargaining and reserves the right to challenge a panel determination that it is a mandatory subject of bargaining in appropriate forums. The Employer refers to its arguments on this issue made on the other issues in which it challenges the jurisdiction of the panel in support of its position on the permissive or mandatory subject of bargaining.

On the merits of the Employer's proposal to delete the Grievance settlement agreement dated 12/22/04 the Employer basically describes the same background as the Union leading to the development of the Memorandum of Understanding No. 1 and the Grievance settlement agreement entered into by the parties on 12/22/04. The Employer says the question of maintaining or not maintaining the language of the Grievance settlement agreement has both economic and practical considerations. The Employer says it is less expensive to use paid-on-call and part-time employees to fill vacancies than fill in with a bargaining unit employee on overtime. (T-913) The Employer also says there is the practical consideration with the current limitation imposed by the Grievance Settlement agreement which limits the Employer to use only paid-on-call employees to fill in for absences of full-time employees. The Employer says many paid-on-call employees work other jobs that would eliminate them from working twelve or twenty-four hour shifts during the weekdays. (T-915) The Employer would like to be able to use either paid-on-call or part-time employees to fill in for full-time staff as long as the full-time staff are allowed their contractually guaranteed amount of overtime. The Employer says the Union's desire to retain the language restricting the Employer's use of employees to fill in for full-time staff absences with only paid-on-call employees is merely intended to make the Employer's use of part-time employees as difficult as possible consistent with the Union's intent that part-time firefighters not be used to fill the positions of full-time firefighters. (T-877)

Discussion and Findings

On the question of whether this issue is a mandatory of permissive subject of bargaining the Arbitrator finds this issue is a mandatory subject of bargaining. The basis for that finding is the same basis and based on the same evidence cited in the discussion and findings sections of this Opinion and Award on issues 4, 5 and 11.

On the merits of the parties' proposals on this particular issue, the Arbitrator finds the Union's last offer of settlement the better course to follow for these parties at this time. The Employer says that it seeks to delete the Grievance settlement agreement for economic and practical reasons. But on the economic matter the Employer acknowledged that it is not more costly to use paid-on-call employees to fill in for full-time employees than it is to use part-time employees. (T-915) On the practical matter the Employer says it thinks the Grievance settlement agreement limits its ability to be as efficient as it thinks it can be by cutting out potential people who are qualified and capable of filling the position. (T-913) Yet no testimony or evidence was provided by the Employer to indicate that the Employer was ever unable to fill full-time employee absences with paid-on-call employees and testimony was provided that indicated that use of paid-on-call employees in this capacity was not extensive. Chief of Paterson testified that "However, we have used paid on-call people in the recent past to fill shifts. ---the deputy chief told me of two occasions that he can recall in the last six weeks where we had done that."

Also, as noted in the discussion and findings on issue #4, the Employer's desire to keep costs down while meeting its obligation to provide safe, adequate fire protection services to its citizens is understandable, but it must attempt to meet that obligation in the context of its duty to negotiate an agreement with the Union on wages and other conditions of employment. That balance appears to be what the parties attempted to address during the most recent negotiations leading to the current agreement and including the Letter of Understanding #1 and the Grievance settlement agreement entered into on 12/2/04. The language of the Grievance settlement agreement the Employer seeks to delete was part of the negotiations to achieve that balance. The Arbitrator finds it is a better course to try to retain or make any clarifying modifications to current language that leaves, as much as possible, that current balance in place, and let the parties continue to work within the parameters of that balance, gain experience with it, and determine what changes, if any, may be mutually agreed upon.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue of deleting the Grievance Settlement Agreement dated 12/22/04 or adding language to Article 33, Section 7 to more nearly comply with the applicable factors in Section 9. Therefore, the additional language in Article 33, Section 7 as proposed by the Union in its last offer of

settlement will be incorporated into the agreement. [Effective upon the issuance of the Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

The Employer delegate disagrees with both the Panels' Award in Issue No. 33, as well as the Panels' determination that Issue No. 33 involves a mandatory subject of bargaining.

Issue #34 – Article 33, Miscellaneous, new section re: training for non-bargaining unit employees (economic)

The Parties Proposals

Union Proposal

The Union proposed to add a new Section to Article 33 as follows:

"Non-bargaining unit employees must participate in the same fire department trainings that are scheduled in the Training Schedule calendars for bargaining unit employees."

Employer Proposal

The Employer proposed maintaining the 'status quo', no change

Union Position

This issue, like issues 4, 5, 11 and 33, involves the question of whether the subject is a mandatory or permissive subject of bargaining. The Union argues that it is a mandatory subject of bargaining and puts forth substantially the same arguments in support of that position as put forth in its position and addressed in the related issues. The Union, on this issue in particular, stresses the safety aspect of this proposal and says safety of employees under PERA has been recognized as a "condition of employment."

On the merits of the proposal, the Union says its member's safety is impacted by the Employer not requiring the part-time employees to participate in the same fire department trainings that are scheduled for the bargaining unit members. The Union says the Employer relies on part-time employees to staff its fire stations and go on fire runs and it should require the part-time employees to participate in the same trainings that it requires of the full-time and paid on-call employees. The Union says the

Employers position that part-time employees are getting training at other fire departments is not sufficient to guarantee adequate training, noting that currently only one of the part-time employees is a full-time employee of another fire department. The Union also questioned the method and quality and procedure undertaken by the Employer to assure that part time employees were getting adequate training from other Employers.

Employer Position

The Employer takes the position that this issue is a permissive subject of bargaining and reserves the right to challenge a panel determination that it is a mandatory subject of bargaining in appropriate forums. The Employer refers to its arguments on this issue made on the other issues in which it challenges the jurisdiction of the panel in support of its position on the permissive or mandatory subject of bargaining. The Employer, in its post hearing brief, specifically focuses in on the issue of safety as it relates to the question of whether this proposal should be considered a mandatory or permissive subject of bargaining. The Employer cited several MERC and Court decisions noting the decisions seeming to depend upon the extent of impact the proposed action would have on firefighter safety and argues that the proposal put forth by the Union here does not have a substantial impact on bargaining unit members safety. The Employer notes that the Union's proposal would not result in identical training and/or familiarity with those that might respond to a fire from another department through a mutual aid pact.

On the merits of the proposal the Employer says this issue isn't about safety, it's about the Union's desire to eliminate the Department's use of part time employees. The Employer says it has approximately 24 employees who are paid on call and 12 part-time employees. Record evidence indicated that nearly all of these part time and paid on call employees are employees of other Fire Departments. The Employer acknowledges it already provides the same training to paid on call employees as it does for the bargaining unit employees. But it points out that the part time employees, as a condition of employment, must maintain certification by the State of Michigan as a firefighter I and II and licenses and certifications as First Responder, CPR, Drivers license, AED and HAZMAT operations. (T-442) These are the same licenses and certifications required of full-time firefighters and part time employees must attend all trainings necessary to maintain these certifications. (T-470) The Employer testified that

there are certain other training sessions that it requires part time employees to attend. (T-475)

The Employer says that in addition to the added cost that would be required by mandating that every part time employee participate in the same training as bargaining unit employees, the Employer is concerned that requiring this training may be duplicative of training they are already getting from their home department (T-507) and that some of these employees other job commitments would conflict with the training schedule and may cause some of them to quit employment with the Township. (T-446) The Employer says the Union failed to present evidence showing that requiring part-time employees to attend the same training as full-time employees would significantly impact safety. The Employer notes that the Union never presented testimony or evidence that the part time employees were untrained, and that its primary concern was that they be trained together with bargaining unit and paid on call employees "so we have that sense of teamwork." (T-422)

Discussion and Findings

On the question of whether this issue is a mandatory of permissive subject of bargaining the Arbitrator finds this issue is a mandatory subject of bargaining. The basis for that finding is the same basis and based on the same evidence, MERC decisions, and court cases cited in the discussion and findings sections of this Opinion and Award on issues 4, 5, 11 and 33. Additionally, the Arbitrator finds that the subject of this proposal is related to and can have an impact on the safety of the bargaining unit members. The Employer argues that other firefighters from other departments may respond to scenes as part of a mutual aid pact and the unit members have no way of knowing what training they have had nor are they familiar with the particular equipment used by this Department. But evidence was presented that all firefighters in Michigan must meet certain qualifications and each Department must be responsible for and expect its mutual aid partners to be responsible for the training of their respective personnel and that those personnel meet the State required qualifications. The unit members have a right to expect that the extent of training provided to or required by the Employer for non-bargaining unit personnel will be such that it will ensure the safety of the bargaining unit members on the job. That is the subject of the Union's proposal and as such, this is a mandatory subject of bargaining.

On the merits, the Arbitrator finds the evidence does not support the Union's proposed change. The evidence revealed that part time employees are required to meet

and maintain the same basic licensing requirements as all other firefighters employed by the Department. Evidence also indicated that they are required to take certain additional training mandated by the Employer. Additionally, it must be recognized that these 12 part time employees join approximately 24 paid on call and 10 full-time employees to constitute the number of firefighters within the department. Skill development, teamwork and familiarity with the department equipment can be obtained on the job as well as in specific training.

The Arbitrator does believe the Employer has a responsibility to demonstrate to the bargaining unit members that it is adequately monitoring the training and skills of the part time employee just as it needs to for the paid on call and full-time employees. But that does not necessarily mean that it must require the participation of part time employees in the same training as bargaining unit employees. The Employer's concern that such a mandate would be duplicative and could result in loss of some employees is legitimate. The Union notes, in its post hearing brief, that the Union's proposal does not dictate the number of training sessions the Employer must have. It would be counter productive to the Union's concern for adequate training if, because of the cost to the Employer of having to pay the part time staff to attend training sessions, the Employer reduced the number of training sessions for all of its employees.

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, on the issue of adding a new section to Article 33 as proposed by the Union in its last offer of settlement, there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

The Employer delegate agrees with the Panels' Award in Issue No. 34, but disagrees with the Panels' determination that Issue No. 34 involves a mandatory subject of bargaining.

The Union delegate agrees with the Panel's determination that the issue is a mandatory subject of bargaining, but disagrees with the Award on the merits.

Issue #35 – Article 35, Duration

The Parties Proposals

Union Proposal

The Union proposed to modify Article 35 to replace "March 31, 2004" with "March 31, 2009."

Employer Proposal

The Employer proposed to modify Article 35 to replace "March 31, 2004" with "March 31, 2008."

Union Position

The Union points out that if the Employer's proposal is awarded on this issue the contract will be expiring less than a year from the time this Award is issued. The Union says its proposal will provide the parties a period of "labor peace" and allow the parties to implement and gain experience with the new contract provisions before embarking on new contract negotiations. The Union says the comparables should not be a major consideration in reaching a finding on this issue because none of the comparables were engaged in an Act 312 proceeding leading to the adoption of their current contracts as these parties were.

Employer Position

The Employer says the expiring contract was essentially a four year agreement and that just because this Act 312 proceeding took as long as it did beyond the expiration date of the current contract is not justification for seeking a five year contract. The Employer says a review of the comparable community contracts supports a shorter, rather than a longer contract.

Discussion and Findings

The arbitrator finds the Union's position to be the stronger position on this issue. The current contract had a beginning and ending period of three years and 6 months. By the time this Award is issued the new contract, under the Employer's proposal, would have a beginning and ending period of 8 months and under the Union's proposal one year and 8 months. The Arbitrator agrees with the Union that the parties are better served by allowing time for the provisions of this agreement to take effect and to perhaps let the emotions cool down before entering into negotiations on a new

contract. Hopefully the parties will be successful in those future negotiations so that they can return to a more traditional three or four year contract period.

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, on the issue of revising the language in Article 35, the proposed language to modify Article 35 as proposed by the Union in its last offer of settlement will be incorporated into the agreement. [Effective upon issuance of this Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #36 – Proposed new Article re: Food Allowance

The Parties Proposals

Union Proposal

The Union proposed to add a new Article entitled "Food Allowance" effective no later than 30 days after issuance of the Award as follows:

"All bargaining unit members shall receive a food allowance of four hundred seventy-five dollars ($475.00) annually. The first annual payment for 2007 shall be made within thirty (30) days of issuance of the Act 312 Award in MERC Case No. L04 B-7005. Annual payments thereafter shall be made by the second Monday of April of each year (i.e., payment made at the same time as the boot allowance)."

Employer Proposal

The Employer proposed the 'status quo', no change.

Union Position

Members of the bargaining unit do not currently receive a food allowance. It is undisputed that the majority of the full-time firefighters work a 24-hour shift and are not permitted to leave work to go home for meals. The fire stations have kitchens but firefighters are responsible for purchasing their own food. The Union points to external comparables in support of its position. It notes that of the five comparable community contracts who have collectively bargained agreements, three have a provision for a food allowance. (U-20) Union exhibit (U-20) reveals that the food allowance payment by those comparable communities currently paying a food allowance is: $575 annual as of

7/1/06; $150 annual; $7.50 each day worked as of 7/1/07 (assuming 100 days worked per year = $750 annual). The Union says the Employer's position of providing no food allowance is not supportable given that three of the four established unionized comparables (the Union says Grand Haven Township should not be considered an "established" unionized comparable because the first ever contract was just recently adopted) and three of the six comparables have a food allowance.

Employer Position

The Employer, in its post hearing brief, says this issue is purely about money. The Employer says the Union shaped their request in the guise of compensating employees for the "extra expense" of eating their meals in the station, but there is no extra expense of eating their meals in the station, or if there is it is minimal. The Employer says it also must be recognized that the bargaining unit employees only work nine shifts a month. The Employer notes that the external comparable communities are split on the issue with three having a food allowance and three not. (E-20) The Employer says none of its other Township employees receive a food allowance.

Discussion and Findings

This is a straightforward issue and the Arbitrator tends to agree with the Employer, it is about money. The Arbitrator has viewed this issue, along with the other issues in this proceeding involving money, in the context of Act 312, Section 9 factors. Particularly for those issues involving money, the Arbitrator has tried to give proper consideration and weight to the factors described in subsections (c)((d)(f) and (h) of Section 9. This issue is therefore viewed in the context of the panel's decision on issues 13-17, 19, 20, 21, 26, 27, and 39. The Arbitrator also agrees with the statement made in the Employer's post hearing brief that "It is the purpose of the Act 312 to replicate an agreement as close to what the parties would have agreed to, if able."

In the context of the decisions made on other economic issues in this Award the Arbitrator finds the Union's proposal for the annual food allowance is reasonable and, again, in the context of those other decisions, more likely to be close to what the parties would have agreed to. As noted, the external comparables are split evenly on this issue.

Another consideration was the dollar amount sought in the proposal. The average annual payment among the comparable communities which have a food allowance will be $492 on 7/01/07. (U-35) This contract will extend to April 2009 and the Union's proposal is that it be prospective, not retroactive. The annual amount sought by the Union of $475 appears reasonable. The Employer notes that the

employees work only 9 shifts a month. At that rate the employee's daily allowance would be about $4.40 (9 shifts x 12 months = 108 days divided into $475 = $4.40 per day). The amount sought appears to be reasonable in comparison with the Comparables.

The Employer notes this will add roughly the equivalent of a 1% increase to the unit member's annual wage. That is true, but when considered in the context of the wages granted in this Award, and the fact that three of the comparable communities provide an annual food allowance averaging $492 in addition to wages, this is not an unreasonable benefit. The other feature of the benefit is that it is an equal amount for each firefighter. Unlike the Union's proposal for a longevity payment, this payment is equal for all members – which it should be, considering food costs the same for everyone – and is a fixed amount that will not change over time unless agreed to by the parties.

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, the Agreement will be revised to add a new Article containing the language proposed by the Union in its last offer of settlement. [Effective upon the issuance of the Award]

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #37 – Withdrawn

Issue #38 – Article 33, Miscellaneous, new section re: limiting requirement to be instructor (non-economic)

The Parties Proposals

Union Proposal

The Union proposed to add a new Section to Article 33 as follows:

"No bargaining unit employee shall be required to be a lead instructor for a CPR class, nor shall be required to be a certified instructor of any kind."

Employer Proposal

The Employer proposed the "status quo," no change.

Union Position

There is no language in the current contract addressing this issue. The Union points out that under Article 33, Section 5 of the current contract all bargaining unit members are required to maintain certain licenses and certifications, including CPR certification. In order to obtain CPR certification classes have to be presented by a person with a CPR instructor certification. Record testimony revealed that several bargaining unit employees have voluntarily obtained the CPR instructor certification and the Employer has paid for the training and for the time spent in training, including overtime, if necessary. The Union testified that during the negotiations the Union had sought to clarify that the Employer would pay for any expense related to the cost of CPR instructor training and that the unit members doing the training do so only for Plainfield Township personnel. The Union says some of its members do not feel comfortable training others, outside the Department. In its post hearing brief, the Union offered alternative language for the panel's consideration that includes a statement that "No employee shall be required to become or remain a certified instructor." The language further states however, that the Employer may *require* a unit member who holds that certificate to be a lead instructor for CPR classes for Plainfield Township fire department personnel only and that the unit member could *volunteer* to provide instruction for a class that includes persons from outside the Plainfield Township fire department. The Union says the Union's way of attempting to address this issue in the Agreement is preferable to the Employer's approach of no language at all, which, the Union says, would most likely lead to further litigation between the parties when the Employer attempts to mandate CPR instructor certification or those who are certified to serve as lead instructors for classes.

Employer Position

The Employer objects to the Union's proposal indicating that currently there is no limitation regarding the Chief' ability to have bargaining unit employees conduct CPR training classes or to become certified instructors. The Employer says this is the way it should be. The Employer says it has paid for the training associated with employees obtaining CPR instructor certification and that having bargaining unit members certified as CPR instructors is the most efficient way to provide CPR

certification to employees who must maintain certification as a job requirement. The Chief also testified that there is also efficiencies in providing training to Plainfield Township firefighters and other fire department employees of other communities and classes sometimes include both. The Chief testified that as a service to community groups, i.e. school bus drivers, lifeguards, school cafeteria workers, etc. the Department conducts CPR classes for these groups four or five times per year. (T-565) The Chief acknowledged that during negotiations the Union's bargaining unit team explained that some employees were not comfortable teaching CPR classes to individuals in outside groups such as bus drivers, lifeguards, etc. (T-567) On the issue of training firefighters, the Chief indicated he is a strong proponent of more, not less, regionalized training, and he would not want the Department to be limited in conducting training for outside the department fire service members. The Chief expressed concern that any language in the contract on training of CPR might impact his ability to require employees to conduct training on other topics. (T-593)

Discussion and Findings

The Arbitrator has reviewed the record testimony carefully and has crafted language that attempts to accommodate the parties' positions and concerns as best as possible. The Employer urges no language at all, but the Arbitrator believes the Union's view is more likely correct, no language could lead to more animosity between the parties. On the other hand, the language of the Union's last offer of settlement is impractical.

It is in both parties' interest that the bargaining unit members have within their ranks, members who are CPR instructor certified and that those individuals conduct CPR training for employees who must have it to retain their jobs. With no language in the contract it is unclear whether the Employer has the authority to mandate that employees become CPR instructor certified, and if the Employer doesn't have this authority it would have to turn to outside or non-bargaining unit sources for CPR instruction. This doesn't make sense. It also makes sense that training classes be taught including other fire departments' personnel when feasible to do so. The language would require that to occur if feasible. What it would not do, is mandate that unit members conduct classes for non firefighter personnel. But it doesn't prohibit them from doing so voluntarily.

Taking all of these factors into consideration, the panel finds the following language, crafted by the Panel, to more nearly comply with the

applicable factors in Section 9. Therefore, on the issue of adding a new section to Article 33, as proposed by the Union, the following new section will be added to Article 33 stating [Effective upon issuance of the Award]:

"The Employer shall have the authority to seek volunteers within the bargaining unit, or if no bargaining unit members volunteer, to select bargaining unit members to obtain and maintain CPR instructor certification and to serve as lead instructor for the following: 1) to conduct CPR certification classes for Plainfield Township fire department personnel only, 2) to conduct CPR certification classes sponsored by Plainfield Township which include fire service personnel from other communities and Plainfield Township personnel who are participating in the class to obtain CPR certification or re-certification. The Employer shall pay for all costs related to the bargaining unit members' obtaining and maintaining CPR instructor certification and for time and expenses related to instruction provided by the lead instructor(s)."

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

Issue #39 – Proposed new Article re: longevity benefit (economic)

The Parties Proposals

Union Proposal

The Union proposed to add a new Article entitled "Longevity Pay" to be effective December 2007 as follows:

Effective December 2007, each bargaining unit employee shall receive an annual longevity payment, to be paid by separate check together with the first regular paychecks paid in each December, in accordance with the following schedule and based on the number of years of completed service the employee had as of the most recent December 1:

0 to 4 years of completed service:	$-0-
5 to 9 years of completed service:	$600.00
10 to 14 years of completed service:	$900.00
15 to 19 years of completed service:	$1,200.00
10 and over years of completed service:	$1,500.00

All payments will be prorated upon termination of employment (and payable to beneficiary in the event of death), with the pro rata share being computed to the nearest full month of completed service.

Employer Proposal

The Employer proposed the "status quo," no change.

Union Position

The Union urges the panel to consider the external comparable communities when reviewing this proposal, particularly those which have an established, unionized labor relationship. It notes that all four have some form of longevity pay. (U-37) The Union says a fifth comparable, Grand Haven Township, also supports the Union's position because it has a percentage benefit system based on income and with a graduated percentage based on longevity. The Union says that the dollar amounts requested at the various steps in its proposal are also reasonable, considering they are less than the average amounts paid in the comparables. (U-37) The Union says awarding this proposal would compensate for the inferior wages paid to bargaining unit members in comparison with these comparables. (U-38)

Employer Position

The Employer says that one of the reasons the Union gave for advancing the proposal is that it is an incentive for a member to remain in the position once the maximum pay level has been reached. (T-605) The Employer notes that there are several other employee benefits linked with additional length of service and this one is not needed for that purpose and is costly. The Employer provided testimony of Bob Homan who made the observation that the trend was showing communities scaling back their longevity benefits. He referred to Norton Shores as a community that had scaled back its benefit for those hired after July 1, 2000 and that Muskegon Township had a very modest benefit capped at $500. (E-32) The Employer noted that none of its non-union employees or employees within the PTMEA bargaining unit have a longevity benefit. The Employer says the cost of this benefit would be substantial. The cost would be $7,500 in 2007, $8,700 in 2008 and grow each year from there. The Employer notes that in 2008 every member of the current bargaining unit would receive some level of longevity benefit, which the Employer says, contradicts the Union's statement that this is needed as an additional incentive for the member to remain in the position.

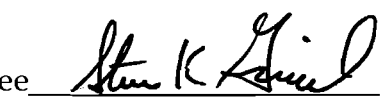
Discussion and Findings

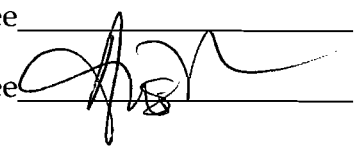
The Arbitrator has analyzed this issue similar to that done with issue 36. This issue, like issue 36, is an issue primarily involving money. Again, the challenge is to

give proper consideration and weight to the factors described in subsections (c)((d)(f) and (h) of Act 312, Section 9. Like issue 36, this issue is therefore viewed in the context of the panel's decision on issues 13-17, 19, 20, 21, 26, and 27. As with all of the issues in this proceeding, the Arbitrator has attempted to reach a balance that fashions an agreement that is as close as possible to what the parties would have agreed to.

In the context of the decisions made on other economic issues in this Award the Arbitrator finds the Employer's proposal for the status quo is reasonable and, again, in the context of those other decisions, more likely to be close to what the parties would have agreed to. On this issue, the external comparables tend to favor the Union's position, but not overwhelmingly. And on this issue, in contrast to issue 36, the internal comparables favor the Employer. It is true that none of the internal comparables favored the Union on issue 36, but neither do any of the other Township employees work 24-hour shifts. This proposal, if adopted, would also be quite costly to the Employer and would increase in cost over time. The Arbitrator believes the decisions of this panel on wages and other benefits provide a proper balance between the Employees overall compensation and the Employer's ability to meet those costs. It also appears, based on the longevity of the current bargaining unit staff, that the absence of this benefit will not significantly influence a members' decision to remain or leave the position.

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, on the issue of adding a new Article to the Agreement addressing longevity pay as proposed by the Union, there will be no change from the current contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

SUMMARY

This concludes the award of the panel. The signatures of the delegates herein and below, along with the signature of the Independent Arbitrator below, indicate that this opinion and award is a true statement 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: **Plainfield Township and Plainfield Township Fire Association**
MERC Case No. LO4 B-7005 (Act 312)

Date: 8/24/07

William E. Long
Arbitrator/Chair

Date: 8-15-07

Steven K. Girard
Employer Delegate

Date: 8/21/07

Alison L Paton
Union Delegate