2207

STATE OF MICHIGAN
COMPULSORY LABOR-MANAGEMENT ARBITRATION

In the Matter of the Arbitration between

THE CHARTER TOWNSHIP OF SHELBY
(FIRE DEPARTMENT),

Public Employer

-and-

Opinion and Award
Of The Tripartite Panel
Donald F. Sugerman, Chairman
Kelly A. Walters, Employer Delegate
Alison L. Paton, Union Delegate
In MERC Case No. D03 K-2611

SHELBY TOWNSHIP FIREFIGHTERS'
ASSOCIATION, LOCAL 1338

Labor Organization

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For the Employer: Craig W. Lange, Esq. and Kelly A. Walters, Esq., of Roumell, Lange & Cholack, P.L.C., Troy, MI

For the Union: Alison L. Paton, Esq., Detroit, MI

OPINION

I
INTRODUCTION

This case involves compulsory arbitration and arises under P.A A. 312 of 1969, being MCL 423.231 *et. seq.* ("Act 312"). The parties are the **Charter Township of Shelby** ("Shelby," "Employer" or "Township") and the **Shelby Township Firefighters' Association, Local 1338** ("Union" or "IAFF").

The "current" collective bargaining agreement ("Agreement" or "CBA") expired on December 31, 2003, but under Act 312 its terms and provision continue in effect until a new agreement is made. The petition giving rise to this proceeding was filed by Shelby, with the Michigan Employment Relations Commission ("MERC") in January 2004. The undersigned was appointed by MERC as the impartial arbitrator and chairperson of the arbitration Panel on March 18, 2004.

A pre-hearing conference was held via telephone on July 6, 2004. In that conference call, the parties agreed that further negotiations would be beneficial, and that it would be helpful, in the event negotiations did not result in a complete agreement, that a decision on comparable communities would assist in expediting the hearing phase of this case.[1] To that end, a schedule was established, by which the parties would nominate comparable communities, submit data thereon, exchange rebuttal data, and file briefs.[2]

When further negotiations did not produce a new contract, the matter was set for hearing. The hearing was held on July 18 and 19, 2006. Last Offers of Settlement were filed in early October 2006, and the record was declared closed as of October 13, 2006. A panel meeting was held on November 16, 2006. Post-hearing briefs were filed March 17, 2007.[3]

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[1]The word "comparble" or "comparables" used herein means the communities selected pursuant to Act 312; sometimes called the "external comparables." Units of employees in the Township may sometimes be referred to as "internal comparables."

[2]Section 9(d) of Act 312 requires that the Panel consider 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 employment in 'comparable communities.'"

[3]The chairman is solely responsible for this Opinion and Award.

II
COMPARABLE COMMUNITIES

The Employer, proposed the following townships as being comparable to Shelby: Bloomfield, Canton, Clinton, Independence, Redford, Waterford, West Bloomfield. The IAFF proposed Clinton and Harrison Townships, and the cities of Roseville, St. Clair Shores, and Sterling Heights.

Unlike Ohio, where the State determines the identity of comparable communities, Act 312 provides no guidance on this subject. The Employer notes that it has nominated only townships and argues, because of different taxing authority, it is improper to use cities as comparables to townships. In support of this proposition, it cites *City of Monroe and Police Officers' Labor Council Command Unit*, MERC No. D98 A-0043 (2000), a decision issued by the undersigned and, *Charter Township of Van Buren and Police Officers' Labor Council*, MERC No. D97 H-1241 (Long, 1999).

The Union, on the other hand, points to the fact that its comparables are all in Macomb County, as is Shelby, and that Clinton and Sterling Heights abut Shelby. And the IAFF disdains the comparable's proposed by the Employer as being, "far flung," in that they are in Wayne and Oakland counties – at a considerable distance from Shelby. In addition, the Union notes that it has proposed the identical comparables used in the prior Act 312 proceeding which resulted in the "current" CBA.

And the IAFF accuses the Employer of "comparable community shopping" inasmuch as in the prior Act 312 case, Shelby proposed Canton, Waterford, and West Bloomfield

townships, and the City of Royal Oak as being comparable communities. To promote stability, the Union argues that its list of comparable communities should be used.

DISCUSSION

I do not see a long-standing history with regard to comparable communities. Nothing in the last Award refers to comparable communities. Presumably, this is because the matter ended with a stipulated award. That is the claim of the Township and it was not contradicted by the Union. Moreover, simply nominating various communities on a single prior occasion does not establish a history or, for that matter, a basis for selecting those particular entities from that point on. However, the fact that in the prior proceeding, Shelby nominated a city as a comparable community, is significant. To some extent, it undercuts the claim made in this proceeding that a city cannot be comparable to a township.

The Union's argument of comparable community shopping is somewhat disingenuous. Undoubtedly there is some degree of such shopping on the part of all Act 312 participants. It would be highly unusual to find a party proposing comparable communities for which the data did not support some or all of its claims on the significant issues in dispute.

The fact that the comparable communities proposed by the Employer were in Wayne, Oakland, and Macomb counties, and those proposed by the Union were all in Macomb County is of little moment. The counties of Wayne, Oakland, and Macomb, comprising a recognized region – southeastern Michigan – is a valid area for comparison. Limiting comparable communities to those with mutual assistance pacts with Shelby does not seem

reasonable under the circumstances, because such pacts are generally limited to those localities in fairly close geographical proximity. I do not find that this factor is of great concern in deciding which communities are similar in "size and texture" to Shelby.

The following matrix was created to assist in the process of determining which communities were comparable to Shelby. Shelby and Clinton form the base, inasmuch as both parties agreed that Clinton is comparable to Shelby. The horizontal column headings are: Community (COM), Population (POP), Median Housing Value (VAL), Median Household Income (MHI), Median Family Income (MFI), Per Capita Income (PCI), Taxable Value/Per Population (TAX in billions/PP), Staff (full-time/part-time). The communities are in shorthand in the first vertical column.[4]

COM	POP	VAL	MHI	MFI	PCI	TAX/PP	F-T/P-T
Shelby	65	196	65	76	30	2B/31	51
Clinton	96	145	50	61	26	2.2B/23	81
Harris	24	167	52	67	29	672M 27	27
Rose	48	98	41	49	19	1 22	42
St. CS	63	124	49	59	25	1.5 24	43
Ster Hts	124	161	60	70	25	3.7 30	92
Canton	76	194	72	84	29	2.2 29	52
Ind	33	204	74	84	33	1 33	36 12
Red	52	105	50	56	22	1 20	39
Water	73	144	55	64	27	1.9 26	60 25

[4]Items circled represent numbers within the base line; squares outside the base line; without either borders on the base line.

Only one community seems like a perfect match for Shelby/Clinton. It is Waterford. Virtually every one of the criteria shows that Waterford is within the parameters of the baseline. While the number of full-time firefighters in Waterford (60) falls within the baseline (51-81), the only variation is that Waterford has a compliment of part-time or volunteer firefighters (25). Using the data above, I have determined that Harrison, Sterling and Canton share a sufficient identity with the baseline to include them as comparable communities.

On the other hand, the other communities are not sufficiently similar in a representative number of criteria. By way of example, Roseville has a much smaller population, a lower median house valuation, a lower median house income, a lower median family income, a lower per capita income, and a smaller tax valuation. Although its tax per population (22) approaches that of Clinton (23), and the number of full-time staff (42) nears that of Shelby (51), these factors are not alone enough to elevate Roseville to that of a comparable community.

The Union contends that it is inappropriate for the Panel to consider the wages, rates of pay, and other terms and conditions of employment of other bargaining units in the Township, as well as other employees not covered by collective agreements. These groups are frequently referred to in Act 312 decisions as the "Internal Comparables." In this regard, the Union cites *County of Wexford v. POAM*, in which the Court of Appeals held there was

no requirement under Section 9 of Act 312 of a comparison between the employees in the Act 312 case and those of other employees of the same employer.

While the *Wexford* court may have limited its decision to the application of Section 9(d), I must respectfully disagree with its broader conclusion. One cannot look at the Act 312 criteria in a vacuum. The wages and other economic items given to one unit have a tendency, at least in the long run, to impact other employees of the employer, those who are represented for bargaining, as well as those who are not.

Is it conceivable that one unit of employees might obtain a benefit, e.g., improved health care, an added holiday, increased vacation entitlement, to mention but a few, without other employees or bargaining agents clamoring for them as well at their next available opportunity to do so? To ask the question is essentially to answer it. Accordingly, I believe it appropriate to consider the so-called internal comparables, whether this is done under Section 9(d), or under subsection (h) is of little moment.

III
PREFATORY STATEMENT

Decisions of the Panel are controlled by ¶ 9 of Act 312. It provides as follows:

> Where there is no agreement between the parties or where there is an agreement, but the parties have begun negotiations or discussions looking for a new agreement or amendment of the existing agreement, then wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:
>
> (a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs. (d) comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.
(ii) In private employment in comparable communities.

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

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

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

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

It is now well established that the Panel must consider each of these factors in deciding which last offer of settlement most nearly complies therewith. The weight to be accorded each factor, however, is left to the Panel's discretion.

SHELBY'S FINANCIAL CONDITION

"The interests and welfare of the public and the financial ability of the unit of government to meet those costs" is a factor that must be considered by the Panel. Indeed, an "inability to pay" is often raised by units of government where there is economic upheaval; frequently older communities suffering from significant loss of population, loss of manufacturing, commercial, retail and wholesale enterprises, and the corresponding diminution of their tax base, while at the same time encountering infrastructure deterioration and the need for increased police and fire services. Shelby does not fall into this category.

On the contrary, Shelby is a well-run and economically sound township. It is to be commended for the prudent management of its resources. It is a growing community with a solid economic base.

Having said this, one must hasten to add that the overall economy of the State is in turmoil. And while local units of government are independent, they are not completely so. Thus, the State's situation and the impact it may have on local communities, mandates prudence. This appears to be the mantra of Shelby. The Panel agrees with this concept finding, overall, that Shelby's financial ability to meet the increased costs of the Award in this case will not be adversely impacted.

CONTRACT DURATION

By stipulation of the parties, the Agreement in this case shall begin January 1, 2004, and continue in full force and effect through December 31, 2009.

WAGES

The parties' competing last offers of settlement differ over the life of the Agreement, on average, by four-tenths of one percent per year. Their respective offers are as follows:

EMPLOYER	YEAR	UNION
2.50%	2004	3.00%
3.00%	2005	3.00%
2.75%	2006	3.00%
2.50%	2007	3.00%
2.50%	2008	3.00%
2.50%	2009	3.00%

As noted, the parties agree on the increase for 2005. Nothing more need be said about the increase for that year. Nothing more will be. The increase for 2005 is 3.00%.

As is to be expected in this type of dispute, each party focuses on the factors supporting its respective position. This includes such factors as averages for two years where there was no increase in one of them; challenging the computation of an annual increase when it was granted semi-annually; factoring increases for fiscal years used by some of the comparable communities, as opposed to calendar years used by Shelby and other comparables; one focuses on actual dollar amounts, while the other uses percentages, and; one uses the "external" comparables, while the other believes the internal comparables are most important.

WAGES - 2004

For 2004, two of the comparables received increases of 3%, and one received an increase of 3 and a fraction percent. Two comparables received no increases. The Union contends that because in one of the comparable units, employees' work hours were reduced from 56 to 53 per period, it amounted to an increase in earnings of 5.7%. That is, of course, one way to look at the situation. The other side is that no increase was awarded, notwithstanding the fact that the hours were somewhat reduced. In other words, no additional new money was provided.

In the other comparable in which there was no increase, the Union believes it appropriate to average the increase granted in the prior year, and by doing so, it arrives at an increase of 2.75% for 2004. This is a stretch. Why a larger increase was given in the first year and no increase in the second is not explained in this record. Thus it is appropriate to look at each year separately. There is a split among the comparable communities. Three granted wages increases corresponding to that sought by the Union, while two gave no wage increases at all.

Among the internal comparables, it is commonplace to examine agreements with certified police officers when determining wage rates for firefighters, and *vice-versa.* Both groups are involved in protecting the public safety. In fact, in some jurisdictions, there are public safety units in which the employees of a single department perform the functions of both police officers and firefighters.

An increase of 2.5% for 2004 was reached through mutual negotiations between the Employer and the POAM, the bargaining representative of patrol officers. Given all of the considerations above, the Panel concludes that the Employer's last offer of settlement should be adopted.

WAGES - 2005

For reasons already set forth elsewhere above, the wage increase for 2005 shall be 3%.

WAGES - 2006

For 2006, Canton, Clinton, Sterling, and Waterford granted increases of 3% to its firefighters. Harrison granted them an increase of 3.5%. Unanimity among the comparable communities preempts the smaller increase given by Shelby to its police officers. For 2006, the last offer of the Union will be adopted.

WAGES - 2007

The comparable community history for 2007 presents slightly different facts. Three of the contracts have been settled: Canton, Clinton, and Harrison. The increases are 3%, 3%, and 3.25%, respectively. Although the effective dates in two of those units are on a fiscal year basis (July and April), it is of little matter inasmuch as the increase for the full year is exactly the same. The contracts in Sterling and Waterford for 2007 have not yet been determined. It is impossible to predict what bargaining in Sterling and Waterford will

produce by way of wage increases. But there appears to be a pattern that strongly suggests, absent other factors, that they will receive something in the 3% neighborhood.

As before, I find that the amount negotiated between Shelby and the POAM for 2007 was not persuasive as a determining factor. In addition, I note, the testimony of the Union's president, who states that police officers and firefighters in the Township have not been considered *pari passau.* For these reasons, the Union's last offer of settlement will be adopted.

WAGES - 2008 AND 2009

The only comparable with a settled contract for 2008 is Clinton. It has awarded firefighters an increase of 4% for that year. No information is available for many of the comparable communities for 2009. The Employer's agreement with the POAM covers 2008. Affected employees will receive an increase of 2.5% for that year.

Southeastern Michigan, particularly the tri-county area, is heavily reliant upon the automotive industry. For the last several years, that industry has been in turmoil. The losses by the Big Three and by many of its suppliers, has been staggering. There may be a light at the end of the tunnel from other than an oncoming train. Indeed, some recent economic reports from the Big Three have been encouraging. Some suppliers, in bankruptcy, are beginning to emerge. Some economists expect a recovery in 2008.

Given the state of affairs, and given the general pattern of increases for the preceding years, it seems likely that a 3% increase will be pattern, will fairly track the cost of living

index, is affordable, and should be awarded. Thus, the Union's last offer of settlement for 2008 and for 2009 will be adopted.

PROMOTIONS

Almost 50 years ago, authors Slichter, Healy and Livernash had this to say about "Seniority":

> IT IS DOUBTFUL whether any concept has been as influential, pervasive, and troublesome in collective bargaining as that of seniority. For our purposes, seniority will be defined simply as an employee's length of service with the company for which he works. In any given collective bargaining relationship, however, the word acquires special meaning through the language of the agreement, but through practices followed in the daily administration of the contract, and not uncommonly through arbitration decisions.[5]

And nowhere is the concept and practice of awarding promotions by seniority more firmly rooted than in the public fire departments of this country.

The dispute here rises from the Employer's proposal to use an independent Assessment Center, rather than strict seniority, for filling the positions of Battalion Chief, Chief of Training, Fire Marshall, and EMS Coordinator. The Union opposes such changes.

The rationale for the Township's proposal may be summarized as follows: The 21st Century, with its great emphasis on technological change, requires administrators, managers, and supervisors with different skill sets and different abilities. To carry out its mission, the

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[5] *The Impact of Collective Bargaining on Management*, The Bookings Institution, Washington, D.C., 1960, at p. 104.

Township needs the most qualified personnel in the subject positions. This is now more important than ever. The use of an assessment center will insure that the best candidate is selected and, at the same time, will eliminate what Shelby perceives as an inherent problem in the current system: An employee accepting a promotion because of his/her seniority for reasons other than a sincere interest in the job itself.[6]

The Employer finds support for its position in that Sterling uses an assessment center for the positions of chief of operations, chief of training, and fire marshall. It also relies upon the fact that the Agreement with its Police Command Officers Association provides for promotions to all unit positions (sergeant, lieutenant, captain) through an assessment center.

It is appropriate at this juncture to examine each of the classifications for which a change in the selection process is being sought. Currently, to become a battalion chief, an individual must have five years of service as a line officer, and hold the certifications Fire Officer I, II, and III. The Union argues that experience on the fire ground is the paramount criteria for successfully performing as a battalion chief. There is no probative evidence that the procedure currently being used for selection is unworkable.

Further, none of the other comparables use assessment center testing to fill this classification. Section 11.3 of the CBA provides a method for the Employer to remove an employee who is unable to carry out the duties and responsibilities of a position to which s/he has been promoted. Admittedly, this requires close oversight, careful evaluation, and

[6]Perhaps, it was suggested, simply to increase one's FAC.

documentation by the Chief or his designee. But it is an available tool in the event the chief is not performing to the standards set for the position. For these reasons, the assessment center proposal concerning the selection of battalion chief cannot be adopted.

Chief of Training. Eligibility for this position requires two years in the training division, and the following certifications: Fire Officer I, II, III, Fire Instructor, EMS Instructor, Coordinator. As already noted, the only comparable using assessment center testing for this position is Sterling. There is no chief of training position in Canton, and it is not clear who, if anyone, performs the duties and responsibilities of the position, or how training is imparted. Canton utilizes the classifications of Chief of Training and Training Officer. On the other hand, Harrison does not utilize either classification, and it cannot be determined who performs these functions, or how such training is delivered. The same applies to Waterford.

The "Training" of fire suppression and emergency personnel has changed from a routine function to become one of the most important, if not the most important, factors in insuring meaningful and successful fire department operations. This training works to the benefit of the public, and the safety of the officers themselves. It is ongoing and critical.

Unlike hands-on experience for battalion chiefs, the training chief in Shelby is unique. Besides performing 50% of the training directly to fire officers, the person in this position is responsible for training others who will in turn, train fire officers. Unlike the position of

battalion chief, experience alone may not be sufficient to perform this vital work. Teaching requires a special talent. Everyone is not equipped to do this.

Given the discussion above, in order to give effect to the seniority system, while at the same time, moving to insure ability and capability of the person selected for this important position, the alternate proposal of the Union, (set forth on pp. 24-25 of it's post-hearing brief), will be adopted.

Fire Marshall (and Deputy Fire Marshall). First, the Employer proposes to require Fire Officer I, II, III certification for this position. The Union contends that the aforementioned certification is, essentially, for employees in fire suppression, not for those in inspection. The Union further notes that, "Under the state law mandating certification to perform fire inspections, the Michigan Fire Fighters Training Council has adopted the MFPA Inspector course work standards . . . that are long and rigorous." Whether this latter item is a requirement under the CBA, or by reference, is not clear. It may, however, may be made a part of the Agreement. To introduce the assessment center process into the equation, the Union's proposal (pp. 28-29 of its post-hearing brief) will be adopted.

EMS Coordinator. Other than Sterling, none of the comparables use assessment center testing for this position. The Union's last offer of settlement will be adopted.

The Union has two proposals on promotions. It claims that, at times, sufficient training has not been available to permit a fire officer to obtain certification required for a promotion. To alleviate this problem, it proposes that where such a situation exists, a senior

officer be promoted, with the understanding that s/he must obtain the necessary certification as soon as possible. The Employer notes, however, that this could lead to an anomaly: An employee being permanently promoted, in other words, employed beyond the six month probation period, and then failing to secure the certification. It is not clear from the anecdotal evidence whether such an incident has ever occurred, and therefore it is more of an effort to ward off a potential problem. The Employer's reservation is well taken.

If an employee can demonstrate that training required for a promotion was not provided through the Employer, s/he is to be treated as though the training had taken place, and that it was successfully completed. The employee must complete the training at the first opportunity it has been made available. A probationary period for the subject employee shall continue from the effective date of the promotion, and for six months from the date of the "delayed" certification.

FIRE CHIEF/RETURN TO BARGAINING UNIT

Under Article 11.4(B)(3), an employee who leaves the bargaining unit to become Fire Chief is entitled to return to his/her former position, unless s/he is terminated for reasons constituting just cause. The Union contends that this provision is the result of "oversight." It claims that the original intent of the parties was that the chief would not be permitted to return to his/her former position where that individual was eligible for a regular service retirement.

The Employer contends that at the time the current Chief accepted his position, there was no issue concerning his right to return to the unit and, therefore, it would be inherently unfair to adopt the Union's position. To avoid remanding this item to the parties, a Panel majority will adopt the Union LBO, but will exclude from its application the current Chief. In any event, the LBO will apply to those persons subsequently hired to be Chief of the Department.

PENSION MULTIPLIER

Under the current Agreement, employees receive a regular retirement pension of 2.5% of final average compensation ("FAC"), multiplied by the employee's first twenty-five years-of-service, plus 1% for years in excess of 25, with a cap of 30 years-of-service. The Employer proposes to continue the current language. The Union proposes to change the multiplier as follows: 2.8% of FAC for the first 20 years; 2.5% for the next five years, and; 1% for each year thereafter. The Union also seeks to increase the maximum AVC from 67.5% to 70%.

Of the comparables, three have a straight 2.8 multiplier, Harrison has 2.8 for the first 20 years, and then 1.8 for the next five years. Only Waterford has a 2.5 multiplier, like that of Shelby. Similarly, only Waterford has a pension level of 62.5%, like that of Shelby, whereas all of the other comparables are higher: Three at 70.0% and one at 65.0%. These factors alone, the Union says, warrant that its last offer be adopted.

The Employer argues that although its multiplier is less than that of most of the comparables, this factor alone is misleading. Employees at retirement in Shelby fare well among their counterparts in the comparable communities because of their higher salaries and, more important, their significantly higher AVC. Moreover, the Employer contends that with all its component parts, the Union's proposal is excessive. It would, Shelby says, catapult its firefighters to the head of the pack. For its part, the Union contends that because of the separate funding for its fire department, Shelby can well afford the proposed increase. The Employer also claims a miasma on the part of the public to the large pensions of public employees, the costs of which have only recently been made public. The Union contends this is a specious argument, inasmuch as public whim is not among the recognized criteria for Act 312 awards.

Although the multiplier in Shelby is tied with Waterford at the bottom of the comparables, several other factors minimize its impact on unit employees. First, and foremost, it must be noted that with the wage increases awarded in this proceeding, Shelby firefighters are, and will continue to be, the best paid among the comparables. Second, the FAC for Shelby firefighters includes many significant elements beyond that of their counterparts in the comparable communities. For example, while Canton, Clinton and Harrison include Food and Clothing Allowances in computing the FAC, Canton excludes unused sick leave, and Harrison and Waterford exclude both unused sick leave and unused

vacations. Generally, these allowances account for a much smaller part of the FAC than do the other identified items.

Third, the goal in arbitration is to issue an award that the parties themselves would have made if their negotiations had borne fruit. If all of the other parts of the Agreement had fallen into place, some increase in the pension benefits would likely have been achieved, but certainly not one of the magnitude proposed by the Union. Fourth, the overall cost to the Employer makes the Union's proposal overly rich. Being first in wages does not carry with it a corresponding entitlement to be first in other economic conditions of employment. Thus, notwithstanding the important service they perform, no basis exists for moving Shelby from its place among the average of the comparables to a position at the top of the heap. Accordingly, the Employer's proposal of *status quo* will be adopted.

RETIREE BENEFIT ALLOWANCE/COLA

Employees who retired after January 1, 1989, receive an allowance of $1000.00 the first pay period in January of each year. The Employer proposes to eliminate this bonus. The Union conditions its acceptance of this proposal on the adoption of its offer for the pension multiplier discussed above. The Employer states that none of the internal comparables have this benefit and of the external comparables only Clinton pays what is referred to as a thirteenth check (not exceeding the amount of the retiree's monthly pension check).

The Employer says this benefit is *de minimis* inasmuch as the retiree is well compensated. Moreover, it contends that with the increase in wages (at it's proposed rate),

employees do not need this benefit. I suspect the benefit is not *de minimis* to the retiree. That the employee will receive an increase in wages (even at a rate higher than that proposed by Shelby), is somewhat disingenuous. The wage rate and the benefit are separate and distinct items. The *quid pro quo* offered by the Union was reasonable. However, it was not adopted. The reduction would not otherwise have been agreed upon in negotiations. And no other convincing reason was offered for its elimination. The Union's offer will be adopted.

VACATION MAXIMUM CARRY-OVER/ACCUMULATION & MAXIMUM CASH-OUT

The Union proposes to increase the maximum carry-over to be included in FAC from the current 720 hours for 24/hour employees, and 400 hours for 40-hour employees, by 80 hours for each category. Here is what the comparables show: Canton 576, 200; Clinton 912, 544; Harrison 1200, 800; Sterling 1152, 600; Waterford 450, 348. Shelby 720, 400.

It is to be noted that the numbers in Canton can be increased, but only with the approval of the Public Safety Director. In Harrison, employees hired after 1993 no longer have the payout as a part of the FAC. And in Waterford, the payout is not included in FAC.

This is a mixed bag. Shelby falls in the median range. Canton, Waterford, and Harrison firefighters who were hired after 1993 are in a lesser position compared to Shelby, whereas those in Clinton, Sterling and Harrison hired before 1993, fare better. This being the case, it seems appropriate to preserve the *status quo*. Accordingly, the Employer's last offer of settlement will be adopted.

TOWNSHIP VEHICLE USE

Currently, 40-hour employees are assigned a township-owned vehicle. They are permitted to use that vehicle to commute to and from work. All fuel and maintenance costs are paid by the Employer.

There is nothing in the Agreement on the subject of vehicle use. The Union proposes to memorialize this use, restricting its application to 40-hour employees who live within 25 miles of Shelby's furthest border. This limitation is in harmony with Article 30.2 of the current Agreement, which mandates such a geographical limitation for employees hired after January 1, 2001. Under the Union's proposal, the limitation would apply to all employees for whom the Township has provide a vehicle.

Shelby proposes to restrict the personal use of its vehicles for commuting to and from work to those employees who live in the Township. Under its proposal, three of the six employees who have vehicles would lose the right to use them for travel to and from their respective residences.

Eighteen years ago, the Township sought to end the practice of allowing 40-hour employees to use their assigned vehicles for commuting to and from their homes. The matter was submitted to arbitration. Arbitrator Maurice Kelman, citing the Maintenance of Conditions provision, held that the Employer had to either continue the practice, or pay them mileage at the IRS approved rate for using their personal vehicles instead. Shelby's proposal does not include any reimbursement for those employees who live outside the Township.

The Union notes that, of the comparables, only Sterling limits its vehicle benefit for 40-hour employees to those who live within the municipality. None of the others have such a restriction. It also notes that 11 command officers have the vehicle benefit without any geographical limitations, and two of those officers live further than the 25 miles proposed by the Union.

The Union's proposal is supported by the comparables. (External and internal.) And other than for reasons of increased prices of gasoline will limit increased costs to the Employer should any employee hired pre-January 1, 2001 move beyond the 25-mile limit. The Union's offer of settlement is adopted.

LONGEVITY PAYOUT AT RETIREMENT/TERMINATION/DEATH

The current contract provides that upon retirement, termination, or death, employees receive pay for all unused sick leave, vacation, and pro-rated holidays. Employees do not receive pro-rated longevity pay. The Union seeks to add longevity to the mix. The Employer proposes the *status quo.*

Admittedly, there is no support among the comparables for selecting the Union's proposal. Indeed, its request for this benefit is premised on "fairness and logic," and "why shouldn't the longevity pay benefit be paid at retirement on a pro-rated basis, just as is the holiday pay benefit?" (Brief at pp. 45-46) While fairness and logic are certainly elements to be considered, they cannot carry the day in this instance. The parties negotiated pro-rata applications for unused sick leave, vacations, and holidays. In their infinite wisdom,

longevity was not included. No persuasive reason has been given for changing the *status quo.* Accordingly, Shelby's last offer of settlement will be adopted.

HEALTH-RELATED INSURANCES

Currently, active employees have hospital-surgical-medical coverage fully paid for by the Employer: Traditional Blue Cross-Blue Shield (for pre-1992 hires only), Community Blue I ("CBI"), and Health Alliance Plan. Both parties propose changes in the insurance.

The Union's proposal will be discussed first, inasmuch as the changes are less complex. It would continue the existing plan with two cost-cutting modifications. Employees in the traditional BX/BS who wished to continue that coverage must pay the premium difference from that of CBI. The prescription drug co-pay which is currently $10.00 will be changed to $10.00 for generic drugs, and $20.00 for others (brand name and formulary). Lastly, the Union would increase the Mental Health co-pay from its current 20% to 50%. (The Employer proposed the same change for the Mental Health co-pay.)

Shelby's proposal is more far-reaching and, quite naturally, reduces its costs: By providing less expensive coverage, and by shifting more of the co-pay onto employees. The highlights of the Employer's proposal are as follows: Instead of CBI being the predominant plan, it will be changed to CBII. The major differences are that general services are covered at 90%, rather than 100%, if provided by a non-participating physician. Deductibles would change from zero to $100 (individual) and $200 (family). These, too, would be waived if the

service was performed by a participating physician. Finally, Emergency Room co-pay would be increased from $50 to $100.

The Union finds support for its position among the comparable communities. While Canton has a different plan because of its proximity to Ann Arbor (M-Care Option 1), which makes comparison to those offered by BX/BS difficult, its salient feature is "no-deductibles." (Note. Since this case began, BX/BS has taken over the administration of M-Care.) The Union sees fundamental similarities between the plans in Shelby and those in Clinton, Harrison, Sterling, and Waterford in the area of co-pays and deductibles. Finally, the Union points to the recent 2004-2008 CBA between Shelby and its Patrol Officers Unit. In that Agreement, the BX/BS CBI is continued in tact, the only change being in the prescription co-pay, which was changed from a straight $10 to the combination $10/$20.[7]

While mentioning the comparables in passing, Shelby instead stresses "National Trends & the Underlying Fiscal Implications." Trends in health care are certainly important to consider. However, national or regional trends cannot trump either what the comparable communities are providing their fire department personnel, or the agreement Shelby entered into with its patrol officers. In reaching its decision to adopt the Union's final offer of settlement, the Panel majority has also considered the overall compensation paid to firefighters, and the ability of Shelby to continue this benefit.

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[7]While the contract between Shelby and the POAM runs through 2008, the Union notes that it is likely – based on experience – that the expired contract will continue as long as the one involved in this proceeding.

PRESCRIPTION CO-PAY

Currently, employees have a co-pay of $10 for all prescriptions, brand name or generic. Both parties have proposals to change this formula. The Union would continue the $10 for generic prescriptions, and add a tier of $20 for brand name drugs. The Employer proposes a three-tier system; $7 for generic drugs, $20 for brand name drugs, and $35 for brand name, non-formulary drugs. Further as an incentive to promote the use of generic drugs, for the first six months, there would be no co-pay for generic prescriptions. The Employer's proposal also provides for Mail Order Prescription Drugs ("MOPD"). This that would enable employees to secure a 90-day supply of so-called "maintenance drugs" that would further contain the costs for the Employer and employee alike.

Both parties recognize that the cost of prescription drug programs have been increasing at an alarmingly and substantially higher rate than even that of basic health care plans.

Among the comparables, Canton has a plan similar to the one proposed by the Employer, while Clinton, Harrison, Sterling, and Waterford have two tiers, similar to that proposed by the Union.

The Employer says that its proposal is the "smarter" of the two.

Both parties recognize the runaway cost of providing prescription drug programs, and both acknowledge the vital importance, to all concerned, of making a good-faith effort to contain increases. Each of the proposals share in the goal of "steering" employees and their

dependents to use generic drugs. If this is the goal, the Shelby proposal is preferable. It reduces the cost of generic drugs below the level proposed by the Union, absorbs the full cost of using such drugs during the first six months, and provides a less expensive method for acquiring maintenance drugs via MOPD.

The Union notes that based on current experience, 22% of prescriptions for unit employees and their dependents fall into the non-formulary category. Under the Union's proposal, the co-pay for formulary and non-formulary drugs is increased 100%. Steering employees to generic drugs would be easier to achieve under Shelby's proposal.

Assuming an equivalency among (1) a non-formulary, (2) a formulary, and (3) a generic drug, it is not clear why a physician would prescribe one over two or two over three. S/he may sincerely believe, rightly or wrongly, that the non-formulary will be more efficacious. Pharmacology is a complex science. There does not appear to be a formulary or generic equivalent for every non-formulary drug. In those instances, it would be unfair and inequitable to require a $35 co-pay. While the employee [patient/dependent(s)] may be able to suggest/request a formulary or generic drug where the doctor has prescribed non-formulary (albeit this probably will not be noticed until the prescription is filled and the employee is asked to pay), s/he has no control over this matter. Moreover, the parties have no say in how the plan administrator decides a drug falls into the non-formulary category. With this clarification – "The $20 formulary charge will be made where there is no

equivalent or alternative formulary or generic drug" – a Panel majority will adopt the Employer's proposal.

One other clarification is required. The Employer proposes that it have the unilateral right "to switch to a self-funded program, and/or utilize a prescription benefits manager." The Union contends this is a mandatory subject of bargaining, inasmuch as it involves "access" to benefits, and may impact the benefits themselves. The proposal to become self-funded or to change the prescription benefits manager should not, cannot impact either access or the type and level of benefits currently in place.

RETIREE HEALTH INSURANCE

Both parties agree to the proposal by the Employer to amend Article 22.5 by adding the phrase, "and/or his surviving spouse," so that it reads as follows:

> Upon attainment of eligibility for medical insurance under the Social Security Act, a retiree and/or his surviving spouse shall make application for said insurance. The Employer shall provide hospitalization insurance coverage to supplement the coverage provided under the Social Security Act, equal to the insurance coverage provided the employee at the date of his retirement.

There is a major change proposed by Shelby, dealing with retiree prescription drug coverage. Under the Agreement prescription drug coverage is not specifically mentioned. Instead, it has been included under the Hospital-Surgical-Medical coverage for employees who subsequently retired. The Employer seeks to carve out from this coverage that relating to prescriptions, and replace it with the following language:

> Retirees and their dependents shall be covered by the Prescription Drug plan equivalent to the one being received by employees.

The effect of this proposal would impact only those employees who retire after the effective date of the agreement resulting from this Act 312 proceeding.[8]

Shelby appears to be banking on the proposition that in the future, employees will absorb more of the costs of prescription drug coverage than they do now. The Union appears to accept this premise. They both may be prescient. On the other hand, neither may be. If the assumption is incorrect, and coverage improves or co-pays decrease, these would inure to the benefit of retirees.

Be that as it may, there is no basic support among the comparables for Shelby's proposal. The fact that health care costs are generally on the increase, and that municipal governments generally have not adequately considered and accounted for these costs, will not change the outcome. With the exception of the stipulated change above, the Union's proposal will be adopted.

UNION ACTIVITIES

The Township proposes to amend Article 4.2 in three ways: 1. To make reasonable time off for Union activities, subject to minimum manpower; 2. To require the Union to exert reasonable means to select an off-duty Union representative to replace the designated

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[8]The Union's fear that the proposed change would impact all of the fire department retirees now on its rolls or, at the very least, all those who retired since the Union became the recognized bargaining representative is not well founded. The proposal is clear and unambiguous. It relates only to future retirees.

representative who is on duty where his/her release would necessitate overtime and; 3. To eliminate the granting of time off for fund raising activities. The Union seeks to preserve the *status quo*.

Shelby's stimuli for this proposal was an adverse arbitration award. The then Union president requested six hours of leave time to attend a Union District meeting. The Chief agreed to five hours of release time, delaying the request by one-hour to avoid calling in a replacement. The arbitrator held that avoiding paying a replacement for a three-hour minimum call-in at overtime was not grounds for denying the Union's request.

The Union contends that tying release time to minimum manpower requirements has the potential to interfere with its investigation of complaints and its processing of grievances. The same is true with regard to the Employer's proposal No. 2, above.

The parties have agreed that this proposal is economic, which means I must accept one or the other, *in toto*. The evidence among the comparables does not support the Employer's proposal. Shelby claims that release time for "fund-raising activities of charitable organizations has been misused. Without deciding that claim, even were I predisposed to accept the Employer's proposal on No. 3, the inclusion of Nos. 1 and 2 in the proposal do not permit me to do so. Thus, a majority of the Panel adopts the Union's proposal.

HOURS OF WORK

There are six employees in the Department who work a 40-hour-a-week: Inspectors (3); EMS Coordinator (1); Chief of Training (1); Fire Marshall (1). They work Monday

through Friday from 8:00 a.m. to 4:00 p.m. with a one-hour paid lunch. Stated somewhat differently, these employees have 35 hours of productive time.

The Township proposes to extend the work day by one-half hour (to 4:30 p.m.) and to change the one-hour paid lunch to a one-hour lunch period with one-half hour paid by the Employer. The main effect of this change would be to increase the productive time for these employees by 2.5 hours per week. This, according to Shelby, this brings its 40-hour Fire Department personnel in line with the productive hours among 40-hour employees in the comparable communities, as well as with employees in the internal comparables.[9]

The Union accepts the proposition of extending productive hours, but would do so by changing the concept: Employees would work four 10-hour shifts, with a one half hour paid lunch. Under this proposal, employees would work either 7:00 a.m. to 5:00 p.m., Monday through Thursday, or Tuesday through Friday (both excluding holidays, in which the Township offices are closed). Employees could be moved from one of these shifts to the other once per year, with 90 calendar days notice. This, would result in 38 productive hours per week.

The Employer contends that the 4/10 configuration would require the entire restructuring of the fire prevention department and, more important, since the Chief of Training and EMS Coordinator are both involved in training Monday through Friday, it

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[9]The Employer cannot simply interpose a one-half hour paid lunch, as it would reduce the compensation of affected employees. Therefore, to accomplish this result without impacting earnings, it must extend the work day by one-half hour.

would create an impossible situation in scheduling those two classifications. Of the comparable communities, the Employer notes that Waterford has a 5/8 schedule, 8:00 a.m. to 4:00 p.m., with no paid lunch, and that training department employees in Clinton work 5/8 with a one-hour paid lunch. It also points out that, while the Harrison agreement permits a 4/10 schedule, 7:00 a.m. - 5:00 p.m., Monday-Thursday or Tuesday-Friday, with a one-hour paid lunch, no employees are currently working on a 40-hour basis. The Canton contract provides for ten-hour shifts, but it applies only to those employees who are being trained away from the Fire Department. The external comparables are of little support for the change proposed by the Union.

Of the internal comparables, a comparison can only be made in the three units involving the police department. The most that can be said is that patrol and command officers work 5/8, and have a one-half hour paid lunch. There are, at least theoretically, 37.5 hours of productive time per week. In the "dispatch" unit, those employees work 5/8 with a one-half hour lunch period and two 20 minute breaks, for what appears to be 34.2 hours of productivity per week.

The Chairman is not enthralled with either proposal, and given his druthers, would prefer the *status quo*. Act 312 requires the selection of the last offer of settlement which more closely satisfies the criteria of the statute. This being the case, a Panel majority adopts the Employer's proposal as being the least disruptive of operations, and more closely aligned with the comparables: A one-half hour paid lunch in Canton and Sterling, and no paid lunch

in Waterford. While Clinton and Harrison provide for a one-hour paid lunch, it applies in the former only to training division employees working away from the department, and has no application in Harrison inasmuch as it does not have 40-hour employees. Among the internal comparables, the three in the Police Department provide for a one-half hour paid lunch.

LONGEVITY PAY

Currently, employees receive a "bonus" based upon the following schedule:

Years of Continuous Service	Percent of Base Salary
5-9	2%
10-14	4%
15-19	6%
20-24	8%
25+	10%

Both parties have made substantive proposals. Both would retain the above schedule for current employees. Both contain a revised schedule; Shelby's would be effective for employees hired after January 1, 2007, and the Union's for employees hired after the issuance of this Award.

The Employer offers a fixed dollar amount on the following schedule:

Years of Continuous Service	Amount
5	$520
7	$780
9	$1,040
12	$1,300
15	$1,560
18	$1,820
21	$2,080
24	$2,340
25	$2,600

The Union proposal reduces the percentage at each level by 50%. It provides:

Years of Continuous Service	Percent of Base Salary
5-9	1%
10-14	2%
15-19	3%
20-24	4%
25+	5%

It is important to note that neither proposal will impact employees during the term of the collective bargaining agreement resulting from this Award. It will not be until 2011 that a Tier II employee will be eligible for a bonus. The second observation is that based upon current wage rates, the amounts paid to firefighters would be similar. By way of example

only, at 10-14 years, the Union's LBO would be $1,208 per year, and Shelby's would pay from $1,040 to $1,300.

The Employer would, naturally, prefer to secure a fixed cost for this item, while the Union prefers a built-in percentage increase, tied to wages. Among the comparables, Canton pays a fixed amount for employees hired after July 1, 1997, and Waterford pays a fixed amount to employees hired between 1983-1999, but has effectively eliminated longevity pay for all other employees. Clinton provides a percentage increase for all employees (albeit with a limiting cap), Harrison pays a percentage to all employees (with two tiers), and Shelby pays a single rate fixed amount.

Thus, the evidence among the comparables indicates that, except for Harrison, the other four have a fixed and/or contained amount. Further support for the Employer's proposal is found in its recent agreement with the Patrol Unit. There, the parties reached mutual agreement on the same proposal offered here. Accordingly, the Panel will adopt Shelby's final offer of settlement.

SICK LEAVE, SHORT-TERM DISABILITY, LONG-TERM DISABILITY

These three separate issues, sick leave, short-term and long-term disability, are part of an overall scheme to provide income continuation to employees who are ill, injured, and unable to work. The Employer's proposals would in one aspect or another, reduce each of these benefits. The Union's proposal is to maintain the *status quo*.

The first principal argument advanced by the Union is that each of these items was addressed in the last Act 312 proceeding, and the Employer's proposals – as currently set forth in the extant CBA – were adopted. This alone warrants the rejection of any further attempt to diminish these benefits. Presumably, the Union's argument is predicated on the concept of stability in labor relations. While not mentioned in the Act 312 criteria, stability is certainly a factor arbitrators take into consideration in deciding interest arbitration matters.

Even though the last CBA between these parties appears to have resulted from a Stipulated Act 312 Award, it does not detract from the fact that changes in the sick leave, short-term, and long-term disability provisions were a part thereof. This favors the adoption of the Union's last best offer.

PERSONAL LEAVE

Currently, both 56 and 40-hour employees may use up to 72 hours annually for personal leave, which may be taken in one-hour increments after an initial use of two hours. The Employer proposes to reduce this amount to 60/32, respectively, and to change to four hours the threshold for the ability to thereafter take one-hour increments. The Union proposes the *status quo*.

The Union points to the history of this benefit. At one time employees had 48-hours of personal leave, but could use an unlimited amount of emergency leave as well. The Employer sought to eliminate the emergency leave benefit. The Union acquiesced. The *quid*

pro quo was that 24-hours was added to the personal leave benefit. The Union says this history should carry the day.

Shelby says that 56-hour employees in comparable fire departments average annual grants of 50.4 hours personal time, or 43% more than the average, and places Shelby first among its comparables, tied with Canton and Harrison. The Township says the comparables support the reduction it has proposed.

The Union takes issue with the analysis of the Employer. It points out that in Clinton, employees have 48-hours of personal time, and may also use 24-hours of sick time for personal use, for a total of 72-hours annually. Similarly, Sterling has 36-hours of personal time, and the ability to use an unlimited amount of sick time for personal use. In addition, Canton and Harrison both have 72-hours of personal leave.

Based upon the criteria of Act 312, the above discussion leads me to conclude that personal leave should not be changed at this time, and the Union's LBO is adopted.

PENSION FAC

The Township proposes to eliminate from an employee's Final Average Compensation (FAC) amounts paid to the Employee for food and clothing allowances. The Union would maintain the *status quo.*

The Employer's argument is two-fold: Food and clothing allowances are reimbursements to employees – not part of their income – and pensions should not be based on this item; neither Sterling nor Waterford compute FAC on the basis of these allowances.

While Canton and Harrison do, they exclude other elements: Unused sick leave and/or vacations. Indeed, Shelby is the only community (other than Canton) to compute FAC on base wages, overtime pay, longevity pay, holiday pay, unused sick leave, unused vacation, food allowance, and clothing allowance.

"Compensation" has been defined as: "The money received by an employee from an employer as a salary or wages."[10] This may be expanded to include those items for which the Employer includes in W-4 or 1099 statements required by the IRS. Food and clothing allowances are designed to reimburse employees for meals they eat while remaining on the job and for expenses they must incur to provide and maintain uniforms they are required to wear. The Employer's proposal is logical, and will be adopted.

HOLIDAY PAY FOR 40-HOUR EMPLOYEES

Currently all bargaining unit employees receive holiday pay on the first pay period in November, equal to 10% of their base pay. All 56-hour employees work some of these holidays. None of the 40-hour employees work on any of the designated holidays.

The Employer contends that 40-hour employees receive duplicate payments; their regular pay for not working the holiday, and the additional lump-sum payment for the holiday. The Union contends that this, at least partially, compensates 40-hour employees

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[10] *The New Oxford American Dictionary*, Oxford University Press, New York, NY, 2001, at p. 349.

who, for the most part, are paid at a rate below that of their counterparts in the comparable communities.

This benefit should not be changed absent compelling circumstances warranting its reduction. As those have not been presented here, the Union's LBO will be adopted.

VACATIONS

Currently, 56-hour employees are allowed a maximum of 360 hours, and 40-hour personnel can utilize up to 200 hours. Vacation time is selected each December, and employees exercise seniority preference for the time they will take by no later than January 1. Those vacations not scheduled in January will be allowed, as long as no more than 3 fire-suppression employees are already scheduled to be off.

The Union proposes to maintain the *status quo*. The Employer proposes to reduce annual allotments by one day, and to increase the years of service required for each level of vacation time granted. Further, it would require the Chief's approval to use vacation time of more than six consecutive days, and for those vacations selected after January, it would impose a limit (beyond 3 already scheduled for vacations) to include those off because of illness. Lastly, Shelby proposes vacation time grants, selections, utilizations, and carry-overs on a semi-annual basis.

Again, the Union notes that in the prior Act 312 case, Shelby sought and succeeded in obtaining the benefits currently in place. This, coupled with the fact that the increase sought by the Employer is significant. This is not, I suspect, a benefit that would be readily

agreed to in negotiations, at least not without some *quid pro quo*. This major change, is not supported by any dynamic change within or without the Township. Accordingly, the Union's proposal will be adopted.

CHIEF DESIGNEE

> Article 30.7. In the absence of the Chief or his designee, whenever the term 'approval of the Chief or his designee' is mentioned in this Agreement, it shall also mean the duty officer at headquarters.

The Employer seeks to delete this provision in its entirety. The Employer states this is an entrepreneurial decision. The Duty Officer should not have the authority of the Chief, unless it is specifically conferred. The Union opines that when the Chief or designee are not available, there must be someone in charge to whom the other employees can turn. This, assumes that the Chief will not designate one person. In actual practice, it would seem logical that the Chief could identify a principal designee, as well as a secondary designee if the first were not available. Of course that may generate a grievance. To resolve this brouhaha, the Employer's LBO will be adopted.

INDEMNIFICATION/HOLD HARMLESS

Currently, employees are protected "from any and all liability whatsoever kind and nature arising out of the performance of their duties." The Union proposes to amend Article 38 by replacing the phrase "arising out of the performance of their duties" with "while in the course of employment and while acting within the scope of his or her authority."

While no anecdotal evidence was presented that this provision has previously come into play, presumably, the parties are motivated by self protection. The Employer seeks to exclude indemnification where an employee has acted in contravention of "standard operating procedures." The Union responds that that terminology is too vague to accept. The Employer responds that the Union's proposal would expand upon the protection already in place.

Most paramilitary organizations operate through written orders and written directives. Whether an employee has acted in contravention of such an order/directive, is often a question of fact, and frequently leads to grievance proceedings. Nevertheless, an employee whose actions directly contravene orders/directives should not expect to be indemnified by the Employer. Accordingly, the clarification of the Employer that such standard procedures apply to written orders and directives, it will be adopted.

DENTAL/OPTICAL/FOOD/CLOTHING

These four Union proposals will considered together. Dental. Increase the annual maximum for Class I, II, III benefits, and the lifetime maximum for Class IV orthodontic benefits to $1000.00 (from the current $800). The Employer proposes the *status quo*. While there is a dearth of anecdotal evidence on this benefit, presumably employees are exceeding the maximums, particularly in the area of orthodontics. Of the comparables, all five provide higher maximums: Canton $1000/$1000, Clinton $1500/$1000, Harrison $1000/$1000, Sterling $1000/$2000, Waterford $2000/$2000. The Union's proposal will be adopted.

Optical. Currently, the plan allowance for frames is $45 annually. The Union proposes a plan that would pay $46 of the wholesale cost with the employee paying 2x the difference between the wholesale cost and the allowance. According to the Union, in Canton, Clinton and Sterling up to $120 is covered (every two years), which it calls "much more" than what amounts to the equivalent of the $90 covered by Shelby. In Harrison frames are a maximum of $50 annually and in Waterford all optical related benefits are capped at $100. The goal here should be to provide employees with functional frames, with the employee paying for designer frames, if that is what is selected. The current plan appears to accomplish this result. Moreover, the comparables do not support a change. The Employer's proposal will be adopted.

Food Allowance. Currently, 24 hour employees receive an allowance of $700.00 per year. The Union proposes to increase this to $820.00 effective July 1, 2004, and to $865.00 effective July 1, 2006. The Employer proposes that there be no change to this benefit.

The Union notes that four of the five comparable pay a higher food allowance, the average being $906 per year. They pay more: Clinton $1031, Harrison $900, Sterling $1200, Waterford $800. Only Canton has a lower rate ($600). It also notes that food prices have increased significantly since the food allowance was last adjusted. The Township takes issue with the entire concept and wonders why employees should be reimbursed at all. I am uncertain about the history of the food allowance. Presumably it is to compensate employees who must eat their meals while they are at work. The theory perhaps being that if they

worked regular hours they would have most of their meals at home. Be that as it may, it is too late in the day to now question the rationale for this benefit. It has been negotiated over the years. For the above reasons, the Union's proposal will be adopted.

Clothing Allowance. The Union wants to increase this benefit from $720 to $800 per year effective July 1, 2006. The Township proposes that the current benefit be maintained. Two of the comparables have a different plan (replacement rather than an allowance). In Clinton, the allowance is about the same as Shelby, as is the situation in Harrison. Only Sterling has a higher benefit. There is no probative evidence to demonstrate that the current allowance is inadequate. Accordingly, the Employer's proposal is adopted.

A W A R D[11]

SUMMARY

The Parties agreed to both the Duration of the Agreement and Wages for 2005.

A Panel Majority, consisting of the Chairman and the Union Delegate, adopt the Union's Last Offers of Settlement on the following economic issues:

Wages for 2006, 2007, 2008, and 2009
Retiree Benefit Allowance/Cola
Vehicle Use
Employee Health Insurance
Retiree Health Insurance
Union Activities
Sick Leave, Short-term Disability, Long-term Disability
Personal Leave
Holiday Pay - 40 Hour Employees

[11]This document may be signed in counterpart.

Vacations
Dental Maximums
Food Allowance

In addition, the following is adopted on the non-economic issue of Promotions: There shall be no changes in Article 11 except for the following:

Section 11.2(F) re Chief of Training: To be modified as set forth in the Union's alternative proposal on pages 24-25 of the Union's post-hearing brief.

Section 11.2(G) re Fire Marshal: To be modified as set forth in the Union's alternative proposal on pages 28-29 of the Union's post-hearing brief.

New. Add Section 11.2(I): "If an employee can demonstrate that training required for a promotion was not provided through the Employer, s/he is to be treated as though the training had taken place, and that it was successfully completed. The employee must complete the training at the first opportunity it has been made available. A probationary period for the subject employee shall continue from the effective date of the promotion, and for six months from the date of the "delayed" certification."

Section 11.4(B)(3) shall be modified to read as follows, with the clarification that the modification will not apply to the current Fire Chief (George W. Morehouse, Jr.) and will apply only to Fire Chiefs thereafter: "The right to return to the bargaining unit shall not be applicable if the Employee is terminated for reasons constituting just cause for termination, or if the Employee is eligible for a regular service retirement."

The Employer's Delegate dissents.

Donald F. Sugerman, Chairman

Alison L. Paton, Union Delegate

Kelly A. Walters, Employer Delegate Dissenting

Vacations
Dental Maximums
Food Allowance

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The Employer's Delegate dissents.

Donald F. Sugerman, Chairman

Alison L. Paton, Union Delegate

Kelly A. Walters, Employer Delegate Dissenting

A Panel Majority, consisting of the Chairman and the Employer Delegate, adopt the following Last Offers of Settlement:

Wages 2004
Pension Multiplier
Vacation Maximum Carry-Over/Accumulation & Maximum Cash-out
Longevity Payout at Retirement/Termination/Death
Prescription Co-Pay (as clarified)

Add a new paragraph to Section 22.1: "As soon as possible after issuance of this award, the Township shall provide Prescription Drug coverage through Express Scripts as the Prescription Benefits Manager with $7.00 generic, $20 brand name (formulary), and $35 brand name (non-formulary) co-pays. Provided, however, that the $20 formulary charge will be made where there is no equivalent or alternative formulary or generic drug. A 90-day M.O.P.D. program shall be provided for a single co-pay. The Township reserves the right to switch to a self-funded program and/or utilize a Prescription Benefits Manager other than Express Scripts provided that the change does not impact either access or the type and level of benefits. Upon implementation of the $7/$20/$35 prescription drug program, the Employer will implement a six (6) month incentive program establishing a zero dollar co-pay for members using brand drugs who seek out and use a generic equivalent during the term of the incentive program."

Hours of Work
Pension FAC
Indemnification/Hold Harmless

The first sentence of Section 30.8 shall read: "The Employer shall indemnify and save all Employees harmless from any and all liability of whatsoever kind and nature arising out of the performance of their duties, provided the Employee has acted within the guidelines set out by the Department's written orders and directives."

Optical Insurance
Clothing Allowance

In addition, on the non-economic issue of Chief Designee, the Panel Majority awards the Township's proposal to delete Article 30.7 in its entirety.

The Union's Delegate dissents.

Donald F. Sugerman, Chairman

Kelly A. Walters, Employer Delegate

Alison L. Paton, Union Delegate Dissenting

September 26 , 2007

The Union's Delegate dissents.

Donald F. Sugerman, Chairman

Kelly A. Walters, Employer Delegate

Alison L. Paton, Union Delegate Dissenting

September 26 , 2007