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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
DEPARTMENT OF LABOR & ECONOMIC GROWTH
STATUTORY COMPULSORY ARBITRATION TRIBUNAL

In the matter of Statutory Arbitration Between:

CHARTER TOWNSHIP OF WATERFORD,

Employer

Arising pursuant to Act 312, PA 1969, as amended

-and-

MERC **CASE NO. No.D07 G-0228**

WATERFORD PROFESSIONAL FIRE FIGHTERS LOCAL 1335, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
Union

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PANEL'S FINAL FINDINGS, CONCLUSIONS AND ORDER

I. APPEARANCES

BEFORE THE COMPULSORY ARBITRATION PANEL

STANLEY DOBRY, Impartial Chairman
STANLEY KURZMAN, Employer Delegate
RONALD R. HELVESTTON, Union Delegate

For the Union
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Dated: December 22nd 2007

II. INTRODUCTION

This Panel is created under the authority of the Michigan Employment Relations Commission (hereinafter MERC), pursuant to the authority of Act 312 of the Public Acts of 1969, as amended; MCLA 423.231 et seq.; MSA 17.455(31) et seq. Act 312 is part of the Public Employment Relations Act.

Under that act, the agency maintains a panel for the resolution of contractual impasses in the collective bargaining process between municipalities and police or fire personnel.

The previous Collective Bargaining Agreement expired on December 31, 2006. When the parties reached impasse, Act 312 proceedings in this matter were initiated by petition filed by the IAFF. Several bargaining and mediation sessions failed to result in settlement.

The parties are the Township of Waterford ("Township" or "Employer") and the Waterford Professional Fire Fighters Local Local 1335, International Association of Fire Fighters ("IAFF", "Association" or "Union").

By petition dated May 25, 2007, the Union gave notice that there was a dispute concerning the wages, hours, and working conditions.

The Union listed the following issues as being in dispute:

Wages – 2007, 2008, 2009, 2010
Food Allowance
Pension Escalator
Pension Multiplier
Funeral Leave – 40 hour employees
Maternity Leave – 40 hour employees
Personal Leave – 24 & 40 hour employees
Automatic Mutual Aid
Out –of-Classification Pay
ALS premium pay & Minimum Staffing of ALS

The Employer submitted, in its preliminary position statement, a list of open issues (excluding the above mentioned Union issues) as follows:

Retiree Health Insurance
Promotion Testing
New Hire Probation
Vacation Scheduling
Drug Testing Policy
DROP Plan change to Promotion Language
Light Duty Assignments
Civil leave
Liability Coverage
Retiree Dental
Longevity Pay
HRA/Optical
Sick Verification
New Hire Pension
Hours of Employment

By letter dated July 17, 2007, the Michigan Employment Relations Commission appointed the undersigned Neutral Arbitrator as Chair of a panel to be convened to take evidence and to resolve the labor dispute. Both the Union and the Township appointed their counsel as delegates to the panel, namely Ronald Helveston and Stanley Kurzman, respectively.

A pre-hearing conference was held at the Township offices, on August 30, 2007. At the pre-hearing conference, the parties set forth the order of the proceeding and arrangements for the exchange of positions on the open issues as well as the exchange of exhibits and witness lists. The parties also stipulated that they waived compliance with Section 6 of MCL 423.236 which requires a hearing to begin within fifteen (15) days of the appointment of the neutral arbitrator, and all other time limits as applicable.

A hearing was held on November 29, 2007, at the offices of the Township of Waterford located in Oakland County, Michigan. The hearing panel

consisting of the impartial chairman and two delegates, namely STANLEY KURZMAN for the Employer and RONALD R. HELVESTON for the Union. Testimony and exhibits were provided. A full transcript was made.[1] By and large, this was an exhibit case; the facts are uncontested. Hearings are concluded.

III. PREFATORY MATTERS

Comparable Communities

The statutory factor 9(d) (i) directs the Panel to look to the terms and conditions of employment of similarly situated employees in comparable communities. The Union and the Employer stipulate to Canton Township, Clinton Township, City of Dearborn Heights, City of Pontiac, Redford Township, City of Royal Oak, Shelby Township, City of St. Clair Shores and the City of Westland. Based on the exhibits submitted by the Employer, the Township does not agree with the Union's submission of the following additional comparables, namely: Bloomfield Township, Roseville, Southfield or West Bloomfield Township.

The panel has not found it necessary to make a determination on the comparables for this proceeding, but, rather has reviewed and considered all the comparables.[2]

Stipulations and tentative agreements:

During the proceeding, the parties stipulated to several issues. The agreements reached by the parties during negotiations and/or this Act 312

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[1]By Tamara A. O'Connor, Certified Professional Reporter, 2385 Jakewood Drive, West Bloomfield, Michigan 48324 (248) 360-1331. E-mail toconnorrptg@aol.com.

[2]In particular, the demonstrable historical relationships do not materially change, no matter which set of comparables is brought to bear.

proceeding will be made part of the parties' final contract.

The above mentioned stipulations essentially addressed six contractual language "clean-up" issues, namely – DROP Plan change to Promotion Language, Civil leave, Liability Coverage, Longevity Pay, HRA/Optical and Sick Verification – thus reducing the number of Employer issues. Moreover, it was agreed the issue regarding Light Duty was in fact a Union issue rather than an Employer issue and would be addressed by the panel accordingly.

The Union, in its Last Best Offer, withdrew its issues listed on the petition as pension escalator, pension multiplier, funeral leave (40 hour employees), maternity leave (40 hour employees) and personal leave (24 hour and 40 hour employees). The Employer, in its Last Best Offer, withdrew its drug testing issue. Therefore, the remaining issues for resolution are:

Union Issues	***Employer Issues***
Wages: January 1, 2007	Retiree Health Insurance
Wages: January 1, 2008	Promotion Testing
Wages: January 1, 2009	New Hire Probation
Wages: January 1, 2010	Vacation Scheduling
Food Allowance	Retiree Dental Insurance
Automatic Mutual Aid	New Hire Pension
ALS Transport Premium Pay & Minimum Staffing of ALS	Hours of Employment – Fire Prevention
Light Duty Assignments	

Initial Determinations:

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

1. The parties duly executed a waiver of all statutory time limits regarding the proceedings.

2. This contract will be in effect for four years commencing with January 1, 2004 with an expiration date of December 31, 2007.

3. The tentative agreements of the parties are incorporated as part of the award as though set forth in full.[3]

4. All portions of the parties' collective bargaining agreement not modified or eliminated as a result of the stipulations or the final Award in this Act 312 proceeding, will remain unchanged.

5. Each of the issues is identified as "economic." For the purpose of this award, all issues have been designated as economic issues with the exception of the Automatic Mutual Aid issue which the Union designated as non-economic in its position statement.

6. Each year of the wage proposal would be treated as separate issues.

Statutory Purpose and Procedure

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

[3]Importantly, they are the living context in which this proceeding was conducted, and this opinion rendered. In fact, their existence was material to the panel's final determinations.

departments." The general statement of statutory policy is enlightening. The statute is to be expressly liberally construed to achieve its legislative purpose. Found at Michigan Compiled Laws Annotated (MCLA) 423.231, and Michigan Statutes Annotated (MSA) 17.455(31), it states:

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

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

It also sets forth procedural timetables;[4] has a provision for the acceptance of evidence;[5] and allows that the panel may issue subpoenas and administer oaths. [MCLA 423.237; MSA 17.455(37)]. The dispute can be remanded for further collective bargaining. [MCLA 423.237a; MSA 17.455(37a) [MCLA 423.239; MSA 17.455(3a)]. Finally, the law provides for enforcement, judicial review, maintenance of conditions during the pendency of the proceedings. [MCLA 423.240-247; MSA 17.455(47)].

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[4]The Arbitrator is supposed to "call a hearing to begin within 15 days" of his appointment. The deadline seems virtually impossible, or at least severely impracticable, to meet. Fortunately, these parties waived all statutory time limits.

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

At or before the conclusion of the hearing, the panel is required to identify each issue as "economic" or "noneconomic." The classification is critical. The panel may adopt either party's offer or its own position on a noneconomic issue. However, on an economic issue, the "arbitration panel *shall* adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies" with the factors set forth in the statute. [MCLA 423.238; MSA 17.455(38)] [Emphasis added].[6]

In other words, the panel must choose the more reasonable of the parties' two offers. Therefore, in many ways Act 312 proceedings, or at least particular issues, may not necessarily be "won"; they may be "lost" by a party making unreasonable demands in light of the facts established on the record. This is the mechanism which drives parties toward the middle, and through which compromises become possible.[7]

In accord with the statutory scheme, on contested issues, the panel based its findings on the statutory criteria, to the extent they are applicable. There

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[6]There are at least six identifiable arguments that have been made against the legality of compulsory public sector arbitration. They are: (1) it interferes with constitutional and home rule power; it constitutes an illegal delegation of legislative authority to a non-public person; (2) the statutes lack sufficient standards, so that there is an illegal delegation;(3) it is a delegation of the power to tax to the arbitration panel, and (4) therefore violates the equal protection clause's mandated principle of one-man one-vote; (5) the hearings do not comport with minimum due process standards; and (6) there is a constitutional violation because there was no appropriate scope of judicial review. See "Constitutionality of Compulsory Public Sector Interest Arbitration Legislation: a 1976 Perspective," Labor Relations Law in the Public Sector, Andrea Knapp, Ed., ABA Section of Labor Relations Law. The standards set forth in this law pass constitutional muster. The Michigan Supreme Court stated: "It is generally acknowledged that the instant and similar statutory schemes are directed toward the resolution of complex contractual problems which are as disparate as the towns and cities comprising the locations for these critical-service labor disputes. The Legislature, through Act 312, has sought to address this complicated subject through the promulgation of express and detailed standards to guide the decisional operations. . . . We must conclude that the eight factors listed in Section 9 of the act provide standards at least as, if not more than as, 'reasonably precise as the subject matter requires or permits' in effectuating the act's stated purpose to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes.'" City of Detroit vs Detroit Police Officers Association, 408 Mich 410, 461, 294 NW2d 68 (1980).

[7]It is one of the best and most principled ways of making collective bargaining work, since strikes by public safety personnel are not legally or politically acceptable in this state.

are ten.[8] MCLA 423.239; MSA 17.455(39) states in relevant part:

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

[8]The existence of these criteria is critical to the constitutionality of this entire statutory framework.

IV. DISCUSSION

Overview

Act 312 Arbitration is first and foremost an extension of the collective bargaining process. Although the following determinations are not necessarily the only solutions to the problems confronting the parties, the Panel finds they are most in conformity with the terms of the statute. The Arbitrator reviewed each statutory criteria as they may apply to the respective issues and the record, and concluded that these criteria virtually command these determinations.

On the economic issues, this disposition represents a fair compromise between the needs of the Township for fiscal responsibility and public accountability, and the Union members' requirement for job and economic security. The state and regional, and local economic climates have a very real impact on what is reasonable. I find maintenance of internal comparability to be a persuasive factor. This resolution also takes into account settlements in comparable communities and bargaining units, and generally maintains the historical pattern and relationship these parties have freely bargained for in the past. Consequently, it reflects the parties' clear historical consensus of their relative worth.

Moreover, both the Township and the IAFF dealt with this proceeding and contractual modifications in the mature and sophisticated way that is expected of labor relations professionals. As a personal note, the Arbitrator was greatly aided by the quality of the representatives' advocacy and the delegates' wise counsel and balanced input in the deliberation process. This proceeding epitomizes the way Act 312 was meant to work.

Union Issue: Wages

The Employer's Last Best Offer on the issue of wages is as follows:

1/01/07	2.0%
1/01/08	2.0%
1/01/09	2.0%
1/01/10	2.0%

The Union's Last Best Offer on wages is:

1/01/07	3.0%
1/01/08	3.0%
1/01/09	3.0%
1/01/10	2.5%

Waterford Township has five bargaining units, four of which are public safety units. The Township opines that it has attempted to make essentially similar proposals to all bargaining units as a matter of fairness and internal equity.

The parties offered exhibits each supporting its position on wages. With regard to the external comparables, five of the six communities with a 2007 wage rate reflect a 3% wage increase. One community - - Redford Township - - received a 2% wage increase in 2007. The other seven communities proposed as comparable have not yet negotiated and/or arbitrated a wage increase for the year 2007 and beyond. With regard to other employee groups within Waterford Township - - MAP, Police Command and the Police Dispatchers - - each received a 2.5% increase in 2007 whereas the Teamsters received a 3% increase for the same year (as well as 2008). The 2.5% increases received by the three police unions are higher than the Employer's offer and lower than the Union's last best offer. Based on the fact that at least one other internal comparable received a 3% wage increase and the pattern of settlement from the external comparables, the majority of the panel finds in favor of the Union's last best offer for the year effective January 1, 2007.

There is little data for the panel to make a determination with regard to bargaining patterns for either the internal comparables or the external comparables for the years 2008, 2009 and 2010. However, the panel has taken into consideration the current financial conditions within the State of Michigan, as well as the entire economic impact resulting from this award considering both the cost savings the Employer will have the benefit of, as well as increased benefits the Union will enjoy, and thus the majority of the panel adopts the Employer's last best wage proposal for the years beginning January 1, 2008 and 2009 and the Union's last best wage offer effective January 1, 2010.

In sum, the panel awards the following wage last best offers:

1/01/07	3.0%	(Union)
1/01/08	2.0%	(Employer)
1/01/09	2.0%	(Employer)
1/01/10	2.5%	(Union)

The collective bargaining agreement shall be amended as follows:

Amend Article VII, Section 1(B) as follows:

SECTION 1 - BASE WAGES

B. Exhibit "A" will reflect a 3.0% wage increase on January 1, 2007, a 2% wage increase on January 1, 2008, a 2% wage increase January 1, 2009 and 2.5% increase effective January 1, 2010.

Union Issue: Food Allowance

The Union proposes an increase in the annual food allowance from the current $800 per year to $1,000 per year. In addition, the Union proposes the annual food allowance for *all* members of the bargaining unit, including the members in the fire prevention division. The Union proposes this increase and modification effective January 1, 2007. The Employer proposes the status quo be maintained. The evidence submitted by the parties demonstrates the majority of the comparables receive an annual food allowance less than the $1,000 submitted by the Union. Four of the thirteen proposed comparables – Roseville, Westland, Clinton Township and Redford Township – receive an annual payment ranging from $1,000 to approximately $1,300. Two of the comparables – Dearborn Heights and St. Clair Shores do not receive food allowance and the remaining seven communities receive an annual allowance ranging from $550 to $865.

However, evidence was also submitted which reveal members of this local have not received an increase in this benefit for at least two contracts preceding the present one at issue before the panel. The last increase, effective January 1, 1998 was a $300 increase from the previous amount of $500. The panel does not feel a $200 increase, the first in seven years, is without merit. Moreover, the Union's last best offer to include fire prevention employees is supported by at least two of the comparables - - Royal Oak and Southfield. Weighing the overall last best offers, the panel has taken into consideration the entire economic impact of this award and accordingly the majority of the panel adopts the Union's last best proposal with regard to food allowance. The collective bargaining agreement shall be amended as follows:

Amend Article VII, Section 9 as follows:

SECTION 9 - FOOD ALLOWANCE

Effective January 1, 2007 each bargaining unit employee will be paid $1,000.00 food allowance annually.

Union Issue: Automatic Mutual Aid

The Union presented its proposal requiring the parties to negotiate, prior to the implementation or entering into any automatic mutual aid pact, fire consolidation or merger with any other municipality, regarding the terms and conditions of such a pact. The Union's last best offer is as follows:

> *Amend Article VI, Section 3 as follows:*
>
> SECTION 3 – MUTUAL AID, CONSOLIDATION, MERGER OR AUTOMATIC AID
>
> The Township will not enter into any mutual aide agreement with any other governmental unit for fire protection without written notice to the Union that such mutual aide is to be considered and an opportunity for a representative of the Union to be heard by the Township Board before such agreement is approved.
>
> Any future Consolidation, Merger or Automatic Mutual Aid pact, or agreement will be negotiated with Waterford Professional Firefighters Association Local 1335 prior to implementation. In the event the parties fail to reach an agreement on the terms and conditions of a Consolidation, Merger or Automatic Mutual Aid pact, or agreement, the Union and the Township agree to submit the issue to binding arbitration pursuant to P.A. 312 of 1969 as amended.

The Employer's proposed the status quo be maintained.

Based on the evidence submitted and considered by the Panel, the majority of the panel favors adoption of the Union's last best offer, noting that should the parties fail to reach an agreement, the matter will be submitted for resolution to binding arbitration pursuant to P.A. 312 of 1969, as amended. With that amendment in place, Article VI, Section 3 shall be revised accordingly effective the date of this award.

Union Issue: ALS Transport Premium Pay & Minimum Staffing of ALS

Similar to the previous issue, the Union has presented a proposal requiring the parties to negotiate, the terms and conditions of the transport service including a 4th ALS rescue unit, ALS premium payments and staffing, should the Township determine to implement ALS transport service. The Union's last best offer provides a new Section 10 to Article VII of the collective bargaining agreement as follows:

> SECTION 10 – ALS TRANSPORT PREMIUM PAY & MINIMUM STAFFING OF ALS
>
> Effective [date of award], in the event the Township determines to provide ALS transport service, the parties agree to negotiate, prior to implementation, the terms and conditions of the transport service including a 4th ALS rescue unit, ALS premium payments and staffing.
>
> In the event the parties fail to reach an agreement on the terms and conditions of implementing ALS transport service, the Union and the Township agree to submit the ALS issues pertaining to a 4th rescue unit, including ALS premium pay and staffing to binding arbitration pursuant to P.A. 312 of 1969 as amended

The Employer's proposes the status quo be maintained.

Based on the evidence submitted and considered by the Panel, the majority of the panel favors adoption of the Union's last best offer and Article VII shall be revised accordingly effective the date of this award.

Union Issue: Light Duty

The Union has proposed adding language to the collective bargaining agreement governing light duty provisions and an employee's work schedule for same. Currently, light duty may be made available to an employee, at the Employer's discretion. The practice has been for an employee working in a light duty capacity to be placed on a forty-hour shift Monday through Friday rather than the current twenty-four hour work schedule. The Union argued the affected employee should be allowed to remain on his/her twenty-four hour schedule if the employee's physician provided medical clearance for the employee to do so. The Employer proposed no change to the current practice and sought maintenance of the status quo. At the time of last best offers, the Union submitted language for a new Section 7 to be added to Article XII as follows:

> SECTION 10 – LIGHT DUTY ASSIGNMENTS
>
> It is understood that an employee does not have the "right" to be assigned work in a light duty capacity and assignment of an employee to light duty remains at the discretion of the Employer.
>
> Effective [date of award] an employee required by the Employer to work in a light duty capacity shall have the option to work his/her normal twenty-four hour shift schedule if the employee receives authorization from his/her treating physician.
>
> If an employee requests to be placed on light duty, the Employer may assign the employee to either an eight-hour or twenty-four hour work schedule if the employee receives authorization from his/her treating physician.

Given that the Union's last best offer does not change light duty assignment remaining within the discretion of the Employer, but simply provides an option for an employee to continue to work their normal twenty-four hour work schedule if the employee's physician provides clearance to do so, the panel awards the Union proposal set forth above.

Employer Issue: Retiree Health Insurance

Currently employees retiring from the Township with twenty-five years of service receive one hundred percent Employer paid health insurance pursuant to Article XVII, Section 3(B). The retiring employee has a choice of seven different plan options as outlined in Section 2 of Article XVII. The current "base plan" paid for by the Employer for retiring employees is Traditional Blue Cross/Blue Shield MMC4, Group #08751 with a two-dollar ($2.00) drug prescription rider. The Employer proposes replacing the current retiree health care coverage, with the Blue Cross/Blue Shield Community Blue, Option 1 PPO with a ten-dollar ($10.00) generic and twenty-dollar ($20.00) non-generic drug prescription rider and a twenty-dollar ($20.00) office visit co-pay. No change is being proposed to the M-65 coverage received by the retiree at age sixty-five (65) or whenever the retiree becomes eligible to receive Medicare coverage. The Employer's last best offer proposes supplementing the current language in Section 3(A) of Article XVII with the following:

> All eligible employees retiring after [date of award], shall have base retiree health benefits defined as Community Blue 1 PPO with a $10/$20 Rx and $20 office visit. At social security Medicare age the base coverage shall be BCBS M-65 or equivalent supplemental plan with a $5/$10 Rx Plan.

The Union proposes the status quo be maintained.

Based on the evidence submitted and considered by the Panel, the majority of the panel favors adoption of the Employer's last best offer and Section 3(A) of Article XVII shall be revised accordingly effective the date of this award.

Employer Issue: Promotion Testing

The Employer's last best offer proposes adding the following language to Article XXVII, Section 2:

> Effective [date of award], candidates eligible to test for the rank of Fire Chief and Deputy Fire Chief shall include all ranks of Captain or higher in both the fire prevention and fire suppression branches.

The Union proposes the status quo be maintained.

Based on the evidence submitted and considered by the Panel, the majority of the panel favors adoption of the Employer's last best offer and Article XXVII, Section 2 shall be revised accordingly effective the date of this award.

Employer Issue: New Hire Probation

The Employer's last best offer proposes adding a new section to Article XI, Section 4 as follows:

SECTION 4 – PROBATION.

A. Effective [date of award] new hire employees shall serve a 1-year probationary period from date of hire.

B. Effective [date of award] employees promoted to a higher rank shall serve a six-month probationary period from the date of promotion.

The Union proposes the status quo be maintained.

This last best offer modifies the current probationary period for newly hired employees from six months to a one-year period. Based on the evidence submitted and considered by the Panel, the majority of the panel favors adoption of the Employer's last best offer and a new Section 4 shall be added to Article XI effective the date of this award.

Employer Issue: Vacation Scheduling

The Employer's last best offer proposes deleting the current Section 2 (F) of Article X, which provides for unlimited splitting of vacation days provided the time is taken in a minimum one-hour increment, and replacing it with the following language:

F. All 1st and 2nd choice vacation days shall be for a full 24-hour day for fire suppression personnel.

G. Employees shall be allowed to use short time vacation (vacations other than 1st and 2nd choice) in three hour or more increments at the Chief or his designees' discretion provided at least twenty-four (24) hours notice is given.

H. Short time vacation shall be approved on a first come first served basis.

I. Once scheduled and approved vacations days may only be canceled if approved by the Chief or his designee.

J. Employees may trade approved vacation days.

The Union proposes the following language added to Section 2 of Article X:

F. No change

G. "Short time" vacation shall not be approved more than fifteen (15) days in advance. "Short time" vacation is defined as less than twenty-four (24) hours.

H. An employee may turn in a request for "short time" vacation at any time, but it will not be approved until fifteen (15) days prior to the date requested. Once an employee has been approved for "short time" vacation, he/she shall not have the approval revoked. If a shift change occurs, any previously approved vacation time will be kept, for the entire period of the original approved vacation request, regardless of the number of personnel scheduled off.

I. "Short time" vacation may be scheduled more than fifteen (15) days in advance, however, "short time" vacation is subject to being "bumped" by a twenty-four (24) hour vacation. Once a "short time" vacation has been approved after the fifteen (15) day deadline, the "short time" vacation is not subject to "bumping" by a twenty-four (24) hour vacation. An employee that has previously turned in a request for "short time" and is subsequently subject to being "bumped" by a twenty-four (24) hour vacation shall have the Right of First Refusal (ROFR) and may elect to

change their "short time" vacation to a twenty-four (24) hour vacation day. An employee who "bumps" another employee or an employee that elects to use the ROFR must use the full twenty-four (24) hour period and shall not return early. Either employee retains the right to cancel the vacation day, provided the cancellation occurs at least twenty-four (24) hours in advance of the scheduled day off. An employee "bumped" under this provision shall be notified of the availability of the vacation day due to the cancellation.

J. A waiting list shall be kept for all denied vacation requests. If a cancellation occurs, the Officer of the day shall check if the cancellation opens a vacation slot not previously available. If so, the Officer shall notify an employee previously denied the time off of the availability.

Based on the evidence submitted and considered by the Panel, the majority of the panel favors adoption of the Union's last best offer and a new Section 2 shall be added to Article X effective the date of this award.

Employer Issue: Retiree Dental

Currently employees retiring from the Township with twenty-five years of service receive one hundred percent Employer paid dental insurance (as described in Appendix F of the collective bargaining agreement) pursuant to Article XVII, Section 7. The Employer's last best offer proposes implementing the same scale for Township premium payments as currently provided with regard to the retiree's health insurance premiums as illustrated in Section 3(B) of the article. Specifically, dental insurance will continue to be paid by the Township at 100% of the premium cost for employees retiring with a minimum of twenty-five (25) years of service, 75% of the premiums to be paid for employees retiring with a minimum of twenty (20) years of service (but less than twenty-five years) and 50% of the premiums to be paid for employees retiring with a minimum of fifteen (15) years of service (but less than twenty years). The Employer's last best offer is:

> Effective [date of award] eligibility for retiree dental coverage shall be based on the same length of service criteria as retiree health insurance coverage established in Section 3(B) above.

The Union proposes no change to the current collective bargaining agreement and submits the status quo should be maintained.

Based on the evidence submitted and considered by the Panel, the majority of the panel favors adoption of the Employer's last best offer and Article XVII, Section 7 shall be revised effective the date of this award.

Employer Issue: New Hire Pension

The Employer has proposed a second tier pension benefit be implemented for employees hired after February 12, 2007. The last best offer provides a revision to Article XXIII by inserting a new Section 8[9] as follows:

> SECTION 8 – PENSION BENEFITS / EMPLOYEES HIRED AFTER FEBRUARY 12, 2007
>
> Employees hired after February 12, 2007 shall have pension benefits calculated based on the following formula:
>
> - 2.3% multiplier for 25 years
> - 1.5% multiplier for service beyond 25 years
> - Normal Retirement eligibility at age 55 with 25 years of service or thirty years of service regardless of age or age 60 with 10 years of service
> - FAC based on best 3 of last 5 years
> - FAC includes Base + Holiday + Overtime
> - Pension benefit is capped at 34 years (71% of FAC)

The Union opposes the implementation a two tier system and submits the status quo should be maintained.

The Union opposed this change based on two criteria. It is opposed to the implementation of a two tier system and the Employer's original proposal provided normal eligibility retirement at age 55 with 25 years of service (or age 60 and 10 years of service). Currently members need only to attain 25 years of service (without regard to age) in order to be eligible for retirement.

The parties, in addition to the defined benefit pension plan, also have contractual provisions permitting employees to participate in a Deferred Retirement Option Plan, commonly referred to as the DROP plan. A member may elect to participate in this DROP plan once he/she reaches normal retirement eligibility. Once in the plan, the maximum participation period is five years. Furthermore, notwithstanding this five year maximum period, a member must complete his/her participation in the DROP plan no later

[9]Aand presumably re-numbering the remaining sections accordingly.

than the first of the month following the DROP Participant's completion of his/her thirty-third (33rd) year of employment. In other words, if an employee chose to "retire" and then enter the DROP plan when he/she had served 28 years with the department, he/she would be permitted the full five year participation period. However, if an employee did not elect to "retire" and enter the DROP plan until he/she had attained 30 years of service, he/she would be limited to a three year participation period in the DROP program.

With the original Employer proposal providing a normal eligibility retirement at age 55 with 25 years of service, the Union argued it was possible a new hire employee may never have the opportunity to participate in the DROP program. If a new employee commenced employment between the ages of 18 to 22, the employee would have to work (depending on the age of hire) between 33 and 37 years before he/she would attain age 50 and consequently would be outside of the 33 years of employment maximum set forth in the DROP plan requirements.

The Employer primarily argued internal equity. The other ACT 345 pension participants (Police Command and Police Patrol units) have already agreed to the same two-tier pension system proposed by the Employer. Ultimately, the Township revised its proposal to include a provision for employees to be eligible for retirement at thirty (30) years of service, regardless of age. The panel believes this modification should alleviate, at least somewhat, the Union's concerns regarding the two-tier system.

Based on the evidence and arguments submitted and considered by the Panel, the majority of the panel favors adoption of the Employer's last best offer and Article XXIII, Section 8 shall be revised effective the date of this award.

Employer Issue: Hours of Employment – Fire Prevention

The Employer proposes a modifying Article VIII, Section 1(C) by changing the current forty hour workweek schedule of an eight (8) hour workday scheduled from 8:00am to 4:00pm to an eight (8) hour workday "using the standard Township work schedule". The Employer's last best offer is:

> C. Effective [date of award], the standard workweek of those in the Fire Prevention Division and those in training shall be forty (40) hours per week. Forty (40) hour per week employees shall be scheduled and on duty for a full consecutive eight (8) hour block workday using the standard Township work schedule.

The substance of this issue was not to change the number of hours worked by forty hour personnel, but to provide coverage for all hours the Township offices are open. It was explained to the panel, that the typical office hours for the Township were 8:00am to 5:00pm with a schedule that varied somewhat during the summer months.

Based on the evidence and arguments submitted and considered by the Panel, the majority of the panel favors adoption of the Employer's last best offer and Article XXIII, Section 8 shall be revised effective the date of this award.

ORDER

For all the foregoing reasons, in summary, the Panel orders the following on the open issues:

Wages – January 1, 2007:Union's Last Best Offer
Wages – January 1, 2008:Employer's Last Best Offer
Wages – January 1, 2009:Employer's Last Best Offer
Wages – January 1, 2010:Union's Last Best Offer

Food Allowance:	Union's Last Best Offer
Automatic Mutual Aid:	Union's Last Best Offer
ALS Transport Premium Pay & Minimum Staffing of ALS:	Union's Last Best Offer
Light Duty Assignments:	Union's Last Best Offer
Retiree Health Insurance:	Employer's Last Best Offer
Promotion Testing:	Employer's Last Best Offer
New Hire Probation:	Employer's Last Best Offer
Vacation Scheduling:	Union's Last Best Offer
Retiree Dental Insurance:	Employer's Last Best Offer
New Hire Pension:	Employer's Last Best Offer

Hours of Employment Fire Prevention: Employer's Last Best Offer

Stanley T. Dobry, Neutral Chair — Date: December 22nd 2007

Ronald R. Helveston, Union Delegate — Date: December , 2007
Dissents on all Employer last best offers awarded by the panel majority.

Stanley W. Kurzman, Employer Delegate — Date: December 22, 2007
Dissents on all Union last best offers awarded by the panel majority.