

2231

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

CHARTER TOWNSHIP OF SHELBY,

Employer,

-and-

MERC Case No. L05 D04 L-1566

POLICE OFFICERS LABOR COUNCIL
(Public Safety Dispatchers),

Union.

_____ /

Panel of Arbitrators

Thomas L. Gravelle, Chairperson
Eric W. Cholack, Township Delegate
Chester Kulesza, POLC Delegate

ERIC W. CHOLACK, ESQ.
For the Township

THOMAS R. ZULCH, ESQ.
For the Association

OPINION AND AWARD

JANUARY 1, 2005 – DECEMBER 31, 2009
COLLECTIVE BARGAINING AGREEMENT

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INTRODUCTION

On January 31, 2008, a prehearing conference was held in Shelby Township, Michigan.

On May 1, 2008, the hearing on the merits was held in Shelby Township, Michigan.

The parties' outstanding issues are health insurance and eligibility for retiree medical benefits (for two members of the bargaining unit).

These outstanding issues are economic. Under the law, the Panel is required to accept the last offer of settlement ("last best offer" or "final offer") made by one or the other party for each economic issue.

In deciding which offers to accept, the Panel has considered the applicable factors set forth in Section 9 of Act 312 PA 1969. Section 9 reads:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and 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 on the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interest 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 in consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Panel has substantial discretion in determining the weight to be accorded each factor. *City of Detroit v Detroit Police Officers Association*, 408 Mich 410, 484 (1980).

STIPULATIONS

The parties have stipulated that the new collective bargaining agreement will be subject to the following:

- (a) The statutory time-limits for the pre-hearing conference and the beginning of the hearing have been waived.
- (b) The new collective bargaining agreement will run from January 1, 2005 until December 31, 2009.

(c) All provisions of the prior contract which have not been modified by previous agreement and which are not at issue in this Act 312 proceeding shall be carried forward into the new contract.

(d) The new contract will consist of the parties' previous collective bargaining agreement as modified by the parties' agreements and by this Award.

(e) The parties' only outstanding issues are (1) health insurance and (2) eligibility for retiree medical benefits (for two members of the bargaining unit).

(f) The Township's bargaining team is Eric W. Cholack, Robert Leman and Rena Corum. The Union's bargaining team is Chester Kulesza, Michael Duvall, Bonnie Bowman and David Marshall.

(g) The parties agree that the comparable communities are the following local units of government:

Canton Township
Clinton Township
Waterford Township
West Bloomfield Township

(h) The date of the Award – July 31, 2008 – is to replace in the new collective bargaining agreement the proposed language which original provided for insertions of “date of ratification by Township” or “date this Agreement is ratified by the parties” (in Articles 19.1, 19.2, 19.3, 19.4 and Article 23.2).

The Panel adopts the above stipulations.

FACTUAL BACKGROUND

Shelby Township is the Employer. It is located in Macomb County, Michigan.

Five separate labor organizations represent different bargaining units in the Township: Police Patrol, Police Command, Fire Fighters, and two UAW Locals.

The Township also has unrepresented office and managerial employees, as well as elected officials.

In recent years, health insurance premiums have soared.

In order to address this increasingly expensive issue, the Township retained the services of health care consultant Mark Manquen to assist it in designing a health insurance plan which would be fair to Township employees and would allow the Township to somewhat curb soaring health insurance costs.

Mr. Manquen testified at length at the May 1, 2008 Act 312 hearing.

As a result of Mr. Manquen's able assistance, on June 13, 2007 the Township and the Union bargaining team reached a tentative agreement on all issues – including health care and eligibility for retiree medical benefits. The Union bargaining team “agree[d] to fully recommend passage of the tentative agreement to the bargaining unit prior to its ratification vote.” However, on July 11, 2007 the Union membership failed to ratify the tentative agreement. The Township then agreed to improve the tentative agreement by “grand fathering” existing employees on the issue of years of full time service (*i.e.*, 10 years rather than 15 years) as part of the eligibility formula for retiree medical benefits. The Union membership failed to ratify this tentative agreement as modified.

The parties have been unable to resolve voluntarily the two issues before the Act 312 Panel.

ISSUE 1: HEALTH INSURANCE

The Township's final offer is to amend Article 19 of the collective bargaining agreement so that the new Article 19 will read as follows:

ARTICLE 19

HOSPITAL – SURGICAL – MEDICAL – DRUG COVERAGE

- 19.1 Effective as soon as practicable after *[insert date of ratification by Township]*, the Township shall replace all current medical insurance plans for members of this bargaining unit with BCBS Flexible Blue Medical Coverage Plan 3, with \$2,000/\$4,000 annual individual/family in network deductible and BCBS Plan Riders XVA, FC and BCBS Riders for preventive care (\$500) and chiropractic/osteopathic care.
- 19.2 Effective as soon as practicable after *[insert date of ratification by Township]* Employees participating in the Township medical insurance plan will be required to pay through a payroll deduction a portion of their health care cost. The cost will be deducted from their paycheck each pay period as follows:
 - A. \$7.69 for single person coverage (or \$200.00 per year);
 - B. \$15.38 for two-person or family coverage or (\$400.00 per year);
- 19.3 Effective as soon as practicable after *[insert date of ratification by Township]* the Township shall establish a secondary **Health Care Funding Arrangement** to self fund claims (on behalf of employees) arising from the BCBS Flexible Blue Plan 3 in-network deductibles. The Township will employ the services of a third-party firm to administer this secondary **Health Care Funding Arrangement** and pay all claims arising from the BCBS Flexible Blue Plan 3 in-network deductibles for active employees. A Summary Plan Description will be available to all employees explaining their rights under this secondary **Health Care Funding Arrangement**.
- 19.4 Effective as soon as practicable after *[insert date of ratification by Township]* the Township shall replace all current prescription drug plans for members of this bargaining unit with a three tier co-pay plan administered by a pharmacy benefit manager and established as follows: \$10 co-pay for generic scripts; \$20 co-pay for formulary brand

scripts; \$40 co-pay for non-formulary brand scripts, with MOPD 2X and contraceptive coverage included. A six-month \$0 Generic Incentive program will be established, in which employees currently using a name brand drug can request from their physician a generic alternative and will receive that generic drug at no cost for six months.

- A. Effective as soon as practicable after January 1, 2007, the Township will also establish a **Health Savings Plan** for members of the bargaining unit who participate in BCBS Flexible Blue Plan 3. The **Health Savings Plan** will be established as a Health Reimbursement Arrangement ("HRA"), an employer-funded medical reimbursement program within the meaning of IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002).
- B. The Township will establish a funding formula for the **Health Savings Plan** as follows. At the end of each calendar year, summary totals of medical claim expenditures arising from BCBS Flexible Blue Plan 3 in-network deductibles will be calculated for each employee. Employees with single contracts and claims less than \$200 during that calendar year will have a contribution made by the Township on their behalf to an established individual **Health Care account**. Employees with two-person and family contracts and claims less than \$400 during that calendar year will have a contribution made by the Township on their behalf to an established individual **Health Care account**. This annual contribution will be made no later than April 30th of the next calendar year and will be calculated as follows:
- Single contracts – contribution amount equal the difference between \$200 and the total claims incurred for that individual during the previous calendar year;
 - Two-Person and Family contracts – contribution amount equals the difference between \$400 and the total claims incurred under that contract during the previous calendar year.
- C. Details of the **Health Savings Plan** will be outlined in a Plan Document developed in accordance with the laws governing HRAs. As of October 2006, the following features generally apply to an HRA:
- An Employee's **Health Care account** may be used by an employee, his/her spouse or qualified dependents for qualified health care expenses not covered by any insurance plans.
 - An Employee's **Health Care account** balance can be accessed immediately upon existence of an account balance. The account is vested immediately at 100%, carries over yearly and can also

be accessed upon separation of service or during retirement.

- The employee does not pay taxes on contributions to his/her **Health Care account**, on investment earnings on his/her **Health Care account** or on distributions from his/her **Health Care account** for qualified health care expenses.

- 19.6 An Employee who is provided with medical insurance coverage through a source other than the Township may choose to decline the medical, dental and vision insurance coverage provided for the Employee and his/her family. Proof of alternative coverage shall be documented by completion of a form provided by the financial management department. In lieu of the Township-paid medical insurance, the annual sum of One Thousand Five Hundred (\$1,500.00) Dollars shall be paid by the Township into the Employee's Deferred Compensation account through biweekly contributions. This option may be selected or changed either at the time of hire or during annual open enrollment only.
- 19.7 Provided the insurance carrier agrees, an Employee who declines insurance coverage at the time he/she exercises the election may reinstate coverage in the event the Employee's alternative coverage is terminated, but in such case the Employee shall cease to receive the compensation granted in section 19.6.
- 19.8 The Township can exercise the right to replace insurance carriers, health care providers, third-party administrators or prescription benefit managers as long as the benefit plan coverage remains equivalent to or better than the existing benefit plan coverage.
- 19.9 Upon retirement in accordance with Article 23.2, a retiree, his/her spouse and dependents at time of retirement, and the surviving spouse of a retiree and their dependent children shall be covered by hospitalization, prescription drug, vision and dental plans equal to those provided for regular Employees in this bargaining unit, provided that said retiree applies for Medicare when he/she is eligible. Retirees participating in the BCBS Flexible Blue Plan 3 medical coverage will no longer be subject to employee contributions through payroll deductions and will no longer receive potential contributions from the Township to their Health Care Account under Article 19.5(B). Such retirees will be directly responsible for paying medical plan claims arising from the in-network deductibles, not to exceed the established annual payroll deduction provided for regular employees under Article 19.2.

In its final offer, the Union agrees with the Township's proposed Section 19.1 "health care of Blue Cross/Blue Care Flexible Blue Medical Coverage Plan 3, with

\$2,000/\$4,000 annual individual/family in-network deductible and Blue Cross/Blue Shield Plan Riders XVA, FC and Blue Cross/Blue Shield riders for preventive care (\$500) and chiropractic/ osteopathic care.” The Union also agrees with the Township’s proposed Section 19.3 “health care funding arrangement to pay the deductibles.”

As to the \$200/\$400 annual premium sharing [see Township proposed Section 19.2], “[t]he Union proposes the status quo with no premium sharing for the health insurance.”

As to prescription drug co-pays [see Township proposed Section 19.4], “[t]he Union proposes a \$10/\$20 drug card with a ninety (90) day supply MOPD program available for two co-pays.”

OPINION AND AWARD

In support of its final offer, the Township argues: (1) The proposed Flex Plan 3 provides enhancements over the current Blue Cross Community 1 PPO including elimination of \$10 co-pay for each physician office visit and \$50 co-pay for each emergency room visit . (2) Because the Township will self-fund the high deductibles of the proposed Flex Plan 3, the Flex Plan will save the Township money without imposing liability for the deductibles on the employees. (3) Because of an annual \$500 preventive care rider, there can be no deductible, no co-pay, and no charge for the first \$500 of preventive services each year. (4) The proposed 3-tier \$10/\$20/\$40 co-pay prescription drug plan (a) provides employees with a voluntary incentive to use lower cost drugs; (b) is near the national co-pay average of \$11/\$24/\$38; (c) is consistent with the high percentage nationally of employees in a co-pay plans of 3 or more tiers; and (d) includes a 6-month non-charge for generic drugs. (5) Under the proposed Flex

Plan 3, employee minimal premium contributions of \$200/\$400 per year (a) are far below the national averages for premium sharing; (b) would be paid on a pre-tax basis; (c) would be credited to the employee's account for future health use if the employee did not use the Plan, only used it for preventive care, or to the extent the employee used it less than \$200/\$400 per year. (6) Under the Township's health insurance proposal, the Township would save almost \$33,000 per year in comparison with the current plan, and would have lower renewal rates. (7) Two of the Township's other bargaining units are already on the Flex Plan 3, for an annual saving of almost \$300,000 or 24.7%. (8) The Township's proposed changes should be treated as a whole, and not subject to the "cherry picking" sought by the Union:

[T]he Union embraces with open arms the zero deductibles, zero office visit co-pays, zero emergency room co-pays and zero generic co-pay benefits its members would enjoy from the Township's health care proposal. However, the Union is unwilling for its members to contribute any amount – not even a potentially refundable \$200 or \$400 per year – toward such superior coverage. This puts the Union out of step with over 90% of covered workers with family coverage (75% for full-time state and local government employees) who do make contributions toward health care premiums.

(9) Although none of the external comparable communities currently has premium sharing, two are working under expired contracts, and one, Canton Township, requires employees who wish to upgrade their coverage to pay for the difference. (10) The Union bargaining team (which included three of the ten members of the bargaining unit) agreed to fully recommend ratification of the parties' tentative agreement, which included various enhancements including an initial \$1,000 lump sum increase in base wages, with additional increases in base wages of 13.5% over five years beginning in 2005, and with increases in shift premiums, with the result that the bargaining unit will

have entered the range of total compensation among the external comparable communities. (11) In summary, the Township argues:

Adoption of the Township's last best offer on health care is warranted since it would enforce the reasonable agreement reached by the Township and Union bargaining teams. It would also endorse a balanced approach, offering employees additional valued benefits while at the same time helping the Township achieve cost containment objectives through widely used methods such as premium sharing (used by 90% of covered workers with family coverage) and a 3-tier drug plan (where 74% of covered workers have a plan with 3 or more tiers) that has proven successful with other Township bargaining units.

In support of its final offer, the Union argues:(1) The members of the bargaining unit are deserving of more than the Township has offered. (2) The Township has not shown an inability to pay. (3) Data from the comparable communities, whose employees are not liable for any premium sharing, support the Union's final offer. (4) The Union's acceptance of the Township's offered Flexible Blue Medical Coverage Plan 3 with the Township paying the deductibles, standing alone, will result in cost savings for the Township. (5) The Union's proposal to move from a straight \$10 prescription drug co-pay to a \$10/\$20 drug co-pay also will save money for the Township, and is supported by the external comparable communities, whose drug cards range from a \$5 co-pay for all prescription drugs to a \$10/\$20/\$30 drug card co-pay. (6) Internal comparables also support the Union's position because (a) Police Patrol and Command, Fire Fighters and the Court have no premium sharing; and (b) Police Patrol and Command and Fire Fighters have better drug cards than that proposed by the Township.

*

The Township's final offer on health insurance is the same as the health insurance proposal tentatively agreed to by the parties in June 2007. On this point, the Township has cited various authorities including Theodore St. Antoine (an expert on labor arbitration and the former dean of the University of Michigan Law School) who wrote in *Macomb County Professional Deputies Association – and – County of Macomb*, MERC Case No. D91 I-1674 (1992):

I do not consider myself entitled to try to impose my own values, or the solutions I might find personally most appealing, on the parties. Instead, I believe my objective should be to resolve each issue in the way I think the parties most likely would have handled it themselves, if their own negotiations had resulted in a voluntary settlement.

Also relevant on this subject is the following passage from ELKOURI & ELKOURI, *HOW ARBITRATION WORKS*, 6th Ed. (BNA Books 2003) 1441:

It has been said that the award in a wage dispute seldom falls outside the area of "probably expectancy," and that this area is the normal resultant product of the parties' negotiations and bargaining prior to submitting their differences to arbitration. In this regard, too, one arbitration board concluded:

An examination of the wealth of evidence submitted in this matter in conjunction with the provisions of settlement worked out by the parties indicates that the most satisfactory award which the Board could render would be one in general agreement with those terms on which the parties were able at one time to substantially agree. Obviously, these terms are not what either party wanted. They represent compromise by both parties. However, since the general terms indicate a meeting of the minds, the Board considers that they hold the basis of a just award..

Under the above citations, the "other factors" referred to in Section 9 (h) of Act 312 support the Township's position that the parties' tentative agreements should be "taken into consideration in the determination of [benefits] through voluntary collective bargaining . . . arbitration or otherwise between the parties."

Other Section 9 factors set forth in Act 312 on balance support adoption in its entirety of the Township's final offer on health insurance:

- The Township's final offer includes \$200/\$400 annual deductions and a \$40 co-pay for non-formulary brand scripts. The highest co-pay for same among the comparable communities is \$30. Among the four comparable communities (three of which have expired collective bargaining agreements) two require employees to pay the difference in premiums between the agreed-upon health insurance policy and a more expensive policy opted for by an employee. As to internal Township employment groups, two UAW units pay the \$200/\$400 annual deductions and the \$40 co-pay for non-formulary brand scripts. Other internal employment groups do not. Taken in isolation, the \$40 co-pay is relatively high in comparison with some internal employment groups and with the parties' comparable communities (three of which are now operating under expired collective bargaining agreements).

- The Township's final offer on health insurance should be considered in its entirety. It includes improvements over the present health insurance both for the bargaining unit and in comparison with the parties' comparable communities. Nationally, three-tiered prescription drug co-pays are becoming increasingly popular, with the national average being \$11/\$24/\$38. The Township's final offer is for \$10/\$20/\$40 co-pays. Further, \$200/\$400 annual deductions for health insurance (with the possibility of refunds) are extremely favorable in comparison with what employees are paying nationally. These national trends are properly considered under Section 9 (h) "other factors" considered in public and private employment.

- Under the new collective bargaining agreement, the total compensation of the bargaining unit members is significantly enhanced in itself and in comparison with external comparable communities. For example, for the first year (2005) of the new collective bargaining agreement, the bargaining unit's increase in base wages is **5.67%**, whereas the average base wage increase for the three comparable communities with a contract in effect in 2005 was 3.18%. For the entire five year period of the new agreement (2005-2009) base wage increases for the bargaining unit will increase by **16.17%** (an average of 3.23% per year, with 5.67% in base wages front-loaded in the first year of the new agreement). These increases also compare favorably with internal employment groups.

- On the issue of financial ability, it is true that the Township has not argued poverty. However, the parties recognize soaring health insurance costs; and it is appropriate for a public employer to seek a long-term partial solution to soaring health care costs where the overall financial detriment to employees is modest or non-existent (depending on individual usage of prescription drugs and services).

- Recently, the cost of living has increased more than in past years, with a significant part of the increase coming in the form of soaring health insurance costs. Viewed in its entirety, the Township's final offer should not have a material adverse effect on the cost of living of the members of the bargaining unit.

For the above reasons, the Panel adopts the Township's final offer on the issue of health insurance.

ISSUE 2: ELIGIBILITY FOR RETIREE MEDICAL BENEFITS

The Township's final offer is to increase the eligibility requirement for retiree medical benefits to 15 years of full time service for future employees (10 years of full time service being retained for existing employees) and to institute a rule of 75 (10 or 15 years of full time service plus age = 75 or more) for eligibility for retiree medical benefits.

The Union's final offer is the same as the Township's except that the Union requests that two members of its bargaining unit be excluded under the new language and instead be "grand fathered" under the previous contract language, which would subject them to a rule of 65 (age 55 plus 10 years of full time service).

OPINION AND AWARD

Article 23, Retirement Benefits contains the following current contract language:

23.2 Full time Employees age fifty-five (55) or above with more than ten (10) years of full time service with Shelby Township, may elect to take early retirement with full medical benefits as provided under the Agreement herein.

On June 13, 2007, the Township and the Union bargaining team reached a tentative agreement with the Union "agree[ing] to fully recommend passage of the tentative agreement to the bargaining unit prior to its ratification vote."

The June 13, 2007 tentative agreement amended Section 23.2 as follows:

23.2 Full time Employees having a minimum of fifteen (15) years of continuous full-time service with the Township and having attained an age of fifty-five (55) or above, which, when combined with the number of years of service, is equal to or greater than seventy-five (75) may retire with full medical benefits as provided under Article 19.9 of this Agreement.

The members of the Union's bargaining unit voted to reject this tentative agreement.

On September 4, 2007, the Township then proposed to improve the proposed language of Section 23.2 by reducing the years of continuous full time service to 10 years for existing employees:

23.2 For employees hired after [insert date this Agreement is ratified by the parties], full time Employees having a minimum of fifteen (15) years of continuous full-time service with the Township and having attained an age of fifty-five (55) or above, which, when combined with the number of years of service, is equal to or greater than seventy-five (75) may elect to retire with medical benefits as provided under Article 19.9 of this Agreement.

For employees hired prior to [insert date this Agreement is ratified by the parties], full-time Employees having a minimum of ten (10) years of continuous full-time service with the Township and having attained an age of fifty-five (55) or above, which, when combined with the number of years of service, is equal to or greater than seventy-five (75), may elect to retire with medical benefits as provided under Article 19.9 of the Agreement herein.

The members of the Union's bargaining unit again voted to reject the tentative agreement.

The Union's final offer on this issue is as follows:

The Union accepts the Employer's proposal of 15 years of service, 55 years of age with a combined total of 75 for all members except (1) Carol Smith and (2) Victoria Vicari. This retirement will be with full medical benefits as provided under Article 19.9 of this agreement.

Carol Smith and Victoria Vicari shall be maintained status quo requiring ten years of full-time service and the age of 55 to obtain full retirement and medical benefits as provided in the current collective bargaining agreement.

As can be seen, the sole dispute as to eligibility for retiree medical benefits is whether two present members of the bargaining unit should be able to retire after 10 years of employment at age 55.

Among internal comparables, it does not appear that any Township employment group (including full-time elected officials) has this favorable vesting schedule.

Nor do the parties' external comparable communities identify any employment groups enjoying this favorable vesting schedule.


It is unusual for one or two members of a bargaining unit to be awarded favored treatment in an Act 312 proceeding (absent a stipulation of the parties).

Finally, the record does not explain why these two bargaining unit members should receive favored treatment.

For the above reasons, the Panel adopts the Township's final offer on the issue of eligibility for retiree medical benefits.

PANEL SIGNATURES


Dated: July 31, 2008



Thomas L. Gravelle, Chairperson

The Township *concur*s.


Dated: July 31, 2008



Eric W. Cholack, Township Delegate

The Union *concur*s on the new BCBS Flexible Blue Medical Coverage Plan 3 and Riders, with the Township paying the annual \$2000/\$4000 deductibles. The Union *dissent*s on the issues of employee liability for \$200/\$400 payroll deductions, and the \$40 co-pay for non-formulary drug brand scripts. Except for two employees, the Union *concur*s on the new eligibility requirements for retiree medical benefits.

Dated: July 29, 2008



Chester Kulesza, Union Delegate

Among internal comparables, it does not appear that any Township employment group (including full-time elected officials) has this favorable vesting schedule.

Nor do the parties' external comparable communities identify any employment groups enjoying this favorable vesting schedule.

It is unusual for one or two members of a bargaining unit to be awarded favored treatment in an Act 312 proceeding (absent a stipulation of the parties).

Finally, the record does not explain why these two bargaining unit members should receive favored treatment.

For the above reasons, the Panel adopts the Township's final offer on the issue of eligibility for retiree medical benefits.

PANEL SIGNATURES

Dated: July , 2008

Thomas L. Gravelle, Chairperson

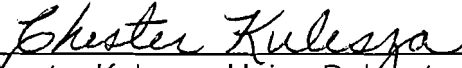
The Township *concur*s.

Dated: July , 2008

Eric W. Cholack, Township Delegate

The Union *concur*s on the new BCBS Flexible Blue Medical Coverage Plan 3 and Riders, with the Township paying the annual \$2000/\$4000 deductibles. The Union *dissent*s on the issues of employee liability for \$200/\$400 payroll deductions, and the \$40 co-pay for non-formulary drug brand scripts. Except for two employees, the Union *concur*s on the new eligibility requirements for retiree medical benefits.

Dated: July 29 , 2008



Chester Kulesza, Union Delegate