

2240

**STATE OF MICHIGAN  
COMPULSORY ARBITRATION**

In the Matter of:

TOWNSHIP OF BLOOMFIELD

Employer,

Arising pursuant to  
Act 312, Public Acts  
Of 1969, as amended

-and-

Case No: D04 L-1552

BLOOMFIELD TOWNSHIP ASSOCIATION OF  
PROFESSIONAL FIRE FIGHTERS, LOCAL 3045,

Union.

\* \* \* \* \*

**ACT 312 AWARD**

\* \* \* \* \*

APPEARANCES

FOR THE COMPULSORY ARBITRATION PANEL

Mark J. Glazer, Impartial Chairman  
Thomas Eaton, Public Employer Designee  
Dennis Fecteau, Labor Organization Designee

FOR THE EMPLOYER

Malcolm D. Brown  
Butzel Long

FOR THE UNION

Gordon A. Gregory  
Emilie D. Rothgery  
Gregory, Moore, Jeakle, Heinen & Brooks, P.C.

Brian Polisuk  
Woodley & McGillivray, P.C.

## BACKGROUND

Bloomfield Township requested Act 312 arbitration on September 25, 2006. There are approximately 59 persons in the fire fighter bargaining unit. The chairperson was appointed on December 22, 2006. A pre-hearing conference was held on March 6, 2007 followed by an order on March 13, 2007. The parties have waived all applicable time limits.

There were five scheduled hearing dates, with hearings actually being held on October 15, 16, 17 and 18, 2007. The October 19 hearing date was adjourned by the parties. Post-hearing and supplemental briefs were submitted. The last best offers are attached to the Award.

The panel is statutorily required to apply provisions of Section 9 of Act 312 in reaching its decision. However, pursuant to *City of Detroit v DPOA*, 408 Mich 410, 482, the panel may apply greater weight to some factors over others. The Section 9 criteria are:

- (a) The lawful authority of the employer.
- (b) Stipulation of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these 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 proceeding.
- (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 factfinding, arbitration or otherwise between the parties, in the public service or in private employment.

### COMPARABILITY

The following communities were stipulated as the external comparables for this proceeding:

Birmingham  
Dearborn Heights  
Royal Oak  
Shelby Township  
St. Clair Shores  
Waterford Township  
West Bloomfield Township

### **THE ISSUES**

#### PENSIONS

The Township seeks to institute a defined contribution plan for new hires, effective with the date of the Award. The Union asks that the present defined benefit plan be retained for all fire fighters.

#### WAGES

The parties agree to retroactivity for wages. The Union asks for 3.5%, effective April 1, 2005; 3.5%, effective April 1, 2006; 3.5%, effective April 1, 2007; 3.25%, effective April 1, 2008 and 3.25%, effective April 1, 2009. The Township asks for 3% for each of these years.

#### HEALTH CARE

The parties have divergent offers on out-of-network deductible, employee premium sharing, and mandatory use of generic drugs.

#### RETROACTIVITY OF SICK LEAVE MODIFICATION

The parties disagree on the retroactivity of certain agreed upon sick leave modifications.

#### HOLIDAYS

The parties have matching offers to increase holiday pay by one day. There is a disagreement as to whether only short-term sick leave should apply to holidays. The parties also disagree on the retroactivity of the holiday.

#### FOOD ALLOWANCE

The Township would increase food allowance to \$650.00, with no retroactivity. The Union requests \$700.00 for a food allowance, with retroactivity.

#### **STIPULATION OF THE PARTIES**

The settlement agreements of the parties are incorporated into this award. Further, the Union requests that the following stipulations described in its brief be noted in the award:

##### **B. Stipulations of the Parties.**

The parties reached a number of tentative agreements concerning Act 312 issues, which were incorporated into a settlement agreement dated June 29, 2007. U Exs. 175, 175(a)-(j). The Union respectfully requests that in addition to the Panel's Opinion and Award, these agreements be incorporated into the 2005-2010 collective bargaining agreement.

The Township and the Union also reached stipulations concerning retroactivity. All wage increases shall be retroactive to April 1, 2005 for all employees employed on the date of the Panel's Opinion and Award. Further, there shall be a "roll-up" on retroactive wages for fringe benefits calculated on wages. Any wage-related payments received from a source other than the Township (e.g., Worker's Compensation) will be retroactively adjusted only if the

associated insurance policies allow for retroactive adjustment. The Panel's Opinion and Award shall not be applied retroactively to any employee who quit, retired, or was terminated prior to the date of the Award.

Finally, on the third day of the arbitration proceedings, the parties resolved three of the disputed issues pending before the Panel: direct deposit, pay for actual hours worked, and promotions:

**1. Promotions.**

The parties agree to adopt the tentative agreement reached on May 8, 2006, concerning the promotional procedure, with the following modifications:

- a. The psychological test will remain in the tentative agreement. III Tr. 4.
- b. Seniority points will be granted on the basis of 1/10 point per month. Id.
- c. The written examination will be weighted at 75% of the overall score; the oral examination will be weighted at 25% of the overall score; with 1/10 point granted per month of service. III Tr. 4-5.
- d. In the event the classes/courses listed in the collective bargaining agreement are no longer offered, available, or are no longer required by the State of Michigan, the parties agree to meet and agree upon equivalent replacement classes/courses before implementation. III Tr. 6-7.
- e. The EMS coordinator position will be designated as "Day Lieutenant EMS" in the collective bargaining agreement. III Tr. 5.

III Tr. 4-5.

In addition, the parties agreed to settle the pending grievance regarding the promotion of Michael Cummings fifteen days from October 17, 2007. The Township agreed to generate a letter stating that in the future, the promotions list will be posted prior to sending any employee for a psychological test. III Tr. 6.

**2. Pay for Hours Worked.**

The parties agree that, as soon as practicable, the Township will pay bargaining unit personnel for actual hours worked in a two-week pay period. Any acting pay that is earned will be paid within the two-week period in which it was earned. III Tr. 5-6, 8.

**3. Direct Deposit**

The parties agree that, as soon as practicable, all bargaining unit members will participate in the direct deposit of paychecks. III Tr. 5, 8.

The Union respectfully requests that the above stipulations and agreements be reflected in the Panel's award.

**MISCELLANEOUS RULINGS**

The Township sought to introduce a letter from the Union regarding the pension issue. The Union objected at the hearing ,on the grounds that it represented a settlement discussion. I deferred my ruling. It is my decision that this letter will not be considered in this matter.

**THE ENVIRONMENT SURROUNDING THIS ACT 312 PROCEEDING**

The Township does not claim an inability to pay pursuant to Section 9. However, it notes that all other units within the Township have accepted its offers, including the Act 312-qualified police and command officers. Further, the Township contends that there has been a history of consistency in compensation among the various Township employees.

It is noted by the Employer that the overall compensation of the fire fighters is equal to or greater than that of the external comparables. Employer witnesses presented a dismal outlook for southeastern Michigan and Oakland County.

Assessor William Griffin testified that starting in 2007, residential values declined in Bloomfield Township for the first time, and that the Township did not expect an increase in taxable

value for the 2007-2008 fiscal year. Griffin concluded that Bloomfield Township faces flat or neutral tax revenues.

The director of finance, Ray Perkins, testified that 78% of Township revenue comes from property taxes, with residential property representing 91% of that figure.

The Union asserts that the overall compensation of the Bloomfield Township fire fighters is approximately equal to the average of the external comparables. The Union further maintains that increases in inflation require that its last best offers be accepted.

## **ISSUE I**

### **PENSION**

The Township seeks to institute a defined contribution plan for new hires, effective with the date of the Award, while freezing its defined benefit plan for existing fire fighters. The defined contribution plan has been voluntarily accepted throughout the Township, including by the Act 312-qualified patrol and command police officers.

The proposed plan provides for a 14% contribution by the Township to a 401(a) plan, and an employee contribution of between 1% and 3.5%. Employees would choose from a menu of 11 funds from the American Funds. They would be assisted by representatives of the Gregory J. Schwartz & Co., a local investment firm. There would be a 1.5% annual management fee charged to the employee. This is expected to drop when the size of the plan increases.

Edward Schwartz testified that the plan participants should expect an 8% average return. Schwartz is currently advising the equity portion of the Township's defined benefit plan, where he maintains that he is achieving an 8 to 10% return.

The Township asserts that a defined contribution plan is superior to a defined benefit plan in withstanding inflation. It is further noted that the current defined benefit plan is limited to a 1%

increase after retirement, whereas a defined contribution plan grows at a higher rate to combat inflation.

The Employer emphasizes that the defined contribution plan provides safeguards insofar as loans and hardship withdrawals are prohibited. Further, it is noted that if an employee fails to invest, there is a default target fund that provides a proper return for the retiree. Finally, the Employer argues that participants are prohibited from investing in risky products.

The Employer indicates that vesting occurs after four years, and that assets are portable. Participants also receive disability insurance and they are able to leave plan assets to their children, unlike the members of the defined benefit plan.

The Township argues that the defined benefit plan has become too expensive, and now costs 30% of payroll. It is further asserted that the plan's actuary testified that the expected cost of the defined benefit plan will decrease by at best 2% of salary over the next 10 years.

With the high cost of retiree health care, coupled with flat or declining revenues, the Township feels that it must take action. The Union's critique of defined contribution plans, it is argued, is not applicable to the carefully crafted Township plan. The Township maintains that with a 6% return, a Township fire fighter will have ample retirement funds. The Township contends that a defined contribution plan is necessary to protect itself from declining or neutral revenues.

The Union argues that only a defined benefit plan can meet the fire fighters' goal of obtaining retirement security, by providing a guaranteed annual benefit at retirement. It is suggested that fire fighters will not be able to obtain a proper return in a defined contribution plan, since as amateurs, they will be responsible for their own investments. In contrast, it is noted that the defined benefit plan is managed by investment professionals.

The Union additionally argues that its data shows that defined benefit plans achieve higher returns than defined contribution plans. It is also contended that defined benefit plans are better able to retain and recruit fire fighters. The Union emphasizes that the comparables all have defined benefit plans.

A defined contribution plan, it is argued, will cause a morale problem for fire fighters who will be working side by side with different plans. The Union also argues that a defined contribution plan is less expensive to operate over time, since it has less administrative expenses.

The Union argues that the Township=s defined benefit plan is in good financial shape, with funding at 93%, which is a very good level. The Union suggests that the Township=s 30% contribution rate for its defined benefit plan is the result of less than efficient management of the plan, which is achieving a 6.2% rate of return, when the actuarial assumed rate is 7.2%.

The Union argues that the Township has not properly proven that it will achieve savings through a new defined contribution plan. Also, it is emphasized that all the comparables provide for a defined benefit plan.

It is asserted that the other Township employees received improvements to their defined benefit plan in exchange for agreeing to a defined contribution plan. The Union argues that the fire fighters have chosen not to request increases to their defined benefit plan.

## DISCUSSION

The proper result on this issue is determined by referring to internal comparability under Section 9 of Act 312. The Act 312-qualified police patrol and command officers have agreed to a defined contribution plan for new hires. Further, under Section 9(h), it would not be expected that new hires for the police and fire would operate under different types of pension plans. The evidence supports that there has been a consistency in the pension plans for Act 312-qualified employees in the Township.

Most importantly, the new defined contribution plan is not being proposed as representing a concession for the fire fighters; rather, the Township expects the fire fighters to achieve a proper return under the new plan, while relieving the Township of a pension contribution burden that all agree is too high at 30%, or even 28% of salary.

This means that if after several years, the defined contribution plan is not performing for fire fighters as represented by the Township, the fire fighters can properly return to collective bargaining or to an Act 312 proceeding, to achieve either improvements in the defined contribution plan or a return to a defined benefit plan. In particular, Act 312 provides protection to the fire fighters that they would not otherwise have. The language of this Award, stating that it was not expected that fire fighters would lose by having a defined contribution plan, is strong protection for the fire fighters going forward

Further, while the fire fighters are losing the security of a defined benefit plan, an excessively expensive defined benefit plan can cause losses for fire fighters in other areas of compensation. In *Highland Park and Highland Park Fire Fighters* (Glazer), the fire fighter defined benefit plan had a provision requiring increases for the retirees, whenever salary increases were obtained by the

existing fire fighters. The City was virtually bankrupt, and because of the defined benefit plan, this led to reduced compensation for the existing fire fighters and an eventual change to a public safety department.

In *City of Detroit and LSA* (Glazer), the Union sought, at the top of the stock market in 2000, to divide a surplus in the defined pension plan among existing employees, retirees and the city. Had this occurred, the city would have had to have made up actuarial losses in 2001, following the stock market crash. This would inevitably have led to reduced salary and benefits for City of Detroit Act 312 eligible employees.

Bloomfield Township is not Detroit or Highland Park. But the point is that high employer pension contribution costs, coupled with neutral revenues, could eventually hurt the fire fighters in other compensation areas. I am not endorsing or not endorsing a defined contribution plan for purposes of this proceeding. As noted, the result in this case is determined by internal comparability, with the caveat that it is expected that fire fighters would receive a proper investment return under the Township=s defined contribution plan. The high defined benefit contribution costs for the Employer are a relevant factor that must be considered.

THE RELATION OF THE FIRE FIGHTERS TO  
THE ACCEPTANCE BY THE POLICE OF  
THE DEFINED CONTRIBUTION PLAN

Because this Award is predicated upon internal comparability, it is necessary to review the voluntary settlement that occurred with the police officers relative to the defined contribution plan.

The director of finance, Ray Perkins, testified at Vol. I, pp. 95-96:

- Q. Were there also pension improvements for any of the employees?
- A. There were pension improvements for the general employees,

the non-union employees, or what's called the non-Act 312 employees. They got a small increase in their multiplier. But they also increased their employee contribution in order to pay for that.

The police department did get an increase in multiplier and a change in their retirement age. They paid for some of that cost with an increase of 2.1 percent for the patrol, and it was a one and half percent increase in employee contribution for the command officers.

- Q. How much was then paid B or how much did the Township have as an additional cost for those improvements?
- A. The Township had some additional cost left for the police patrol unit, I would venture to say in the neighborhood of maybe \$1,500. I don't have the numbers right in front of me. It was probably about \$1,500 per man per year. In exchange for the increase, though, they agreed to have a defined contribution pension plan for all hires going forward.

Therefore, the quid pro quo for the police agreeing to a defined contribution plan was an increase in benefits for the police officers= defined benefit plan. This increase resulted in an increased cost for the Township, although the exact figures were not presented on the record. Further, the precise cost of fire fighter improvements to balance the increased costs of pension improvements for the police cannot be determined from this record.

What is apparent from the record, however, is that increases in holiday pay and wages over and above that received by the police, are necessary to balance the fire fighters compensation with the increased pension improvements received by the police. Since the police were granted defined benefit pension improvements that cost the Township money, as the quid pro quo for a defined contribution plan for new hires, the fire fighters must be granted benefit and wage improvements to represent the quid pro quo for a defined contribution plan. Again, internal comparability is the basis for granting the defined contribution plan, and therefore the costs that the Township incurred for

pension increases for the police should be balanced by increased costs for wage and other improvements for the fire fighters.

### AWARD ON PENSIONS

The last best offer of the Employer on a defined contribution plan for new hires is awarded along with retroactivity to the date of the Award.

### ISSUE II

#### WAGES

The parties proposed wage increases as follows:

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Township	3.0%	3.0%	3.0%	3.0%	3.0%
Union	3.5%	3.5%	3.5%	3.25%	3.25%

The parties are in agreement that the awarded increases will be retroactive to 2005. The Union asserts that the Employer=s offer in 2005 only covers the 2.9% inflation for that year, whereas the Union=s offer provides for a modest increase. Regarding 2006, the CPI is said to be slightly over 3%, which is said to cause a real wage loss if the Employer=s offer is accepted. The Union suggested that going forward the CPI was trending towards similar 3% increases in 2007 and 2008. The Union maintains that its offer is appropriate for the first three years. For the final two years, the Union contends that 3.25% is also appropriate, considering the relevant Act 312 factors.

The Township points out that none of the external comparables have received a wage increase in excess of 3%, and that the internal comparables have all accepted 3%. The Employer also contends that the fire fighters have kept up with inflation, when such things as food allowance are considered.

The Township notes that there are 12 Basic EMTs (BEMTs), and that they are paid more

than any of the comparable communities when there is a 3% increase. It is further asserted that total compensation for the BEMTs is the highest of the comparables.

There are 32 Advanced EMTs (AEMTs). It is asserted that of the comparables, only Shelby Township receives a higher base wage. Total compensation is argued to place Bloomfield Township with the top tier of Shelby Township and Royal Oak among the comparables. The additional holiday pay in the present matter is said to place only Shelby Township with higher total compensation.

Regarding lieutenants, it is asserted that only Royal Oak pays its lieutenants more than Bloomfield Township. The Employer argues that it is paying fire fighters at the highest level among the comparables.

#### **DISCUSSION OF WAGES**

All of the other employees in the Township, including the Act 312-qualified police officers and command, have accepted the Employer=s wage offer. Therefore, internal comparability favors the Employer. External comparability also favors the Township, with no external comparable having received more than the 3% offered by the Employer. Further, the Employer=s 3% offer places Township employees at or near the top of the comparables.

The CPI, when controlled for the food allowance, does not support a greater increase, particularly when the internal and external comparables are considered. Therefore, for the first three years of the contract, the Section 9 factors favor the Township.

In the final two years of the contract, the defined contribution plan will be in effect for new hires in the fire fighter unit. As previously noted, the defined contribution plan was the quid pro quo for increased pension benefits for the police. The fire fighters have not sought increased pension

benefits, but apparently they have exhibited an historical preference for wages over pensions, as noted in footnote 18 to the Employer=s brief, which states as follows:

Local 3045 has a history of seeking wage increases above those offered to the police union and others at the Township and foregoing other enhancements like changes to the retirement plan. These increases have either taken the form of increasing rank differentials or obtaining other wage-related items. In the negotiations for the 1999-2002 labor contract, Local 3045 sought and obtained the FLSA guarantee and increased classifications differentials. See Ex. 56 and Ex. 96. In the negotiations for the 2002-2005 labor contract, Local 3045 again accepted increased compensation through rank differentials for 2002 and a food allowance in lieu of other issues like an increased pension multiplier. See Ex. 48, 96 and 137. In 2002, the police unions accepted the same wage increase as the general employees but sought and obtained a increased pension multiplier and defrayed that cost with an increased employee contribution (in 2002 the police union increased their multiplier from 2.75 to 2.85 and increased their pension contribution from 1% to 1.4% for police officers and from 1% to 2% for police command. See Ex. 149

The Union=s preference for wage increases in lieu of other objectives can also be seen in the comparison between police officer and AEMT wage rates since 2000. See Ex. 93-95. In 2000 police officer wage rates were higher than AEMT wage rates. By 2002, that was no longer true. Ex. 93. The total compensation of AEMTs is clearly higher than that of police officers for 2005-2007 due in part to these increases and the police favoring pension enhancements and larger employee contributions to the defined benefit plan.

Under paragraph (h) of Section 9, it would be appropriate to award 3.25% increases to the fire fighters in the last two years of the contract as part of the quid pro quo for establishing a defined contribution plan for new hires.

## AWARD ON WAGES

The following is awarded on wages:

<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
3.0%	3.0%	3.0%	3.25%	3.25%

These wage increases shall be retroactive, pursuant to the stipulation of the parties.

### ISSUE III

#### HOLIDAY PAY

The parties agree that there should be one additional paid holiday and certain changes to the contract language. Their only difference is in eligibility for holiday pay: the Employer seeks to retain the status quo, and to disqualify an employee from holiday pay if he/she uses sick leave on a holiday. The Union would change the contract to require only a disqualification for short-term sick leave, allowing employees on long-term sick leave to be eligible for holiday pay. Long-term sick leave is available to unit employees after two successive days of absence and after five successive days of absence for day employees. A physician statement is required for a long-term sick leave.

The Union asks that the holiday pay provision on utilization with sick leave conform with the language in the police officers' contract, which it states contains the following language:

To be eligible for holiday pay, the employee must work his/her last scheduled work day prior to the holiday and after the holiday, except that if an employee is on a scheduled day off, personal leave day, vacation or sick leave, he/she shall be paid for the unworked holiday.

The Union argues that there is little cost associated with its proposal, because of the difficulty of a fire fighter qualifying for long-term sick leave. Further, it is argued that the external comparables, except for West Bloomfield, all allow an employee to collect holiday pay, notwithstanding the use of sick leave.

The Township argues that the Union failed to provide any exhibits on this issue, and that it has failed to meet its burden of proof. It argues that the Union has not shown how the issue has been handled internally or externally.

### **DISCUSSION**

If, indeed, the police in Bloomfield Township and most of the external comparables would support the Union=s position, this would be a strong factor in its favor. However, while I accept the Union=s representations in its brief, evidence pertaining to the internal and external comparables was not placed into the record. As a result, it would be inappropriate to base a decision upon assertions that are not supported by evidence. Moreover, the Employer is denied the opportunity to rebut assertions that are raised for the first time in a supplemental brief.

Having said that, Section 9(h) provides for a consideration of factors that are generally considered in Act 312 proceedings. The police received a gain in pension benefits as the result of agreeing to a defined benefit plan. As part of achieving a commensurate quid pro quo for the fire fighters, it is appropriate to award the improvement in sick leave language for holiday pay.

### **AWARD ON HOLIDAY PAY**

The last best offer of the Union on holiday pay is awarded.

### **ISSUE IV**

#### **RETROACTIVITY OF HOLIDAY PAY**

Under paragraph (h) of Section 9, retroactivity of holiday pay can be seen as part of the quid pro quo for the Employer=s gain of a defined contribution plan. Accordingly, retroactivity of holiday pay should be awarded.

### **AWARD ON RETROACTIVITY OF HOLIDAY PAY**

The Union=s last best offer on award of retroactivity for holiday pay is awarded.

## **ISSUE V**

### **FOOD ALLOWANCE**

The Union seeks to increase the food allowance from \$550.00 to \$700.00 per year, effective April 1, 2005. The Township would increase the food allowance to \$650.00, effective the date of this award.

The Union notes that a food allowance is designed to offset the cost of food required for working a 24 hour shift. It is asserted that the average of the external comparables that provide the benefit is \$734.00, with a \$700.00 median amount for the total.

Increases in the CPI that are also said to justify the increase. It is noted that the food index increased of 12.1% between 2000 and 2006. The Union contends that it has not seen an increase in the food allowance since 2002.

The Township argues that when the average of the external comparables are used, the total is \$531.00. The Township=s offer of \$650.00 is said to exceed the average of the comparables, and is said to be more appropriate than the Union=s offer of \$700.00 per year.

### **DISCUSSION OF FOOD ALLOWANCE**

There is no suggestion that there should be any type of a give back by the fire fighters in terms of the food allowance. The Employer=s offer would seem to meet the increases required by the CPI for food, although recent, extreme increases in food prices may have an effect going forward, that will exceed the 2% annual average increase.

Ultimately, the appropriate result is determined by paragraph 9(h) of Section 9 of Act 312. As previously noted, the police received increases in their defined benefit pension plan as the result of agreeing to go to a defined contribution plan for new hires. Insofar as the pension section of this award was predicated upon internal comparability, it is necessary and appropriate to award increases to the fire fighters in order to achieve a quid pro quo for the defined contribution plan.

Therefore, it is appropriate to award the fire fighters their last best offer on food allowances to serve as part of the quid pro quo for the defined contribution plan. For that reason, these changes should also be retroactive.

#### **AWARD ON FOOD ALLOWANCE**

The Union=s last best offer on food allowance and retroactivity of that food allowance is awarded.

#### **ISSUE VI**

#### **HEALTH CARE**

The Employer describes the agreed upon health care changes at p. 31 of its brief as follows:

- § Lasik Surgery at \$500 per participant/family member is being added to the plan. Birmingham is the only comparable community that offers Lasik coverage. Ex. 119.
- § Physicals at \$500 for adult family member and \$250 per child per year are being added to the plan.
- § Prescription co-pays will increase to \$10/\$20/\$30.
- § Doctor office co-pay will increase from \$10 to \$15.
- § Out-of-network out-of-pocket will increase to \$1,000 to \$2,000.
- § There will continue to be no in-network deductible or out-of-pocket.

The Township and the Union have three issues of disagreement. The first is out-of-network deductible: the Township offers \$350.00/\$700.00 and the Union offers \$250.00/\$500.00. The second area of disagreement is employee premium contribution. The Township asks that the fire fighters contribute \$3.85/\$7.70 bi-weekly, with retroactivity. The Union asks that there be no employee contribution and no retroactivity, which is the status quo. Finally, in regard to generic drugs, the Township asks that there be mandatory use of generic drugs when they are available, and the Union asks that Adispense as written@ (DAW) be permitted.

The Township is self-insured, with an additional \$75,000.00 per claim stop-loss policy. The Township health care costs have increased at a rate of 10.2% per year, with a family averaging \$20,539.00 per year.

The Employer asserts that its proposed plan is the best among the comparables in regard to in-network and out-of-network deductibles. The Township further states that some of the plans of the comparables allow for no out-of-network coverage. It is maintained that the Township=s overall plan is at the top of the list of the comparable communities.

The Township also argues that the internal comparables, including the police, have accepted its health care plan. Regarding its request for an employee contribution to health care premiums, it is maintained that two of the external comparables have premium-sharing, and that several of the comparables require employees to pay the difference between a basic plan and a more enhanced one. The Township emphasizes that going forward, there will be substantial costs for retiree health care, and that it needs savings at this time.

It is argued that premium-sharing is occurring across the nation. The Employer asks that employee health care contributions should be retroactive, since wages are retroactive in this proceeding. It is further noted that other Township employees have been paying contributions while this proceeding has continued.

Regarding generic drugs, it is maintained that all Township employees are required to use generic drugs, when available. It is noted that Birmingham, Royal Oak and Waterford have provisions that are similar to the Township=s proposal. It is also argued that the Union has not offered a basis for making fire fighters the only Township employees with a separate rule on generic drugs.

The Union notes that it has accepted many of the Township proposals on the health care issues. However, it asserts that the Township=s offer on generic drugs fails to take into consideration a situation where a generic drug is inappropriate for a patient, such as where the patient has an allergy to the generic drug.

Regarding out-of-network deductibles and out-of-pocket costs, it is asserted by the Union that there is no justification for the significant increases sought by the Township. It is maintained that there is no evidence pertaining to what would be saved by higher out-of-network costs. Further, it is argued that there is no evidence of what the Township=s expense have been regarding out-of-network costs. The Union additionally argues that its proposed out-of-network payments are similar to those of the comparables.

The Township=s proposal for employee health care contributions is further argued to be inappropriate. The Union maintains that the Township has substantial reserves for its health care plan, making an employee contribution unnecessary. Additionally, it is contended that there was no

evidence to support that employee contributions will reduce employee utilization of the health care plan. The Union also notes that among the comparables, only one requires an employee contribution to its basic plan.

The Union additionally asks for a 30 day implementation policy. Finally, the Union contends that employee contributions should not be retroactive. It suggests that under Section 10 of Act 312, only increases are permitted to be retroactive. Further, retroactivity, if maintained, will not serve to meet the Township's goals.

## **DISCUSSION ON HEALTH CARE**

### **MANDATORY GENERIC**

Generic drugs are cheaper than brand drugs, and therefore represent a cost savings. There is no indication on the record that generic drugs are inferior to brand name drugs, and as a general proposition, there would be no reason to allow dispensing as written, when there is an acceptable generic equivalent. The difficulty is when an employee is unable to take a generic equivalent drug because he/she is allergic to it.

Pursuant to paragraph (h) of Section 9, I can take notice of other arbitration decisions. In an unpublished decision of mine involving a major corporation and a major union, the employer refused payment for a brand name birth control pill, when there was a generic equivalent. However, there was testimony that the employee's spouse was allergic to the generic equivalent. It was concluded that the employee spouse, for valid medical reasons, was entitled to use the brand named drug at a preferred rate, but that an appeal to the company (where it could be granted), was a necessary precedent to immediate relief. The award in that case leads to the following conclusion in this matter.

To achieve internal consistency, and because there is internal comparability that favors the Employer, the Employer=s last best offer on mandatory use of generics should be adopted. This will discourage doctors from unnecessarily writing Adispense as written@, when there is no medical reason for doing so, and an acceptable generic exists. This will allow the Employer to achieve cost savings.

However, the Employer should understand that contracts are to be read to avoid harsh, absurd or unreasonable results. It would be unreasonable to require an employee to use a generic, when he/she is allergic to it. Under these circumstances, as a matter of grievance arbitration, it would be expected that the employee would be allowed to use a generic equivalent.

With this interpretation, the Employer=s LBO on use of generic drugs should be adopted.

#### OUT-OF-NETWORK CONTRIBUTION

The purpose for an increase in the out-of-network contribution is to encourage employees to stay in the network, and to thereby save the Township money. There is no evidence regarding out-of-network utilization by fire fighters, and whether the increase sought by the Employer will either be important to the Township, or if it will represent a significant burden on the fire fighters.

Under these circumstances, it is appropriate to consider internal comparability, and place fire fighters in the same position as the other Act 312-qualified police officers and command officers. Importantly, there is no suggestion that fire fighters and other Act 312-qualified employees have had difficulty with out-of-network utilization.

### EMPLOYEE HEALTH CARE CONTRIBUTION

The Employer is asking for what it regards as a minor contribution by the fire fighters. The intent of such a contribution appears to be a means for the Employer to set a precedent for employee contributions, should there be significant health care increases in the future.

Internal comparability with the police and police command favors the Employer on this issue. Additionally, increases that the fire fighters have received in wages, holidays and other benefits can be seen as an offset to the increased health care costs. As a result, the Employer=s last best offer should be adopted.

### RETROACTIVITY OF PRIOR CONTRIBUTIONS

There shall be no retroactivity for employee premium contributions. The justification for instituting these employee contributions is not served by requiring retroactivity. Further, the Township has had the use of the fire fighters= back wages over the past several years, including interest. Retroactive payment of employee contributions would not be appropriate in light of the Employer=s use of the back wages of the fire fighters.

### RETROACTIVITY OF HEALTH CARE PLAN

The Union asks that the changes to the health care plan take place no sooner than 30 days after the panel=s award. This is reasonable to allow the fire fighters to adapt to the changes required by this award.

### **AWARD ON HEALTH CARE**

1. The Employer=s last best offers on prescriptions and their retroactivity are awarded by the panel.
2. The Employer=s last best offer on out-of-net-work payments and retroactivity are

adopted by the panel.

3. The Employer=s last best offer on doctors= office visit and its retroactivity is adopted by the panel.

4. The Employer=s last best offer on employee health care contribution is adopted by the panel.

5. The Union=s last best offer on retroactivity of health care plan shall be adopted by the panel.

## **ISSUE VII**

### **SICK LEAVE**

The parties are in agreement on improvements for sick leave payment. As stated in the Union=s brief at p. 16, the following language has been accepted.

1. Modify Article XXV, Section 5, to increase the payout for unused sick leave both annually and at retirement or death, to sixty percent (60%). Consistent with the parties= final offers and the language of the expired agreement, there shall be no change to the maximum number of hours to be paid specified in Article XXV, Section 5.
2. Modify the language of Article XXV as reflected in the parties= final offers of settlement.

### **RETROACTIVITY**

The only issue separating the parties is retroactivity. The Union asks that retroactivity apply to banked sick time in excess of 1,120 hours for unit employees and 800 hours for day employees. It is asserted that it takes employees years to qualify for the increased benefit, and that the increased

costs for the Township for sick leave payment would negligible.

The Township contends that traditionally, retroactivity is not awarded for fringe benefits, but rather is limited to wages. It is further argued that the computation of sick leave payment would be confusing.

**DISCUSSION OF RETROACTIVITY OF SICK LEAVE**

Retroactivity of payment for unused sick leave should not be granted. On the issue of retroactive increases for employee payment for health care, retroactivity was not granted. Pursuant to paragraph (h) of Section 9, it would not be expected that retroactivity would be granted for this other health-related issue.

**AWARD ON SICK LEAVE**

The Employer=s last best offer on sick leave and its retroactivity is awarded by the panel.

**SUMMARY OF AWARDS**

**ISSUE I.**

**AWARD ON PENSIONS**

The last best offer of the Employer on a defined contribution plan for new hires is awarded along with retroactivity to the date of the Award.

**ISSUE II.**

**AWARD ON WAGES**

The following is awarded on wages.

<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
3.0%	3.0%	3.0%	3.25%	3.25%

These wage increases shall be retroactive, pursuant to the stipulation of the parties.

**ISSUE III.**

**AWARD ON HOLIDAY PAY**

The last best offer of the Union on holiday pay is awarded.

**ISSUE IV.**

**AWARD ON RETROACTIVITY OF HOLIDAY PAY**

The Union=s last best offer on award of retroactivity for holiday pay is awarded.

**ISSUE V.**

**AWARD ON FOOD ALLOWANCE**

The Union=s last best offer on food allowance and retroactivity of that food allowance is awarded.

**ISSUE VI.**

**AWARD ON HEALTH CARE**

1. The Employer=s last best offers on prescriptions and their retroactivity are awarded by the panel.
2. The Employer=s last best offer on out-of-net-work payments and retroactivity are adopted by the panel.
3. The Employer=s last best offer on doctors= office visit and its retroactivity is adopted by the panel.
4. The Employer=s last best offer on employee health care contribution is adopted by the panel.
5. The Union=s last best offer on retroactivity of health care plan shall be adopted by

the panel.

**ISSUE VII.**

**AWARD ON SICK LEAVE**

The Employer=s last best offer on sick leave and its retroactivity is awarded by the panel.

PANEL SIGNATURES

Date: \_\_\_\_\_

\_\_\_\_\_  
Mark J. Glazer, Chairman

Date: \_\_\_\_\_

\_\_\_\_\_  
Thomas Eaton, Employer Delegate\*

Date: \_\_\_\_\_

\_\_\_\_\_  
Dennis Fecteau, Union Delegate\*\*

\* Concurs on all last best offers awarded to the Township, and dissents on all last best offers awarded to the Union.

\*\* Concurs on all last best offers awarded to the Union, and dissents on all last best offers awarded to the Employer.