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STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of Arbitration  
Under Act 312 (Public Acts of 1969)

Harrison Township,

Employer,

-and-

MERC Case No. D07 G-1111

Harrison Township Firefighters Local 1737

Union.

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**OPINION AND AWARD**

Chairman of the Arbitration Panel:	Kenneth P. Frankland
Township Delegate:	Adam Wit
Union Delegate:	Michael Barnhard
Representing Township:	Christopher P. Mazzoli
Representing Union:	Alison L. Paton
Pre-Hearing Conference	June 24, 2008
Hearing Held	January 20, 2009, in L'Anse Creuse
Post-Hearing Briefs Received:	April 20, 2009
Opinion and Award Issued:	May 8, 2009

**STATEMENT OF THE CASE**

The Harrison Township Firefighters, Local 1737, filed a petition for arbitration pursuant to Act 312 of Public Acts of 1969 on December 13, 2007. On May 12, 2008, MERC appointed Kenneth P. Frankland as the impartial arbitrator and chairperson of the panel in this matter. A pre-hearing conference was held on June 24, 2008, and a report was generated by the chair the same day. During the pre-hearing conference, the parties identified the only issue; a wage re-opener for 2008, 2009 and 2010.

The parties also took under consideration the issue of comparability and agreed to meet and confer with respect to communities that might be comparable. Indeed, the parties stipulated to eleven communities as set forth in Joint Exhibit 13 namely the Townships of Canton, Clinton, Plymouth, Redford, Shelby and Washington and the Cities of Eastpointe, Madison Heights, Roseville, Sterling Heights and St. Clair Shores. The Stipulation is for purposes of this case only and not set a precedent for purposes of future Act 312 cases between the parties. At the hearing the parties stipulated to a waiver of the statutory time limits. The hearing was held on January 20, 2009, at the Township Hall in L'Anse Creuse, at which time testimony was taken and exhibits introduced on the wage issue. Subsequent to the hearing, last best offers were received from each of the parties and post hearing briefs were received by the panel on April 20, 2009, after the parties had requested extensions.

As provided in Act 312, the panel consists of a delegate chosen by each party and an impartial chair appointed by MERC. The chair of the panel is Kenneth P. Frankland, Adam Wit, Deputy Supervisor, is the Township delegate, and Michael Barnhard, Local President, is the Firefighters' Association delegate. As required by the

Harrison Township Act 312 Opinion

Act, the panel is required to adopt the offer of one of the parties that most closely conforms to the requirements of Section 9(a).

**STANDARDS OF THE PANEL**

Act 312 of 1969, MCL 423.231, specifically §9, contains eight factors upon which the panel is to base its opinion and award. Those are:

- a. lawful authority of the employer;
- b. stipulation of the parties;
- c. interests and welfare of the public and financial ability of the unit of government to meet those costs;
- d. comparison of 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 communities generally:
  - (i) in public employment and comparable communities;
  - (ii) in private employment and 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 a determination of wages, hours and conditions of

**Harrison Township Act 312 Opinion**

employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment.

In the ensuing discussion, the panel will discuss the Section 9 factors which are most pertinent on this issue.

**DISCUSSION OF WAGE ISSUE**

**Union's Last Best Offer**

**1. 2008 Wages**

Wage increase of 3% across-the-board for all classifications and steps effective retroactive to January 1, 2008; retroactive pay only for those who are currently employed as of the date of issuance of the Award.

**2. 2009 Wages**

Wage increase of 2.75% across-the-board for all classifications and steps effective retroactive to January 1, 2009; retroactive pay only for those who are currently employed as of the date of issuance of the Award.

**3. 2010 Wages**

Wage increase of 2.75% across-the-board for all classifications and steps effective January 1, 2010.

**Township's Last Best Offer**

**1. 2008 Wages**

2.25%, not retroactive, effective date of the Award

**2. 2009 Wages**

2.25%, not retroactive, effective date of the Award

**3. 2010 Wages**

Harrison Township Act 312 Opinion

2.25%, effective January 1, 2010

**TABLE OF EXHIBITS**

- Joint 1. Current Contract
- Joint 2. Canton Township Contract
- Joint 3. Clinton Township Contract
- Joint 4. Eastpointe City Contract
- Joint 5. Madison Heights City Contract
- Joint 6. Redford Township Contract
- Joint 7. Plymouth Township Contract
- Joint 8. Roseville City Contract
- Joint 9. Shelby Township Contract
- Joint 10. St. Clare Shores City Contract
- Joint 11. Sterling Heights City Contract
- Joint 12. Washington Township Contract
- Joint 13. Stipulation regarding comparable communities
- Employer 1. Certification of Assessment Roll 2007, 2008 and 2009
- Employer 2. Assessing Document
- Employer 3. List of Foreclosures
- Employer 4. Revenue and Appropriation Summary FY 2009
- Employer 5. State Revenue Sharing Analysis
- Employer 6. Projected Millage FY 2007-2010
- Employer 7. Fire Fund Financial Statement
- Employer 8. Budget Document, FY 2009 Line Items
- Employer 9. Revenue History Analysis
- Employer 10. Broker Statement Retirement Fund 12/31/08
- Employer 11. Fire Department Wage Base
- Employer 12. Fire-Fighter Total Compensation 2005-2008
- Employer 13. Actual Compensation by Rank 2008
- Employer 14. Actuarial Study June 30, 2006
- Employer 15. Color-Coded Comparable Analysis
- Employer 16. Contract Supervisory Employees Local 2006 - 2009
- Employer 17. Contract AFSCME Local 25, 1/1/08 - 12/31/11
- Employer 18. Demographic Statistics, Comparable Communities
- Employer 19. CPI Index 1998 - 2008
- Employer 20. Taxable Value and SEV Data Comparable Communities
- Employer 21. Detroit Free Press Article 1/7/09
- Employer 22. AP Article Michigan Revenue Forecast
- Employer 23. Yahoo hot jobs
- Union 1. Macomb Daily Foreclosures
- Union 2. 2007 Tax Rate Request
- Union 3. 2008 Tax Rate Request
- Union 4. 2009 Salary Increases Township Officials
- Union 5. Stress Article
- Union 6. LRIS Article
- Union 7. 2007 Annual Report

## Harrison Township Act 312 Opinion

- Union 8. Total Runs Five Years
- Union 9. Percentage Wage Increases of Comparables
- Union 10. Base Wage with Paramedic 2007 Comparables
- Union 11. Wages vs CPI
- Union 12. Fire Fund Audits 2005-2007 and 2008 Pre-Audit
- Union 13. 2009 Fire Budget vs 2007 and 2008
- Union 14. Local 1737 12/10/07 Request for Information from Township
- Union 15. 12/17/07 Township Response to Request for Information
- Union 16. FY 2009 Budget Adoption Minutes
- Union 17. Notes to Financial Statements December 31, 2006
- Union 18. Fishing Hole Project Minutes
- Union 19. Macomb Article re Library

### STATEMENT OF FACTS

Harrison Township, a charter township, is located in Macomb County in zip code 48045. It contains 14.3 square miles of land and 9.4 square miles of water area. (E-18) The latter is being adjacent to the western shore of Lake St. Clair including Metro Beach Metropark. The landed area includes Selfridge Air Force base. L'Anse Creuse School District is within the township.

The property tax base is 85% residential, the balance commercial. The estimated median house or condo value for 2007 was \$192,161. The 2000 census was 24,461. The estimated median household income in 2007 was \$54,878. (E-18). The Township is policed by the Macomb County Sheriff but has its own fire department. There are two fire stations, one on Crocker Boulevard and the other is the new station on Jefferson between Sixteen Mile road and South River Road. There are 27 fire employees in this bargaining unit, including 3 battalion chiefs, 3 lieutenants, 6 sergeants and 15 firefighters. The Township levies 6.67 mills; five of which are dedicated to the fire department, 1.34 to police and the balance to the general fund. This is a three year millage, the first ever passed, and expires in 2009. The Township expects to propose a renewal election this year.

## Harrison Township Act 312 Opinion

The assessor, Carol Ryan, testified regarding the difference between assessed and taxable value. The first is supposed to be 50% of true market value and the latter is a cap one year after a sale that can be increased no more than the rate of inflation or 5% via the Headlee Amendment. She certifies the taxable value of all property in the Township on the first Monday in March each year. (See, E-1 2007, 2008 and 2009 Certifications) The taxable value has gone up slightly each year while the market value has been decreasing. The 2008 figure is used for the 2009 budget. Currently, the taxable value is going down due to the economic conditions but still up overall. She thinks the 2009 taxable value may be as low as 2005. E-2 illustrates the allocation of the millage in 2007-2009 to the fire department using unaudited budget numbers for 2007 and 2008 and projected for 2009. There was considerable discussion about foreclosures, when they are posted on the rolls and the effect on certifications for the future.

Glenn Spencer is the Finance Director for four years. He prepares the budget for the Board's consideration. He uses E-2 to start the budget process as to available local revenue and looks at state revenue sharing and other sources. 2007 is audited, 2008 is soon to be audited, 2009 is from the current budget and 2010 is an estimate. ( See, E-4 2009 budget) He testified that looking at E-6, the levy is not enough for police services for 2008 and 2009. He reviewed the Fire Fund (E-7) and unaudited for 2008 showed a balance of \$742,634. He projected a smaller surplus of \$180,337 for 2009. (E-9) Good accounting practice suggests the fire fund surplus should be about six months of expenditures or about \$1,000,000. The fire pension fund is losing money via the market crash. (E-10)

He reviewed E-11, the full time department employees wage summary including all extra incentives. In E-12 the average base wage for 2008 is \$64,347 and total compensa-

## Harrison Township Act 312 Opinion

tion average is \$ 84,013. Retiree health care is a pay as you go but the Township would like to switch to a trust at some time.

In E-15. Mr. Spencer depicted the 2007 wages, the 2008 wages with a 2.25% increase (\$67,022 for a firefighter e.g.) and the wages in the comparables communities as of 1/1/09. He identified 4 communities paying higher wages than Harrison and 7 that pay less.

Anthony Forlini is the Township Supervisor, elected in 2004 for a four year term. He received his first raise of 5.08% over 2008 in the 2009 budget (U-4). He does make a 15% contribution to health insurance; the Union members have none. He stressed financial challenges with shortfalls in the next two years and a police shortfall in 2008. The Township did not ask for concessions in 2008 and offered a 2.25 % wage increase as all it could afford as the economy worsens and property values decrease. The Board supports the work of the Union members. Millages are contentious but in 2009 they will probably ask for a 6.67 millage renewal.

Michael Barnhard is a sergeant and president of the Union since January, 2008 and treasurer before that. He was hired in 1997. He has been on the bargaining team for that last three contracts. This is the only Act 312 unit. In all negotiations, internal comparables were never used by either side.

The members perform firefighter duties, fire prevention, public education, paramedics do transport services and provide a dive team and ice rescue. These latter teams are certified. U-8 depicts the total runs for the last five years. In 2007, 2438 runs; 682 fire, 1590 medical and 117 public service. In 2008 there were 2545 total runs.

In U-9, he described the percentage wage increase in the comparables. In U-10, he described the 2007 full-paid firefighter with paramedic base wage rankings and Harrison



## Harrison Township Act 312 Opinion

had four communities paying higher and six paying less.

He described the history of the current contract. The 2001-2004 collective bargaining agreement was extended to 12/31/2010 with an extensive Addendum in 2003 and another Addendum in May 2005. (J-1) Although the collective bargaining agreement was not to expire until 2004, in 2003 there was a major reorganization preparatory to a millage vote. The department went from two to three platoons that reduced the need for overtime and the Union lost two 40-hour positions. Health care was changed to save money. The five mill department was to be placed on the ballot in 2004 and in that year the Union took no wage increase. They agreed to wage re-openers for 2005-2010. The May 2005 Addendum had wage increases of 3.75% for 2005, 3.50% in 2006 and 3.25% in 2007. It was his view that substantial cost savings in the revised health insurance program were to be used for retiree health costs; but that did not materialize.

### DISCUSSION

#### **2008 Wage**

As stated above, the Township LBO is 2.25% with no retroactivity and the Union LBO is 3% with retroactivity to January 1, 2008. The Panel must adopt one or the other and cannot "divine" its own proposal.

**The Panel believes that Section 9(c), 9(d) and 9(e) are most germane to this case and by applying these factors finds that the Union LBO in 2008 most closely complies with those factors.**

Before applying these factors, the Panel is struck by the fact that the total dollar difference between the proposals is relatively small given the Fire Fund budget as a whole.

## Harrison Township Act 312 Opinion

Using E-7, the unaudited 12/31/08 firefighter salaries (Item 708.000) of \$1,737,356, the Township LBO adds a \$43,433 expenditure. The Union LBO adds \$52,120. **The difference, \$8,686.78.** It seems ironic that the parties would go through the laborious process of Act 312 and its costs for such a relatively small amount - but ours is not to question why; but to do our statutory duty, and so we shall!

The Township's primary focus is on ability to pay. They site the national and state economic crisis as undermining fiscal integrity. The declining market value of housing and in time the taxable value as well seems ominous given the 85% residential property in the Township. The Township now assess 6.67 mills, of which 5 are dedicated to the Fire Department and those will expire in 2009 and must be placed before the voters again to maintain that financial base. Funding health care on a pay as you go basis is jeopardized if there is a strain on the Fire Fund.

The Union correctly counters "a woe is me" scenario is not compelling for 2008 given the primary fact that all numbers for 2008, even though unaudited, are known. **And the very significant fact is that the citizens have approved a 5 mill dedicated Fire Fund from which to finance the department.** The Township general fund and state revenue sharing play no role. Many of the concepts presented by the Township for 2008 have little relevance and would be more appropriate if we were dealing with all components of a municipality's general fund.

U-12 sets forth the Fire Fund for 2005-2007. In 2005, there was a surplus of \$275,721 and fund balance of \$686,006; in 2006 a surplus of \$175,383 and fund balance of \$861,389; and in 2007, a surplus of \$34,790 and a fund balance of \$996,179. In 2006 and 2007, the Township was able to purchase a new fire engine each year and

Harrison Township Act 312 Opinion

notwithstanding these capital expenditures still had the mentioned surpluses.

E-7 and U-12 both demonstrate the pre-audit 12/31/08 figures. They show revenues up from 2007 at \$5,685,176, expenditures of \$4,942,542 and a surplus of \$742,634 and fund balance of \$1,738,813. In fact, the evidence shows that gross revenues have increased each year, the Township has been prudent with expenditures thus creating a surplus each year and perforce a growing fund balance that now exceeds what Mr. Spencer asserted would be good accounting practices.

These numbers clearly show that the Township has the ability to pay not only the 2.25% it proposed but also the 3% Union LBO. Ability to pay is not an impediment, reluctance to do so, for whatever reason, is why arbitration is now necessary.

With respect to Section 9(d), a comparison with internal units is not warranted. Firstly, this is the only Act 312 unit in the Township and the Panel believes that comparisons should be to like 312 entities. Secondly, there is no bargaining history that internals have ever been mentioned in negotiations and no proofs were presented.

The external comparable communities are stipulated to the above mentioned cities and Townships. Both parties agree the best measure of wages is the firefighter including paramedics classification.

Even if E-15 is slightly flawed as the Union suggests, Harrison is still somewhat in the middle of the pack with four communities paying more in 2008 than Harrison for this classification and U-10 illustrates the same fact. The Township points out that with their LBO Harrison would maintain the same position in 2008 and the same is true with the Union LBO. And as the Union argues, the four higher communities add the paramedic wage into the base and thus pay overtime, longevity and holiday pay on that base. Contrarily, in Harrison, the added pay for paramedics is in a separate bonus and is not

## Harrison Township Act 312 Opinion

included for payment of overtime, longevity and holiday pay thus decreasing the total compensation effect.

Given that each LBO is expressed as a percentage increase, it behooves the Panel to look at the comparable data expressed as a percentage. There was some confusion at the hearing regarding obtaining the most reliable information from contracts and the parties were permitted to submit a Revised Union 9 and an Employer Rebuttal to Revised Union 9. Even with all footnotes taken into consideration, it is obvious that for 2008 the majority of increases were 3%. This lends support for the Union LBO.

Finally, Section 9(e) discusses cost of living as a factor to consider. U-11 and E-19 lists the CPI for various years. We note discrepancies for 2005-2007 in the exhibits. U-11 has a cumulative total of 8.19% while E-19 has 9.4%. We cannot account for this unless the parties were not using the same statistical area. In any event, the point is that the aggregate wage increases for 2005-2007 were 10.5% (3.75%, 3.5% and 3.25%) and thus barely above the CPI for that period.

For 2008, E-19 shows the CPI to be 3.8%. Even the Union LBO of 3% would not cover the CPI and the Township LBO would further reduce the ability to keep pace with the cost of living.

The Township LBO does not contain retroactivity; the Union does. The Township brief states retroactivity is not mandated by Act 312 and indeed that is correct. However, it is one of the issues that a panel often decides using the factors of Section 9. The Township cites, *Village of Beverly Hills*, Michigan Employment Relations Commission D05 J-1-63 (February 13, 2009) in which retroactivity was not awarded. The Panel has reviewed that case and believes the facts here require a different conclusion on retroactivity. In *Beverly Hills*, the parties both agreed on 2.5% across the board raises for 2006, 2007,

Harrison Township Act 312 Opinion

2008 and 2009 and the only issue was retroactivity. That panel thought that the 2009 pay that would be the highest of the comparables, the time that expired since the settlement of other bargaining units and overall compensation suggested no retroactivity. Here, none of those factor come into play. This is a wage re-opener not multiple issues. We have a dedicated 5 mill Fire Fund. In *Beverly Hills*, the citizens defeated a millage renewal for their general fund. The facts are just so dissimilar that "Act 312 doesn't require retroactivity" does not come into play in this case.

The Union points out, without rebuttal, that all of the comparables that had 2008 increases had retroactivity. This is compelling. Further, the passage of time should not be used for or against either party on this issue. The ability to pay as outlined above will not be significantly impacted by a retroactive award.

The Panel is reminded that we must take one or the other LBO. On balance, as stated above the Union LBO best meets the factors of Section 9 and since the Union LBO contains retroactivity, it must be adopted.

AWARD

The Union LBO is adopted. 3.0 % increase; effective retroactive to January 1, 2008, but with retro pay limited to those who are currently employed as of the date of issuance of this Award.

Dated: 5/18/09

  
Kenneth P. Frankland  
Chairperson

Dated: 5-12-09

  
Adam Wit

Harrison Township Act 312 Opinion

Dated: 5-12-09

Delegate for the Township

Concur

Dissent

  
Michael Barnhard

Delegate for the Union

Concur

Dissent

**2009 Wage**

For 2009, the Township LBO is 2.25% without retroactivity and the Union LBO is 2.75% with retroactivity to January 1, 2009.

The arguments for each party are mirror images of 2008 and the analysis for this panel is similar to that of 2008.

Mr. Spencer testified that E-8 is the 2009 budget adopted by the Board. As presented it reflects revenue and expenditures being the same, \$5,661,281. E-9 however, suggested a \$180,375 surplus. Again, the fund balance from 2008 is \$1,731,450. A closer inspection of E-8 shows very similar numbers for both 2008 and 2009 in almost all categories with two exceptions. Contingency, item 956.000 is \$180,375 vs only \$43,688 in 2008. Also, equipment reserve, item 980.000 is stated at \$240,000 vs \$183,380 in 2008. This suggests fluidity has been built into the budget and while seeming to be evenly balanced may well be set up for a surplus as has occurred in earlier years and was projected in Mr. Spencer's analysis as stated above. As Mr. Spencer testified that he had not budgeted any wage increase in 2009, even the 2.25% the Township is offering could well be handled within the "contingency" item. The panel believes that the ability to pay is evident for either proposal including the .50% difference if the Union LBO is adopted.

Harrison Township Act 312 Opinion

The only other evidence that is germane for 2009 is the percentage increases in the comparables that have wage increases. Revised U-9 and the Township Rebuttal shows six increases for 2009. Of those, four, are at 3.0%, above the Union LBO, two are at 2.5% thus between the competing proposals here and one is 2.0%, the only one less than the Township 2.25%. The panel believes this supports the Union proposal at 2.75% not being out of line with the comparables and would not support the Township 2.25% proposal.


The panel adopts the same rationale on retroactivity as in the 2008 analysis.

**Thus, given the ability to pay and the comparables being more favorable to the Union LBO, the panel adopts the Union LBO as being most compatible with the Section 9 factors.**

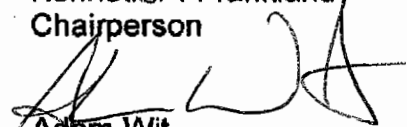
AWARD

The Union LBO is adopted. 2.75% increase; effective retroactive to January 1, 2009, but with retro pay limited to those who are currently employed as of the date of issuance of this Award.

Dated: 5/8/09

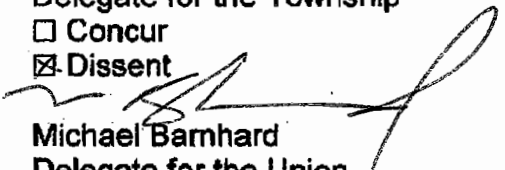
  
Kenneth P. Frankland  
Chairperson

Dated: 5-12-09

  
Adam Wit  
Delegate for the Township

Concur  
 Dissent

Dated: 5-12-09

  
Michael Barnhard  
Delegate for the Union

Concur  
 Dissent

2010 Wages

Harrison Township Act 312 Opinion

The Union LBO is 2.75% effective January 1, 2010; the Township LBO is 2.25% effective January 1, 2010.

The analysis for this year is dramatically different from the preceding two years and Section 9 (c) comes into play. Ms. Ryan testified that the 2009 certification used for 2010 revenue could well be down as much as 15% from the increases of 2007-2009 and closer to 2005 levels. This seems prescient as the certification for 2009 is \$977,466 or a 5.5% decrease. (See, Ex. A to Township Brief, and fn 4, page 4; the panel received no adverse information from the Union regarding use of this document). While Mr. Spencer used a 11% decline in his 2010 projections (E-2, E-9) the fact remains that significantly less revenue will be generated in 2010 even assuming that the 5 mills for the fire department will be approved by the voters in 2009.

Township Brief, at page 5, fn 7 succinctly summarizes the financial situation. Only \$4,887,331 will be generated by 5 mills. The 2009 budget has revenues of \$5,661,281. Assuming most of the costs stay relatively the same as 2009, a structural deficit seems likely as Mr. Spencer and Mr. Forlini testified. Either cuts will have to be made or the current healthy fire fund balance will have to be drawn down drastically and perhaps even below the level Mr. Spencer suggested as safe accounting practices. We do note that the Township has a desire to pre-fund future retiree health costs, a laudable objective even if not required by current law. Extensive use of the fund balance would negatively impact upon that objective.

As to comparable communities, there are only 4 contracts with 2010 wages and provide little enlightenment. Roseville provides a muddled path as the parties view that contract differently and the reduction in hours worked in Roseville makes comparisons difficult. The Township argues that the Union LBO exceeds the 2.67% and 2.5% average



Harrison Township Act 312 Opinion


raise in the comparables. The panel does not find this information particularly helpful as not being strongly persuasive for either party.

**In summary, the general overall economic factors, the use of projections and the lack of persuasive comparable information leads the panel to conclude that the Township LBO for 2010 best meets the criteria of Section 9.**

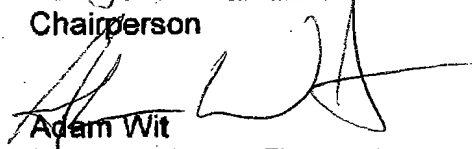
AWARD

The Township LBO is adopted; 2.25% increase effective January 1, 2010.

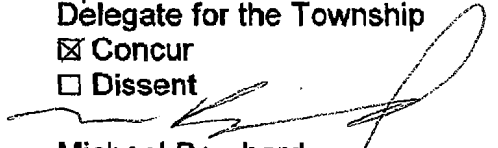
Dated: 5/8/09

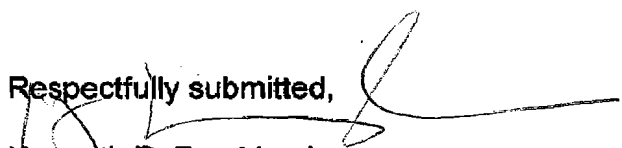
  
Kenneth P. Frankland  
Chairperson

Dated: 5-12-09

  
Adam Wit  
Delegate for the Township  
 Concur  
 Dissent

Dated: 5-12-09

  
Michael Barnhard  
Delegate for the Union  
 Concur  
 Dissent

Respectfully submitted,  
  
Kenneth P. Frankland  
Chairperson