STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ACT
312 ARBITRATION BETWEEN

Township of Shelby,
Employer,

And

Case No. D 04 L-1565

Command Officers Association of Michigan,
Labor Organization

ACT 312 ARBITRATION AWARD

Donald Burkholder
Panel Chair & Arbitrator

For the Employer:

Craig Lange
Roumell & Lange, LC
314 Town Center Dr.
Troy, Michigan 48084

For the Union:

Kevin Loftis
Command Officers Assoc. of Michigan
27056 Joy Road
Redford, Michigan 48239

STATUTORY AUTHORITY

MICHIGAN EMPLOYMENT RELATIONS COMMISSION [MERC]

Section 8 of Act 312 requires that, in relation to economic issues, "an arbitration panel shall adopt the last best offer of settlement which... more nearly complies with the applicable factors described in Section 9" of Act 312. *Section 9 contains the eight factors that the arbitration panel must consider as applicable.*

Section 9 of Act 312 provides for the following:

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 upon the following factors, as applicable:

a. the lawful authority of the employer;
b. stipulations of the parties;
c. the interests and welfare of the public and the financial ability of the unit of government to meet those costs;
d. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees *performing similar services and with other employees generally:*
    (i) In public employment in comparable communities;
    (ii) In private employment in comparable communities.
e. the average consumer price for goods and services, commonly known as 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 hearing;
h. such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 10 of Act 312 provides that the decision of the Arbitration Panel must be supported by "competent, material and substantial evidence on the whole record." This has been supported by the Michigan Supreme Court's decision in City of Detroit v. Detroit Police Officers Association, 408 Mich 410 (1980). The decision shows that the legislature evinced no intention in Act 312 that each factor of Section 9 is to be accorded with equal rate. Rather, they provide a compulsory checklist to insure that arbitrators render an award only after taking into consideration those factors deemed relevant by the legislature and codified in Section 9.

COMPARABLE COMMUNITIES

These parties agreed to the following comparables: Bloomfield, Canton, Clinton, Waterford and West Bloomfield Township, Roseville and St. Clair Shores. Taxable valuations for the tax year 2007 indicate that Shelby Township's residential and commercial property position is approximately the average of the comparables. Shelby's industrial property valuation is approximately triple the average. Crime statistics for 2006 show approximately 600 fewer 'index' or serious offense arrests, and 1,700 fewer total offenses than the average year.

Data formulated by the Southeast Michigan Council of Governments (SEMCOG) compare the benchmark localities based on a December 2007 projection. Total Shelby Township population was 73,608; average population for the comparables was 66,840. The total Shelby Township area is 35.2 square miles. The comparables average is 25.5 square miles.

Based on the 2000 census and in 1999 dollars, median household income in Shelby was $65,291. The median for the comparables was $66,199. The projected median income for the 1990-2000 decade was projected to drop for all comparables except for a significant increase in Canton Township, and a 1.5% increase in Shelby Township.

Taking into account the fact that SEMCOG statistics and projections are somewhat dated, they are nevertheless the best available data for overall comparison. Residential, commercial, and industrial property valuation and median income for 2007 do not reflect the economic factors of 2008 and 2009, i.e., a serious recession with a 12.5 percent unemployment rate nationally and higher in Michigan, particularly southeast Michigan. Although crime statistics comparisons alone are of little value, they nevertheless relate to population trends and area coverage. They are useful in the overall consideration of command officer compensation levels when compared with the comparables.

THE ISSUES

1.	Wages	Joint Issue
2.	Vacation Payout into FAC	Union
3.	Sick Time Payout into FAC	Union
4.	Shift Differential	Union
5.	Pension Multiplier	Union
6.	Hospital-Surgical-Medical Coverage	Employer
7.	Prescription Co-Pay	Employer
8.	Short Term Disability Issue	Employer
9.	Long Term Disability Insurance	Employer

The parties agreed during the course of the proceedings to a three percent (3%) increase the first year of the Agreement.

ACT 312 SECTION 9 FACTORS CONSIDERED*

Section 9 (c) provides that the panel consider "the interest and welfare of the public and the financial ability of the unit of government to meet those costs." It is standard practice in a 312 proceeding, as other 312 chairs have noted, for the panel to consider the interest and welfare of the public as a whole, along with the local government's ability to meet the costs of the economic issues set forth. The 'n' or universe of financial factors must be dealt with in its totality; thus the Employer's present financial status must be considered in the context of the future impact of current proposals and decisions.

Although Section 9 (c) is clearly the most significant basis of the panel's decision, each of the paragraphs, a through h, inclusive is examined. The Employer has well defined legal and fiduciary requirements, and therefore it has the authority and clear necessity to manage its finances responsibly. The parties agreed to a three percent, first year wage increase, and to the status quo on Long Term Disability. Examination of comparables indicated that Shelby Township's COAM officers are fairly compensated including wages, hours, conditions of employment including vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received. There was no indication that cost of living had a substantial impact on union members. There was reliable information on declining Township tax revenue during the 18 months since the initial pre-hearing conference, and the 13 months since the initial hearing on November 25, 2008. Paragraph 'h' requires us to consider "...other factors" while including analysis of the inextricable relationship of the various COAM requests/positions, among and between themselves, and with the Township's present and future financial obligations with special attention to its rapidly increasing Unfunded Actuarial Accrued Liabilities (UAAL).

FINANCIAL STATUS

Shelby Township's tax revenues as well as state shared revenues are in significant decline, consistent with a third quarter 2009 Census Bureau report of a seven percent decrease nationally, over the past year, and of a seven percent decrease in state and local revenues. The amount of state-shared revenue available to the Township, which can include funding for police officer wages and benefits, has trended downward since 2001. Economic hardship has caused plummeting property value, drastically decreasing housing prices and tax revenue based on those properties. The Taxable Value (TV) and State Equalized Value (SEV) of more and more parcels are tending toward equalization as a result of Proposal A requirements, causing faster and steeper declines in tax revenues. With 49% of all TV at its Proposal A maximum limit, the SEV will continue to decrease, a decline that is likely to continue for at least the next three to five years. Competent testimony and detailed exhibits indicate no reasonable assumption can create anything other than substantial reductions in the Township's SEV between now and 2013.

Estimated property tax revenues of approximately $13.4m for the 2008 fiscal year fell by roughly $74,000 for 2009. These tax revenues, based upon values determined in 2006 and 2007, are only reflective of the very beginning of the economic downturn. Utilizing the most optimistic forecast of Township TVs, revenue from property taxes will continue to decline to approximately $12.5m for FY 2012, and only then begin to increase. The Shelby Township Fire and Police Pension Retirement System, with a UAAL of approximately $22.9m at the end of 2007 was 67.4% funded. At the end of 2008, unfunded liabilities had increased almost $6m to $28.7m. The Employer annual contribution for 2010 is calculated to be more than $4.6m, which constitutes 39.2% of the Township's payroll, up from 30.96% of payroll in 2009.

The option of increasing the tax levy in order to increase revenues is not only unpopular with the residents, but impossible. The Township is already levying from its police operations millage, the maximum rate allowed by law without voter approval. Similarly the Employer is unable to allocate any additional mills from its general operating millage to its police operations. Of 2.2262 mills currently being levied, 1.2262 are already allocated to the Police Fund, leaving 1 mill for all other Township Departments, excluding the Fire Service.

<u>WAGES</u>

[Joint Issue]

The panel adopts the Employer position and language on wages, noting that the parties are in agreement with regard to the first year wages only. This decision is based on paragraphs a, c, d, e, f, g, and h of Section 9. The respective wage proposals are as follows, in percentages:

	UNION	EMPLOYER
1/1/05	3.0	3.0
1/1/06	3.0	2.75
1/1/07	3.0	2.50
1/1/08	3.0	2.50
1/1/09	3.0	0
1/1/10	3.0	0

Ability to pay and comparability have been examined. Shelby Command Officer pay, as well as total compensation, exceeds those of their counterparts in the comparable communities. Data on percentage increases in those communities provides little meaningful guidance. Internal comparability and a history of wage parity with the Patrol Association since, at least, 1996 are given significant weighting. At the core of this decision must be the Employer's present and estimated future financial status, i.e., paragraph c of Section 9, particularly reductions in revenue from revenue sharing and property taxes. A realistic analysis emphasizes the imperative of reducing costs. Wage increases, through the multiplier effect, relate directly to all other issues in dispute, including FAC, sick leave, shift differential, and pension computations.

VACATION PAYOUT INTO FINAL ANNUAL COMPENSATION

[Employer issue]

The panel adopts the Employer position and language on Vacation Payout into Final FAC, based on paragraphs a, c, d, f, g, and h of Section 9. This requires the removal of a provision waiving an 80 hour annual limit of vacation pay for the last three years of employment prior to retirement. The Employer points out that although this issue is entitled "Vacations", is it actually an issue related to Pension. Article 23 of the Agreement provides that a Command Officer's pension is in part determined by FAC with the Township. Article 23.3 states that FAC includes wages, overtime, longevity, holiday pay, accrued unused sick leave in pay and accrued unused vacation in pay.

By choosing to take no vacation during the last three years of employment, 264 hours of compensation would be paid in each of those last three years prior to retirement. This adds a total of 1,056 hours to their FAC, significantly enhancing it for purposes of calculating their pension. This has resulted in retirees nearly matching or exceeding their last three years of salary.

The inclusion of up to 1,056 hours of vacation pay into FAC is a windfall not experienced by any other comparable, internal or external. The Employer proposal will limit the payouts of vacation pay for command officers and place them at a par with patrol officers, who have the possibility of including up to 492 hours of unused vacation pay in their FAC.

SICK TIME PAYOUT INTO FAC

[Union Issue]

The Union proposes to incorporate up to 300 additional hours of compensation into FAC for purposes of Pension Calculation. The Employer proposes the status quo. The panel adopts the Employer's language. The impact of such an increase on FAC and ultimately on the Employer UAAL is clearly unacceptable under the Section 9 guidelines, particularly in relation to paragraph c, along with a, d, e, f, g. and h; the panel therefore awards the Employer position.

SHIFT PREMIUM

[Union Issue]

The panel adopts the Employer proposal, based on Section 9 paragraphs a, c, d, f, g, and h. The Union seeks to increase the shift premium differential from 3% to 5% for command officers working non-day shifts. The panel adopts the Employer position, i.e., status quo. Of the seven comparable communities, four do not have shift differentials. In the three communities that offer shift differentials, i.e., Clinton Township, Roseville, and St. Clair Shores, total compensation to command officers is significantly lower than it is in Shelby Township. Examination of internal comparables indicates that patrol officers and dispatchers receive a 5% shift differential. As the Employer notes, patrol officers and dispatchers are paid at a much lower rate than their commanding officers; general and supervisory unit employees are paid only a 1.5% shift differential.

The Township Finance Director has budgeted $17,126.23 to pay the 3% differential. A 5% differential would require a budgeted amount of $28,543.65, an increase of $11,417.42 each year. These are significant increases, expanding the wage costs significantly further than the wage proposals suggested by the parties.

PENSION ANNUITY FACTOR

[Union Issue]

The panel adopts the Employer's Last Best Offer and language for the pension annuity factor, i.e., *the status quo except to modify language such that officers hired after July 1, 1995 receive a 2.5% pension annuity factor for the first 25 years of service and 1% for each additional year of service. Section 9 paragraphs a, c, d, f, g, and h are applicable.*

The Township LBO maintains current contract language, with one variation. Specifically, the Employer would remove the current differentiation between the pension annuity factors for command officers who were hired after July 1, 1995 such that those officers would be subject to the same 2.5% annuity factor as officers hired prior to that date.

The Union LBO alters Article 23.1 A (2) to provide for a regular retirement pension calculated at 2.8% of the employee's average final compensation for the first 25 years of service, plus 1% of the employee's FAC. This proposal to increase the pension multiplier applies only to members of the command unit who are on the payroll on the date of this award. Like the Township, the Union seeks to modify the pension annuity factor for employees hired after July 1, 1995. However, the Union also proposes significant additions to the FAC factors for post-July 1995 hires, i.e., longevity, holiday pay accrual, unused sick leave in pay and unused vacation in pay.

The Employer proposal provides that, for officers hired after July 1, 1995, FAC factors are base wage and overtime only.

In an apparent attempt to assist the Township in bearing the increased cost of its proposal, the Union would increase the officer's required contribution rate from 4% or 5% to 7%, apparently only for command officers on the payroll on the date of the award. The Employer asserts that the Union's offer is unclear as to what contributions would be required of command officers who are promoted into the unit at a future date. The Union offer provides that such employees will receive the retirement benefits provided to them at the time of their promotion out of the patrol unit; it does not address the rate of contribution for officers promoted to command after the date of the issuance of the Award.

Nineteen command officers were employed as of December 21, 2007, averaging 17.87 years of service and 43 years of age, with an average salary of $96,570 and an overall payroll of $1,834,839. The Union proposal would result in an increase of $735,405 over a 14 year amortization period to fund its pension obligations for command officers. This would result in an annual increase equivalent to 2.17% of command officer payroll. Significantly, Unfunded Accrued Actuarial Liability (UAAL) is approximately $8.6 million. The Union proposal would require the Township pay an additional 4.83% of payroll to fund all prior years on behalf of employees within the pension plan. Expressed as a percentage of command officer payroll, the Township contribution would increase from 7.54% for current command officers to 13.17% if applied to both current and future command officers. In any case, increases such as those proposed by the union result in extraordinary and unjustifiable costs.

Other Michigan cities have taken measures to deal with the high costs of public pensions, including negotiating reduced pension benefits, capping final average pay, overtime restriction, and excluding unused sick and vacation time from FAC. The City of Taylor, facing exorbitant pensions, was forced in 2004 to raise property taxes by nearly 1.5 mills in order to manage the rising costs of police and fire pensions.

The Shelby command officer pensions as well as overall compensation are the highest among the comparables. As noted by Arbitrator Donald F. Sugerman in a 2007 panel decision regarding Shelby Township fire fighters, "Being first in wages does not carry with it a corresponding entitlement to be first in other economic conditions of employment." In view of the challenges posed to the Township's fiscal stability and future, it would be irresponsible to adopt the Union position.

HOSPITAL-SURGICAL-MEDICAL COVERAGE

[Employer Issue]

The panel awards the Employer position and language on Hospital-Surgical-Medical Coverage, based on Section 9 paragraphs a, c, d, f. g. and h. All command officers will be transferred to a "high deductible" plan, Blue Cross/Blue Shield Flexible Plan 3, which, like Community Blue, is also a Preferred Provider Organization (PPO) plan. Retired officers will not be required to contribute the premium sharing requirements of current employees. Flex Plan 3 has a $2,000 annual individual in-network deductible and a $4,000 annual family in-network deductible. It should be emphasized that the Township, not the officer, pays the 'high deductibles' through a third party firm. The Employer currently pays the full cost of health insurance for its command officers, three of whom have HAP/HMO coverage, while five have Blue Cross Community Blue, a PPO, and ten have Blue Cross Traditional coverage.

The Union in its last offer proposed to eliminate BC/BS Traditional coverage, and maintain the status quo with respect to Community Blue 1 PPO coverage and HAP/HMO coverage. Thus, under the Union's offer, the officers who are currently covered under the Traditional plan would move to one of the two remaining plans, and those with HAP or Community Blue 1 would continue to be covered by those programs.

The Employer, in advocating for its proposal, notes that because the Employee is not required to pay any of the Flex 3 Plan deductibles, it is even more favorable than the Community Blue 1 PPO. Although neither the Community Blue 1 nor Flex Plan 3 have a deductible, employees in Community Blue l have certain co-pays, e.g., physician office visits are part of the $2,000/$4,000 deductible. Accordingly, an employee under Flex Plan 3 does pay an office visit co-pay, since the Township covers that cost as part of the deductible.

The Flex Plan 3 also includes a preventative care rider in the amount of $500 per member annually for services such as annual physicals. Thus, there is no deductible co-pay and no charge for the first $500 of preventative services each year.

Nationally, the continually increasing burden of health care and medical costs need not be belabored. The Kaiser Foundation has documented widespread increasing adoption of high deductible health plans and employee health care premium sharing. In the public sector, U.S. Department of Labor data showed that in 1998, the last time such data was collected, 51% of full-time state and local government employees were required to make premium payments for single coverage; 75% were required to contribute for family coverage.

Shelby Township proposed a modest sharing arrangement, significantly, on a pre-tax basis as opposed to paying a deductible for which there is no tax benefit at all. An employee with single coverage would contribute $7.69 per pay period (or $200 per year). An employee with two person or family coverage would pay $15.38 per pay period (or $400 per year). These levels are well below the 1998 national average of $721/$3,455 per year for high deductible plans and 384/$1,824 per year for local government employees; these payment levels would most likely be considerably higher today, eleven years later.

A member who does not use the health plan, only used it for preventative care, or uses less than $200 (single) or $400 (couple or family) during a calendar year could essentially earn back part or all of the premium contribution. The Township will set up a health reimbursement arrangement (HRA) in the name of the employee and deposit the annual premium contributions, if any, each year, to grow tax-free and be distributed tax-free to reimburse the employee for the covered health plan and medical expenses as defined by the Internal Revenue Service. Available both during active employment years as well as during retirement, it can be used to cover prescription drug co-pays, over-the-counter drugs, uncovered dental and vision expenses, and almost any other health care expense that falls outside of the health plan coverage.

In both the current agreement and the Employer proposals, health care provided to retirees 'floats' with that provided active employees. The Township asserts that for the Police Department alone, its total Unfunded Actuarial Liability for retiree health care would be $20,156,000 for the year 2007 had it been required to adopt the currently required Government Accounting Standards Board's (GASB) "45 rule." The annual required contribution under the standards as of 2007 for retiree health care funding is estimated at $1,768,000 in the Police Department alone, or 41% of department payroll.

The Employer's health care costs more than doubled between 2000 and 2008, from $1,985,274 to $4,420,041. In this context, the Employer seeks to implement the high deductible in order to better manage its health care costs. The Employer's consultant on health insurance testified that the annual cost for medical plan coverage only, for command officers, excluding prescription drug costs, was $228,006 in 2008. Conversely, had the bargaining unit been covered under Flex Plan 3 in the same year, the cost to the Township would have been approximately $156,069, resulting in a projected savings of $72,000 for a better plan.

Analysis of the projected cost to the Township of insuring all command officers with $2,000/$4,000 deductible indicates a use rate of 55 – 60% for groups tracked in southeast Michigan and for the Employer's supervisory personnel. Similarly, 55% of the $2,000 deductible is being used and reimbursed for other Shelby Township employees. Another benefit to the Employer of switching to Flex Plan 3 is that renewal rates for 2007 – 2008 grew at a lesser rate compared with Community Blue 1. For the period 2007-2008, Flex 3 plans increased by 17.4% compared with 20.57% for Community Blue 1, with a much lower starting point for Flex 3.

The Township is experiencing significant projected savings for three other bargaining units it has placed in Flex 3, with the three tier drug co-pay, the same plan now being proposed for the command officers. Two of the units, UAW supervisory and UAW municipal, were placed in Flex 3 in February and July 2007, respectively. An Act 312 award moved the dispatchers into Flex 3 effective January 2009. Even after accounting for the deductible reimbursement, the

Township recognized a savings of more than $930,000, for 13.1% for its two UAW units, for the year 2006 with the Flex Plan 3.

Although only one of the external comparables has premium sharing, other factors are significant. In Canton Township, command officers receive only HMO coverage without premium sharing. In Waterford Township, officers receive Community Blue 10 coverage, which is not as comprehensive as the Community Blue 1 PPO applicable in Shelby Township. In West Bloomfield, the lack of premium sharing is a remnant of a contract that expired three years ago.

The Employer LBO on health care is a balanced approach, offering employees additional benefits, while at the same time helping the Township achieve cost containment objectives through widely used methods such as premium sharing.

PRESCRIPTION DRUG COVERAGE - Article 21

[Employer Issue]

The panel awards the Employer position and language on prescription drugs, based on Section 9 paragraphs a, c, d, f, g, and h. The current contract language provides a single tier $10 prescription co-pay, which is an anomaly in today's health care market. The Union has proposed a three tier program, $7/$20/$35. The Employer also proposes a three tier co-pay prescription drug plan administered by a pharmacy benefit manager; a $10 co-pay for generic prescriptions, a $20 co-pay for formulary (or "preferred" prescriptions), and a $40 co-pay for non-formulary (or "non-preferred brand" prescriptions). The Township proposal is lower than the $10/$26/$46 national average reported by the Kaiser survey. The Union proposal is not in line with the three most recent collective bargaining agreements entered into by the Township bargaining units, which include the $10/$20/$40 co-pays proposed for command officers.

Suggesting another incentive to encourage the use of generic drugs, the Township offers a $0 generic co-pay program. Employers currently using a brand name drug can request from their physician a generic alternative, and receive that generic drug for six months at no cost.

External comparables on prescription coverage are more in line with the Employer proposal. Regarding generics, five comparables offer a $10 generic co-pay and none offer a $7.00 generic co-pay.

SHORT TERM DISABILITY – Article 19, Sec. 19.2.2

[Employer Issue]

The panel adopts the Employer position and language on short term disability, reducing the benefit from 100% to 75%, and placing the command officers on equal footing with their subordinates in the patrol officers' unit. An employee off work due to illness or injury has less work-related expenses. Work-related costs are reduced, and providing supplemental income at less than 100% provides an incentive for temporarily disabled workers to return to work. The Union's exhibits offer no logical rationale for Shelby command officers to continue to receive benefits far exceeding those of their subordinates in the patrol unit. Section 9, a, c, d, f, g, and h are applicable.

LONG TERM DISABILITY - Article 19.9.3

The parties agree that contract language is to remain exactly as it appears in the current contract. Section 9 paragraph b is applicable.

SPECIAL NOTE -

This case was extraordinarily complex. The Chairman notes with appreciation the thorough preparation, presentation, and continuing courtesy and helpfulness of the advocates and the delegates. The parties were most professionally and capably represented.

* Applicable Act 312 Section 9 paragraphs are explicitly noted. The paragraphs not listed do not apply.

The Union Delegate concurs with two issues, the 3.0% raise for the first year of the Agreement, and Long Term Disability, *but dissents with respect to wages for 2006 to 2010, inclusive, further* dissenting on all remaining issues, i.e.,

/s/ Kevin Loftis 2/11/2010
Kevin Loftis Date

The Employer Delegate concurs with two issues, the 3% raise for the first year of the Agreement, and Long Term Disability, and votes in the affirmative with respect to wages for 2006 to 2010 inclusive and all remaining issues, i.e., Vacation Payout into FAC, Sick Time Payout into FAC, Shift Differential, Pension Multiplier, Hospital-Surgical-Medical Coverage, Prescription Co-pay, and Short Term Disability Insurance.

/s/ Craig Lange 2/11/2010
Craig Lange Date

PANEL CHAIRPERSON:

2/15/2010
Donald R. Burkholder Date