STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
ACT 312 ARBITRATION

_____/

IN THE MATTER OF:

FLINT CHARTER TOWNSHIP

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN

_____/

MERC CASE NO.: D08 E-0794

Arising Pursuant to Act 312
Public Acts of 1969, As Amended

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FINDINGS, OPINION AND ORDERS

PANEL:

C. Barry Ott, Panel Chairman
Stephen O. Schultz, Employer Delegate
James DeVries, Labor Delegate

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FOR THE EMPLOYER:

Stephen O. Schultz (P29084)
Matthew D. Drake (P67030)
Fahey, Schultz, Burzych and Rhodes, PLC
4151 Okemos Road
Okemos, Michigan 48864

FOR THE LABOR ORGANIZATION:

James DeVries
Business Agent
27056 Joy Road
Redford, Michigan 48239-1949

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PROCEEDINGS

This compulsory arbitration case arises pursuant to a Petition filed by the Union with the Michigan Employment Relations Commission under 1996 PA 312, as amended, being MCL 423.231, *et seq.* The Chairman of the Arbitration Panel was appointed by MERC on September 24, 2009. Efforts to schedule the matter for hearing were delayed while the parties awaited the completion of a pension actuarial study. A pre-hearing conference meeting was held on February 25, 2010. The parties exchanged their respective exhibits and a hearing was held on April 19, 2010. The panel chair exchanged the parties' last best offers of settlement and post-hearing briefs were filed and exchanged in a timely fashion. The last collective bargaining agreement between the parties expired on 12/31/08. The extant collective bargaining agreement between the parties together with any tentative agreements reached in negotiations and the provisions of this Opinion and Award shall constitute the complete agreement between the parties for a successor collective bargaining agreement.

ISSUES IN DISPUTE

Union Issues:

1. Duration
2. Wages
3. Pension Contribution
4. Health Insurance – Disability Pension

5. Section 1.2, Deletion of the sentence where the language speaks to conflicting language between Act 78 and the collective bargaining agreement.

Flint Township Issues

1. Equalization of overtime
2. Residency for new hires
3. Change in holiday overtime pay
4. Ability to pay with respect to all economic issues

During the hearing on April 19, 2010, the Parties stipulated that the above issues are the only issues in dispute and no new issues would be submitted after the start of the hearing.

DECISION MAKING CRITERIA

The basis for an Arbitration Panel's Findings, Opinion and Orders are factors, as applicable, contained in Section 9 of Act 312 of 1969, as amended, being (MCL 423.239), which provides:

Sec. 9. 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 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 wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours

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

The disputed issues previously identified must be resolved on the basis of the factors outlined in Section 9, as well as other requirements provided in Section 8 and 10 of the Act. A majority decision of the panel is binding if it is supported by competent, material and substantial evidence of the entire record.

COMPARABLE COMMUNITIES

The parties were able to reach an agreement regarding the comparable communities that are to be utilized in this proceeding as follows:

City of Burton, City of Flint, Grand Blanc Township, Mount Morris Township, and Mundy Township.

With the exception of the City of Flint, the record includes copies of the collective bargaining agreements for the above communities under Jt.Exs. 2-5.

INTERNAL COMPARABLES

The record includes copies of the collective bargaining agreements for the following bargaining units recognized by Flint Township:

1. Flint Township Supervisory and Command Officers represented by the UAW, Local 708.
2. Flint Township Fire Fighters, Local 1425, I.A.F.F.
3. Flint Township General Employees, Local 1918-01, AFSCME.
4. Flint Township Communication Operators, Teamsters Local 214.

In addition, the record includes the employment contract of the Chief of Police, Flint Township, Mr. George Sippert. (Jt.Exs. 6-10)

ABILITY TO PAY

The Employer is this case has advanced an ability to pay argument, claiming that the Township has experienced a significant negative change in its financial outlook. The record evidence and testimony of Mr. John Ervin, former Township Controller and present Special Projects Administrator indicates that like many Michigan units of local government Flint Township is confronted with declining tax revenues generated from the local property tax. The Townships operating tax millage rate stands at 4.6423 mills for 2010 and has been at that level since 2005. Declining taxable property values have resulted in a decrease in revenues of $560,000 for the fiscal year 2011, beginning July 1, 2010. Mr. Ervin predicts a continued decline in taxable property values and projects a 3% annual decrease in tax revenues for the period 2010-2013.

The second largest source of revenue for the Township is state revenue sharing and the Township has experienced a steady decline from that source. In 2007 state revenue sharing produced $2,572,582 and that amount declined to $2,043,000 for 2010. Based upon a State Fiscal Agency Memorandum dated May 28, 2009, Mr. Ervin projects that the statutory portion of state revenue sharing would decrease by 4.9% annually through 2013. Contrarily, Mr. Ervin optimistically projects that the constitutional portion of revenue sharing will remain constant. However, if the Township experiences the same level of reduction that occurred from 2007 to 2010 for the period of 2010 to 2013, the Township would loose an additional $500,000.

On the expenditure side of the ledger, Township expenditures in 2007 stood at $11,523,641 against total revenue of $13,901,512, leaving a general fund balance of $2,851,989. The budget for 2010 shows revenues at $14,141,189 vs expenditures of $11,370,325 and a fund balance of $2,770,864. The projected forecast for 2011 takes a decidedly negative down turn. Revenues are estimated at $12,995,178, down some $1,146,011 from 2010, with estimated expenditures of $11,221,784, leaving an estimated general fund balance of $1,773,394. Mr. Ervin's projections forecast further erosion of the general fund balance for 2012 and a negative fund balance for 2013 of some $605,913. According to Mr. Ervin, the Township has in the past attempted to maintain a fund balance equal to three months of expenditure, approximately $2,000,000 and must maintain at least a balance of $800,000 to meet its expected cash flow requirements, with no reserve for emergencies. Since the Township cannot legally adopt a budget with a negative fund balance, alternatives

must be developed. Absent a turn around in the revenue flow the Township will be forced to impose significant cuts in expenditures and that will very probably necessitate reductions in personnel and resultant services to the public.

It is noted that the financial forecasts of Mr. Ervin represent his best estimates based on the data he had to work with when the report was prepared in March of 2010 and those estimates are subject to change as more firm data becomes available. It is also noted that Mr. Ervin in his testimony acknowledged that even with a worst-case assumption, there is no real financial problem until 2012 or 2013. Transcript, P 141-142.

In the opinion of a majority of the Panel, the record testimony and evidence has established that while the Township is experiencing some declining revenues from property taxes and state revenue sharing that could by the year 2013 become a very serious financial problem, it does not establish that the Township is unable to meet the costs attendant to the proposed contract for either a two year contract for the period of January 1, 2009 to December 31, 2010, or a three year contract for the period of January 1, 2009 to December 31, 2011.

The provisions of Act 312 Sec. 9 simply list the factors that the Panel must consider. Nothing in the Act gives any guidance as to the relative weight or impact any one of the factors should have on the decision of the Panel in deciding the issues in dispute. However, in the view of a majority of this Panel, ability to pay and the financial condition of the Township must be given significant weight in our deliberations, but in this case not an overriding role over the other Section 9 factors.

DURATION

The Township would prefer a two-year contract term, January 1, 2009 to December 31, 2010, while the Union would prefer a three-year contract, January 1, 2009 to December 31, 2011. The Township contends that a two-year contract term is critical for one reason. According to the Township, such a contract term would put all of the local bargaining unit contracts on the same timetable of expiration for the purpose of addressing the matter of managing the costs of health care with all bargaining units. Toward that objective the Township intends to begin the process of creating a health care alliance. Moreover, the Township argues that a two-year contract would afford the Union an opportunity to revisit issues in the near future and suggests that the Union could then discuss the issue of employee pension contribution at the same time as health care, further suggesting that if health care savings could be realized, the Township would be in a better position to discuss adjustments to the employee pension contribution.

The Union argues that historically their contracts have been for three years and expired one year after the Township's three other internal comparable contracts. The Union asserts that continuing that practice would allow the Township to negotiate any changes in wages and benefits with the other bargaining units in 2011 and use those settlements as a pattern in bargaining with the P.O.A.M.

The record is silent regarding the nature of the contemplated "health care alliance". One can speculate that its purpose would be to explore different insurance plans, deductibles, co-pays, and other assorted features that might reduce or shift the

costs of health care coverage, but the record contains no such specifics. The record does indicate that Mr. Ervin has included a 10% increase annually for health insurance through 2013, apparently not in anticipation of any costs savings that might result from the proposed health care alliance. What is clear is that nearly all aspects of employee health care coverage is a mandatory subject of bargaining and each bargaining unit has an independent right to engage in negotiations with their employer and may not be compelled to transfer that right to some wider organization without an agreement between the parties to do so.

The Employer had every opportunity to make any proposals concerning health care issues during the negotiations and no such proposals were presented in this compulsory arbitration case. The Township was certainly aware of the projections of Mr. Ervin and the trend line forecasts for 2012 and 2013. Having said that, it is also clear that there is nothing to prevent the Township from inviting the P.O.A.M from participating in a joint health care alliance regardless of the duration of the contract, but it cannot compel such participation of this or any other bargaining unit.

The fact that the ink would hardly be dry on this award and negotiations would be in order on a successor agreement if the term of the contract was limited to January 1, 2009 through December 31, 2010 and the parties would be required to beginning the lengthy and costly bargaining process again does not go unnoticed by the Panel. A majority of the Panel is of the opinion that a three-year contract term is supported by the record evidence concerning the historical practices of the parties

and to a lesser degree, the practices of the external comparable communities and is in the best interest of the parties and the public, given the nature of the issues in dispute.

AWARD

DURATION

The Panel hereby adopts the Union's proposal for a three-year contract term for the period beginning January 1, 2009 through December 31, 2011.

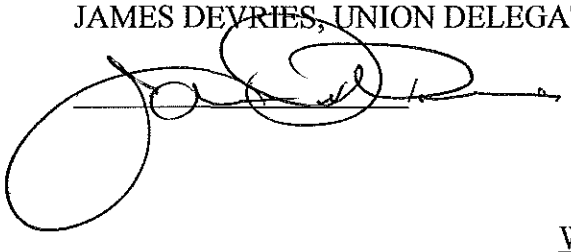
C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

_____/

JAMES DEVRIES, UNION DELEGATE



WAGES

(Economic Issue)

The last best offers of the parties are essentially the same, both provide for a 2.5% increase for 2009, and no wage increases for 2010 and 2011. The Union offer specifically includes the provisions that the 2.5% increase is to be retroactive to January 1, 2009, for all steps in the pay plan and for all employees who were on the

pay roll on January 1, 2009. The offer of the Employer isn't as specific, but does not contain any specific exclusion as to retroactivity or application.

The Panel therefore adopts the last best offer of the Union on this issue.

AWARD

WAGES

The Panel hereby adopts the Union's last best offer of settlement as follows:

Effective and retroactive to 1-1-2009, all steps; two and one half percent increase (2.5%) for all employees who were on the pay roll on January 1, 2009.

Effective 1-1-2010, no increase in wages.

Effective 1-1-2011, no increase in wages.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

_____/

JAMES DEVRIES, UNION DELEGATE

_____/

PENSION

EMPLOYEE RATE OF CONTRIBUTION

(Economic Issue)

The Union proposes to eliminate the current language contained in section 19.4 and to replace it with the following sentence: " The employees' contribution shall be capped at 10% of compensation." Additionally, the Union proposes to delete all of section 19.5, alleging that the language is either outdated, inoperable, or conflicts with section 19.4 of the existing contract and would conflict with the proposal of the Union.

The present language of section 19.4 and 19.5 read as follows:

"Effective January 1, 2006, or as soon thereafter as possible, contingent upon switching the health insurance program to Blue Cross Blue Shield of Michigan Community Blue PPO Option 1, Flint Township's contribution shall be an amount up to nine (9%) percent of employee's gross wage. If additional funds are required to provide the Pension Benefit, such funds will be contributed by the employees through pre-tax payroll deduction, if permitted by law. The employee's contribution shall not exceed seven (7%) percent until such time as the Employer is making a contribution to M.E.R.S. of nine (9%) percent."

"Section 19.5. Flint Township will transfer current pension assets to M.E.R.S. Plan. Initially, the parties will pay reduced amounts based upon the transfer of these assets. The Township and the employee shall pay such reduced amounts to the M.E.R.S. Plan based upon the Employer's contribution, plus interest of the current Plan's assets and the employee's contribution, plus interest of the current Plan's assets on a 50/50 basis, based upon the actuarial requirements of M.E.R.S."

"Increases required following the initial contribution shall be shared 50/50 by the Township and the officer until such time as the Township reaches its limit of seven (7%) percent. Thereafter, all increases will be the responsibility of the employee. Effective January 1, 2006, based upon the contingency set forth in 19.4 above, future increases and decreases will be shared on a 50/50 basis."

The Union asserts their proposal is supported by both the internal comparables, particularly that of the Police Command unit and the Chief of Police, and the external comparables. An examination of the exhibits for the external comparables does show that all have pensions plans that are comparable in terms of the benefit structure and that the employees contribution rate is less than that of Flint Township. Flint Township Fire Fighters are under an Act 345 pension plan and have a 2.5% multiplier as do the Police Officers and Command Officers, but the Fire Fighters rate of contribution is capped at 8% of participating payroll and the Employer contributes 31%. The record evidence indicates that the Police Officers contribution rate is presently 12.31% with the Employer contributing 10.61% and the Chief of Police has a contribution rate cap of 7%. The Command Officers contribute at the rate of 10.81% and the Employer pays 12.11%. (Tr- p 32)

The Union contends that the Command Officers settled their contract for the period of January 8, 2008 through December 31, 2010 sometime in 2009 and the Township agreed to "cap" the employee contribution at varying rate during the period of the contract. The Command Officers agreement does include the following rates of employee contribution: January 1, 2008, 10.38%, January 1, 2009, 10.31%

and January 1. 2010, 9.73%, and the Employer is responsible for the remainder of the funding costs as determined by the actuary. It also includes the clause that any increases following the initial contributions shall be shared 50/50 by the Township and the Employees.

The Employer's last best offer is to maintain the existing contract language on the grounds that at the time of the settlement of the Command Officers contract, early in 2009, the Township didn't recognize the severity of its financial situation, and they simply cannot afford to make any significant increase in pension contributions for the Police Officers unit. As to the external comparables, the Employer argues that the record evidence is not a true "apples to apples" comparison because there was no evidence that shows the pension plans of the external comparables are actually comparable in terms of their retirement plans and funding levels and no evidence that the comparable communities are faced with any comparable financial crisis.

The record includes the testimony of Ms. Lynda Pittman, Director of Retirement Services of the Municipal Employees Retirement System of Michigan (M.E.R.S) that addressed in part Union exhibits 16 and 17, which are supplement evaluations dealing with computations of employer and employee contribution rates for the Police Officers and Command Officers units. Based upon the record, it is clear that these supplement evaluations are of questionable value because they are flawed due to the fact that exhibit 16 relies upon the assumption that the employer contribution factor is limited to 7% which is contrary to the terms of the contract.

Exhibit 17 is also in error because the record indicates that the Township failed to provide M.E.R.S. a resolution regarding the changes to the Command Officer contribution cap or copies of the contract at the time the contract was negotiated. The exhibit indicates an employee contribution rate of 14.06% while the contract limits the employee contribution to 9.73%, as of January 1, 2010.

A majority of the Panel is not persuaded by the Employer's contention that they were not aware of their financial position when they agreed to settle the Command Officers contract in 2009 providing for the employee contribution cap. Mr. Ervin testified that he was producing his financial forecasts for years and the data for draft #4, Employer exhibit 29 begins with 2007. In the opinion of a majority of the Panel, the Employer was aware or certainly should have been aware of its financial position when it settled the Command Officers contract and the Fire Fighters contract, both of which contain caps on employee pension fund contributions. Moreover, we have concluded that while the Township is experiencing declining property values and resultant tax revenues, the data does not support any conclusion that it can not meet the costs of the Union's proposal.

As to the Employer's contention that the record data for the external comparable communities pension plans does not establish that the plans are truly comparable to that of Flint Township, a majority of the Panel does not agree. Union exhibit 18 shows that like Flint Township three of the four comparable communities have the M.E.R.S. B-4 benefit plan, that has a 2.5% multiplier and a maximum benefit of 80% of final average compensation. Mt. Morris Township has a 3%

multiplier. All have 25 years service requirement for normal retirement and age 60 with 10 years of service. In the opinion of the Panel they are comparable pension plans. The Employer's argument that the plans are not comparable because the Union failed to produce any data showing the comparable communities are faced with a comparable financial crisis is not persuasive since the Panel concludes that the Township has not established that there is a financial crisis for the period of the proposed contract.

In the opinion of a majority of the Panel, the Union's proposal is supported by both the external and internal comparables. Therefore the Panel will adopt the Union's proposal as that which is supported by the Section 9 factors.

AWARD

PENSION

EMPLOYEE RATE OF CONTRIBUTION

The Panel hereby adopts the Union's last best offer of settlement as follows:

Eliminate the current language contained in Section 19.4 and replace it with the following sentence:

19.4. The employee's contribution shall be capped at ten (10%) percent of compensation.

19.5. Delete.

Effective Date, January 1, 2011.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

_____ /

JAMES DEVRIES, UNION DELEGATE

_____ /

HEALTH INSURANCE - DISABILITY PENSION

(Economic Issue)

The Union proposes to amend Article 18.3 of the labor agreement that reads as follows:

18.3: F. An employee with less than twenty-five (25) years of credited pension service, who is retired due to a duty related disability, shall be eligible for Township paid insurance, as described in this Article 18, Section 1 (A) and (B) for the retiree and spouse, provided the retiree is not eligible for such insurance under any other insurance plan.

The Union seeks to add the following clause: "and children and /or dependent as defined by the Internal Revenue Service".

The Employer proposes to maintain the existing language without change and contends that the evidence regarding the comparable communities does not support the Union's proposal. According to the Employer, only the City of Burton provides dependant coverage for duty disability and only 60% of the cost of the benefit. The Employer also contends that neither, Mt. Morris Township nor Mundy Township provide for any dependent care coverage. The Union maintains that Mt. Morris Township does provided for disability retirement dependent coverage, citing sections 5 and 6 of the labor agreement between the parties. Section 5 does provide that the employer will pay the premiums for Blue Cross Hospitalization Insurance to age sixty-five should an employee retire under conditions of the retirement programs or if the employee becomes permanently and totally disabled. Section 5 in the first sentence provides that if an employee opts out of the employer provided health care package in its entirety shall receive a payment of $5,400 (family coverage) and $2,500 (single coverage) pro-rata yearly. Section 8 provides that all new employees hired after 4/1/08 will pay $25 per pay period or $650 per year towards the health care premium if needed for spouse or children. While it isn't clear as to just what is provided for dependents, in connection with duty disability retirement, by inference, coverage for dependents is probable at least for those employee hired prior to 4/1/08. None of the internal collective bargaining agreements provide for the benefit proposed by the Union. Only the Chief of Police enjoys such a benefit and his employment agreement is not a collective bargaining agreement.

A majority of the Panel is of the opinion that the internal and external comparables do not support the Union's proposal. Therefore, the Panel will adopt the Employer's proposal as supported by the Section 9 factors.

AWARD

HEALTH INSURANCE – DISABILITY PENSION

The Panel hereby adopts the last best offer of the Employer as follows:

Flint Township proposes the current contract language, which is as follows:

F. An employee with less than twenty-five years of credited pension service, who is retired due to a duty disability, shall be eligible for Township paid insurance, as described in this Article 18, Section 1 (A) and (B) for the retiree and spouse, provided the retiree is not eligible for such insurance under any other insurance plan.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

_____ /

JAMES DEVRIES, UNION DELEGATE

_____ /

ACT 78 LANGUAGE

SECTION 1.2
(Non-Economic)

The present contract language regarding this issue reads as follows:

ARTICLE 1 – RECOGNITION

1.2: The filling of positions, vacancies filled by promotions, removal or suspension and reduction in force shall be in conformity with the provisions of Act 78 of the Public Acts of 1935, as amended. Where a conflict between this Agreement and Act 78 arises, Act 78 shall prevail.

The Union's last best offer seeks to amend the last sentence to read as follows: "Where a conflict between this agreement and Act 78 arises, this agreement shall prevail."

According to the Union the present language impedes both the Employer's and the Union's ability to collectively bargain any of the issues covered by P.E.R.A.

The Employer would prefer to maintain the current contract language, and argues that this issue was never proposed during the negotiation or mediation. The Employer asserts that since there is no current conflict between the provisions of the contract and Act 78 this issue is best left to the bargaining process.

A majority of the Panel is of the opinion that the existing language in no way impedes the ability of the parties to engage in collective bargaining over any mandatory subject of bargaining, nor can Act 78 abrogate the collective bargaining rights provided under P.E.R.A. If in the future the parties should negotiate new provisions regarding the subjects referenced in Section 1.2, and such new provisions

are contrary to the provisions of Act 78, it would be necessary to amend Section 1.2 so as to provide for such exceptions.

While the language of the Command Officer's and the Fire Fighter's contract is different as to form there is no real difference as to its effect from that of the language contained in the Police Officer's contract. As to the external comparables, there is no record evidence as to whether Act 78 applies or not.

A majority of the Panel is of the opinion that the proposed change is simply not necessary at this time as there has been no demonstrated conflict between the contract and the provisions of Act 78. Therefore, the Panel will adopt the Employer's proposal.

AWARD

ACT 78 LANGUAGE

(Section 1.2)

The Panel hereby adopts the last best offer of the Employer as follows:

1.2 The filing of positions, vacancies filled by promotions, removal or suspension and reduction in force shall be in conformity with the provisions of Act 78 of the Public Acts of 1935, as amended. Where a conflict between this agreement and Act 78 arises, Act 78 shall prevail.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

_____ /

JAMES DEVRIES, UNION DELEGATE

_____ /

EQUALIZATION OF OVERTIME

ARTICLE 15.4

(Non-Economic)

The last best offer of the Employer seeks to amend Section 15.4 as follows:

15.4: If a sufficient number of employees are not available through the Equalization of Overtime procedure specified in Section 3 above, the Township has the right to assign employees based on the number of equalized hours. The employee with the lowest number of hours will be assigned the overtime. Such time worked shall be charged double to the employee(s). Anyone who agrees to work overtime but fails to show up shall be charged with double the available hours.

According to the Employer, this amendment is necessary because under the current language of Article 15.4, employees with the least amount of seniority are assigned overtime if no one else volunteers for the work and consequently newer employees are being overly utilized for overtime and are getting "burned out". The Employer asserts that working excessive amounts of forced overtime could result in a negative experience in the retention of less senior officers.

The Union would prefer to maintain the present contract language of the contract and argues that the current language is identical to that found in the Command Officer's contract and similar to that contained in the contracts with AFSCME and the Fire Fighters. Moreover, all of the external comparables have similar contract language dealing with overtime.

There is no record evidence that identifies the overtime hours worked by the bargaining unit employees and their relative seniority. Nor is there any statistical evidence that demonstrates employee turnover among less senior employees due to forced overtime work. The record testimony of the Police Chief on this issue is anecdotal and represents his opinion and is somewhat contradictory. The expressed concern that less senior employees have to carry the burden of overtime work when there are no volunteers is offset when the Chief testified that in many cases, it is higher seniority employees rather than junior employees who wish to work overtime hours in order to obtain a pension advantage.

There are many different ways to distribute overtime work and in the opinion of a majority of the Panel the record evidence is not so compelling to warrant a change in the present contract language. The present provision is consistent with that of the Command Officers and similar to that of the other internal and external comparables. Therefore the Panel will adopt the proposal of the Union to maintain the present contract language.

AWARD

EQUALIZATION OF OVERTIME

ARTICLE 15.4

The Panel hereby adopts the last best offer of the Union as follows:

The Union proposes no change in the current language, status quo.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

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JAMES DEVRIES, UNION DELEGATE

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RESIDENCY – NEW HIRES

(Non-Economic)

The Employer proposes a new article as follows:

All employees hired after September 30, 2010, shall be required to reside within 20 miles from the nearest Township boundary. Employees have ninety (90) days after the initial appointment to comply with this requirement.

This requirement does not apply to a person if the person is married and both of the following conditions are met:

(a). The person's spouse is employed by another public employer.

(b). The person's spouse is subject to a condition of employment or promotion that, if not for this section, would require him or her to reside a

distance of less than 20 miles from the nearest boundary of the public employer.

According to the Employer, the present civil service rules prevent the elimination of candidates for employment based upon residency. This prohibition leaves the Township no choice but to hire employees who live more than an hour away, resulting in delayed response time and overtime pay consequences since the Township compensates response travel time. It is also suggested that in some instances non-resident employees leave Township employment after completion of training in favor of employment closer to their home.

The Union is opposed to the new requirement on the grounds that none of the internal or external comparables have such a residency requirement. It is also noted that by requiring compliance within 90 days of appointment new hires would be required to move, perhaps sell a house and buy within the required boundary or rent an apartment prior to completion of their probationary period, thus creating a undue hardship.

Response time can be an important consideration for an emergency service department. Travel time compensation certainly is a cost factor but not a major cost and could easily be addressed by establishing a travel time compensation limit. The exceptions for married persons who are employed by a public employer that has a residency requirement appears to recognize a hardship factor, but does not address the vary real concerns of the Union regarding economic hardships associated with compliance prior to completion of the probationary period.

A majority of the Panel is of the opinion that the record evidence concerning turnover based upon residency considerations is not sufficient to justify the proposed change. None of the internal and external comparables support the proposal of the Employer. Therefore, the Panel will adopt the proposal of the Union as that which is supported by the Section 9 factors.

AWARD

RESIDENCY – NEW HIRES

The Panel hereby adopts the last best offer of the Union as follows:

The Union proposes no new or additional language to the collective bargaining agreement, status quo.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

_____/

JAMES DEVRIES, UNION DELEGATE

_____/

HOLIDAY COMPENSATION

ARTICLE 12.2 AND 12.4

(Economic)

The Employer proposes to amend the language for Sections 12.2 and 12.4 of the agreement as follows:

12.2: If an employee is required to work on any of the specified holidays, in addition to pay in Section 1 of this Article, he/she will be paid at one and one-half (11/2) times his/her regular rate of pay for hours actually worked.

12.4: C. The employee is scheduled to work a contractual holiday and does, in fact, work so that actual hours worked inclusive of the holiday is eighty (80) hours. In this case, the employee would be paid for seventy-two hours straight-time and eight (8) hours double time and one-half.

D. The employee works eighty (80) hours exclusive of a contractual holiday contained within the pay period then is called in to work on the holiday. Also, if the employee works, as defined in Paragraph C. above, but works in excess of eight (8) hours on the holiday. In either of these instances, the employee would be paid at double and one-half time.

The effect of this proposal reduces the present pay of double time in Section 12.2 to one and one-half time, and from triple time in Section 12.4: C. and D. to double and one-half time.

The Union proposes to maintain the present holiday pay provision.

Among the internal comparables, only the Command Officers unit enjoys the same holiday pay provision as that of the Police Officers unit. A review of the labor agreements for the external comparables indicates that the City of Burton pays triple time for three of the designated holidays and double time and one-half for work performed on the balance of the holidays. The Township of Grand Blanc' contract provides that an officer who works on a holiday receives eight hours holiday pay at straight time, plus an additional eight hours for work performed on a holiday and eight hours compensatory time, the equivalent of triple time. However, the contract further provides that only one full time officer is scheduled to work on a holiday and only if there is a volunteer. Part-time officers cover the holiday shift. The MT. Morris labor agreement provides for time and one-half for work performed on a holiday and in addition are paid for the holiday or may take another day off. Munday Township's contract provides for time and one-half for work performed on a holiday in addition to holiday pay.

The Union has argued that the Township's last best offer is defective in that it does not have an effective date of when the proposed holiday compensation change would be effective and that the Panel may not substitute or impose and effective date on the Employer's offer. A majority of the Panel disagrees with the Union's assertion. First, the Union does not cite any precedent or authority for their assertion. Section 8 of Act 312 provides in part that: "As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in

section 9." Absent a designated effective date in a last best offer, the panel is authorized to fashion an effective date. However, Section 10 of Act 312 provides that: "Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other stature or charter provisions to the contrary notwithstanding." Only increases in rates compensation may be awarded retroactively. Since the Employer's proposal involves a reduction in holiday compensation it may only be awarded prospectively.

A majority of the Panel is of the opinion that the present Township holiday pay provisions exceed that provided by a majority of both the internal and external comparables. Therefore, and in consideration of the improvement awarded to the Union concerning employee pension contributions and the record evidence of the internal and external comparables, the Panel will adopt the last best offer of the Employer, effective January 1, 2011.

AWARD

HOLIDAY COMPENSATION

ARTICLE 12.2 AND 12.4

The Panel hereby adopts the last best offer of the Employer as follows:

12.2: If an employee is required to work on any of the specified holidays, in addition to pay in Section 1 of this Article, he/she will be paid at one and one-half (11/2) times his/her regular rate of pay for hours actually worked.

12.4: A. The employee works eighty (80) hours exclusive of a contractual holiday contained within the pay period, i.e., the holiday was a regularly scheduled day off. In this case, the employee does not receive the benefit of the holiday and would be paid for eighty-eight (88) straight-time hours.

B. The employee is scheduled to work a contractual holiday, but has it off so that actual hours worked is seventy-two (72). In this case, the employee would be paid for eighty (80) straight-time hours.

C. The employee is scheduled to work a contractual holiday and does, in fact, work so that actual hours worked inclusive of the holiday is eighty (80) hours. In this case, the employee would be paid for seventy-two (72) hours straight-time and eight (8) hours at double time and one-half.

D. The employee works eighty (80) hours exclusive of a contractual holiday contained within the pay period then is called in to work on the holiday. Also, if the employee works, as defined in Paragraph C. above, but works in excess of eight (8) hours on the holiday. In either of these instances, the employee would be paid at double and one-half time.

Effective January 1, 2011.

C. BARRY OTT, PANEL CHAIR

C. Barry Ott /

STEPHEN O. SCHULTZ, EMPLOYER DELEGATE

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JAMES DEVRIES, UNION DELEGATE

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Dated 8.27.010.