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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

TOWNSHIP OF FLUSHING

-and-

MERC ACT 312 CASE NO. D11 A-0051

POLICE OFFICERS LABOR COUNCIL

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ACT 312 OPINION AND AWARD

APPEARANCES:

ADVOCATES:           STEPHEN O. SCHULTZ, ATTORNEY  
                              THOMAS R. ZULCH, ATTORNEY

PANEL MEMBERS:   STEPHEN O. SCHULTZ, ATTORNEY  
                              LLOYD WHETSTONE, LABOR REPRESENTATIVE

PETITION DATED:   AUGUST 17, 2011

CASE HEARD:        March 2, 2012

AWARD DATE:        June 13, 2012

AWARD

LAYOFF:                               THE TOWNSHIP LAST BEST OFFER (LBO) IS ADOPTED.

LENGTH OF RECALL RIGHTS:       THE UNION LBO IS ADOPTED.

RETIREE BENEFIT CAP:               THE UNION LBO IS ADOPTED.

RETIREE HEALTH CARE CAP:        THE UNION LBO IS ADOPTED.

SICK LEAVE:                           THE UNION LBO IS ADOPTED.

COLLEGE INCENTIVE PLAN:         THE UNION LBO IS ADOPTED.

SELECTION OF HEALTH CARE PLAN:  THE UNION LBO IS ADOPTED.

CONTRACT DURATION:               THE UNION LBO IS ADOPTED.

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INTRODUCTION

The Township of Flushing filed a Petition for Act 312 Arbitration on August 17, 2011. The Petition enumerates 18 issues in dispute. The Collective Bargaining Agreement (CBA) between the Township and the Police Patrol Unit expired on March 1, 2011.

Several issues were eliminated from dispute following the submission of Last Best Offers (LBOs) in February 2012.

Section 9 of the Act, as currently amended, specifies the following:

- (1) If the parties have no collective bargaining agreement or the parties have an agreement and 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:
  - (a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:
    - (i) The financial impact on the community of any award made by the arbitration panel.
    - (ii) The interests and welfare of the public.

- (iii) All liabilities, whether or not they appear on the balance sheet of the unit of government.
- (iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA. MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer.
- (c) Stipulations of the parties.
- (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 in both of the following:
  - (i) Public employment in comparable communities.
  - (ii) Private employment in comparable communities.
- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
- (f) The average consumer prices for goods and services, commonly known as the cost of living.
- (g) 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.
- (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
- (i) Other factors that 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.

- (2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence.”

### Ability to Pay

The Township has raised its financial ability to pay as a factor to be considered. The Township notes that revenues from the Police millage have declined substantially. The Police millage revenue amounted to \$1,004,000 in March 2010 and is projected to decline to \$826,000 on March 31, 2013. Like most other areas in the State, property tax revenues have declined – 1,172,000 in 2009 to a projected amount of 948,000 in 2013. The Township also has an unfunded pension liability in excess of \$2,000,000 and some \$930,000 of other pension employee benefits. According to information from the Township Auditor on March 31, 2011, the Township Police Fund Balance was \$93,932. Nevertheless, the Auditors state “a fund balance of 94,000 is comparatively low.” The basic explanation is that the Police Millage is collected early in the year and it should be one-third expended in March of a given year. On that basis the Auditors state that on March 31, 2011 the fund balance should have been ”approximately \$576,00. The Auditors further state: “The trend in the Police Millage Fund Balance has improved since 2009.”

William Noecker, Township Treasurer since November 2008, stated the Township funds the Police Department with a millage – currently 3.4114 – which was recently renewed for five years. Mr. Noecker explained that the Township collects taxes from the millage early in the year

and by May it is necessary to borrow funds from the Township Water Fund in order to keep the Police Department operating. He noted that if the millage failed, the Township would be unable to borrow monies from the Water Fund. The Witness stated that layoffs have been limited to the Police Department. On cross-examination, Mr. Noecker acknowledged that at no time since his tenure as Treasurer has the Township spent more on the Police Department than revenues from the Police millage. With regard to the matter of unfunded liability, he agreed the Township has never missed a payment and in 2011 it paid an extra \$66,000 toward its liability.

In response to questioning by the Undersigned Mr. Noecker agreed that the Police Millage was passed in November 2011 with a five year renewal. He also agreed that the amount collected from the Police Millage from January through December “is enough to pay for that 12 month period.” The township is forced to borrow monies from the Water Fund because a prior Township Board apparently granted benefits which made the borrowing necessary.

The Union called Mark Bolin, a laid off Township Police Officer with 14 ½ years of service, who stated the entire bargaining unit of Police Officers is currently on layoff status. Mr. Bolin stated the Police Officers contribute 8% toward retirement as a result of a concession – the former contribution amount was 2%. The Employer also has a cap of 15% as to its contribution obligation. At present, one Officer from the Patrol Unit is retired.

The Panel is not persuaded that Ability to Pay is an overriding problem in this case. The electorate has voted in favor of a millage for Police in an amount sufficient to pay the costs of providing Police services. The renewal is for a 5 year period so it will remain in effect until a period beyond the expiration of the CBA which will result from this Award. The Panel is aware the Township around May of each year borrows monies from the Water Fund to pay for the

Police services for the remainder of the year, however, it also recognizes that so long as the electorate votes to renew the Millage sufficient monies are available each year to repay the borrowed Water Fund monies. That is not to say the Township is without any economic difficulty. It should be noted this bargaining unit has made significant concessions in the past. Moreover, the Parties have resolved many issues in which the Union has agreed to accept the Employer Last Best Offer. The majority of the resolved issues are economic.

The following are the unresolved issues before this Panel.

### **ISSUES:**

#### **Layoff**

Article 7, Section 1, of the CBA defines a layoff:

“The word layoff means the reduction of the work force due to the limitation of funds.”

#### **Township Proposal:**

The word layoff means the reduction of the work force.

#### **Union Proposal:**

Maintain the status quo.

The Employer right to determine the number of employees needed is generally regarded as a management right. The Parties have grievances pending in which the current language is a basis for the dispute. The Panel adopts the Township proposal effective the date of this Award.

#### **Length of Recall Rights**

Article 7 – Layoff and Recall – Section 2, currently provides:

“If employee is laid off longer than his/her seniority or two years whichever is less, the employee loses recall rights.”

Township Proposal:

If employee is laid off longer than his/her seniority, or one (1) year, whichever is less, the employee loses recall rights.

Union Proposal:

Maintain status quo.

The Township asserts a two year recall period presents “administrative difficulties”.

The Union disputes the Township rationale:

“There is no burden on the Employer in locating laid off members as it is the employees’ responsibility to advise the Township of their current address. There are not hundreds of employees. There are only five members currently on layoff.”

The Panel is not persuaded that the Township proposal has merit.

**Retiree Benefit Cap**

Article 19 – Retirement Program – provides for a maximum retiree benefit level cap at 80%.

Township Proposal

Reduce the cap to 60% starting on the date of the Award.

Union Proposal

Maintain the status quo.

It should be noted the Parties have agreed to a reduction in the pension multiplier from 3.0% to 2.5% for all credited service from the date of the Award forward.

Mark Bolin, laid off Township Police Officer, testified that the bargaining unit employees

contribute 8% toward their retirement. He further stated that the Employer has a 15% capped contribution. The Witness noted that the Command Officer retirement contribution is 2%. Mr. Bolin further stated that the Patrol Officer retirement was 87% funded in 2010. He acknowledged that the first retiree from the bargaining unit occurred on December 1, 2011.

The Employer in its Brief states that “No bargaining unit member is above the 60% cap, so no one’s benefits would be diminished.” It provides the following calculation relative to the implementation of its proposal:

“... if an officer has to date served for 10 years and continues to work for 10 more years after the date of the award, the benefit would be calculated with 10 years at a 3% multiplier for 30% of FAC and 10 years at the 2.5% multiplier stipulated by the parties for an additional 25% of FAC. for a total benefit of 55% of FAC.”

The primary basis for the Employer proposal relates to the retirement of a bargaining unit member. Mr. Noecker stated the Township unfunded pension liability amounts to \$2.3 million and the police department’s portion is \$1.2 million.

The 2.5% multiplier is a significant concession. The Township admits that the 60% cap will not affect anyone in the bargaining unit since no one is “even close to 20 years of service.”

Given the reduction in the multiplier from 3% to 2.5% and the fact that the members contribute 8% toward retirement, the Panel does not agree that the 60% cap is warranted at the present time.

### **Retiree Health Care Cap**

Article 19 – Retirement Program -- provides for automatic increases with the result that the retiree health benefit is now over \$1,000 per retiree per month.

### **Township Proposal**



A \$750 cap for future retiree health benefits.

Union Proposal

Cap at the current level.

Given that only one individual is retired from this bargaining unit, the Panel adopts the Union proposal.

Sick Leave

Article 11 – Sick and Personal Leave – provides in pertinent part:

“Employees shall accrue sick leave at a rate of ninety-six (96) hours per year. Employees may accrue up to 600 hours ... Upon leaving the department due to death or retirement the employee or his/her family shall be paid for his/her accumulated days at their base rate of pay. If an employee terminates his/her employment for other reasons, he/she shall be paid for one-half (½) of his/her accumulation.”

The Parties are in agreement that the 600 hour accrual will be reduced to 240 hours.

Township Proposal

Reduce the payout at death or retirement to 50%. No payout if an employee voluntarily quits or is terminated.

Union Proposal

Status quo with a 240 hour cap.

The new cap of 240 hours represents a sixty (60%) percent reduction in Township liability.

The purpose of a sick leave payout is to encourage employees to report to work as scheduled and to avoid the use of sick leave except when absolutely necessary. The Employer interest is served when sick leave usage is reduced.

The CBA already distinguishes the payout entitlement at retirement or death from termination or voluntary quit. In the latter situation, a 50% payout is operative.

The Panel concludes the Union proposal has merit.

### **College Incentive Plan**

Article 17 – College Incentive Program Educational Training – provides:

“Any employee earning at least an associate degree in law enforcement or related field shall receive a two and one-half (2 ½) percent increase in his/her base rate of pay.”

### **Township Proposal**

Any employee who is hired on or before March 31, 2012 that earns post-secondary degree in law enforcement or related field after his or her date of hire shall receive a one-time payment equal to two and one-half percent (2 ½%) of his or her base rate of pay.

### **Union Proposal**

The Union proposes rolling in the current incentive into the base pay for all current employees. Incentives shall be eliminated for all new hires after the date of the Award.

It is not uncommon for Employers to reward employees who have obtained higher education. An Employer benefits from the employee attainment by having a better trained work force with which to provide service to Township residents. An employee who obtains a college degree utilizes their own time to pursue that credential. A one-time payment does not recognize the continuing benefit to the Township for a better trained Officer.

The Union Proposal is adopted.

### **Selection of Health Care Plan**

Article 18 – Proposed Group Health Changes – provides in pertinent part:

“Hospitalization Insurance or carrier shall not be changed without employee approval.”

Township Proposal

“Section 2 - Selection of Health Care Plans. The Employer may change hospitalization insurance plans and coverage levels, dental insurance plans and coverage levels, and vision insurance plans and coverage levels, including in each case, changes in deductibles, co-pays, and premium contributions, provided:

- A. The plan(s) selected or changes made are at least equivalent to the plan(s) offered or changes made to the plan(s) of other union and non-union employees of the Employer.
- B. The Employer first meets and negotiates with the Union over all changes to the plan(s) prior to the effective date of the changes. Should the parties be unable to agree on such changes, they shall first utilize the services of a state-appointed mediator before any changes are implemented. The Union specifically agrees that any such changes over the issues addressed in this Article may not and will not be submitted to proceedings under Act 312 of 1969 and the Union, for itself and its members, waive any such rights it/they may have under Act 312 with respect to this subject until March 31, 2013.”

Union Proposal

Maintain status quo.

The legislature via PA 152 has addressed health care costs for public employees. When a CBA expires, PA 54 requires that wages and benefits be frozen during contract negotiations and prohibits retroactive pay and benefit increases. The Township in its Brief posits a scenario in which the Union might play “hard ball” and force the Township into Act 312 proceedings during which time the health plan in place would continue. That fear factor seems overstated, given the

number of issues which this Union has agreed to accept the Employer Last Best Offers.

Moreover, the passage of PA 54 of 2011 makes it highly unlikely that the Union will not attempt to enter into a new CBA before its expiration.

The Panel concludes the Union proposal should be adopted.

### **Contract Duration**

#### *Township Proposal*

The Township proposes a contract expiration date of March 31, 2013 or the expiration of the dedicated police millage.

#### *Union Proposal*

Contract expiration date of March 31, 2014.

The Township notes it has entered into a contract with the County Sheriff to provide police services in the Township. On that basis, it contends “there is no reason to extend the contract to 2014.” The Union explains the rationale for its proposal:

“ ... members have been laid off with recall rights for two years. The 2014 date will protect the contract for their possible return under the two year recall rights.”

The Union has set forth a valid reason for its proposal and it is adopted.

AWARD

Layoff: The Township Last Best Offer (LBO) is adopted.

UNION  
DISSENT  
this ISSUE only

EMPLOYER AGREES  
ON THIS ISSUE

Length of Recall Rights: The Union LBO is adopted.

Retiree Benefit Cap: The Union LBO is adopted.

Retiree Health Care Cap: The Union LBO is adopted.

Sick Leave: The Union LBO is adopted.

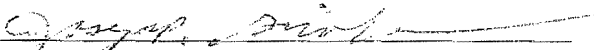
College Incentive Plan: The Union LBO is adopted.

Selection of Health Care Plan: The Union LBO is adopted.

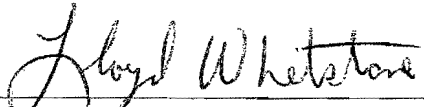
Contract Duration: The Union LBO is adopted.

EMPLOYER DISSENTS ON  
THESE ISSUES.

PLEASE NOTE EMPLOYER'S DISSENT AS ATTACHED.

  
JOSEPH P. GIROLAMO, Panel Chairperson

Dated: 6/13/12

  
LLOYD WHETSTONE, Union Panelist

Dated: 6-2-12

  
STEPHEN O. SCHULTZ, Employer Panelist

Dated: 6/6/12

**STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
EMPLOYMENT RELATIONS COMMISSION**

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Charter Township of Flushing

File No. A11 C-0051

-and-

Arbitrator Joseph P. Girolamo

Police Officers Labor Council

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Thomas R. Zulch (P57195)  
Police Officers Labor Council  
Attorney for Police Officers Labor Council  
667 East Big Beaver Road, Suite 205  
Tel: (248) 524-2752

Stephen O. Schultz (P29084)  
Helen E. R Mills (P74467)  
FAHEY SCHULTZ BURZYCH RHODES PLC  
Attorneys for Charter Township of Flushing  
4151 Okemos Road  
Okemos, MI 48864  
Tel: (517) 381-0100  
Fax: (517) 381-5051

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**CHARTER TOWNSHIP OF FLUSHING'S DISSENT ON ABILITY TO PAY**

The Township respectfully offers this dissent to the portion of the award addressing the Township's ability to pay. (Award, pgs. 3-5) The Township asserts that the proofs offered in this proceeding were un rebutted and generally unchallenged. These un rebutted proofs were unjustifiably brushed aside even though the panel correctly notes that "That is not to say the Township is without any economic difficulty."

The panel's award correctly notes that

The Police millage revenue amounted to \$1,004,000 in March 2010 and is projected to decline to \$826,000 on March 31, 2013. Like most other areas in the State, property tax revenues have declined – 1,172,000 in 2009 to a projected amount of 948,000 in 2013. The Township also has an unfunded pension liability in excess of \$2,000,000 and some \$930,000 of other pension employee benefits. According to information from the Township Auditor on March 31, 2011, the Township Police Fund Balance was \$93,932. Nevertheless, the Auditors state "a fund balance of 94,000 is comparatively low." The basic explanation is that the Police Millage is collected early in the year and it should be one-third expended in March of a given year. On that basis the Auditors state that on

March 31,2011 the fund balance should have been “approximately \$576,000.” Award at pg. 3.

What is not acknowledged by the panel, however, is that the balance being discussed is only the cash balance in the Police Department’s operating account generated by the police millage. This statement by the Auditors says nothing about any surplus in the Police Fund, a surplus necessary to address cash flow issues. As to a true “fund balance” necessary to address unexpected expenditures or cash flow issues, generally recommended to be 15%- 20%, the Township has nothing in its Police Fund for that!

Rather, the panel’s Award correctly notes that the dire situation faced by the Township requires it to “borrow[ ] monies from the Water Fund to pay for the Police services for the remainder of the year....” The panel rejects this issue noting only that “so long as the electorate votes to renew the Millage sufficient monies are available each year to repay the borrowed Water Fund monies.” (Award at pgs. 4-5) Such a response is to merely “kick the can down the road.” To suggest that we just put off indefinitely the responsibility to address an annual revenue shortfall equal to almost 75% of the Police Department operating budget is to simply pass on to later generations the responsibility for a current deficit. (Sound familiar?)

The Township established that it faces a critical financial situation. It may have a police millage that generates revenue, but that revenue is dwarfed by close to \$3 million in unfunded liabilities incurred by previous Boards and the bargaining unit<sup>1</sup>. The current Township Board is now faced with addressing that situation.

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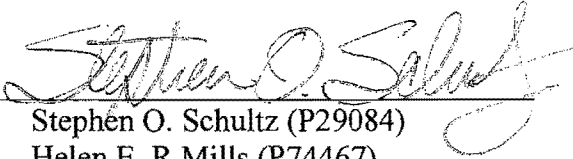
<sup>1</sup> The bargaining unit must take some responsibility for the calamity the current Township Board faces. The bargaining unit gladly accepted extraordinary pension benefits that it knew could not be afforded. It readily gave those benefits back for future years of service when challenged by the current Township Board, but the unfunded liability created by its previous actions cannot be undone. The extraordinary pension benefit it took is vested for previous years of service.

For the panel to conclude that an inability to pay has not been established is clearly erroneous. Further, had the Township's ability to pay position been accepted, the panel's decision on the remaining issues would have favored the Township's position. For these reasons, the Township dissents from the panel's decision on ability to pay and on those other issues where the Union's last best offer was accepted.

Respectfully submitted,

FAHEY SCHULTZ BURZYCH RHODES PLC  
Attorneys for the Charter Township of Flushing

Dated: June 6, 2012

By:   
Stephen O. Schultz (P29084)  
Helen E. R. Mills (P74467)