

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

POLICE OFFICERS LABOR COUNCIL

SUPERVISORY UNIT

and

DEWITT CHARTER TOWNSHIP

MERC CASE NO.: 19-G-15987 CB

COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended.

[MCL 423.231, *et seq*]

Arbitration Panel

Chair: Eugene Lumberg

Employer Delegate: Helen Mills

Union Delegate: Brendan Canfield

Advocates

Employer Advocate: Helen Mills

Union Advocate: Brendan Canfield

PETITION(S) FILED: 11/27/2019

PANEL CHAIR APPOINTED: Eugene Lumberg, December 5, 2019

SCHEDULING CONFERENCE HELD: November 26, 2019 (Agreed by parties that it would be a joint schedule with the supervisory and non-supervisory units)

HEARING DATE(S) HELD: October 13, 2020 and October 26, 2020

AWARD ISSUED: 04/13/2021

TABLE OF CONTENTS

1. Introduction and Background.....3

2. Statutory Criteria.....3

3. Stipulations and Preliminary Rulings.....5

4. Comparables.....5

5. Issues before the Panel.....7

 1. Duration.

 2. Wages.

 3. Personal Leave. Hours.

 4. Personal Leave. Use increments.

 5. Pensions FAC.

 6. Pensions employee contributions.

 7. Retirement/Pension new hires.

 8. Promotions.

 9. Vacation payout.

6. Summary of Award.....6

WITNESS LIST

1. Nancy Ciccone
2. Bill Darnell
3. Andrew Dymczyk
4. Hal Telling
5. Marne Daggett
6. Julie Coleman
7. Duane Smith
8. Kyle Kokla
9. Mike Gute

EXHIBIT LIST

The parties submitted joint exhibits as well as union exhibits and employer exhibits at the beginning of the proceeding, they were admitted and made a part of this decision.

Appendix A-Exhibit List attached

1. INTRODUCTION AND BACKGROUND

Dewitt Charter Township is in Clinton County, Michigan, it is surrounded by several municipalities, *i.e.*, Lansing and the City of East Lansing, along with other townships that border Dewitt Township. The township itself has approximately 15,000 residents. It is basically township with a small commercial tax base. It serves the areas of Lansing and East Lansing as a residential area for professionals and university professors, administrators, et al. The township has 36 full time employees. The police department is composed of supervisory and non-supervisory officers and are represented by the Police Officers Labor Council.

The non-supervisory unit has 11 positions, and the supervisory unit consists of five positions. The supervisory positions are four sergeants, one of whom is off on some type of leave and a lieutenant.

With the growth of the area, there has been a rise in demand for municipal services. The township has some restrictions as to revenue because of limits set by State mandated caps.

There is no full-time fire department. The Dewitt police department is the most significant expense of the township. Approximately 1/3 of the township's budget is used for the maintenance of the police department.

The monies needed to support the police department have risen steadily since 2010 when the amount was \$461,000 to approximately \$640,000 in 2020, in millage revenue. The actual cost to operate the department has gone from 1.6 M in 2010 to 2.2 M in 2020, with the general fund subsidizing the police department in the amount of approximately 1.5 M annually.

One of the biggest increases in the cost to maintain the police department is the increased pension costs.

The township is not claiming an inability to pay at this time. What they are saying is they have some concern with future costs and ability to pay in the future.

2. STATUTORY CRITERIA

Michigan Public Act #312 of 1969, as amended, requires that the Act #312 Arbitration Panel issues its award and base its findings, opinions and order on the following factors contained in section nine of the act:

Sec. 9. (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 financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.

(b) The lawful authority of the Township.

(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.

(j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized under the Michigan financial review commission act.

(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.

3. STIPULATIONS AND PRELIMINARY RULINGS

The Parties have stipulated as follows:

1. That the parties agree that this arbitration panel would hear both the supervisory and the non-supervisory 312 Arbitration at the same time.
2. That all issues are economic.
3. That the parties agree that all the exhibits were made a part of the final opinion and decision. The exhibits will be subject to oral objections at the proper time.
4. The issue of wages can be taken one year at a time as to LBO.
5. The issue of wages is retroactive back to the end of last contract hence, starting on January 1, 2019.
6. The comparables have been stipulated to the following 1-6.
 1. Davison Township.
 2. Flushing Township.
 3. Fruitport Township.
 4. Granville.
 5. Saline.
 6. Thomas Township.
7. The union has entered into a stipulation with the township that the present pension plan being a defined benefit shall be closed to new hires and that the new pension plan shall be a defined contribution for new hires hired after the date of this award. (Flushing Township and Fruit Port Township, Granville, Saline and Thomas Township).
8. The contract years are based on the calendar years, thus, the contract would begin as of January 1, 2019 and run through to December 2023.

5. ISSUES BEFORE THE PANEL

1. Duration.
2. Wages.
3. Personal Leave. Hours.
4. Personal Leave. Use increments.
5. Pensions FAC.
6. Pension Employee Contributions.
7. Retirement/Pension new hires.
8. Promotions.
9. Vacation payout.

Note: there is one other bargaining unit in the township, but they are currently seeking a contract. All issues are economic.

6. SUMMARY OF AWARD [Use chart format]

ISSUE	AWARD
1. Duration	Union's Last Best Offer to be entered
2. Wages	Employer's Last Best Offer to be entered
3. Personal Leave. Hours	Union's Last Best Offer to be entered
4. Personal Leave. Use Increments	Union's Last Best Offer to be entered
5. Pensions FAC	Union's Last Best Offer to be entered
6. Pension Employee Contributions	Employer's Last Best Offer to be entered
7. Retirement /Pension new hires	Employer's Last Best Offer to be entered
8. Promotions	Employer's Last Best Offer to be entered
9. Vacation payout	Union's Last Best Offer to be entered

Note: there is one other bargaining unit of the Township and they are currently seeking a contract. All issues are economic.

LAST BEST OFFERS OF SETTLEMENT FOR COMMAND UNIT

ISSUE 1. DURATION (Article 40) (Joint Economic Issue)

The Union's Last Best Offer

The Union proposes to delete the stricken language and to add the underlined language.

ARTICLE 42. DURATION

This agreement shall become effective as of ~~September 6, 2011~~ January 1, 2019 and shall continue in full force and effect until December 31, ~~2015~~ 2023, and for successive annual periods thereafter unless not less than ninety (90) days prior to the end of its original term or of any annual period thereafter, either party shall serve upon the other written notice of their desire to terminate, revise, modify or change the provisions of the Agreement.

The Township's Last Best Offer

1. Duration [Mutual Issue] – four (4) years: January 1, 2019 – December 31, 2022.

ISSUES.

Issue 1. Duration. Joint Economic Issue.

The Union's last best offer concerning duration was, that it be a five-year period effective January 1, 2019 and stay in full force and effect until December 31, 2023.

In the Township's last best offer, they request a four-year term beginning January 1, 2019 ending December 31, 2022. The previous contract expired on December 31, 2018, two years ago. The Union argues that their request for a five-year contract, with two years of it being retroactive is tantamount to now being less than a three-year contract which is common in labor negotiations. The Township argues that there are no internal comparables on this issue and that the external comparables as to non-supervisory police contracts range in the length from 2 years to 5 years. See Union Exhibit 7A.

Looking at the comparables disclosed that of the six communities, five have collective bargaining agreements of three years or longer and two of the communities

have five-year contract. The average duration of the comparable community's contracts according to the Township brief is 3.83 years.

In essence, because of the timing, this would be a contract that would expire in less than three years from now. The Township argues the position that a four-year contract would allow them to be more flexible and that they would be able to account for and adapting to unexpected costs, etc., that would negatively affect the Township. Over two years have expired since the ending of the last contract and a five-year contract would be called for. There would be less than three years remaining in the contract, and the Township should have no problem in adopting to any unexpected situations that may arise during that period of time.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
 Concur
 Dissent

Dated: 4/14/21

Arbitrator
By: Eugenie Lumberg
Eugenie Lumberg
 Concur
 Dissent

Dated: 4/9/21

2. WAGES (Article 38) (Joint Economic Issue)

The Union's Last Best Offer

The Union proposes to delete the stricken language and to add the underlined language.

ARTICLE 38. WAGE SCHEDULE

~~Sargent shall receive a wage that is equal to 12% over the top of a patrol officer's base wage. Lieutenant shall receive a wage that is equal to 19.5% over the top of a patrol officer's base wage.~~

Effective January 1, 2019. Sergeants(s) shall receive a wage equal to 13% over a top patrol officer's base wage. Lieutenant(s) shall receive a wage equal to 20% over a top patrol officer's base wage.

Effective January 1, 2021. Sergeants(s) shall receive a wage equal to 14% over a top patrol officer's base wage. Lieutenant(s) shall receive a wage equal to 20.5% over a top patrol officer's base wage.

Effective January 1, 2022. Sergeants(s) shall receive a wage equal to 15% over a top patrol officer's base wage. Lieutenant(s) shall receive a wage equal to 21% over a top patrol officer's base wage.

The Township Last Best Offer

2. Wages [Mutual Issue]

- a. **Year 1:** Effective January 1, 2019, Sergeant shall receive a wage that is equal to 12% over the top of a patrol officer's base wage. Lieutenant shall receive a wage that is equal to 19.5% over the top of a patrol officer's base wage.
- b. **Year 2:** Effective January 1, 2020, Sergeant shall receive a wage that is equal to 12% over the top of a patrol officer's base wage. Lieutenant shall receive a wage that is equal to 19.5% over the top of a patrol officer's base wage.
- c. **Year 3:** Effective January 1, 2021, Sergeant shall receive a wage that is equal to 12% over the top of a patrol officer's base wage. Lieutenant shall receive a wage that is equal to 19.5% over the top of a patrol officer's base wage.
- d. **Year 4:** Effective January 1, 2022, Sergeant shall receive a wage that is equal to 12% over the top of a patrol officer's base wage. Lieutenant shall receive a wage that is equal to 19.5% over the top of a patrol officer's base wage.

II. WAGES.

The township proposes maintaining a status quo as to sergeant's wages, as being the present 12% over the top patrol wages and lieutenant's wages at 19.5% over the top patrol wages for each year of the new contract. The union's last best offer as to supervisory wages is that sergeants are to receive 13% over the top patrol wages, lieutenants 20% over the top patrol wages for the first two years of a five-year contract

effective retroactive to January 1, 2019. Effective January 1, 2021, the union proposes that the sergeants receive an increase to 14% over the top patrol wages and lieutenants an increase to 20.5% over the top patrol wage. Effective January 1, 2022, the union proposes that sergeants receive 15% over top patrol wages and lieutenants to receive 21% over the top patrol wages.

Any wages that non-supervisory unit receives will be reflected in the supervisory officers' wages. Those officers receiving a percentage over the top patrol wages which would include any increase awarded by the arbitration panel. See employer exhibit 19. The township points out that the general comparables consist of only one other union which is presently in negotiations. The township's nonunion staff receives annual raises which correspond to the State of Michigan Tax Commission Inflation Rate Multiplier.

Because the supervisory officer's wages are based on a percentage of the non-supervisory, they automatically get a raise when the non-supervisory officers get raises.

For the rank of lieutenant, Davison Township (the only external comparable with a lieutenant rank) paid 15.5% over top patrol in 2018; 16% in 2019, 16.5% in 2020, and 6.5% in 2021. The Dewitt's Lieutenant wages is 19.5% over the top patrol wage as of the last contract. The Union's last best offer, the Lieutenant will make roughly \$4,000 more than his counterparts in Davison.

The union argues that unlike patrol units, the supervisory units take calls at home and is "basically is always working". The lieutenant is in an executive position and fills in for the chief of police at various times according to the union's argument. Wages

effect pensions as to overall final average contribution for example. The panel considers this issue but feels the salary issue stands on its own legs.

Because the command supervisory officers get advantage of any increase, the non-supervisory officers get raises of approximately 12% over a period of 5 years and any percentage over the base pay would amount to a big increase to the nonsupervisory officers. They are getting a raise, therefore any increase their compensation due to an increase in percentage, would be an increase on an increase.

The majority of the panel concludes that the Employer's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
 Concur
 Dissent

Dated: 4/14/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
 Concur
 Dissent

Dated: 4/9/21

ISSUE 3. PERSONAL LEAVE HOURS (Article 23, Section 6) (Joint Economic Issue)

The Union's Last Best Offer

The Union proposes to delete the stricken language and to add the underlined language.

ARTICLE 23. SICK LEAVE – PERSONAL LEAVE

Section 6. Officers covered by this Agreement shall in addition to sick leave receive ~~three (3)~~ thirty-six (36) hours of personal leave per year. Officers may use said personal leave for their personal business and need only give reasonable advance notice (not less than 24 hours) to the Chief for the use of first personal leave day. He/She must give reasonable notice as may be required by the Chief for use of the second personal leave day but in no event shall the officer be required to give more than forty-eight (48) hours' notice. The forgoing notwithstanding, the Chief may permit the taking of a personal leave day-upon shorter notice if such time off shall not inconvenience the Department or may refuse to grant personal leave if one or more persons has already been granted personal leave for that period of requested time off or because of Department need. Personal leave days shall be taken in no less than one-half (1/2) day and that such one-half days will not be taken in conjunction with vacation days.

The Township's Last Best Offer

The Township's Last Best Offer on Issue III is Status Quo.

Issue III, Art. 23, Sick Leave, Personal Leave, Sec. 6. Union Issue.

This article deals with personal leave days awarded to each officer, each year. The present language calls for three days to be given to each officer. The union is requesting that be changed to 36 hours of personal leave time per year. The township is requesting that the language in the present contract remain and the contract provision remains status quo.

The union's position, as to sick leave/personal leave, Art. 23, Sec. 6 is as follows:
that the contract be changed to read that each officer to receive 36 hours of personal leave

per year rather than the present language that states 3 days. It would seem that there would be a problem in that the officers in the department work different amounts of hours depending on the who they are and what shift they are on. There was testimony that there were 8- 10- and 12-hour days. The union is requesting that the time allowed per the contract be changed from 3 days to 36 hours, which in essence, is three 12-hour days, as opposed to three 8-hour days being 24 hours. ***The examination of Ms. Coleman. The lieutenant presently is working a 12-hour shift plus one 8-hour shift in a two-week period, but in the past, they have worked 10 hour shifts and previously used 8-hour shifts. The three-day provision in the contract has been since 1996, seems confusing. See Employer exhibit 28. Again, it would be easier to use hours than days. The command officers work various amounts of hours in each shift.

Sergeants and lieutenants all work different shifts. A lieutenant's works 4 ten hour shifts in a one-week period. The union states that using the number of 36 hours makes more sense because it relates to the different shifts that different people work. The panel agrees that this issue should equate to hours worked verses days worked under these circumstances. Hence, the Union's last best offer of changing from three personal days per year to 36 hours per year fits the criteria of section 9.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen ER Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brenda Carr

Dated: 4/14/21

Brendan Canfield
 Concur
 Dissent

Arbitrator

By: _____

Eugene Lumborg
 Concur
 Dissent

Dated: _____

4/9/21

ISSUE 4. PERSONAL LEAVE USE INCREMENTS (Article 23, Section 6)

The Union's Last Best Offer

The Union proposes to delete the stricken language and to add the underlined language.

ARTICLE 23. SICK LEAVE – PERSONAL LEAVE

Section 6. Officers covered by this Agreement shall in addition to sick leave receive three (3) personal leave days per year. Officers may use said personal leave for their personal business and need only give reasonable advance notice (not less than 24 hours) to the Chief for the use of first personal leave day. He/She must give reasonable notice as may be required by the Chief for use of the second personal leave day but in no event shall the officer be required to give more than forty-eight (48) hours' notice. The forgoing notwithstanding, the Chief may permit the taking of a personal leave day-upon shorter notice if such time off shall not inconvenience the Department or may refuse to grant personal leave if one or more persons has already been granted personal leave for that period of requested time off or because of Department need. Personal leave days shall be taken in no less than ~~one-half (1/2) day~~ one (1) hour increments and that ~~such one-half increments~~ will not be taken in conjunction with vacation days.

The Township's Last Best Offer

Issue 4. PERSONAL LEAVE USE INCREMENTS (Article 23, Section 6) - Status Quo.

In Art. 23, Sec. 6, sick leave/personal leave, issue no. 4, officers covered by the agreement are allowed to take their time off in no less than one-half day increments. The union is proposing that they be allowed to take their time in one-hour increments and that

the one-hour increments will not be taken in conjunction with vacation days. These two issues only apply to the command unit and not the patrol.

The union points out that the proposals set forth under tabs 9 & 10 of the command binder exhibits, that they seek to have the three days of personal leave changed to 36 hours, see tab 10, and that they be allowed to use personal leave in one hour increments instead of the ½ day requirement now. The union points out that if the time allotted were changed from 3 days to 36 hours, then keeping the ½ day provision would be contrary to the reasoning behind changing it to 36 hours. The employer's position is status quo. The union points out that the raised numbers for the bargaining unit work different hours on shifts. Sergeants work six 12 hour shifts and one 8-hour shift for a total of 80 hours in a two-week period. A lieutenant works 4-10 hr. shifts in a one-week period. Therefore, the union makes the argument that its last best offer for use of personal leave, using exact hours rather than the days, makes sense. In its brief the union points to union exhibit 10b, which are the personal policies of the township, page 37 of the policy manual, which applies to non-union employees, allows those employees to use personal leave in one half hour increments. It is argued by the union that this benefit of one-half hour increment usage applies to the chief of police and three administrative employees working within the police department. It makes sense that the officers be allowed to take their personal leave in one hour increments rather than "one half day increments" per half day. This would be in keeping with the hours-to-hours theory. As far as the argument that the department would have trouble replacing officers for one hour at a time, as opposed to one-half day at a time, this is a management right and personal leave days are granted by the Chief.

For this reason, the panel would agree with the Union as to this issue.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E.R. Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
 Concur
 Dissent

Dated: 4/14/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
 Concur
 Dissent

Dated: 4/14/21

ISSUE 5. PENSION FAC ROLL-INS (Article 31, Section 1) (Employer Economic Issue)

The Union's Last Best Offer

The Union proposes to add the underlined language.

ARTICLE 31. RETIREMENT BENEFIT

(Section 1 removed per parties' agreement.)

Section 21. The employer shall provide the MERS B-4 retirement program with the MERS F-55 with twenty-five (25) years of service waiver program. Final Average Compensation shall include base wages, longevity, vacation payout, overtime, and holiday payout.

The Township's Last Best Offer

Pension – Current Employees (FAC Roll-Ins) [Employer Issue] – The Employer proposes to amend Article 31, Section 2 as follows:

The Employer shall provide the MERS B-4 retirement program with the MERS F-55 with twenty-five (25) years of service waiver program. *Effective September 1, 2020, FAC shall be calculated using base wage only. Overtime compensation shall also be*

included in the FAC calculation if the Employer's MERS Police Supervisory Division (20) reaches 85% funded.

ISSUE V. Current Employee Pension. Final Average Compensation.

Article 31. The Township proposes that the calculation for the final average compensation for pensions should be based on base wages only (Article 31 of present contract, also see patrol binder Tab 13). The Township goes on to state that in their offer that when the non-supervisory pension becomes 85% funded, then at that time, overtime shall be included in calculating FAC.

The Union points out that the present contract does not enumerate the types of compensation to be used in calculating the final average compensation for pension purposes, being the defined benefit pension plan. The Union further states that past practices are used for the purposes of FAC and that in the past, wages, longevity, vacation payout, overtime and holiday pay were included in the FACs.

The Union seeks to maintain the status quo by listing agreed upon FAC inclusions based on past practices. The Township wishes only to base the FAC on base wages and depending on circumstances in the future, include overtime if the pension reaches over 85%. The Union argues that when it agreed to close the defined benefit pension to new hires and begin a defined contribution for said new hires, they made concessions to the Township. The new pension system only affects new hires and not present patrol officers. Arguing that the union gave up something for new hires who have not even joined the police department as of this date, is not something to be considered normally for them to gain other benefits.

The bifurcation of pensions is a dangerous situation under normal circumstances. As to new hires in the patrol unit with a defined contribution, as opposed to the older officers with a defined benefit plan. Be that as it may, new officers have the option of joining a police force with a defined contribution plan. These situations are not unheard of and in the past the Unions have even gone back to doing away with a defined contribution and having the defined benefit plan and of course is a point that helps bring members into the police force.

As to internal comparability, the non-union Township employees do not have a defined benefit plan, nor does it seem to include any items other than base wages in their retirement. As to external comparables, Davison Township still allows its employees to take advantage of multiple items for FAC, through its defined benefit plan. As to the other comparables, they have no defined benefit plan, or they have closed their defined benefit plan to new hires.

The Union further argues that some of the command officers have been paying approximately 13.94% of their wages into their pension in part to receive the benefit of the various FAC roll ins and that eliminating the items in the FAC would have a drastic effect on their pension benefits. In selecting which items to include in the FAC, this arbitrator is bound to pick either the Union's proposal or the Township's proposal. The Union points out that the offer by the Township to include overtime into the FAC, when the pension is 85% funded, would create a situation where the Township may not contribute more than the bare minimum to the pension contribution and in essence, keep the funding below 85%. This situation cannot be controlled by this arbitration.

In this current day, efforts to control spending by public entities, this issue is of great importance. It would seem the Township would save quite a bit of money by not including certain items in the FAC pension benefits. We are faced with difficult times financially, and the future is not something that can easily be foreseen when it comes down to future pension benefits. However, past practices would indicate that more than the base wages were used to calculate final average compensation for retiring officers. Based on the testimony of past practices, the arbitration panel would find that the Union's Last Best Offer meets the criteria of Section 9.

It should be pointed out that the township has a higher-than-average fund balance and that is on the high end of the recommended State fund balances percentages. Therefore, for the above reasons, the arbitration panel finds for the Union.

The Township has a higher-than-average fund balance in their budget. It is on the high end of the recommended State number on fund balances. For these reasons, the arbitration panel finds for the Union. That the union's proposal as to FACs would apply to present employees in the defined benefit program only and not to future hires who would be in the defined contribution pension.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills

Dated: _____

Concur
 Dissent

By: Brendan Canfield
Brendan Canfield

Dated: 4/14/21

Concur
 Dissent

Arbitrator

By: _____

Eugene Lumborg

Concur

Dissent

Dated: _____

4/9/21

ISSUE 6. EMPLOYEE PENSION CONTRIBUTION (Article 31, Section 2) (Joint Economic Issue)

The Union's Last Best Offer

The Union proposes to add the underlined language.

ARTICLE 31. RETIREMENT BENEFIT

(Section 1 removed per parties' agreement.)

Section 3-2. Effective January 1, 2006, a MERS E-2 post retirement escalator shall be added to the employees' pension plan. The cost of the E-2 benefit shall be paid entirely by the employees through payroll deduction. If the cost of the E-2 benefit changes, either higher or lower, the employees cost paid through payroll deduction will change using the formula and process spelled out in Appendix A attached to this Agreement. The employee contribution shall not exceed fourteen percent (14.0%) of wages.

The Township's Last Best Offer

6. Pension - Current Employees (Employee Contribution) [Joint Issue] - Status Quo

Issue No. 6. Pension, Current Employee Contribution, Joint Issue

The Union's Position.

The union is requesting a change in this contract provision whereas the employer wants to stay status quo. In agreement of the parties, Section I of Article 31 Retirement Benefit has been removed.

In Section II, the Union is proposing changes in what now will be called Section II of the Article 31. First, the word entirely changing the sentence as follows: "The cost of the E2 benefit shall be paid by the employees through payroll deduction". There are different

percentages and data cited by the parties, see the union's proposal under Tab 9 of the union's exhibits. The union proposes that the employee contribution shall not exceed 14% of wages. Presently there is no employee contribution cap and the union points out that the employees presently are now paying 13.94% of their gross wages. They are seeking to set an employee cap at 14%. While the employer is seeking status quo with no cap.

Testimony by the union pointed out that the employee contribution rate is been continuously moving upwards over the last ten years. Since 2010, the rate has increased from 5.96% to 13.94%. Testimony as to that issue was given by labor representative, Hal Telling, on behalf of the union.

Further, the union has concerns that the closing of the defined benefit pension program for new hires will cause employee contributions to increase dramatically. Ms. Daggett testified on behalf of the employer and stated she did not expect immediate impact on employee contribution rates with the closing of the defined benefit pension program. The union's states that if the employer is confident that the rates will be unaffected, then they should shoulder the risk of the contribution increases.

Further, the union states that the employer is receiving a substantial benefit by closing the defined benefit pension for new hires. The union's position that when a plan closes and there are no new hires coming into that plan, then the present employees under the defined benefit plan will be faced with increased funding in the future which can increase their costs.

The union states that the comparable communities show that the union's last best offer to be more reasonable. They point out that three comparable communities, Flushing

Township, Grandville, and Saline have agreed to close their existing pension system, and that all three of have an employee pension contribution cap in place. See Union Ex. 11B.

The union further states that the comparable communities pay less in pension contributions overall, *i.e.*, Davison Township, 7%, Flushing township 8% and Grandville 3.4%, and Saline 5.5%, which compares to 13.94% for command officers in Dewitt. See Union Ex. 11A. The union also points out that the Davison Township provides some form of retiree health care coverage.

The Township's Position

The employer points out that the Union proposes a cap on the employee contribution be 14%. The Employer wishes to maintain the status quo on this issue. That pursuant to Appendix A of the party's present contract, there is no cap on either party's contributions. Further, the status quo would also retain the language that requires employees to bear the entire cost of the E2 benefit and the FAC-3 Pension Riders. See Joint Ex. C, Article 31, Section III.

As to internal comparables, non-union employees of the township do not participate in a defined benefit pension program. Therefore, their present position is of no help to this issue. The nonsupervisory employees are presently in 312 Arbitration and it is an open issue at this time.

External Comparables:

The employer points out that only Davison Township provides their employees with an E2 Rider, and that two of the comparables communities have never had a defined benefit program.

The employer goes on to state that of the four remaining comparables all, but one has placed a cap on employee contributions. See Union Ex. 11A. Further the three other comparable communities that have a defined benefit plan and a cap have closed their defined benefit plan to new hires. Flushing Township, Saline, Grandville. See Union Ex. 11A. Davison Township is the only comparable community that has maintained a defined benefit plan for all police officers for a number of years. Like Dewitt, it provides an E2 Escalator, See Union Ex. 11A. It also does not place a cap on employee contributions in its defined benefit plan. Davison Township does have a cap on employer contributions to offset the cost of pension benefit with an E2 Rider, See Union Ex. 11A. The township points out because of the rising costs for this program, that if the employee's contribution is capped, the employer will bear the expense of the rising cost of contributions with the Union's contributions frozen at 14%, the employer will bear the entire future increases.

The employer further points out that the Union's last best offer eliminates language as to requiring the employees to pay the entire cost of the E2 benefit. The employer states that the only reason they agreed to the inclusion of the E2 benefit originally, was with the understanding that any increases in costs would be borne by the employees. Thus, the union is attempting to have this panel revise previous negotiations in previous contracts. The employer argues that the union's position has no support in the external comparables, that while three communities have placed caps on the employee contributions, those three communities have closed their defined benefit plans. None of those communities has the E2 Rider that increases pensions. The only comparable community that offers the E2 Rider is Davison Township. The employer

further states, that Dewitt and Davison are the only two communities that have all the employees in defined benefit plan. Therefore, the employer argues that Davison Township is the most relevant comparable community. Further, that Davison Township has not capped employee contributions, but does have a cap on employer contributions. Ms. Marney Dagett, regional manager of MERS, testified that she does not believe that pension divisions in Dewitt Township will face acceleration of amortization. Further, it's the position of the employer that the union's last best offer is based on fears of acceleration, and a spike in costs and is based on outdated information.

The majority of the panel concludes that the Township's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
 Concur
 Dissent

Dated: 4/14/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
 Concur
 Dissent

Dated: 4/9/21

ISSUE 7. RETIREMENT FOR FUTURE MEMBERS (Article 31) (Joint Economic Issue)

The Union proposes to add the underlined language.

ARTICLE 31. RETIREMENT BENEFIT

[Section 1 removed per parties' agreement].

Section 3. employees promoting into this unit after January 1, 2019 with a Defined Benefit shall be placed into the Command Defined Benefit Plan. Employees promoting into this unit after January 1, 2019 with a Defined Contribution Plan shall retain the Defined Contribution Plan.

The Township Last Best Offer

7. Pension – New Hires [Joint Issue] – The Employer proposes to add a new section to Article 31 to read as follows:

Employees promoted into this unit on or after September 1, 2020 with a MERS Defined Benefit Plan shall be placed into this unit's Defined Benefit Plan. Employees promoted into this unit on or after September 1, 2020 with a Defined Contribution Plan shall be placed into this unit's Defined Contribution Plan. Employees hired into this unit from outside the Non-Supervisory unit on or after September 1, 2020 shall participate in an ICMA Defined Contribution Plan on the following terms:

- a. Employer contribution of 10% of base wage with no minimum employee contribution.*
- b. If an employee contributes 1% of base wage into the Defined Contribution Plan, the Employer will contribute 1% of base wage into a Retiree Health Savings Account. If the employee contributes 2% of base wage into the Defined Contribution Plan, the Employer will contribute 2% of base wage into a Retiree Health Savings Account. Employee contributions beyond 2% are not subject to any form of Employer matching.*

Issue No. 7. COMMAND UNIT, SUPERVISORY UNIT

The Union's Position

The parties agree that section I of Article 31, is to be removed per their agreement. The union proposes that section III, stating that employees promoted into the unit after January 31, 2019, with a defined contribution plan shall retain a defined contribution plan. Employees promoted into the unit after January 31, 2019 with a defined benefit shall be placed in a command contribution plan shall retain the defined contribution plan.

The employer proposes adding a new section to Article 31.

The employer proposes that employees hired into the supervisory unit from outside the nonsupervisory unit on or after September 1, 2020 shall participate in IMCA defined contribution plan on the following terms. A contribution of 10% of the base

wages with no minimum employee contribution will be made. It also states if an employee contributes 1% of their base wage into the defined contribution plan, then the employer will contribute 1% total of base wage, if the employee contributes 2% total of base wage, then the employer will match 2% into a retiree health savings account. Any contribution beyond 2% by the employee will not subject the employer for any matching funds.

The parties have agreed that there is not an issue of ability to pay. At the present time, the employer does that the ability to pay for the changes in the contract.

The union proposal concerns itself with future employees promoted into the command unit. The concern of the union is those officers promoted should retain the same retirement benefits that they had in the patrol unit. They point out that the defined benefit plan for future hires has been phased out by agreement. The union concern is command officers hired from outside the bargaining unit would receive a defined contribution plan with the Township contributing 10% employer contribution based on base wages up to 2% matching on retiree health savings account. The union states that the township's proposal is in fact creating two separate plans for outside hires. The employer argues that the union's proposal is to allow any employee promoted into the supervisory unit with a defined benefit pension to be placed in the supervisor's defined benefit plan and for those promoted with a defined contribution plan to retain their defined contribution plan.

Further, those promoted into supervisory unit that have a defined contribution plan to be placed in the supervisors defined contribution plan. Those hired from outside the township into the supervisory unit would be placed into an ICMA defined

contribution plan with the township contributing 10% of their base wage with the employee need not contribute anything in addition and the township shall match up to 2% of base wage into a retiree health saving account.

The township further cites the non-union staff who have a defined contribute retirement plan with a 10% employer contribution based on base wages. The township points out that the major difference is between the proposals is the required contribution from employer and employees. The township cites external comparison and states that only Davison Township and DeWitt Charter Township still provide a defined benefit pension to all supervisory police officers. Flushing Charter Township moved all new hires to a defined contribution plan in 2016, with 5% contributions from both the employer and the employees. Saline moved new hires to a 10% employer contribution.

Grandville switched new hires to a defined contribution plan beginning in 1993 wherein the employer contributes 10% and the employees contribute 4%.

Fruitport Charter Township has never had a defined benefit plan and offers a defined contribution plan with a 10% employer contribution and no required employee contributions. That based upon put forth by both parties, this panel agrees with the Employer that the contribution for the command officer's retirement benefit for new hires be adopted.

The majority of the panel concludes that the Employer's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
 Concur
 Dissent

Dated: 4/14/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
 Concur
 Dissent

Dated: 4/9/21

ISSUE 8. PROMOTIONS (New Article) (Union Economic Issue)

The Union's Last Best Offer

The union proposes that the following language be added into a new Article of the collective bargaining agreement.

PROMOTIONAL PROCEDURE **LIEUTENANT**

The purpose of this Article is to establish a procedure for promotions to the rank of Lieutenant from the rank of Sergeant with the Dewitt Township Police Department. To be eligible for promotion to the rank of Lieutenant, an employee must have held the rank of Sergeant within the Dewitt Township Police Department for not less than two (2) years. If there are no applicants with at least two (2) years of service in the rank of Sergeant with the Dewitt Township Police Department, the Employer shall allow non-probationary Sergeants with the Dewitt Township Police Department to apply for promotions.

When a position for Lieutenant becomes available, the employer shall post a notice within the police department for ten (10) days. Employees interested in the promotion shall submit a letter of interest and resume not more than seven (7) days after the final posting date.

A selection committee shall be comprised of the Chief of Police and City Manager. A committee shall conduct interviews of all applicants and the committee shall make a selection.

The promoted employee shall be a probationary employee for six (6) months and may be returned to the rank of Sergeant during the probationary period. The promoted employee shall also have the right to voluntarily return to the rank of Sergeant during the probationary period without loss of seniority.

The Township Last Best Offer

8. Promotions [Union Issue] – The Employer proposes a new Promotions Article to read as follows:

If the Township determines it will fill vacant Lieutenant position(s), it shall establish the qualifications, including but not limited to, training and performance and follow the below procedure for posting the vacancy:

- 1. The Township shall provide at least 30 calendar days' notice of the promotional opportunity by posting on the Department's bulletin board and via Township email to all bargaining unit members.*
- 2. Interested members must submit to the Chief a letter of interest and résumé to indicate interest in the promotional opportunity no later than the deadline for such submission. To be eligible for consideration, employees must have served as Sergeant in the Dewitt Township Police Department for at least two years.*

The Chief and Township Manager shall review qualifications, training, and performance to issue a promotional recommendation, if any, to the Township Board for its final determination. In their discretion, Chief and Township Manager may confer with or form a selection committee and/or develop an interview, testing, and/or other reasonable selection process(es). If the Township determines no internal candidate is qualified for the position, the Township retains all rights to hire outside candidates, if any. The candidate selected will be given the wage, badge, and insignia of the rank and be expected to perform all duties and assume all responsibilities of the rank. Unsatisfactory completion of the probationary period may result in demotion to the previously held rank; the candidate may also voluntarily return. If the selected individual returns to his or her previous rank, the individual shall not be eligible for promotion for a period of one (1) calendar year.

Issue No. 8. Command Supervisor's Unit. Promotions.

Promotions to lieutenant. It is a union issue. The Union's LBO on the issue of promotion to the rank of lieutenant would require applicants to have 2 years of experience as a sergeant with Dewitt Township. It could be waived to include all non-probationary sergeants if none meet the criteria to apply for the position. Further, the LBO is that the position be posted for 10 days and that employees have until 7 days after the posting is removed to apply. The selection committee is to consist of the chief and the township manager. Further, the LBO requires that the interview be conducted by a selection committee but otherwise gives full discretion for the selection committee, which consists of the chief of the township manager to decide. Further, that they be

probationary for six months, and can be returned full rank of sergeant during that period. They may voluntarily request demotion to sergeant during the probationary period without loss of seniority.

The township's LBO requires the establishment of qualification to include at least training and performance. That the position would be posted for at least 30 days and on the department's bulletin board as well as to be emailed to employees within the bargaining unit. Those interested are to submit a letter of interest and resume to the chief. They must have at least two years' experience as a sergeant in a department. The chief and township manager will assess candidates' qualifications, and performance to recommend a promotion to the township board for a final decision. At their discretion, the chief and township manager, may form a selection committee and/or develop an interview, testing and or other reasonable other reasonable selection process. If the township determines no internal candidate is qualified for the position, the township retains all rights to hire outside candidates, if any. During the probationary period, which is set by contract at one year, the promoted employee may be demoted to its previous rank or the candidate may voluntarily do so. If the employee is demoted, he is not eligible for promotion for one year.

Internal Comparability

There is no established promotional process for any other union or nonunion township employees.

External Comparable

The City of Granville posts its openings internally and any promotions are at the City's discretion. The City of Granville considers employees experience, qualifications, and seniority in filling vacancies.

The vacancies in Saline are posted internally, and internal candidates will be considered for such vacancies as the same time as applicants from outside the department. The chief of police retains the sole authority and discretion to select such command officers, and that selection is not subject to grievance and arbitration procedures under their contract.

Davison Township requires four years patrol officer experience, at least two of those years must be with Davison Township. The township's supervisor and chief of police are permitted to choose between the top three candidates. If there are not three internal candidates, Davison Township may look to external candidates, with at least five years of law enforcement experience. The evaluation process in Davison Township is a written exam worth 40%, an oral exam worth 40%, and past experience worth 20%. If promoted, employees are permitted to return to prior rank during the probationary period as set in the contract.

Flushing Charter Township provides that only those officers with three or more years' experience with the department can be promoted. They have a written exam counting 60%, an oral board worth 30%, and the chief's written evaluation worth 10%. The employer may then promote the top two scoring candidates. The parties so promoted may be demoted to previous rank within the probationary period of the contract.

Fruitport Charter Township

Fruitport Charter Township under its management rights clause, reserves to the township the right to select employees for promotion or transfer to supervisory or other positions. In another part of the contract, the township reserves the right to assign positions or make promotions of employees or applicants they select, and further states that the position shall be filled based on qualifications of the applicants.

Analysis and Conclusion.

As far as this issue, the union states there is no current contract language. See trial transcript 2, page 81. LBO are set forth in tab 13, the Union's command binder. Essentially, the difference is that the Union offers promotions to the rank of the lieutenant be made from within the township. The employer has the ability to hire the lieutenant from outside the police department.

The parties stipulated there had been three previous promotion to lieutenant. All are made from the rank of sergeant within the department. See transcript 2, page 4, see also transcript p. 83. Therefore, the Union feels that since all promotions up to this point have been made from within the department to lieutenant, then that language would be proper. The Union points out that there are safeguards to ensure that there are qualified people within the department to move on to the rank of lieutenant. They state that in the selection the process for patrol candidates, they are put through a rigorous selection process. Thereafter, any promotion to sergeant, requires again a rigorous selection process. Therefore, by the time the rank of lieutenant has to be filled, the candidates have already been through two processes for employment and advancement, and this would be the third process to select someone internal.

Presently, the department has the position for four segments. Therefore, the township would have the pick of four individuals to promote. Further the Union states that the employer under the Union's proposal would have complete discretion to promote its candidate. Thereafter, the employee would undergo a six-month probationary period and if the township is unsatisfied, the party could be demoted, and township then chooses a different candidate. The township acknowledges that they have a great work force and that they have faith and confidence in the individuals in the police department. Further, they have very qualified sergeants. See transcript 1, page 243, transcript 2, page 95. The Township and Chief of Police should have the discretion of promoting to the lieutenant rank. It should be noted there is only one lieutenant's position in the department and that person would be sworn officer, but also would be considered the deputy chief, and hence, have the ability to work with the chief operating the department. Therefore, the panel would favor the Employer's position.

The majority of the panel concludes that the Employer's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
 Concur
 Dissent

Dated: 4/14/21

Arbitrator
By: Eugene Lumberg
Eugene Lumberg
 Concur
 Dissent

Dated: 4/9/21

ISSUE 9. VACATION PAYOUT (Article 19) (Joint Economic Issue)

The Union's Last Best Offer

The Union proposes to delete the stricken language and to add the underlined language.

ARTICLE 18. VACATIONS

Section 4. Vacation time will be paid to employees who separate employment for any reason, provided that the employee has who have successfully complete their probationary period and provides tow (2) weeks written notice prior to resignation or retirement. If upon resignation two (2) weeks, prior written notice is given by the employee, using the following guidelines. Employees shall receive one hundred percent (100%) for all unused vacation time and will receive a one hundred percent (100%) prorated payment for vacation time earned since their last anniversary date.

a. ~~Employees shall receive payment for fifty percent (50%) of the unused balance of vacation time if the employee's notice of resignation is received and is effective within one hundred eighty (180) days of that employee's most recent anniversary date of hire.~~

b. ~~Employees shall receive payment for one hundred percent (100%) of the unused balance of vacation time in all situations other than above.~~

c. ~~Vacation time earned on the employee's last anniversary date is subject to paragraph a.~~

The Township Last Best Offer

9. Vacation Payout [Joint Issue] - The Employer proposes to amend Article 19, Section 4 in full to read as follows:

Section 4. Vacation days will be paid to employees who have successfully completed their probationary period using the following guidelines:

a. Employees resigning or retiring with at least two (2) weeks' prior written notice will receive 100% payout of accumulated vacation hours, including prorated vacation time since the most recent anniversary date.

b. Employees resigning or retiring without proper notice are not entitled to any payout of accumulated vacation hours.

c. Employees terminated for cause shall receive 100% payout for accumulated vacation hours earned through the employee's most recent anniversary date. Vacation hours earned since the employee's most recent anniversary date shall not be paid out.

Issue No. 9, Article 18, Section 4. Joint Economic Issue.

The Union proposes to delete certain language and add certain language.

Vacations, Section 4.

The Union proposes the following language: Vacation time will be paid to employees who separate employment for any reason provided, that the employee has successfully completed their probationary period, and provides two weeks written notice prior to resignation or retirement. The employee shall receive 100% for all unused vacation time and receive a 100% prorated payment for vacation time earned since their last anniversary date.

The Union further proposes that Sections 4a, 4b, and 4c be struck. The Township proposes the following:

To amend in full Article 18, Section 4 to read as follows:

Section 4. Vacation days will be paid to employees who have successfully completed their probationary period using the following guidelines:

a.) employees resigning or retiring with at least two weeks written prior notice to receive a 100% payout of accumulated vacation hours, including prorated vacation time since the most recent anniversary date.

b.) To employees resigning or retiring without proper notice are not entitled to any payout of accumulated vacation hours.

c.) Employees terminated for cause shall receive 100% payout for accumulated vacation hours earned through the employee's most recent anniversary date. Vacation hours earned since the employees most recent anniversary date shall not be paid out (after the Union's first proposal, see tab 12, union's patrol binder). The Union argues their proposal is not that much different from the Township's proposal. The Union's proposal is that vacation time would be paid to employees who separate employment for any reason.

The Township's proposal agrees that any employee terminated who gives two-week written notice, is terminated and leaves employment by resigning or retiring, and has successfully completed its probationary period, would be paid unused accumulated vacation hours for the calendar year which they leave employment. However, any employee terminated for cause, would only receive a payment for accumulated vacation hours earned through the employees most recent anniversary date. Vacation hours earned since the employee's most recent anniversary date shall not be paid out, i.e. if they were terminated in the middle of the year, they would receive six months of vacation time and not 12 months of vacation time. The proposal penalizes the employee for being terminated by eliminating the vacation pay for the year in which they are terminated per the Township's position. The Township argues that the non-union employees in the Township are treated exactly in the same manner as the non-supervisory police officers would be treated under the Township's proposal. The only other bargaining unit in the Township has raised the same issue their Act 312 Arbitration. As to external comparables, the Township raises an issue that the Flushing Charter Township Contract provision on vacation time shows that termination does not entitle the employee to any unused vacation payout. The Fruit Port Charter Township Contract talks about termination in one part of the contract section on payouts and does not talk about termination and other parts of the contract. After reviewing both of the arguments on each side, I would agree with the Union that an employee who is terminated should receive their earned vacation time hence, an employee that has completed probation and employee who gives two weeks' notice, should receive all of their unused vacation time.

The majority of the panel concludes that the Union's Last Best Offer of Settlement on this issue more closely corresponds to the applicable Section 9 criteria and makes that award.

By: Helen E. R. Mills
Helen Mills
 Concur
 Dissent

Dated: _____

By: Brendan Canfield
Brendan Canfield
 Concur
 Dissent

Dated: 4/14/21

Arbitrator
By: Eugene Linnberg
Eugene Linnberg
 Concur
 Dissent

Dated: 4/9/21

