

ARTICLE 35

PENSION PLAN

PART A

Section 1.

The State will maintain the State Police Pension Plan as provided in the State Police Retirement Act of 1986 (P.A. 182 of 1986), as it exists on the effective date of this Agreement, except as provided in Section 10 and except as provided in Part B, and except that the State agrees not to enforce the mandatory age 56 retirement provision contained in Section 24(1) unless and until it is determined that such provision is not in violation of State or Federal law, and the Consent Judgment in the case of EEOC vs State of Michigan, Department of State Police [USDC-WD 9-81-756-CA(A)] is modified or rescinded by court order.

Section 2. Revision of P.A. 182.

In the event that Public Act 182 of 1986 is amended during the term of this Agreement, and such amendment addresses a subject which is a mandatory subject of bargaining between the parties, this Agreement does not require that such amendment(s) be applied to employees or positions in the bargaining unit.

Section 3. Insurances.

Bargaining unit members who have retired on or after the effective date of this Agreement under Public Act 182 of 1986 (except current Section 30) or their beneficiary and dependents, shall be entitled to enroll in Group Dental and/or Vision Care Plan authorized for active employees by the Michigan Civil Service Commission and the Department of Management and Budget. 90% of the applicable premiums payable by the retirant (or the retirant's beneficiary and enrolled dependents) for such coverage shall be paid by the State.

Bargaining unit members who have retired on or after the effective date of this Agreement under Public Act 182 of 1986 (except current Section 30), or their beneficiaries and dependents, shall continue to be entitled to enroll in the Group Health Care Plan authorized for active employees by the Michigan Civil Service Commission and the Department of Management and Budget. 95% of the applicable premiums payable by the retirant (or the retirant's beneficiary and enrolled dependents) for such coverage shall be paid by the State.

Claims for services provided prior to enrollment shall not be payable under this Agreement.

Section 4. Pension Benefit.

Consistent with Public Act 182 of 1986, any pension which becomes payable on account of the attainment of 25 years of service credit, duty-incurred disability or duty-

incurred death of a bargaining unit member on or after October 1, 1986 shall be equal to 60% of the member's final average compensation; any pension which becomes payable on account of the nonduty-incurred death or disability of a bargaining unit member on or after October 1, 1986 shall be calculated on the basis of the applicable years of service credit multiplied by 2.4.

Section 5. Deferred Retirement.

A deferred pension shall continue to be calculated on the basis of years of service credit (not to exceed 25 years) times 2, as provided in Public Act 182 of 1986.

Section 6. Final Average Compensation.

Whenever the term "average annual salary" is applied to members of this bargaining unit, in accordance with past practice and Public Act 182 of 1986, this term shall include the following:

- a. Regular salary paid for the last two years of service (including but not limited to that salary which is deferred pursuant to the state deferred compensation program);
- b. Overtime, shift differential, and shift differential overtime paid for the last two years of service;
- c. Workers' Compensation benefits paid for the last two years of service.
- d. The following gross pay adjustments affecting the last two years of service:

Administrative Leave	Reallocation
Annual Leave	(including
Call Back	retroactive
Compensatory Time	classification
Civil Rights Adjustment	actions)
Emergency Response	Retroactive General
Compensation	Increase
Fair Labor Standards	Shift Differential
Act Adjustment	Shift Differential
Hazard Pay	Overtime
Jury Duty	Step Increase
Military	Time & Attendance
On-Call	Adjustment
Overtime	Working Out of
Personal Sick Leave	Class (under
(except for payment	provisions of
for accumulated but	Collective
unused sick leave at	Bargaining
separation)	Contract)

- e. Up to a maximum of 240 hours of accumulated annual leave, paid at the time of retirement separation;
- f. Deferred hours (Plans B of FY 1980-81 and FY 1981-82) that are paid at the time of retirement separation;
- g. Longevity pay (two full years);
- h. Bomb squad paid for the last two years of service;
- i. On-call pay paid for the last two years of service.

Section 7. Adjusting Service Time.

For purposes of computing average annual salary pursuant to these same statutory provisions, the term "last two years of service for which the member was paid" shall be calculated based on the payments made to the employee, for the compensation elements specified in Section 6 above during the 24 calendar month period immediately preceding retirement. If the employee did not receive full compensation in any of the 24 months immediately preceding retirement, an amount of time equal to the lost time shall be included, so that Final Average Compensation is based on 24 complete months of earnings. Adjustments, if necessary, shall be made using the time immediately prior to the final 24 months of service.

Section 8. Procedure for Handling of Disability and Death Claims.

The parties adopt and incorporate the following procedures for handling applications for disability and death allowances submitted by or on behalf of bargaining unit members under the State Police Retirement Act of 1986 (the Act), MCL 38.1601, et seq, and this Collective Bargaining Agreement. The parties agree that these procedures are intended to be applied in a manner that will allow the expeditious processing of claims that are clear and undisputed, while providing an efficient process for gathering information and acting on applications where there are factual or legal issues that must be resolved by the Board.

- a. **Disability.** A member may request a duty- or non-duty disability retirement allowance by filing an application with the Office of Retirement Service (ORS), which acts on behalf of the State Police Retirement Board (the Board). The application shall be on a form developed by the ORS and shall identify all medical or psychological conditions in support of the application.
 - (1) The Director of the Department of State Police may submit an application on behalf of a member if the Director believes that a question regarding the existence or extent of a disability exists, and that the member may be entitled to a duty- or non-duty retirement allowance. In this event, the ORS shall provide the affected member with a copy of the application and the member will be considered an applicant for purposes of these procedures, with the same rights and

responsibilities as a member who voluntarily submits an application for a disability retirement allowance. Any requests for accommodation by an applicant under the Americans with Disabilities Act (ADA) or the Persons with Disabilities Act shall be made to the Department of State Police, and not to the ORS under these procedures.

- (2) Upon receipt of an application for a disability retirement allowance, the ORS shall appoint a physician, acting as an Independent Medical Advisor (IMA). The IMA will review the applicant's medical records and other relevant information to determine if the applicant meets the criteria for a State Police disability retirement. The IMA may request additional information or testing to assist in making this determination. If requested by the IMA, the ORS will schedule a medical examination of the applicant and the applicant shall cooperate by attending the examination and/or reporting for the requested test(s).
- (3) If the IMA determines that the disability and its extent meet the criteria for a State Police disability retirement, the Board authorizes the ORS to do either of the following:
 - (a) Waive the application review by a Medical Review Panel and approve the non-duty disability application; or
 - (b) Waive the application review by the Medical Review Panel and present the duty-incurred disability application to the Board to determine whether the disability was duty-incurred.
- (4) If the IMA determines that the disability and its extent are not sufficiently documented and indicates that a bona fide disagreement as to the existence or extent of the disability may exist, the ORS shall arrange a Medical Review Panel.
 - (a) The Medical Review Panel shall consist of the IMA, a physician designated by the Director of the Department of Community Health, and a physician selected by the applicant. If the applicant fails to provide the name of his or her selected physician within 30 days after the notice of the Medical Review Panel, the application will proceed based upon the information that is available to the remainder of the Panel.
 - (b) Either the applicant or the Director of the Department of State Police may submit additional information to the Medical Review Panel that is relevant to the existence, extent, or relationship to duty of the disability. The information shall be provided to the ORS within 30 days of the notice of the

Medical Review Panel. The ORS shall be responsible for providing the information to each member of the Medical Review Panel.

- (c) Any member of the Medical Review Panel may waive an in-person examination of the applicant if he or she believes that the medical evidence, test results, and any other information that has been submitted is sufficient to formulate an opinion regarding the existence of a disability or its extent.
- (d) After the Panel has reviewed all medical evidence, test results, and any other information that has been submitted, and after the applicant has been examined (if deemed appropriate), the Medical Review Panel shall determine, based solely on the medical evidence submitted by the parties and any examination conducted, whether or not a disability exists and whether or not its extent meets the criteria for a State Police duty- or non-duty disability retirement.
- (e) Each member of the Medical Review Panel shall complete a medical advisor statement concerning the disability and its extent.
- (f) If a member seeks a duty-incurred disability retirement allowance, and the relationship to duty depends upon the interpretation of medical facts, the Medical Review Panel may render an advisory opinion on this issue; the advisory opinion, however, shall not be binding on the Board or the applicant.
- (g) After a Medical Review Panel has considered an application for a disability retirement, ORS shall promptly forward to the applicant, the applicant's representative, and the Director of the Department of State Police, the following information:
 - (1) A copy of the findings of the Medical Review Panel on disability and its extent; and
 - (2) A copy of the Medical Review Panel's advisory opinion(s), if any, on the issue of the disability's relation to duty.
- (5) When a question of relationship to duty arises in a disability case, and it cannot be resolved upon the basis of the applicant's medical condition and history, the ORS may, on its own, or at the request of the Director of the Department of State Police, conduct an investigation. This does not preclude the Department of State Police

from initiating its own investigation and submitting the results to the ORS, with a copy to the applicant.

- (6) If the ORS denies a disability retirement allowance of any kind, the ORS shall notify the applicant in writing of its action. The notification shall inform the applicant of the right to request an evidentiary hearing as set forth in subsection c.
- (7) If the ORS denies a duty disability retirement allowance, but determines that the criteria for a non-duty disability allowance have been met, the ORS shall notify the applicant in writing of its action. The notification will inform the applicant of the right to request an evidentiary hearing as set forth in subsection c.
- (8) If the ORS denies a duty disability retirement allowance, but determines that the criteria for a non-duty disability allowance have been met, the applicant may make a written request to the ORS that it process the non-duty disability retirement and pay that allowance during the pendency of a final decision by the Board on the issue of duty relatedness. Upon receipt of such a request, the ORS shall process the claim for non-duty disability benefits without prejudice to the applicant's right to seek duty-incurred disability benefits, retroactive to the date of retirement.

b. **Death.** If a member dies, a surviving spouse or beneficiary may file an application for a death allowance. The Director of the Department of State Police shall promptly notify the ORS of the member's death so that a determination can be made regarding the spouse's or dependent(s)' eligibility for a duty-incurred or non-duty death allowance.

- (1) If ORS determines that there is no dispute that the member's death meets the criteria for a non-duty death benefit, and that the member had the necessary time in service, the Board authorizes the ORS to promptly approve the application and process benefits in accordance with MCL 38.1627.
- (2) If ORS determines that there is no dispute that the member's death meets the criteria for a duty-related death allowance, the ORS shall promptly schedule a special meeting of the Board to consider whether the member's death meets the criteria for a duty-related death allowance.
- (3) If ORS denies a non-duty or duty-incurred death allowance, it shall notify the applicant in writing of its action. The notification shall inform the applicant of the right to request an evidentiary hearing as set forth in subsection c.

- (4) If the Board denies an application for a duty-related death allowance without first giving the applicant notice of the right to request a hearing, the ORS will notify the spouse or eligible beneficiaries of the denial. The notification shall inform the applicant of the right to request an evidentiary hearing as set forth in subsection c.
- (5) If the Board denies the application for a duty-incurred death allowance under paragraph (4) above, but determines that a non-duty death allowance is payable, it shall direct the ORS to process a non-duty death allowance, without prejudice to the right of the spouse or beneficiary to exercise the right to a hearing under subsection c. below.

c. **Request for Hearing.** If, without first giving the applicant notice of the right to request a hearing, the ORS or the Board denies an application for a disability retirement allowance or death allowance, the ORS shall notify the applicant of the denial and of his or her right to request a hearing on this issue.

- (1) The notice shall inform the applicant that the request for a hearing must be filed in writing with the ORS within 60 days after the date the notice was mailed and that the request should contain all of the following:
 - (a) A fair and accurate statement of the facts as the applicant understands them;
 - (b) The reason(s) supporting the applicant's claim; and
 - (c) The reasons why the determination regarding the absence of a disability or the determination to deny duty- or non-duty death or disability benefits should be reversed.
- (2) Upon receipt of a timely request, the ORS shall arrange for an administrative hearing without undue delay.
- (3) The hearing, proposal for decision, and final decision and order, shall be conducted and administered pursuant to the contested case procedures of the Administrative Procedures Act, 1969 PA 306, as amended, being MCL 24.271 – 24.287. Medical reports and records shall be admitted into evidence by the presiding officer in lieu of requiring attendance at a hearing by medical personnel.
- (4) The applicant and the ORS shall be furnished with a copy of the proposal for decision issued by the presiding officer and any exhibits

or other items of public record that will be submitted to the Board to be used in making its final decision.

- (5) The Board shall review the findings and proposal for decision submitted by the presiding officer, which shall not be binding on the Board. The Board shall issue a final decision in the matter, which shall be based upon competent, material and substantial evidence in the whole record.
 - (6) The final decision of the Board may be reviewed by a court as set forth in the Administrative Procedures Act, 1969 PA 306, as amended, being MCL 24.301 – 24.306.
- d. Except as modified by the current or a future Collective Bargaining Agreement, the rights of members and their retirement beneficiaries to a retirement allowance shall be in accordance with the provisions of the State Police Retirement Act of 1986 (1986 PA 182, as amended), MCL 38.1601, et seq, as it existed on October 1, 2005.

Section 9. Post Retirement Adjustment.

An employee (or beneficiary if applicable) shall be entitled to receive the annual post retirement adjustment set forth below, if:

- a. The employee is eligible for a retirement allowance under Act 182 of 1986 directly following separation from state service and has a retirement allowance effective date on or after October 1, 1989, or
- b. The employee defers retirement under Section 30 of Act 182 of 1986 on or after October 1, 1989.

Each retirement allowance shall be increased each October 1 beginning with the later of October 1, 1990 or the first October 1 which is at least 12 months after the retirement allowance effective date. The amount of the annual adjustment shall be equal to two percent of the initial retirement allowance and shall not exceed \$500.

The annual adjustments are cumulative but are not compounded. Once the first adjustment is received, the monthly benefit will increase by the same amount each October 1 thereafter.

Section 10. Survivor Pension Payments.

- a. Any individual hired after July 1, 2006 as a new bargaining unit employee may elect, prior to retirement, a survivor (spouse or child less than 18 years of age) retirement allowance option of 100%, 75%, or 50% at actuarially reduced monthly payments, including duty-incurred disability and non-duty disability retirement.

- b. A member or deferred member who elects one of the survivor options and whose retirement allowance beneficiary dies before the retirant shall have his or her retirement allowance increased to the full, straight life amount.
- c. A retirant, who is divorced after payment of his or her retirement allowance begins and whose former spouse is his or her retirement allowance beneficiary, may change his or her survivor option to the straight life option only if an order of the court states that the election of a survivor option under paragraph (a) of this section is to be considered void by the retirement system. A retirant who subsequently remarries may elect a survivor retirement allowance option for his or her spouse of 100%, 75%, or 50% of his or her actuarially reduced monthly payments, unless otherwise precluded by court order.
- d. A member who is not married at the time of retirement and who subsequently marries may elect a survivor retirement allowance option for his or her spouse of 100%, 75%, or 50% of his or her actuarially reduced monthly payments.
- e. Survivor retirement allowance payments made under paragraphs (c) and (d) for this section shall be based upon the retirant's and his or her spouse's ages at the time of their marriage. The election of a retirement allowance beneficiary under paragraph (c) or (d) must be made within 60 days of the retirant's marriage.
- f. If a retirant elects a survivor retirement allowance option after his or her retirement under paragraph (c) or (d) of this section, the retirement allowance beneficiary shall only be designated as such for that portion of the retirement allowance not subject to an eligible domestic relations order assigning a previous spouse a reduced benefit under MCL 38.1704(b).

PART B. DEFERRED RETIREMENT OPTION PLAN

Section 1. Eligibility and Plan Overview.

An employee who has 25 years or more of credited service under the State Police Retirement Act of 1986, as amended, or former act 1935 PA 251, or both, may elect to participate in the deferred retirement option plan (DROP) by executing the application provided by the Office of Retirement Services. Once the application is accepted by the Office of Retirement Services, the employee's participation in the DROP is irrevocable and he or she becomes a DROP participant. The employee is solely responsible for any federal, state, or local tax due as a result of his or her participation in the DROP.

Participation in the DROP does not guarantee continued employment. Except as otherwise provided in this article, an employee who elects to participate in the DROP will remain an active employee eligible to receive any applicable wage changes and

benefits, and will be subject to policies and procedures of the Department of State Police in the same manner as if he or she had not elected to participate in the DROP.

For each fiscal year that begins on or after October 1, 2004, the Director of State Police and the Retirement Board may elect to discontinue accepting applications for the deferred retirement option plan.

Section 2. Participation Period.

An employee shall indicate on the application for the DROP the number of years that the employee wants to participate in the DROP, up to a maximum of six years. As a condition for participation, the employee agrees to retire at the conclusion of his or her participation in the DROP.

Section 3. DROP Benefit and Account.

A deferred retirement option plan account shall be created in the accounting records of the retirement system for each DROP participant. Each deferred retirement option plan account shall earn interest at the rate of 3% per annum, prorated for any fraction of a year. The DROP account of a DROP participant shall be credited with the following percentage of his or her monthly retirement allowance as calculated pursuant to section 24 of the State Police Retirement Act (retirement act) as if he or she had retired on the day prior to becoming a DROP participant:

- a. 100% if the employee remains in the DROP for six years.
- b. 90% if the employee remains in the DROP for five years but less than six years.
- c. 80% if the employee remains in the DROP for four years but less than five years.
- d. 70% if the employee remains in the DROP for three years but less than four years.
- e. 60% if the employee remains in the DROP for two years but less than three years.
- f. 50% if the employee remains in the DROP for one year but less than two years.
- g. 30% if the employee remains in the DROP for less than one year.

A DROP participant shall not receive a monthly retirement allowance, as calculated pursuant to the Retirement Act, until termination of his or her DROP participation and commencement of retirement. A DROP participant shall not have any claim to any funds in his or her DROP account until he or she retires at the termination of his or her DROP participation.

Section 4. Distribution of DROP Funds.

Upon termination of the DROP participation and commencement of retirement, the former DROP participant shall select one or more of the following options with regard to his or her DROP account:

- a. A total lump sum distribution.
- b. A partial lump sum distribution.
- c. A lump sum direct rollover to another qualified plan if allowed by federal law and subject to the procedures of the retirement system.
- d. Maintain the funds in the account.

A former DROP participant shall remove all funds from his or her DROP account no later than April 1 following the later of the calendar year in which the DROP participant attains 70 years, six months of age or the calendar year in which the DROP participant is retired.

Section 5. Death or Disability.

If a DROP participant or former DROP participant dies before removing all funds from his or her DROP account, the former DROP participant's designated beneficiary shall receive any remaining balances. If the former DROP participant has not named a beneficiary for his or her DROP account, the amount in the DROP account shall be paid to the beneficiary of the former DROP participant's retirement allowance. If the former DROP participant has not named a beneficiary to his or her retirement allowance, the balance in the former DROP participant's account shall be paid to the former DROP participant's estate.

If a DROP participant is found to be disabled under Section 29 of the retirement act, his or her participation in the DROP shall immediately cease and he or she shall be retired.

Section 6. I.R.C. Compliance.

The DROP shall be administered in compliance with Section 415 of the Internal Revenue Code, 26 USC 415, and regulations under that section that are applicable to a governmental deferred retirement option plan. If there is a conflict between this section and another section of this article, this section prevails.

If the department receives notification from the United States internal revenue service that this article or any portion of this article will cause the retirement system to be disqualified for tax purposes under the internal revenue code, 26 USC 1 to 1789, then the portion that will cause the disqualification does not apply.

Section 7. Special Provisions.

Notwithstanding any other contractual provision, the following special provisions apply to a DROP participant:

- a. At the time of acceptance to the DROP, the DROP participant shall be paid for his or her accrued eligible sick leave, subject to subdivision (g). A DROP participant shall not accrue any further sick leave. A DROP participant may use up to 240 hours of sick leave for which payment was not received. No payment will be made at retirement for any unused sick leave.
- b. At the time of acceptance to the DROP, the DROP participant shall be paid for his or her accrued annual leave up to 240 hours, subject to subdivision (g). Any accrued annual leave in excess of 240 hours may be used by the DROP participant.
- c. Excluding participation in the banked leave time program, each DROP participant shall receive a total of 7.7 hours of annual leave for each 80 hours of paid service in a biweekly work period; however, the maximum number of annual leave hours that a DROP participant may accumulate, including annual leave hours remaining prior to DROP participation, is 200 hours. If a DROP participant is not paid for 80 hours in a biweekly work period, the participant shall be credited with a prorated amount of annual leave for that work period. A DROP participant on an alternative work schedule of more than 80 hours of paid service in a biweekly work period shall only receive 7.7 hours of annual leave in the biweekly work period. At retirement, the DROP participant will only be paid for a maximum of 76 hours of annual leave.
- d. DROP participants shall not be eligible for, and cannot receive, any longevity pay.
- e. As of the effective date of participation in the DROP, a participating employee is paid for all accrued compensatory time. As of the effective date of participation in the DROP, a participating employee and the employee's supervisor may agree to allow the employee to accrue up to 48 hours of compensatory time. A participating employee is paid for up to 48 hours of unused compensatory time at retirement.
- f. DROP participants shall pay group insurance plan premiums equal to the amount the employee would have paid if the employee had retired on the day before becoming a DROP participant.
- g. Payments due an employee upon approval to participate in the DROP, such as for accrued sick leave, annual leave, compensatory time, and similar items, may be paid at the sole discretion of the state, at the rate of

17% per year until the DROP participant retires, at which time any remaining balance shall be paid. This provision shall not affect how an employee's final average compensation is determined for purposes of calculating his or her retirement benefit pursuant to section 24 of the retirement act.

- h. Solely for purposes of voluntary transfer under the provisions of Article 13, a trooper shall be considered as having three years of time in service seniority, and sergeants shall be considered as having one year of time in rank seniority.
- i. DROP Participants shall be paid at the appropriate 15-year pay rate.

Section 8. Additional Provision.

In the event command officers of the department are offered terms in DROP benefits relating to Section 3 and Section 7.g. above, that the Association considers favorable to them in the same sections, the Association upon notice and demand to the Office of the State Employer will be granted the same provision for all employees as are granted to the command officers for the duration of the current agreement.