

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ACT 312 ARBITRATION BETWEEN:

COUNTY OF NEWAYGO AND THE
NEWAYGO COUNTY SHERIFF,

EMPLOYER

MERC Case No. L99E-1014

Command Unit

AND

POLICE OFFICERS LABOR COUNCIL,

UNION

ARBITRATION OPINION AND AWARD

David W. Grissom, Chairperson
Fred LaMaire, Union Delegate
Kurt W. Humphrey, Employer Delegate

June 23, 2003

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INTRODUCTION

This Arbitration Award is rendered as the result of a Petition filed by the Police Officers Labor Council (POLC/Union) on December 20, 1999 with the Michigan Employment Relations Commission under 1969 PA 312 as amended, MCLA 423.231 *et seq.*; MSA 17.455(31) *et seq.* A Pre-Hearing conference was conducted on February 14, 2001 and thereafter, Hearings took place on June 25 and September 16, 2002 at the Newaygo County Offices in White Cloud, Michigan. The Union was represented by Mr. Peter P. Sudnick, Attorney. The County of Newaygo was represented by Mr. John R. McGlinchey, Attorney. The Arbitration Panel consisted of the undersigned Arbitrator as Chairperson with Labor Representative Fred LaMaire as the Union Delegate and County Controller/Administrator Kurt W. Humphrey as the County (Employer) Delegate. Union

witnesses: Undersheriff David Allen Babcock, Labor Representative Fred LaMaire, Research Analyst Nancy Ciccone and Lt. Don Myers. Employer Witnesses: Deputy County Administrator Lori M. Gracik and Employee Compensation Consultant O. William Rye. The Hearings were concluded on September 16, 2002. Pursuant to the receipt of the official Transcript of these proceedings; Last Best Offers submitted by the parties and Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

The POLC and the County of Newaygo are parties to a collective bargaining Agreement effective January 1, 1997 through December 31, 1999 (Joint Exhibit #1). That Agreement covered the wages, hours and working conditions for both Deputies and Command Officers in the Newaygo County Sheriff's Department. Specifically, Deputies, Sergeants and Lieutenants were in the same bargaining unit. The Police Officers Association of Michigan (POAM) filed a Petition to represent the Deputies (approximately seventeen (17) employees) and was subsequently certified as the bargaining agent for a new non-command unit. Prior to this Arbitration, those parties consummated a collective bargaining Agreement of their own. The bargaining unit represented by the POLC now consists of seven (7) Command Officers – Sergeants, Detective/Sergeants and Lieutenants. The Contract in the instant case, constitutes the first Agreement for the new Command Officers' unit.

The issues submitted by the Union for the Panel's consideration are as follows: Wages, Retirement, Retiree Health Insurance, Uniforms and Cleaning, Pager Pay, Seniority, Layoff and Recall, Humanitarian Clause and Prior Discipline. The issues submitted by the County are: Wages, Discipline, Health Insurance, Overtime Distribution,

National Conference and Humanitarian Clause. Joint issues are also denoted in this Award. In the Union's Last Best Offer, it withdrew its proposals for Snowmobile and Marine Patrol Pay.

STATUTORY REQUIREMENTS

In accordance with Section 8 of Act 312, MCLA 423.328, the Panel must adopt the Last Best Offer of settlement on "economic" issues that it determines best comports with the elements set forth in Section 9, MCLA 423.239; Metropolitan Council No. 23, AFSCME v City of Centerline, 91 Mich App 337, 283 NW2d (1979), to wit:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hour and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.

- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment.

Under the statute, all economic issues must be construed as a total package; wages and benefits in terms of total costs to the Employer.

Relative to issues designated as "non-economic", the Panel is free to adopt either parties' Last Best Offer or it may fashion an Award which it believes most nearly satisfies the applicable Section 9 factors but such determinations are not to be retroactive, Metropolitan Council No. 23 v Board of Commissioners of Wayne County, 86 Mich App 453, 272 NW2d 681 (1982).

The parties have stipulated that all tentative agreements reached during Contract negotiations would be incorporated into the successor Contract and that the balance of the prior labor Agreement, not modified by tentative agreement or the Proceedings herein, would continue in the successor Contract.

COMPARABLES

For purposes of this case, the parties have agreed that the following are comparable communities:

Barry County
Clare County
Gratiot County
Mecosta County
Montcalm County
Oceana County
Wexford County
Isabella County

There is no dispute regarding the use of these communities as comparables. However, it is noted that some counties do not have "comparable" ranks. In other counties, Sergeants are part of Deputy non-command units. Additionally, in some counties, certain command ranks are not unionized and therefore are not eligible for Act 312 Arbitration. Where applicable, these differences will be identified.

ECONOMIC ISSUES

WAGES (Union/Employer)

The parties' wage proposals are predicated upon a three (3) year Agreement. The Union's Last Best Offer for the first year effective January 1, 2000 is a retroactive four and one-quarter percent (4.25%) wage increase for Sergeants; a five and one-half percent (5.50%) increase for Detectives and an eight percent (8%) increase for Lieutenants. The

Union proposes three percent (3%) retroactive increases "across the board" for the remaining two (2) years of the Contract. The three percent (3%) increases "across the board" are to be effective January 1, 2001 and January 1, 2002.

The Employer's Last Best Offer is to increase wages for all Sergeants (including Detectives) by three (3) percent for each year of a three (3) year Contract. For Lieutenants, the Employer proposes an increase of four percent (4%) for the first year and a three percent (3%) increase for each of the two (2) remaining years of a three (3) year Agreement. The effective date of the first year wage increase would be January 1, 2000. The wage increases for 2001 would be January 1, 2001 and the wage increases for 2002 would be effective on January 1, 2002.

Therefore, the parties are in agreement that three percent (3%) "across the board" increases should be awarded for the last two (2) years of the Contract. The first year increases remain in dispute and will affect the agreed upon three percent (3%) increases in the last two (2) years.

UNION POSITION ON WAGES

The Union's position on Wages is as follows: Its wage proposal in the first year of the Agreement seeks to increase "actual" differentials between the various ranks by means of graduated increases the first year. The actual differentials are comparable to those in other comparable counties. For example, the average differential between a top-paid Deputy and a fully paid Sergeant in the Comparables is 7%. But in Newaygo

County, that differential between Sergeants and Deputies is only 4.7% (Union Exhibit #11B). Adoption of the Union's proposal will bring Newaygo Sergeants up to the 7% average differential over Deputies. Further, the Union's proposal of a 4.25% increase for Sergeants in the first year of the Contract would return wages in Newaygo County to 3.3% above the average Comparable wage (In 1999, such wages fell to 2.4% above the average – Union Exhibit #11C; H). According to the Union, the County's first year wage proposal would allow Sergeants to fall to 2.1% below the average Comparable. However, the Panel's adoption of the Union's proposal in the first year will maintain the County's historical rank as a competitive Employer in relation to the comparables communities.

The Union further posits as follows: Its wage proposal for the first year is designed to recognize the duties of the Command Officers beyond those performed by Deputies and in the case of Detective/Sergeants, beyond the duties of Road Patrol Sergeants (TR. II, 27-29). Detectives "outrank" Sergeants in the chain of command and not only have the supervisory responsibilities of Sergeants but also conduct criminal investigations (TR. II, 30). Notwithstanding, they are currently compensated the same as Sergeants. Prior to 1991, Detectives' pay was equal to that of Lieutenants but the Union is not seeking to recapture this "historical" wage status; rather, only to place Detectives' wages slightly above Sergeants and below Lieutenants in recognition of their increased responsibilities.

The Union asserts further that its first year wage proposal for Lieutenants is justified on the following grounds: The Employer's 4% increase in the first year of the successor Agreement fails to raise wages relative to the Comparables. This, according to

the chart set forth below.¹

County	1997	1998	1999	2000	2001	2002
Clare	\$31,126	\$31,749	\$33,092	\$34,010	\$34,955	\$37,929
Montcalm	\$36,392	\$37,665	\$39,360	\$40,738	\$42,164	\$43,639
Oceana	not avail.	not avail.	\$40,934	\$41,974	\$43,233	\$44,530
Wexford	\$36,462	\$37,398	\$38,522	\$39,686	\$40,872	\$41,683
Average	\$34,660	\$35,604	\$37,977	\$39,102	\$40,306	\$41,934
Newaygo (Union)	\$35,048	\$36,109	\$37,190	\$40,192	\$41,391	\$42,636
Newaygo +/-Avg.	\$388 (1.1%)	\$505 (1.4%)	-\$787 (-2.1%)	\$1,090 (2.8%)	\$1,085 (2.7%)	\$702 (1.7%)
Newaygo (Employer)	\$35,048	\$36,109	\$37,190	\$38,678	\$39,838	\$41,033
Newaygo +/-Avg.	\$388 (1.1%)	\$505 (1.4%)	-\$787 (-2.1%)	-\$424 (-1.1%)	-\$468 (-1.2%)	-\$901 (-2.1%)

The Union reports that under the Employer's proposal, in the last year of the Contract, Lieutenants will have fallen behind; that by contrast, the Union's proposal (8%) will bring Lieutenants up to a level similar to Sergeants in the first year – 2.8% above the average of the Comparables. By the last year of the Contract, Lieutenants will only be

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For comparison purposes, the information has been consolidated from Employer Exhibit #7D and Union Exhibit #11G. Because the Employer's Exhibits were based on its initial proposal of 3.0% across the board, the information has also been modified to reflect the Employer's last offer of 4% for Lieutenants in the first year of the new Agreement.

slightly above the average under the Union's proposal.

Moreover, according to the Union, Lieutenants rank far below the average in terms of the differential between a fully-paid Deputy and a top-paid Lieutenant. Excluding Oceana County, the average differential is 12.2% while in Newaygo, the average is 6.7% (Union Exhibit #11F). If Oceana County is included, the average differential is 15.0%, over twice the differential between Deputies and Lieutenants in Newaygo County. Adoption of the Union's proposal for the first year of the successor Agreement will close the gap and raise the actual internal differential to 13.0%. Thus, Newaygo Lieutenants will be more closely aligned to the Comparables in relation to the ranks they supervise.

The Union contends that the greater wage difference between Command Officers and Deputies created by its first year wage proposal, sends a message that the Employer recognizes the importance of supervisors' duties – leading to improved morale and more effective supervision. Plus, it will help attract the most qualified candidates for promotion from the lower ranks. Ultimately, the Union's proposal will maintain Command Officers' wages at or slightly above the average of the Comparables and will keep pace with the cost of living. Based upon this reasoning, the Union urges that its wage proposal for the three (3) year Agreement be adopted by the Panel.

EMPLOYER POSITION ON WAGES²

NOTE: The Union's position on Wages was more direct and composite than the Employer's. Ergo, the explanation of the Employer's position is more lengthy.

The Employer's position on Wages is as follows: Overall compensation must be considered in determining all economic issues before the Panel, to wit at Section 9(f) of the Act (MCLA 423.239):

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

A study of the total compensation in comparable communities confirms that the Employer's wage package is more logical and fair (Employer Exhibits #7A-7CC). Regarding the Employer's Last Best Offer for Sergeants' wages, the proposal exceeds the average of the Comparables for 2000 and 2001 (2002 was not considered since only five (5) Comparables had established rates for that year at the time of the Hearing) (Employer Exhibit #7C). To this extent, the Employer's proposal keeps Sergeants more than \$1,100.00 annually above the average of the comparable communities.

The County's proposed increase for Sergeants stands up well with the Comparables in that it paid its Sergeants higher in direct compensation in 1999 over all but three (3) of the eight (8) Comparables (Employer Exhibit #7K). Sergeants received more in net cash benefits than all but two (2) of the comparable counties (Employer Exhibit #7O; 7P). Additionally, Newaygo County Sergeants do not contribute anything towards their retirement plan unlike every other comparable community with the exception of Isabella County.

Further in terms of total compensation, the Employer denotes that paid

vacation time is above all of the Comparables – 50% more in all but Gratiot and Wexford Counties (Employer Exhibit #7T). Also, that Newaygo Sergeants are way above all of the comparable communities in sick leave cash out compensation (Employer Exhibit #7V). Based on 1999 rates, Newaygo Sergeants could be paid as much as \$16,848.00 in unused sick time. This is more than double relative to four (4) of the comparable communities. It is \$2,700.00 more than the next closest Comparable (Isabella County) (Employer Exhibit #7V).

The Employer's comprehensive position on Sergeants' pay is this: Its proposal for wage increases from 2000 to 2001 for Newaygo Sergeants is equal to, or greater than all but three (3) of the comparable communities which have provided wage increases (Employer Exhibit #7E). Barry's rate of increase is 3% (based on an average of 2% + 2% increases for the year); Clare is 2.8%; Gratiot is 3%; Oceana is 3% and Wexford is 2.8%. Isabella is 4% for 2000, only; Mecosta is 4.75%; and Montcalm is 3.5%. However, even with such a substantial percentage increase, Mecosta Sergeants' pay remains \$1,000.00 annually less than Newaygo Sergeants' salary (Employer Exhibit #7C).

Under the Employer's proposal for 2000, the wages for Sergeants at the top step exceed the comparable communities' average by more than \$750.00 (Employer Exhibit #7C). However, the wage rate under the Union's proposal adds more than \$450.00 which is an additional 60%. For 2001, the Employer's proposed wage increase exceeds the Comparables' average by \$1,100.00. The Union's proposed Sergeants' salary for 2001 (\$39,197) exceeds the Comparables' average by almost \$1,600.00. The Employer asserts that this is beyond what can be considered reasonable. Rather, it is more reasonable that

the Employer's proposals be adopted. The Union's proposal would result in a major disparity between Newaygo and the comparable counties.

Regarding compensation for Detectives, the Employer points to Undersheriff Babcock's testimony that historically (since 1991), the pay rates for Detectives have been based on Sergeants' wages as opposed to Lieutenants (TR. 25-27). Therefore, the Employer relies on its discussion on Sergeants' compensation relative to the Detective classification.

The Employer's position on Lieutenants' wages is as follows: Four (4) of the comparable communities have no Lieutenants – Barry, Gratiot, Isabella and Mecosta (Employer Exhibit #7D). Lieutenants in Oceana County are not in a bargaining unit (TR. 25; Employer Exhibit #7D). In Wexford County, Lieutenants are in a unit separate from Sergeants (TR. 51). Only in Clare and Montcalm Counties, are Lieutenants included with Sergeants in the same bargaining unit (TR. 51, 53). Ergo, of all of the comparable communities, it appears that Clare and Montcalm are the "most" comparable.

The Employer contends that in any event, its proposal to increase wages by 4% in 2000 compares very well to the rate of increase by the comparable communities having Lieutenants for the same year. In Clare County, Lieutenants received 2.8% in 2000 (Employer Exhibit #7E). Montcalm Lieutenants received a 3.5% wage increase in 2000. (Employer Exhibits #7D and E). Oceana County Lieutenants received a 2.6% wage increase in 2000, while Wexford County Lieutenants received a 3% increase for that year (Employer Exhibit #7E). The Employer's wage offer for Lieutenants for 2001 (3% for each

of the two (2) years) is equal to, or greater than the rate of increase for all of the comparable communities, except Montcalm County (Employer Exhibit #7E). Only one (1) of the comparable communities (Montcalm) had a wage increase established for 2002 at the time of the Hearing so a comparison was not performed for that year.

The Employer views the Union's 8% proposal for the year 2000 as unrealistic. Why? Because this is more than double the rate of increase for the next highest comparable (Montcalm at 3.5%). It is almost more than triple the percentage increase in 2000 for Lieutenants in Clare and Wexford Counties. And it is about 270% more than the wage increase for Lieutenants in Oceana County for 2001 (Employer Exhibit #7D).

The Employer further postulates as follows: In 1999, Newaygo Lieutenants' annual salary was about \$800.00 less than the average of the four (4) counties having Lieutenants (Employer Exhibit #7D). Under the Employer's 2000 proposal, the average annual salary for Lieutenants in the comparable communities would be only \$424.00 more. In other words, the dollar "gap" between Newaygo County and the Comparables' average almost would be halved under the Employer's proposal (Employer Exhibit #7D). The Union's proposal, which would calculate to a 2000 salary of \$40,165.00, however, would catapult Newaygo Lieutenants' salary to more than \$1,000.00 above the Comparables' average for 2000. This is so even adding in the extremely high salary of the non-Union Oceana Lieutenants. Included is the fact that Lieutenants in all of the comparable communities contribute to their retirement plan, in some cases substantially, so that the net compensation paid to Newaygo Lieutenants is just slightly below the Comparables' average (Employer Exhibit #7Q). According to the Employer, if the 1999 cash

compensation figures for Lieutenants in the chart entitled "NET CASH COMPENSATION FOR A 15-YEAR LIEUTENANT (1999)" (Employer Exhibit #7Q) (to the extent of the information available), is tested against (multiplied) the known rates of increase for 2000, the cash compensation would be as follows:

Clare County	\$36,896
Montcalm County	\$40,916
Oceana County	\$42,867
Wexford County	\$40,569
Newaygo County	\$38,677

Taking these figures and subtracting the respective percentages for employee pension contributions (while adding in the clothing/gun and cleaning allowances for Clare) yields the following total net cash compensation for 2000:

Clare County	\$36,485	
Montcalm County	\$38,666	
Oceana County	\$40,813	
Wexford County	\$39,758	
Newaygo County	\$38,677	(unchanged since Newaygo Lieutenants do not contribute to their MERS B-3 pension plan)

Extending this argument, when the average of the comparable communities is considered in terms of total net compensation for 2000, that figure is \$38,930.00. The Employer points out in accordance with its calculations, that Newaygo Lieutenants, at \$38,677, are just over \$250 less than that average in terms of total net cash compensation under the Employer's 4% wage proposal for 2000; that the Union's 8% wage proposal for 2000 (\$40,165), would place Newaygo County above every comparable community except the non-Union Oceana Lieutenants at \$40,813.00 for total net cash compensation in 2000.

It would jump Newaygo Lieutenants to more than \$1,200.00 above the average of the comparable communities for total net cash compensation in 2000. The Employer contends that there is no justification for such a disparate increase (8%).

Ultimately, the Employer asserts that it is not proposing that this bargaining unit accept wage increases which are less than the comparable communities; that on the contrary, the County is proposing wage increases which are equal to or above most of the comparable communities and thus, more than keeps pace with such Comparables. The County urges that the Panel adopt its wage proposal.

PANEL DETERMINATION ON WAGES

In accordance with the statutory requirement that the Panel is not at liberty to reject both of the parties' Last Best Offers and must adopt one or the other, the Panel adopts the County's proposal on Wages. The dispute on Wages resides in the first year of the Agreement – the increase effective January 1, 2000. For Sergeants, Detectives and Lieutenants, the Union seeks wage increases of 4¼%, 5½% and 8% in that order. The Employer for the first year of the Contract, proposes increases of 3%, 3% and 4% for the same classifications in that order. The Panel's adoption of the Employer's Last Best Offer is based upon the following:

- 1) Newaygo County Command Officers enjoy more "overall compensation" in relation to the comparable communities under the statute's Section 9(f) specifications – direct wage compensation, vacations, holidays, other excused time (sick leave time), insurance and pensions, medical benefits and other fringe benefits.

2) The Employer's proposed 3% wage increase for Sergeants in the first year of the Contract exceeds the average of Comparables for 2000 and 2001 (2002 was not considered due to lack of data at the time of the Hearing). The increase for Newaygo County Sergeants stands up well relative to the Comparables on several counts. Newaygo County paid its Sergeants higher direct compensation in 1999 over all but three (3) of the comparable communities; more net cash benefits in all but two (2) of the comparable communities plus Newaygo Sergeants contribute nothing towards their retirement unlike all of the comparable communities except Isabella County. Newaygo Sergeants receive higher paid vacation time in relation to Comparables and exceed all Comparables in sick time cash out compensation. These elements also apply to Detectives who historically (since 1991) have had their pay rates based on Sergeants' wages as opposed to Lieutenants.

3) In years 2000 and 2001, the Employer's wage increase (3%) is equal to or greater than all but three (3) of the eight (8) comparable communities. The Union's proposal on the other hand, does result in a considerable disparity in Sergeants and Detective wages in comparison to the identified communities.

4) In considering the Union's 8% proposal for Lieutenants in the first year of the Contract against the 4% proposal of the Employer, the latter is considerably more logical. The 4% increase compares well with Clare County – 2.8% in 2000; with Montcalm County – 3.5% in 2000; with Oceana County – 2.6% in 2000 and with Wexford County – 3% in 2000. Also, the Employer's wage offer for Lieutenants in 2001 (3% for the next two (2) years of a three (3) year Contract), is equal to or greater than the increase for all of the

comparable counties except Montcalm. Only one (1) comparable County (Montcalm), had a wage increase established for 2002 at the time of the Hearing, thus, no comparison was done for 2002.

5) On the evidence, an 8% wage increase for Lieutenants is not completely realistic. It is more than double the rate of increase for the next highest Comparable (Montcalm at 3.5%); almost triple the percentage increase in 2000 for Lieutenants in Clare and Wexford Counties and exceeds Oceana County for 2001 by a wide margin beyond 250%. Additionally, in all of the comparable communities, Lieutenants contribute to their retirement plan; in Newaygo County, they do not. Also, their total net compensation based on 1999 computations, is greater.

6) In the aggregate, the Employer has proposed wage increases which are equal to or above most of the comparable communities, enabling its Sergeants, Detectives and Lieutenants to keep pace with their counterparts in those communities.

For these reasons, considered in conjunction with the relative arguments denoted herein, the **Panel adopts the Last Best Offer of Newaygo County on Wages.**

"AGREEMENT"/DURATION (Union)

The Union has proposed a modification of page 1 of the predecessor Contract entitled "**AGREEMENT**" and Article 26, at page 30 on **DURATION** to reflect that the successor Contract will take affect on January 1, 2000 and will continue through

December 31, 2002. The substantive language is to remain the same. This is language fundamental to the collective bargaining Agreement and need not be restated here.

The Employer has not submitted a specific final offer on either of these provisions. However, in the preface to its Last Best Offer, the Employer denoted that outside the statement of the Union and Employer issues "... the balance of the collective bargaining Agreement shall remain as it existed in the predecessor Agreement subject only to appropriate date changes, typographical errors and changes that may be required by the final Act 312 Award." Ergo, the *status quo* applies, subject to "appropriate changes." The Employer has made wage proposals for calendar years 2000, 2001 and 2002 indicating that the effective date of the successor Contract and its duration, are acceptable with date changes.

The Panel adopts the Union's proposal on modifications on the "AGREEMENT" and DURATION provisions.

RETIREE HEALTH INSURANCE (Union)

The Union proposes that the language of Article 17, Section 5(2) on INSURANCE at page 19 of the predecessor Agreement, be modified as follows:

- (2) The maximum payment obligation of the Employer is up to \$200.00 per month for the premium costs.

The Employer's proposal is to maintain the *status quo*. This position is

predicated upon benefits paid in most comparable communities depending upon the number of years of service and the fact that Newaygo County pays \$100.00 per month without regard to years of service or age – plus Oceana and Montcalm Counties contribute \$100.00 per month (Union Exhibit #8B). The Employer contends that there is no justification to increase its contribution towards retiree health insurance, particularly in view of already sky-high insurance costs paid by the Employer for current employees.

The Union's argument is fundamental and direct, to wit: There is no post-retirement adjustment for increases in the cost of living and retirees live on fixed incomes. The \$100.00 contribution by the Employer has been fixed at least since January 1, 1997. But premium rates have "sky rocketed" – from 1999–2001, by 26% and rates increase annually by an average of 10% (TR II, 98; 130). Since the \$100.00 contribution is a fixed rate, any increases in premium rates are the sole responsibility of the retiree meaning that greater percentages of retirement income must go toward health insurance costs. The requested increase here (to \$200), will enable retirees to maintain their health insurance and also an acceptable standard of living on a fixed income. Further, six (6) of the comparable communities provide some form of health insurance coverage for retirees – Barry, Clare and Montcalm currently contribute up to \$200.00 per month toward such coverage and Gratiot, almost \$300.00 per month depending on years of service (Union Exhibit #8B). Several Comparables have post-retirement adjustments that help offset increases in health care costs and overall cost of living, a benefit not available to Newaygo retirees. The Union contends that its proposal to modify Article 17, Section 5(2) (\$200), best complies with Section 9 factors.

The Union's rationale and data is convincing, particularly as it relates to the tremendous increase in insurance premiums and the Employer's \$100.00 contribution still pegged at least to the year 1997.

The Panel adopts the Union's proposal (\$200) on Retiree Health Insurance.

PENSION PLAN (Union)

The Union proposes that Article 16, Section 1 of the predecessor Contract on **PENSION PLAN** at page 18, be modified as follows:

Effective December 31, 2002, the Employer shall provide the MERS B-4 (annuity factor 2.50% times years of service) retirement plan.

The Employer proposes the *status quo*.

The Union asserts as follows: Under the existing Agreement between the parties, Command Officers participate in the Michigan Employees Retirement System (MERS) plan B-3. The plan for Newaygo County provides for retirement at age fifty with twenty-five years of service, with a 2.25% annuity factor ("multiplier") and a maximum benefit of 80% of final average compensation (FAC) (Union Exhibit #7B; Employer Exhibit #3A). In its final offer, the Union has proposed to change the pension to the MERS B-4 plan effective December 31, 2002. The only difference between the existing and proposed plans is the annuity factor, which increases to 2.50% under the B-4 plan.

The Union further posits: The Employer's objection is based only on cost uncertainties but this position is insufficient to justify a rejection of the Union's proposal. The reasons: The MERS B-4 was offered to members of the Deputies bargaining unit (POAM) in their 2000-2002 Agreement (thirty-one (31) day "window" period in January 2002). Further, the Employer has agreed to offer the MERS B-4 plan to the Deputies Unit beginning January 5, 2004 (TR. 105). The Command Officers deserve the same. This will also attract the most capable employees to fill supervisory ranks. There should be no disparity in retirement benefits between the Deputies and Command Officer's bargaining units. The Union notes that it has submitted the results of an actuarial valuation – cost based data from the December 31, 1997 valuation (Union Exhibit #7C). This report indicated that the cost to increase to the B-4 plan was less than \$7,000.00 (Union Exhibit #7C2). In this connection, the Union acknowledges that the information relied on as "somewhat" out-of-date. But according to the Union, this is the only information available and provides a likely picture of costs. Further, the Employer has made the B-4 plan available to members of a bargaining unit (Deputies) more than twice the size of the Command Officers unit. Therefore, the Employer must be well acquainted with the costs involved which cannot be unreasonable because the B-4 plan has been provided to the Deputies. The Union asserts that on this basis, its final offer to improve the MERS pension plan from B-3 to B-4, should be adopted by the Panel.

The Employer's *status quo* position on the Union's pension improvement plan is this: The B-4 costs are unknown. There is no current actuarial study which specifies such costs to the Employer. Thus, the Union is requesting that the Employer buy "a pig

in a poke.” In comparable communities, the pension plan enjoyed by bargaining unit members is equal to or better than in all other counties except Barry County (Employer Exhibit #3A). But in Barry, employees contribute 2.5% of their salaries to the retirement plan while Newaygo Command Officers contribute nothing (Employer Exhibit #3A). Plus, in Clare County, employees contribute between 3% and 5% towards the same B-3 plan. Newaygo County employees have no costs. Montcalm Command Officers contribute 5.5% to the B-3; Oceana, 3% to 5% and Wexford employees pay 2% towards the B-2 plan. Alone, in Isabella County do employees pay nothing as in Newaygo County. Only due to other concessions, was the B-4 plan offered in a short window period to Deputies (POAM) in January 2002 and negotiated for that unit not to take affect until January 5, 2004 (TR. 105).

The Employer contends that the costs of the B-4 modification have not been verified and in terms of Comparables, is not justified; that the *status quo* (B-3) should be maintained and adopted by the Panel.

PANEL DETERMINATION ON PENSION PLAN

The Union's proposal to modify Article 16, Section 1 on PENSION PLAN whereby effective December 31, 2002, the Employer shall provide the MERS B-4 plan is adopted by the Panel.

The Panel has been persuaded in this determination by the undisputed fact that the Employer did provide a one (1) month “window” in January 2002 for members of

the Deputies' unit (POAM) to secure the B-4 plan. Additionally, the Employer has negotiated, albeit with concessions as in all negotiations, a B-4 plan for Deputies commencing January 5, 2004. The deduction here is that the County has to know the costs of the change from B-3 to B-4. Moreover, from many standpoints, in the long term, it would be counter-productive for Deputies to have an enhanced pension retirement plan, the MERS B-4, while their Command Officers are confined to a less desirable retirement plan in the B-3. **The Union's Pension Plan proposal is adopted.**

UNIFORMS AND CLEANING (Union)

The Union proposes that Article 19, Section 2 specifically entitled as Clothing at page 21 of the predecessor Agreement, be modified as follows:

Effective December 31, 2002, any employee required to use ordinary street clothes as a substantial part of his/her duties shall receive a clothing allowance in the sum of Seven Hundred Dollars (\$700.00) per annum.

Newaygo County Command Officers required to wear street clothes, currently receive an annual \$500.00 clothing allowance.

The Employer proposes to maintain the *status quo*.

A review of comparable communities does not support a \$200.00 increase in the plain clothes allowance the Union requests (Union Exhibit #10B). Barry and Clare Counties are high at \$1,000.00 and \$750.00 respectively. But Gratiot is at \$500.00,

Isabella at \$350.00; Mecosta at \$250.00; Montcalm at \$550.00; Oceana at \$450.00 and Wexford at \$400.00.

The Panel adopts the Employer's *status quo* position on this Union proposal.

MISCELLANEOUS: PAGERS (Union)

The Union requests that a new Section be added to Article 25 on MISCELLANEOUS which begins on page 27 of the predecessor Contract (Fourteen (14) sections). The Union proposes the following new language:

Section 15. Pagers. Employees of the unit who are required by the Employer to carry pagers during their off-duty time shall be compensated at the rate of \$25.00 per week for the responsibilities associated with carrying a pager.

The Employer proposes the *status quo*.

A review of the eight (8) comparable communities finds that none of them provide for "pager pay" (Union Exhibit #14B). Moreover, a study of the direct and cross-examination testimony on this subject (TR. 81-88), inclusive of the parties' post-Hearing arguments, does not support the Union's requested addition to the Contract in the form of a \$25.00 per week "pager" stipend.

The Panel adopts the Employer's *status quo* proposal.

LIABILITY INSURANCE (Union)

The Union has proposed minor changes to the existing language of Article 17, Section 3 on **INSURANCE** at page 18 of the contract, to wit:

Section 3. Liability Insurance. The Employer shall furnish liability insurance ~~for employees, if practicable, to and including those standard limits customarily secured for other agencies similarly situated~~ protecting the employees from any and all liability while acting within the good faith scope of their duties and that arises out of or in the course of their employment. Said insurance coverage shall include acts of negligence of the employee performed during his course of duty and shall further provide said employee if sued, with an adequate defense and if any judgment is rendered against him, it shall be satisfied. Should the Employer fail to obtain the insurance coverage above set forth, it shall be deemed by this contract to be a self insurer and shall protect said employees in the same manner in the same terms and conditons (sic) as if it had secured the liability insurance coverage.

The Employer did not submit a final offer on this item. Therefore, the presumption is that the current language should remain unchanged.

The Union's proposed modification is the same as that contained in the Deputies' Contract. The change does not alter the scope of the Employer's duty to provide liability insurance protection to employees under the existing language of the Agreement. The modification continues to allow the Employer freedom to choose the level and means of coverage as long as the Employer fully defends and indemnifies the employee as set forth in the provision. The deletion adds clarity to the provision. The adoption of this minor modification will create consistency in the two (2) separate collective bargaining Agreements (POLC/POAM).

The Union's proposal on Liability Insurance is adopted by the Panel.

INSURANCE-HOSPITALIZATION OPT-OUT OPTION (Union)

The Union proposes that Article 17, Section 7 on the "Opt-Out" Insurance provision at page 19 of the predecessor Contract, remain the same (*status quo*). The Employer has not submitted a Last Best Offer on the provision and therefore since it has not been addressed, the Panel adopts the Union's proposal that the *status quo* be maintained.

**HEALTH INSURANCE (PRESCRIPTION CARD
AND PREMIUM COSTS) –
ARTICLE 17 ON "INSURANCE" (Employer)**

The Employer proposes that bargaining unit members adopt a prescription drug card requiring employees to pay ten dollars (\$10.00) for generic and twenty dollars (\$20.00) for name brand prescriptions. Additionally, the Employer proposes to maintain the current health care plan with employees contributing five dollars (\$5.00) per month toward the premium cost, effective the first day of the contract. The Union has proposed the same modification.

Both parties have made the same proposal and therefore no discussion and finding is necessary by the Panel.

NATIONAL CONFERENCE (Union/Employer)

The Union proposes that Article 25, Section 8 on **NATIONAL CONFERENCE** at page 28 of the predecessor Agreement, be modified as follows:

Section 8. National Conference. Employees who are elected to represent the Local Police Officers Labor Council Lodge in special, state or national conferences shall be allowed time off without loss of pay to attend such conferences, not to exceed three (3) days, twenty-four (24) hours, in any fiscal year, upon written request from the Police Officers Labor Council and with the prior approval of the Sheriff or his designee, further provided, that such employees number no more than one (1) at any given time.

The Employer proposes that a bargaining unit representative be permitted to attend a National Union conference annually for up to two (2) days without loss of pay.

As already discussed, the Deputies and Command Officers were previously members of the same bargaining unit represented by the same Union. Under Article 25, Section 8. of their Agreement, a maximum of five (5) days (forty (40) hours) paid leave was permitted to attend Union conferences. Now, the POAM represents the Deputies and the POLC, the Command Officers. The organizations are not affiliated and each has its own conferences, conventions, seminars and meetings. Under the new Deputies' Contract, one (1) representative may attend conferences for up to three (3) paid days.

Based upon a study of the arguments and rationale of the Union and Employer on this issue, it is determined that Command Officers, even though their numbers are smaller than those in the Deputies Unit, should have the same opportunity to attend Union conferences currently afforded to the Deputies. The Panel does not find

that three (3) paid days for one (1) Command Officer representative at a time to attend national conferences, will work a hardship upon the Department.

The Panel adopts the Union's Last Best Offer on National Conference.

NON-ECONOMIC ISSUES (Employer)

DISCHARGE AND DISCIPLINE

The Employer proposes the following modification to Article 7, Section 3. of the predecessor Contract on Prior Discipline at page 6.

Section 3. Prior Discipline. In imposing any discipline or discharge on a current charge, the Employer will not take into account any prior infractions which occurred more than four (4) years previously.

(Emphasis added)

The Union proposes to maintain the *status quo* on "prior infractions" at the current "two and one-half (2½) years previously."

On the evidence and arguments, there is no justification for this "take away."

The Panel adopts the Union's *status quo* position on Prior Discipline.

OVERTIME DISTRIBUTION (Employer)

The Employer has proposed deleting Article 23, Section 10. on Overtime

Distribution at page 26 of the predecessor Contract which states as follows:

Section 10. Overtime Distribution. When overtime work becomes available which has not been scheduled, it shall be offered first to regular full time deputies on duty before said overtime shall begin. Thereafter, off duty full-time deputies shall be offered the overtime. The Sheriff or his designated representative shall make every effort to distribute as equally as possible, overtime among regular full time employees.

The Union has proposed the following modified language:

Section 10. Overtime Distribution. When overtime work becomes available which requires supervision, the Employer shall offer the overtime to a regular full-time supervisor holding the rank appropriate to the overtime work. In instances where the Department is unable to fill road patrol overtime from the Deputies unit, the Employer will offer the available overtime to Sergeants before offering the overtime to part-time officers. The Department shall make every effort to distribute, as equally as possible, overtime among the regular full-time unit members.

The Employer's position is as follows: The predecessor Contract dealt with overtime distribution for Deputies even though Command Officers were included in the bargaining unit. Since there are no Deputies in the instant Command unit, there is no applicability for the former language. The Union's proposal imposes restrictions which have never previously existed. In fact, the Union's proposal would create an encroachment upon the POAM Agreement and present a conflict for the Employer. The POAM Contract allows the Employer to use part-time Deputies, to wit:

Section 9. Overtime Distribution. When bargaining unit overtime work becomes available which has not been scheduled, it shall be offered first to regular full time deputies on duty before said overtime shall begin. It shall be next offered to off duty full time deputies, if no regular full time deputy accepts the overtime it may then be offered to either part time deputies or other members of the Sheriff's

department. If no other employees of the Sheriff's department accepts the overtime or if not offered to them by the Sheriff, then the overtime may be assigned to the least senior eligible full time deputy. The sheriff or his designated representative shall make every effort to distribute, as equally as possible, overtime among regular full time employees.

No regular full time deputy shall be assigned overtime to vacancies that the Sheriff or his designated representative had determined to be supervisory.

The Employer emphasizes that the POAM Contract covers both full-time and part-time officers. The Employer asserts that under that Agreement, it has the right and in fact the duty, to use part-time employees for Deputy overtime bargaining unit work. According to the Employer, the Union's proposal would require that the Employer first give the Command Officer, Deputy overtime work, presumably at Command Officer pay. The Employer denotes that such a mandate has never existed and is unjustified; that it is contrary to the parties' predecessor Contract, contrary to the POAM Agreement and contrary to fiscal responsibility. Further, that when the Deputies and Sergeants were in the same bargaining unit and represented by the same bargaining agent, there was no problem in using Sergeants as part of the overtime distribution. However, now that the Deputies have separated into a distinct unit, a requirement that Command Officers first be offered Deputy overtime, is fraught with problems. According to the Employer, it has no objection to offering Deputy overtime to Sergeants, "if necessary" but the Employer should not be compelled to cross bargaining unit lines to distribute overtime.

The Employer urges that the Panel delete Article 23, Section 10. as proposed.

The Union asserts that there is no evidence in support of the Employer's proposal to delete Section 10. and its proposal does not conform to Section 9. factors, MCLA 423.240 – "competent, material and substantial evidence on the whole record." The Union's position is as follows: Undersheriff Babcock testified that there are two ways under current Department practice, that overtime opportunities become available to Union members.³ The current practice is reflected in the Union's final offer of settlement. First, if the Sheriff's Department needed to have a supervisor on any given shift, that opportunity would go to a Sergeant (TR. II, 24). This practice is implicitly recognized in Article 23, Section 9 of the Agreement between the Deputies' bargaining unit and the Employer. Under that Agreement, overtime for supervisory vacancies may not be assigned to non-supervisory employees (*i.e.*, members of the Deputies' bargaining unit). The first sentence of the Union's final offer memorializes the Department's practice: "When overtime work becomes available which requires supervision, the Employer shall offer the overtime to a regular full-time supervisor holding the rank appropriate to the overtime work" (Union's Last Best Offer, page 4).

According to the testimony of Undersheriff Babcock, the second way that an overtime opportunity may become available to a Union member is when the Department is unable to fill overtime vacancies in the Deputies' unit through their call-in procedure. In the event that a Deputy cannot be found to fill the vacancy, the overtime would then be offered to a Sergeant first. This procedure has been in place for well over four years (TR.

3

Excluding emergencies that require additional personnel. (See TR. II, 25)

II, 24, 25). The second sentence of the Union's final offer memorializes this practice: "In instances where the Department is unable to fill road patrol overtime from the Deputies' unit, the Employer will offer the available overtime to Sergeants before offering the overtime to part-time officers." The final sentence of the Union's proposal continues the commitment from the Employer in the predecessor agreement to make efforts to assure distribution of overtime as equally as possible among bargaining unit members.

The Union avers that it is clear that its proposal contains necessary and reasonable modifications to the current language which refers to Deputies who are no longer a part of this bargaining unit; that the proposal simply memorializes existing practice. For these reasons, the Union urges that its proposal be adopted.

The Panel's view on the "Overtime Distribution" issue is this: The Overtime Distribution provision in Section 10. of the predecessor Agreement is substantively significant. However, it is indispensably noted that conflicts in the language of the Deputies' Contract (POAM) and the Command Officers' Contract (POLC) must be avoided. On this score, the Employer's duty to use part-time Deputies for Deputy overtime work as reflected in Section 9. of the Deputies' Contract, is persuasive. The second sentence in the Union's proposed modification presents the prospect of an unnecessary conflict with the Deputies' Contract and potentially places the Employer squarely in the middle. The first sentence in the Union's proposed modification regarding overtime work that requires supervision, does not portend a possible encroachment on the distribution of overtime work to Deputies. In an effort to reconcile 1) the Employer's "deletion" position (2) the Union's proposed modifications and the confusion that might result from an attempted application

of the second sentence and (3) the Overtime Distribution provision in the Deputies' Contract, there appears to be an "out" (flexibility) for the Employer in the second sentence of the Deputies' contractual language, to wit: "It shall next be offered to off duty full-time Deputies (sic), if no regular full-time Deputy accepts the overtime, it may then be offered to either part-time Deputies or other members of the Sheriff's Department" (Emphasis added).

Notwithstanding, the manner in which the Union's proposed second sentence modification is framed, could still present serious difficulties for the Employer if it uses supervisors for Deputy overtime work instead of part-time Deputies.

Overtime Distribution has been designated as a non-economic issue which if accurately assessed, would allow the Panel to compose its own language which frankly, it is reluctant to do for many axiomatic reasons. A study of the predecessor provision under Article 23, Section 10. and the Union's proposed modification, does suggest a heavy economic overlay. The Panel shall opt to delete the provision as proposed by the Employer. The grounds: The Union's proposed language presents potential conflicts and unnecessary problems. It is better to opt on the side of deletion than to embrace the specter of contractual incongruity and disputes. That is the Panel's finding on this issue.

There is however, an alternative which would require Employer agreement. The parties may take this discussion as "advisory" and sit down to fashion an Overtime Distribution provision that better conforms to the predecessor provision; the language in the Deputies' Contract and what the Union seeks to accomplish via contractual

modification. The parties are urged to do this.

The Panel adopts the Employer's proposal to delete Article 23, Section 10. of the predecessor Agreement on Overtime Distribution.

SUBCONTRACTING (Employer)

The Employer proposes to modify Article 25, Section 13. on Subcontracting at page 29, as follows:

Section 13. Subcontracting. The Employer guarantees that it will not employ outside persons for work customarily done by the employees in this bargaining unit except as stated below. The Union agrees that the Employer may permit County employees, not included in the bargaining unit, to perform bargaining unit work when an immediate and unforeseen emergency places demands which exceed the manpower capability of the Sheriff's Department. However, all other uses of County or other employees to perform bargaining unit are the subject of collective bargaining.

The Employer seeks to substitute the word "capability" for "capabilities" and the word "subject" for "object" in the last line of the first paragraph of the provision and to delete the final paragraph in its entirety, to wit:

Notwithstanding anything in this contract to the contrary, the Employer reserves the right to lay off employees in accordance with Article 18 and to subcontract out dispatch services to a 911 Center. Any employees laid off as a result of such subcontracting who are qualified by passing all reasonable exams and reasonable job requirements shall be offered employment with the 911 Center.

The Union proposes also that the word "subject" be used as denoted above and that the second paragraph be eliminated as no longer relevant to members of the Command Officers bargaining unit.

Both parties agree on the deletion of the second paragraph of Section 13. on Subcontracting. The Panel adopts the Employer's "word" modifications as well as the agreed upon elimination of Paragraph 2 of the provision.

NON-ECONOMIC ISSUES (Union)

PROMOTION OUTSIDE OF THE BARGAINING UNIT (Union)

The Union proposes the following modification of Article 13., Section 3 on Promotion Outside the Bargaining Unit at page 14 of the predecessor Agreement.

Section 3. Promotion Outside of the Bargaining Unit. In the event an employee is promoted outside of the bargaining unit, the employee will continue to accrue seniority in the new position at the Newaygo County Sheriff's Department. In the event the employee returns to a position in the bargaining unit, the employee shall be credited for all time earned with the Sheriff's Department, whether accrued in or out of the bargaining unit.

The Employer's proposed language is only slightly different and reads as follows:

Section 3. Promotion Outside of the Bargaining Unit. In the event an employee is promoted outside the bargaining unit, his seniority shall continue at the time he assumes his new position in the service of the Newaygo County Sheriff's Department. In the event the employee returns to a position in the bargaining unit, he shall be credited for all time with the Sheriff's Department, whether in or out of the bargaining unit.

Both parties agree that their proposals accomplish the same purpose. The

Employer denotes that either proposed provision is acceptable. The Panel reads the first sentence of the Union's proposal as lending more clarity to the provision and therefore, the Union's proposed modification is adopted.

SENIORITY – PROBATIONARY PERIOD (Union)

The Union proposes that Article 13., Section 9 on Probationary Period at page 15 of the predecessor Contract, be modified as follows:

Section 9. Probationary Period. Employees promoted into a supervisory unit classification shall be considered on probation for a period of six (6) months. The Sheriff shall have the right to extend the probationary period for an additional period not to exceed two (2) months after consultation with the employee and the Union. Any extension of the probationary period shall not be subject to the grievance procedure. Provided cause is established by the Sheriff, any employee who fails to pass the probation period, and provided the reason for the Sheriff's decision does not otherwise justify termination of the employment relationship, shall be allowed, without loss of seniority, to return to the employee's former position in the Sheriff's Department. After successful completion of the probationary period, the employee shall have seniority in the classification from the effective date of the promotion. If during the probationary period, an employee is absent from work due to sickness, layoff or leave of absence, the probationary period shall be extended by a period equal to the duration of such absence.

The Employer proposes the *status quo* on the existing language, to wit:

Section 9. Probationary Period. All employees shall be considered probationary employees until the employee has completed six (6) months of Employer compensated work. The Sheriff has the right to extend the probationary period of an employee up to an additional two (2) months upon consultation with the affected employee and Union representative prior to the extension of any probationary period. It is agreed between the parties that, after consultation as noted above, any extension of the probationary period shall not be subject to the grievance procedure. During the probationary period, and any extensions thereof, the employee may be terminated without recourse to or without regard to this

Agreement, and shall not be entitled to the benefits of the grievance procedure as it relates to discipline and/or discharge. The probationary employee can be terminated for any reason or for no reason by the Sheriff. Upon completion of such probationary period, the employee's name shall be placed on the seniority list as of his/her last date of hire; provided, however, that if an employee is absent from work due to a layoff or leave of absence, his/her probationary period shall be extended by a period equal to the duration of such absence.

A review of the Union's proposal and arguments, finds that the terms, "Provided cause is established . . ." constitutes an expansion of the existing language which would be open to interpretation resulting in disputes between the parties. Further, under the existing language, the Employer is not required to have "cause" to rescind the promotion of a probationary employee. Nor has there been any restriction on the Employer's ability to terminate a probationary employee. The Union's proposal represents an inroad to the Employer's Management rights which were incorporated into the Agreement in prior negotiations. There is no justification for such a reduction in that managerial prerogative.

The Panel adopts the Employer's *status quo* proposal on Probationary Period.

LAYOFF AND RECALL – DEMOTION IN LIEU OF LAYOFF (Union)

The Union proposes the following modification of Article 18., Section 2 on Demotion in Lieu of Layoff at page 20 of the predecessor Contract:

Section 2. Demotion in Lieu of Layoff. An employee, subject to layoff who so requests within forty-eight (48) hours after receipt of notice of layoff, shall in lieu of layoff, be demoted to a lower classification in the supervisory bargaining unit if the employee has greater seniority than the employee in the lower classification. An employee serving a probationary period in the supervisory unit shall not displace a permanent employee in a classification where said probationary employee has not held permanent status. No employee in the bargaining unit will be permitted to bump into a position not covered in the bargaining unit, except to the extent that any

agreement covering the employees of another unit permits a supervisor's return to a position in that other bargaining unit.

The Employer has proposed that the existing language in the predecessor Agreement remain and adds the last sentence. According to the Employer, this modification is necessary due to the separation of the Deputies into their own POAM represented bargaining unit. The Employer proposes the following language:

Section 2. Demotion in Lieu of Layoff. An employee, subject to layoff who so requests within twenty-four (24) hours after receipt of notice of layoff, shall in lieu of layoff, be demoted to a lower position in the bargaining unit if he has greater seniority than any employee in that lower classification. No employee in this bargaining unit will be permitted to bump into a position not covered in this bargaining unit, including a corrections officer position. Before a more senior employee can bump a less senior employee, the Sheriff must be satisfied that the employee can properly perform the job he wishes to bump into. Employees covered in the bargaining unit cannot bump into another bargaining unit unless agreed to by that bargaining unit.

The Union's position is this: Deputies and Command Officers were once members of the same bargaining unit. Any demotion in lieu of layoff occurred within the bargaining unit. Now that the Deputies and Command Officers are in separate bargaining units, the Union's modification is necessary. An expanded "window" (twenty-four (24) hours to forty-eight (48) hours) after receipt of notice of layoff to determine if he/she is willing to accept a demotion, provides a more reasonable time for contemplation and consideration. Further as in the Employer's proposal, the "employee" as opposed to the word "he", may only be demoted to a position within the Command Officer's bargaining unit. The employee cannot "bump down" into a position within the Deputies or Correctional

Officers units. The Union's proposed modification recognizes that. The Union's proposal also contains a "savings clause" which would permit a supervisor to return to his/her old units in lieu of layoff if those units agreed to it. Additionally according to the Union, the Employer's proposed language that it must be "satisfied" that the employee can properly perform the work in the job he/she wishes to bump into is unnecessary and clutters the provision.

The Employer sees no necessity to increase the "request time" to forty-eight (48) hours. Moreover, the Employer views the deletion of the Sheriff's right to be "satisfied" that the employee can properly perform the work in the job he/she wishes to bump into, as a reduction of Management's authority previously achieved in negotiations.

The Panel's finding is as follows: The increase to forty-eight (48) hours is reasonable and therefore adopted. Also, the utilization of the words "employee" or "he/she" as appropriate, are adopted. The word "supervisory" in reference to the bargaining unit appears to be redundant. It is suggested that "this" bargaining unit or words to that affect, should be used instead. Reference to the "Corrections Officer position" as denoted in the Employer's proposal, does not appear necessary. The Employer's proposed "satisfied/property perform" language is to remain in the provision and the Union's proposal to permit a "supervisor's return" to a position in another bargaining unit with its permission -- an element recognized also by the Employer, should be included in the language. Substantially, the parties agree on the fundamentals of this provision. The Union and Employer are requested to fashion the language of Article 18., Section 2 on Demotion in Lieu of Layoff, along the lines discussed.

Accordingly, the Panel adopts both proposals in part and leaves the details of putting together the provision under the directed guidelines, to the parties themselves.

HUMANITARIAN CLAUSE (Union/Employer)

Regarding Article 25, Section 11. of the predecessor Agreement entitled **(MISCELLANEOUS) Humanitarian Clause** on page 28, at the September 16, 2002 Hearing, the Employer accepted the Union's proposed modification, to wit (TR. 148):

Section 11. Humanitarian Clause. Should an employee covered by this Agreement become physically or mentally handicapped to the extent that the employee cannot perform his/her regular job, the Employer will make every effort to place the employee in a position within the bargaining unit that he/she is physically and mentally able to perform. The parties recognize that the Americans with Disabilities Act (ADA) applies to the Sheriff's Department. In the event of a conflict with this contract and the ADA, the ADA shall supersede that provision.

The Panel directs that the Union's proposed modification be incorporated into the successor Agreement.

APPLICABILITY AND RETROACTIVITY (Union/Employer)

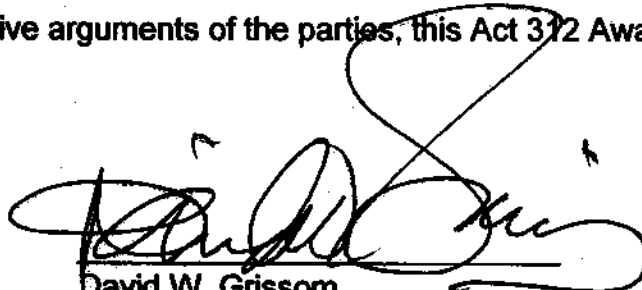
The Employer proposes that this Award be made applicable only to employees employed on the date of the Award. The Union proposes that the Award be applicable to all employees employed during the Contract period.

The Panel directs that this Award be applicable only to employees

employed on the date of this Award. Further, it is directed that the wage increases adopted at the outset of this Award, are to be retroactive as proposed by the Union.

CONCLUSION

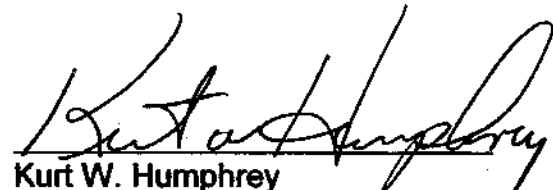
Based upon a full consideration of the Section 9 factors, tested against the evidence and respective arguments of the parties, this Act 312 Award is duly rendered.



David W. Grissom
Chairperson



Fred LaMaire
Union Delegate



Kurt W. Humphrey
Employer Delegate

June 23, 2003