STATE OF MICHIGAN

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION ARISING PURSUANT TO ACT 312, PUBLIC ACTS OF 1969, AS AMENDED BETWEEN:

OTTAWA COUNTY AND OTTAWA COUNTY SHERIFF (Employer)(County)

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN (Union)(Association)

_____/

MERC Case #L02 E-8007

FINDINGS OF FACT, OPINION AND ORDERS

APPEARANCES:

ARBITRATION PANEL:	Mario Chiesa, Impartial Chairperson
	Richard Schurkamp, Employer Delegate
	James DeVries, Union Delegate
FOR THE UNION:	Frank A. Guido, Esq. and William Birdseye and James DeVries Police Officers Association of Michigan 27056 Joy Road Redford, MI 48239-1949
FOR THE EMPLOYER:	Nantz, Litowich, Smith & Girard, P.C. By: John H. Gretzinger 2025 East Beltline, S.E. Suite 600 Grand Rapids, MI 49546

INTRODUCTION

As previously indicated, this is a statutory compulsory interest arbitration conducted pursuant to Act 312, Public Acts of 1969, as amended. The Union filed the October 21, 2002 petition which was received by the MERC on October 22, 2002. The impartial Arbitrator and Chairman was appointed via a correspondence from the MERC which was dated November 22, 2002.

On February 4, 2003 a pre-hearing conference was conducted at the MERC offices in Lansing, Michigan. The dispute was remanded for further mediation. The hearing commenced on June 16, 2003. On August 11, 2003 the briefs regarding the preliminary issues were exchanged through the Chairman's office. The hearing continued on August 26, 2003 and was completed on September 5, 2003.

On October 21, 2003 the Chairman exchanged between the parties their respective Last Offers of Settlement. On February 4, 2004 briefs were exchanged in the same fashion as were Last Offers of Settlement.

On March 26, 2004 an executive meeting was held at the Employer's facilities in West Olive, Michigan.

An additional executive session was requested and held by telephone conference call on May 20, 2004. There was discussion regarding a request by the Employer that the parties be allowed to submit amended Last Offers of Settlement. The Chairman was under the impression that the parties were to meet and discuss the possibility of submitting amended Last Offers of Settlement. In a document dated June 22, 2004 the Chairman was informed by

Employer's counsel that the meeting did not take place and the Employer was assuming that the Union would not agree to allow the Employer to amend its Final Offer. The panel was requested to proceed to issue the decision as soon as possible.

It is noted that the parties have waived all statutory and regulatory time limits. These Findings of Fact, Opinion and Orders have been issued as soon as possible under the prevailing circumstances.

STATUTORY SUMMARY

Act 312 is an extensive piece of legislation outlining both procedural and substantive aspects of compulsory interest arbitration. Without getting into every provision, but certainly ignoring none, there are aspects of the statute which should be highlighted.

For instance, Section 9 outlines a list of factors which the panel shall base its Findings, Opinion and Orders upon. Those factors read as follows:

> "(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 the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> (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 service or in private employment."

ISSUES

The parties settled a number of issues. One of the issues which was resolved was the duration of the agreement. The parties initially indicated that the new Collective Bargaining Agreement would have a term of three (3) years terminating on December 31, 2005. However, at the first day of the hearing, which was June 16, 2003, the parties agreed the contract term would begin on the date of the Award. Additionally, there is an issue regarding the continuation of certain aspects of the contractual relationship beyond December 31, 2005. This will be more carefully explored at a subsequent point.

Furthermore, the TAs, settlements of the parties, and language in the prior contract, which has not been deleted or altered by any

agreements or by provisions of this Award, are made part of this Award.

Among the issues are two which the parties have indicated are "preliminary." They are preliminary in the sense that the panel must decide whether they are appropriately before it for resolution. If the decision is that neither of them is appropriately before the panel, that would be the end of any analysis. However, if either or both of the issues are deemed properly before the panel, the panel will direct that offers be submitted by the parties and the parties will be given the opportunity for further argument. The panel will then resolve the issues in accordance with the statutory criteria.

In general terms, the so-called preliminary issues deal with the question of whether non-economic issues can be resolved retroactively and whether an issue dealing with retroactivity of arbitration and an issue dealing with the continuation of contract provisions beyond the termination date of the agreement are properly before the panel. The Employer suggests neither issue was bargained or mediated and thus neither should be the focus of any panel attention. Further, the Employer suggests both are permissive subjects of bargaining.

Issues presented for final resolution in general include: wages, dog handler pay, retiree health coverage, pension, overtime pay, call-in pay, and numerous health care coverage issues. It is noted that floating holidays is listed in the Employer's Final Offer of Settlement. However, the record establishes that the

issue is subject to a TA and thus is no longer an issue that needs to be resolved. All of the above stated issues are economic in nature, therefore, the panel is confined to accepting one or the other party's Last Offer of Settlement. Additionally, it was agreed that each year of the contract presents a separate issue of wages, so each year of the contract will be dealt with separately.

A copy of the Last Offers of Settlement submitted by the parties is attached hereto as Exhibit A for the Employer and Exhibit B for the Union.

THE RECORD

There was an extensive hearing with both parties being afforded every opportunity to present all the evidence they thought was necessary. As a result, there were approximately 400 pages of transcript created and the record also included dozens and dozens of pages of data and information.

All factors contained in Section 9 of the Act, along with all the evidence related to each, were carefully considered and applied. Of course, every item and bit of evidence will not be mentioned in this analysis of the issues. However, that doesn't mean anything was ignored. All the evidence and factors were evaluated and these Findings, Opinion and Orders are based strictly thereon.

COMPARABLES

It should be noted that as far as external comparables are concerned, the parties have generally relied on the data from Allegan, Kent and Muskegon County; thus, there is no need to

explore any data regarding Ottawa County in relation to the other counties utilized as comparables.

PRELIMINARY ISSUES

RETROACTIVITY OF NON-ECONOMIC ITEMS

The first preliminary issue arises out of the Employer's contention that the panel does not have the jurisdiction to make non-economic awards retroactive. Specifically, it maintains that the panel does not have jurisdiction to consider or adopt the Union's proposal regarding retroactivity of arbitration which reads as follows:

> "Retroactivity of Arbitration. The right to arbitrate grievances shall be retroactive to January 1, 2003 for any pending grievances, including those filed on or after January 1, 2003."

The Union's position is to the contrary and it argues that the panel does have the authority.

It is important to keep in mind that by its own terms the prior Collective Bargaining Agreement terminated on December 31, 2002. However, it is also noted that the petition, which led to the current 312 arbitration, was filed on October 22, 2002.

The issue related to the duty to arbitrate during the periods between contracts was addressed in Ottawa County v Jaklinski, 423 Mich 1 (1985). However, the operative facts in Jaklinski present a different case than is currently before this panel. In Jaklinski the prior Collective Bargaining Agreement had expired on December 31, 1979. The petition for Act 312 arbitration was not filed until April 29, 1980. In the current case the petition for Act 312

arbitration was filed on October 22, 2002, which was before the stated termination of the prior contract which, as indicated above, was December 31, 2002. In this case the filing of the petition predated the termination of the contract. This may prove significant because the majority opinion in Jaklinski stated, inter alia, on page 15 of that opinion:

> ". . . Second, the 'wages, hours, [or] other conditions of employment' which are frozen in place during the pendency of Act 312 arbitration are those which exist at the time such arbitration is invoked. Therefore, Jaklinski's right to arbitrate her failure to be reappointed could not be preserved under Act 312 unless it survived the expiration of the old collective bargaining agreement on December 31, 1979, and then remained viable during the hiatus between that date and the invocation of Act 312 arbitration in April, 1980. Lastly, nothing in these statutes indicates that invocation of Act 312 proceedings should 'revive' rights which terminated at the expiration of an old collective bargaining agreement. Thus, we conclude that the second prong of Jaklinski's argument is without merit unless it can be shown that her rights survived the hiatus between January 1 and April 29, 1980, a proposition we next examine."

The above difference certainly seems to suggest that the outcome of Jaklinski may have been different had the petition been filed before the termination of the Collective Bargaining Agreement.

The foregoing has not been explored by the parties in this dispute, but the Chairman is concerned that the difference in the facts in the current dispute and the Jaklinski case may turn the current discussion into an academic exercise.

Both parties have spent a substantial amount of time presenting evidence and arguing the issues, so it is incumbent upon the panel to resolve this question.

Essentially the Employer relies on three general propositions to support its position. It argues that the language requiring retroactive application of the grievance procedure during hiatus periods is a permissive subject of bargaining that can only arise as part of a voluntary agreement reached between the parties. It also argues that the language of Act 312 does not specifically authorize the issuance of retroactive changes to non-economic issues. Furthermore, it argues that the Act 312 panel has no jurisdiction to decide issues that were not bargained or mediated, and in this case the issue of retroactivity of arbitration was not bargained or mediated.

The Union challenges the Employer's contentions, arguing that the language in the statute specifically references the panel's ability to retroactively award non-economic benefits. It goes on to maintain that the issue of retroactivity of arbitration is a mandatory subject of bargaining and thus falls within the panel's jurisdiction. And, lastly, it argues there is no doubt that the issue of retroactivity was adequately addressed by the parties before being presented to the panel.

It seems apparent that the law in Michigan establishes that grievance procedures, as well as binding grievance arbitration, are included in the term "other terms and conditions of employment" and are mandatory subjects of bargaining. Indeed, in Pontiac Police

Association v Pontiac (After Remand) 397 Mich 674 (1976), on page 681 the court stated:

> "We conclude that disciplinary procedures and a proposal for final and binding grievance arbitration concern 'other terms and conditions of employment' and are a mandatory subject of collective bargaining."

Also, see Gibraltar School District v Gibraltar Mespa-Transportation, 443 Mich 326 (1993), footnote 9 which states: "This jurisdiction has similarly deemed grievance procedures and arbitration as mandatory subjects of bargaining." See Ottawa Co v Jaklinski, 423 Mich 1; 377 NW2d 668 (1985); Pontiac Police Officers Ass'n v Pontiac (After Remand), 397 Mich 674, 246 NW2d 831 (1976).

I note that the Union has submitted several citations which stand for the proposition that the parties in any given dispute could negotiate a retroactivity clause regarding application of the grievance procedure and arbitration. However, that doesn't necessarily mean that the issue of retroactivity of a grievance procedure and arbitration are necessarily mandatory subjects of bargaining. They could very well be permissive subjects and the parties could choose to negotiate and arrive at the conclusions listed above.

The Employer suggests that generally waiver of legal rights are considered to be permissive subjects of bargaining over which it has no requirement to bargain. That certainly is an interesting proposition, but the Employer hasn't supplied any source for the conclusion, such as statutory or case opinion references. In fact, it seems apparent that many mandatory subjects of bargaining involved employers waiving or having to give way on legal rights.

Charter provisions, even statutes, have given way when it was determined that a mandatory subject of bargaining was involved.

Certainly it is true, as the parties have recognized, that only mandatory subjects of bargaining fall within the jurisdiction of an Act 312 panel. Metropolitan Council 23 and Local 1277, AFSCME, AFL-CIO v City of Centerline, 414 Mich 642 (1982).

However, the Centerline decision is no impediment to this panel considering the issue of retroactive application of the grievance procedure and arbitration because after carefully considering the entire record, all the arguments and evidence, the panel concludes that the issue of retroactive application of arbitration provisions is a mandatory subject of bargaining.

Clearly there is no question that a proposal to establish or bargain over the concept of a grievance procedure and binding arbitration is a mandatory subject of bargaining and certainly it would seem that the question of when the grievance procedure and binding arbitration will become effective, including whether it will become effective retroactively, is also a mandatory subject of bargaining.

The Employer also argues that the issue of retroactivity of arbitration is not properly before the panel because it was not bargained or mediated and those two activities are prerequisite for presenting an issue to an Act 312 panel. The Union maintains that in the present matter both the testimony and exhibits establish that the Union issue of retroactivity of grievance arbitration have been "in dispute" during all phases of the collective bargaining

process, including negotiations, mediation and petition for compulsory arbitration. It maintains that the issue is properly before the panel.

The determination of issues in dispute and which are economic in nature, which means also identifying those that are non-economic in nature, is the responsibility of the arbitration panel. Section 8 of Act 312 of 1969, being 423.238 MLC, states, inter alia: "... The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive..."

The Chairman has been faced with this question in the past and most recently chaired a panel which issued an extensive interim decision in a recent Michigan State Police case which discussed and analyzed several of the considerations and realities involved in determining whether an issue is properly before the arbitration panel. (Michigan State Police, Office of the State Employer and Michigan State Police Troopers Association), Case #L00 B-1015.

As indicated in the above decision, the standard is not as simple as determining whether a particular issue has been bargained or mediated. There are some issues, for instance, which may be raised initially at bargaining and never addressed again and, yet, given the circumstances may be a viable issue at arbitration. Perhaps the other party didn't respond, or just indicated flat out that there wasn't any chance of an agreement of that issue. The point is that in determining which issues are properly before the panel, the panel must weigh all aspects of the communications

between the parties in many settings, including negotiations, or other types of discussions, as well as the written proposals and the circumstances in which bargaining has taken place. In the appropriate circumstances, it can be found that a proposal made by a party may nonetheless be an issue properly before an arbitration panel even if it was not the specific subject of mediation or negotiation.

In the current dispute the issue regarding retroactivity of grievance arbitration is not new to the parties. The issue was confronted by a panel chaired by Arbitrator Mark Glazer during the prior Act 312 arbitration. In general terms, that panel ruled that the issue of retroactivity of grievance arbitration was not properly before it apparently because the issue was raised by the Association for the first time shortly before the October 2001 arbitration hearing. On page 9 of that Act 312 Opinion and Orders, being MERC Case #L99 G-8011, the panel indicated:

> "The question of the retroactivity of arbitration rights and the prospective application of those rights was raised by the Association for the first time shortly before the October 2001 arbitration hearing in a September 26, 2001 letter and in a telephone conference in August of 2001. However, it was never made clear that the Association was intending to submit last best offers on these issues. More importantly, the Association never asked to amend the petition or the pre-hearing order to allow a consideration of the arbitration-related issues. Moreover, the Employer never agreed to allow these issues to be considered by the panel.
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> *******
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> "Because of the requirements of Act 312, and the commission rules as it relates to the identification of issues, it would be inappropriate to consider the arbitration-related last best offers of the

> Association. Act 312 and the commission rules clearly require the identification of issues well in advance of the hearing. When the Association waited until the time of the hearing to raise its arbitration-related issues, it violated the rules and the Act, and it would be improper to consider the last best offers at this time."

A dissent was filed by the Association's delegate. It is noted that the above panel decision was upheld by the Circuit Court of Ottawa County, but was reversed and remanded by the Michigan Court of Appeals in Police Officers Association of Michigan v Ottawa County Sheriff, Ottawa County, and Ottawa County Board of Commissioners, August 19, 2004.

It is noted that if one of the pivotal considerations, as apparently defined by the prior arbitration panel, is that the issue must appear in the Petition for Arbitration, the panel takes notice of the fact that the issue is listed in the petition in this dispute which was received by MERC on October 22, 2002. Furthermore, it is clear from the arguments that the Employer is not taking the position that the issue of retroactivity of grievance arbitration was not listed in the petition. In fact, it makes the observation that the issue was listed in the petition.

On June 16, 2003 testimony was taken from Mr. Schurkamp on behalf of the Employer and Mr. DeVries on behalf of the Association. Essentially Mr. Schurkamp indicated there was no discussion regarding retroactivity of arbitration. However, he did clearly state that when he received the petition he was disturbed by the fact that one of the issues listed on the petition was retroactivity of arbitration in the grievance procedure. Mr.

Schurkamp did express that he thought that the issue of retroactivity of grievance arbitration was a dispute between the parties because it was in litigation, but he went on to explain that he thought the issue would be resolved through the courts.

Mr. DeVries testified, inter alia, that when he submitted a document which outlined the Association's concerns he made it very clear that he explained that the Association was seeking retroactive arbitration for any grievances. It is noted that the written proposal referenced by Mr. DeVries doesn't mention retroactivity of grievance arbitration, but states, inter alia:

> "26.1 Create language that continues the contracts wages and benefits up to one year after the duration, if notice is sent to re-open the contract sixty days prior to its expiration date."

It is clear that the written proposal makes no mention of a claim of retroactivity for grievance arbitration, but nonetheless, Mr. DeVries indicated that when he discussed that proposal he specifically raised the issue of retroactivity for grievance arbitration.

When all of the evidence is carefully analyzed, including the fact that the testimony and documents establish that the petition contained reference to retroactivity to grievance arbitration, the panel has no alternative but to conclude that this specific argument raised by the Employer regarding the appropriateness of the panel considering retroactivity of grievance arbitration cannot be adopted.

The Employer has also taken the position that the clear language of the statute specifically prohibits non-economic items

from being made retroactive. To state it in another fashion, the Employer's position is that only economic items can be made retroactive.

A portion of the language in Section 10 of Act 312 of 1969, being MCL 423.240, reads as follows:

> "... The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration."

In order for the Employer's position to be adopted, the panel would have to interpret the phrase "increases of rates of compensation or other benefits" to relate only to economic issues.

The Michigan Court of Appeals spoke to the question of whether non-economic awards could be made retroactive. (Metropolitan Council 23 and Local 1917, AFSCME v Board of Commissioners of Wayne County, 86 Mich App 453 (1979)). The court found that Section 10 of the statute, as it read at the time, only allowed for retroactive application of economic awards. The court stated that increases in rates of compensation may be retroactive.

However, in analyzing the Metropolitan Council 23 case the Chairman notes that the decision was two to one, with Justice Cavanaugh dissenting, and indicating that non-economic items, specifically the promotional considerations involved in the dispute, could be subject to retroactive awards.

It is also interesting to note that in Warren Police Officers Association the court interpreted the same language as Metropolitan Council 23 and stated on page 404, inter alia:

> "Thus the purpose of the Act is to provide an 'expeditious' and 'effective' means of solving a labor dispute where, as noted in Justice Williams's separate opinion in Dearborn Fire Fighters Union Local No. 412, IAFF v Dearborn, 394 Mich 229, 293; 231 NW2d 226 (1975), 'the public welfare cannot endure the impact of a work stoppage while awaiting the resolution of problems through normal negotiations'. Accordingly, the implicit goal is to provide arbitration awards which approximate agreements that would have been reached in the normal course of collective bargaining. The award of retroactive health and insurance benefits is thus contemplated by the Act since such benefits are normally included in a private-sector bargaining agreement."

Thus, it seems apparent that the decision in Warren Police Officers Association establishes the proposition that the term "rates of compensation" as utilized in the original wording of Section 10, also included economic benefits.

The Employer has presented an excellent argument supporting its position and has explored the legislative history leading up to the current language in Section 10 of the Act. The Association's position is that the decision in Metropolitan Council 23 relates to the original statute and not the current version of Act 312 of 1969, as amended.

The panel notes that there are many non-economic provisions which are mandatory subjects of bargaining. As previously indicated, a grievance resolution procedure and arbitration are mandatory subjects of bargaining and arguably could be considered, and in this case have been stipulated by the parties to be non-

economic. Furthermore, the amendment of the statute which led to the inclusion of the term "or other benefits" certainly suggests that the legislature desired to widen the definition of items that could be awarded retroactively. It is interesting to note that in the Warren Police Officers Association case the court had already indicated that rates of compensation included economic benefits, so it would seem that one could argue that the term "other benefits" included in the current version of Act 312 went beyond just economic benefits.

Furthermore, prior discussion has established that courts recognize that the parties could very well negotiate a retroactive application of a grievance arbitration procedure. So if there is no constraint placed on the panel by Act 312 of 1969, there is no constraint placed on the retroactive application of a grievance arbitration procedure by the courts.

There is no court decision precisely on point and perhaps one day there will be and the issue will be clarified. Until then, however, the panel is persuaded that the totality of the language in the statute, including the stated policy in the State of Michigan indicating, inter alia, that the Act shall be "liberally construed," as well as a consideration of all relevant factors in the record, convince the panel that Act 312 of 1969, as amended, provides that the panel has the authority to make a non-economic award retroactive.

Having stated the above, the panel is also aware of the realities dealing with specific issues. Indeed, there are some

issues, even economic issues which, while the panel may have the authority to make retroactive, should not do so because of the total impracticality, and in many cases impossibility, of making the award retroactive. As an example, if an award involved a third party, such as a health insurance carrier, and the carrier refused to retroactively re-write its policy, the reality would be at loggerheads with the panel's order. Thus, while the panel has the jurisdiction to make both economic and non-economic issues retroactive, there are some issues which would be impossible to resolve on a retroactive basis.

The panel concludes that the issue of retroactivity of grievance arbitration, a non-economic issue, is properly before it.

Mario Chiesa, Chairman — 10-5-04

Association Delegate — 9.24.04

/s/ Dissent — 10-1-04
Employer Delegate

The remaining preliminary issue concerns the Association's proposal which in its interim position is stated as follows:

> "This Agreement shall be effective for employees in the classifications of Detective and Road Patrol Deputy January 1, 2003, and shall remain in full force and effect until December 31, 2005. This Agreement shall become automatically renewable from year to year thereafter, unless either party wishes to modify or change the Agreement, in which event, notification of such must be given to the other party in writing sixty (60) days prior to the expiration date of the Agreement, or any anniversary thereof. Upon transmittal of such notice, this Agreement shall remain in full force and effect until the earlier of: execution of a successor agreement through

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Mario Chiesa 10-5-04
Mario Chiesa, Chairman

KSI 9-24-04
Association Delegate

Rick Schuckamp 10/1/04 (Dissent - see attached)
Employer Delegate

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> negotiated settlement (or compulsory arbitration), or December 31st of the year next following the year in which such notice is given; provided that continuation of the Agreement shall not constitute a waiver or bar to any claim for retroactive application of wages and/or benefits in any successor agreement."

Keeping in mind the previous discussions and conclusions, it is noted that the Employer has taken the position that the issue raised by the Association's proposal is not properly before the panel because it was not bargained or mediated. The Association maintains that the issue has been negotiated, subjected to mediation, petitioned for and is an issue in dispute.

Keeping in mind all of the related prior discussion, it is noted that this particular issue received even more attention by the parties than the issue regarding retroactivity of grievance arbitration. It was referenced in the Association's written proposals given to the Employer during negotiations. Mr. Schurkamp testified that during the first negotiation session, which was probably July 15, 2002, the Association presented the proposals referenced above which contained a reference to language that would continue the contract's wages and benefits for up to one year after the duration, etc.

In its August 26, 2002 proposal the Employer took the position that the duration language in question would remain status quo per the current agreement.

Mr. DeVries testified that when he started the bargaining process in July of 2002, he made it very clear that one of the conceptual issues was the language regarding duration and the

continuation of contract provisions. He explained that when the proposal was made, it was rejected by the Employer. He further testified that it was presented to the mediator.

Furthermore, the evidence establishes that the issue of "duration" was listed on the petition.

Given the above and keeping in mind the discussions regarding this aspect of the dispute, which was previously displayed in the prior preliminary issue, it is apparent that the panel has no alternative but to conclude that it cannot adopt the Employer's position that this issue was not bargained or mediated, even if that were the controlling standard, which the prior discussion suggests is not the case.

The Employer has taken the position in a footnote in its brief that the proposal "to the extent the contractual provisions as written is a permissive subject of bargaining because it requires a waiver of bargaining rights after the expiration of the Agreement. The County will challenge any award that contains this exact language."

Generally duration of a Collective Bargaining Agreement and aspects related to the length of time wage rates, benefits, etc., are in effect, appear to be mandatory subjects of bargaining. Having made that finding the panel must conclude that the issue in question is a mandatory subject of bargaining and thus is appropriately before the 312 panel.

Nonetheless, the fact that the issue is properly before the panel doesn't answer all of the questions. There are some

interesting considerations and issues which may arise from an examination of the Association's proposed language. For instance, can the Association's proposal become reality in light of the language in Section 13 of Act 312 of 1969, as amended, being MCL 423.243? That language doesn't put a one-year limit on its application and it will be interesting if this matter is not resolved by the parties to see the exact language sought by the Association and the arguments submitted by both parties.

The last issue in this preliminary dispute relates to the previously decided question of retroactivity of non-economic issues. As stated above, non-economic issues can be made retroactive by an Act 312 panel. The arguments in this area as it relates to the specific preliminary issue seems a little vague and murky. Given the Association's proposal as it is currently written, it is questionable whether it need be applied retroactively. There is some reference to retroactive application in the Association's documents, but it seems as currently drafted that the proposal, at least that portion of it which provides for the continuation of the agreement until a negotiated settlement or compulsory arbitration, or December 31 of the following year, would only be effective prospectively and not retroactively. While there may be some interpretation of the language suggesting retroactive application, that remains to be seen after analyzing arguments related to the proposal. Given the prior findings regarding the panel's ability to retroactively apply non-economic proposals, and the clear understanding that non-economic proposals can be

retroactively applied, the panel must conclude that this proposal is properly before it for a resolution.

The panel concludes that the Association's proposal or issue regarding duration and continuation of contract provisions beyond December 31, 2005, is properly before it for a resolution.

Mario Chiesa, Chairman — 10-5-04

Association Delegate — 9-24-04

Employer Delegate — 10-1-04

In summary, it should be noted that the parties indicated to the panel that Last Offers of Settlement, and that term is used to include proposals in non-economic issues, would not be submitted until they were required by the panel's ruling regarding the preliminary issues. It was also agreed that the parties would hold off presenting any arguments until the Last Offers of Settlement were submitted. It is the Chairman's understanding that at this point an appropriate timetable of submissions of Last Offers of Settlement and subsequent briefs would be established.

BACKGROUND

As previously indicated, the "Employer" in this dispute is actually comprised of a joint employment relationship between the County of Ottawa and the Sheriff of Ottawa County. The bargaining unit includes an array of classifications, many of which are non-312 eligible. Thus, this 312 arbitration is confined to the employees who are eligible for binding interest arbitration under

retroactively applied, the panel must conclude that this proposal is properly before it for a resolution.

The panel concludes that the Association's proposal or issue regarding duration and continuation of contract provisions beyond December 31, 2005, is properly before it for a resolution.

Mario Chiesa, Chairman

Association Delegate 9-24-04

Employer Delegate 10-1-04 (Dissenting - see attached)

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BACKGROUND

As previously indicated, the "Employer" in this dispute is actually comprised of a joint employment relationship between the County of Ottawa and the Sheriff of Ottawa County. The bargaining unit includes an array of classifications, many of which are non-312 eligible. Thus, this 312 arbitration is confined to the employees who are eligible for binding interest arbitration under

the Act. In very general terms, and not to specifically define those who are eligible, the group includes road patrol and detectives.

In total, the Employer has approximately 1,140 employees. There are two groups which are not represented by bargaining agents. The first is characterized as the unclassified and they number about 185 individuals. The second involves the temporary and part-time individuals of which there are about 240. Of course, the numbers change, perhaps on a daily basis, but documentation submitted by the Employer suggests that as of December 31, 2002, there are 719 employees covered by labor agreements. The largest unit is Teamsters Local 214 with 348 employees. It includes the general county employees. Next is the group of employees involved in this arbitration. There are approximately 95 road officers and detectives eligible for Act 312. There are approximately 76 employees in the POAM unit that are not eligible for 312. There are 51 employees in the Probate/Juvenile Association unit, 48 in the 58th District Court Association, 43 in the Michigan Nurses Association, 29 in Local 4014 Ottawa County Michigan Friend of the Court, 21 in the Command Officers Association who are eligible for 312, and 8 in the Command Officers Association who are not eligible for 312.

According to the testimony, the Sheriff's Department works under a decentralization plan with no centralized facility where patrol or community policing officers congregate. Deputies work out of township offices, schools and in probably ten different

locations throughout the county. The record indicates there are eight different school districts plus township offices in Grand Haven, Spring Lake, Allendale, Marne, Jenison, Holland, Zeeland and several other locations where officers are working. There are approximately 56 officers working under contract with different townships and schools.

The Department also has specialty teams, including a SWAT team, dive team, canine officers, field training officers, and a critical response team. Of course, there are also detectives.

As expected, there are several different work schedules. In general, county-funded road patrol officers work 12-hour shifts, i.e., six to six. Community policing officers generally work an eight or ten-hour shift and detectives generally work eight-hour shifts of days only. Generally officers keep their own record keeping of hours.

Given the nature of the employment, detectives are allowed to take cars home. Other vehicles are assigned in a variety of ways. For instance, community policing officers, those assigned to schools and townships and are funded by those entities, are assigned cars. Generally the vehicles are purchased by the entity that is contracted with the Sheriff's Department and the source of funding will determine whether the vehicles can leave a particular township. As a general rule, assigned cars cannot leave the county. As a result, in order to take a vehicle home, the deputy must live in the county.

Many of the deputies are allowed to schedule themselves based on their assignment. It appears that all these special units are provided pagers and cell phones, with the understanding that they are not required to respond to a page unless they choose to do so or unless it may be an emergency.

There will be a more specific discussion in relation to the various issues.

FINANCIAL INFORMATION

There was some evidence dealing with the Employer's financial status. At the time of the arbitration the Employer was just finishing up the 2004 budget and, according to the record, was looking at an approximate three million dollar deficit. It was anticipated that the deficit would be made up by taking funds from other sources to try to balance the budget. For instance, according to the record, funds were to be taken from the delinquent tax fund, management information systems fund, and one of the self-insurance funds. The Employer was trying to keep the millage rate at the same rate for the next year. There has been an increase in some service fees and state revenue sharing has decreased significantly.

Testimony did establish that Ottawa County was probably more stable financially than Muskegon or Allegan Counties and probably on par with Kent County. In fact, property taxes had been lowered a couple of times in Ottawa County, with the explanation being that the County didn't feel it needed to levy all of the millage to balance the budget. Currently Ottawa County is levying a millage

of 3.4 which is lower than the three comparable counties. The property tax supplies between 50 and 60 percent of the general fund income, with the remainder coming from the state and from fees for services. The general fund millage is 3.1 mills.

Further, Ottawa County ranked 3rd in 1995 in household income when compared to other Michigan counties. In 1990 about 95% of the labor force was employed. In 2000 this figure increased to about 98%.

WAGES - ECONOMIC

As previously indicated, the Last Offers of Settlement submitted by the parties are attached and made a part hereof.

This portion of the dispute involves the wage rates beginning on 1/1/03, 1/1/04 and 1/1/05. To recall, each year is considered a separate issue.

Most of the analysis will be based on a top paid road patrol deputy. There are other issues concerning detectives which will subsequently be analyzed. Furthermore, while there was initially some confusion, the Employer has stated emphatically in its brief, and argued in writing, that its Last Offer of Settlement applies to each step of the salary schedule. Additionally, while there was some dispute, the panel concludes that the issue of retroactivity is a separate issue.

The Collective Bargaining Agreement from 1/1/02 to 12/31/02 provided, inter alia, that effective on 1/1/02 a deputy at the start step would receive a salary of $35,880.00; one year $42,229.00; two years $44,634.00; three years $46,217.00; and at

five years $46,337.00. The Employer's proposal for the first year, effective 1/1/03, would be a 3.2% increase across the board. If it were adopted and, according to the Employer's calculations as displayed in its brief, the start rate would be $37,028.00; one year $44,612.00; two years $46,062.00; three years $47,695.00; and at five years $47,819.00. These figures are within a dollar or so of what was calculated by the Chairman.

If the Union's Last Offer of Settlement were adopted, there would be a 4% wage increase across the board, effective 1/1/03. This would lead to a start rate of $37,315.00; one year $44,957.00; two years $46,420.00; three years $48,066.00; and at five years the last step would be $48,189.00. Again, these figures are within a dollar or so of the Chairman's calculations.

As can be seen from the comparison, the difference between the two offers is .8% which amounts to a difference of approximately $370.00 at the fifth step. While the difference is somewhat significant, the figures are nonetheless fairly close.

The panel has carefully considered all of the factors "as applicable" outlined in Section 9 of the Act. This of course does not mean that there would be an extensive display of that analysis. Nonetheless, there was a thorough consideration of the record and the Section 9 criteria.

One of the items specifically listed in Section 9 of the Act relates to what is referred to as the average consumer price for goods and services commonly known as the "cost of living."

It is noted that there is substantial evidence in the record which is comprised, inter alia, of data and information from the Bureau of Labor Statistics, which of course is part of the United States Department of Labor. That government organization is the source of cost-of-living data which of course is derived from the various consumer price indexes. The data is also available on its web site.

In reviewing the data it must be understood that the figures are influenced by which index is utilized, such as all urban consumers, urban wage earners and clerical works, etc. Furthermore, the data is influenced by whether it is seasonally adjusted or not.

Using the base period 1982-1985 equalling 100, the consumer price index for all urban consumers, not seasonally adjusted, for a 12-month period, shows that from 2001 to the current data the annual increase has not been over 3%. Indeed, except for the 3.4% increase in the year 2000, the increase in the CPI has been under 3% going all the way back to 1997. In 1996 the rate was at 3% or just above, but again fell below 3% going back to 1994.

In examining the data it is interesting to note, although it comes as no surprise, that one of the items feeling the greatest CPI pressure is medical care. Of course, the special index of energy and energy commodities present very substantial swings in data rising 14.2% in the year 2000 and falling 13% in the year 2001.

The panel can take notice that the non-adjusted all-urban consumers percentage increase from July of 2003 to July of 2004 was about 3%.

It is clear from this data that either Last Offer of Settlement, standing alone, would adequately deal with the pressures of increased cost of living as referenced in Section 9 of the Act.

The data regarding the comparable communities is displayed in relation to a deputy at the top of the salary schedule.

In Kent County the salary schedule provides seven steps. The salary for a top paid patrol officer effective 1/1/02 is $49,171.20. On 1/1/03 that figure became $52,665.60. On 1/1/04 that salary rate increased to $54,246.40 and on 1/1/05 the figure becomes $55,868.80.

Muskegon County has an eight-step salary progression for sheriff deputies. Again, utilizing the data at the top step and calculating the increases outlined in the contract and utilizing the data in Union Exhibit 31, it becomes apparent that on January 1, 2002 a top paid deputy was receiving $45,140.37. On January 1, 2003 that figure increased to $46,494.58. On January 1, 2004 the figure increased to $47,889.42. By its terms the Collective Bargaining Agreement terminates on December 31, 2004.

The Allegan County agreement was effective from January 1, 2000 through December 31, 2002. There is a seven-step salary schedule for the deputy position. In 2000 the rate was $41,413.00 which increased in 2001 to $42,661.00. As of January 1, 2002 the

figure was $43,951.00. There is no other figure given in the Collective Bargaining Agreement, but in the Union's exhibit it factored in a 3% assumed increase for January 1, 2003 which calculates to provide a top paid patrol officer a salary of $45,270.00. I note that there is a special wage table for a youth services deputy which shows that position pays approximately 4% more than the deputy position.

The average, assuming a 3% increase in Allegan, would be $48,144.00. If we assume only a 2% increase in Allegan, the average would be $47,997.00. Whatever the case, either party's Last Offer of Settlement in this dispute would be in the ballpark.

When the historical data is analyzed, the Union's exhibit suggests that the percentage increases in Ottawa County for the period 1/1/2000 through 12/31/2002 would be about 6.92%. The Union points out that the percentage increase based on the average in the comparables is about 11% for the period 1/1/2000 to 1/1/2003. Thus, it maintains that 4.08% is the difference.

Notwithstanding the above, submission of information subsequent to the hearing, which was provided to all the parties and has not been objected to, shows that Allegan County provided wage increases for the deputy unit of 1.5% for 2003, 1.5% for 2004 and 3% for 2005.

Just to follow up a bit on the percentage increases referenced above, it is noted that in Ottawa County the top paid deputy received a 3.2% increase effective 1/1/02. An Allegan County top deputy received an increase of just a little more than 3% effective

1/1/02. The data from Kent County showed that the salary rate on 1/1/02 was about 2% more than the salary rate on 1/1/01. However, there was more than a 7% increase granted on 1/1/03 with 3% granted on 1/1/04 and 1/1/05. Just based on the raw percentage increases, this data suggests the Union's position is slightly more acceptable.

Depending upon how the data in the comparable communities is considered, and there are many ways of doing so, one could make a reasonable argument supporting either party's Last Offer of Settlement, although there seems to be more support for the Association's position. However, there are other very important and valid considerations.

For instance, there is the issue of total compensation. Certainly in this area the evidence suggests that members of this bargaining unit are doing well. There are no glaring or astonishing deficiencies. However, what is impossible to ignore is the other awards in this 312 resolution which have an economic impact on members of this bargaining unit. When all of the considerations are weighed, the panel is convinced that the Association's Last Offer of Settlement must be accepted for the period beginning 1/1/03. Thus, each level of the road patrol deputy salary schedule shall be increased by 4%. From the start step to the 5th year those rates will be $37,315, $44,957, $46,420, $48,066, and $48,190, respectively.

AWARD - WAGES EFFECTIVE 1/1/03

The Association's Last Offer of Settlement shall be adopted.

Mario Chiesa 10-05-04
Mario Chiesa Chairman

9.21.04
Association Delegate

/s/ Dissent
Employer Delegate

The parties indicated that when dealing with wages each year shall be considered a separate issue. Thus, the panel will address each separately.

The next consideration involves the wage rate to be effective on January 1, 2004.

Given that the Association's Last Offer of Settlement was adopted effective January 1, 2003, adoption of the Employer's Last Offer of Settlement based on 2% increase would, according to its calculations, provide wage rates from start to the 5th year of $38,061, $45,857, $47,347, $49,026, and $49,153, respectively.

If the Association's Last Offer of Settlement were adopted, assuming a 3% increase, the salaries from start through the 5th year would be $38,434, $46,306, $47,813, $49,508, and $49,636, respectively.

With the exception of Allegan County, it appears that, where the data is available, a top paid deputy in Kent County and Muskegon County received an approximate 3% increase effective on January 1, 2004. While the percentage increases are similar, the

AWARD - WAGES EFFECTIVE 1/1/03

The Association's Last Offer of Settlement shall be adopted.

Mario Chiesa 10-05-04
Mario Chiesa Chairman

Ist - 9-24-04
Association Delegate

Rick Schenkel 10-1-04 (Dissenting - see attached)
Employer Delegate

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If the Association's Last Offer of Settlement were adopted, assuming a 3% increase, the salaries from start through the 5th year would be $38,434, $46,306, $47,813, $49,508, and $49,636, respectively.

With the exception of Allegan County, it appears that, where the data is available, a top paid deputy in Kent County and Muskegon County received an approximate 3% increase effective on January 1, 2004. While the percentage increases are similar, the

actual dollar increases would be different depending on the base to which the percentage is applied.

Keeping in mind the prior analysis and findings related to the first year wage increase and incorporating them at this point, the panel concludes that after carefully analyzing all of the evidence, including other awards which will exist in this Opinion and Award, that the Association's Last Offer of Settlement of a 3% minimum and 5% maximum should be adopted. Given other awards, there will be adjustments so that officers will not receive the full impact of the increase.

AWARD- WAGES EFFECTIVE 1/1/04

The Association's Last Offer of Settlement shall be adopted effective January 1, 2004.

10-5-04
Mario Chiesa, Chairman

9.24.04
Association Delegate

Dissent 10-1-04
Employer Delegate

This leaves us with the last year and the salary rate to be effective on 1/1/05.

Given that the Association's Last Offer of Settlement was accepted for the previous year and the Employer's current offer is a minimum of 2%, utilizing that 2%, the salary rates for the start through 5th year step, according to the Employer's calculations, would be $39,206, $47,232, $48,767, $50,496, and $50,627, respectively.

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Keeping in mind the prior analysis and findings related to the first year wage increase and incorporating them at this point, the panel concludes that after carefully analyzing all of the evidence, including other awards which will exist in this Opinion and Award, that the Association's Last Offer of Settlement of a 3% minimum and 5% maximum should be adopted. Given other awards, there will be adjustments so that officers will not receive the full impact of the increase.

AWARD- WAGES EFFECTIVE 1/1/04

The Association's Last Offer of Settlement shall be adopted effective January 1, 2004.

Mario Chiesa 10-5-04
Mario Chiesa, Chairman

151 9-24-04
Association Delegate

Rick Schenkenfelder 10-1-04 (Dissenting - see attached)
Employer Delegate

This leaves us with the last year and the salary rate to be effective on 1/1/05.

Given that the Association's Last Offer of Settlement was accepted for the previous year and the Employer's current offer is a minimum of 2%, utilizing that 2%, the salary rates for the start through 5th year step, according to the Employer's calculations, would be $39,206, $47,232, $48,767, $50,496, and $50,627, respectively.

Applying the Association's Last Offer of Settlement minimum of 3%, if its Last Offer of Settlement were adopted, the salary rates for a deputy from the start step through the 5th year would be $39,587, $47,695, $49,247, $50,993, and $51,125, respectively.

Again, the evidence establishes that adoption of the Association's Last Offer of Settlement with a minimum of 3% increase is on a percentage basis equal to the 3% increase Kent County deputies receive on 1/1/05. It is also equal percentage-wise to the 3% increase received by Allegan County deputies, although Allegan County deputies receive substantially less.

For the same reasons outlined above, the panel finds that the Association's Last Offer of Settlement should be adopted for 1/1/05.

AWARD - WAGES EFFECTIVE 1/1/05

The Association's Last Offer of Settlement effective 1/1/05 shall be adopted.

10-5-04
Mario Chiesa, Chairman

9-24-04
Association Delegate

10-1-04
Employer Delegate

This brings us to the issue regarding detectives. It is noted that in the prior Collective Bargaining Agreement detectives were considered a separate classification from road patrol deputies. The Employer argues that most other counties merely appoint road patrol deputies to work as detectives. It maintains that there is

Applying the Association's Last Offer of Settlement minimum of 3%, if its Last Offer of Settlement were adopted, the salary rates for a deputy from the start step through the 5th year would be $39,587, $47,695, $49,247, $50,993, and $51,125, respectively.

Again, the evidence establishes that adoption of the Association's Last Offer of Settlement with a minimum of 3% increase is on a percentage basis equal to the 3% increase Kent County deputies receive on 1/1/05. It is also equal percentage-wise to the 3% increase received by Allegan County deputies, although Allegan County deputies receive substantially less.

For the same reasons outlined above, the panel finds that the Association's Last Offer of Settlement should be adopted for 1/1/05.

AWARD - WAGES EFFECTIVE 1/1/05

The Association's Last Offer of Settlement effective 1/1/05 shall be adopted.

Mario Chiesa 10-5-04
Mario Chiesa, Chairman

9-24-04
Association Delegate

Rich Schenkamp 10-1-04 (Dissenting see attached)
Employer Delegate

This brings us to the issue regarding detectives. It is noted that in the prior Collective Bargaining Agreement detectives were considered a separate classification from road patrol deputies. The Employer argues that most other counties merely appoint road patrol deputies to work as detectives. It maintains that there is

an imbalance between what the detectives receive in comparable communities and what they receive in Ottawa County because detectives in Ottawa County receive substantially more than the patrol deputies. It seeks to close that gap by proposing a Last Offer of Settlement which equals a fixed amount over the deputy wage rate at each particular step of the salary schedule. For January 1, 2003 that amounts to $2,780. For January 1, 2004 the amount is $2,390 and for January 1, 2005 the amount is $2,000.

The Association's position is that the detectives should receive the same percentage increase as deputies.

It is true that deputy wage rate is a separate issue for each year, but one discussion will suffice in supporting the awards for all three years.

It is also true that detectives are paid at a higher rate than road patrol deputies. However, what the Employer characterizes as an inequity seems to be something which the parties specifically negotiated in the past. What the give and take was at that time is unknown, but before a change is made in the fundamental relationship displayed by the salary schedules between road patrol deputies and detectives, there should be a very substantial record supporting such a realignment.

The available evidence regarding the relationship between the parties shows that in the last Collective Bargaining Agreement all classifications, including detectives, received a 3% increase effective 1/1/00, approximately a 3.6% increase effective 1/1/01,

and a 3.2% increase effective 1/1/02. These percentages were applied to all classifications at all steps.

The point is that the deputies received wage increases following the same scheme and pattern as did the road patrol officers.

Keeping in mind the prior awards for road patrol deputies, adoption of the Employer's proposal would lead to a top paid detective receiving $50,970 as of 1/1/03, $52,025 as of 1/1/04, and $53,124 as of 1/1/05.

Adoption of the Association's Last Offer of Settlement would provide that same detective a salary of $51,082 as of 1/1/03, $52,614 as of 1/1/04, and $54,193 as of 1/1/05.

Of course, given the higher salary levels of detectives, adoption of the Association's Last Offer of Settlement for all of the years in question would amount to substantial increases. Yet, it is noted that the salaries received by the detectives, if the Association's Last Offer of Settlement for each year were adopted, would still be substantially less than what was received by Kent County patrol deputies.

Certainly given the panel's resistance to changing the fundamental relationship between road patrol deputy and detective pay sought by the Employer and the careful analysis of the available data and recognizing subsequent awards, the panel orders that the Association's Last Offer of Settlement be adopted for each of the three years in question, being 1/1/03, 1/1/04 and 1/1/05.

AWARD - DETECTIVE SALARIES
1/1/03, 1/1/04 and 1/1/05

The Association's Last Offer of Settlement shall be adopted for each of the years in contention, being 1/1/03, 1/1/04 and 1/1/05.

10-5-04
Mario Chiesa, Chairman

9.24.04
Association Delegate

10-1-04
Employer Delegate

Retroactivity is also an issue. The parties agreed that it would be treated separately. The Association seeks retroactivity for all wage awards. The Employer takes the position that the wage rate implemented on January 1, 2003 shall not be paid retroactively. It also takes the position that the pay raise implemented on January 1, 2004 should be paid retroactively for the first full pay period on or after January 1, 2004 or the date of issuance of the Act 312 award whichever is later. Wage increases to be implemented on January 1, 2005 will be prospective.

The Employer did raise an issue regarding the Association's Last Offer of Settlement. It suggests that the Association's Last Offer of Settlement would provide retroactive payments to former employees, as well as active employees. It points out that Section 14.3 of the Agreement deals with this issue and states:

> "14.3: Retroactive application of wages to January 1, 2000, shall be applied and paid to any individual, or estate of any individual, having separated from service after January 1, 2000, due to retirement or death, but excluding

AWARD - DETECTIVE SALARIES
1/1/03, 1/1/04 and 1/1/05

The Association's Last Offer of Settlement shall be adopted for each of the years in contention, being 1/1/03, 1/1/04 and 1/1/05.

Mario Chiesa 10-5-04
Mario Chiesa, Chairman

FA 9-24-04
Association Delegate

Rick Schuerkamp 10-1-04 (Dissenting - see attached)
Employer Delegate

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those individuals who separated from service for any other reason."

The Employer suggests that the Association is attempting to change that language.

First of all, and dealing with that assertion, it is clear that the language in 14:3 of the prior contract dealt with retroactive application of wages to January 1, 2000. In this dispute the panel is dealing with retroactive wages to January 1, 2003. Furthermore, there is no dispute that employees who were on the payroll on January 1, 2003 and are on the payroll at the time the Act 312 award is issued would receive full retroactivity of wage increases under the Association's proposal. Perhaps the Association's proposal could be construed to change the policy existing in 14:3, but the reality is that the policy in 14:3 could very well have died with that contract. However, that may be a consideration the parties will have to address at some further point. The fact is, however, that if the Association's proposal is otherwise acceptable, it doesn't become unacceptable because of the issue raised by the Employer.

Clearly the statute recognizes that increases in compensation and other benefits may be made retroactive to any period or periods in question. Additionally, the characterization of some of the Last Offers of Settlement submitted by the Employer in relation to other issues anticipate that wage increases could be made retroactive. Thus, while the Employer has made excellent arguments indicating that retroactivity causes great difficulty, if not an impossibility to recoup some of the costs incurred, nonetheless,

the record does not support a conclusion that retroactivity should be denied. The Employer has not pointed to any indication in any of the comparable communities' Collective Bargaining Agreements which deal with retroactivity in the manner it seeks to do so in this case. While certainly there may be some internal units that haven't received retroactivity, that is a product of their negotiations and not this arbitration. Additionally, the language in the prior Collective Bargaining Agreement certainly suggests that employees who were employed throughout the period would receive full retroactivity of wage increases.

AWARD - RETROACTIVITY OF WAGE AWARDS

The Association's Last Offer of Settlement regarding retroactivity is adopted and, thus, all wage increases referenced above shall be fully retroactive.

Mario Chiesa 10-5-04
Mario Chiesa, Chairman

9.24.04
Association Delegate

10-1-04
Employer Delegate

DOG HANDLER/CANINE OFFICER COMPENSATION - ECONOMIC

In the prior Collective Bargaining Agreement the only reference to additional pay for canine officers is contained in Article XIV - Wages, 14.2, which reads as follows:

> 14.2: Specialist Pay - Effective 1/1/95: An employee assigned to one of the following specialties on January 1 of each year will receive $150. An employee assigned to one of the following specialties

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Mario Chiesa 10-5-04
Mario Chiesa, Chairman

9-24-04
Association Delegate

Rick Schuknecht (Dissenting - see attached) 10-1-04
Employer Delegate

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> 14.2: Specialist Pay - Effective 1/1/95: An employee assigned to one of the following specialties on January 1 of each year will receive $150. An employee assigned to one of the following specialties

on July 1 of each year will receive $150. No employee shall receive more than $150 each January and $150 each July under this section. The specialties are as follows: E-Unit, Field Training Officer, K-9, and Corrections Officer Training Officer (effective August 5, 1998, add Critical Response Team and Dive Team). Employees required to train or attend monthly meetings because of their specialties outside of their regular scheduled hours shall be compensated at straight time rate with such hours not counted for the purpose of computing overtime.

"14.3: Retroactive application of wages to January 1, 2000, shall be applied and paid to any individual, or estate of any individual, having separated from service after January 1, 2000, due to retirement or death, but excluding those individuals who separated from service for any other reason."

Both parties have suggested specific language regarding canine officer compensation. As can be seen from the attached, the Association's Last Offer of Settlement would provide an officer with one-half hour of the employee's straight-time hourly rate for each day and for each dog assigned to the employee. It does not indicate that such payments are in lieu of specialist's pay referenced in Section 14.2.

The Employer's Last Offer of Settlement is much more complicated, but when analyzed in light of the record and specifically the Employer's written arguments and representations, which are relied upon, it becomes clear and understandable.

In examining the Employer's Last Offer of Settlement, it is apparent that it has several operative elements. First, there is the realization that normally one-half hour per day, seven days a week are necessary to perform the task of care and feeding of assigned dogs. This is merely a declaratory statement of what generally happens. Second, the County indicates that it will pay

the dog handler for three and one-half hours each week for each dog assigned to their care without receipt of specific time records documenting this time. The language goes on to suggest that the employee should submit documentation of the time and activities if more time is expended in any week. Third, the language indicates that if the work is performed outside the employee's regularly scheduled hours, the rate of pay shall be $10.00 per hour. Further, if overtime is incurred as a result of the care and feeding of assigned dogs it will be paid utilizing the $10.00 per hour rate. This is construed to mean that the overtime must be exclusively attributable to the care and feeding of an assigned dog in order for the $10.00 per hour rate to apply. Furthermore, the language indicates that overtime pay shall only be required "under this section" if the hours worked and paid at regular straight-time rates combined with hours worked in care and feeding of the assigned dogs exceeds $171.00 during the 28-day work period. This language cannot be construed as affecting overtime payments acquired by any other provision of the agreement or FLSA, but only to overtime payments which are specifically referenced and created by the language.

Consideration of these offers presents interesting observations. For instance, if the Union's Last Offer of Settlement were accepted and the current hourly rate of $22.2775 is applied over a year's period, an officer with one dog would receive about $4,060.00. If the $300.00 referenced in 14.2 is added in,

the amount would be $4,366.00. That's quite an increase from what has transpired in the past.

The Employer's offer, to an extent, would automatically provide a dog handler with three and one-half hours each week for each dog assigned to their care. If this care were performed outside the employee's regularly scheduled hours which, according to the evidence, seems to be the norm without submitting any time records, an officer caring for one dog over a year's period would receive $1,825.00 per year. This is also a substantial increase from the compensation stated in prior Section 14.2.

Considering the Employer's offer is interpreted as stated above and does not otherwise affect overtime or overtime rates as they exist in other portions of the agreement or FLSA, it is apparent from the record that the Employer's Last Offer of Settlement should be adopted.

AWARD - K9 OFFICER COMPENSATION

The Employer's Last Offer of Settlement is adopted. It shall become effective upon the date of the award.

Mario Chiesa, Chairman 10-5-04

Association Delegate Dissent 9.24.04

Employer Delegate 10-1-04

CALL-IN PAY - ECONOMIC

The current language regarding call-in pay is contained in Article XI - Witness and Subpoena Fees, of the prior contract. It

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Mario Chiesa 10-5-04
Mario Chiesa, Chairman

9-24-04
Association Delegate

10-1-04
Employer Delegate

CALL-IN PAY - ECONOMIC

The current language regarding call-in pay is contained in Article XI - Witness and Subpoena Fees, of the prior contract. It

is reproduced in the Association's Last Offer of Settlement, and as can be seen, the call-in provision only applies when an individual is called as a witness in a judicial proceeding for reasons connected to County employment.

In addition to the above, there was a substantial amount of testimony regarding the current practice. In general terms, the call-in discussions related to a specialty team, such as SWAT, dive team, canine and the critical response team. The issue also relates to detectives. Testimony from Detective Bosman and Undersheriff Vredeveld established a number of considerations.

First of all, the testimony seems to establish that except in cases of an "emergency" which was not defined, members of the specialty team who were called or detectives who do not wish to report to the call-in are not required to do so. Of course, there may be some ramifications from the Department if an individual continually fails to respond, but nonetheless, the testimony from the witnesses made it clear that there is no mandatory response in most cases.

Second, while perhaps it is due to the fashion in which the Department operates, there are many times when specialty officers who are called in make arrangements to report, including interrupting family time or other activities, and, yet, are called off before they report for duty. There doesn't seem to be any policy which suggests that these individuals would be compensated in any specific manner.

Third, the Undersheriff related that it is rare that a member of the dive team, for instance, actually appears for work because they are called off shortly after the initial page was transmitted. The Undersheriff suggested that if the individual had spent more than 15 minutes or so or perhaps an hour preparing or driving towards the scene and submitted a request for overtime, they were going to be paid.

The Association's Last Offer of Settlement would in essence guarantee a minimum of two hours' overtime at time and one-half whenever an employee is called in.

The Employer's Last Offer of Settlement is more complicated. Breaking it down and relying on the Employer's explanation in its brief, the aspects of the offer seem clear. Furthermore, it is assumed that in the seventh line of the offer there is a typographical error, with the word in question really being "shift."

First of all, it is clear from the language in the Employer's Last Offer that the call-in guarantee provisions only applies where an employee is "required" to work at times other than their regularly scheduled shift. Thus, it appears that it wouldn't apply when an employee is called in or decides to report rather than being required to report. This conclusion seems to be fortified by the language which indicates that the provision does not apply "in instances where the employee is not mandated to accept the additional work assignment."

Furthermore, while the Association suggests that the Employer's proposal would change the provisions related to overtime payments, the panel is persuaded that this is not the case and the reference to instances contained in the offer, such as working past scheduled termination of a shift, call to work prior to the start of the shift, etc., only relates to the impact of the specific language in Section 5.5. There is no indication that any of the language in the proposal to the new Section 5.5 would affect any other provision of the contract. To the contrary, the way the language is drafted means that the provisions for guaranteed time in relation to only call-in pay are the only considerations when the other instances or scenarios are mentioned. There is nothing in the language which alters or precludes the application of any other provisions in the contract which may affect overtime payments in the circumstances specifically referenced in the Employer's Last Offer of Settlement.

Part of the reality of the circumstances in Ottawa County is that when officers are called in, such as dive officers, canine detectives, etc., they may very well engage in substantial efforts to provide the services requested and, yet, if called off before reporting, are not entitled to any compensation. It is recognized that the Undersheriff indicated that they could put in for overtime and historically that's been accepted. However, there doesn't seem to be anything memorialized in the agreement which provides for that payment.

It is significant to note that each of the comparable communities operate under language in their Collective Bargaining Agreement which provides a call-in benefit which is essentially the same as sought by the Association in this dispute. The language is contained in the record and Muskegon County, Kent County and Allegan County all provide a minimum of two hours at time and one-half, or in Muskegon County two hours "at the premium rate called for under the terms of this Agreement." These call-in benefits are available beyond an officer reporting for court or administrative agency appearances.

Certainly the evidence referenced above supports the adoption of the Association's Last Offer of Settlement. However, beyond the evidence noted above, it must also be recognized that call in of officers is under the essential control of the Employer. The Department makes the decision to call in officers. It has the sole ability to do so and in that regard it may also create reasonable rules and regulations regarding call in and administration of the call-in guarantee.

The evidence clearly establishes that application of the Section 9 criteria supports the conclusion that the Association's Last Offer of Settlement must be adopted.

AWARD - CALL IN

The panel adopts the Association's Last Offer of Settlement. It shall be effective as of the date of the award.

10-5-04
Mario Chiesa, Chairman

9.24.04
Association Delegate

/s/ Dissent 10-1-04
Employer Delegate

RETIREMENT MULTIPLIER AND EMPLOYEE CONTRIBUTION ECONOMIC

Given the nature of these two issues, they are best analyzed in one discussion. The language in the current, or if you will, prior Collective Bargaining Agreement, is contained in Article XV - Retirement, specifically 15.1(iii). That language is memorialized in both parties' Last Offers of Settlement.

The Association's Last Offer of Settlement regarding the multiplier is that detectives and road patrol deputies shall have at their option the right to purchase a multiplier of 2.75.

The Employer's position is that there should be no change and the language currently in effect should continue. However, in the alternative, it proposes no change, but would clarify the language. The clarification is outlined in its Last Offer of Settlement.

In relation to the employee contribution issue, the Association's Last Offer of Settlement, which is also clarified in a document dated December 1, 2003, submitted after a conference call between the delegates and attached hereto, would be that if the opportunity to purchase the increased multiplier was adopted,

AWARD - CALL IN

The panel adopts the Association's Last Offer of Settlement. It shall be effective as of the date of the award.

Mario Chiesa 10-5-04
Mario Chiesa, Chairman

151 9-24-04
Association Delegate

Rick Schenkenberg 10-1-04 (Dissent)
Employer Delegate

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In relation to the employee contribution issue, the Association's Last Offer of Settlement, which is also clarified in a document dated December 1, 2003, submitted after a conference call between the delegates and attached hereto, would be that if the opportunity to purchase the increased multiplier was adopted,

the cost of the increased multiplier "shall be paid by affected bargaining unit members at the actuarial determined cost." The Employer's position is that there would be no change in the contribution rate if the increased multiplier were not made available, but if the increased multiplier was made available, there would be one of two alternatives available to the panel to fund the increased liability that would be created when a bargaining unit member or members made the choice to purchase the increased multiplier.

Obviously the first issue to be decided is whether the increased multiplier should be made available to bargaining unit members who are willing to pay for it.

At the outset the Association's request seems rather benign since if it is adopted, either one way or the other, the cost would be absorbed by members of the bargaining unit. However, there are other considerations to analyze. For instance, if that benefit were made available, then there could be demands from other units and they too would be allowed access to an increased multiplier. Further, there certainly is a question of what impact the increased multiplier would have in relation to the cost-of-living adjustments which are provided for members retired on or after November 1, 1983 and on further funding of the pension plan.

The evidence establishes that in relation to the comparable communities members of this bargaining unit have excellent pension benefits which are extremely comparable, and in some cases superior.

In Ottawa County an officer in this unit receives social security. The pension plan is a MERS defined benefit plan with the normal retirement age being 50 with 25 years of service. The current multiplier is 2.5% with a total service cap of 80%. The final average compensation is based on the highest five years. It is also important to note that post-retirement cost-of-living adjustments are provided at an annual 2.5% increase for any member who retired on or after 11/1/83. Keeping all of this mind, it is noted that when it comes to funding, the data from 2001 indicates that in addition to the 6.2% paid by the Employer for social security, the defined benefit plan requires a contribution of 10.97%. Employees pay social security at 6.2% and their contribution to the plan is 3.1%. Allegan, Kent and Muskegon Counties provide social security and have defined benefit plans. Allegan County allows retirement at 50 with 25 years of service and 55 with 15 years of service. Kent County has no age limit, but allows retirement at 25 years of service, or after five years of service if an individual reaches 60. Muskegon County provides retirement at 50 with 25 years of service; there is also an entry indicating that at age 55 with 25 years of service an employee may retire.

All three have the same multiplier of 2.5% and Allegan and Muskegon Counties have caps of 80%, while Kent County is 75%.

When it comes to final average compensation, Allegan and Muskegon Counties rely on the highest five years, while Kent County is three out of five.

Post-retirement cost-of-living adjustments do not exist in Muskegon County. In Allegan County there is a one-time 2% adjustment for all retirees who retire prior to 1/1/2000. There is an annual 2.5% increase for any member who retired on or before 1/1/93. In Kent County there is a 1% increase for any member retired on or after 1/1/76 provided that there has been a corresponding increase in the CPI. This information is contained in Union Exhibit 35.

Since all the comparables provide social security, they all pay 6.2% as do each of their employees. In Allegan County the Employer's contribution is 11.1%. In Kent County it is 2.94% and in Muskegon County it is 6.68%. However, it is important to note that when compared to the 3.1% contribution made by members in the bargaining unit in Ottawa County, employee contribution is 4.91% in Allegan County, 6.5% in Kent County and 3.5% in Muskegon County. This is 2001 data.

Considering the above, the panel is persuaded that the Association's Last Offer of Settlement should not be adopted. Since there is no award providing for an increase in the multiplier, all of the Last Offers of Settlement regarding increased employee contribution rates are moot. Furthermore, the panel is not convinced that the Employer's alternative Last Offer of Settlement, which it characterizes as a clarification, need be adopted. The evidence does not establish that there has been any type of confusion, grievances or other disputes regarding the meaning of the current language.

As a result, existing language shall continue.

AWARD - MULTIPLIER AND EMPLOYEE CONTRIBUTION

The Association's Last Offer of Settlement regarding the availability of the 2.75% multiplier shall not be adopted. Furthermore, the Employer's alternative offer to the status quo, which it suggests is for clarity sake, will not be adopted. Thus, in relation to this issue, the status quo shall continue in that the Employer's Last Offer of Settlement which proposes no change to the current multiplier and continues the language currently in effect shall be adopted.

10-5-4
Mario Chiesa, Chairman

Dissent 9.24.04
Association Delegate

151 - 10-1-04
Employer Delegate

RETIREE HEALTH INSURANCE - SURVIVOR BENEFIT AND FORMULA ECONOMIC

It is noted that there are actually two separate issues involved in the general consideration of retiree health insurance. However, much of the evidence relates to both issues, so it would be appropriate to analyze the issues in one discussion, but of course to issue two separate orders.

The first issue concerns the formula utilized to provide the benefit. The current provision is contained in Article XIII -

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Mario Chiesa 10-5-04
Mario Chiesa, Chairman

/s/ Dissent 9-24-04
Association Delegate

Rick Schuckman 10-1-04
Employer Delegate

RETIREE HEALTH INSURANCE - SURVIVOR BENEFIT AND FORMULA ECONOMIC

It is noted that there are actually two separate issues involved in the general consideration of retiree health insurance. However, much of the evidence relates to both issues, so it would be appropriate to analyze the issues in one discussion, but of course to issue two separate orders.

The first issue concerns the formula utilized to provide the benefit. The current provision is contained in Article XIII -

Insurance, Section 13.7(a) of the Collective Bargaining Agreement. It is reproduced in the Association's Last Offer of Settlement. Currently a retiree is credited with $8.00 for each year of service to a maximum of $200.00 a month. The Association seeks to increase the credit to $10.00 for each year of service up to a maximum of $300.00 a month. This is to be effective January 1, 2003.

The Employer's Last Offer of Settlement seeks a continuation of the status quo in relation to the credited amount. However, there are two additions which the Employer maintains are minor clarifications. The first is that coverage is not available to deferred retirees. In other words, the coverage is only available to those employees who are immediately eligible for a pension benefit from MERS. Secondly, the Employer has included the phrase "as the same may be changed from time to time." It represents that this language means that retirees will be required to be in the same plan as active bargaining unit members. It maintains that this will eliminate potential lawsuits. It is important to note that the panel is specifically relying on the Employer's representation as to how the language will be construed.

The Collective Bargaining Agreement in Kent County has a rather extensive provision regarding retiree health insurance. Employees who retire on or after July 1, 1999, who also have a minimum of 25 years of service or those who receive a duty disability retirement, shall receive at the Employer's expense the lowest single subscriber health insurance currently available to bargaining unit members up to a maximum of $200.00 per month.

Effective for employees who retire on or after January 1, 2004 with a minimum of 25 years of service the per month cap is increased to $300.00. If a retiree has less than 25 years of continuous service at the time of retirement, the monthly amount is determined by multiplying $6.00 x the employee's full years of continuous service. There is also a provision effective January 1, 2004 dealing with duty disability at retirement. It is prorated for individuals with service less than 25 years. Furthermore, the provision does not provide coverage for the retiree's spouse, although the retiree has a contractual right to purchase such coverage. Upon a retiree's death the surviving spouse may continue to purchase the health insurance provided by the Employer at the Employer's group rates, subject to the carrier's rules. The language goes on to indicate that no payment shall be made if the employee, inter alia, receives a deferred pension. Further, no payments are made if after retirement the employee is employed by another employer who provides a health care program or insurance. The coverage is not provided if the retiree is covered by a health care program or insurance under his spouse's employment. Further, contributions are conditioned upon the retiree participating in the County's health care program as provided to members of the bargaining unit.

Under its prior contract Allegan County provided $10.00 for each year of service to a maximum of $200.00 a month. This was to cover both the retiree and spouse. These payments continue for 10 years or until the retiree reaches age 65, whichever occurs first.

There is a list of events which would eliminate the County's contribution. They are essentially the same as Kent County. Notably they include no payment for retiree health if an employee receives a deferred or disability pension. If the retiree dies prior to the exhaustion of the benefit, payments shall cease and the surviving spouse shall be eligible for COBRA. The plan available to retirees is the same that is available to actively employed employees in the bargaining unit. The plan can be changed in accordance with County policy and collective bargaining negotiations. As indicated, there is information regarding the new Allegan contract; however, it seems at least one of the changes is not accurately depicted. The change indicates that the maximum is now being increased to $250.00 a month, but the language references $5.00 for each year of service. This doesn't make any sense and the $5.00 for each year of service statement is not in bold as are the other changes in the provision. Further, a 10-year limitation is eliminated and the language now provides coverage until the employee reaches age 65 or reaches Medicare eligibility whichever occurs first. Finally, there is an agreement to re-open this provision for consideration of insurance alternatives in 2004.

The Muskegon County Collective Bargaining Agreement provides, inter alia, that for employees hired prior to January 1, 1994 and who go from County employment immediately into retirement under the MERS plan, the employer will provide medical coverage. However, the retiree must pay for his dependents. The second provision relates to retirees hired on or after January 1, 1994. In that

track there is an increasing percentage of coverage beginning with 10 years of continuous years of service and ending with 25. At 10 years the percentage paid by the County is 40%. This increases at a 4% per year rate until the 25th year when the County pays 100%. There is no mention of spouses or dependents being covered.

The evidence does establish that currently in Ottawa County if a retiree dies his spouse is entitled to purchase the same coverage which was available to active employees through the County.

Frankly, it appears to the Chairman that the best resolution of this issue would have been a combination of both parties' Last Offers of Settlement. Nonetheless, by statute the panel is required to select one or the other Last Offer of Settlement.

The panel concludes that the explanations and pronouncements made by the Employer regarding the language "as the same may be changed from time to time" means that retirees will receive the same health care coverage as active bargaining unit members. If active bargaining unit members' coverage changes a retiree's coverage will change. Given the foregoing, the panel finds that the Employer's Last Offer of Settlement is more acceptable.

It is certainly true that on the face of the evidence the comparables may provide higher dollar benefit, but there are certain differences to keep in mind. For instance, the increase sought by the Association would be retroactive to January 1, 2003. It does appear that in Allegan County, the increase, if indeed there is an increase, would be effective on January 1, 2003. The increase in Ottawa is not effective until January 1, 2004 and then

only for employees who retire on or after that date. That appears to be quite different than what the Association is seeking in this case. In Muskegon County there is a two-tier system, although arguably either tier would provide a much more lucrative benefit than what currently exists in Ottawa County.

It is important to note, however, that the clarifications sought by Ottawa County, i.e., retirees receiving the same health benefits as current active employees and retirees being able to receive the benefit only if they are immediately eligible to collect at retirement, is clearly the norm in at least Allegan and Kent Counties.

Furthermore, it is noted that retirees in Ottawa County receive post-retirement cost-of-living adjustments which for the most part are more substantial than that received by retirees in the other comparable communities.

Additionally, since this contract by its terms will terminate on 12/31/05, it will be just a little more than a year before this issue can be re-visited by the Union.

Based on a careful analysis of the record and based also on the specific representations made by the Employer regarding the application of the language in its Last Offer of Settlement, the panel adopts the Employer's Last Offer of Settlement.

10-5-04
Mario Chiesa, Chairman

Dissent 9-24-04
Association Delegate

10-1-04
Employer Delegate

RETIREE HEALTH INSURANCE - SURVIVOR BENEFITS

Currently the agreement between the parties does not provide that if a retiree who is receiving a monthly retirement health insurance credit dies prior to losing eligibility for that credit, his/her spouse will continue to receive the credit until the deceased retiree would have lost his/her eligibility. To state it in a different manner, the health insurance credits for retirees cease upon the retiree's death.

The current language is contained in the Association's Last Offer of Settlement. It is noted that its Last Offer would continue the retiree health insurance credit beyond the retiree's death covering the retiree's spouse for the period the retiree would have otherwise been eligible.

The Employer proposes that there may be no change in the status quo and shouldn't be required to pay any amounts towards the health insurance coverage of the surviving spouse of the deceased retiree.

Based on a careful analysis of the record and based also on the specific representations made by the Employer regarding the application of the language in its Last Offer of Settlement, the panel adopts the Employer's Last Offer of Settlement.

Mario Chiesa 10-5-04
Mario Chiesa, Chairman

I Dissent 9-24-04
Association Delegate

Bill Schuckman 10-1-04
Employer Delegate

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The current language is contained in the Association's Last Offer of Settlement. It is noted that its Last Offer would continue the retiree health insurance credit beyond the retiree's death covering the retiree's spouse for the period the retiree would have otherwise been eligible.

The Employer proposes that there may be no change in the status quo and shouldn't be required to pay any amounts towards the health insurance coverage of the surviving spouse of the deceased retiree.

A careful analysis of the record clearly establishes that the Association's Last Offer of Settlement should not be adopted. There is no support for changing the status quo.

AWARD - RETIREE HEALTH COVERAGE SURVIVOR BENEFITS

The Employer's Last Offer of Settlement is adopted and thus the status quo shall continue.

Mario Chiesa, Chairman

9.24.04
Association Delegate

Employer Delegate

OVERTIME - DEFINITION - ECONOMIC

The dispute concerns Article V - Hours of Work and Overtime, specifically Section 5.2(a).

The Association maintains that the current language is as it appears in its Last Offer of Settlement. However, the Employer maintains that there was an agreement adding to that language. It suggests that, as a result of a grievance settlement, the second paragraph of 5.2(a) states: "Effective 4/12/02: An employee who is required by the Department to work in excess of an average of forty (40) hours per week shall have the option to request either pay or compensatory time off provided however that compensatory time may not be accumulated in excess of one-hundred and twenty (120) hours."

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Mario Chiesa, Chairman

Association Delegate 9-24-04

Employer Delegate 10-1-04

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The Employer's Last Offer of Settlement characterized it as a clarification. A simple reading of it shows that it substantially revises/restates the language currently in the Collective Bargaining Agreement.

The evidence establishes that if an officer is working a 12-hour shift over a 14-day period, he/she would work three shifts one week and four shifts the next. That would amount to 84 hours. It was explained that the Employer pays overtime for anything in excess of an average of 80 hours. Every six weeks officers receive a 12-hour shift off to deal with the four hours extra each pay period. So, according to the explanation, in a six-week period an officer is either working at 72-hour pay periods or 84-hour pay periods. When the Department averages that out, then anything over 84 hours is paid at time and one-half.

Further, the record establishes that when calculating overtime, used vacation time is not counted towards 80 hours worked. Sick time is not counted, but floating holidays are.

In examining the data regarding comparable communities, it is noted that in Kent County holidays, which have been paid, compensatory time, vacation time, which has been paid, and funeral leave, which has been paid, is counted as time worked up to eight hours each day for overtime purposes. In Muskegon County vacation time and holidays are counted as time worked for the purposes of computing overtime. Sick leave is also counted as time worked for the purposes of computing overtime if the overtime assignment is mandatory. In the Allegan County contract originally received in

the record there was no mention in the appropriate section, 10.3 of Article X - Hours and Wages, of time paid being counted as time worked for overtime purposes. However, the Employer did forward a copy of the recently settled Allegan contract which contains the change "for purposes of determining overtime premium, paid time shall be treated as time worked."

When considering that currently in Ottawa County only floating holidays are considered as time worked for overtime purposes, the data regarding the comparable communities, even ignoring the latest contract in Allegan, supports adoption of the Association's proposal. In this regard it must be understood that the only change that the Association's proposal would institute to the current practice in contract language is the addition of vacation time and compensatory time off being considered time worked for the purposes of computing overtime. There is nothing in the Association 's Last Offer which affects the contract language limiting the accumulation of compensatory time to 120 hours. Further, the Association's inclusion of the language "as determined by the employee" seems to state which is currently in the contract as a result of the grievance settlement leading to the 4/12/02 addition.

After carefully analyzing the entire record, the panel concludes that the Section 9 factors support adoption of the Association's Last Offer of Settlement.

The Association's Last Offer of Settlement is adopted. It shall become effective as of the date of the award.

10-5-04
Mario Chiesa, Chairman

9.24.04
Association Delegate

10-1-04
Employer Delegate

HEALTH CARE - INSURANCE ISSUES - ECONOMIC

There are a number of issues which fall within this general category and while each will be separately considered, for the sake of judicial economic, it would be appropriate to discuss portions of the record which apply to all issues. Furthermore, it must be recognized that in relation to any health care coverage, premium or prescription issues, the Association's position is that it rejects any change in the current language and/or practice and desires to maintain the status quo. The Employer offers the County's cafeteria plan which includes health insurance, two dental options and an optical plan. The plans are self-insured and are funded by the Employer making available the amount calculated by the actuary for the anticipated cost of health, prescription, dental and vision plans for each year. In practice this amounts to a self-insured plan.

While it would be too tedious to analyze all of the details of the health care plan, it is noted that there is a general division between what is known as in-network services and providers and out-of-network. For instance, and as an example, in the plan feature

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Mario Chiesa, Chairman 10-5-04

Association Delegate 1st - 9-24-04

Employer Delegate Rich Schuhlenk 10-1-04 (Dissent)

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of-network. For instance, and as an example, in the plan feature of surgery and surgery-related services if done in-network there is 100% coverage. If done out-of-network, there is an 80% coverage after deductible. The 80% is subject to a cap of actual dollars the participant would have to pay. Currently the maximum out-of-pocket for out-of-network claims is $1,100 for single and $1,200 for family. As further examples, the emergency room physician coverage and immediate care centers are covered 100% with in-network providers and 80% after deductible and out-of-network providers. The physicians' office health center visit is covered 100% in-network, with a $10.00 co-pay per visit, and 80% after deductible in out-of-network.

The Collective Bargaining Agreement reflects the co-pay for prescriptions. Currently there is a 10% employee co-pay on all prescription drugs with a minimum of $5.00 and a maximum of $15.00 per prescription. Effective 2002 the maximum increased to $20.00.

INSURANCE OUT-OF-POCKET MAXIMUM
OUT OF NETWORK - ECONOMIC

According to the record, currently the maximum annual out-of-pocket for out-of-network claims is $1,100 for single coverage and $1,200 for family. There is no mention of two-person.

The Employer's position is to add paragraph C to Article XIII - Insurance, 13.1 - Hospital/Medical Insurance, for employees in this bargaining unit. The Last Offer of Settlement provides that effective January 1, 2004 the annual out-of-pocket maximum for out-of-network claims shall be $1,650 single and $1,800 for family. As

indicated previously, the Association seeks the status quo on all health care/insurance issues.

The evidence establishes that this identical offer has been made to every other unit employed in the County of Ottawa. Apparently the contract for the Juvenile Court Division has been settled, and according to the Employer's representations the benefit change was generally well received, although other issues have prevented contract closure in all cases.

It is noted that there would be no change in the out-of-pocket costs to employees for the first $1,100 for single and $1,200 for family. According to the 20% calculation, this means that for a family there would have to be $6,000 spent out-of-network before the difference in out-of-pocket responsibilities were felt.

Given the nature of the plan, it is not inappropriate for the Employer to provide incentives for employees to use in-network facilities, doctors, etc. If the record established that there was a lack of reasonably accessible providers in-network, then perhaps it would be more difficult to raise the out-of-pocket maximum for out-of-network services. However, there is no such evidence.

Given the status of the record and after considering all of the relevant factors, the panel concludes that the Employer's Last Offer of Settlement should be accepted.

The Employer's Last Offer of Settlement regarding insurance out-of-pocket annual maximum for out-of-network claims is adopted.

10-5-04
Mario Chiesa, Chairman

Dissent 9:24:04
Association Delegate

10-1-04
Employer Delegate

EMPLOYEE HEALTH INSURANCE WAITING PERIOD - ECONOMIC

Currently employees who are hired into this bargaining unit become eligible for insurance coverage under the health plan on their first day of employment. The Employer's Last Offer of Settlement seeks to add a new paragraph to Article XIII, 13.1, which would become paragraph C and indicate that employees hired after the date of the Act 312 award, which is the only possible effective date, shall become eligible for insurance coverage the first month following their first 60 calendar days of employment with the County.

The very nature of the Employer's proposal does not affect current bargaining unit members. As suggested by the Association, it may very well cause some concern when hiring new employees, but hopefully the Employer has considered that issue.

There is testimony in the record suggesting that it is not typical for employers to provide coverage the first day and it is actually more common for employees to endure a 30 or 60-day waiting period. Occasionally there is a 90-day waiting period, but that

The Employer's Last Offer of Settlement regarding insurance out-of-pocket annual maximum for out-of-network claims is adopted.

Mario Chiesa, Chairman 10-5-04

Association Delegate 9-24-04

Employer Delegate 10-1-04

EMPLOYEE HEALTH INSURANCE WAITING PERIOD - ECONOMIC

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seems to be the exception. Clearly, it would only provide the Employer with very modest savings by delaying coverage.

In relation to the data regarding the comparable communities, it is noted that Allegan County provides coverage 30 days after hire. Kent County provides coverage effective as of the start date, but according to Employer Exhibit 13, Muskegon County does not provide health care coverage until six months after the date of hire.

When all of the evidence is carefully analyzed, and understanding that there is no impact on current bargaining unit members, the panel adopts the Employer's Last Offer of Settlement.

AWARD- HEALTH INSURANCE WAITING PERIOD

The Employer's Last Offer of Settlement regarding insurance coverage waiting period is adopted.

10-5-04
Mario Chiesa, Chairman

Dissent 9-24-04
Association Delegate

10-1-04
Employer Delegate

WELLNESS PAYMENTS - ECONOMIC

Apparently the current health care plan provides an annual per person Wellness Prevention amount of $250. As indicated, the Association suggests the status quo and it is noted that this particular item has not been addressed in the written arguments.

Given the status of the record, the panel will adopt the Employer's Last Offer of Settlement.

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Mario Chiesa 10-5-04
Mario Chiesa, Chairman

/s/ Dessen 9-24-04
Association Delegate

Rick Schuurkamp 10-1-04
Employer Delegate

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Given the status of the record, the panel will adopt the Employer's Last Offer of Settlement.

AWARD- WELLNESS PAYMENTS

The Employer's Last Offer of Settlement regarding Wellness payments is adopted.

10-5-04
Mario Chiesa, Chairman

9.24.04
Association Delegate

10-1-04
Employer Delegate

EMPLOYEE CONTRIBUTION TO HEALTH INSURANCE PLAN - ECONOMIC

As previously explained, the Employer provides a cafeteria plan, making available the full amount the actuarial cost for the least expensive plan.

As indicated, the Union seeks no change in the provisions and requests the continuation of the status quo.

The Employer's Last Offer of Settlement is displayed, but there was additional information necessary to determine the exact intent of the language.

To explain further, the record and testimony indicated that the same cost-sharing provisions were being offered to other units and that one unit had already TAed the proposal. In the documents representing the settlements in the Juvenile Court unit, it was clearly indicated that there was a 25% cap placed on the year-to-year increase applicable to employee contributions. However, it was difficult to interpret the words in the Last Offer of

AWARD- WELLNESS PAYMENTS

The Employer's Last Offer of Settlement regarding Wellness payments is adopted.

10-5-04
Mario Chiesa, Chairman

9-24-04
Association Delegate

10-1-04
Employer Delegate

EMPLOYEE CONTRIBUTION TO HEALTH INSURANCE PLAN - ECONOMIC

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Settlement submitted by the Employer to recognize this cap and its impact on employee and employer contributions.

In its brief the Employer made it clear that it was proposing and relying on a cap. In fact, on pages 25 and 26 the Employer's counsel stated:

> ". . . Ottawa County believes that it is appropriate for its employees to make some contribution towards the cost of health insurance premiums. Its proposal is very modest, and would require employees to pay an 'Employee co-pay of twenty percent (20%) on the difference in actuarial determined cost between each year and 2002. The cost of this proposal is not extreme, since employees selecting Family coverage in 2003 would pay $341.60 per year (.20 x 1,708 [$9,674-$7,966] or $28.46 per month. Under this cost sharing formula, employees selecting family coverage in 2004 would be required to pay $670.08 per year (.20 x 3,354 [$10,724-$7,966] or $55.90 per month, but the cap of a 25% yearly increase would limit this amount to $427.00 per year or $35.58 per month. Assuming that costs increased by 10% in 2005 the cost for coverage would increase to $11,796.40. Under this cost sharing formula, employees selecting family coverage in 2005 would be required to pay $766.00 per year (.20 x 3,830 [$11,796-$7,966] or $63.83 per month, but the cap of a 25% yearly increase would limit this amount to $433.75.00 (sic) per year or $44.48 per month. This amount of employee premium is significantly lower than the premiums paid by employees in other municipal entities."

In relation to the arguments raised by the Association, and while it doesn't specifically reference the 25% cap on the yearly increase of the employee's contribution, the figures it utilizes, specifically $342.00 to $420.00, clearly could only exist if there was a 25% cap on the year-to-year increase applicable to the employee's contribution. The Association's statement is contained on page 30 of its brief and reads as follows:

> "The third concept of cost savings as advanced by the employer is the most egregious of the

> changes it demands. For the first time in history the employer is demanding premium sharing by establishing a benchmark cost of the health care plans in 2002 which it will pay, then imposing a 20% premium co-pay from the employee for any annual increases which would occur after that date. By way of example, the employer has calculated that beginning in January, 2003, employees needing the family plan would begin to pay $342 per year under the new proposal. In the last year of the contract under the same formula the cost would be $420 per year to maintain the same level of health care. By the end of the contract the Ottawa deputies would pay the highest premium share of any of the comparable counties under this formula, and the costs will likely rise each year. Ottawa deputies' increase in costs will continue to escalate well beyond that of their peers in the comparable communities."

To illustrate the point, and using the family rates as an example, although the formula and year-to-year 25% cap would apply to single and two-person coverage, I note that the evidence also establishes that if the Employer's offer were adopted, the employee contribution on a full family plan of health, dental 2 and optical, beginning in January of 2003, would be about $342. The Employer would be responsible for the remaining amount of the increase or about $1,366. Beginning on January 1, 2004 and utilizing the figures contained in the Employer's Last Offer of Settlement, which would be $11,432 for the same family coverage, minus the family coverage rate in 2002 of $7,966, the application of the 20% formula would require an employee contribution of $693 for that year. However, neither party has even suggested that that would be the employee contribution beginning January 2004. Clearly, if we take the prior year contribution rate of $342 and apply the 25% cap, then the employee's share of the increase would be limited to $427

for that year. This clearly coincides with the Association's argument and illustrates the Employer's position even though I note that the Employer used the figure of $10,724 for the cost of 2004 when the documentation shows that it is actually $11,432.

In order to insure that everyone properly understands the Employer's position, the Chairman contacted the Employer and the Association explaining his concern. In a document dated September 17, 2004, and attached to the Employer's Last Offer of Settlement and made a part of these Findings of Fact, Opinion and Orders, the Employer confirmed, inter alia, that its proposal contained a 25% cap on the year-to-year increases which would apply to the 20% responsibilities employees would have in relation to the cost increase for the year in question. The Employer also confirmed that the 80% limit applying to its contribution was only part of the initial calculations, but in fact if the 25% applying to the employee contributions were in effect in any particular year, the Employer will be required to pay more than the 80% of the increase in that year. In other words, the Employer is responsible for all increased costs beyond those the employees will cover by their contributions. All of this will be subsequently summarized.

As indicated, the Association has taken the position that there should be no increase, and has argued that it is especially unpalatable because it deals with post-tax dollars. It further argues that it is unfair for police officers to be included in the calculation of the cost of health care for the general labor population of Ottawa County.

It is noted that the identical provision outlined above has been offered to all other bargaining units and, as indicated, has been accepted by the Juvenile Court unit.

The evidence related to this issue regarding the comparable communities establishes that in Kent County, as of the execution date of the contract, employees were to contribute $44 per month to their health care. On January 1, 2004 that figure became $48 and on January 1, 2005 became $52. The contributions are collected through bi-weekly payroll deductions.

In the Allegan County contract, which terminated on December 31, 2002, the County employees shared payment of premiums. The employee paid $35 per month for family coverage, $27 per month for two-person coverage, and $18 per month for single coverage. As a point of information, in the current Allegan County contract there was a new provision which indicated that as of January 1, 2004, the County would pay 90% of the premium and the employee would pay 10% of the premium which was capped at 2% of the Deputy Step G in each year of the agreement. A deputy at Step G would, as of 2003, receive $21.45 per hour. Based on 2,080 hours per year, that would produce a yearly salary of $44,616. Two percent of that figure amounts to $892.32 or $74.36 per month.

The Collective Bargaining Agreement in Muskegon County, which terminates on December 31, 2004, provides that employees enrolled in the County's medical plans 1 or 1A pay $10 per month. If an employee selected plan 3B the employee pays the additional cost of that coverage in excess of the cost of plan 1A, in addition to the

contribution amounts set forth above. The amounts are paid through payroll deduction.

The comparable data suggests that some sharing of health care cost is appropriate. Indeed, every one of the employers referenced above requires some contribution.

Having stated the above and suggesting that a contribution is appropriate, it then becomes necessary to summarize what the prior discussion regarding the meaning of the Employer's Last Offer of Settlement has established. To be sure, and to make no mistake about it, the panel is specifically relying on the explanations contained in the Employer's brief, as well as the supplemental explanation forwarded by the Employer's counsel on September 17, 2004. The Employer's signature on this award confirms that understanding, for if that is not the case, the panel would have voted to continue the status quo.

To summarize the meaning of the language and utilizing only the full family rate as an example, even though the formula applies to all categories, the following procedure is the understanding embraced by the panel. The results may change if the dollars available change, but the procedure remains the same.

First, the total dollars available for health care in 2002 at the full family rate for health, dental 2 and optical was $7,966. This is the amount utilized as the base figure in the Employer's Last Offer of Settlement for full family coverage.

Second, beginning January 1, 2003 the same family rate of total dollars available was $9,674. Subtracting the $7,966, which

was the family base rate in 2002, establishes that the increase in actuarial requirement is $1,708. Utilizing the 80%/20% formula, the employee's contribution for the year beginning 1/1/03 is $341.60. When this is divided by 26, which is apparently the number of bi-weekly pay periods, the bi-weekly employee contribution is $13.14. This amounts to $26/$28 per month. I note that in its Last Offer the Employer calculates the monthly rate at $28.50 per month. The difference is that it has rounded $341.60 to $342.00 and then divided by 12 months. The panel has taken the exact figure of $341.60, divided it by 52 weeks, and then multiplied that result by 2 to represent the number of pay periods. The difference is insignificant.

On January 1, 2004 the total dollars available for the same full family coverage is $11,432. When $7,966, which is the 2002 base rate, is subtracted from that figure, the increase is $3,466. Twenty percent of that increase is $693.20. However, since the contribution by the employees is capped at a 25% increase from year to year, the application of that cap to the $341.60 liability in 2003 caps the Employer's liability to $427.00 in 2004. Thus, the employee's bi-weekly pay period contribution would be $16.42. Furthermore, since the increase over 2003 was $3,466 and since employees were only responsible for $427, the entire remaining balance would be the Employer's responsibility. This amounts to $3,039 which is about 87.7% of the $3,466 increase. So regardless of the 80% limit used in the first year calculation, the Employer

will be responsible for about 88% of the actuarial increase effective 1/1/04.

Using the figures supplied by the Employer for 2005, it is noted that the total full family dollars available amount to $12,850. Subtracting the 2002 base of $7,966, leaves an actuarial increase of $4,884. Twenty percent of that increase would be $976.80. However, when the 25% limit is applied to the $427 contributed by an employee in 2004, the maximum amount which can be contributed in 2005 is $533.75. This amounts to $20.52 bi-weekly/pay period. The remaining amount of the increase would be the Employer's responsibility. Thus, regardless of the initial 80% limit placed on the Employer's contribution to yearly increases, which was applicable on 1/1/03, the Employer would be paying $4,350.35 of the increase or about 89%.

As indicated, this methodology would apply to all categories, i.e., single, two-person, full family. The base figures represent total dollars available for health, dental 2 and optical.

Since all wage increases were made retroactive, the contributions required herein are also made retroactive in accordance with the Employer's Last Offer of Settlement. Additionally, it is noted that the contribution rates will be higher if the more expensive dental plan is selected. However, the methodology of the calculations would be the same.

As previously indicated, if the above represents the Employer's intent in effectuating its Last Offer of Settlement, then the panel concludes that its Last Offer of Settlement should

be accepted. It is noted that, as suggested by the Association, the cost to be absorbed by the employee will escalate, but the increases to the end of the term of this contract are modest and not as substantial as exists in, for instance, Kent County. There will be ample opportunity for the parties to negotiate over any concerns they may have regarding the characteristics of the premium sharing program or concerns which arise after its implementation.

AWARD - EMPLOYEE CONTRIBUTION TO HEALTH INSURANCE PLAN

The panel adopts the Employer's Last Offer of Settlement as outlined above and as represented by the Employer's submissions.

Mario Chiesa, Chairman 10-5-04

Association Delegate 9-24-04

Employer Delegate 10-1-04

EMPLOYEE PRESCRIPTION CO-PAY - ECONOMIC

When the agreement was terminated on 12/31/02 employees were required to pay a 10% co-pay on all prescription drugs. The minimum was $5.00 and maximum was $15.00 per prescription. In 2002 that maximum became $20.00.

The Employer's Last Offer of Settlement seeks to increase that prescription co-pay to $10.00 for generic drugs, $20.00 for brand name formulary, and $40.00 for brand name non-formulary. The characterization of the drugs is in accordance with the designations used by Blue Cross.

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The Employer also represents that if no generic drug was available or if the treating physician directs that a generic not be used, employees are nonetheless charged as if they had purchased the generic instead of the brand name. The statement is contained on page 29 of the Employer's brief and reads as follows:

> "This drug co-pay was created on the basis that it should be readily acceptable to employees. Under current policy, if there is no generic drug available or if the treating physician directs that a generic not be used, employees are charged as if they had purchased the generic instead of the brand name. This concept is also applied to the formulary, so that if the treating physician specifies that a non-formulary drug is required, the employee will only be charged the $20 co-pay that would apply to a formulary drug. These internal Dispense As Written requirements make Ottawa County's $10/$20/$40 similar in impact to the $10/$20 co-pay that has become extremely common, but includes some of the incentives for savings available if employees use formulary drugs over their more expense non-formulary counterparts."

The Association suggests that it is impossible to establish how much savings would attribute to the Employer as a result of the adoption of its offer. However, it is noted that without going back and analyzing each and every transaction for the past year and comparing that to the costs savings if the Last Offer of Settlement had been utilized, it is difficult to establish any type of savings based on historical data.

The Employer has indicated it has made the same offer to all other bargaining units.

As always, the information regarding what is available to employees in the comparable communities must be carefully considered.

It is interesting to note that in its brief the Employer indicates that deputies in Kent County are subject to a $10.00 co-pay rider. However, an examination of the Collective Bargaining Agreement contained in the record establishes that $10.00 only applies to generic drugs. Under the listing of "retail" the employee responsibilities are $10.00, $15.00 and $30.00 for generic formulary and non-formulary drugs. The same dollar co-pay exists for "mail order." There are provisions which indicate that if a non-formulary brand prescription is prescribed and there is no other formulary equivalent, the appropriate formulary brand co-pay shall apply. Furthermore, brand name prescriptions written as DAW are subject to the corresponding co-pay of the tier in which the prescription belongs. Brand name prescriptions written as non-DAW, will require a $10.00 co-pay if no generic is available.

I note that the Employer takes the position that deputies in Allegan County are subject to a $10.00, $15.00 and $20.00 drug co-pay rider. In that regard the Allegan County contract, which terminated on December 31, 2002, makes no mention of drug co-pays. At least an examination of the contract didn't reveal a reference to drug co-pays. However, the new Allegan County contract, which is effective January 1, 2003, contains what appears to be new language and it provides, in general, a $10.00, $15.00 and $20.00 plan.

The Employer indicates that in Muskegon County deputies are subjected to a $7.00/$12.00 50% drug co-pay rider. However, nothing has been discovered in the Collective Bargaining Agreement.

Nonetheless, what is clear from the evidence is that the comparable communities have an array of benefits. It is noted that Kent County's formula is extremely similar to that sought by the Employer in the current dispute, although it is less expensive for the employee at a formulary and non-formulary level.

After carefully analyzing the entire record, an application of the appropriate factors convinces the panel that the Employer's Last Offer of Settlement should be accepted.

AWARD - PRESCRIPTION CO-PAY

The Employer's Last Offer of Settlement regarding the economic issue of prescription co-pay be adopted.

10-5-04
Mario Chiesa, Chairman

Dissent 9-24-04
Association Delegate

10-1-04
Employer Delegate

Dated: September 21, 2004

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10-5-04
Mario Chiesa, Chairman

9-24-04
Association Delegate

10-1-04
Employer Delegate

Dated: September 21, 2004

DISSENTING OPINION OF OTTAWA COUNTY DELEGATE RICHARD SCHURKAMP

I have reviewed the Act 312 Decision drafted by Chairperson Chiesa and have indicated in the body of that Decision the matters to which I agree and those matters in which I dissent. As to those issues in which I have agreed I do not necessarily agree with all of the analysis utilized to support that Award. As to those issues in which I have dissented, that dissent is based upon a disagreement with the analysis that supported the Award on that issue as well as the Award. In the interest of brevity I will not explain all of the reasons for dissenting on each issue, but there are certain matters in which I believe it is important to express some of the reasoning that lead to my dissent.

Retroactivity of grievance arbitration. The parties have agreed that the issue of grievance arbitration is a non-economic issue, and the Chairperson has concluded that the Act 312 Panel has the authority to retroactively implement a provision changing a non-economic issue. The Michigan Court of Appeals in *Local 1917, Metro Council No. 23, AFSCME v Wayne Co Bd of Comm'rs*, 86 Mich App 453, 462-463; 272 NW2d 681 (1978) specifically addressed this issue and held that an Act 312 Panel does not have jurisdiction to retroactively implement a provision changing a non-economic issue. The Chairperson appears to contend that this published decision of the Court of Appeals can be disregarded because there was a dissenting opinion. Under MCR 7.215(C)(2) "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." As a result, this decision is the law in Michigan until it is reversed by the Michigan Court of Appeals or the Michigan Supreme Court. It should also be noted that as recently as June 17, 2004, the Court of Appeals affirmed the validity of this holding in *Flint Police Officers Ass' v City of Flint*, Court of Appeals No. 244985, when it stated "Indeed, based upon the statute's language, this Court has held that non-economic benefits could not be applied retroactively absent a specific provision in the statute providing for it. *Local 1917, Metro Council No. 23, AFSCME v Wayne Co Bd of Comm'rs*, 86 Mich App 453, 462-463; 272 NW2d 681 (1978)." This Act 312 Panel does not have the authority to retroactively apply the provision requested by the POAM and therefore cannot lawfully consider that proposal since it dealt solely with the retroactive application of grievance arbitration back to January 1, 2003.

Automatic extension of collective bargaining agreement after expiration. The parties have agreed that the collective bargaining agreement to be created by this Act 312 proceeding will cover the period from January 1, 2003 through December 31, 2005. An Act 312 Panel has no jurisdiction to enter an award dealing with issues that arose prior to the beginning of this period or to enter into an award dealing with issues that will arise after the end of that period. In this instance, the POAM has proposed to add the following language to the agreement:

> Upon transmittal of such notice, this Agreement shall remain in full force and effect until the earlier of: execution of a successor agreement through negotiated settlement (or compulsory arbitration), or December 31st of the year next following the year in which such notice is given; provided that continuation of the Agreement shall not constitute a waiver or bar to any

> claim for retroactive application of wages and/or benefits in any successor agreement.

The purpose of this language is to automatically extend the term of the collective bargaining agreement beyond its termination date, and is outside the jurisdiction of the Act 312 Panel because it deals with issues that can only arise after the end of the period in dispute in this proceeding .

In addition, as noted by the Michigan Employment Relations Commission in *POAM –and- City of Manistee*, 1987 MERC Lab Op 92, 97:

> Charging Party points out that by law there are certain provisions of the contract which are "creatures of the contract" and which the employer may terminate unilaterally when that contract expires even though it has , in general, a duty to maintain the *status quo* until impasse or agreement (or during the pendency of an Act 312 proceeding). Thus, an employer's agreement to extend the contract past its expiration date during negotiation for a new agreement provides a valuable benefit to the union. We agree with Charging party the rights and obligations of the parties to a collective bargaining agreement alter when there is no collective bargaining agreement in effect.

The proposed automatic extension language would prohibit the County from exercising certain rights it lawfully possesses upon contract expiration such as the right to decline to arbitrate certain grievances, the right to decline to collect union dues and the right to decline to continue in effect provisions of the expired collective bargaining agreement that are permissive subjects of bargaining. In addition, this proposed language would also prohibit the employees within this collective bargaining unit from exercising their right to change their collective bargaining representative since MERC's contract bar rule could prohibit the processing of a rival union's petition or a decertification petition filed by employees seeking to no longer be represented by the POAM.

It is important to understand that some of the provisions contained in the collective bargaining agreement are not terms of employment but as noted in *Wayne County*, 1985 MERC Lab Op 168, 176 "benefits running to the labor organizations, such as union security, end with the contract, as does a codified grievance procedure, even when containing a provision for arbitration. It is the latter aspect of the *Warren Consolidated* case that is significant to the one at hand. The contractual benefits that run to a labor organization are the equivalent to those contractual benefits that run to a public employer. Examples of such employer benefits would be waiver clauses, waiving a union's statutory right to be bargained with about changes in working conditions. On this basis, I conclude that contract clauses such as a management rights clause that limits the statutory bargaining rights of a represented labor organization are extinguished upon the expiration date of the contract." This proposal is essentially a requirement that the County waive its legal right to elect to discontinue these matters after contract expiration, and constitutes a

permissive subject of bargaining that the POAM cannot insist upon discussing or submitting to Act 312 arbitration.

Wages. The Award grants employees increase of 4.0% in 2003, 3.0% in 2004 and 3.0% in 2005, even though Ottawa County currently pays its deputies more than the average of the three counties utilized for labor market purposes and only is behind Kent County in wages for these employees. I do not believe that Kent County is a true comparable to Ottawa County since it is significantly larger in population and includes a large metropolitan core city. While the level of wages paid to employees in Kent County is somewhat relevant to this proceeding, those wages should not effectively determine the wages as occurred in this instance. In addition, the Chairperson failed to address the impact of internal comparability. Every other union representing employees in Ottawa County has voluntarily agreed to receive wage increases of 3.2% in 2003, 2.0% in 2004 and 2.3% in 2005, including the POAM and COAM in their representation of non-act 312 eligible Sheriff Department employees. In the absence of a wage rate that is demonstrated to be below the prevailing wage rate, it is inappropriate to award employees wage increases higher than the remainder of the employees in Ottawa County simply because they are eligible for Act 312. Such actions encourage Act 312 eligible employees not to reach voluntary resolutions at the collective bargaining table, since it sends the message that there is always something more to be achieved by invoking the Act 312 process.

These are the major reasons that I dissented from portions of the Act 312 Decision and Award.

Richard Schuramp

Richard Schuramp
Ottawa County Human Resources Director
Ottawa county Delegate
October 1, 2004

EMPLOYER'S LAST OFFER OF SETTLEMENT

EXHIBIT A

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
Employment Relations Commission
Labor Relations Division

OTTAWA COUNTY and
OTTAWA COUNTY SHERIFF

Respondent/Employer, **Case No. L02 E-8007**

and

POLICE OFFICERS ASSOCIATION OF MICHIGAN

Petitioner/ Labor Organization.

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Ottawa County Final Offer of Settlement

Ottawa County, by its attorneys, Nantz, Litowich, Smith & Girard, submits the following Final Offer of Settlement of the issues in dispute.

A. ISSUES ON WHICH FINAL OFFERS ARE BEING SUBMITTED AT THIS TIME

1. **Floating Holidays. (Ottawa County Issue)**

Employees who leave County employment are not currently paid for unused floating holidays.

Ottawa County proposes to add the following new language to Section 9.1E:

(iii) Employees who leave employment for any reason shall not be compensated for remaining Floating Holiday time, if any exists.

2. **Dog Handler Pay.**

Employees assigned to the K-9 Unit currently receive $300 per year for theses duties.

Ottawa County proposes to add the following new section:

Section 14.3. Dog Maintenance Payments. It is recognized that individuals assigned to a K-9 Unit are required to provide for the care and feeding of their assigned dogs. The time necessary to perform these tasks is normally one half (1/2) hour per day, seven days a week. The County will pay the dog handler for three and one half hours each week for each dog assigned to their care without receipt of specific time records documenting this time; provided, however, that the employee should submit documentation of the time and activities if more time is expended in any week. Employees shall be paid for this time at the rate of $10.00 per hour if the work is performed outside of the employee's regularly scheduled hours and that any overtime incurred as a result of the care and feeding of assigned dogs will be paid utilizing this rate as the individual's straight time rate of pay. Overtime pay shall only be required under this section if the hours actually worked by the officer for which compensation is paid at straight time rates combined with the hours worked in the care and feeding of assigned dogs exceeds one hundred seventy-one (171) during the 28 day work period. These payments shall be in lieu of Specialist Pay for K-9 Officers under Section 14.2.

3. **Retiree health insurance - Formula**

Employees who retire under a normal service retirement are currently provided with a contribution towards the cost to participate in the County's health care plan in the amount of $8.00 per year of service up to a maximum payment of $200 per month.

Ottawa County proposes to modify Section 13.7 to read as follows:

13:7. (a) Retiree Health Insurance. Employer will credit retiree eight dollars ($8.00) for each year of service with the Employer up to a maximum of $200/month for applying towards health coverage through the Employer, **as the same may be changed from time to time,** for retiree and spouse after age fifty (50) and up until age sixty-five (65), (e.g. 22 years of service X $8.00 = $176/month credit). **This retiree health insurance provision is applicable only to those employees who are immediately eligible to collect a retirement from MERS upon leaving the County's service and is not applicable to employees who will be eligible to collect a retirement benefit at a later date due to their service with the County.**

(b) Effective December 1, 1996: For employees in all classifications except Detective and Road Patrol Deputy, the Employer shall carry future retirees on the Employer's health coverage at the retiree's cost.

4. **Retirement Plan - Multiplier.**

Employees currently participate in MERS Plan B-4 with riders F(50)(25) and E-2.

Ottawa County proposes no change to the current B-4 multiplier and would continue the language of Section 15.1(iii) which reads as follows:

15.1(iii): for employees in the classifications of Detective and Road Patrol Deputy: The Employer shall pay all costs, including the employee's portion, of the current retirement plan in accordance with provisions of the law. The retirement plan is the Municipal Employee's Retirement System (MERS) C-2 Plan with B-1 base. In addition, a F-50 waiver (after 25 years of service) and the E-2 benefit is included in the retirement plan. Effective 12/21.94: The Employer shall assume the full costs for improving the (MERS) retirement system to benefit level B-3 for all years of service.

Effective 12/31/96: Detectives and Road Patrol Deputies shall pay one percent (1%) of their annual MERS reportable wages towards the cost of their retirement plan. Effective December 31, 1998, the MERS pension plan multiplier will be increased to the B-4 benefit level with employees paying an additional two and one-tenths percent (2.1%) of their salaries towards the change. The total employee contribution towards the pension benefit there is three and one-tenths (3.1%) of annual MERS reportable wages.

In the alternative, Ottawa County proposes no change to the current B-4 multiplier, but for clarity sake would revise the language to read as follows:

The program of retirement benefits provided for in Plan B-4 with riders F50(25) and E-2 of the Municipal Employees Retirement System of Michigan (MERS) shall be in effect for employees in the classifications of Detective and Road Patrol Deputy. As participants in the retirement plan, employees contribute 3.1% of their annual MERS reportable wages through required payroll deductions. The specific terms and conditions governing the retirement plan are controlled by the Plan Document establishing the Municipal Employees Retirement System.

5. **Retirement Plan - Employee Contribution**

Employees currently contribute 3.1% of their annual MERS reportable wages to the retirement plan.

In the event that the Panel determines that a pension multiplier increase should be implemented, Ottawa County proposes that the following new provision be added to 15.1(iii):

Effective upon implementation of the pension multiplier increase: The current three and one-tenths (3.1%) of annual MERS reportable wages employee contribution towards the retirement plan for Detectives and Road Patrol Deputies shall be increased by the amount calculated by the MERS actuaries to be the additional normal cost of the increase in multiplier from B-4 to 3.00 [or whatever multiplier is awarded]. In addition, an amount equal to the total amount calculated by the MERS actuaries to be the newly created unfunded liability created by applying the increase in multiplier from B-4 to 3.00 [or whatever multiplier is awarded] to the years of service prior to the effective date of the multiplier increase shall be deposited by the POAM with MERS on behalf of the employees in the unit.

In the alternative, in the event that the Panel determines that a pension multiplier increase should be implemented, Ottawa County proposes that the following new provision be added to 15.1(iii):

Effective upon implementation of the pension multiplier increase: The current three and one-tenths (3.1%) of annual MERS reportable wages employee contribution towards the retirement plan for Detectives and Road Patrol Deputies shall be increased by the sum of (a) the amount calculated by the MERS actuaries to be the additional normal cost of the increase in multiplier from B-4 to 3.00 [or whatever multiplier is awarded] and (b) the amount calculated by the MERS actuaries to be the newly created unfunded liability created by applying the increase in multiplier from B-4 to 3.00 [or whatever multiplier is awarded] to the years of service prior to the effective date of the multiplier increase utilizing a period of five (5) years to amortize this amount. The additional contribution required by (b) shall remain in effect for the longer of five years or until the total contributions received from (b) equal the total amount calculated by the MERS actuaries to be the newly created unfunded liability created by applying the increase in multiplier from B-4 to 3.00 [or whatever multiplier is awarded] to the years of service prior to the effective date of the multiplier increase.

6. Overtime Pay

Under Section 5.2 (a) employees currently are paid overtime in accordance with FLSA, which does not require an employer to count time paid but not worked.

Ottawa County proposes that there be no change in the method in which overtime is calculated, but for clarity purposes proposes to revise this section to read as follows:

5.2(a): Employees shall be paid time and one-half (1½) their regular straight time rate of pay for all hours actually worked in excess of eighty (80) hours in a fourteen day work period. For purposes of this section, hours worked does not include time for which the employee is compensated but is not required to work such as paid sick leave, vacation, compensatory time or bereavement leave. Employees in the classifications of Detective and Road Patrol Deputy who work overtime may elect to receive compensatory time in lieu of receipt of overtime pay. Compensatory time shall be credited at the rate of one and one-half (1½) hours for every hour of overtime worked and may be accumulated to a maximum of one hundred twenty (120) hours. Compensatory time shall be scheduled in advance at a time mutually agreeable to the employee and the Employer.

7. Call-in Pay.

Ottawa County currently pays employees a minimum of 2 hours pay when they are required to report for work at a time other than their regularly scheduled shift, but this pay guarantee is reflected only in Section 11.1: Court Time.

Ottawa County proposes to add a new section to read as follows:

5.5. Call-in Pay: Employees who are required to work at times other than their regularly scheduled shift shall be paid for two (2) hours at time and one half (1½) their regular rate of pay or for the time actually worked at the appropriate rate, whichever is greater. The hourly pay guarantee of this Section does not apply in instances where the employee is required to perform duties past the scheduled termination of their regularly scheduled shift, in instances where the employee is called to work prior to the start of their regularly scheduled shift and continues to work through the start of their regularly scheduled shit, or in instances where the employee is not mandated to accept the additional work assignment. In addition, the hourly pay guarantee does not apply to an employee receiving Specialist Pay under Section 14.2 for the attendance at training or monthly meetings relating to their specialty or if after receiving a call-in they are advised not to report prior to their arrival at the location where the extra work was to be performed.

8. **Insurance Out of Pocket Annual Maximum.**

The health care plan currently has an annual out pocket maximum for out of network claims of $1,100 single and $1,200 family.

Ottawa County proposes to add the following new section:

13.1: Hospital/Medical Insurance (for employees in the classification of detective and Road Patrol Deputy).

C. Effective January 1, 2004, the annual out pocket maximum for out of network claims shall be $1650 single and $1,800 family.

9. **Employee Health Insurance Coverage Waiting Period**

Employees currently become eligible for insurance coverage under the health care plan on their first day of employment with the County.

Ottawa County proposes to add the following new section:

13.1: Hospital/Medical Insurance (for employees in the classification of detective and Road Patrol Deputy).

D. Initial Insurance Coverage. Employees hired after 1-1-2004 (or the date of the Act 312 Award, whichever is later) shall become eligible for insurance coverage the first of the month following their first 60 calendar days of employment with the County.

10. **Employee Contribution to Health Insurance Plan**

Ottawa County provides a cafeteria plan that allows employees the option to participate in the health and vision care plans and to select one of two dental plans. The County currently makes available the full amount of the actuarial determined cost for the least expensive plan.

Ottawa County proposes to limit the amount of additional funds that it will place into the cafeteria plan to 80% of the increased costs for the health, RX, dental and vision plan effective for calendar years beginning 1-1-2003. The additional amounts that would have been paid by employees in 2003 shall not be paid retroactively, unless the Act 312 Panel awards a retroactive pay increase for 2003. The contribution levels for 2004 shall be effective as of 1-1-2004, and shall be paid retroactively if the Act 312 Award is not issued before December 31, 2003.

This cost sharing would be accomplished by modifying Section 13.1 A and by adding a Letter of Understanding that would read as follows:

13.1: Hospital/Medical Insurance (for employees in the classification of Detective and Road Patrol Deputy).

A. Employees in the bargaining unit will be eligible to participate in a county cafeteria plan and flexible spending account. The benefit dollars available in the flexible spending account in 2002 were $2,644 (Single), $5,710 (Two person) and $7,966 (Family). The County has its actuary calculate the anticipated cost for the health, RX, dental and visions care plans each year, and provides that cost figure to the County prior to the beginning of each calendar year. The benefit dollars available each calendar year is an amount equal to the benefit dollars in effect in 2002, plus 80% of the difference between the benefits dollars in effect in 2002 and the anticipated cost for the lowest cost plans in effect that calendar year. Employees are responsible for all costs in excess of these amounts for the plans they select within the cafeteria plan.

Letter of understanding regarding flexible benefit amounts.

Section 13.1A establishes that the benefit dollars available for use in the cafeteria plan each calendar year beginning 1-1-2003 is an amount equal to the benefit dollars in effect in 2002, plus 80% of the difference between the benefits dollars in effect in 2002 and the anticipated cost calculated by the County's actuary for the lowest cost plans in effect that calendar year. The benefit dollars available for use in 2003 are calculated as follows:

1-1-2003

Single: The 2002 benefit level was $2,644 and the 2003 actuarial cost for the health care plans was $3,211. This represented a $567 increase in costs over the 2002 base period, 80% of which is $453. The new benefit level for 2003 is increased to $3097, with employees required to pay all costs in excess of this amount. ($114 or $9.50 per month)(Higher if the more expensive dental plan is elected).

Two Person: The 2002 benefit level was $5,710 and the 2003 actuarial cost for the health care plans was $6,927. This represented a $1217 increase in costs over the 2002 base period, 80% of which is $973. The new benefit level for 2003 is increased to $6,683, with employees required to pay all costs in excess of this

amount. ($244 or $20.33 per month). (Higher if the more expensive dental plan is elected).

Family: The 2002 benefit level was $7,966 and the 2003 actuarial cost for the health care plans was $9,674. This represented a $1708 increase in costs over the 2002 base period, 80% of which is $1,366. The new benefit level for 2003 is increased to $9,332, with employees required to pay all costs in excess of this amount. ($342 or $28.50 per month). (Higher if the more expensive dental plan is elected).

The County has already received its actuarial cost for 2004, which is $3,792 (single), $8,182 (Two person) and $11,432 (family), and these amounts will be utilized to calculate the benefit dollars for 2004.

11. **Wellness payments.**

The health care plan currently provides an annual per person wellness/prevention amount of $250.

Ottawa County proposes to add the following new section:

13.1: Hospital/Medical Insurance (for employees in the classification of detective and Road Patrol Deputy).

F. Wellness payments. Effective January 1, 2004, the annual per person wellness/prevention amount shall be $300.

12. **Employee Prescription Co-pay (Ottawa County Issue)**

Employees currently pay a10% co-pay on all prescription drugs, with a maximum payment of $20.

Ottawa County proposes to modify Section 13.1 B to read as follows:

13.1: Hospital/Medical Insurance (for employees in the classification of detective and Road Patrol Deputy).

B. Effective on January 1, 2004 or upon the issuance of the Act 312 Award, whichever is later, the health care plan shall be modified to change the prescription rider to be $10 (generic), $20 (brand name formulary) and $40 (brand name non-formulary). (The brand name formulary and brand name non-formulary shall be determined in accordance with the designations used by Blue Cross.)

13. **Road Patrol Wages**

Road Patrol Deputies currently are paid $46,337 at the five year step.

Ottawa County proposes that wages for Road Patrol Deputies shall be established as follows:

January 1, 2003	3.2% (Not to be paid retroactivity)(**$47,819 five year rate**)
January 1, 2004	2.0% (To be paid retroactively to the first full pay period on or after January 1, 2004 or the date of issuance of the Act 312 Award, whichever is later)(**$48,776 five year rate**)
January 1, 2005	Increase wages by the CPU used to calculate the Headlee rollback as provided to the County by the State Treasurer with a minimum of 2.00% and a maximum of 5.00%.

14. **Detective Wages**

Detectives currently are paid $49,177 at the five year step or $2780 above the top deputy rate.

Ottawa County proposes that wages for Detectives shall be established as follows:

January 1, 2003	$2780 above appropriate Deputy step (**$50,599**) (Not to be paid retroactivity)
January 1, 2004	$2390 above appropriate Deputy step (**$51,166**).
January 1, 2005	$2000 above appropriate Deputy step. (**$51,751 to $53,214**)

15. **Retiree Health Insurance - Survivor Benefit**

Retirees and spouses currently participate in the retiree health care plan. IN the event that the retiree dies, the surviving spouse is allowed to continue to participate in the health care plan at their own expense.

Ottawa County proposes that there should be no change in this coverage and it should not be required to pay any amounts towards the health insurance coverage of the surviving spouse of a deceased retiree.

B. ISSUES ON WHICH NO FINAL OFFER IS BEING SUBMITTED AT THIS TIME PENDING RESOLUTION OF PRELIMINARY MATTERS

1. **Grievance Procedure – Retroactivity of Arbitration. (POAM Issue)**

The POAM has listed "Grievance Procedure – Retroactivity of Arbitration" In the event that the Act 312 Panel determines that this issue is within its jurisdiction, Ottawa County will submit its position on this non-economic issue in accordance with the direction of the Act 312 Panel.

2. **Grievance Procedure – Arbitrator's Powers. (POAM Issue)**

The POAM has listed "Grievance Procedure – Arbitrator's Powers" as an issue in dispute on the Act 312 Petition. " In the event that the Act 312 Panel determines that this issue is within its jurisdiction, Ottawa County will submit its position on this non-economic issue in accordance with the direction of the Act 312 Panel.

C. ISSUES ON WHICH NO FINAL OFFER IS BEING SUMBITTED AT THIS TIMEDUE TO TENTATIVE AGREEMENTS

1. **Separate Agreements.** The parties have agreed to develop separate collective bargaining agreements, one for Act 312 eligible employees and one of non-Act 312 eligible employees.

2. **Leaves of Absence.** The parties have agreed to certain changes in Article VII, Leaves of Absence.

3. **Step 3 Grievance Procedure timetables.** The parties have agreed to modify Section 19.2 to read as follows:

Step 3. If the grievance is not settled at such meeting, a meeting shall be held **within thirty (30) days of the Step 2 meeting,** at which the Sheriff and/or his designated representative(s), together with such other persons as he may desire to be present, the aggrieved employee and an Union representative shall be present. The Sheriff shall make a written reply to the Grievant within five (5) days after such meeting.

4. **Residency**. The parties have agreed to modify Section 23.3. Residency to recognize the current residency statute.

5. **Longevity**. The parties have agreed to modify Section 25.2 by adding the following language:

Employees who qualify for longevity and convert from part-time to full-time status shall receive a pro rata longevity amount for the year in which they convert (October 1st to October 1st) based upon their hours worked in relation to full-time. Following completion of their first year of full-time employment (October 1st to October 1st) they shall be eligible to receive the full longevity amount.

6. **Floating Holidays.** The parties have agreed to modify Section 9.1(E) to read:

E. "Floating " holidays shall be prorated in one-half day increments for the year for new employees hired during the calendar year and employees who terminate their employment during the year as follows:
   (i) For employees who begin employment during the calendar year proration of Floating Holidays shall be according to the following

example: Bargaining Unit hire date is July 8th, leaving 5.75 months remaining in year (July 8 to December 31). Floating Holiday time credited is 19.1475 hours (3.33 hours per month X 5.75 months). This employee will be credited with twenty (20) hours after rounding to the nearest whole hour.

(ii) If such proration of Floating Holidays for employees who terminate during the calendar year results in an overuse of Floating Holidays the amount of the overuse times the employee's hourly rate of pay will be deducted from their final paycheck. Example: Employee terminates on May 28th with a balance of ten (10) hours of Floating Holiday time remaining. Seven months remain in the year, therefore the remaining balance should be 23.31 hours (3.33 hours per month X 7 months = 23.31). The balance remaining however is only ten (10) hours. This employee have 13.31 hours of pay deducted from their paycheck (23.31 – 10 = 13.31).

NANTZ, LITOWICH, SMITH & GIRARD
Attorneys for Ottawa County

Dated: October 16, 2003

By: _____
John H. Gretzinger (P28979)

Business Address:
600 Weyhill Building
2025 East Beltline, S. E.
Grand Rapids, Michigan 49546
(616) 977-0077

NANTZ, LITOWICH, SMITH & GIRARD
ATTORNEYS AND COUNSELORS
A Professional Corporation
2025 East Beltline, S.E., Suite 600, Grand Rapids, Michigan 49546 • (616) 977-0077 • Facsimile (616) 977-0529

JOHN H. GRETZINGER
Direct Dial: (616) 977-0403 Ext. 22
Email: john@nlsg.com

September 17, 2004

Mr. Mario Chiesa
428 N. Gulley Road
Dearborn, MI 48128

Re: County of Ottawa-and-POAM, MERC Act 312 Case No. L02 E-8007

Dear Mr. Chiesa:

This letter is in amplification of our telephone conversation on September 17, 2004 when you requested verification on how the County's Offer on the employee portion of the health care plan would work in 2004 and 2005. In 2003 employees would pay 20% above the base rate in effect in 2002. In 2004 and 2005, there would be an 80/20 split subject to a maximum yearly employee increase in 2004 and beyond of 25% higher than in the previous year. See, OCJECA Settlement Agreement (Exhibit 49) and Mr. Schurkamp's testimony that "their 20 percent could not increase by more than 25 percent." (T-317). I attempted to explain this aspect of the County's proposal on pages 25 to 27 of my post-hearing brief, and indicated that this identical proposal was agreed to in the Juvenile Court settlement and had been agreed to in principal by all of the other unions. Although Ottawa believed that this group could afford higher premium contributions, its offer was identical to that made and accepted by the other unions in the County. The draft letter of understanding that attempted to explain this proposal in contractual language may not have clearly explained this portion of the offer, but the County's understanding of its proposal was clearly set forth in the brief. Attached is the current calculation of the 2004 rates.

In regards to the 120 hour reference in the proposal on Overtime, Section 5.2(c) specifically references the "current compensatory time maximum of 120 hours." As part of a grievance resolution in 2002, the parties agreed that effective 4/12/02, Section 5.2(a) would be amended to include a statement that "compensatory time may not be accumulated in excess of one-hundred and twenty (120) hours. Attached is a copy of the correct page from the CBA.

If you have any further questions, please contact the undersigned.

Very truly yours,

NANTZ, LITOWICH,
SMITH & GIRARD

John H. Gretzinger

JHG/.\
Cc: Mr. Richard Schurkamp
Mr. Bill Birdseye (POAM)
Mr. Jim DeVries (POAM)

HEALTH INSURANCE CO-PAYMENT - 2004

Deduction Code/Description	2002 Benefit	2004 Benefit	Difference	20% Annual Co-Pay	Bi-Wk Deduction	2004 Bi-Wk Deduction	25% Cap 2003-2004	2003 Co-Pay
365 - Single	2,644.00	3,792.00	1,148.00	229.60	8.83	5.46	141.75	113.40
375 - 2 Person	5,710.00	8,182.00	2,472.00	494.40	19.02	11.71	304.25	243.40
385 - Family	7,966.00	11,432.00	3,466.00	693.20	26.66	16.43	427.00	341.60

Benefit Group 710 - 750	Juvenile	Coverage starts 5/1/03
Benefit Group 610 - 620	District Court	Coverage starts P/E 03/13/04
Benefit Group 510	Friend of Court	Coverage starts P/E 03/27/04
Benefit Group 209 - 240	MNA	Coverage starts P/E 04/24/04
Benefit Group 119 - 126	Group T	Coverage starts P/E 05/22/04

HEALTH INSURANCE CO-PAYMENT - 2005

Deduction Code/Description	2002 Benefit	2005 Benefit	Difference	20% Annual Co-Pay	Bi-Wk Deduction	**2005 Bi-Wk Deduction**	25% Cap 2004-2005	2004 Co-Pay
365 - Single	2,644.00	4,261.00	1,617.00	323.40	12.44	**6.82**	177.19	141.75
375 - 2 Person	5,710.00	9,189.00	3,479.00	695.80	26.76	**14.63**	380.31	304.25
385 - Family	7,966.00	12,850.00	4,884.00	976.80	37.57	**20.53**	533.75	427.00

Benefit Group 710 - 750	Juvenile	Coverage starts 5/1/03
Benefit Group 610 - 620	District Court	Coverage starts P/E 03/13/04
Benefit Group 510	Friend of Court	Coverage starts P/E 03/27/04
Benefit Group 209 - 240	MNA	Coverage starts P/E 04/24/04
Benefit Group 119 - 126	Group T	Coverage starts P/E 05/22/04

5.2(a): An employee covered by this Agreement who is required by the Department to work in excess of an average of forty (40) hours per week will receive payment at the rate of time and one-half or compensatory time at the rate of time and one-half for such excess hours.

Effective 4/12/02: An employee who is required by the Department to work in excess of an average of forty (40) hours per week shall have the option to request either pay or compensatory time off provided however that compensatory time may not be accumulated in excess of one-hundred and twenty (120) hours.

5.2(b): All regular full-time Road Patrol Officers who are assigned by the Sheriff to work a twelve (12) hour shift shall normally work eighty-four (84) hours per pay period and receive eighty (80) hours of pay at the straight time rate. The difference in hours between eighty-four (84) and eighty (80) shall be submitted as a request for four (4) hours of compensatory time at an hour for hour rate.

5.2(c): Compensatory time elimination for employees in all classifications except Detective and Road Patrol Deputy: Effective 12/31/97, the current compensatory time maximum accumulation of one hundred and twenty (120) hours shall be reduced to eighty (80) hours. Effective 12/31/98, the maximum accumulation shall be reduced to forty (40) hours. Effective 12/31/99, compensatory time will be eliminated.

5.3: Overtime shall be as equally distributed among qualified employees of a division as is reasonable.

5.4: Work schedules shall be posted on a monthly basis at least one (1) week prior to the beginning of the next month's schedule. Schedule changes requested by an employee after a schedule has been posted will not be allowed unless:

(a) employees affected by the schedule change mutually agree to the employee's request and the Employer approves, or

(b) the Employer determines the employee's shift may go unfilled and approves the request.

The Employer specifically reserves the right to make schedule changes due to, but not limited to, employee illness or injury and emergency situations. Schedule changes for the purpose of avoiding overtime caused by an employee's illness or injury will not be made by the Employer the first day without employee consent.

UNION'S LAST OFFER OF SETTLEMENT

EXHIBIT B

IN THE MATTER OF
ARBITRATION UNDER ACT 312
PUBLIC ACTS OF 1969
AS AMENDED

BEFORE MARIO CHIESA, ESQ., IMPARTIAL CHAIRMAN

COUNTY OF OTTAWA

- and -

MERC Case No. L02 E-80079

POLICE OFFICERS ASSOCIATION
OF MICHIGAN
_____/

UNION'S FINAL OFFER OF SETTLEMENT

Police Officers Association
of Michigan
27056 Joy Road
Redford, MI 48239-1949
(313) 937-9000

UNION ISSUES

*1. Duration

2. Wages - Across-the-Board

3. Pension - Multiplier

4. Retiree Health Insurance - Survivor Benefit

5. Retiree Health Insurance - Formula

6. Call-In Pay

7. Overtime - Definition

**8. Grievance Procedure - Retroactivity of Arbitration

9. K-9 Officers - Compensation

With the exception of Union Issue #1, #8 and #9 all Union issues are economic.

EMPLOYER ISSUES

1. Health Care - Coverage, Premium and Prescription

* The parties have agreed to a duration of three years for the period of January 1, 2003 through December 31, 2005. However, the language contained in Article XXVI shall be decided as a separate issue by the arbitrator.

** Issue #8 shall also be decided as a separate issue by the arbitrator.

UNION ISSUE #1

DURATION

PRESENT:

ARTICLE XXVI
DURATION

26.1 (ii) This Agreement shall be effective for employees in the classifications of Detective and Road Patrol Deputy August 5, 1998, and shall remain in full force and effect until December 31, 1999, and shall become automatically renewable from year to year thereafter, unless either party wishes to terminate, modify or change this Agreement, in which event, notification of such must be given to the other party in writing sixty (60) days prior to the expiration date of this Agreement, or any anniversary date thereof.

To be decided later.

UNION ISSUE #2

WAGES

PRESENT:

Salary Schedule for All Classifications
Detective and Road Patrol Deputy

Effective 1/1/02: Increase the 2001 salary schedule 3.2%.

		A STEP START	B STEP 1 YEAR	C STEP 2 YEAR	D STEP 3 YEAR	E STEP 5 YEAR
4170 Road Patrol Deputy						
1/1/02	Annual	$35,880	$43,228	$44,635	$46,217	$46,336
	Hourly	17.2500	20.7831	21.4592	22.2198	22.2774
4200 Detective						
1/1/02	Annual	$38,033	$45,822	$47,313	$48,988	$49,117
	Hourly	18.2851	22.0300	22.7468	23.5523	23.6143

UNION'S FINAL OFFER OF SETTLEMENT:

Add language to contract:

Salary Schedule for All Classifications
Detective and Road Patrol Deputy

Effective 1/1/03: Increase all classifications by 4.0%.

		A STEP START (4.0%)	B STEP 1 YEAR (4.0%)	C STEP 2 YEAR (4.0%)	D STEP 3 YEAR (4.0%)	E STEP 5 YEAR (4.0%)
4170 Road Patrol Deputy						
1/1/03	Annual	$37,315	$44,957	$46,420	$48,066	$48,189
	Hourly	17.940	21.614	22.318	23.109	23.168

		A STEP START (4.0%)	B STEP 1 YEAR (4.0%)	C STEP 2 YEAR (4.0%)	D STEP 3 YEAR (4.0%)	E STEP 5 YEAR (4.0%)
4200 Detective						
1/1/03	Annual	$39,554	$47,655	$49,206	$50,948	$51,082
	Hourly	19.017	22.911	23.657	24.494	24.559

Effective January 1, 2004 and January 1, 2005, the annual wages for Road Patrol Deputy and Detective shall increase equal to the percentage the State of Michigan informs municipalities as the inflation rate for the "Headlee" calculation, with a minimum increase of 3.0% and a maximum increase of 5.0%.

Wages to be retroactive to January 1, 2003 for all hours compensated, for all employees in the bargaining unit as of January 1, 2003.

UNION ISSUE #3

PENSION - MULTIPLIER

PRESENT:

ARTICLE XV
RETIREMENT

15.1(iii): For employees in the classifications of Detective and Road Patrol Deputy: The Employer shall pay all costs, including the employee's portion, of the current retirement plan in accordance with provisions of the law. The retirement plan is the Municipal Employees Retirement System (MERS) C-2 Plan with B-1 base. In addition, a F-50 waiver (after 25 years service) and the E-2 benefit is included in the retirement plan.

Effective 12/21/94: The Employer shall assume the full costs for improving the (MERS) retirement system to benefit level B-3 for all years of service.

Effective 12/31/96: Detectives and Road Patrol Deputies shall pay one percent (1%) of their annual MERS reportable wages toward the cost of their retirement plan. Effective December 21, 1998, the MERS pension plan multiplier will be increased to the B-4 benefit level with employees paying an additional two and one-tenths percent (2.1%) of their salaries toward the change. The total employee contribution toward the pension benefit there is three and one-tenths (3.1%) of annual MERS reportable wages.

UNION'S FINAL OFFER OF SETTLEMENT:

Add language to contract:

During the term of this Agreement, Detective and Road Patrol Deputies shall, at their option, have the right to purchase, at the employee's actuarial determined cost, a multiplier of 2.75%.

Pension - Multiplier option to be effective date of award.

UNION ISSUE #4

RETIREE HEALTH INSURANCE - SURVIVOR BENEFIT

PRESENT:

ARTICLE XIII
INSURANCE

13.9: (a) Retiree Health Insurance. Employer will credit retiree eight dollars ($8.00) for each year of service with Employer up to a maximum of $200/month for applying toward health coverage through the Employer for retiree and spouse after age fifty (50) and up until age sixty-five (65), (e.g. 22 years of service X $8.00 = $176/month credit).

(b) Effective December 1, 1996: For employees in all classifications except Detective and Road Patrol Deputy, the Employer shall carry future retirees on the Employer's health coverage at the retiree's cost.

UNION'S FINAL OFFER OF SETTLEMENT:

Add language to contract:

Retiree health care credit as provided in subparagraph (b) shall be provided to a surviving spouse of an employee under the following conditions:

1. If a retiree whose receiving the monthly retiree health insurance credit becomes deceased prior to reaching aged sixty-five (65) the surviving spouse shall receive the credit for those remaining years that the deceased retiree would have been eligible.

The credit to the surviving spouse shall cease if the surviving spouse remarries.

Retiree Health Insurance - Survivor Benefit to be effective date of award.

UNION ISSUE #5

RETIREE HEALTH INSURANCE - FORMULA

PRESENT:

ARTICLE XIII
INSURANCE

13.9: (a) Retiree Health Insurance. Employer will credit retiree eight dollars ($8.00) for each year of service with Employer up to a maximum of $200/month for applying toward health coverage through the Employer for retiree and spouse after age fifty (50) and up until age sixty-five (65), (e.g. 22 years of service X $5.00 = $176/month credit).

(b) Effective December 1, 1996: For employees in all classifications except Detective and Road Patrol Deputy, the Employer shall carry future retirees on the Employer's health coverage at the retiree's cost.

UNION'S FINAL OFFER OF SETTLEMENT:

Add language to contract:

Effective January 1, 2003, the credit shall be increased to ten ($10) for each year of service up to a maximum of $300/month.

Retiree Health Insurance - Formula to be effective January 1, 2003.

UNION ISSUE #6

CALL-IN PAY

PRESENT:

ARTICLE XI
WITNESS AND SUBPOENA FEES

11.1: Court Time. (a) If an employee is called as a witness in a judicial proceeding (i.e. Court appearance or hearing) for reasons connected with his or her County employment, such employee shall:

(i) Receive leave with pay for such attendance if and to the extent it occurs during the employee's regularly scheduled working hours.

(ii) Receive a minimum guarantee of two (2) hours overtime pay at time and one-half or pay in accordance with the "Overtime" provisions of Article V of this Agreement, whichever is the greater, for such court time if and to the extent it occurs during hours when the employee is not scheduled to work.

UNION'S FINAL OFFER OF SETTLEMENT:

Add language to contract:

Court Time. (a) If an employee is called as a witness in a judicial proceeding (i.e. Court appearance or hearing) for reasons connected with his or her County employment, **or is called in to work while off duty, such employee shall:**

(i) Receive leave with pay for such attendance if and to the extent it occurs during the employee's regularly scheduled working hours.

(ii) Receive a minimum guarantee of two (2) hours overtime pay at time and one-half or pay in accordance with the "Overtime" provisions of Article V of this Agreement, whichever is greater, for such court time or **call in** if and to the extent it occurs during hours when the employee is not scheduled to work.

Call-In Pay to be effective date of award.

UNION ISSUE #7

OVERTIME - DEFINITION

PRESENT:

ARTICLE V
HOURS OF WORK AND OVERTIME

5.2(a): An employee covered by this Agreement who is required by the Department to work in excess of an average of forty (40) hours per week will receive payment at the rate of time and one-half or compensatory time at the rate of time and one-half for such excess hours.

UNION'S FINAL OFFER OF SETTLEMENT:

Add language to contract:

An employee covered by this Agreement who is required by the Department to work in excess of an average of forty (40) compensated hours per week will receive payment at the rate of time and one-half or compensatory time at the rate of time and one-half for such excess hours **as determined by the employee.**

Compensated hours, as it applies to 5.2(a), shall be defined as all hours paid to an employee in either regular hourly wage, vacation time, floating holiday time, compensatory time off.

Overtime - Definition to be effective date of award.

UNION ISSUE #8

GRIEVANCE PROCEDURE - RETROACTIVITY OF ARBITRATION

PRESENT:

No language currently exists.

To be decided later.

Grievance Procedure to be retroactive to January 1, 2003.

UNION ISSUE #9

K-9 OFFICER COMPENSATION

PRESENT:

Presently there is no provision for extra compensation for dog handlers.

UNION'S FINAL OFFER OF SETTLEMENT:

Employee(s) performing the function of dog handler (K-9) shall receive one-half (½) hour of the employee's straight time hourly rate for each day and for each dog assigned to the employee.

K-9 Officer Compensation shall be effective the date of the award.

EMPLOYER ISSUE #1

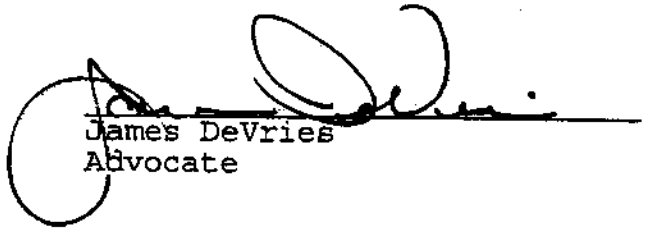
HEALTH CARE, COVERAGE, PREMIUM AND PRESCRIPTION

UNION'S FINAL OFFER OF SETTLEMENT:

The Union rejects any change in the current language and/or practice and desires to maintain status quo.

Wherefore, the Final Offer of Settlement of the Union is tendered in good faith and upon careful consideration.

POLICE OFFICERS ASSOCIATION
OF MICHIGAN



James DeVries
Advocate

Dated: October 17, 2003

POLICE OFFICERS ASSOCIATION OF MICHIGAN

27056 Joy Road • Redford, MI 48239-1949

Telephone (313) 937-9000
FAX (313) 937-9165
Voice Mail Extension

December 1, 2003

Mario Chiesa
428 N. Gulley Rd.
Dearborn, MI 48128

Re: Act 312 Arbitration
Sheriff and County of Ottawa
- and -
Police Officers Association
of Michigan
MERC Case No. E-8007

Dear Mr. Chiesa:

This letter will serve to clarify the Unions Last Best Offers regarding Pension/Multiplier and Pension Contribution that was discussed between the panel members by conference call on November 26th.

The Union's LBO on the issue of Pension Multiplier is:

During the term of this Agreement, Detective and Road Patrol Deputies shall, at their option, have the right to purchase a multiplier of 2.75%.

The Unions LBO on Pension Contribution is: (only in the event that the panel adopts the Unions LBO on an increased multiplier)

The cost of the increased multiplier shall be paid by effected bargaining unit members at the actuarial determined cost.

This "cost" is the amount determined by the actuarial factors used by MERS at the time the benefit becomes effective.

If you should have any other questions regarding this issue please contact me at your earliest convenience.

Sincerely,

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

James DeVries/hai

James DeVries
Business Agent

JD/hai

cc: Marvin Dudzinski
Bill Birdseye
Frank Guido