MICHIGAN DEPARTMENT CONSUMER AND INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

ARBITRATION UNDER ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

In the Matter of The Act 312 Arbitration Between:

COUNTY OF BAY and BAY COUNTY SHERIFF
Employer,

-and- **MERC Case No. L02 L-3006**

POLICE OFFICERS LABOR COUNCIL
Union.
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APPEARANCES

FOR THE COUNTY:	FOR THE UNION:
John R. McGlinchey, Esq.	Peter Sudnick, Esq.

PANEL

Martin L. Kotch	Chairperson
John R. McGlinchey	Employer Delegate
Danny Bartley	Union Delegate

This matter arises pursuant to a Petition filed with the Michigan Employment Relations Commission under 1969 PA 312, as amended, being MCL 423.231, et seq. The Petitioning Union is the Police Officers Labor Council, which represents certain personnel within the Bay County Sheriff's Department. The Employers in the instant case include the County of Bay, and the County Sheriff, jointly referred to as the Employer.

BACKGROUND

COMPARABLES

Prior to the hearing, the parties agreed to the following as comparable counties: Allegan, Calhoun, Eaton, Grand Traverse, Lenawee, and Midland. Exhibits and testimony were offered at hearings held on April 27, and September 30, 2004.

The Parties have stipulated that all tentative agreements reached during contract negotiations would be incorporated in the successor contract and that the balance of the prior labor agreement, not modified by tentative agreement or the proceedings herein, would continue in the successor contract. The duration of the contract, three years, is not in dispute.

A question seems to have arisen with respect to the matter of retroactivity. The Union has argued on behalf of retroactivity in a manner which suggests they perceive that the Employer does not agree. This is not the case. On many occasions, and in many setting, the Employer has agreed to retroactivity. Where matters are not amenable to retroactivity back to contract anniversary dates, as they would be, for example, with wages, the Employer agrees that retroactivity is to apply as soon as practicable following the issuance of this Award.

ISSUES

The following issues remain before this Panel for resolution:

1. Wages (Economic) – Joint
2. Health Insurance – Employee Premium Contribution (Economic) – Joint
3. Retirement Program – FAC Components (Economic) – Union
4. Retirement Program – FAC Multiplier (Economic) – Union
5. Educational Travel and Expenses – (Economic) – Union
6. Personnel File – (Non-Economic) – Union
7. Job Vacancies and Job Assignments – (Non-Economic) – Union

The factors for the Panel's consideration in reaching its decision as to these issues are set forth in Section 9 of the Act (MCL 423.239), which provides:

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

(a) The lawful authority of the Employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
(d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hour and conditions of employment of other employees performing similar services and with other employees generally:
    (i) In public employment in comparable communities,
    (ii) In private employment in comparable communities.
(e) The average consumer prices for goods and services, commonly known as the cost of living.
(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment.

Pursuant to Section 8 of Act 312, (MCL 423.238) as amended, the Panel must adopt the final offer of settlement that the Act 312 Panel believes best comports with the applicable factors set forth in section 9 above, with respect to each issue that has been designated "economic."

FINANCIAL BACKGROUND

The Employer has stressed the difficult financial picture it faces. While the Union disputes some of the characterizations of the Employer with respect to internal finances, and the ability of the Employer to do better, it is worthy of judicial notice that many Michigan counties, including Bay County, have faced severe financial times recently, in large part due to loss of state revenue, as well as skyrocketing health care costs. The Employer's evidence makes it manifest that Bay County is no exception in this regard. In addition, the Employer points to a number of other factors which have contributed to the County's fiscal woes. By way of example, its tax base ranks third to last of all Michigan counties in increasing its tax base. More importantly, while the County used to receive between $2.2 and $2.4 million in State revenue sharing, currently it only receives about $.75 million. It is anticipated that the County will suffer another seventeen percent (17%) reduction in State revenue sharing which would equate to another $400,000.

While these financial realities must inform the Panel's decisions, it is also a reality that the solution to these problems may not come disproportionately at the expense of the County's employees, particularly, those covered by Act 312. It is the Panel's task to view the totality of the circumstances in light of the statutory criteria, in order to arrive at a fair award, in conformity with statutory criteria.

JOINT ECONOMIC ISSUES

1. SALARIES AND WAGES – ARTICLE XXXII (SEE APPENDIX A)

Last Best Offers

The Employer's Last Best Offer for wages is to freeze wages for all unit employees for the first year of the parties' contract and, thereafter, increase wages two percent (2%) in each year of the two years remaining in a three (3) year successor agreement. The wage increases for 2004 would be effective January 1, 2004, and the wage increases for 2005 will be effective January 1, 2005.

The Union's proposed last best offer for wages is a retroactive three percent(3 %) wage increase each year of a three (3) year contract.

CONTENTIONS OF THE PARTIES

The Employer argues that wages, as well as any other economic issue, cannot be considered in a vacuum. Instead, overall compensation must be considered in determining all economic issues brought before the Panel. It contends that a review of the total compensation of the comparable communities confirms that the County's wage package is more logical, fair and perhaps, most importantly, necessary.

Section 9(f) of the Act (MCL 423.239) sets forth the criteria for calculating total"compensation":

> (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.

The Employer argues that its "comparable compensable factor" exhibits (EX 9 - EX 30) include the same criteria as found in Section 9(f) of the Act.

As to Sergeants, the Employer argues that review of the comparable communities shows that Bay County's Last Best Offer for Sergeants wages exceeds the average of the comparables for 2003 and 2004 (2005 should not be considered as only one comparable community had established rates for that year at the time of the hearing. EX 10). The County proposal keeps them more about $1,100 annually above the average of the comparable communities. (EX 10.)

The County's proposal to increase the current wages for Sergeants compares very well with those of the comparable communities. Bay County paid its Sergeants higher wages in 2002 than every comparable community (EX 10). Under the Employer's proposal in 2003, they will receive more in wages even with a wage freeze than all but two of the comparable counties. (EX 10.) In 2004, Bay Sergeants will be paid more than Sergeants in all of the comparable communities with established wage rates except one, Midland County. (EX 10.)

The amount of paid time off received by the Bay Sergeants is above all of the comparables except one (Lapeer). (EX 23.) Indeed, Bay County provides almost six days more annually in paid time off than the average of all other comparable communities. (EX 23.)

The Employer's wage proposal is further supported by the County's complete funding of the employees' retirement plan. (EX 29.) Employees in every comparable community except Bay County pay a percentage of their income toward their pension plan. In Calhoun and Eaton Counties, employees pay more than 13 % of their compensation toward their retirement plan. (EX 29.) In Midland County, employees pay 6.27%; in Lenawee County and Allegan Counties, they pay about 5%. (EX 29.) Employees in Bay County pay nothing

toward the cost of their retirement plan. This must be considered when one considers the Employer's wage proposal.

With respect to compensation for Road Patrol Deputies, the Employer contends that its Last Best Offer exceeds the average of the comparable communities by more than $2,700 for 2003, even with a wage freeze. (EX 9.) The Employer will pay its road patrol deputies in 2003 more than every single comparable community except Midland County. (EX 9.) The same also is true for 2004. In 2004, under the County's proposal of a 2% wage increase, Bay County road patrol deputies will continue to be second only to Midland County in wages (EX 9.)

In contrasting the parties' proposals, the Employer argues that under the Union's proposal for annual 3% increases, Bay County road patrol deputies will be paid more than $1,300 more in 2003 than the Employer's offer. The Union is proposing that deputies be paid almost $2,000 more than what the Employer proposes for 2004 and over $3,000 more for 2005. Such amounts, it says, given the totality of the County's financial situation, is far beyond what can be considered reasonable.

However, argues the Employer, under the Union's proposal for annual 3% increases, Bay County road patrol deputies will be paid more than $1,300 more in 2003 than what the Employer can offer. The Union is proposing that deputies be paid almost $2,000 more than what the Employer proposes for 2004 and over $3,000 more for 2005. That is far beyond what can be considered reasonable given the Employer's strained economic circumstances. This is particularly true in view of what other internal units have received in their settlements with the Employer.

The Employer notes that every other bargaining unit in Bay County that had settled its labor contract with the County at the time of the instant arbitration hearing has accepted the same wage proposal being offered to this bargaining unit, that is, a wage freeze for 2003, followed by 2% increases in 2004 and 2005. (EX 31.) In other words, five out of the eight other bargaining units settled with the Employer for these wages. That includes employees represented by the POLC, the same Union in this 312 arbitration. (EX 31.)

The Employer asserts it is not proposing that this unit accept wage increases which are less than these which are being provided to any other County employees. What is more, the Employer is proposing wage increases which keep Bay County equal to or above most of the comparable communities. That means that Bay County's proposal more than keeps pace with the wage increases in the comparable communities, even with a first year wage freeze. It also compels adoption of the Employer's wage proposal.

The Union proposes a 3% across-the-board increase for each of the next three years of the contract. It also proposes each year of new agreement be treated as a separate and distinct issue. The Union acknowledges that the County's proposal is identical to that offered other County bargaining units, but notes that they are not eligible for Act 312 arbitration.

Finally, the Union urges the Panel to treat each year separately because this would afford the Panel the opportunity to be flexible in fashioning a reasonable and equitable award. The justification put forth by the Union is that such a separation would provide the Panel with needed "flexibility."

DISCUSSION

The statute is very clear that with respect to economic matters, the Panel is to have *no* flexibility. It must choose one of the two proposals. As the Employer has pointed out, under MCL 423.238, a 312 arbitration Panel is confined to adopting one party's economic proposal on an issue. That provision, provides in relevant part:

> As to each economic issue, the arbitration Panel shall adopt the last offer of settlement which, in the opinion of the arbitration Panel, more nearly complies with the applicable factors prescribed in section 9.

In light of the foregoing, the Panel concludes that it is without authority to separate the agreed-upon three year term of the forthcoming contract into three one-year units.

There are several difficulties with the remainder of the Union's position. Internal units have accepted the same proposal contained in the County's Last Best Offer here. The figures for external comparables indicate the bargaining unit will, in general retain, its relative position. In reviewing considerations of overall compensation, the financial difficulties faced by the County have been made abundantly clear. While the wage proposal made by the County probably cannot be considered a generous one, it is certainly reasonable; with respect to comparables, it leaves the unit in virtually a status quo position relative to these other counties. The Union's position, on the other hand, seeks a wage increase well outside of the range of comparability, especially, of course, with respect to internal units. Little evidence was adduced at the hearings which supported the Union's proposal.

Looking to the evidence produced at the hearings with respect to financial constraints upon the County, the overall compensation package, and comparability, both internal and external, the Employer's Last Best Offer is well supported with respect to the statutory requirements of section 9; the Union's is not.

The Panel adopts the proposal of the Employer.

2. HEALTH AND BENEFITS – ARTICLE XXII

Last Best Offers

The Employer has proposed that for 2003, the County pays 83% of health insurance costs; the employee's pay 17% of the weighted average premium of the five plans offered. For 2004, the Employer would pay 83% of the total premium cost and the employees 17%. For 2005, the Employer would pay 85%, and the employees 15%.

The Union has proposed a retroactive modification of the contract provision calling for a 15% contribution by the employees. The Employer will pay the 85% balance. Employees will be reimbursed for any amounts paid over the 15% since January 1, 2001. All obsolete language in the provision relating to methods of computing the employees' share will be deleted.

CONTENTIONS OF THE PARTIES

By way of background, the Employer notes that under the expired contract, the Employer paid 114% of the October, 2000 premium rates and the employees paid the remainder. A Memorandum of Agreement was subsequently entered into, after the expiration of the contract. Under that Agreement, the County paid 121% of the October, 2000 premium rate, with the employees paying the remainder. Currently, employees pay about 38% of the total premium cost. Under its proposal, the Employer contends, employees will pay not even one-half of what they have paid and currently pay.

The Employer argues that health insurance costs have reached a crisis level for

almost all Employers. It has presented abundant evidence of escalating health costs in general, and with respect to Bay County, and the Union acknowledges this. Thus, in 2002, the Employer paid about 12% more for Blue Cross health insurance for its employees. The costs increased about 16% fo 2003. It went up over 15.5% in 2004. They Employer insists it cannot continue to absorb these increases without relief. Additionally, it argues that this is especially true because the County pays toward health insurance for retirees as well. The County has settled with every employee group on health insurance along the same terms being proposed for the POLC unit. The Employer contends that it is trying to alleviate the financial strain on both sides where it can.

The Union's argument acknowledges the closeness between the parties' positions. It focuses mainly on the "complicated" nature of the Employer's proposal, and the lack of retroactivity. As to this last, as noted above, the Employer has made it abundantly clear that wages and benefits will be retroactive, and all contract language will be held to reflect this. The Panel is uncertain as to the nature of the complexity perceived by the Union; the Employer's proposal seems straightforward and, given the savings to it *and* the employees, is the preferable choice.

The Panel adopts the proposal of the Employer.

OTHER ECONOMIC ISSUES

1. RETIREMENT – ARTICLE XXVI

Last Best Offers

The Union proposes that the retirement plan for bargaining unit members be changed from a 2.25% multiplier to a 2.50% multiplier with employees paying 2.0%, maximum, of the cost of the improvement. The Employer proposes increasing the multiplier to 2.50% at the employees' cost.

CONTENTIONS OF THE PARTIES

The Employer argues that no current actuarial study has been performed to show the cost of the Union's proposed improvement. Instead, the Union merely submitted a report based on a 2001 valuation date. (UX 8F.) The Union's witness on this proposal testified she believed the figures contained in the valuation remained valid only through August, 2004. (TR II 75.) Therefore, the figures estimating the costs cannot be relied upon.

What is more, the actuarial report notes that if certain events not factored in the actuarial's assumption occur, the costs for the proposed pension improvement could radically change. The Union's proposal makes the County liable for any costs above the 2% figure. That is a blank check the Union is asking the Employer to write.

The Employer further argues that the Union's proposed pension proposal (whatever its cost) is unjustified. It is not supported by any of the comparables, either external or internal. It is not supported by any other reasons. Simply, there should be no further pension costs to the Employer, especially where, as here, those costs are unknown and subject to change.

The Union notes that both parties agree that the pension multipliers should be

increased from 2.25% to 2.50%. However, the parties disagree over who should bear the cost of this improvement. The Union proposes that employees contribute two percent of their income during the life of the agreement to pay for the increased multiplier. Should other units within the County receive an increased multiplier at a lesser cost to the employee, the Union proposes that its members' contributions would be reduced accordingly.

The Union disputes the utility in using comparables to analyze this issue. While many comparable counties have employee contribution toward the pension plan, the percentage contributions cannot be viewed in a vacuum. Thus, all the plans have a higher maximum retirement benefit than the one afforded Bay County retirees – 80% of FAC versus 75% of FAC, which, of course, costs more money. Several comparables use a three-year period for determining FAC, which is also associated with a higher cost. Most of the comparables, unlike Bay County, provide a post-retirement adjustment which adds to the cost of funding the retirement plan. Most importantly, the funding level of each comparable's pension system is unknown here. In general, employee and Employer pension contributions are higher when a retirement system is not fully funded.

What is known in this case is the funding level of the Bay County retirement system. As of the last actuarial valuation, the pension's reserves were 157% funded. Employer testimony shows that the system still enjoys a surplus of approximately 30% (130% funded). Several measures employed by the County reduced payroll but increased pension costs: an early retirement option, and the establishment of a VEBA account. The latter gets contributions from the retirement fund's surplus, with no out-of-pocket cost to the County.

The Employer has not made a pension contribution to the Sheriff's Department fund

since December 31, 1995. The Employer also agreed to pick up active employees' contributions of 4% beginning in 2001. This amount is not an out-of-pocket costs to the County. As of the last actuarial valuation, the Employer will not be expected to contribute to the Sheriff's Department fund within the retirement system for another 30 years. Despite arguable financial difficulties in the County-wide budget, the Employer can hardly complain that does not have the resources to absorb some of the cost of the pension improvement which both parties agree is appropriate.

The Union asserts that the Employer's proposal in essence offers nothing, since all the costs would be borne by the employees. Under the Union proposal, the County will pay, over many years, out of the surplus in the fund; the employees will be out-of-pocket.

DISCUSSION

The Union makes a strong case here. Given the healthy state of the retirement fund, and the agreement by the Employer that a move to 2.5% is appropriate, the Union's proposal is quite reasonable. The Panel must look at the total compensation - benefit package in weighing Last Best Offers. The Employer has acknowledged economic constraints, and these have proved persuasive in weighing the proposals regarding wages. Here, the situation is quite different. The fund is well able to absorb the increase far into the future. There is no valid justification for putting this burden, in addition to two years of frozen wages, entirely upon the employees. Indeed, even without this latter, and substantial consideration, the Panel believes the Union's last best offer best meets statutory criteria.

The Panel adopts the Union's proposal.

2. RETIREMENT PROGRAM – ARTICLE XXVI

Last Best Offers

The Union requests that the Panel add a new section 26.4 specifying all components of employees' final average compensation (FAC) for retirement purposes.

The Employer seeks the status quo.

CONTENTIONS OF THE PARTIES

The Union notes that the Ordinance governing matters of final average compensation is incorporated by reference in the current contract. It seeks to incorporate into the contract specific language from that Ordinance. The rationale for this change is that employees will be more easily advised of their pension benefits without resort to the Ordinance itself. In its brief, the Union cites two portions of the Ordinance *in haec verba*, and requests incorporation of "this language, or language to this effect, in the parties' collective bargaining agreement."

The Employer seeks the status quo.

DISCUSSION

It is difficult to see why the Union wishes to incorporate into the contract language already incorporated by reference. It might be argued, on the other hand, why not? Its inclusion is not, the Union insists, a Trojan Horse, as the subject must be negotiated with the Union should any changes be desired by the Employer.

This is a minor matter, but the justifications on each side make the issue a close one to decide. Perhaps the strongest argument supporting the Employer's desire for the status quo is that such detail is inappropriate (since unnecessary) in a collective bargaining

agreement. The burden of persuasion rests with the proponent of contractual change. With the "why" and the "why not" fairly balanced, decisive weight, such as it is, rests with the proponent of the status quo. This is particularly so given the relatively short time before a new round of collective bargaining.

The Panel adopts the proposal of the Employer.

3. EDUCATIONAL TRAVEL AND EXPENSES – ARTICLE XXV

Last Best Offers

The Employer proposes to maintain the status quo which requires the County only to pay for job related courses.

The Union proposes that the Employer pay for any courses so long as the course is within a law enforcement degree curriculum.

CONTENTIONS OF THE PARTIES

The Employer argues that the best reason for preserving the status quo appears in the arbitration award issued by Arbitrator Sherwood Malamud on February 13, 2002. EX 36. In that case, the grievants, who are members of this bargaining unit, sought to make the County pay for World History and American Literature courses. Because these courses were not job related, the Employer declined to pay for them, and was upheld by Arbitrator Malamud.

The Employer contends that the Union's position is unreasonable. While the degree itself may be useful to the employee, courses taken in history, fine arts and other non-employment-related studies do not benefit the Employer and should not drain already limited

sources. None of the comparable communities have this type of "benefit." There is some apparent dispute as to whether one of the internal employee groups has such a provision.

The Union argues that an employee's educational level is one factor for consideration in making promotions to higher ranks and specialized assignments within the Department. A degree in law enforcement is clearly job-related. It is the job of education professionals at local colleges to determine which courses are necessary to complete a law enforcement degree. Further, by making all courses in a recognized law enforcement degree awarding program per se job related, the risk of disparate treatment and abuses of discretion are eliminated.

The Union further argues that evidence in the previous arbitration suggests that there is no consistency, and no criteria, for evaluating courses for the job-relatedness. The prior arbitration award pointed to by the Employer is not binding, says the Union. The language interpreted there was broad and ambiguous. The language is still ambiguous; there are no criteria limiting the Employer's discretion under that award. By adopting the Union's proposal, the ambiguity can be satisfactorily resolved.

DISCUSSION

The Union's first argument is that educational level is a factor in promotion. But the promotion of one deputy over another because of educational attainment is not, in and of itself, job-related. As to the risk of disparate treatment, the Union has had recourse to arbitration on this very issue. Where such is the case, arbitrators are loath to overturn prior arbitral decisions in the absence of compelling reasons to do so. The Panel Chair has strong supportive feelings with respect to the benefit of liberal academic courses within any

profession-specific curriculum. Nonetheless, he believes that it cannot be said that such courses are, by definition, related to the job requirements of a Sheriff's Deputy. Certainly reasonable minds may differ over the efficacy or utility of such courses on the job. However, given the existence of a prior award upholding the Employer's position, the fiscal constraints upon the County, and the absence of any compelling reason, educational or professional, for an employee to take such a course other than its being required for a degree, the Union has failed to demonstrate a reason for changing the status quo.

The Panel adopts the proposal of the Employer.

NON- ECONOMIC ISSUES

1. JOB VACANCIES AND JOB ASSIGNMENTS – ARTICLE X

Last Best Offers

The Employer proposes the status quo.

The Union seeks to modify Section 10.1 in the following manner:

10.1. Except for the positions of Detective, Friend of the Court Officer, and D.A.R.E. Officer, job vacancies and job assignments shall be made upon the basis of seniority. All job vacancies and job assignments for general road patrol, township patrol, and secondary role patrol will have the respective schedules determined and fixed, and will be posted by not later than December 1 of each year. Each job vacancy and job assignment will then be picked by seniority. Employees will then have until December 20 of each year to pick the posted job vacancies and job assignments. In January 1 of each year all employees will move to the new job assignment. In the event that any job assignment or work schedule is changed, the new assignment and/or schedule will be posted at least 10 days in advance of the change, and will be filled on the basis of seniority. Any resulting vacancy will be filled on the basis of seniority.

Whenever a seniority employee applies for a vacancy in higher-paying classification for which a written examination and oral review what required,

person takes the position). To date, all persons who successfully have bid into these assignments remained in those assignments.

The Employer contends that the Union's proposal that *every* assignment be determined by seniority is a radical change from the parties' labor contract and long-standing practice. In addition, the Union proposal entails a re-bidding process if work schedules are changed, a complex and unnecessary intrusion into the bidding system.

The Employer argues that under the Union's proposal, the Employer must "determine and fix" the scheduled hours of work by December first of each year. That is another substantial change to the parties' labor contract. The contract currently allow the Employer to post a work schedule, and changes to it, at least ten (10) days in advance.(Section 27.4). The Union's language, it argues, appears rather contradictory in that it requires the Employer to "determine and fix" schedules by December first, but if the work schedule for particular assignment is changed, the bidding process must begin all over again.

The Union argues that current contract language provides that vacancies and assignments, as well as shift assignments, will be made on the basis of seniority. However, it says, the Sheriff has devised a way to bypass more senior employees to give favorable assignments and shift selections to less senior employees within the Department. The Union argues that its proposal on this issue seeks to rectify that situation and restore the integrity of the seniority language.

That Union further contends that testimony showed that the Department staffs few deputies to Road and Township patrol assignments per shift. Vacancies and opportunities for advancement are rare. Under current language, a vacancy in a desirable Township

position is bid by seniority. The Union contends that the Department bypasses this procedure by posting the position for an unfavorable shift schedule. This deters senior members from submitting a bid. By default, a less senior member is then assigned to the desirable Township. Once this occurs, says the Union, the Department readjusts the position and provides a more favorable schedule – one for which more senior employees *would have bid.* The Union argues that the process is patently unfair and is a gross circumvention of a negotiated language.

The Union contends its proposal simply prevents the Employer from circumventing the seniority bidding system. There would be a single bidding period and employees would rotate only once a year. This system is commonplace in other Departments. Allowing senior deputies to fairly bid for desirable positions for which they are qualified is a small reward for many years of service. There is minimal intrusion on management prerogative, as any employee may be removed for cause.

DISCUSSION

It appears that the system proposed by the Union is rather convoluted, and intrudes far more than necessary into the prerogatives of management. It is not uncommon, in relatively small units, to perceive bias in favor of, or against, an employee, since so few are involved, and individual personalities appear to loom large in the decision-making process. Of course, sometimes perceptions are correct. The evidence produced at the hearings, however, do not approach the level of proof required to draw such a conclusion. Rather, the special circumstances of the Department – Township relationship were made apparent. Further, the Townships have a financial interest in the services they receive from the

Department. If the Township is pleased with the work of an Officer, but wishes to modify his or her schedule, deference to its wishes, where not contractually inappropriate, is understandable.

The Union itself has characterized its description of the Sheriff's conduct with respect to these assignments as "patently unfair and a gross circumvention of negotiated language." Given that, grievance arbitration would seem to be the remedy for any violation of the seniority provisions of the contract, whether done directly or by a indirect, two-stage manner as described and alleged by the Union.

The Panel adopts the proposal of the Employer.

2. PERSONNEL FILE – ARTICLE XXX

Last Best Offers

The Union has proposed limitations on the length of time discipline can remain in an employee's personnel file. It proposes that written reprimands be removed from an affected employee's file after two years. Disciplinary suspensions of less than ten days would be removed after three years.

The Employer proposes the status quo, which provides for the removal of a letter of reprimand after two years unless the Sheriff regards the matter as one of a "serious nature" and decides the letter should be retained.

CONTENTIONS OF THE PARTIES

The Employer argues that this is a prime example of the Union seeking to eradicate a managerial right that has existed from the outset. "Not only has the Employer bought and

paid for this right through collective bargaining, but setting forth such a schedule without regard to the severity of the offense or number of offenses is grossly unreasonable and could provoke a more severe disciplinary measure than the Employer originally may contemplate." Thus, the Employer argues that, e.g., should an employee engage in several discrete yet identical acts of misconduct, say for tardiness, the Employer may be compelled to issue suspensions so as to preserve a record of greater duration rather than a written reprimand. The Employer most certainly would argue at an arbitration challenging such discipline that it was justified in issuing more severe discipline because of the short duration discipline remain in the file. Presumably, says the Employer, neither party would desire that situation. Moreover, the Employer notes that not one collective bargaining agreement in Bay County contains any restriction on the duration of discipline and a personnel file.

The Employer contends that the Union may argue that discipline older than a certain length of time is of little or no value for present consideration. It says that nothing prevents the Union from making such an argument on a case by case basis and letting an arbitrator decide if the Employer wrongfully relied on "stale" discipline. Therefore, there is no compelling reason to remove the discipline on a date certain.

The Union notes that prior discipline is an issue in the promotion process. It is, of course, relevant in administering and evaluating subsequent discipline. Traditionally, just cause regards discipline as corrective, rather than punitive. The current practice permits the reverse to take place. It is the Union's contention that the sheriffs discretion has been abused, in that he regularly retains letters of reprimand in personnel files. According to the Union, the exception has swallowed the rule.

DISCUSSION

Whatever the situation with respect to internal comparables, the granting of unfettered discretion in the Employer regarding the length of time a discipline may remain in the personnel file is at wide variance with collective bargaining practice. The Employer's argument that the Union may argue the probative value of a "stale" discipline ignores the essential core of due process considerations implicit in the just cause standard. One should be entitled to know what jeopardy may attach to one's conduct. Moreover, as the Union indicates, the present system reverses the correction rather than punishment framework which is the standard by which all disciplinary systems are evaluated. The Union's proposal is, if anything, generous in the time limits it seeks, and is well within standard practices of collective bargaining.

There is no doubt, as the Employer indicates, that the Union runs the risk of heavier initial sanctions being imposed by the Employer, to avoid the constraints of the Union's proposal. By the same token, if the Employer pursues such a course of action, it faces the risk of increased challenges and increased arbitrations. The existence of these risks, however, cannot be used to negate standards of fairness in the collective bargaining setting.

The Panel adopts the proposal of the Union.

AWARD

The Panel has adopted the proposals of the parties as indicated in the body of the Award. The Union Delegate, Mr. Danny Bartley, dissents from all decisions of the Panel in which the proposal of the Employer is adopted. The Employer Delegate, Mr. John R. McGlinchey, dissents from all decisions of the Panel in which the proposal of the Union is adopted.

Danny Bartley, Union Delegate

John R. McGlinchey, Employer Delegate

Martin L. Kotch, Panel Chair

April 15, 2005