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State of Michigan

Department of Consumer and Industry Services

Employment Relations Commission

In the Matter of the Act 312 Arbitration between:

Otsego County Board of Commissioners &  
Otsego County Sheriff's Department,

Public Employer.

-and-

Police Officers Labor Council,

Union

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MERC Case No.: L03 L-3011

**ARBITRATION OPINION AND AWARD**

**APPEARANCES:**

Arbitration Panel:	Ruth E. Kahn, Chairperson
Employer Delegate:	Howard L. Shifman, Esq.
Union Delegate:	Jerry Caster, POLC Staff Representative
For the Employer:	Howard L. Shifman, P.C. By: Howard L. Shifman 370 E. Maple Road, Ste. 200 Birmingham, MI 48009
For the Union:	John A. Lyons, P.C. By: Mark P. Douma, Esq. 675 E. Big Beaver Road, Ste. 105 Troy, Michigan 48083

Date of Award: ~~October~~ <sup>September</sup> 2, 2005

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## **INTRODUCTION**

This is a statutory compulsory arbitration conducted pursuant to Act 312, Public Act of 1969 as amended. The record reflects the following:

- A. The Union filed a petition for Act 312 arbitration.
- B. The impartial arbitrator and chairperson was appointed via correspondence from the Employment Relations Commission.
- C. A pre-hearing conference was held on June 14, 2004.
- D. The Arbitration Panel held a Hearing on September 9<sup>th</sup> and September 10<sup>th</sup>, 2004.
- E. The Chairperson received the parties' last offer of settlement on or about February 28, 2005.
- F. Post-Hearing Briefs were filed and exchanged on July 6, 2005.
- G. The panel held executive sessions to review these issues on several occasions.

The Findings, Opinion and Order which follow were issued as soon as possible thereafter consistent with a thorough and careful analysis of the record and the issues before the Panel. The Panel greatly appreciates the thoughtful arguments raised by each of the respective parties as well as their delegates.

## **APPLICABLE FACTORS AND STATUTORY SUMMARY**

Act 312 provides for the compulsory arbitration of labor disputes involving County Sheriff's Departments, among other covered entities. Section 8 of Act 312 states in relation to economic issues that:

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 described in Section 9. The findings, opinions and orders as to all other issues shall be based upon the applicable factors prescribed in Section 9.

Consistent with the above, the factors that the Arbitration Panel must consider in resolving this dispute are contained in Section 9 of Act 312, 1969 as amended, i.e. MCLA 423.239. The provision reads as follows:

"423.239 Findings and orders; factors considered.

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. Stipulation of the parties.
- c. The interest and welfare of the public and the financial ability of the unit of the government to meet these costs.
- d. Comparison of the wages, hours and conditions of employment of the 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 price for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical 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."

On each issue, the Panel has taken into account these factors in reaching its decision.

## **COMPARABLES**

One of the Section 9 factors that parties often have relied upon is subsection (d) which involves the comparison of wages, hours and conditions of employment of the employees involved in the arbitration with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in comparable communities and in private employment in comparable communities.

Often the parties spend a substantial amount of time presenting evidence and arguments regarding the question of which communities should be considered comparable to the community involved in the arbitration. In many cases, a substantial portion of the record is developed where this type of evidence and argument is bandied back and forth.

However, in the current case, the parties stipulated to a list of counties which they propose the panel should consider comparable for the purposes of this arbitration. The counties agreed upon by the parties are:

Antrim

Benzie

Charlevoix

Cheboygan

Clare

Crawford

Gladwin

Iosco

Kalkaska

Manistee

Oceana

Roscommon

Given the parties' stipulation to agreed-upon comparable counties, it is unnecessary to review the elements which arbitration panels consider relevant for selecting appropriate comparables. The Panel will honor the stipulation of the parties on the comparability issue consistent with the Statute.

## **ISSUES**

The parties have indicated various issues to be submitted to the Panel. The Last and Best Offers of each of the respective parties are noted below:

“Union’s Last and Best Offer and Issues are as follows:

### **“UNION’S LAST OFFER OF SETTLEMENT**

As its last best offers of settlement, the Union proposed the following:

#### **UNION ISSUES**

##### **Longevity, Article XIV, Section 20 (Economic)**

*Modify Article XIV, Section 20 to read as follows:*

**Section 20. Longevity Pay.** Full-time employees will receive longevity according to the following formula:

$$0.25\% \times \text{years of service} \times \text{annual base wage}$$

To qualify an employee must be on the Employer’s payroll on December 1 of the applicable contract year. The amount will be paid to qualifiers on the Employer’s last payroll period prior to Christmas of the applicable year.

##### **Retiree Health Insurance, Article XXI, Section 6 (Economic)**

*Modify Article XXI, Section 6 to read as follows:*

The Employer agrees to pay \$450.00 per month toward hospitalization insurance for all employees and employee’s spouse, who retire until such retiree reaches the eligible Medicare age.



**Job Classifications and Wages, Schedule B (Economic)**

*The parties have agreed that each year of the agreement is to be treated as a separate issue for the purpose of determining wage increases. The parties have further agreed that retroactivity is to be treated as a separate issue.*

- A. Effective 1/1/04: 3.5% across-the-board.
- B. Effective 1/1/05: 3.5% across-the-board.
- C. Effective 1/1/06: 3.0% across-the-board.
- D. Full retroactivity on all economic benefits.

**Health Insurance, Active Employees, Article XXI, Section 2 (Economic)**

- A. Increase the prescription drug co-pay to \$10/\$40.
- B. All other aspects of the current health insurance coverage for active employees are to remain status quo.

**EMPLOYER ISSUES**

**Physical Exams, Article XXV, Section 11**

The Union proposes that the existing Article XXV, Section 11, remain status quo.

**Vacation, Article XXIV, Section 4**

The Union proposes that the existing Article XXIV, Section 4 remain status quo.

**TENTATIVE AGREEMENTS**

The Union requests that all tentative agreements between the parties be incorporated into the Panel's Act 312 award by reference."

The Employer's Last and Best Offer and Issues are as follows:

**"COUNTY'S LAST AND BEST OFFER**

**EMPLOYER ISSUES**

**1. ARTICLE XXI, SECTION 2 – HOSPITALIZATION**

**County's Last and Best Offer:**

**Change to PPO 2, \$B250/\$500 deductible, 90/10. \$10 Chiropractic Office Visit**

**2. ARTICLE XXI, SECTION 2 – HOSPITALIZATION**

**County's Last and Best Offer:**

**Rx \$10 generic/\$40 brand**

**3. ARTICLE XXIV, SECTION 4 – VACATION**

**County's Last and Best Offer:**

**Employees can carry over from one year to another no more than their base amount of vacation at any given time.**

**4. ARTICLE XXV, SECTION 11**

**Re-word to coincide with Section 8 of this Article.**

**(Removes grievance procedure makes neutral physician the binding determiner of fact.)**

**Change the language to read:**

**To maintain a capable work force, the County will schedule physical examinations for unit employees at a minimum of one each two (2) years with a County designated doctor at County expense.**

**If the County designated doctor determines that an employee is unable to perform the full scope of a deputy's duties, then the employee can consult a doctor at his/her own expense for an opinion regarding ability to so fully perform and to thus maintain continued employment status.**

**If a conflict relative to ability to perform the full scope of deputy deputies exists between the aforementioned two (2) doctors, then a third doctor mutually agreeable to the County and the Union will conduct an examination at County expense, and render his/her opinion as to the ability to perform the full scope of deputy duties. The Third Doctor's decision will be final and binding and will serve to decide any and all issues between the employee and the County.**

**5. SCHEDULE B – WAGES**

**County's Last and Best Offer:**

**Each Year is a separate issue.**

<b>Issue 5(A)</b>	<b>2004</b>	<b>Year 1 – 2.0%</b>	<b>across-the-board</b>
<b>Issue 5(B)</b>	<b>2005</b>	<b>Year 2 – 2.0%</b>	<b>across-the-board</b>
<b>Issue 5(C)</b>	<b>2006</b>	<b>Year 3 – 2.5%</b>	<b>across-the-board</b>

**6. LONGEVITY**

**County's Last and Best Offer: Status Quo.**

**7. SCHEDULE B – WAGES**

**County's Last and Best Offer: No retroactivity.**

**8. ARTICLE XXI, SECTION 6 – RETIREE HEALTH**

**County's Last and Best Offer: The County proposes an increase from \$200.00 per month to \$250.00 per month with the provision that the spouse at the time of retirement only will be covered."**

## **BACKGROUND**

The Police Officers Labor Council, (hereinafter, "Union") and the County of Otsego, (hereinafter, "Employer") are parties to a collective bargaining agreement, (hereinafter at times, "Agreement" or "CBA") which expired on December 31, 2003. The Agreement set forth the wages, hours and other terms and conditions of employment for approximately the ten (10) employees of the Otsego County Sheriff's Department, ("Employees") classified as Detective Sergeant, Sergeant and Deputy.

Prior to the expiration of the Agreement, the parties were able to resolve a number of issues to be included in the successor agreement through negotiations. As a result a number of issues which were not resolved, the Union filed a Petition for Compulsory Interest Arbitration pursuant to MCL 423.231 et seq. ("Act 312") on December 22, 2003.

A Hearing was held and exhibits and testimony were offered in support of each of the respective party's positions on September 10, 2004. The parties exchanged Last and Best Offers of Settlement on or about February 28, 2005. The parties have thoroughly and carefully briefed each of their respective settlement proposals and analyzed the record.

As indicated above, the parties were able to resolve a number of issues prior to Arbitration. The parties have agreed those issues should be incorporated into the Act 312 Panel's Opinion and Award by reference. The following issues remain before this Panel for Resolution.

- **Wages<sup>1</sup> (Economic)**
- **Retroactivity of Economic Benefits (Economic)**
- **Health Insurance – Prescription Drug Co-Pay (Economic)**
- **Health Insurance – Active Employee Coverage (Economic)**
- **Health Insurance – Employer Contribution for Retiree Coverage (Economic)**
- **Longevity Pay (Economic)**
- **Vacation Time Carry-Over (Economic)**
- **Physical Examinations (Non-Economic)**

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<sup>1</sup> / The parties have stipulated that each year of the successor agreement is to be treated as a separate and distinct issue for the purpose of the Panel's Award on wages.

### **ABILITY TO PAY**

Subsection (c) of Section 9 of the Act specifically references as a factor, which the panel must consider, the interest and welfare of the public and the financial ability of the unit of government to meet those costs. This element has often been characterized as the Employer's ability to pay. In this case, while not technically raising an ability to pay claim, the Employer has taken the position that it lacks both the short and long term ability to afford the proposals sought by the Union.

In essence, the County argued there is a real question of its ability to pay in the long term. The background information and record establishes that the County has faced a financial crisis. It was facing an approximate \$1 million shortfall in its budget in each year. According to the County, it could not continue to afford to meet the demand for services and keep its present work force.

The County argues it has been buffeted by numerous increases in pension, healthcare and other areas.

The County pointed out that there is growing demand for services in the County. Health Insurance costs in 2002 for the County were \$874,000.00. In 2003, they were \$1.2 million. In 2004 they exceeded \$1.6 million. In essence, the County argues health insurance premiums doubled in the two (2) year period.

Against that backdrop, the County argues that over 16% of their revenue is now going to health insurance, while interest income and all other revenues are declining at the same time that their expenses are increasing and a demand for

services is rising. Moreover, the County argues they are faced with the unusual Court Litigation of the 46<sup>th</sup> Circuit Court. Actual Attorney fees paid out by Otsego County exceed \$300,000.00. The County points out that the case is presently in the Supreme Court and it is possible that they may have to reimburse the other two counties for their attorney fees as well as pay a portion of the attorney fees for the 46<sup>th</sup> Circuit Court which presently exceeds \$1 million.

The County also notes that it has approximately 200 hundred employees but it eliminated numerous positions including an Assistant Prosecutor and a Secretary. The County has presented numerous exhibits regarding the reductions which have been made throughout the County in eliminating positions or moving people from full-time to part-time status.

The Union's response to the County's position is that the County's financial condition and ability to pay is but one factor to be considered by the Arbitration Panel and is not necessarily the determinative the factor in Act 312 Proceedings.

The Union also argues that Otsego is one of the fastest-growing counties in Michigan. While the Union concedes growth does prompt a greater need for governmental services, it argues that growth likewise generates a substantial increase in property tax revenues. They also concede that the ability of the County to capture this revenue is limited somewhat by the operations of Headlee and Proposal A.

In the Panel's view, there is no question that there is a financial stress placed upon the County and they acted in reducing their expenses where they can. They have eliminated positions and asked for sacrifices across the board. Non-union employees and department heads have had wage freezes and significant increases in healthcare costs.

Where appropriate, the County's ability to pay will be taken into account by the Panel.



### **OTHER APPLICABLE FACTORS**

There is other data and evidence regarding all of the statutory factors which have all been carefully analyzed and considered by the Panel on each issue before the Panel.

## **RESOLUTION OF THE ISSUES**

At the outset, in addition to developing a record which is hundreds of pages of documentation, the parties have also made numerous arguments on behalf of their respective positions. They are to be commended on their presentation. The entire record was carefully and thoroughly analyzed in making these decisions.

In resolving the issues before the Panel, on occasions the Panel will bounce back between the Employer and the Union issues since there is an overlap between the two. In resolving these issues, while all of the applicable statutory factors have been reviewed, only the important reasons for the Panel's decision will be outlined below.

The position of the County on the issue of healthcare is as follows:

### **Employer Issues No. 1 & 2– Hospitalization**

#### **1. ARTICLE XXI, SECTION 2 – HOSPITALIZATION**

##### **County's Last and Best Offer:**

**Change to PPO 2, \$B250/\$500 deductible, 90/10. \$10 Chiropractic Office Visit**

#### **2. ARTICLE XXI, SECTION 2 – HOSPITALIZATION**

##### **County's Last and Best Offer:**

**Rx \$10 generic/\$40 brand**

In response the Union has proposed the following regarding healthcare:

**Union Issue - Health Insurance, Active Employees**

**Health Insurance, Active Employees, Article XXI, Section 2 (Economic)**

- A. Increase the prescription drug co-pay to \$10/\$40.
- B. All other aspects of the current health insurance coverage for active employees are to remain status quo.

**DISCUSSION OF THE ISSUE**

The record in this case demonstrates that the largest component of increases in the County's budget is healthcare. Otsego County, as well as all other Public and Private Employers are experiencing significant uncontrolled increases in their health insurance costs. The record establishes that the cost of health insurance has doubled between 2002 and 2004. Some of this cost is due to increase in employees. The actual illustrative rates have gone up in excess of 35%.

Whether there has been a doubling of the cost, or whether the rates have gone up 35% over the last two years, there is no question that the cost of healthcare is significantly straining the County's budget. The County argues that to continue to be able to hire full-time employees it needs to moderate these increases. Even granting their Last and Best Offer, the County argues, it will not stop health insurance increases but merely moderate them.

The Union has taken a responsible position by proposing a \$10.00 generic and a \$40.00 brand drug card. The Union argues that by agreeing to that drug card, the County's proposal to go from Community Blue Option 2 cannot be

adopted by the Panel. They argue that members of their bargaining unit cannot absorb the increases required by both changes.

The County argues, in response, that all non-union and department heads have the Community Blue Option 3 and the County has proposed a better plan for members of the Sheriff's Department and Community Blue Option 2. Community Blue Option 2 is a 90/10 plan which has a maximum out of pocket for an entire in network of \$1,200.00 for a family. It has a \$100.00 single/\$200.00 family deductible. It has a family deductible on the 90/10 co-payments of \$500.00 single and \$1,000.00 family. This is a significantly better plan than Community Blue Option 3.

Each side has ably argued its position before the Panel. The Panel accepts that the healthcare issue is the most important challenge facing governments today. The proposal by the County is fair. While it will increase the cost to employees, it is a moderate increase. Numerous comparables provide Community Blue Option 2. Further, this Option provides better coverage than is provided to department heads and to non-union employees.

It is important to remember that even under the old Master Medical Program there was an 80% Employer/ 20% Employee contribution. The Community Blue Option 2 Plan with 90/10 is still an excellent program.

Based upon the above, as well as all applicable Section 9 Factors, the position of the County is adopted on the issue of HealthCare.

The position of the County on the issue of wages and retroactivity is as follows:

**Employer Issues No. 5 & 7 – Wages and Retroactivity**

**5. SCHEDULE B – WAGES**

**County's Last and Best Offer:**

**Each Year is a separate issue.**

<b>Issue 5(A)</b>	<b>2004</b>	<b>Year 1 – 2.0%</b>	<b>across-the-board</b>
<b>Issue 5(B)</b>	<b>2005</b>	<b>Year 2 – 2.0%</b>	<b>across-the-board</b>
<b>Issue 5(C)</b>	<b>2006</b>	<b>Year 3 – 2.5%</b>	<b>across-the-board</b>

**7. SCHEDULE B – WAGES**

**County's Last and Best Offer: No retroactivity.**

The parties have mutually agreed that the Panel should treat each year 2004 – 2007 collective bargaining agreement as a separate and distinct issue for purposes of determining the wage increases to be afforded to bargaining unit members. (The parties have also agreed to treat the issue of retroactivity as a separate issue which will be addressed below).

In response, the Union has proposed the following regarding wages and retroactivity:

**Union issue - Wages and Retroactivity**

**Job Classifications and Wages, Schedule B (Economic)**

*The parties have agreed that each year of the agreement is to be treated as a separate issue for the purpose of determining wage increases. The parties have further agreed that retroactivity is to be treated as a separate issue.*

- A. Effective 1/1/04: 3.5% across-the-board.
- B. Effective 1/1/05: 3.5% across-the-board.
- C. Effective 1/1/06: 3.0% across-the-board.
- D. Full retroactivity on all economic benefits.

### **DISCUSSION ON THE ISSUE**

Significantly, the Panel would note, the parties narrowed the ground between their position on the wage issues in their final offers. Both sides made movement. Nevertheless, there is still disagreement over the appropriate wage increases for bargaining unit members. Each party argues that in light of the relevant statutory factors its respective proposal is most appropriate and should be adopted by the Panel.

In reaching its decision, the Panel has examined all of the relevant Section 9 Factors. Moreover, it has taken into account the fact that the County has previously settled its other collective bargaining agreements internally, (though as the County notes, in better economic times and provided wage increases in the year 2004 greater than that offered by them in these proceedings).

Moreover, the Panel has also taken into account the fact that the Panel's Award regarding healthcare ~~has been taken into account~~ will raise the out of pocket expenses for members of the bargaining unit. The County's financial position as well, has been taken into account by the Panel and will moderate the

ultimate award made by the Panel due to the difficult financial conditions which exist, not only in the County, but in the State as well.

On the already expired 2004 contract year, the Panel believes the Union's final offer most closely comports with the applicable Section 9 Factors for the reasons noted above. For instance, the average wage increase given to Deputies in comparable counties in the year 2004 exceeded 3.46%. That is more consistent with the internal comparability on this issue as well. Accordingly, the Panel adopts the final offer of the Union for the year 2004 of the collective bargaining agreement.

The Employer's 2% offer in the second year more carefully mirrors the applicable Section 9 Factors. As was stated above, the record has been painstakingly analyzed to determine whose position is warranted. The County's financial condition demonstrated by its difficulty in balancing the budget in 2005 as well as the economic trends they have demonstrated, have all been factored into the decision by the Panel to adopt the Employer's position for the year 2005.

In the final year of the agreement, the parties are a 1/2% apart. In light of the fact that the Panel has granted the first year to the Union and the second year to the County, moving into the last year of the contract, members of the bargaining unit have received a 5.5% pay increase over the first two years of the Award. In granting the Union's request, the increases during the term of this collective bargaining agreement will total 8.5%. The average increase would amount to approximately 2.8%. This is still less than the comparables and takes into account

keeping members of the bargaining unit competitive with other counties, as well as the county's economic condition and the fact that the employees will now be contributing more to their healthcare program.

Before closing, the Panel will also discuss briefly the issue of retroactivity. The County has proposed no retroactivity and the Union has proposed retroactivity. In this case, no compelling reason has been offered as to why the Panel should not award retroactivity.

Accordingly, the Union's position on retroactivity will be adopted by the Panel.

Based upon the foregoing, the Panel adopts the following regarding wages which most closely comports with the Section 9 Factors.

For the 2004 contract year, the Panel adopts the Union's proposal of 3.5%.

For the 2005 contract year, the Panel adopts the Employer's proposal of 2.0%.

For the 2006 contract year, the Panel adopts the Union's proposal of 3.0%.

On the issue of retroactivity, the Union's Proposal is adopted.

The position of the County on the issue of Longevity is as follows:

**Employer Issue No. 6 – Longevity**

No change in current contract provision.

In response the Union has proposed the following regarding Longevity:

**Union Issue – Longevity**



**Longevity, Article XIV, Section 20 (Economic)**

*Modify Article XIV, Section 20 to read as follows:*

**Section 20. Longevity Pay.** Full-time employees will receive longevity according to the following formula:

$$0.25\% \times \text{years of service} \times \text{annual base wage}$$

To qualify an employee must be on the Employer's payroll on December 1 of the applicable contract year. The amount will be paid to qualifiers on the Employer's last payroll period prior to Christmas of the applicable year.

**DISCUSSION OF THE ISSUE**

In its final offer of settlement, the Union has proposed to modify and increase the existing formula for employee longevity and payments. Under the current contract, bargaining unit members with 6 years of seniority receive an annual longevity payment of \$110.00. The amount of annual payment increases by \$10.00 for each additional year of service.

The Union proposes to change the formula so that the longevity payment for each employee equals  $0.25\% \times \text{years of service} \times \text{base salary}$ . The Employer seeks to maintain the status quo.

Each side argues the Section 9 Factors compel its position be adopted by the Panel. The Employer notes that the overwhelming majority of comparable counties provide little or no longevity. And, further, as to new hires, two of the comparable counties have eliminated longevity for new hires as of 1989 and 1990.

On this issue, neither the external nor the internal comparables support the Union's demand to increase longevity payments. The Union has provided no persuasive justification to support a change in the status quo. Accordingly, the Panel will adopt the Employer's position.

The position of the County on the issue of Retiree Healthcare is as follows:

**Employer Issue No. 8 – Retiree Healthcare**

**8. ARTICLE XXI, SECTION 6 – RETIREE HEALTH**

**County's Last and Best Offer:** The County proposes an increase from \$200.00 per month to \$250.00 per month with the provision that the spouse at the time of retirement only will be covered.

In response the Union has proposed the following regarding Retiree Healthcare:

**Union Issue – Retiree Healthcare**

**Retiree Health Insurance, Article XXI, Section 6 (Economic)**

*Modify Article XXI, Section 6 to read as follows:*

The Employer agrees to pay \$450.00 per month toward hospitalization insurance for all employees and employee's spouse, who retire until such retiree reaches the eligible Medicare age.

**DISCUSSION ON THE ISSUE**

Under Article XXI, Section 6 of the current collective bargaining agreement, Retirees and their spouses receive health insurance coverage equivalent to the insurance coverage provided to active employees until they reach the age of eligibility for Medicare coverage. Retirees are responsible for paying a portion of the premium cost for this benefit. Under the existing agreement, the Employer contributes \$200.00 per month toward health insurance for retirees and their spouses.

In their Last and Best Offers, the parties have recognized that some increase in the Employer's contribution was warranted. The Union proposes to increase the Employers contribution to \$450.00 per month and the Employer has proposed to increase its contribution to \$250.00 per month, and for spousal coverage to cover only the employee's spouse at the time of retirement. For reasons discussed below, the Panel will adopt the Employer's final offer of settlement.

The Panel recognizes that the issue of retiree health insurance has become an increasingly important and controversial issue. As the cost for care sky rocketed, more and more public employers have sought ways to control the costs – which is particularly true since the Governmental Accounting Standards Board (GASB) now requires that governmental entities begin to show it as a liability on their financial statements. The Panel notes that this will become another unfunded liability for Otsego County. The County's proposal provides a 25% increase from \$200.00 per member toward retiree health insurance per month to \$250.00 per month up to Medicare age. The County seeks only to impose a single limitation,

namely that coverage will apply only to the spouse at the time of retirement. Its demand in this regard recognizes the benefit is inherently a part of the employee's retirement package and has accrued to the couple up to the time of retirement. The Union's proposal seeks an increase which more than doubles the county's contribution.

In analyzing this issue, the Panel takes cognizance of the fact that even the Union's exhibit shows that the County's offer is better than the majority of the Counties who were utilized as comparables, some of which do not provide any coverage.

In light of the external comparability, the fact that the \$250.00 is provided internally and the financial condition of the County as well as the requirement that they will be required shortly to show this as a liability under the GASB Rules, the County's position more closely comports with the applicable Section 9 Factors.

The Panel certainly respects the reasons why the Union has made the offer that it has and it has forcefully set forth their position. The Panel, however, must agree with the Employer on this issue.

The position of the County on the issue of Physical Examinations is as follows:

**Employer Issue No. 4 -- Physical Examinations**

**4. ARTICLE XXV, SECTION 11**

Re-word to coincide with Section 8 of this Article.

(Removes grievance procedure makes neutral physician the binding determiner of fact.)

**Change the language to read:**

**To maintain a capable work force, the County will schedule physical examinations for unit employees at a minimum of one each two (2) years with a County designated doctor at County expense.**

**If the County designated doctor determines that an employee is unable to perform the full scope of a deputy's duties, then the employee can consult a doctor at his/her own expense for an opinion regarding ability to so fully perform and to thus maintain continued employment status.**

**If a conflict relative to ability to perform the full scope of deputy deputies exists between the aforementioned two (2) doctors, then a third doctor mutually agreeable to the County and the Union will conduct an examination at County expense, and render his/her opinion as to the ability to perform the full scope of deputy duties. The Third Doctor's decision will be final and binding and will serve to decide any and all issues between the employee and the County.**

In response the Union proposed the following regarding the issue of Physical

Examinations:

**Union Issue – Physical Examinations**

**Physical Exams, Article XXV, Section 11**

The Union proposes that the existing Article XXV, Section 11, remain status quo.

**DISCUSSION OF THE ISSUE**

The Employer argues the following regarding the issue of physical examinations:

This issue does not involve external comparability. It involves a situation unique to the language of Otsego County. The position of the County on this issue is clear:

There is simply no reason where the parties agree on a third and final doctor to determine someone's ability to perform their job to allow that decision to be appealed to an Arbitrator.

The Employer then goes on to argue that it is important to allow medical professionals to evaluate someone's ability to perform their job. The County argues that since the parties have already decided that they will mutually agree upon a doctor, what would be the purpose of proceeding to arbitration.

The Union counters that an Arbitrator should review the medical findings of the third and final doctor and determine whether the decision to initiate the process was made in good faith.

The Panel is not here to determine whether the language agreed upon involving a third and final doctor is appropriate: Both parties have still agreed it should remain in the collective bargaining agreement. The issue posed by the Panel is that once the parties have agreed upon utilizing a third doctor who is mutually agreed upon between the Employee or Union's Physician and the Employer's Physician, should that medical finding be appealed to arbitration.

The parties' agreement to use a third doctor, selected by mutual agreement of the Employee/Union physician and of the Employer physician, remains unchanged. And, further, a question of whether the decision to initiate the process

is proper, is not submitted to the Panel. Hence, it is emphasized, the sole issue presented to the Panel is the appealability of the third doctor's decision. The Panel agrees with the position of the Employer that the existing procedure contains its own review process and finds no value in providing for arbitration for that particular question.

The position of the County on the issue of Vacation is as follows:

**Employer Issue No. 3 – Vacation**

**3. ARTICLE XXIV, SECTION 4 – VACATION**

**County's Last and Best Offer:**

**Employees can carry over from one year to another no more than their base amount of vacation at any given time.**

In response the Union has proposed the following regarding vacation:

**Union Issue – Vacation**

**Vacation, Article XXIV, Section 4**

The Union proposes that the existing Article XXIV, Section 4 remain status quo.

**DISCUSSION ON THE ISSUE**

The Employer argues this provision is necessary to not allow people to carry over vacation from year to year. The Employer argues that carrying over

vacation causes scheduling difficulties. They argue as well that the purpose of this proposal is to have people use their vacation in the year that is actually earned.

On the other hand, the Union argues that the Employer has not been able to set forth a single circumstance of abuse or a problem with that provision. In essence, the Union argues that there has been no compelling reason offered by the Employer to change the status quo.

The Panel agrees with the Union. The position of the Union of status quo on this issue will be adopted by the Panel.



## AWARD

### ISSUE NO. 1 & 2 – HOSPITALIZATION

Based upon the foregoing, the Employer's argument is most persuasive  
utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the

Employer's position.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☒ Concur ☐ Dissent

  
JERRY CASTER

Dated: 9-29-05

☐ Concur ☒ Dissent

### ISSUE NO. 5 & 7 – WAGES & RETROACTIVITY

Based upon the foregoing, the Union's argument is most persuasive  
utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's  
position for the Year 2004.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☐ Concur ☒ Dissent

  
JERRY CASTER

Dated: 9-29-05

☐ Concur ☒ Dissent

Based upon the foregoing, the Employer's argument is most persuasive  
utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the  
Employer's position for the Year 2005.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☒ Concur ☐ Dissent

  
JERRY CASTER

Dated: 9-29-05

☐ Concur ☒ Dissent

Based upon the foregoing, the Union's argument is most persuasive  
utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's  
position for the Year 2006.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☐ Concur ☒ Dissent

  
JERRY CASTER

Dated: 9-29-05

☒ Concur ☐ Dissent

#### RE: RETROACTIVITY

Based upon the foregoing, the Union's argument is most persuasive  
utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's  
position.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☐ Concur ☒ Dissent

  
JERRY CASTER

Dated: 9-29-05

☒ Concur ☐ Dissent

## ISSUE NO. 6 – LONGEVITY

Based upon the foregoing, the Employer's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Employer's position on Longevity and maintain the Status Quo.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☒ Concur ☐ Dissent

  
JERRY CASTER

Dated: 9-29-05

☐ Concur ☒ Dissent

## ISSUE NO. 8 – RETIREE HEALTHCARE

Based upon the foregoing, the Employer's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Employer's position.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☒ Concur ☐ Dissent

  
JERRY CASTER

Dated: 9-29-05

☐ Concur ☒ Dissent

#### ISSUE NO. 4 – PHYSICAL EXAMINATIONS

Based upon the foregoing, the Employer's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the

Employer's position.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☒ Concur ☐ Dissent

  
JERRY CASTER

Dated: 9-29-05

☐ Concur ☒ Dissent

#### ISSUE NO. 3 – VACATION

Based upon the foregoing, the Union's argument is most persuasive utilizing the Section 9 Factors. The Panel votes 2 to 1 to adopt the Union's position.

  
RUTH E. KAHN

Dated: Oct 12 2005

☒ Concur ☐ Dissent

  
HOWARD SHIFMAN

Dated: 9/27/05

☐ Concur ☒ Dissent

  
JERRY CASTER

Dated: 9-29-05

☒ Concur ☐ Dissent