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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
ACT 312 ARBITRATION

IN THE MATTER OF:

INGHAM COUNTY and
INGHAM COUNTY SHERIFF,

Employer

-and-

MICHIGAN ASSOCIATION OF POLICE,

Union.

MERC, Case No. L04 I-1005

Arising Pursuant to Act 312,
Public Acts of 1969, As Amended

FINDINGS, OPINION AND ORDERS

APPEARANCES:

PANEL:

Chairperson: C. Barry Ott
Employer Delegate: John R. McGlinchey, Esq.
Association Delegate: Fred Timpner, Executive Director

FOR THE ASSOCIATION: MICHIGAN ASSOCIATION OF POLICE
By: Fred Timpner, Executive Director
27704 Franklin Road
South field, MI 48034

FOR THE EMPLOYER: Cohl, Stoker, Toskey & McGlinchey, P.C.
By: John R. McGlinchey
601 North Capitol Ave.
Lansing, MI 48933

PROCEEDINGS

This compulsory arbitration case arises pursuant to two Petitions filed with the Michigan Employment Relations Commission under 1969 PA 312, as amended, being MCL 423.231, *et seq.* The petitioning parties are the Michigan Association of Police, hereinafter referred to as the "Union", and the Ingham County Sheriff's Office and Ingham County as co-employers for the employees within the Sheriff's Office, hereinafter referred to as the "Employer".

The Chairperson of the arbitration panel was appointed by MERC on January 12, 2006. A pre-hearing conference was held on March 27, 2006 at the MERC Lansing office. During the course of the pre-hearing conference the parties reviewed the issues in dispute and identified them as economic issues or non-economic. The Employer raised threshold issues challenging the Union's demand for a contract term preceding the certification date of the Union as the exclusive representative of the bargaining unit and the Union's demand that there should be no transfers from the Field Services Unit to the Corrections Unit. By letter dated April 25, 2006 the Panel Chair rendered the opinion that the Panel had no authority to issue an award for any period of time that preceded the date of the Union's certification as the exclusive representative.¹ Moreover, the issue of transfers between the Field Services Unit and the Corrections Unit was a prohibited issue and could not be submitted to the Act 312 Panel.² Subsequently, the Panel Chair by letter

¹ *City of Huntington Woods, Docket No. CU89 K-58, April 23, 1992*

² *Ingham County and Ingham County Sheriff, MERC Case No C04 D-102*

dated June 22, 2006 issued a ruling that these two issues could not be submitted to the Panel.

The Employer also challenged the authority of the Panel to treat each year of the three-year contract as a separate issue as it related to wages as opposed to a single issue. The parties were directed to file briefs and the Panel Chair issued an Interim Ruling on June 22, 2006 that the Panel had the authority to treat each year of the agreement as it relates to wages as a separate issue.

A hearing was scheduled for September 12, 2006 and the parties were to exchange exhibits two weeks prior to the hearing. On September 1, 2006 during a conference call with the parties and Panel Chair two threshold issues were raised concerning the Panel's authority to award retroactive effect to the grievance procedure and to order retroactive arbitration of four (4) individual employee grievances. During the September 12, 2006 hearing the parties offered their respective arguments and subsequently filed supporting briefs. On October 12, 2006 the Panel Chair issued a ruling holding that Section 10 of Act 312 does not authorize retroactive changes in non-economic benefits.

Additional hearings were held on September 21, 2006 and October 4, 2006. The parties were directed to submit their "last best offers" post marked by October 18, 2006 and closing briefs by December 1, 2006. The Panel Chair in a timely fashion received the "last best offers" and closing briefs.

ISSUES IN DISPUTE

There are some seventeen (17) issues in dispute before the Panel in this case, which are characterized as follows:

ECONOMIC ISSUES

1. Wages, adjustments to the wage schedules for the years 2003, 2004, 2005, 2006 and 2007. Since the Panel has ruled that no retroactivity may be awarded prior to the date of certification of the Union the adjustment for 2003 and 2004 is to be retroactive to February 27, 2004. Each year is to be treated as a separate issue. (5)
2. Pension
3. Shift Premium
4. Paramedic Pay
5. Holidays
6. Sick Leave
7. Retroactivity

NON-ECONOMIC ISSUES

8. Grievance Procedure (Court Step)
9. Discipline and Discharge
10. Transfers Within Unit
11. Election of Remedies
12. Transfers Into the Bargaining Unit
13. Restricted Duty

DECISION MAKING CRITERIA

The basis for an arbitration panel's Findings, Opinion and Orders are factors, as applicable, contained in Section 9 of Act 312 of 1969, as amended, being (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 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, 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 or in private employment.

The disputed issues previously identified must be resolved on the basis of the factors outlined in Section 9, as well as other requirements provided in Section 8 and 10 of the Act. A majority decision of the panel is binding if it is supported by competent, material and substantial evidence of the entire record.

BACKGROUND FACTS:

The Michigan Association of Police was certified by the MERC on February 27, 2004 as the exclusive representative of a bargaining unit composed of approximately 80 members employed by the Ingham County Sheriff's Office as deputies and detectives in the Field and Staff Services Division. Prior to that time these employees were included in a bargaining unit together with employees of the Corrections Division that was represented by the Fraternal Order of Police (FOP). The Ingham

County Sheriff, Ingham County and the FOP were parties to a labor agreement for a period of January 1, 2000 through December 31, 2002.

FACTORS:

Sec. 9. (a). Lawful authority of the employer.

There has been no challenge to the lawful authority of the employer in this dispute.

Sec. 9. (b). Stipulations of the parties.

During the hearing of September 12, 2006, the parties stipulated to the waiver of the time limits set-forth in Act 312. The parties further stipulated that the identified issues in dispute represent all of the disputed issues and no other issues would be submitted later. Finally, the parties stipulated that all tentative agreements reached during negotiation would be incorporated in the successor agreement and the balance of the prior labor agreement, not otherwise modified by tentative agreement or this Act 312 proceeding, would continue in the successor agreement.

Sec. 9. (c). The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

The Ingham County Sheriff's Department provides public safety services for the people of Ingham County with additional services to specific local jurisdictions in the county under special service agreements. These services include general road patrol, criminal investigation and emergency medical response. The public welfare demands that such services be provided in an orderly, efficient and competent manner. It is

essential to the community that the officers be reasonably equipped, well educated, and trained in the performance of their duties. It is just as important in meeting such goals that the County provide a level of compensation sufficient to attract and retain personnel in the competitive labor market and to maintain a high level of morale within the department. In many Act 312 cases the parties often submit substantial evidence concerning the financial condition of the employer in support of or in defense of their respective economic proposals. In this case the parties have elected not to submit any such data. Therefore it is presumed that the county has the financial resources to meet the costs of the various proposals.

Sec. 9. (d). Comparison of 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.

In many arbitration cases the parties spend considerable time arguing over which jurisdictions represent comparable communities. To their credit the parties in this case have agreed to the following list of counties as comparables:
 Kalamazoo, Washtenaw, Saginaw, Muskegon, Jackson, Macomb, and Berrien.

Given the nature of police work, the parties have agreed that there really are no meaningful comparisons in private employment and have elected not to offer any data or argument regarding private sector wage or benefit data.

Sec. 9 (e). The average consumer prices for goods and services, commonly known as the cost of living.

The record in this case does not include any significant argument regarding the CPI. However, since the Act specifically directs the Panel to take this subject into consideration we will take judicial notice of the CPI for the Midwest Urban region, as reported by the Bureau of Labor Statistics. Since December of 2002 through December of 2005 the index has increased by just over eight percent (8.5%), Union exhibit #42. The increase from November 2005 through November of 2006 is about two percent (2%).

Sec. 9. (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 parties have submitted extensive exhibits regarding wages and benefits provided to employees engaged in similar type work in the group of comparable jurisdictions together with data for the other bargaining units in Ingham County. We have examined the labor agreements from the list of comparables together with the

various data tables submitted by the parties and will discuss same in context with the issues in dispute.

Sec. 9. (g) Changes in the foregoing circumstances during the pendency of the arbitration proceedings.

To the best of our knowledge the Panel is not aware of any material changes during the pendency of the proceeding that would affect the Panel's decision.

WAGES (ECONOMIC)

The last best offers of the parties identify wage adjustments to the base wages for all bargaining unit employees for the years 2003 through 2007. This Panel has ruled that there can be no award retroactive prior to the date that the union was certified as the exclusive collective bargaining representative. Therefore, the proposed wage increases for the year 2003 and 2004 are to be retroactive to February 27, 2004, the date of certification of the union by MERC.

The Employer's last best offer is as follows:

Article 39, Salary Schedules, Section 1.

Effective January 1, 2003, 3% added to the Employees' base rate but not paid out as the MAP did not represent the bargaining unit.

Effective January 1, 2004, 3% added to the Employees' base rate, only, with payment for retroactive wage increases commencing February 27, 2004, the date of the MAP's certification.

Effective January 1, 2005, 3% added to the Employees' base rate.

Effective January 1, 2006, 2.5% added to the Employees' base rate.

Effective January 1, 2007, 2.5% added to the Employees' base rate.

Retroactivity, The Employer proposes that retroactivity apply to wages, only, limited to February 27, 2004, forward, and only to those employees employed on the date of the Act 312 Award.

The Union's last best offer is as follows:

Effective for all persons on the payroll covered by the bargaining unit as of January 1, 2003, Three and one-half percent (3.5%) increase to base wages for all classification and all steps of the wage scale. This shall not result in any retroactive pay for any persons covered by the bargaining unit in 2003.

Effective for all persons on the payroll covered by the bargaining unit as of January 1, 2004, three and one-half percent (3.5%) increase to base wages retroactive to February 27, 2004 through December 31, 2004 for all classifications and all steps of the wage scale.

Effective for all persons on the payroll covered by the bargaining unit as of January 1, 2005, three and one-quarter percent (3.25%) increase to base wages for all classification and all steps of the wage scale, retroactive to January 1, 2005.

Effective for all persons on the payroll covered by the bargaining unit as of January 1, 2006, three percent (3%) increase to base wages for all classifications and all steps of the wage scale, retroactive to January 1, 2006.

Effective for all persons on the payroll covered by the bargaining unit as of January 1, 2007, three percent (3%) increase to base wages for all classifications and all steps of the wage scale, retroactive to January 1, 2007.

DISCUSSION

In evaluating the two proposals, the Panel will examine the relative wages standing of Ingham County in relationship with the other counties in the agreed upon group of comparables, and the impact of the respective last best offers on that relative wage ranking and the relationship of the proposed increases to the increases occurring within the internal group of comparables. We will examine and discuss the wage issues in general and decide each year's increase as a separate issue.

The following represents a comparison of the application of the respective wage proposals to the maximum base salary:

Deputy	Employer	Union
2003	3%	3.5%
	\$46,822	\$47,049
2004	3%	3.5%
	\$48,226	\$48,696
2005	3%	3.25%
	\$49,673	\$50,278
2006	2.5%	3%
	\$50,915	\$51,787
2007	2.5%	3%
	\$52,187	\$53,340

Detective	Employer	Union
2003	3%	3.5%
	\$50,241	\$50,485
2004	3%	3.5%
	\$51,749	\$52,252
2005	3%	3.25%
	\$53,301	\$53,950
2006	2.5%	3%
	\$54,633	\$55,569
2007	2.5%	3%
	\$56,000	\$57,236

Employer exhibit #116 lists the maximum base pay rate for deputy sheriffs in the external comparables. In 2002, the last year under the terms of the expired contract, Ingham County ranked fourth among the comparables, with a maximum base salary of \$ 45,458 for a deputy. With the application of a 3% increase in 2003, the maximum base salary would increase to \$46,822 and that would result in the county maintaining their fourth place rank among the comparables.

Employer exhibit #118 lists the percentage increases for non-supervisory officers in the comparable counties. Those increases ranged from a low of 2.75% in Berrien County to a high of 3.5% in Kalamazoo County for 2003. Macomb County provided

a 3.25% increase and the other four counties all provided an increase of 3% in the year 2003.

Employer exhibit #126 lists the percentage increases in salary for twelve other bargaining units recognized by Ingham County covering the period of 2003 through 2007. For the year 2003, in all but two bargaining units, the parties negotiated a 3% wage increase.

Employer exhibit #117 lists the maximum base salary for non-supervisory detectives in the comparable counties. Only two of the comparables, Saginaw and Washtenaw have a non-supervisory, detective position. The remaining counties either have no rank of detective or have a rank of detective sergeant, paid as a sergeant. The data indicates that Ingham County ranked second with a salary of \$48,778 in 2002. Under the Employer's proposal the County would maintain their second place ranking.

The Union notes that the current maximum base salary for a deputy is \$45,458 and \$48,778 for a detective. Under the Union's proposal for a 3.5% increase in 2003, the maximum base rate for a deputy would be \$47,049 and \$50,485 for a detective. Such an increase would result in an increase of \$227 more than the proposed Employer's maximum base salary and \$244 more for the detective's salary. The Union argues that the Employer's exhibit #116 indicates the average wage for deputy sheriff among the comparables for the year 2003 is \$48,105 and the Union's proposal of 3.5% results in a maximum base salary that is \$956 below the average of the external comparables, while the Employer's proposal would result in a salary that is \$1,283 below the average. The Union contends that their proposal is closer to the

average than the Employer's. Moreover, the Union suggests that their proposal is justified because there will be no retroactivity for 2003 and the .5% additional increase over that negotiated by the Employer with the other county bargaining units makes up for the penalty of no retroactivity.

The Union's proposal for the rank of detective, would maintain their second place ranking among the limited comparables through the year 2004 and improve their ranking to number one in the years 2005 and 2006, no comparable data is available for the year 2007.

The Union contends that their overall wage proposal is the fairer of the two and has been designed to move the Ingham County Deputy Sheriff's annual maximum base pay from \$1,251 below the external comparables to \$140 above the average in the year 2006, for deputies, there being no data available for 2007. In justifying the proposed increases, the Union relies on three basic arguments; the loss of retroactivity from February 27, 2004 to January 1, 2003, the average salary among the external comparables and a rather imprecise contention that the bargaining unit employees might bear a heavier burden of the premium cost of health insurance than those in the external comparables.

The Employer maintains that their proposal will maintain their relative ranking among the deputies in the comparable communities and will, in most cases increase, comparatively, their position within that ranking. Moreover, the proposal is right in line with the percentage increases provided by the external comparables as demonstrated in Employer exhibit #116 and the internal comparables in Employer

exhibit #126. The same may be said for the position of non-supervisory detective as indicated in Employer exhibit #118.

Wages, January 2003:

The difference between the parties' proposals is one-half percent (.5%), or \$227 per year for a deputy and \$244 for a detective. Such a small difference makes it difficult to distinguish which offer should prevail. The Union's argument that since the average salary for deputies among the comparables is higher, their proposal is justified because it is closer to the average than that of the employer isn't particularly persuasive. In 2002, the deputies' rate was below that of the average among the comparables and ranked fourth (4th). The rate was some \$222 per year above the median for the comparables. The wage increases provided by the comparables in 2003 for deputies range from a high of 3.5% to a low of 2.75%, with four counties providing increases of 3%, for an average percentage increase of 3.07%. Of the twelve bargaining units among the Ingham County internal comparables, ten negotiated increases of 3% for 2003.

The data for detectives is limited to only two other counties that employ non-supervisory detectives, Saginaw and Washtenaw. Employer exhibit #117 indicates that these two counties provided increases of 3% for the year 2003, the same increase as proposed by Ingham County. The increase maintains the relative ranking of Ingham County with the other two comparables.

The Union argument that a one-half percent increase greater than that negotiated by the Employer with the internal comparables is justified because of the lack of

retroactivity is without merit. The loss of retroactivity to January 1, 2003 is a direct result of the application of the law, not the fault of the Employer. The extra one-half percent isn't designed to simply apply until the lost retroactivity is recouped, it would remain in effect indefinitely, producing a greater benefit than that lost due the change in union representation and the attendant delays resulting from a contested election.

It is the opinion of the Panel that the applicable Section 9 factors of Act 312 support the adoption of the Employer's last best offer of settlement for the year 2003.

AWARD—WAGES—JANUARY 1, 2003

The Panel hereby adopts the Employer's last best offer of settlement as follows:

Article 39, Salary Schedules, Section 1.

Effective January 1, 2003, 3% added to the Employee's base rate but not paid out, as the MAP did not represent the bargaining unit.

C. BARRY OTT, Panel Chair

C. Barry Ott

EMPLOYER DELEGATE, JOHN R. McGLINCHEY

John R. McGlinchey
UNION DELEGATE, FRED TIMPNER
Fred Timpner
Dissent

Wages, January 2004:

Once again, the difference between the parties' proposals is one-half percent (.5%), or \$470 for a deputy sheriff at the maximum of the base salary and \$503 for a detective. Both proposals are to be retroactive to February 27, 2004, the date of the Union's certification. The Union argues that the extra .5% is justified because of the loss of approximately two months retroactivity. In addition, the Union contends that their proposal is closer to the average salary of the external comparables than the Employers'. For the reasons stated above, neither of these arguments is persuasive. The increases provided by the external comparables for deputies in the year 2004, as indicated in Employer exhibit 118, ranged from a wage freeze in Kalamazoo County, to an increase of 1.25% in Berrien County, and an increase of 3% in the remaining five counties, for an average increase of approximately 2.7%. All of the twelve internal comparables of Ingham County negotiated a 3% increase for 2004.

The data for detectives shows that the increase proposed by the Union would raise the relative ranking of Ingham County to first among the external comparables, while the Employer's proposal would maintain their relative ranking.

In the opinion of the Panel, the Section 9 factors of Act 312 support the adoption of the Employers' last best offer of settlement for the year 2004.

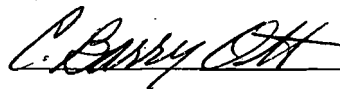
AWARD—WAGES—JANUARY 1, 2004

The Panel hereby adopts the last best offer of settlement of the Employer as follows:

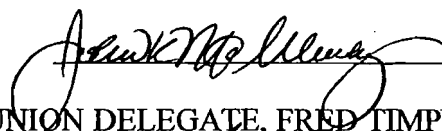
Article 39, Salary Schedules, Section 1.

Effective January 1, 2004, 3% added to the Employees' base rate, only, with payment for retroactive wage increases commencing February 27, 2004, the date of the MAP's certification.

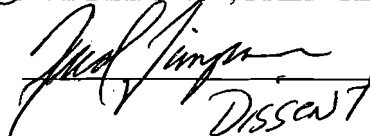
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



DISSSENT

Wages, January 2005:

The difference between the parties' proposals is one-quarter percent (.25%), or \$605 for a deputy and \$649 for a detective. While the Union notes that the Employer's proposal is \$57.00 below the average for the external comparables for the year 2005, and the Union's proposal is \$548 above the average, the Union proposal should be awarded because the external average is artificially low due to the fact that no figures are available for Macomb County. A more meaningful evaluation of the available data as indicated by Employer exhibit #118 shows that the increases negotiated by the external comparables ranged from a low of 1.5% in Berrien County to a high of 3% in Saginaw and Washtenaw Counties, for an average increase of 2.49%. Again, all twelve of the internal comparables of Ingham County negotiated an increase of 3% for the year 2005.

The data for detectives in the two external comparables shows that they each received 3% increases for the year 2005. Again, Ingham County's proposal of 3% for the year 2005, is consistent with the increases provided for both internal and external comparables.

In the opinion of the Panel, the Section 9 factors of Act 312 support the adoption of the Employer's last best offer of settlement for the year 2005.

AWARD—WAGES—JANUARY, 2005

The Panel hereby adopts the last best offer of settlement of the Employer as follows:


Article 39, Salary Schedules, Section 1.

Effective January 1, 2005, 3% added to the Employees' base rate.

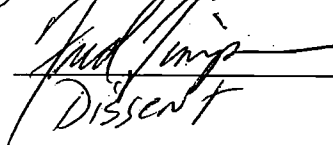
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



Dissent

Wages, January 2006:

The difference between the parties' proposals is one-half percent (.5%) or \$872 for a deputy and \$936 for a detective. The Union argues that their proposal should be

adopted because it is closer to the average than the Employers, the Union's offer being \$140 more than the annual average and the Employer's being \$702 below the average. Again, averages do not provide a very meaningful comparison. Under the Employer's proposal Ingham Counties' deputies would maintain their relative ranking among the external comparables. Employer's exhibit #118 indicates that the increases provided by the external comparables ranged from a low of 1.5% in Kalamazoo to a high of 3.5% in Muskegon, for an average increase of 2.35%. We note that data for Macomb and Saginaw counties is unavailable. The Employer's proposal of 2.5% compares favorably to the increase of 1.75% in Berrien County, 2% in Jackson County and 1.5% in Kalamazoo County. Again, the Employer's proposal is consistent with the increases of 2.5% negotiated with the twelve internal comparable bargaining units of Ingham County for the year 2006.

In the opinion of the Panel the Section 9 factors support the adoption of the Employer's last best offer of settlement for the year 2006.

AWARD—WAGES—JANUARY 2006

The Panel hereby adopts the last best offer of settlement of the Employer as follows:


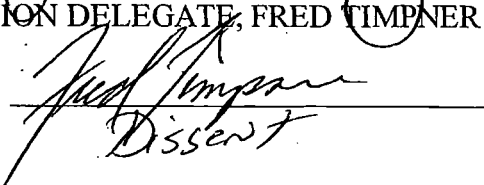
Article 39, Salary schedules, Section 1.

Effective January 1, 2006, 2.5% added to the Employees' base rate.

C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN McGLINCHEY


UNION DELEGATE, FRED TIMPNER

Dissent

Wages, January 2007:

The difference between the parties' proposals for the year 2007 is one-half percent (.5%), or \$1,153 for a deputy and \$1,236 for a detective. There is no external comparable data in the record for the year 2007. The Union argues that their proposal is designed to bring the deputies' pay from \$1251 below the average for external comparables in the year 2002 to \$140 above the average in the year 2006 and in their opinion, taking into account inflation a 3% increase in 2007 is not unreasonable and would maintain their relative position to the external comparable for 2008.

The Employer argues that while there is no external data to compare the Panel still has the internal comparables to examine in relationship to the Employer's proposal for the year 2007. Employer exhibit #126 indicates that of the twelve other bargaining units that Ingham County deals with, all twelve have negotiated contracts that provide for an increase of 2.5% for the year 2007. Included in that group is another Act 312 eligible unit that has agreed to the same proposal being offered by the County, that unit consists of the sergeants, lieutenants and captains who supervise the MAP-represented employees.

The Panel is of the opinion that the Employer's last best offer of settlement more nearly meets the Section 9 factors of Act 312 and should be adopted for the year 2007.

AWARD—WAGES—JANUARY, 2007

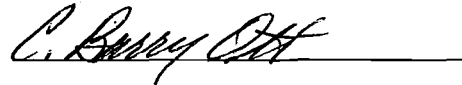
The Panel adopts the last best offer of settlement of the Employer as follows:

Article 39, Salary Schedules, Section 1.

Effective January 1, 2007, 2.5% added to the Employees' base rate.

As to the retroactivity of wages, the Employers' proposals as awarded by this Panel apply to wages, only, limited to February 27, 2004, forward, and only to those employees employed on the date of this Act 312 Award.

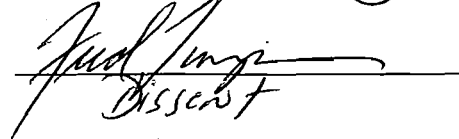
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



PENSION, (ECONOMIC)

The Union proposes to reduce the employee contribution to the retirement plan from 10.96% to 8.96% of their salary. The Employer proposes to maintain the current level of employee contributions.

The employees of this bargaining unit participate in a pension plan administered by the Municipal Employee's Retirement System of Michigan (MERS) and are included

in a plan that includes the employees of the Corrections Division, who are in a separate bargaining unit represented by the FOP. The plan is a “non-conforming” plan in that it exceeds the highest normal pension plan offered by MERS. The plan utilizes a defined benefit formula that includes a 3.2% multiplier, which is multiplied by the years of service to calculate the percentage of retirement pay to be received by a retiree, by applying the percentage to a final average pay factor. This benefit produces a very generous pension benefit; for example, an employee with 30 years of credited service would be eligible at retirement age for a benefit of 96% of his/her final average earnings factor. No other county among the external comparables provides a pension plan with a 3.2% multiplier; it is a very expensive benefit. The cost of any pension benefit is based in part upon the number of employees in the group, their age, their years of prior service, and the gross payroll of the group. Costs to the Employer and its’ employees is usually determined by an actuarial study. The cost usually includes an unfunded liability factor based upon the cost of funding all of the employees’ prior years of service. This cost can be increased or decreased by the length of the period of amortization. In short, pension plan funding is a complicated subject and one cannot make simplistic assumptions when projecting cost implications resulting from changes.

The 3.2% multiplier was incorporated into the pension plan in the expired contract between the Employer and the FOP. Joint exhibit #2, at page 40, Section 7., provides in part that the retirement plan multiplier shall be increased to 3.2%, effective at the first available enrollment period following ratification. The cost of this improvement was to be borne entirely by the employees.

The Employer argues that the Union proposal to reduce their contribution to the retirement fund by 2% translates to an increased cost to the Employer of 2% of the unit payroll. The Union argues that the cost to the Employer would not necessarily be increased by 2%, but would be closer to 1.72%, based upon their interpretation of the Union exhibit #58 that contains a footnote at page 92 indicating that for every increase/decrease of 1% in members' contribution the Employer contribution is increased/decreased by .86%. This assertion doesn't address what if any impact will occur to the Employer's cost for the remainder of the pension plan. The assumptions of the Union regarding the unfounded liability for vested former members and retirees and beneficiaries are speculative at best.

None of the comparative data of external comparables is of any meaningful value to the Panel, absent a detailed analysis of the various plans, in evaluating the merits of this issue. There are two other bargaining units that enjoy the same 3.2% multiplier, the FOP unit, which is included in the same plan as the MAPS unit and the supervisory unit. The supervisory unit employee contribution is 20% of their earnings and the FOP unit employees pay 10.96%, the same as the MAP unit employees.


In the opinion of the Panel there simply is no compelling evidence under the Section 9 factors of Act 312 to shift any of the costs of the plan as determined by the actuary for the fund. Consequently, the Panel elects to award the proposal of the Employer to maintain the status quo of the current level of employee contributions.

AWARD--PENSION


The Panel adopts the last best offer of settlement of the Employer as follows:

Article 21, Retirement. The Employer proposes the status quo (no provision).

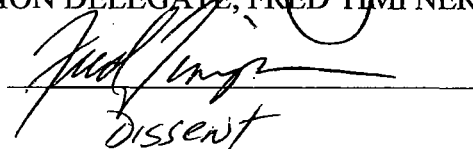
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



Dissent

SHIFT PREMIUM, (ECONOMIC)

The Union's last best offer of settlement is as follows: Employees who work the majority of their assigned shift from 2:00 p.m. to 6:00 a.m. shall be paid a thirty-five cent (\$.35) per hour shift premium for all hours worked effective July 1, 2006.

The Employer proposes maintaining the status quo, (no shift premiums).

The majority of the Field Services personnel are assigned to two shifts: those shifts are usually 6 a.m. to 6 p.m. and 6 p.m. to 6 a.m. Employees so assigned work six (6) twelve hour days and one (1) eight hour day in a two (2) week period. This results in the officers working either seven days or nights out of fourteen days, followed by seven days off.

The Union argues that their proposal is supported by the shift premium data contained in Union exhibit #54 for the external comparables. Four of the comparables have some form of shift premium while three do not and neither does Ingham County. Jackson County utilizes three shifts and pays \$.50 cents per hour to employees who regularly work the second or third shifts defined as shifts that are regularly scheduled to commence after 2 p.m. or before 6 a.m. Washtenaw County pays \$.45 cents per hour for all hours worked between 6 p.m. and 6 a.m. Macomb County pays 3% of the base hourly rate for employees who work the afternoon shift and 6% to those who work the midnight shift. The afternoon shift is defined as any shift with a scheduled starting time on or after 2 p.m. and before 10 p.m. the midnight shift is defined as any shift with a scheduled starting time on or after 10 p.m. and before 6 a.m. Kalamazoo County pays 2% of base hourly rate to employees who work a shift which commences on or after 12 noon but before 8 p.m. and 1% to employees who works a shift which commences on or after 8 p.m., but before 6 a.m. All of the counties providing a shift premium allow for shift bidding on the basis of seniority. Union exhibit #55 identifies two other Ingham County bargaining units that have a shift premium; Park Rangers receive \$1 per hour for work performed between the hours of 11 p.m. and 6 a.m., and the U.A.W. Local 2256 bargaining unit has a \$.15 cent per hour premium for work on a shift other than the day shift.

The Employer argues that the employees prefer the 12-hour shift and are permitted to bid on their preference. As to the various shift premiums paid by the external comparables, the Employer points out that in Kalamazoo County for the contract years of 2003 through 2006, Kalamazoo deputies received only a 7.70% wage increase, while

Ingham County has proposed an 11.5% pay increase for the same time period. Similarly, Jackson County pays its deputies about \$1800 less annually in 2006 than does Ingham County. The Employer maintains that the shift premiums paid by Macomb and Kalamazoo Counties are not useful comparisons because they utilize a three shifts system and Ingham County uses a two-shift system. The Employer points out that no other Ingham County Sheriff's Office bargaining unit receives a shift premium. The Employer contends that there has been no evidence presented that anyone has been inconvenienced by virtue of his or her shift selection or that employees working the second shift work any "harder" than those employees that work the day shift and therefore the Panel should reject the Union's proposal to create this additional form of compensation.

The Employer's argument that it is proposing a greater increase in pay for the contract years 2003 through 2006 than Kalamazoo County as justification for denying the Union's shift premium proposal isn't particularly persuasive in view of the fact that Kalamazoo County pays its deputies considerably more than Ingham County over the same time period. The data for external comparables does support the Union's proposal for a shift premium and the amount proposed is not inconsistent with that provided by the other counties.

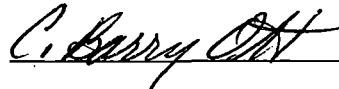
In the opinion of the Panel the Section 9 factors of Act 312 support the adoption of the Union's last best offer of settlement for the year 2006.

AWARD—SHIFT PREMIUM

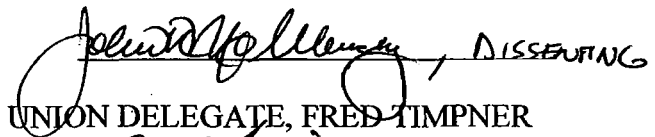
The Panel hereby adopts the last best offer of settlement of the Union as follows:

Employees who work the majority of their assigned shift from 2:00 p.m. to 6:00 a.m. shall be paid a thirty-five cent (\$.35) per hour shift premium for all hours worked effective July 1, 2006.

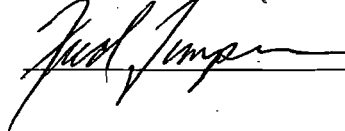
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



PARAMEDIC PAY, (ECONOMIC)

The Employer proposes to increase assigned paramedics additional pay from \$400 annually to \$500 annually, and maintain the non-assigned paramedics additional pay at the present level of \$150 annually.

The Union proposes to increase the assigned paramedics addition pay from \$400 annually to \$1000 annually, provided that they function as a paramedic for twelve consecutive months prior to their anniversary date each year of the contract. The payment is to be made in four installments of \$250 each quarter of the calendar year, effective February 27, 2004. The Union proposes to maintain the non-assigned paramedics additional pay at the present level of \$150 annually.

There is no external or internal comparable data for this issue since none of the counties utilize the services of deputies/paramedics. The Union argues that the additional duties of a deputy assigned as a paramedic, the required training, and the possibility that the county has the ability to pass the increased cost on to those communities that have service contracts with the county justify their proposal. The Union claims that the Employers' proposal does not indicate the effective date of their proposal as required and should be rejected for that reason. The Employer's last best offer of settlement clarifies this matter by indicating that retroactivity applies only to wages. It is clear that the Employer's proposal on the increase to paramedic pay (wages) is to be retroactive to February 27, 2004.

The Employer argues that the record evidence indicates that the number of private advanced life support services has doubled in recent years and the testimony of Deputy Wilk indicates that as an assigned paramedic he performs paramedic duties about once in a two week period, and that the number of paramedic calls has not increased. According to the Employer, nothing in this record supports the 150% increase proposed by the Union.

This issue presents the Panel with the task of making a decision on proposals for which neither side has presented compelling supporting evidence. We are of the opinion that the correct level of compensation for the paramedic duties lies somewhere between the respective proposals of the parties. However, Act 312 does not grant the Panel the discretion to make that decision. We are compelled by the Act to award one or the other proposals without modification. We concluded that there is no evidence in this record that would justify the increase proposed by the Union.

In the opinion of the Panel the Section 9 factors of Act 312 support the adoption of the Employer's last best offer of settlement.

AWARD, PARAMEDIC PAY

The Panel hereby adopts the last best offer of settlement of the Employer as follows:

Article 39, Salary Schedules, Section 2, subsection B, Special Compensation for Paramedics. The Employer proposes an increase of the annual payout to \$500.

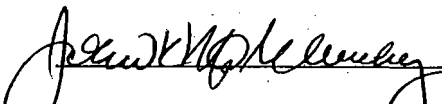
B. Special Compensation for Paramedics. Assigned paramedics will receive a Four Hundred Dollars (\$400.00) payment, provided that they function as paramedics for twelve (12) consecutive months prior to their anniversary date each year of this contract. Effective ____, the compensation to assigned paramedics will be increased to Five Hundred Dollars (\$500.00). Non-assigned paramedics shall receive a One Hundred Fifty Dollar (\$150.00) payment for each year of the contract.

As noted in the discussion, this provision is to be retroactive to February 27, 2004.


C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



Disscut

HOLIDAYS, (ECONOMIC)

The unit employees presently have twelve paid holidays, as do all other employees of Ingham County. The Union proposes to add two holidays, Christmas Eve Day and New Year's Eve Day, increasing the total holidays to fourteen. The Union also proposes that the contract be changed to recognize all holidays to the actual day of the holiday for purposes of compensation, rather than the day designated by Ingham County as the holiday.

The Employer proposes to maintain the status quo on both the number of holidays and the designation of holidays consistent with the County's observance.

The Union argues that five of the seven external comparables provide more than twelve holidays as justification for their proposed increase of two days. An examination of Union exhibit #103, and Employer exhibit #134 indicates that Macomb County has fourteen and one-half or fifteen and one-half holidays depending on whether or not it is an election year. Berrien County has thirteen holidays, Jackson County has ten holidays, Kalamazoo County has 11 holidays, Muskegon County has thirteen holidays, and Saginaw and Washtenaw Counties each have twelve and one-half holidays.

The Employer argues that the average number of holidays among the external comparables is twelve and one-half, slightly more than Ingham County but significantly less than that proposed by the Union. Moreover all other bargaining units of Ingham County have twelve negotiated holidays.

The Union proposes to change the date that holiday premium pay is applied from the designated date to the actual identified holiday. Such a change would result in those deputies who actually work on the day of the holiday receive the holiday premium pay.

Under present arrangements the deputies who work on the designated day get the holiday premium pay and depending on the work schedule get the actual holiday off.

The Employer wishes to maintain the present system because many of the other County agencies that interact with the deputies and members of the bargaining unit work a Monday through Friday schedule, and their offices are closed on the designated day. The Employer maintains that the Union proposal would create too many operational problems and would increase the County's holiday premium pay costs.

Since the holiday issue has been identified as a single issue, the Panel may not separate the factors of the number of holidays and the date of designation and must award one or the other of the respective proposals without modification as it is an economic issue

Again it appears that the more reasonable number of holidays based upon the comparables should be somewhere between the two proposals of the parties, but that determination authority does not rest with the Panel. Similarly, one would think that there could be developed a method of dealing with a holiday schedule for employees assigned to a Monday through Friday schedule and those assigned to the twelve hour day schedule that could satisfy the concerns of both parties, but that is not within the province of the Panel.

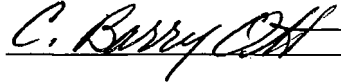
In the opinion of the Panel there is insufficient evidence among the external comparables to support the Union's proposal and the weight of the number of holidays provided all other employee of Ingham County supports the Employer's proposal. The Panel is of the opinion that the Section 9 factors of Act 312 support the award of the last best offer of the Employer.

AWARD, HOLIDAYS


The Panel hereby adopts the last best offer of the Employer as follows:

Article 13, Holidays. The Employer proposes the status quo (no provision).

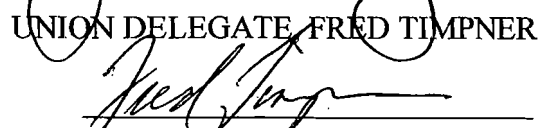
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



Dissent

SICK LEAVE, (ECONOMIC)

This issue consists of two sections. The Union proposes to amend Article 15, Section 3., by adding the following language: "An employee shall be eligible to use more than forty (40) hours in circumstances whereby one of the above listed individuals has a serious health condition as defined by the Family and Medical Leave Act (FMLA). Medical verification may be required by the Employer." Section 9., Cash Out Upon Separation, A. Death, is to be amended by increasing the maximum pay out upon the death of a member from 50% to 75%, and the maximum hours from 640 to 960 hours and B. Retirement, is to be amended by increasing the maximum pay out upon the retirement of a member from 50% to 75%, and the maximum hours from 640 to 960 hours. The Union proposal is to be effective on the date of the arbitration award.

The Employer proposes to amend Article 35, Leaves of Absence, to add the following Section 6. Family and Medical Leave Act. “The Union and the Employer reserve all their rights under the Federal Family and Medical Leave Act and May exercise same. A cumulative maximum of forty (40) hours of sick leave credit per contract year may be used for the illness of a spouse, minor dependent child or stepchild, or parent of the employee. Medical verification may be required by the Employer”.

“Employees may use accumulated sick time for approved leave of absences relating to a Family Medical Leave request when it is necessary, as medically certified, to care for a family member. This is in addition to the time allowed in Section 15. This sick time use will be granted after the employee has exhausted other available time. There shall be no donation of sick time for care of family members.”

The Employer proposes to maintain the status quo regarding the pay out of sick leave upon death or retirement of an employee.

There is not a great deal of difference between the respective proposals of the parties with regard to the family medical leave provisions. The Union argues that their proposal is more clear and concise, and suggests that the Employer’s use of the term “when it is necessary as medically certified” is fraught with peril and could lead to disputes. Both provisions provide for medical verification if required by the Employer. The Act uses the term “serious health condition,” while the Employer simply provides, “when it is necessary, as medically certified”.

Union exhibit #106 indicates that all of the external comparable counties, with the exception of Macomb County, provide for the payment of 50% of unused sick time upon the death of an employee, and Berrien and Kalamazoo Counties do not pay for any

unused sick time upon the death of an employee. All of the comparables, except Macomb and Muskegon Counties, provide for the payment of unused sick time at the rate of 50% at the time of retirement. Ingham County allows the most accumulated sick time pay out at 640 hours at retirement, more than any other county. The level is consistent with that provided to the other bargaining units in Ingham County.

In the opinion of the Panel, the Section 9 factors of Act 312 support the award of the last best offer of settlement of the Employer, effective on the date of the award.

AWARD, SICK LEAVE

Article 35, Leaves of Absence.

Section 6. Family and Medical Leave Act. The Union and the Employer reserve all their rights under the Federal Family and Medical Leave Act and may exercise same. A cumulative maximum of forty (40) hours of sick leave credit per contract year may be used for the illness of a spouse, minor dependent child or stepchild, or parent of the employee. Medical verification may be required by the Employer.

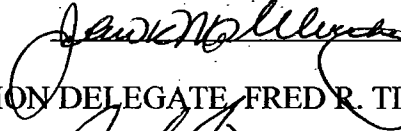
Employees may use accumulated sick time for approved leave of absences relating to a Family Medical Leave request when it is necessary, as medically certified, to care for a family member. This is in addition to the time allowed in Section 15. This sick time use will be granted after the employee has exhausted other available time. There shall be no donation of sick time for care of family members.

The present formula for sick time cash shall remain the status quo.

C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED R. TIMPNER



Dissent

GRIEVANCE PROCEDURE, (NON-ECONOMIC)

The grievance procedure contained in the expired contract provided that grievances challenging any discipline of less than a five (5) day suspension could proceed to arbitration. Grievances involving discipline of five (5) days or more suspension could proceed to circuit court.

The Union proposes a major change over the status quo and seeks to remove the restriction on appealing to arbitration grievances involving disciplinary actions of five (5) days or more suspension. The Union argues that all of the external comparables allow all types of discipline up to and including discharge to be appealed to an arbitrator and even Ingham County has four bargaining units that provide for arbitration of all types of discipline. According to the Union, the State of Michigan and its courts have long recognized arbitration as the favored mechanism for dispute resolution of labor disputes.

The Employer proposes to maintain the status quo and argues that for at least thirty years the Employer and its deputies have utilized the circuit court and a judge to

resolve disciplinary grievances of a severe magnitude. The Employer contends that there really is no difference between the two forums. Under the present system the parties simply select their final adjudicator of grievances from the Ingham County bench rather than selecting an arbitrator through an arbitration service, along with the attendant costs. The judge on the grievance case simply acts as an arbitrator in deciding the case. The prospect of a jury trial is a rare event since in all of the past cases adjudicated in Circuit Court there has only been one instance of a jury trial at the request of the Union and the Employer is willing to stipulate that it will never request a jury trial. According to the Employer, there is no record evidence of even a perception of bias under the present system and no evidence of any cost analysis of grievance arbitration versus the cost of the present system. In short, the Employer maintains the adage of, if it isn't broke, why fix it, is appropriate in this instance.

Based upon the external comparable data, there is support for the Union's proposal and there is no record evidence that the procedure proposed by the Union would be any more costly to the parties than the present system.

In the opinion of the Panel, the Section 9 factors of Act 312 support the last best offer of settlement of the Union.

AWARD, GRIEVANCE PROCEDURE

The Panel hereby adopts the last best offer of the Union as follows:

CONTRACT GRIEVANCE PROCEDURE

Section 1. The grievance is defined as a reasonably and sensibly founded claim of a violation of any of the terms of this Agreement. Any grievance filed shall refer to the

specific provision alleged to have been violated and it shall adequately set forth the facts pertaining to the alleged violation.

Section 2. An employee having a grievance in connection with the terms of this Agreement shall present it as follows:

STEP 1: The Grievance shall be reduced to writing by the employee and /or Union and presented to the Sheriff, or the person acting in said capacity, within ten (10) days after the grievant knew, or should have known, of the occurrence of the matter aggrieved in order to be proper matter for the grievance procedure. The grievance shall be dated and signed by the aggrieved employee and /or Union and shall set forth the facts, including dates and provisions of the Agreement that are alleged to have been violated, and the remedy desired. The grievance shall not be considered submitted until the Sheriff, or the person acting in his capacity, receives the written grievance. At the time it is received, it shall be dated and a copy returned to the aggrieved employee and the Union. A meeting will be arranged by the employee and/or his representative and the Sheriff, or his designee, to discuss the grievance. The Sheriff, or the person acting in said capacity, will then answer the grievance in writing within seven (7) days from the date of the meeting at which the grievance was discussed.

STEP 2:

- A. If the answer of the Sheriff is not satisfactory, the Union shall submit said grievance to the Human Resources Director within ten (10) days after receipt of the answer of the Sheriff as provided in Step 1, indicating the reasons why the written answer of the Sheriff was unsatisfactory. A meeting between no more

than three (3) representatives of the Union and the Sheriff, and/or a representative of the Corporation Counsel and the Human Resourced Director shall be arranged to discuss the grievance submitted. Said meeting shall be held within ten (10) days from the date the Human Resources Director received said grievance. The Human Resources Director shall answer the grievance within ten (10) days of the date of the meeting at which the grievance was discussed.

- B. The Union representatives may meet at a place designated by the Sheriff or Human Resources Director for one-half hour immediately preceding said grievance meeting.

STEP 3: If the answer of the Human Resources Director is not satisfactory, the Union may submit for an arbitration panel to the American Arbitration Association or the Michigan Employment Relations Commission within fifteen (15) day after the Human Resources Director has answered said grievance. The arbitration shall be held in accordance with the procedures and rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding upon all parties. The fees and expenses of Step 3 shall be paid equally by the County and the Union.

Section 3. The employee and /or his/her representative may be present at all steps outlined above, and the arbitration proceeding, without loss of pay or benefits.

Section 4. No person or body constituting one of the steps of the grievance procedure outlined above shall have the power to add to or subtract from, nor modify any of the terms of this Agreement, nor shall he/she substitute his/her discretion for that of the

County, the Sheriff, or the Union where such discretion has been retained by the County, the Sheriff, or the Union, nor shall he/she exercise any responsibility or function of the County, the Sheriff, or the Union. This limitation shall include the arbitrator as stated in Step 3.

Section 5. A grievance not appealed to the next higher step within the time limit shall be deemed permanently denied. Should the Employer or his/her representative fail to respond on time at any step, the relief requested by the aggrieved shall be deemed to have been granted.

Section 6. Saturdays, Sundays and holidays, as provided in this Agreement, shall not be counted in regard to time limitations and dates for submission of grievances, appeals, answers, etc.

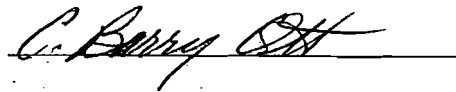
Section 7. The Employer and employees will have the right to call witnesses to testify.

Section 8. Nothing in this procedure shall prohibit any individual employee at any time from presenting grievances to the Employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of this Agreement, provided that the Union has been given the opportunity to be present at such adjustment and has been given a copy of the settlement.

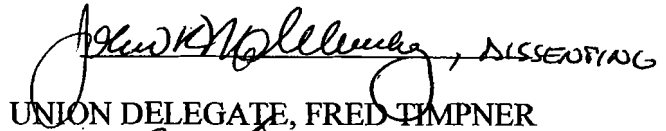
Section 9. New-hire probationary employees may be disciplined or terminated with or without cause and shall not have the right to file a grievance under this procedure with regard to those matters.

The above shall be effective the date of the arbitration award.

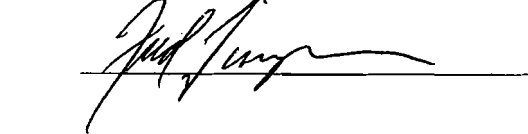
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



DISCIPLINE AND DISCHARGE, (NON-ECONOMIC)

The Union proposes to add a new Article to the contract consisting of some fifteen sections as follows:

Section 1. No employee shall be reduced in pay or position, denied benefits, suspended, demoted, transferred, discharged, or subject to disciplinary action except for just cause. This shall not apply to new-hire probationary employees who may be disciplined or terminated with or without cause.

Section 2. Discipline shall be applied in a corrective, progressive, and uniform manner. Discipline shall be consistent for similar or substantially similar violations.

Section 3. Progressive discipline shall take into account the circumstances surrounding the incident, the nature of the violations, the employee's record of discipline, and the employee's record of performance and conduct.

Section 4. Discipline includes oral warnings and/or reprimands, written warnings and/or reprimands, suspensions, demotions, transfers, and discharges. Counseling sessions shall not be considered as discipline or used as such in violation of Section 2.

Section 5. An employee under investigation for an offense that may result in disciplinary action or the filing of criminal charges shall not be interviewed without a Union representative or Union attorney present.

Section 6. If the Employer interviews, questions, or holds any meeting pertaining to an employee under investigation, the interview, questioning, or meeting shall be conducted during the employee's regular scheduled working hours unless the Employer and employee decide upon a mutually agreeable time in advance.

Section 7. An employee shall be given a minimum of seventy-two (72) hours advance notice that the Employer wants to interview, question, or hold a meeting pertaining to an investigation or discipline. The employee shall also be given written notice of the subject of the meeting and the charges, if any, against the employee.

Section 8. All interviews, questioning, or meetings shall be limited in scope to activities, circumstances, events, conduct, or acts which pertain to the incident which is the subject of the investigation. No employee shall be required or requested to disclose any items of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of the employee's family or household.

Section 9. If the Employer tape records an interview with the employee, a copy of the tape shall be provided to the employee. If the recording is reduced to a transcript, a copy of the transcript shall be provided to the employee.

Section 10. An employee ordered to complete a written statement or report shall be given a minimum of seventy-two (72) hours to do so. The Employer may ask for

clarification of information in the statement or report, but no employee shall be ordered to change the statement or report.

Section 11. If an investigation by the Employer may result in criminal charges, the employee shall be notified of his or her constitutional rights as afforded by Miranda. In addition, when an employee is ordered to answer any questions and a failure to do so could result in his or her termination, the employee shall be allowed to invoke his or her constitutional rights as afforded by Garrity. An employee shall also be allowed to invoke his or her Garrity rights on a written statement or report. No criminal investigators shall be present at any meeting that may result in discipline.

Section 12. In all disciplinary hearings, the employee shall be presumed innocent until proven guilty.

Section 13. Any investigations and/or complaints against an employee, when designated by the Employer to be unfounded, shall not be included in the employee's personnel file and shall not be used in any subsequent disciplinary proceeding or in making any personnel decisions.

Section 14. Employees shall be given a copy of any complaints against them and advised of the final disposition. Employees shall also be given a copy of the final disposition of any disciplinary action.

Section 15. Any discipline issued to an employee shall be removed from any and all personnel files in the possession of the Employer upon the one (1) year anniversary of the discipline being imposed.

The Employer proposes to add the following language as an addition to the grievance procedure:

Section ____. Discipline shall take into account the circumstances surrounding the incident, the nature of the violations, the employee's record of discipline, and the employee's record of performance and conduct.

Section ____. Discipline includes verbal warnings and/or reprimands, written warnings, suspensions, demotions, and discharges. Counseling sessions shall not be considered as discipline.

Section ____. An employee under investigation for an offense that may result in disciplinary action shall not be interviewed without a local union representative upon the employee's request.

Section ____. An employee shall be given advance notice that the Employer wants to interview, question, or hold a meeting pertaining to an investigation or discipline. Unless there are exigent circumstances, the employee shall also be given written notice of the subject of the meeting and the charges, if any, against the employee.

Section ____. No employee shall be compelled to waive his Fifth Amendment rights under threat of discipline in an interview conducted by the Employer. If the Employer advises the employee that his answers/statements will not be used in a criminal proceeding, the employee shall be subject to discharge for any refusal to answer the Employer's questions.

Section ____. Employees shall be advised of the final disposition of any complaints filed against them. Employees shall also be given a copy of the final disposition of any disciplinary action.

Section ____. No occurrence for which an employee has not previously been formally disciplined may be used in a discipline or discharge action after three (3) years

from the date of such occurrence, except for determination as to the type and extent of discipline to be enforced upon a finding of wrongdoing. Notices of discipline shall be removed from the employee's personnel file after three (3) years.

Both parties have advanced their respective arguments in support of and in rebuttal to the proposals and we have carefully reviewed them in detail. A summary of each and every argument advanced is not necessary. We will however address those points that in the opinion of the Panel are most pertinent to reaching a decision on this issue. In doing so, the Panel has resisted the temptation to pick and choose portions of each proposal and has elected to select only one proposal in total.

The Union in Section 1 and Section 4 of their proposal has identified transfers as a form of discipline and seeks to impose a "just cause" standard on an employee transfer. In the opinion of the Panel this proposal is contrary to the decision of MERC in *Ingham County and Ingham County Sheriff, MERC Case No. C04 D-102*. We also note that the inclusion of the terms "reduced in position" is ambiguous, and could be interpreted to be a prohibition on the Sheriff's right to make routine duty assignments without "just cause." We find such an unusual restraint to be unwarranted.

In Section 5, the Union proposal prohibits the interview of an employee under investigation that might result in disciplinary action or the filing of criminal charges without the mandatory presence of a Union representative or Union attorney. Under *Weingarten*, an employee has the right in such a case to have a Union representative present or not as he/she may desire. As to any criminal investigation a whole different set of requirements are necessary.

In Sections 6, 7 and 10, the Union proposes to limit Employer interviews, questioning, and meetings to the employee's regularly scheduled work hours, and then only after seventy-two hours advanced notice to the employee. We find these limitations to be extraordinary and certainly not in the best interests of the public. There are many situations that the public interest demands an immediate investigation and corrective action. Given the nature of the work schedule of the Field Services Division, extreme delays could result that any reasonable person would find to be intolerable.

In Section 8, the Union proposes restrictions on questioning involving an employee's property, sources of income, assets, etc. Such restraints would seriously curtail an investigation of alleged corruption and are not in the best interest of the public. It is entirely possible if not probable that such inquiries could or should involve a criminal investigation and under those circumstances the law adequately protects the rights of an employee the same as any other citizen.

In Section 11, the Union mixes criminal law concepts with those of labor law. *Miranda* warnings apply only to criminal law and only when a person is in "custody." Moreover, "*Garrity Rights*" provide that an employee may not be compelled to waive his/her Fifth Amendment rights under the U.S. Constitution; under threat of employer discipline any such statements obtained may not be used in a criminal action. The concept that an employee has a right under "*Garrity*" to so insulate any written report or statement is without any cited legal foundation.

The Panel is of the opinion that the Section 9 factors of Act 312 support the award of the Employer's last best offer of settlement.

AWARD, DISCIPLINE AND DISCHARGE

The Panel hereby adopts the last best offer of the Employer as identified above.

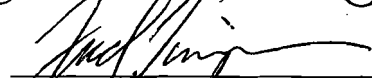
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



Dissent

TRANSFERS WITHIN THE UNIT, (NON-ECONOMIC)

The Union proposes five new sections be added to the contract dealing with duty or work assignments as follows:

Section 1. Any and all transfers within the bargaining unit shall be posted for a minimum of thirty (30) calendar days. Transfers shall include, by way of example and not limitation, Webberville, Delhi, Courts, Traffic, Quartermaster, etc.

Section 2. Individuals that sign their name to a posting shall be assigned to that particular position. If more than one individual signs their name to a posting, assignment shall be made based upon seniority, with the individual having the highest seniority assigned to the position.

Section 3. If no individuals sign their name to a posting, assignments shall be made based upon seniority with the individual having the lowest seniority assigned to the position.

Section 4. Any and all postings shall indicate the specific assignment, a beginning date, and an ending date.

Section 5. This Article shall not be applicable to unforeseen emergency situations that may arise.

The Union maintains such a provision is necessary to allow employees to secure assignments closer to home and to accommodate the needs of their personal life.

The Employer proposes to maintain the status quo, maintaining its right to make job assignments. The Employer characterizes the Union proposal as an attempt to make all job assignments at the Sheriff's Office based upon employee preference and it is an effort to allow employees to dictate where they will work. In the opinion of the Employer, the Union proposal would undermine the Sheriff's basic operational control of the office by eliminating the judgment of the Sheriff as to which officers were best suited to perform a particular assignment and would prohibit the Sheriff's ability to honor any requests by municipalities, courts, or other service agencies regarding personnel.

Union exhibits #111 and #112 reveal that none of the other Ingham County bargaining units have such a provision in their agreements and only one external comparable, Muskegon County has a posting provision. Muskegon County does not provide that the Sheriff is required to assign the least senior employee if no one signs the posting.

There is no record evidence that indicates employees have experienced difficulty with their job assignments and certainly there is no comparable data that supports the Union proposal. To require a thirty (30) day posting for each and every duty assignment made in the Sheriff's Office and to deny the exercise of the Sheriff's judgment as to

which officers are best suited for a particular assignment appears to be an extreme restriction of managements ability to make the best use of their personnel.


In the opinion of the Panel, the Section 9 factors of Act 312 support the award of the last best offer of settlement of the Employer.

AWARD, TRANSFERS WITHIN UNIT

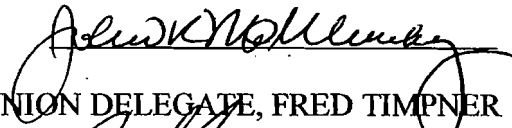
The Panel hereby awards the last best offer of the Employer as follows:

The Employer proposes maintaining the status quo, maintaining its right to make job assignments.

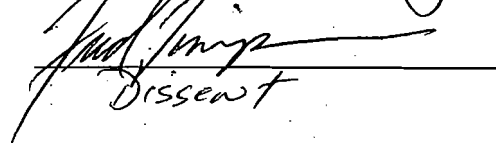
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



Dissent

ELECTION OF REMEDIES, NON-ECONOMIC

The Union's proposal is as follows:

When the same remedies are available for a dispute which arises under this Agreement under the grievance procedure which are available under any administrative or statutory scheme or procedure such as, but not limited to, a Veteran's Preference Hearing, Civil Rights Hearing, or Department of Labor Hearing, and the member elects

to utilize the statutory or administrative remedy, the Union and the member shall not process the complaint through the grievance procedure provided for in this Agreement.

Nothing herein shall be construed to eliminate the right of a member or the Union to apply to the Courts to compel compliance with terms of this Agreement by request for injunctive or other relief. Nor shall this Article be construed to bar grievances which seek relief not within the jurisdiction or not available in the above forums.

The Employer proposes to add the following to the contract for both grievances challenging discipline and contract interpretation:

Section ____.

- A. When remedies are available for any complaint and/or grievance of an employee through any administrative or statutory scheme or procedure for a Veteran's Preference Hearing pursuant to Act 305 of the Public Acts of 1897, et seq., or any federal law pertaining thereto, and/or Civil Rights matters pursuant to Act 453 of the Public Acts of 1976, or any federal law pertaining thereto, in addition to the grievance procedure provided under this contract, and the employee elects to utilize the statutory or administrative remedy, the Union and the affected employee shall not process the complaint through any grievance procedure provided for in this contract.
- B. If an employee elects to use the grievance procedure provided for under this contract and subsequently elects to utilize either of the above-stated statutory remedies, then the grievance shall be deemed to have been withdrawn and the grievance procedure provided for hereunder shall not be applicable and any relief granted shall be forfeited.

The Employer argues that the Union's proposal is flawed because it uses the term the "same" remedy must be available before the election of remedies provision would be triggered. Under such circumstances it is probable that the Union's election of remedies' provision would have no effect since the same remedies are not often available in the various forums. Similarly, the Employer argues that the Union proposal ignores the situation where the grievance procedure is used to its conclusion and then the employee initiates an action in an outside forum. The Employer contends that its proposal is designed to prevent this kind of double dipping by requiring the employee to forfeit whatever relief is obtained under the grievance procedure if he/she subsequently elects to go outside the contract.

The Employer also contends that Union's proposal goes beyond the issue of an election of remedies and would establish an employee's right to petition the court to enforce the terms of the labor contract and to seek injunctive relief. Under existing law an individual employee represented by a union has no standing to sue in court to enforce a collective bargaining agreement if the agreement contains a grievance/arbitration procedure.³ An individual employee may bring a lawsuit for breach of a collective bargaining agreement by alleging that the Union breached its duty of fair representation.

³ *Grosse Pointe Farms Police Officers Assn v Howlett*, 53 Mich App 173, 178-179; 218 NW2d 801 (1974); *O'keefe v Dept of Social Services*, 162 Mich App 498, 505-506; 413 NW2d 32 (1987); *Provincial House, Inc v Dept of Social Services*, 167 Mich App 1, 10; 422 NW2d 241 (1988); *Bonneville v Michigan Corrections Organization, Service Employees International Union*, 190 Mich App 473; 476 NW2d 411 (1991); *AFSCME V Highland Park Bd of Educ*, 214 Mich App 182, 185-187; 542 NW2d 333 (1996)

The Union's argument that the Employer's proposal would prohibit the Union from seeking a stay or injunctive relief while a grievance works its way through the grievance process isn't persuasive, since it would be incumbent upon the Union to establish irrevocable harm beyond an arbitrator's ability to remedy. In any grievance case administered by the Union it is the responsibility of the Union to elect that forum which is most appropriate to the nature of the complaint. The Employer's proposal does not limit the Union in exercising that responsibility and seeks only to limit access to the grievance procedure if the employee elects to take the dispute outside of the contractual grievance procedure.

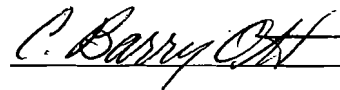
Neither party has submitted arguments involving the comparables on this issue.

In the opinion of the Panel the best interest of the public and the Section 9 factors of Act 312 support the adoption of the last best offer of the Employer.

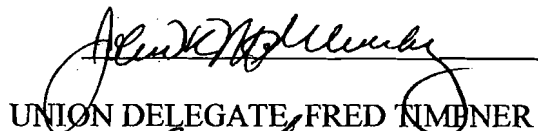
AWARD, ELECTION OF REMEDIES

The Panel hereby adopts the last best offer of the Employer as identified above.

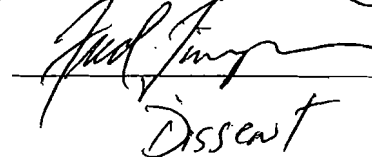
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMMER



Dissent

TRANSFERS INTO THE BARGAINING UNIT, (NON-ECONOMIC)

The Union's proposal is as follows:

Employees transferred from a Correction or other County employment position to a Field Services or Staff Services position shall be treated as a new hire probationary employee starting at the new hire rate of pay and benefits. They will maintain any countywide time earned for purposes of retirement, longevity, and sick and vacation accrual purposes only. No employee will be transferred into Field Services or Staff Services receiving a greater rate of pay or greater benefits than those specified in the MAP collective bargaining agreement.

The Employer's proposal is as follows:

Employees transferred from a Corrections position to a Field Services or Staff Services position shall have new hire seniority for purposes of shift, pass day and vacation day selection, and lay off and recall only. For purposes of pay, benefits and probationary status, said employees shall maintain the status they held before the transfer. No employee will be transferred into Field Services or Staff Services receiving a higher rate of pay or any benefits higher than specified in the MAP collective bargaining agreement.

The Employer argues that their proposal simply maintains the practice that existed prior to the creation of the MAP bargaining unit and the proposed language is identical to that contained in the corrections officer's contract. In the opinion of the Employer the Union proposals is designed to punish an employee who is transferred into the unit.

The major difference between the proposals is that the Union proposal would treat a transferred employee as a new hire probationary employee with starting pay at the new hire rate of pay and benefits, but preserves their pension, longevity, sick leave and

vacation accrual. The Employer's proposal would require a new hire date for seniority for purposes of shift, pass day and vacation selection, and lay off and recall upon transfer, but would maintain their original hire date for purposes of pay, benefits and probationary status. Under the Union proposal a transferred employee could suffer a reduction in pay and would be required to serve an additional probationary period. The Union raises the question of what would happen if a permanent corrections officer transferred to the unit didn't work out. The answer is obvious; the Sheriff could simply transfer the employee back to corrections.

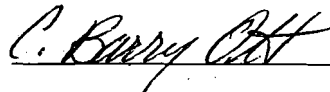
The language proposed by the Employer is identical to that in the corrections officers contract and reflects the prior practice. Neither party has advanced any argument regarding the external comparables. There is no evidence in this record to justify the proposal of the Union that would create an unnecessarily harsh penalty for an employee who transfers into the unit.

The Panel is of the opinion that the public interests and the Section 9 factors of Act 312 are best served by the award of the Employer's last best offer of settlement.

AWARD, TRANSFERS INTO THE BARGAINING UNIT

The Panel hereby adopts the last best offer of the Employer as identified above.


C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER


Dissent

RESTRICTED DUTY, (NON-ECONOMIC)

The Union's proposal is as follows;

LIGHT DUTY ASSIGNMENTS:

Section 1. Light duty assignments are for bargaining unit members who, because of injury, illness, pregnancy, or disability, are unable to perform their regular assignments but are capable of performing alternative duty assignments. Eligible personnel will be given a reasonable opportunity to work light duty assignments, but will not be required to do so.

Section 2. It is understood that light duty assignments are limited in number, task, variety, and availability. Therefore, personnel injured or disabled in the line of duty will be given preference with regard to light duty positions that are available. This Section shall be applied in a fair and consistent manner among all members of the Ingham County Sheriff's Office.

Section 3. Assignment to light duty shall not affect an employee's pay classification, pay increases, promotions, retirement benefits, or any other employee benefits provided for by the Employer and/or by way of the collective bargaining agreement.

Section 4. Every effort shall be made to assign personnel to positions consistent with their current position. If a position consistent with the employee's current position is not available, the employee may be assigned to perform other duties with the understanding that the assignment shall not affect their membership with the Michigan Association of Police (MAP).

Section 5. Light duty assignments shall not be made for disciplinary purposes.

Section 6. The Employer shall make the necessary determination as to whether or not an employee must wear a uniform and necessary equipment or be identified as an employee while on a light duty assignment. Any decision made with regard to this issue, however, shall be applied in a fair and consistent manner among all members of the Ingham County Sheriff's Office.

Section 7. Every attempt shall be made to place an employee on light duty on the shift that he or she is regularly assigned to. Upon being able to return to regular duty, an employee shall be returned to his or her previous shift.

Section 8. An employee may request a light duty assignment by providing notice to the Employer of an injury, illness, pregnancy, or disability. The Employer may request, every thirty (30) days, medical certification regarding an assessment of the nature and a statement of what duties the employee can perform.

Section 9. The Employer may require the employee to submit to an independent medical examination by a health provider of the Employer's choice. In the event the opinion of the Employer's health provider differs from that of the employee's, the employee may request a third opinion at the Employer's expense. The employee's provider and the Employer's provider shall mutually agree upon the provider that will issue the third opinion, which both parties shall be bound by.

Section 10. This Article in no way affects the privileges of employees under provisions of the Family and Medical Leave Act, Fair Labor Standards Act, American with Disabilities Act, or other federal or state law.

The Employer's proposal is as follows:

Employees requesting restricted duty assignments from Staff Services or Field Services positions will be assigned to the "Communications Center." Restricted duty assignments shall be limited in duration to a maximum of twelve (12) weeks and under no circumstances shall be available on a permanent basis.

Requests for restricted duty assignments must be accompanied by a detailed physician's statement describing the employee's injury, medical condition, and the medical reasons why restricted duty is necessary for the requested duration. Requests for restricted duty assignments shall be handled in the order in which they are received and limited to the following positions.

1. Tuesday through Saturday – 6 p.m. to 2 a.m. Because this assignment is during the night shift, and relief might not be readily available, the break period will be built into the working schedule.
2. Monday through Friday – 9 a.m. to 6 p.m. A one hour unpaid lunch will be given, as relief will be available.

The first person to request and qualify for a restricted duty position will be placed into assignment #1. If a second person requests and qualifies for a restricted duty assignment, they will be placed into assignment #2. Should assignment #1 become vacant while an individual is working in assignment #2, the individual will then be placed into assignment #1. Should a third person request and qualify for a restricted duty assignment, they will not be assigned as such, until either position #1 or position #2 becomes vacant. If and when position #1 or #2 becomes vacant, the third person requesting and qualifying for a restricted duty assignment will be placed into the vacant position. Seniority will not be a

a factor in determining the scheduling of the light duty assignments. (Note: position #1 and #2 are reserved for Field Services personnel only.)

While the parties appear to be very close on this issue, there are a number of significant differences. The Employer proposes to establish two specific limited duty positions in the "Communications Center," assigned to specific shifts. The Union proposal does acknowledge generally that light duty assignments will be limited in number, but places no specific limits on the number of such opportunities. The Employer seeks to limit such assignments to twelve (12) weeks and clearly states that under no circumstances will they be available on a permanent basis. The Union places no limit on the duration of such assignments. Moreover, the Union questions the propriety of making these assignments available to non-unit personnel and stating so in the agreement. There are other issues of concern expressed by the Employer as to the specificity of the Union proposal but the forgoing represent those of the greatest significance.

Union exhibit #108 reviews this issue among seven other Ingham County units and none contain any provisions for light duty assignments. Similarly, Union exhibit 109 reviews the subject among the external comparables and none of the other counties provide for light duty assignments. There is no evidence in the record as to the underlying reasons or need for the respective proposals to guide the Panel in its deliberations.

The proposal of the Employer is clear and specific as to the number of limited duty assignments available, hours of work, work location, and duration of assignment. The Fact that the Employer's proposal makes it clear that the Sheriff's Office will have but two limited duty assignment for all personnel from Staff Services or Field Services is


not an improper mixing of bargaining unit personnel, it is a clear statement as to the limit that the Sheriff is willing to accommodate within his office.

The Panel is of the opinion that while there is no comparable data to provide guidance as to which proposal should be awarded, and the Panel Chair is of the opinion that the issue may not be the best to incorporate into the labor agreement for a variety of reasons that need not be discussed, the proposal of the Employer is the more precise and best serves the interest of the public and the Section 9 factors of the Act.


AWARD, RESTRICTED DUTY ASSIGNMENTS

The Panel hereby adopts the last best offer of the Employer as identified above.

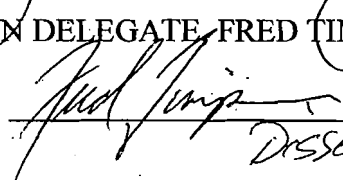
C. BARRY OTT, PANEL CHAIR



EMPLOYER DELEGATE, JOHN R. McGLINCHEY



UNION DELEGATE, FRED TIMPNER



Dissent

The issues identified, as economic issues shall be retroactive to the dates indicated for the award of the issue. The non-economic issues shall all be effective as of the date of this arbitration award.

DATED, 2/7/07.