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JACKSON COUNTY COMMISSIONERS & SHERIFF

and the

**POLICE OFFICERS LABOR COUNCIL
(Communication Technicians/Clerk Typists)**

Act 312 Petition
MERC Case No. L04 K-4003

Homer Lafrinere, Union Delegate
Thomas R. Zulch, Union Advocate
John R. McGlinchey, Employer Advocate

Donald R. Burkholder,
312 Chairman and Arbitrator

March 2, 2007

UNIT, BACKGROUND, PETITION(S), HEARING, AND CONFERENCE DATES

The bargaining unit consists of 21 communication technicians and clerk typists employed with the Jackson County Sheriff's Department. The collective bargaining agreement, a three-year contract, had expired on December 31, 2004. The POLC filed a Petition for Act 312 Arbitration on December 16, 2004. The Employer filed a similar petition setting forth its separate issues on February 14, 2005. A two-hour mediation session had been held on January 14, 2005. A MERC appointment letter dated June 1, 2005 appointed this Arbitrator.

The parties held a pre-hearing conference on October 18, 2005, during which there was considerable discussion of whether the issues should be separated year-by-year, as well as the appropriate comparable communities. Although the parties scheduled an April 11, 2006 hearing on comparables, agreement was reached in mid-March as follows:

Allegan County	Eaton County
Bay County	Lenawee County
Berrien County	Muskegon County
Calhoun County	Saginaw County

The Act 312 Arbitration Hearing was held on Tuesday, September 19, 2006, with Last Offers due October 21, 2006, followed by Briefs on December 1, 2006. The Executive Committee met on March 2, 2007 to finalize the decisions in the various items in dispute.

ISSUES

The following issues were dealt with in the Arbitration proceeding, with a number of stipulated agreements reached at the 312 hearing listed separately below by Article and section. The detailed wording of these stipulations is affixed to this document as an addendum.

ECONOMIC ISSUES

Joint Economic Issues: 1) Duration; 2) Wages.

Employer Economic Issues: 1) Health Insurance; 2) Paid Time Off; 3) Uniforms and Cleaning.

Union Economic Issues: 1) Paid Time Off; 2) Shift Premium; 3) Retirement; 4) Communication Technician Pay; 5) Overtime; 6) Compensatory Time.

NON –ECONOMIC ISSUES

Employer Non-Economic Issues:

- 1) Compensatory Time Off (Eligibility);
- 2) Holiday Pay (Eligibility) (Article 28, Section 6); The applicable subsections of Section 9, Act 312 are (b), (d), (f), and (h).
- 3) Paid Time Off Accumulation (Article 29, Section 1);
- 4) Minimum Paid Time Off Usage (Article 29);
- 5) Request for Paid Time Off in Advance (Article 29, Section 4);
- 6) Loss of Seniority (Article 9); Section 8);
- 7) Drug Testing Protocol.

Union Non-Economic Issues: 1) Shift Trades.

STIPULATIONS

- 1) Article 8, Union Representation, Section 1;
- 2) Article 9, Seniority, Section 1, Probationary Period;
- 3) Article 10, Grievance Procedure, Section 7, Meetings Concerning Grievances;
- 4) Article 15, Union Security and Checkoff, Section 9, Hold Harmless;
- 5) Article 18, Compensation, Section 2, Wage Shortage;
- 6) Article 22, Banked Sick Leave.
- 7) Article 23, (Funeral) Bereavement Leave;
- 8) Article 30, Personal Leave Days;
- 9) Article 34, Part Time Employees.

The parties also stipulated on the record or in their last best offers to wording for two sections of Article 29, Paid Time Off. The last paragraph of Article 29, PAID TIME OFF. 1. Accumulation. replaces the current language (as follows:)

There will be no accrual of paid time off while an employee is absent from work and receiving short term disability (STD), long-term disability (LTD), workers compensation, or is on an unpaid leave.

Section 7 of Article 29 contains stipulated language (in boldface) as follows:

7. **Payment Upon Death, Retirement and Termination. Employees who die, retire, or otherwise terminate their employment with the Employer shall be entitled to payment of their unused paid time off at seventy-five (75%) percent of their current pay. Employees with less than one (1) year of service shall not be entitled to payment of their unused time off.**

In its last best offer, the Union accepted an Employer proposal to use paid time off in minimum increments of one (1) hour and thereafter one-half (1/2) hour increments.

STATUTORY AUTHORITY

MICHIGAN EMPLOYMENT RELATIONS COMMISSION [MERC]

Section 8 of Act 312 requires that, in relation to economic issues, “an arbitration panel shall adopt the last best offer of settlement which... more nearly complies with the applicable factors described in Section 9” of Act 312. Section 9 contains the eight factors the arbitration panel must consider as applicable.

Section 9 of Act 312 provides for the following:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer price for goods and services, commonly known as 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 hearing.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 10 of Act 312 provides that the decision of the Arbitration Panel must be supported by “competent, material and substantial evidence on the whole record.” This has been supported by the Michigan Supreme Court’s decision in *City of Detroit v. Detroit Police Officers Association*, 408 Mich 410 (1980). The decision notes that the legislature evinced no intention in Act 312 that each factor of Section 9 be accorded equal rate. Rather, they provide a compulsory checklist to insure that arbitrators render an award only after taking into consideration those factors deemed relevant by the legislature and codified in Section 9.

ANALYSIS OF ECONOMIC ISSUES

The applicable subsections or factors of Section 9, Act 312, are noted after each item. Subsections not noted are not applicable. Each subsection was considered in relation to each disputed issue, as required by Section 10, Act 312 and subsequent interpretation by the Michigan Supreme Court.

Duration and Wages

A three-year agreement was deemed appropriate in light of the need to provide a cooling off period for the apparent high emotions and perhaps distrust on the part of unit members, and to allow sufficient time for the initiation of bargaining on the future contract. The Employer's allegation of a last minute attack on the part of the Union in requesting a three-year contract and possible financial consequences for the County are not persuasive in view of the circumstances.

Increases across the board of three percent (3%) effective 1-1-05, two percent (2%) effective 1-1-06, and two percent (2%) effective 1-1-07 will improve the employees pay status in comparison with the external comparables, take into consideration the more substantial benefits package now in place, and provide some remuneration for the loss of uniform and cleaning cost payments. Except for the first-year award of three percent (3%), this award is also generally consistent with the internal comparables. These wage rates shall be retroactive for those employees in service on the date of this award.

The applicable subsections of Section 9, Act 312. 1969, are (c), (d), (f), and (h).

Health Insurance

The Union accepted the Employer's proposed language that Cafeteria Plan benefits are available after completion of ninety (90) days of employment. There was also acceptance of the Employer proposed language that pre-1996 hires pay \$120.00 annually for single coverage, \$264.00 annually for two (2) person coverage, and \$288.00 annually for family coverage. Post - 1995 hires will pay ten percent (10%) of the rates noted. Further, Individualized Benefit Plan (IBP) dollars may be used to purchase Community Blue PPO1, \$10/\$20/\$40 prescription option, basic dental and optical options, and that cash in lieu of insurance will not be available where both spouses are employed by Jackson County. The Union sought and the Arbitration Panel awarded an increase in IBP dollars to \$5,840. This system is in place beginning March 2, 2007, the date of this Arbitration award.

The applicable subsections of Section 9, Act 312 are (b), (d), (f), and (h).

Uniforms and Cleaning

The Union accepted the Employer's language removing uniforms from the Collective Bargaining Agreement and adopting the dress code of January 1, 2005 in its place. However, the Union maintained that the annual cleaning and shoe allowance should remain at four hundred dollars (\$400.00), and that the allowance should apply retroactively to current employees. The Union asserted that the Employer eliminated the uniform and cleaning allowance in January of 2005 in violation of a Public Act 312 petition which was in place at the, claiming that the change created a substantial burden upon the employees who, on short notice, had to purchase business attire for work. Noting that the Union accepted the Employer's action in removing the uniform requirement, and that it is to a considerable extent the right of public safety employer to determine how its employees are required to dress, as part of the lawful authority of the employer. However, the panel is concerned about the removal of the uniform and cleaning allowance after a Public Act 312 petition had been filed. This financial 'savings' was taken into consideration in determining the findings on the other economic factors, especially wages and insurance. Comparables were considered but did not provide meaningful guidance. The Panel adopted the Employer position.

The applicable subsections of Section 9, Act 312 are (a), (d), (f), (g), and (h).

Hours of Work – Shift Premium

The Union proposed to increase the shift premium pay for afternoon and midnight shifts by ten (10) cents an hour for a total of fifty (50) cents per hour. Article 16, Hours of Work, Section 2, Work Shifts and Premiums. The panel adopted the Employer's position, i.e., the status quo, based on comparables and related factors, including the overall package awarded.

Applicable subsections of Section 9, Act 312, are (d), (f), and (h).

Retirement

The Union proposed that a six-month retirement window be created for employees with 25 years of service, asserting that there is one dispatcher with 25 years of service, at top pay, and one of three who have received longevity. The Union asserts that the Employer created 25 year windows in the past to entice senior dispatchers to retire, benefiting the Employer who can hire a younger, healthier worker for significantly lower pay and benefits. The Employer notes that the cost has not been documented, and that the issue argues for a two-year contract so that the matter can be more fully explored. The Panel adopted the Union position, in view of undisputed past practice, no clear indication of unreasonable financial burden on the employer, the apparent high-pressure nature of the work, and the probably overall positive impact on the morale of the workforce.

Applicable subsections of Section 9, Act 312, are (c), (d), (f), and (h).

Communications Training Officer (CTO)

The Union proposed a new article be added to the Collective Bargaining Agreement to state that the CTO shall receive one hour pay (a one-quarter hour increase) for each day worked in the CTO capacity. There was some lack of clarity concerning current practice, with a Union witness testifying that the present practice is that the Employer provides three-quarters of an hour of compensatory time for each day a CTO works training other employees, and that deputy sheriffs receive compensatory time for providing training. Comparables, both external and internal, do not support the proposed change. The Panel adopted the Employer proposal.

Applicable subsections of Section 9, Act 312, are (d), (f), and (h).

Overtime

The Union proposed to amend language of Article 16, Hours of Work, regarding overtime, to give the right of offer and first refusal to full time employees before part time or casual employees. This proposed but unspecified amended language would not change management's rights to order full time employees to cover unfilled positions. The lack of specific language regarding this proposal, the details of its implementation, e.g., the meaning of and procedure for making the first offer, are problematic. The employer raised questions about significant additional costs under this proposal, noting that a Union witness under questioning by the Employer advocate characterized overtime costs under the existing system as horrendous. The Panel adopted the Employer proposal.

Applicable subsections of Section 9, Act 312, are (a), (c), (d), (f), and (h).

Compensatory Time Off

The Union proposed to amend Article 16, Section 4 to increase compensatory time carry over at the end of the calendar year, Subsection C, and comp time Subsection D, to sixty (60) hours from forty (40) hours. The Employer notes that the proposed increase from to sixty (60) hours is a fifty percent (50%) increase, that compensatory time that is carried over from one year to another increases in cost every time a wage increase occurs, and that there was testimony at the hearing that union members have not had the opportunity to use their forty (40) hours banks of compensatory time due to workplace operations. The Panel adopted the Employer proposal. It also should be noted that the potential cost factor was also persuasive in leading the Panel to adopt the Employer position on its Non-Economic proposal to require mutual agreement by the

Sheriff or his designee and the employee for employees to take compensatory time in lieu of overtime payment or in lieu of payment for time worked on a holiday at the rate of time and one half for each hour worked.

Applicable subsections of Section 9, Act 312, are (d), (f), and (h).

SUMMARY AND ANALYSIS OF NON-ECONOMIC ISSUES

Article 9, Seniority. Section 8. Loss of Seniority. The Employer proposed that language permitting termination be adopted when an employee is absent from work, including failure to return to work at the expiration of any approved leave of absence, paid time off, or lay off for three consecutive working days without presenting an excuse acceptable to the Employer and making acceptable arrangements for returning to work. The Employer proposal seems reasonable on the surface. However, despite one arbitration case resulting from the present arrangement, there is no pressing reason to increase the Employer's control over such a situation; it is possible that an employee could have a sound reason for failing to return to work for three consecutive working days. To give the Employer total discretion as to what excuses are acceptable is not justifiable. The Arbitrator considers these employees to be individuals who are interested in the organization and its well-being, and who by and large prove their worth by responsible, conscientious, hard-working performance. The Panel adopted the Union position, Status Quo..

Article 16, Hours of Work, Section 4 A, Compensatory Time Off. The Employer position as noted above in relation to Section 2 is applicable here both in terms of financial considerations, normal staffing concerns, flexibility, and equity. The Employer proposal was that employees shall have the option of taking compensatory time off in lieu of payment for time worked on a holiday at the rate of time and one-half for each hour worked, with the proviso that there is mutual agreement by the Sheriff or his designee and the employee. The Panel adopted the Employer proposal.

Article 28, Holidays Section 6. The Panel decided that equity, fairness, and common sense make it illogical that employees on paid sick leave receive holiday pay. The Employer position was adopted.

Article 29, Paid Time Off in Advance. Section 4, Request for Paid Time Off in Advance. The Employer proposed deleting language permitting an employee to receive his/her paycheck prior to going on paid time off, if a regular payday occurs during the employee's scheduled paid time off. The Employer asserted that the processing of individual paychecks is no longer necessary or desirable, causes an administrative burden as well as a cost, and should be done by direct deposit. The Panel determined that there was no justification for changing the present system, noting that it may cause a burden on

some employees who may not be using direct deposit. The Union position, Status Quo, was adopted.

Shift Trades. The Union proposed a new article to permit two employees to agree to a time trade, which would permit all time trades to be pre-approved by the Sheriff or his representative in writing. The Employer was concerned that the proposed language appeared to require to Employer to agree to time trades, that it would create dispute and contention, leading to grievances, and that it would lead to overtime. The uncertainty and potential for complexity and contention persuaded the Panel to adopt the Employer position, which was Status Quo.

Drug Testing. New Employer Proposal. The Employer submitted a proposal to require random drug testing at the Employer's expense. Some employee safeguards were provided, with the employee having the option of testing the 'split sample' at the same or a different laboratory, with the employee responsible for all costs associated with the testing if the split sample testing results in a positive, and employer responsible if the results of the split sample are negative. The Union, noting that the proposed drug policy would be the first for any bargaining unit in Jackson County, acknowledges that drug use would be detrimental to the public safety. Nevertheless, there was no clear justification for applying this requirement, a random, without cause drug policy without limitations, to these employees. The proposed policy appears to allow for an indefinite number of random drug screens which the Union terms a severe invasion of privacy. The Panel accepted the Union position, Status Quo.

All stipulations and agreements between the parties during negotiations are incorporated into this Award.



Donald R. Burkholder, Ph.D., March 2, 2007
312 Chair and Arbitrator

ECONOMIC ISSUES

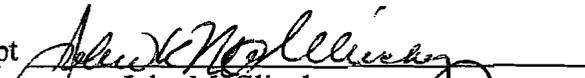
Article 16, Hours of Work

3. Overtime.

(Union proposes to amend the language to give the right of offer and first refusal of overtime to full time employees before part time or casual employees. This amended language would not change management's rights to order full time employees to cover unfilled positions.)

Status quo. (Employer position.)

Accept 
Donald R. Burkholder

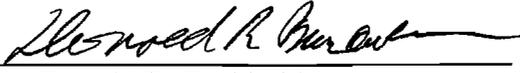
Accept 
John McGlinchey

Reject 
Homer Lafrinere

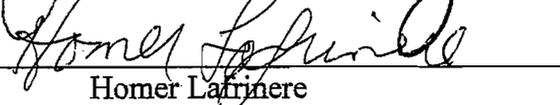
Article 16, Hours of Work

2. Work Shifts and Shift Premiums.

C. Shift Premiums. Status Quo. (Employer position).

Accept 
Donald R. Burkholder

Accept 
John McGlinchey

Reject 
Homer Lafrinere

Article 18, Compensation

1. Wage Rates. Employees shall be compensated on an hourly basis in accordance with the rates specified in attached Schedule A. Base wage rates will be increased for all employees on the active payroll at the time of the ratification as follows:

- a. Effective 1-1-05 - 3% across the board
- b. Effective 1-1-06 - 2% across the board
- c. Effective 1-1-07 - 2% across the board

These wage rates shall be retroactive for those employees in service on the date of the Award.

Accept Donald R. Burkholder *DRB*
Donald R. Burkholder

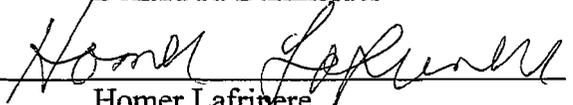
Accept Homer Lafriniere
Homer Lafriniere

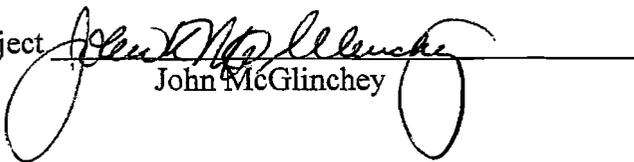
Reject John McGlinchey
John McGlinchey

Article 19, Retirement

2. C. Employees with 25 years of service may retire during the window period of (the date of this 312 award and until the specified date six (6) months thereafter).

Accept 
Donald R. Burkholder

Accept 
Homer Lafrinere

Reject 
John McGlinchey

Article 21, Insurance

1. Hospital and Medical Insurance Coverage. **Effective March 2, 2007**, Cafeteria Plan benefits as reflected on Attachment A, are available to full-time employees after completion of ninety (90) days of employment.

Employees will pay a portion of their health insurance cost based on the following table.

		1/1/05 to 12/31/06 (annual costs)
Pre-96 Hires	Single	5 x 24 = \$120
	2-Person	11 x 14 = \$264
	Family	12 x 24 = \$288
Post 1995 Hires		<u>10% of the illustrated rate</u>

Individualized Benefit Plan (IBP) dollars are \$5,840 allowing the purchase of Community Blue PPO1, \$10/\$20/\$40 prescription option, and basic dental and optical options.

Cash in lieu of insurance will not be available where both spouses are employed by the County of Jackson.

Accept Donald R. Burkholder  
Donald R. Burkholder

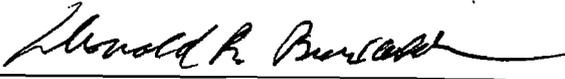
Accept Homer Latriere
Homer Latriere

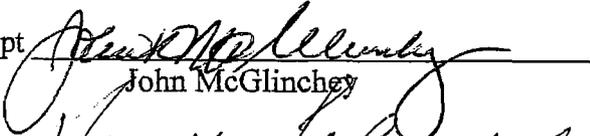
Reject John McGlinchey
John McGlinchey

[Chairman's note: Employer position prevails except for IBP amount, where the Union position prevails.]

Article 31, Uniforms and Cleaning

Article 31 is eliminated.

Accept 
Donald R. Burkholder

Accept 
John McGlinchey

Reject 
Homer Lafriniere

Article 37, Duration and Amendment

This agreement shall expire December 31, 2007. Should either party x x x

Accept 
Donald R. Burkholder

Accept 
Homer Lafrinere

Reject 
John McGlinchey

Communication Training Officer Pay – (Union Proposal)

Status Quo. (Employer position).

Accept 
Donald R. Burkholder

Accept 
John McGlinchey

Reject 
Homer Lafrinere

NON-ECONOMIC ISSUES

Article 9, Seniority, Section 8, Loss of Seniority

Status quo. (Union Position).

Accept Donald R. Burkholder *DB*
Donald R. Burkholder

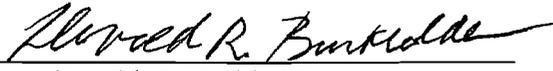
Accept Homer Lafrinere
Homer Lafrinere

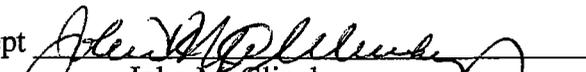
Reject John McGlinchey
John McGlinchey

Article 16, Hours of Work.

Section 4. Compensatory Time Off

- A. **Upon mutual agreement by the Sheriff or his designee and the employee**, employees shall have the option of taking compensatory time off in lieu of overtime payment or in lieu of payment for time worked on a holiday at the rate of time and one-half for each hour worked.

Accept 
Donald R. Burkholder

Accept 
John McGlinchey

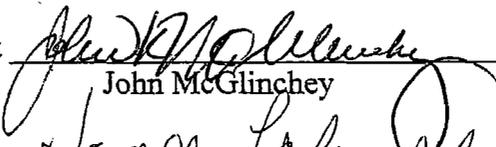
Reject 
Homer Lafriniere

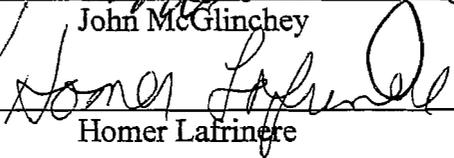
Article 28, Holidays.

Section 6. Holiday Occurring While on Paid Sick Leave or Paid Time Off.

Employees on paid sick leave when a holiday occurs shall not receive holiday pay.

Accept 
Donald R. Burkholder

Accept 
John McGlinchey

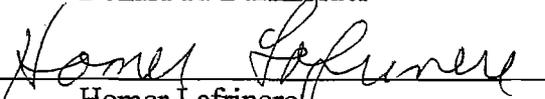
Reject 
Homer Lafrinere

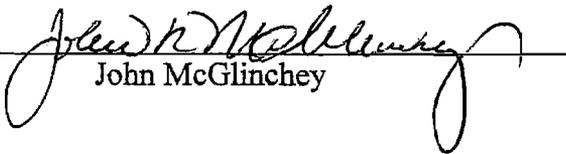
Article 29, Paid Time Off

Section 4. Request for Paid Time Off in Advance.

Status quo. (Union position.)

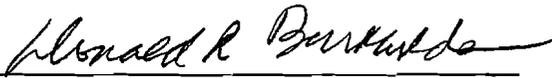
Accept 
Donald R. Burkholder

Accept 
Homer Lafrinere

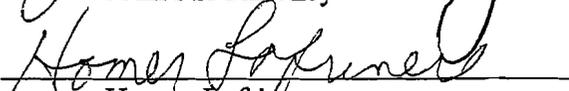
Reject 
John McGlinchey

Shift Trades – Union Proposal

Status quo. (Employer position).

Accept 
Donald R. Burkholder

Accept 
John McGlinchey

Reject 
Homer Lafraniere

Drug Testing. Employer proposal.

Status quo. (Union position).

Accept Donald R. Burkholder
Donald R. Burkholder

Accept Homer Lafrinere
Homer Lafrinere

Reject John McGlinchey
John McGlinchey

Article 16, Hours of Work

Section 4, Compensatory Time – Banked Hours of Compensatory Time.

Status Quo. (Employer position.)

Accept 
Donald R. Burkholder

Accept 
John McGlinchey

Reject 
Homer Lafrinere