STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

In the Matter of the Arbitration between

OAKLAND COUNTY AND THE OAKLAND COUNTY SHERIFF,

Employer,

-and-

Opinion and Award of Panel Chairman Donald F. Sugerman In No. D05 A-0055

OAKLAND COUNTY DEPUTY SHERIFFS' ASSOCIATION,

Association.

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APPEARANCES

For the Employer: Malcolm Brown, Esq., of Butzel, Long, Bloomfield Hills, MI

For the Association: L. Rodger Webb, Esq. and Chad D. Englehardt, Esq. of Webb, Englehardt & Fernandez, Troy, MI
James M. Moore, Esq. of Gregory, Moore, Jeakle, Heinen & Brooks, Detroit, MI

OPINION

I
BACKGROUND

The **County of Oakland and its Sheriff** (jointly "County" or "Employer") and the **Oakland County Deputy Sheriff's Association** ("Association" or "OCDSA" and sometimes referred to as "Union") have been parties to successive collective bargaining agreements ("Agreement" or "CBA"). The last CBA was effective for the period October 1, 2001 – September 30, 2003.[1] It covered the wages, rates of pay, hours, and terms and conditions of employment of Deputies who worked in the Patrol Services Division ("road patrol" or "patrol") and those who worked in the Corrections Division ("corrections") in the Jail.[2] These are the two main classifications each with about 350 employees.[3]

Thereafter, the parties entered into protracted negotiations. They did not bear fruit. And on August 29, 2006, OCDSA filed a "Petition For Act 312 Arbitration" with the Michigan Employment Relations Commission ("MERC"). That petition spawned this proceeding.[4] On December 22, 2006, I was appointed chairperson of the arbitration panel to decide the outstanding economic and non-economic issues that were in dispute.[5]

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[1]This CBA was executed by the parties about two weeks prior to its expiration date.

[2]The existing unit encompassed employees in other than the deputy classification, but reference to those in these two divisions is sufficient for discussion purposes.

[3]There are numerous other classifications but with much smaller numbers of employees.

[4]The reason for the three year lapse is not explained in this record.

[5]Kenneth Hiller was recently elected Association President and has replaced former President Gary McClure as the Association's panel member, joining Thomas Eaton, the Employer's panel member.

Before the substantive issues could be decided, a fundamental issue had to be resolved: A claim by the Employer that corrections officers (and other classifications in its various divisions) were not "policemen" as that term is used in Section 2(1) of Act 312 ("Act"), and, therefore, not entitled to use the Act to settle their terms and conditions of employment. Accordingly, the County filed a petition with MERC to clarify the unit.

After hearings in the UC case, on August 7, 2007, MERC issued its Decision and Order clarifying the unit. MERC concluded that corrections officers were not entitled to coverage under the Act. It created two separate units. The one in this case is comprised of non-supervisory law enforcement deputies, dispatcher, and employees in other miscellaneous classifications.

The substantive part of this case began with the issue of comparable communities ("comparables"). The parties agreed to deal with this issue before proceeding with the other parts of the case. The parties submitted their respective nominees. Two counties, Wayne and Macomb were the only mutual proposals. The Employer offered three other counties, Genesee, Kent, Washtenaw as comparables. The Association proposed Canton and Shelby Townships and the cites of Farmington Hills, Southfield, West Bloomfield and Livonia.

A hearing on comparables was held at MERC on May 2, 2008.[6] On June 13, 2008, I notified counsel of my decision on comparable communities. They were, in addition to Macomb and Wayne Counties, Kent County. A copy of the Interim Award on comparable

[6]All of the hearing were held at MERC's Detroit offices.

communities is attached.

The County raised an "ability to pay" issue (Sec. 9c of the Act). Hearings on that issue were held on June 18, 25 and 26, 2008. As it turns out, the financial ability of the County to meet the costs of the wages and benefits awarded in this case, is no longer an issue. Hearings on the remaining substantive issues in dispute were held on July 16, 17, 30, 31, August 6, 19, 20, 21, October 20, 21, and 22, 2008. Last Offers of Settlement ("Last Best Offers" or "LBOs") were submitted on December 18, 2008.[7]

Post-hearing briefs were filed on March 5, 2009. A few words about the "briefs" are in order. First, these were the most complete and comprehensive briefs I have had the pleasure to receive, albeit the pleasure might have been enhanced were they not so voluminous; just over 200 pages from the County and slightly less from the OCDSA. Nevertheless counsel have my sincere thanks for their cogent and persuasive arguments and for their capable assistance in this matter.

There were mutual agreements on some of the issues, both economic and non-economic. The issues remaining in dispute, in both categories, are discussed below. In addition, the parties have entered into a series of "Tentative Agreements" that are incorporated herein by reference. These "stipulations" are made a part of this Award pursuant to Section 9b of the Act. Finally the various Section 9 elements of the Act have been carefully considered in deciding (where applicable) each of the disputed issues.

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[7]Pursuant to Sec. 8 of the Act.

This case deals with the Law Enforcement Services Division. It is made up of about 330 officers, most of them in the classification of Deputy II.[8] Of this number, almost 250 officers are assigned to the twelve local communities that contract with the Sheriff for law enforcement services. In addition there are 42 Communication Agents ("dispatchers") and officers in a variety of other units, e.g., alcohol enforcement, aviation, arson, auto theft, fugitive apprehension, and narcotics enforcement, to mention a few.

II
THE DISPUTED ISSUES

RETROACTIVITY

The parties have stipulated that wage increases are to be retroactive to October 1, 2003. Their last offers of settlement ("LBO") are identical for the fiscal years beginning October 1, 2003 (2.0%), October 1, 2004 (3.0%), and October 1, 2006 (2.0%). The parties have further stipulated to the entitlement for retroactive wage increases for former unit employees in three categories: 1. those employed by Oakland County on the date of the award who are no longer in the unit; 2. those who have retired from the unit; 3. the estate of those who have died shall receive the increases that would have otherwise been paid to them to the date of the disabling event. They also agree to a category of employees who are not entitled to retroactive pay increases: those discharged for cause during the term of this agreement. These stipulations are accepted pursuant to Section 9 of Act 312.

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[8]Deputy I is an entry level position in the corrections unit. A career path is for a deputy I to progress to II in the road patrol unit.

The parties do not agree on the issue of retroactivity for those unit employees who voluntarily left County employment during the term of this Agreement. The Association proposes that such employees be paid in the same manner as the three categories referred to above. The Employer refers to its longstanding policy of denying retroactive increases to employees who voluntarily quit during the term of the Agreement

In support of its position, Oakland County relies on its longstanding negotiated policy, and on an Award issued by Arbitrator Mario Chiesa in 2004, involving these same parties. In that case, the Association sought to recover retroactive increases to employees who had quit prior to the ratification of the predecessor Agreement. Although finding the grievance untimely, Arbitrator Chiesa nevertheless addressed the issue on its merits. In doing so, he found a longstanding negotiated policy, in effect a past practice, and therefore, denied the grievance on that basis as well.

The Association argues the increases were earned by employees, and there is no logical reason to deny payment to those who quit in light of granting such payments to persons employed by Oakland County outside the bargaining unit, to those who retired, and to the estates of those who died.

It is not altogether uncommon for employers and unions negotiating a new contract to deny retroactive application to employees who are not employed on the date the new contract is executed. With a finite amount of money in the pot, the employer's rationale is, presumably, that the benefit should be paid to active, rather than "former" employees. From

the union's standpoint, this may make some sense notwithstanding its duty of fair representation.

Be that as it may, there seems to be little justification for withholding such payments. An example may help to illuminate this point. Two deputies are offered positions with another law enforcement agency that would be considered promotions for each. Deputy A is eligible for retirement. Deputy B is not. Both accept the offers; Deputy A retires, and Deputy B resigns. Why Deputy A should receive retroactive wage adjustments, but not Deputy B is difficult to comprehend.

Accordingly, the Association's LBO will be accepted with one caveat. The employee's separation from employment must be "voluntary." The increase will not apply to an employee who was asked or was permitted to resign in lieu of discharge or possible criminal charges. In other words, leaving County employment must be completely voluntary for the retroactive payment of wage increases.

WAGES

Wages for the years beginning October 1, 2005, October 1, 2007, and October 1, 2008 are in dispute, as is the request for an addition to the across-the-board increases for employees in the classification Communications Agent. Four principal factors impact across-the-board increases. They are the comparable counties, the so-called internal comparables, the Consumer Price Index ("CPI"), and the overall compensation of the subject employees.

Oakland County deputies enjoy a higher basic salary than their counterpart in Kent,

Macomb, and Wayne counties. For the year ending 2002, employees in the classification of Deputy II were paid $56,481.[9] At the same time, deputies in Kent, Macomb, and Wayne were paid $52,666, $52,061, and $48,665, respectively.

For the first two years of the Agreement, Oakland County deputies will have received a total increase of 5%. This compares favorably with the average of their counterparts in Kent, Macomb, and Wayne counties.[10]

For the year beginning October 1, 2005, deputies in the comparable counties received increases of 3.5% (Kent), 2.5% (Macomb), and 2% (Wayne). The average increase was 2.6%.

Except for the year beginning October 1, 2007, all of the other represented employees of Oakland County received increases identical to that proposed in the County's LBO. The exception is for the year beginning October 1, 2007, where other county employees received a 1% increase, and the Employer's LBO is for no increase. This will be discussed *anon.*

The CPI for the years 2006 and 2008, rose 3% and 2.3% respectively. The figures available so far in 2009 suggest that the CPI will fall below the 2008 rate of increase.

I fully recognize the tensions created when one unit of government is awarded, through arbitration, more than the other units of the same government agreed to in

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[9]The contracts in Kent and Macomb are on a calendar year basis. The contract in Wayne is on a fiscal year beginning December 1. No attempt has been made to adjust for the different starting dates.

[10]Deputies in Kent, Macomb, and Wayne counties each received a 3% increase in the "comparable" first year. In the second year, the corresponding numbers were 3% (Kent), 2.5% (Macomb), and 0% (Wayne). The average over the two years was 4.8%.

negotiations. While important in determining wages and benefits, those voluntary agreements may not necessarily be controlling. In this case, I find that the amounts paid by comparable county units of government and the CPI are entitled to greater weight.

For the year beginning October 1, 2005, the 3.5, 2.5, and 2.0 increases paid in the comparable communities, and the increase in the CPI of 3% means that the Association's LBO more closely approaches the relevant Section 9 factors, and will be adopted. Thus, the rate for a top paid Deputy II will be $61,066. (This maintains the differential between the deputies in Kent and Oakland counties.)[11] The agreed upon 2% increase beginning October 1, 2006, will bring the base salary for the highest paid Deputy II to $62,287.00.

Turning now to October 1, 2007. While all other county employees received a 1% increase in wages, the Employer proposes no increase for bargaining unit employees. The Association proposes an increase of 2%. The County's rationale for a 0% increase is that, "OCDSA represented employees have continued to receive the healthcare incentive selection that all other employees . . . ceased receiving in 2003-2004." (Post-hearing brief, p. 52.) In addition, all other units accepted healthcare co-payments (sometimes "co-pays") that, over the past five years, equated to about 1% of the base wage of a top-rated Deputy II.

This argument corresponds to the position of the County that Union engaged in a deliberate stratagem by delaying the processing of this case – particularly by waiting years before filing its petition – to secure for its members the economic advantages of continued

[11]Kent is the county that most closely parallels Oakland. This will continue the approximately $3,000 differential between deputies in the two counties.

health benefits. I find this argument unpersuasive. The County was not required to sit idly by while awaiting for the Association to act. In addition, a part of the delay was occasioned by the Employer's successful effort to remove from the historical combined unit (deputies and corrections officers) the corrections officers who were found by MERC not entitled to coverage under Act 312.

Between 0 and 2%, I find that the latter more closely satisfies the Section 9 requirements. For the year beginning October 1, 2007, Kent employees received an increase of 2.75%, and Wayne employees received a 1% increase. The Macomb contract had expired. The average increase was 1.875%. At the same time, the CPI rose by 2.3%. The increase will bring the base wage of the top-rated Deputy II to $63,533, and will maintain a declining differential with Kent County employees of $2,300.

Finally, for the last year of the Agreement beginning October 1, 2008, the County proposes an increase of 1%, and the Association, an increase of 2%. Only one of the comparable counties, Kent, has an agreement covering 2009. This peer group will be paid $62,759 for 2009. Under the County's LBO, the top rate would be $64,168. Per the Association's LBO, it would be $64,804. While there is no magic in maintaining the same differential, under the Employer's proposal, it would drop to $1,400 (from $3,795 under the preceding contract.) Accepting the Union's proposal will continue the differential, in this case at $2,045, which maintains a slower rate of decline. In addition, the 2% will help to insulate unit employees from the projected cost of living increase in about that same amount.

COMMUNICATIONS AGENTS

Employees in this classification provide dispatch services for the Sheriff's Department.[12] The Association seeks an additional 1% increase in base wages for dispatchers in each of the last two years of the Agreement. It bases its proposal on the claim that dispatchers are providing additional services (which translates into "working harder") and, are at risk of discipline, up to and including discharge, if they fail to use the protocols developed by the Employer by asking callers a series of questions.

The OCDSA presented the testimony of a dispatcher, who testified to increased pressures from higher workloads, and from the threat of discipline if the aforementioned protocols were not followed. No statistical data was submitted by the Association to support its claim. On the other hand, the County presented evidence, in the form of records, establishing there has been no increase in workload.

And, insofar as the protocols are concerned, they are akin to work rules. As long as work rules are reasonable, they may be enforced through discipline. While an employee may feel increased pressure, it is clear that the protocols are designed to assist dispatchers and deputies in having all of the vital information that might be needed in responding to a call for assistance. Aside from that fact, there is no evidence that anyone has been disciplined with regard to the protocols.

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[12]There are actually two different levels for these employees; Agents and Shift Leaders. Of the total component, only a few are Leaders.

Having rejected the two major grounds upon which the Association basis its request for additional compensation, there is no reason to provide Communications Agents with even greater across-the-board increases than those negotiated with other bargaining units or more than what has been awarded in this proceeding.

Communications agents will receive the following wages:

October 1, 2003	(2%)	$43,079
October 1, 2004	(3%)	$44,371
October 1, 2005	(3%)	$45,702
October 1, 2006	(2%)	$46,616
October 1, 2007	(2%)	$47,548
October 1, 2008	(2%)	$48,498

Under the preceding contract, dispatchers in Oakland County earned $42,234, and those in Macomb were paid $37,574, a differential of $4,660. Effective October 1, 2007, the differential grew to $4,890. (There is no contract in place in Macomb for 2008.) And the rates paid to dispatchers in Oakland County compare favorably with those paid to their counterparts in Kent:

	FY 2004	**FY 2005**	**FY 2006**	**FY 2007**	**FY 2008**	**FY 2009**
Kent	$43,181	$44,470	$46,040	$47, 431	$48,736	$49,954
Oakland	$43,079	$44,321	$45,651	$46,564	$47,495	$48,445

The Employer's LBO for Communications Agents will be adopted.

CONCLUSION - WAGES

The Association's LBOs for each of the three disputed years of the Agreement are

adopted.

The Employer's LBO for Communications Agents, of no additional compensation, beyond the across-the-board increases, is adopted.

The Association's LBO on retroactivity for unit employees who voluntarily quit is adopted.

PENSIONS

The County established a pension plan for its employees many years ago. It was, what is called, a Defined Benefit ("DB") Plan ("DBP"). In a DBP, the benefits for the participants are established by the Plan Sponsor, or through collective bargaining. A variety of factors determine the benefits to be received by employees upon retirement. These include: service credits (including those for past service), years of service required, age at retirement, Final Average Compensation ("FAC" and the items included therein), and a Multiplier (often including a CAP on benefits).

While a DBP is, generally, in the best interest of employees, it may not be so for the Plan Sponsor or contributing employer. The reason for this is that the funding of a DBP is, for the most part, undetermined. Indeed, an employer's obligation to fund the plan is also determined by a variety of factors. To mention a few: the amount of the annual contribution, investment income, an actuarial determinations of participants' life expectancy, normal retirement age, employee turnover/vesting, and changes in accounting rules. Generally, the amount, if any, that an employer must make is actuarially determined on an annual basis.

Thus, sometimes no contribution is required, but often one is, and it may be in an unexpected, sizable amount.

In the early 1990s, perhaps because of an Act 312 Award in which the Multiplier was increased for Command Officers, or simply for "business" considerations, the County became concerned over its largely unknown obligation to fund the DBP.[13] As a result, County representatives investigated to determine if there were alternate types of retirement programs for which its obligation could better be determined and stabilized. It found that a Defined Contribution ("DC") Plan ("DCP") would serve this function nicely. Under a DCP, the contribution is established by the plan sponsor , participating employer, or, in situations in which employees are represented by a labor organization, through negotiations.

Deciding that a DCP would allow it to better budget its resources, the County, in June 1994, adopted a DCP. All employees hired after July 1, 1994 would be covered by the DCP, unless they were in a collective bargaining unit, in which case participation would be subject to negotiations. For employees entering the DCP on and after July 1, 1994, the Employer would make a 5% contribution. There was no provision at that time for an employee contribution.

At the same time, the County passed a resolution permitting participants in the DBP to transfer into the DCP, and bring with them the actuarial value of their participation which would then be transferred to their individual DCP account. The Employer offered an

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[13]The Employer was perhaps prescient. It appears that many public employees across the country are in DBPs that are underfunded, some woefully so.

incentive for employees to make such a transfer, increasing the contribution for this group to 6% (rather than 5%). A transfer of this type was irrevocable; an employee who voluntarily transferred from the DBP to the DCP could not return to the former Plan.

It goes without saying, that the County's goal was, if possible, to wean as many participants as possible from the DBP. The more it could convince to transfer, the more its pension obligations could be predetermined. The then Manager of Labor Relations, Thomas Eaton, was directed to try to meet the Employer's goal. Eaton was successful, perhaps beyond expectations. He managed, over a period of years, to negotiate a provision with every bargaining unit to require new hires to participate exclusively in the DCP, and to permit voluntary transfers thereto from the DBP.

It appears that when Eaton sought to negotiate with OCDSA representatives, he found them skeptical, to say the least. It was a "hard sell," but Eaton was able to secure the new hires/voluntary transfers to the DCP by offering the Association various "incentives" – over and above those offered (and accepted) by the other Unions. These included an additional 1% contribution for new hires (6%) and, for those transferring from the DBP 7%, and an option for employees to make a pre-tax contribution that had not been offered to other labor organizations.

In addition, OCDSA was given fully paid retiree healthcare after 25 years with no age requirement, whereas other bargaining units had a 55 year age requirement. Another enticement was to permit deputies an unlimited period in which to buy military time that had

been theretofore restricted to the first ten years of employment. For the OCDSA bargaining unit, May 27, 1995 was the date on which new hires were required to participate exclusively in the DCP, and on which DBP participants could transfer. Another open period for transfers was subsequently agreed-upon by the parties (from April 1 - May 30, 1997). In the next round of negotiations (for the October 1, 1998 CBA,) the multiplier in the DBP was increased, as were the contributions to the DCP (both by the Employer and employees), for each year of the contract for those employees hired before May 27, 1995. For employees in the DCP hired after May 27, 1995, both the Employer and employee contributions were increased. This same trend occurred in the negotiations leading to the predecessor Agreement; contributions were increased by 1% for the Employer (9%) and for employees (3%).

Here then are the current statistics concerning the DCP and the DBP. There are 3,509 full-time active employees of whom 2,751 are in the DCP, and 758 are in the DBP. With regard to the bargaining unit that is the subject of this proceeding, 86 are in the DBP, and 240 are in the DCP, of which 81 were voluntary transfers. It appears that the Employer, for the most part, succeeded in converting from the DBP to the DCP.

The DCP involves individual employee accounts. The services of financial planners are available for employees to assist them is selecting from a variety of investment vehicles. There is a default fund for employees who do not choose to handle their own accounts. The Association (or at least some of its leaders at the time) held to the proposition that the DCP

was falling short, meaning it was not providing sufficient benefits to permit employees to retire. For this reason, it seeks to establish a DBP under the auspices of the Michigan Employees Retirement System ("MERS"). MERS, based upon an actuarial analysis made by Gabriel Roeder Smith ("GRS"), submitted six different plans to the Association, of which its LBO is for the plan identified as DP B-4.[14]

According to the Association, the B-4 Plan is the *sine qua non* of this proceeding. The OCDSA has made it abundantly clear that it would willingly sacrifice other benefits to secure its goal of a DBP. To use the vernacular, it has "bet the farm" to get a DBP. The award of benefits in an Act 312 proceeding, however, must be predicated upon more than desire. It must be based upon the criteria of Section 9 and, to some degree, on common sense.

Regrettably, I am unable to adopt the Association's LBO for reasons that will now be explained.

Section 9(h) states, in relevant part, as follows:

> Such other factors . . . 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 . . .

The parties, through voluntary negotiations, established the DCP as the one for new employees as well as those who voluntarily transferred from the DBP in 1995, as well as

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[14]Under this plan, there is a 2.5% multiplier, a ten-year vesting requirement, retirement at age 55 with 25 years-of-service, pre and non-duty death and disability benefits, highest 5 consecutive years FAC (which includes overtime,) a 75% FAC cap, and a provision permitting participants to buy up to 5 years of service credit in one-month increments.

during subsequent open periods, including one under the predecessor Agreement that expired September 30, 2003.

The negotiations between the County and the OCDSA included open periods and increased contributions. (There were also corresponding improvements in the DBP.) In addition, the Association secured other benefits for its members that were unique to the bargaining unit, and not afforded other represented employees.

The County is an extremely well run, efficient entity. It is perhaps, the best managed County in the State. In the 1990s, it came up with a strategic plan to better control its cost for providing retirement benefits to employees. The DCP was introduced, proposed to each of the bargaining units and, through incentives, a three tiered system was negotiated: a DCP for all new hires; a DCP for employees transferring thereto from the DBP, and; the existing DBP for employees who preferred to remain in that plan.

Does the history of bargaining mean that the Association can never secure a DBP? The answer, of course, is "No." It would be best for the OCDSA to "negotiate" for such a benefit, just as was done with the DCP by the County. In that milieu, it would be able to engage in the "give and take" necessary to secure its objective.

Moreover, this is not a propitious time to introduce a benefit for which the costs are largely unknown. This will be discussed in the second part of this analysis. I do not mean to suggest that the County's claim of ability to pay is a deciding factor. It is not. The Employer could, very likely, absorb the cost of a MERS DBP. But, this is not the point. It

should not be expected to do so given the current environment.

Again, the County is well positioned economically. This is the result of its farsighted strategic planning. But tax values have decreased, the housing market is in a major slump with foreclosed properties serving as a drag on sales and values, layoffs are high, business opportunities are declining, as is State revenue sharing.

The second reason for rejecting the OCDSA proposal to establish the MERS B-4 Plan involve procedural and due process considerations.

The first proposal submitted by the Association was to transfer only the 238 deputies in the DCP to one of the MERS DB Plans. The deputies (86) in the DBP were unaffected by the proposal. This position radically changed when, on June 26, its representative indicated an error had been made, and that: 1. all employees in the DBP would be required to transfer to the MERS B-4 Plan, 2. deputies hired after May 27, 1995 likewise, would be required to transfer to the B-4 Plan, and 3. participants in the DCP hired before May 27, 1995 would have the option to transfer to the B-4 Plan.

As a result of this announcement, the actuarial data submitted by the OCDSA did not apply, and it was given six more weeks to supply pertinent actuarial information. The data which the Association submitted to the Employer was predicated upon all bargaining unit employees transferring to the B-4 Plan.

Finally, in an October 2, 2008 letter – sent during the course of the hearing – the Association's position on participation in the B-4 plan changed yet again. All DBP and DCP

participants would be given the option to remain in the County plans or to transfers to the B-4 Plan. Because of the lead time necessary to do an actuarial study, the County was unable to secure such a review, and thus unable to determine what the costs of such a plan might be. Given the nature of the OCDSA's proposal, it seems unlikely that a meaningful assessment of the costs could have been made even were additional time provided. It would have undoubtedly prolonged an otherwise protracted proceeding and in the end, have served no useful purpose.

The problem with the Association's LBO is that it apparently attempts to satisfy divergent views among bargaining unit employees. The only employees required to participate in MERS would be those hired after the date of this Award. The eighty-one deputies who had transferred to the DCP and the 86 deputies remaining in the DBP had the option of whether to transfer or not.

Presumably, the costs associated with the transfer of those in the DCP could be determined and it would necessarily have to take into consideration loans (and forfeitures) involving those employees, as well as the reduction of available assets because of Eligible Domestic Relations Orders ("EDROs").[15] The actual costs, however, can not be determined until the employees eligible for electing a transfer have done so. I am unable to compel the County to adopt MERS B-4 without knowing its cost – or at the very least, having a reasonable range of what the costs might be.

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[15]The same would be true with regard to the 81 employees who had voluntarily transferred into the DCP.

The County has raised another issue as to whether an Act 312 arbitrator can compel it to participate in a MERS plan, whether its doing so would violate a number of MERS Rules, the tax consequences for doing so, and because the County could withdraw from the MERS plan only by a vote of its electorate, whether this removed the issue from the province of a mandatory subject of collective bargaining. In view of my disposition of this matter as set forth above, it is unnecessary for me to rule on these issues, and I respectfully decline to do so – noting, however, that were the Association's LBO adopted, it would appear to insure billable hours for a cadre of lawyers for years to come.

PENSION - DCP EMPLOYEE CONTRIBUTION

In view of the fact that the County will be increasing its contribution to the DCP for deputies hired after May 27, 1995 (from 9% to 10%), it requests that the employee contribution be increased from 3% to 4%. The Association proposes that the contribution remain as it is now. There is little discussion on this point in the record. Presumably it is in the interest of participants to increase their individual accounts. Especially as it involves the use of pre-tax dollars. On the other hand, the affected employees, many of whom are younger, may not have the same interest in pensions as their older colleagues.

The only comparable county with a DCP (#4) is Wayne. Under its plan, Wayne contributes four dollars for every one dollar contributed by deputies for the first 20 years, and five dollars to every one dollar after 20 years. The 25% ratio in Wayne compares favorably with the 10/3 contribution that will become effective with this Award.

The internal comparables do not clearly support the increase requested by the County. While the command officers have settled a contract on the basis of 10% (employer) and 5% (officers), these are, presumably, older employees who are closer to retirement age, and who welcome the opportunity to increase their individual accounts with pre-tax dollars. For the reasons herein, the LBO of the OCDSA will be adopted.

CONCLUSION - DBP

The Employer's LBO on the issue of the DB MERS B-4 Plan for active employees of *status quo* is adopted.

On the County's LBO to increase the employee contribution to the DCP for employees hired after May 27, 1995 from 3 to 4%, I find unpersuasive relevant evidence to support the Employer's proposal. Accordingly, the Association's LBO to retain the *status quo* will be adopted.

The parties agree that the Employer's contribution to the DCP will increase effective with the date of the award from 9 to 10%. Accordingly, their joint proposals are adopted.

The final issue in dealing with pensions is that both parties agree that effective with the date of the award, all future loans from the DCP will be prohibited. Their joint proposals are therefore adopted.

PRESCRIPTION DRUGS CAP

Both parties submitted LBOs to increase the current $5.00 co-pay for prescriptions to

a three-tiered system: $5.00 for generic prescriptions, $10.00 for brand name prescriptions, and $25.00 for formulary prescriptions. The OCDSA's proposal, however, contains an ancillary requirement:

> [The prescription co-pay shall have] a 40 script/fiscal year cap. Employees (including covered spouses and dependants, as applicable) with more than 40 prescriptions per fiscal year shall be reimbursed for the additional cost of the co-pay for prescriptions in excess of 40. Requests for reimbursement would be submitted through the County Human Resources department on an annual basis for the period October 1 through September 30 each year. It is the responsibility of the employee to present copies of the prescriptions for the prior period. The reimbursement will be paid by November 1 each year.

Acknowledging that there is no support for a prescription cap in the comparable counties and the internal comparables, OCDSA claims it nevertheless makes sense on the following grounds:

> (I) it disallows a unit employee from getting hit by a large number of co-pays in conjunction with a serious injury or chronic medical condition; (ii) $40 scripts is a ballpark number, one that affords a significant cost sharing to the County, yet protects unit employees from significant expense in untoward circumstances; (iii) $40 is a good trial number; as was established at the hearing Oakland County (notwithstanding its ability to do so . . . presented no actual use data at the hearing for OCDSA unit personnel, hence the Association has no idea what its proposal will cost over any time period, whereas one bad situation can burden a unit employee; the increased co-pay in that situation does not prejudice the County; (iv) it places the burden on Union member to save and present receipts at a time certain, which will likely weed out employees who have not been significantly affected; (v) it can be adjusted as indicated, when experienced-based information is available, and (vi) this is a good idea: it should not matter that that's not the way things have always been done, or this is not a County pattern-based proposal. (Brief, p. 114)

The County offers two principal arguments for denying the cap; one procedural, and the other, substantive. As to the first, the Employer contends that there was no discussion whatsoever during the prolonged negotiations of a cap on prescription drug co-pays. It was, according to the County, broached for the first time, and indirectly at that, when its own expert witness, Lawrence Gelman, was asked on cross-examination whether computer programming could accommodate a system in which employees were reimbursed for over 50 prescriptions a year. In addition, the Association did not list a prescription cap as one of its Act 312 issues.

As to the substantive issue, the County asserts that no data was introduced by the Association as to what the cost of this program would be, either in payments to plan beneficiaries, or for the County to administer such a program. For these reasons alone, the County says, the Association's LBO should be rejected.

Whether I have the authority to separate the Association's LBO into two separate segments is problematic. To say that it has agreed to the 5/10/25 co-pay provision seems improper when it is tied together with a cap. I reach this conclusion notwithstanding the OCDSA's failure to seriously contest the new co-pay structure. This is perhaps, academic. I find that the probative evidence submitted by the County, including that of the comparable counties and the internal comparables, supports a 5/10/25 co-pay, and the County's LBO will be adopted.

The County's procedural argument will not be embraced. Although it may be true that

the prescription cap was not discussed in negotiations, that it was not listed as a Union issue in its Act 312 submission, and that Section 3 implies there must be a "dispute over mandatory subject of bargaining" before it may be submitted to arbitration, I believe the matter is sufficiently dynamic to allow a party to make a countering LBO to one advanced by the other party that does not meet the first two qualifications (discussed in negotiation or listed as an issue). Having said this, the Association's proposal must be rejected.

There is some confusion in the Association's LBO and its Brief; the former speaks to the number of prescriptions, while the Brief refers to their dollar amounts.[16] There is no explanation in the record as to where 40 (whether it be the number of prescriptions or the dollar amount thereof) came from. While the idea of a "stop-loss" seems like a good one, there is simply no probative evidence of numbers or cost to permit the panel to analyze the matter, yet alone issue an award on this item. Accordingly, the Employer's LBO will be adopted.

HEALTH INSURANCE - HAP

The County seeks to eliminate Health Alliance Plan ("HAP") as one of the health plans that may be selected by unit employees hired after the date of this Award. At the time

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[16]"As regards PDR caps, he [Gelman] again indicated that he was far more familiar with caps where there is a percentage co-payment, as opposed to a **fixed-dollar co-pay**." (Brief, p. 103.) "OCDSA has agreed to the County's PDR proposal, with a $40 script per year cap (script filled in excess of $40 may be submitted for reimbursement.) (Brief, p. 109, and see the quote set forth elsewhere above where, in subsection (ii), there is a reference to $40 scripts and (iii) where $40 is referred to as a good trial number.

of the hearing, 39 of the 320 unit employees were enrolled in HAP, which is essentially an health maintenance organization. HAP is an insured plan.

The vast majority of unit employees are enrolled in the Blue Cross, Blue Shield ("BX BS") of Michigan Preferred Provider Organization "PPO" (61%) and tradition BX BS (20%). These plans are administered by Blue Cross but, except for HAP, all of the health insurance plans provided by the County are those in which it is self insured.

The County argues that its self insured plans are cheaper, predicated on the generalized testimony of its expert, Gelman, because they eliminate risk charges, and the cost of funding the reserves typically charged by a insured plan. All of the internal comparables have eliminated HAP as a choice for new hires. Finally, elimination of HAP will have no real impact, inasmuch as there likely will not be new hires into the bargaining unit for many years, as vacant positions are filled by employees from the Corrections Unit.

The Association relies on the testimony of its Health Benefits Consultant, Matthew Burghardt. Burghardt testified that as a third-party administrator, he typically recommends an HMO option, because it usually is cheaper than a PPO, has good coverage with a gatekeeper, and places an emphasis on preventive services and wellness. He further testified that HAP had a great network in the area.

The testimony of the experts is unavailing. Both were speaking in general terms. No data was introduced to show the actual cost of HAP to the Employer. All three comparable counties offer an HMO option to their deputies. Continuing the HAP option will have little

virtually no impact on employees during its term. Even continuing HAP after contract expiration, it will have small impact since new hires will come from the Corrections unit. And even if time without a new contract is extensive, there is no reason to believe new hires will join in a different proportion, around 1 in 10.[17] This being the case, the Association's LBO to retain the HAP option will be adopted.

EMPLOYEE HEALTHCARE CONTRIBUTION

This issue has been divided into two parts. The first deals with current employees, and it too, is divided into two parts: those hired before/after January 1, 2000, and employees hired after the date of the Award in this case. It goes without saying that there has been a decided trend in this country for employees to absorb part of the cost of healthcare paid by their employers. Indeed, even the vaulted healthcare coverage in the automobile industry – traditionally paid entirely by the employers – has fallen to the combination of soaring costs and economic depression. It is, therefore, not surprising that both the County and the Association agree that a contribution on the part of employees toward healthcare costs is warranted. Their disagreement is to the amounts which are to be paid.

All other employees of the County (union represented and non-union), with the exception of those represented by OCDSA, have been paying the 2003 contribution rates since 2004. Most of the other county employees (non-union) and, with the exception of

[17]Another reason HAP will probably decline in enrollment is because of the new health benefit co-pays that will become effective. The cost of the HAP benefit will likely dissuade new employees from choosing it as the carrier.

OCDSA and Command Officers (as well as two smaller labor organizations) have been paying the 2008 rates.[18] The Employer's proposed rate for current employees will now be compared to the Association's proposals.

The respective proposals for the three plans that cover virtually all of the employees are representative.

BX/BS PPO RATES

LBO's	Single	Couple	Family
OCDSA	520	650	781
COUNTY	520	1092	1300

BX/BS TRADITIONAL AND HAP

LBO's	Single	Couple	Family
OCDSA	780	1,040	1,300
COUNTY	858	1,482	1,638

The County's PPO contribution mirrors that of Kent County (632/1327/1565) and it is closer to the contribution by Wayne deputies than the proposal of the Association. Furthermore, the Employer's LBO is identical to the 2008 contributions for non-union and, for the most part, other union represented employees.

The same scenario plays out with the BX/BS traditional and HAP employee contribution rates. In Kent they are 683/1,441/1,651 (Macomb has no employee contribution,

[18]The two smaller labor unions referred to herein have since reached agreement with the County and their members will pay the 2009 rates.

and that in Wayne is substantially higher.) Insofar as the internal comparables are concerned, the comments for the BX/BS PPO apply equally here. For these reasons, the County's LBO on the contribution rate for current employees will be adopted.

This leaves for consideration whether the 2009 rates negotiated with two of the smaller labor organizations should be applied to employees hired after September 30, 2009. The Association argues that the County's imposition of rates on non-union employees and its negotiations with two small unions should not set a pattern. Stated somewhat differently, the Arbitrator should not be swayed by this effort on the part of the Employer. In addition, OCDSA objects to the establishment of yet another tiered benefit level.

I agree with the Association. Having established the concept of employee contributions in this Agreement, the issue of additional contributions should be left to negotiations. To the extent possible, labor relations are better stabilized when the parties are able to reach a "voluntary" agreement, rather than have its terms settled in interest arbitration.

While tiered systems of wages and benefits has become *de rigueur*, this may not necessarily be in the long term interest of the parties. It has the potential for causing friction among employees receiving different rates and benefits for performing the same work. Moreover, as noted by the County, it is unlikely there will be "new hires" for some years, as vacancies will be filled by Corrections employees on a career path. The Association's LBO dealing with new hires will be adopted.

RETIREE HEALTHCARE BENEFITS

Once again, there are two distinct parts to the issue of retiree healthcare benefits. The County seeks to change the funding mechanism for employees hired after the effective date of this Award. It proposes individual Health Savings Accounts ("HSA") into which it will deposit $2,000 annually per employee. The Employer has already implemented HSAs for all non-union employees, and has negotiated this provision into all other labor contracts, including that with the Command Officers.

The second aspect of retiree healthcare is an effort on the part of the OCDSA to require the County to, in effect, "lock-in" the level of medical insurance extant at the employee's date of retirement. As a corollary, the Association seeks to insure that such medical coverage "not be diminished post-retirement."

Insofar as HSAs are concerned, the County has followed the same philosophy and procedures it followed in converting from the DBP to the DCP. From a philosophical point-of-view, the County cannot be faulted. It has recognized the inherent problems of providing healthcare benefits, and has decided that the HSA is the best vehicle by which to accomplish its goals.

To secure the HSA concept – across-the-board – it established these accounts and placed newly hired, non-union employees into them. It then went about negotiating the HSA into each of its labor contracts, presumably offering whatever (reasonable) enticements were

needed to secure the approval of the various labor organizations.[19] The rationale for the HSA is that the County wants to get out of the retiree healthcare "business."[20]

According to the County, a $2,000 contribution should generate $135,000 to $140,000 after 25 years-of-service, and about $200,000 after 30 years-of-service. These dollars, the Employer says, can be used to fund healthcare from the date of retirement to age 65, when the employee becomes eligible for Medicare, and thereafter, to pay Medicare Part B that the County does not pay for any employees hired after 1989.

While implicitly, at least, acknowledging that an HSA may not enable an employee to fully pay for healthcare benefits on retirement, it blithely argues as follows:

> It may be possible that new hires into the OCDSA bargaining unit will be required to work longer than 25 years in order to have a more secure retirement. If the recent economic circumstances have revealed anything, it is that Americans will have to work longer (and perhaps harder) to be able to retire an to secure appropriate retirement income. Today's reality is that employees may not be able to retire after 25 years-of-service, which is perhaps a luxury that our nation can no longer afford. Today, there are simply limits on what municipalities can do. (Brief, p. 143.)

The Association's expert, Charles Monroe, estimated that if a deputy had $136,000 in his HSA at the time of retirement, it would purchase 5.8 years of coverage, and with $200,000 in the account, it would provide for 6.8 years of coverage.[21]

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[19]The difference between the HSA here, and the change to the DCP years earlier, is that the latter was accomplished through voluntary negotiations, not imposed in an Act 312 proceeding.

[20]The County's initial offer in this regard was to contribute $1,300 for each new hire annually but, its representative candidly testified, after looking at the comparable counties, that it believed a contribution of $2,000 would stand a better chance of winning arbitral approval in this proceeding.

[21]While the figures between those submitted by the County and those of the Association are not directly related, these are estimates based upon the contents of the exhibits (E-458, p. 4 and A-863-B).

Although a contribution of $2,000 to the HSA on behalf of unit employees is greater than the contribution being made on behalf of non-union, as well as represented employees, it is significantly below the amount paid by the comparable counties for retiree medical care benefits: Kent pays $4,200 annually; Wayne pays $3,000 for retirees having BX/BS traditional, and $1,150. for retirees with BX/BS-PPO and HAP. Macomb pays the full cost of retiree healthcare benefits.[22] Finally, I am mindful that given the career hiring path, any application of an HSA to employees hired after the date of this Award is probably several years off. The Association's LBO will be adopted.

This brings us to the proposal by the OCDSA to lock-in healthcare benefits on the date of retirement, and prevent any diminishment thereof after that date. In his able Brief, Counsel for the County has set forth in great detail a comprehensive history of how the Employer has handled retiree healthcare benefits. (Brief, pp. 143-159.) That history will now be summarized.

> A Board of Commissioners Ordinance confirms the comprehensive, core healthcare benefits to all present retirees and current employees who qualify for retiree healthcare. Past practices establish the County's right to modify co-pays, deductibles and other cost items, and to modify benefits and procedures, but not to change the comprehensive Schedule of Benefits attached to the Board Ordinance. Retiree healthcare has centered around three broad principles: 1. a single retiree group for all county employees (non-union, and union represented, including those in the OCDSA unit), and their uniform, equal treatment; 2. a commitment to providing uniform, comprehensive core benefits with the concomitant right to make changes in non-core items, and to

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For two persons and a family, the HSA would provide even less coverage.

[22]The Employer correctly notes that Macomb is under considerable economic stress. Thus, whether it will be able to continue this benefit for newly hired deputies is, at best, problematic.

modify and adopt co-pays, deductibles, and other such costs; 3. the uniform funding of retiree healthcare benefits

The rationale for treating retirees as a single group was based upon fairness, administrative efficiency, and lower cost. Conversely, there was no reason to have multiple healthcare plans and provisions depending on date of retirement or union affiliation. The County has negotiated eligibility for retiree healthcare, but never the benefits contained in the program, itself. These benefits are described in various documents: Merit System Booklet, Oakland County Employees Retirement Program Booklet, Resolutions of the Board of Commissioners, and various other benefit documents.

As a result, the County has over the years modified retiree healthcare program for all retirees. For example, in January 1987 it increased the prescription co-pays, increased the healthcare deductibles, implemented a second surgical opinion, and surgical pre-certification procedures. It has over the years enhanced various benefits by adding mammograms, PAP, PSA, a free family continuation rider for retirees with dependent children, as well as paid dental and optical coverage. Over the years, the County has also reduced or eliminated peripheral items of healthcare, and increased co-pays and deductibles.

After having ratified the predecessor Agreement, OCDSA filed a grievance claiming that the County's increase of co-pays for deputies was improper. A grievance over this dispute proceeded to arbitration. Arbitrator E. Beitner found that the County has historically treated retirees as a distinct group, sometimes enhancing and sometimes reducing peripheral benefits, while at the same time, confirming the viability of core benefits.

The fundamental goal of Act 312 arbitration is to provide the parties with the agreement they would have made had their negotiations been fruitful. Given the definitive history of treating all retirees as a separate, distinct, equal group, it seems doubtful that OCDSA could have persuaded the County to lock-in retirement healthcare benefits for its members, alone. While there have been some modest reductions along the way, there have been enhancements, as well. Since benefits for already retired employees is not a mandatory

subject of bargaining, it would seem that treating the group as a whole has benefitted it more than it has disadvantaged the group. The Association, of course, has the right to bargain benefits for future retirees, but there is insufficient probative evidence – in light of the long history on this subject – for changing the rules for one group of represented employees over those of all other employees. Accordingly, the Employer's LBO will be adopted.

RELEASE TIME - ASSOCIATION OFFICIALS

OCDSA seeks two fundamental changes on the 2001-2003 CBA: the release of its President for two days per week (without loss of pay), to attend to Union business, duties and responsibilities (in addition to the time-off already provided) and, in the absence of the President, because of approved leave, a vice-president shall be entitled to such release time; the establishment of a "release bank" of 32 hours-per-month to be used by Grievance Committee Members for Union Business above and beyond the time for which they are already permitted release time.

The County has filed an Unfair Labor Practice with MERC asserting that the OCDSA proposal is a non-mandatory subject of bargaining because: 1. the President may be in the Corrections unit, which has been severed from the Act 312 eligible patrol unit; 2. the President and the grievance committee will use release time to attend to matters involving the Corrections unit. OCDSA appears to argue that the term "Union Business Duties and Responsibilities" extends beyond matters limited to the Patrol unit, that a determination of the quoted term is beyond the scope of the Employer's inquiry and; that a community of

interests between its Patrol and Corrections units (including a career path leading from the latter to the former) makes the County's arguments specious.

I am mindful, that the issue of whether the Association's proposals on release time are mandatory subjects, is ultimately for determination by Judge Doyle O'Connor and the Commission. That does not mean however, that I am precluded from commenting thereon.

Section 8 of the Labor Relations and Mediation Act provides, in relevant part, as follows:

> It shall be lawful for employees to organize together, or to form, join, or assist in labor organization, to engage in lawful, concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their employers through representatives of their own free choice. (Emphasis added.)

Under the Statute, employees in an appropriate bargaining unit are entitled to select "representatives of their own free choice." The quoted language is without restrictions. While the representatives are often in the bargaining unit, they are frequently from a separate entity. Indeed, the representative might be from the FOP, MAP, POAM, or POLC organizations that represent Act 312 law enforcement officers. Thus, payment by an employer to an employee of an independent entity, in conjunction with the representation of the employer's employees would likely be an unfair labor practice under Section 10(1)(a) and (B) of the Public Employment Relations Act. [Release time is not implicated where the representative is not an employee of the employer.]

Since release time is a mandatory subject of bargaining (*City of St. Clair Shores* 17

MPER ¶27 (2004); *UAW, Local 688 v. Central Michigan University*, 217 Mich App 136 (1996)), and there being no restriction in the statute that requires the released employee to be in the bargaining unit, it seems to me that the release of any employee of the Employer – whether from the sister Corrections unit, from a unrelated bargaining unit, or from the non-represented employee – is appropriate for bargaining. I believe the County's contention on this point will not be sustained by the MERC judge, should the case reach determination. For these reasons I conclude that it is appropriate for the OCDSA to insist upon bargaining with the Employer for release time of its representative, as long as that individual is an employee of the County.

The term "Union Business, Duties and Responsibilities" requires a different analysis. Although the Patrol and Corrections officers have been placed into separate bargaining units, they remain part of and represented by the same labor organization, the OCDSA. The two units together elect their officers. This is an internal matter outside the scope of the Employer's concern or purview. I agree with the County's "technical assessment" that if the Association's LBO is designed to permit the President to engage in activities on behalf of the Corrections unit, while on release time, it would not be a mandatory subject of bargaining. Conversely, if Union Business means those matters which directly affect the bargaining unit, it is a mandatory subject of bargaining, for the reasons articulated elsewhere above.

Moreover, the Employer's position suffers from a degree of impracticality. If the Association is able to secure release time to handle matters directly or indirectly affecting the

corrections unit, the issue will be moot.

This leaves for consideration the issue of whether the OCDSA President should receive the additional requested release time of two days per week. Currently, the President is released with pay to attend collective bargaining sessions, grievance meetings with the County, arbitrations, personnel appeal board hearings, Loudermill hearings,[23] unfair labor practice hearings, Act 312 hearings, Weingarten investigatory interviews,[24] and any other Union business that requires a meeting with the County or an employee. It appears that the only category for which release time has been denied, is to prepare the aforesaid functions, and otherwise to investigate grievances. These, seemingly, are legitimate Union Business functions.

Initially, OCDSA requested release to have a full-time Association President. It has since scaled this back to two days. Gary McClure, who was the Association President at the time of the hearing, testified that he billed the Association, on average, 28 hours-per-month for work on its behalf, not covered by release time.[25] Assuming that the 28 hours was split evenly between work for Patrol/Corrections, it would mean that 14 hours-per-month was spent on Union Business for the Patrol group. This being the case, I am unable to see a

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[23]*Cleveland Board of Ed. v. Loudermill,* 470 U.S. 352 (1985) A public employee with a property right in his job is entitled to a pre-determination hearing to present any information he wishes to be known before being terminated.

[24]*NLRB v. J. Weingarten, Inc.,* 420 U.S. 251 (1975) Employees represented by a union have the right to the presence of a steward of other representative during any management inquiry that the employee reasonably believes may result in discipline.

[25]McClure actually stated that this was for "part of the time" he spent on OCDSA affairs. He did not indicate the total time involved, or why he was not paid for it.

justification for increasing release time to between 16-20 hours-per-week. For this reason, the County's LBO will be adopted.[26]

This, however, does not end the discussion. One would imagine that the President, Chief Steward, or Steward would be granted reasonable time to investigate complaints and/or grievances. This is certainly Union Business, and the procedure is in the interest of all concerned: the employee, the Association, and the County. As President McClure aptly noted, small problems unattended can fester and develop into major concerns.

By the same token, one would expect that a representative would be permitted to meet with an employee to prepare for personnel appeal board, Loudermill, and Weingarten proceedings. To require participation on the part of the representative only at the actual hearing seemingly brings into play issues of due process and fair representation. A deputy facing a Weingarten (or even perhaps a Garrity) interview is at risk of discipline. An Association representative must be afforded sufficient time to explain the process to the deputy, advise the deputy of his rights and obligations, and counsel the deputy on how to proceed. I believe this time, too, constitutes important Union Business. For this reason, I encourage the OCDSA and the County to include within the term "Union Business" the type of activities referred to herein. If this does not resolve the matter, then I suggest that the parties agree to discuss the issue of release time on a joint basis with regard to the

[26]The practice in the external comparables, Kent and Macomb, do not support the Association's position. Although Wayne has full release time for its President, its bargaining unit is five times greater than that of the Patrol unit.

Patrol/Corrections units in negotiations for their new Agreements effective October 1, 2009.

The comments dealing with the release time for the President apply equally with regard to the Grievance Committee. There is no evidence that the individuals on the Grievance Committee have been unable to perform the full spectrum of their Association duties in the time for which they have been released from work. The comments concerning investigation of matters would apply to a member of the Grievance Committee. (Only one Association official, absent extraordinary circumstances, would be entitled to engage in preparatory activities.) Moreover, there is no support among the comparable counties or in the Oakland County Employees' Union for establishing a bank with the time used for Union Business. Accordingly, the Employer's LBO will be adopted.

HOLIDAY PAY - CHRISTMAS EVE AND NEW YEAR'S EVE DAYS

For convenience, I will refer only to Christmas Eve day because, for the purposes of this discussion, it is identical to New Year's Eve day. The County's policy on this subject is complicated and not easily explained. It is governed by Rule 26 of the Merit System. The applicable provisions provide in part as follows:

> 1. December 24 is a recognized holiday whenever December 25 falls on a Tuesday, Wednesday, Thursday, and Friday. In other years, Christmas Eve Day shall not be considered a Holiday.
>
> 2. Whenever Christmas Day falls on a Saturday, the preceding Friday shall be a Holiday.
>
> 3. In those County Departments and institutions which provide 24 hour, 7 days-a-week service, those employees on 7-day scheduling shall be designated

eligible for holiday compensation on the actual holiday, rather than the County celebrated holiday.

4. In those instances when Christmas Day falls on a Saturday or Sunday, these designated employees (7/24) shall be compensated for the actual day on which the holiday falls. (Exhibit 1530)

Thus, from 2003 through 2009, Christmas Eve Day was a holiday in four of the seven years. (2003, 2007-2009).

Thomas Eaton, Director of Human Resources, who is extremely knowledgeable on the County's practices with regard to wages, hours, and conditions of employment explained how this somewhat convoluted (my words, not his) practice came into being:

> About 1977, to the best of my recollection, it was learned that Circuit Court was following – as far as their holiday schedule – they were following the Michigan Capital Supreme Court schedule, and the rest of the County was following the then-established holiday schedule, which did not compensate employees or treat as a holiday Christmas Eve or New Year's Eve.
>
> We switched or changed our – the County-wide holiday schedule to add Christmas Eve an New Year's Eve on those days in which they fell on a Monday, Tuesday, Wednesday, or Thursday.
>
> Because the courts were taking those days off as a holiday, and the rest of the County was working, and we had employees who were there at the court or who were assigned to the court both the sheriff's department and other places, who then were, in fact, in limbo. They didn't have a place to go. They didn't have any business occurring on that day. So it was determined that it was in the best interest of all concerned to switch our holiday schedule by adding this additional holiday on certain days.

The OCDSA contends that since its members work 24/7, they should be paid for Christmas Eve Day regardless of the day of the week in which Christmas Day falls. The

County proposes that there be no change.

Why the Christmas Eve Day holiday should be recognized as such on some years, but not others, for 24/7 employees is difficult to comprehend. Indeed, unlike other County employees, deputies are compensated for the "actual day on which the holiday falls." This being the case, there seems to be no reason why they should not be uniformly compensated for Christmas Eve Day. The comparable counties support this decision, in that each of them treats Christmas Eve Day as a holiday.[27] For the reasons set forth herein, the Association's LBO will be adopted.[28]

LOCATION PREFERENCE

With the exception of subparagraph B, the parties have agreed to all of the provisions of what is Article XV in the predecessor 2001-2003 CBA. Simply put, the location preference provision is an annual program in which Deputies (and Corrections Officers) select, by seniority, the place (location) and the shift they wish to work. They do not agree on which party shall administer the program. There have been minimal problems with the County's administration but, according to McClure, there was one error made by the Employer that had a rippling effect on unit employees. The County responds that the documentation involving the error had been furnished to the Association and, it too, failed to notice the mistake.

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[27]The number of holidays in Wayne and Macomb corresponds to those in Oakland. That Kent has only 10 holidays is of less importance, since the number in Oakland is, for the most part, fixed.

[28]The effective date of the LBO is the date of the Award.

The OCDSA believes that its administration will serve a useful purpose in that the Association would "make sure that the process allows for our members to 'purchase' a spot with their eyes wide open." He further said that guessing wouldn't need to occur, but that they [Deputies] would actually know, if they want to, what's available. Finally, its rationale is that the OCDSA would be in a better position to alert members about the availability of positions as the process unfolded, it would make the process more visible to the membership.

In 2007, when the parties were negotiating with the unit still intact (including Patrol and Corrections), the County had agreed to the Union's administration of the location selection process. It has pulled back from that agreement only with respect to the Act 312 unit. In other words, the Employer still considers its agreement on location preference to be in force with the Corrections unit. The County had agreed to the process as being a "trial" that if it went awry, could be renegotiated.

Major Damon Shields, in explaining why the County has backtracked in this proceeding, explains that he thought the original idea was a bad idea, and if it did not work with Corrections, could be restored to County Administration through negotiations (or, presumably imposed as either a non-mandatory subject of bargaining, or after impasse), but with the Patrol unit it would likely take an Act 312 proceeding to restore County Administration. I believe that the voluntary agreement of the parties should be controlling weight in this matter. For this reason alone, the LBO submitted by the Association will be adopted.

SPECIAL ASSIGNMENTS

A Special Assignments provision has been a part of the CBAs between the parties for more than 15 years. It has remained unchanged since its inception. A Special Assignment is a job assignment within the Deputy II classification. It is not a promotion as such, and does not involve an increased rate of pay.

The Special Assignments are referred to as follows:

Patrolman Investigator
Weigh master
Motorcycle Officer
School Liaison Officer
Station Desk Officer
Narcotics Enforcement Team
Fugitive Apprehension Team
Special Response Team
Auto Theft Unit
Crime Suppression Task Force[29]

OCDSA proposes to transform the system in a number of ways. With the exception of a few Special Assignments, the period of time a deputy could serve on a Special Assignment would be limited to four years (with a possible extension of one year.) The most important aspect of the Association's proposal deals with qualifications. The Sheriff will continue to determine the qualifications for Special Assignments, but relative ability would be eliminated. Instead, the sole criterion from among applicants who satisfy the minimum qualifications will be selected by seniority. This, according to the County, is the road to mediocrity.

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[29]About 60 deputies are on Special Assignments.

The Employer has raised a threshold issue, arguing that the Association's proposal infringes upon the rightful authority of the Sheriff, is a non-mandatory subject of bargaining, and the OCDSA's insistence in pursuing this provision is an unfair labor practice. A charge of that effect is pending before MERC.

The Association argues that a Special Assignment is a benefit to an employee that enhances his opportunities to gain invaluable experience that will enhance career chances, especially those relating to promotions. Thus, the OCDSA asserts that Special Assignments come under the rubric, "Terms and Conditions of Employment," and are therefore mandatory subjects of bargaining.[30]

I agree with the Association. The Sheriff has the right to establish Special Assignments, and the qualifications for the assignment. The Sheriff, however, does not have the unfettered right to decide subjectively who is best for the assignment, and give it to that individual. A set of qualifications and standards should be set for each Special Assignment. The process from application to selection should be completely transparent. The Association's proposal seeks to obtain too much, too quickly. Any change in the current process should be incremental.

The Association's proposal would, in effect, place "term limits" on Special Assignments (a few were excluded from this limitation). The rationale for the proposal is egalitarian; all deputies should get a shot at Special Assignments. The County opposes this

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[30]In support of this position, the Association cites: *National Union of Police Officers, Local 502-W v. Wayne County*, 93 Mich App 76 (1979).

concept, arguing that it limits the Sheriff's authority, there is a learning curve that may take considerable time before a deputy on Special Assignment performs at the highest level, and a forced removal of a deputy on Special Assignment who is performing to the Sheriff's satisfaction is not in the public interest, especially where the only purpose is to give another deputy the opportunity to perform the assignment. I agree with the position of the Sheriff on this aspect of the proposal.

For the reasons already stated, I agree with the County that selection for special assignment should not be predicated upon minimal qualifications. This would elevate seniority to being the greatest factor.

In professional law enforcement, ability and seniority should be considered, but the weight to be given to each factor should be dynamic. For example, between employee A, who is determined to have the greatest ability, and Employee B, with minimal ability, A should be selected, when their seniority is essentially similar. On the other hand, where Employee C has substantially greater seniority than Employee D and their relative abilities are essentially similar, seniority should control.

One of the reasons for the Association's proposal is to eliminate favoritism in the selection of deputies for Special Assignment. This, together with the proposal for transparency, warrant further development. Qualifications for Special Assignment should reasonably relate to the Assignment, and should be based upon objective, rather than subjective considerations. The Sheriff is directed to establish a comprehensive set of

qualifications for each Special Assignment. Any subjective component is to be given appropriate, limited weight. To this extent only, the Association's LBO will be adopted. Otherwise the County's LBO shall be adopted.

COMPENSATORY TIME

"Compensatory Time Off" is defined as: "Special time allowed to employees in lieu of overtime pay, or for extra time put in by the employee for which no overtime can be paid, as in certain government jobs."[31]

The OCDSA contends the issue of compensatory time is non-economic, and that it seeks only to codify what has been a secretive practice. The County claims that compensatory time off is economic, and that it has been prohibited by Merit System rules for more than 30 years.

The Association's proposal is economic. One of the provisions thereof is to establish a cap on the accumulation of compensatory time, and to convert unused compensatory time to dollars at the prevailing rate on October 1 of each year.

The Merit System rule states, unequivocally, that:

> Eligible employees . . . shall be compensated for overtime as previously described by payment in salary, which shall be computed at the rate of one and one-half of the employee's normal salary rate. (Exhibit 388)

According to Thomas Eaton, unit employees are compensated on a "pay as you go" basis.

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[31] Roberts' Dictionary of Industrial Relations Third Edition, The Bureau of National Affairs, Inc., Washington, D.C. (1986) at p. 119.

This means that if an employee works authorized overtime, he is entitled to overtime pay.

The Employer does not deny that there may have been occasions where a supervisor and one of his subordinates have made a private arrangement for the latter to use time off, rather than receive overtime pay. The evidence, however, does not convince me that there has been a "past practice" with regard to this subject. On the contrary, to the extent and "off-the-books" arrangement exists, it appears to be infrequent in nature, an isolated in occurrence.

The County comparables do not support awarding compensatory time, yet alone pay in lieu thereof. And the internal comparables are bound by the Merit System Rules. For these reasons, the County's LBO will be adopted.

ADOPTION BY REFERENCE/RESOLUTIONS AND PERSONNEL POLICIES

Article XIV in the predecessor contract reads as follows:

> All resolutions of the Oakland County Board of Commissioners, as amended or changed from time-to-time, relating to the working conditions and compensation of employees covered by this Agreement, and all other benefits and policies provided for in the Oakland County Merit System, which incorporates the Oakland County Employees' Handbook, are incorporated herein by reference and made a part hereof to the same extent as if they were specifically set forth, except as provided and amended by this Agreement.

The quoted language has been in every labor contract negotiated by the County with its labor organization for 30 years.

The OCDSA proposes to eliminate the provision from this Agreement. Its position is predicated on the assertion that the Association does not have, and is unaware of, the

resolutions, rules, amendments and modifications thereto that have occurred over the years. As a result, the Association has been "blind-sided" or, at the very least, surprised when, in response to a grievance and an unfair labor practice charge, the County has produced a resolution/rule – of which, allegedly, it was unaware – to prevail in those proceedings.

In support of its position, the County notes that if, in fact, the Association was unaware of the Resolution/Rules, it should have known of them; that the Association has now been provided with all such Resolutions/Rules so that any future claim of surprise cannot be sustained, and; that it has assuaged the Association's concerns in its LBO to modify the language.

As I view this matter, the adoption by reference language is to an employer what the incorporation of "past-practice" language in a contract is to a union. In both instances, the underlying philosophy is that there are untold practices affecting the parties that are not contained within the four corners of the Agreement. Thus, I am reluctant to eliminate the language from the Agreement. By the same token, it is understood that any Resolution/Rule that affects wages, rates of pay, hours, and other terms and conditions of employment will have no impact on unit employees until agreement on those subjects has been reached between the Employer and the Association.

The language to be incorporated into this Agreement will read as follows:

> All Resolutions which have been passed by the Oakland County Board of Commissioners on or before September 11, 2009, relating to the working conditions and compensation of employees covered by this Agreement, and all other benefits and policies provided for in the Oakland County Merit System,

> which incorporates the Oakland County Employees' Handbook, are incorporated herein by reference and made a part hereof to the same extent as if they were specifically set forth, except as provided and amended by this Agreement.

With a minor change in specifying the effective date of the provision, the County's LBO will be adopted. [32]

FORENSIC LABORATORY POSITIONS

There are two positions in the Forensic Laboratory: Specialist I and Specialist II. These positions are now within the Corrections and Court Services Unit, severed by MERC from the unit that included Road Patrol Deputies.

The Employer contends that a "promotion" from the classification deputy to FLS is not a mandatory subject of bargaining, because it involves the movement to another, separate, bargaining unit, to which the incumbent representative of the Corrections and Court Services Unit may not agree and, in fact, may negotiate a provision into its Agreement reserving movement to the FLS positions to employees in that unit.[33]

It is also noted that movement to the FLS I classification has generally been from the unit without an open competitive examination, but the FLS II classification has involved such examination.

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[32]Any resolution, merit system rule, employee handbook affecting wages, rates of pay, hours, and terms and conditions of employment of unit employees subsequent to the date of the Award is, of course, subject to negotiations between the parties.

[33]A promotion involves an increase in pay, and movement from the deputy classification to that of FLS may not involve such an increase.

When the Law Enforcement and the Corrections and Court Services Unit were combined, the issue of promotion to the FLS classification was not an issue. Presumably, that will be the case as long as the OCDSA remains the bargaining representative for the two units. I do not see the Association's proposal as either an effort to negotiate with respect to another unit, or as an unfair labor practice. It seeks only to give unit members the opportunity to be considered for the two classifications. Accordingly, the Association's LBO will be adopted.

USE OF RESERVES

For almost 25 years, the County has had a program in which it uses Reserve Officers to assist in certain law enforcement activities. The terms and conditions under which reserves are utilized was set forth in a 1985 Letter of Understanding between the County and the Association. The program has functions smoothly over the years. There have been no disputes. For reasons of transparency, the Union proposes that the LOU be incorporated into the CBA. When a unit member or members queried President McClure about the use of reserves during his term in office, he needed to research the matter in order to provide a response. It appears that deputies were unaware of the LOU.

The Employer is opposed to the LOU being made a part of the CBA on the grounds that it may, somehow, limit the flexibility of the Sheriff to use Reserves. I find this argument unpersuasive.

Accordingly, the LOU shall be added as an Appendix to the Agreement.

INVESTIGATORY/DISCIPLINARY PROCEEDINGS FOR OCDSA MEMBERS

In proposing a comprehensive set of rules/regulations/procedures, the Association "seeks to establish predictable and binding procedures when a unit member is subject to disciplinary investigation or action." Many of the provisions memorialize existing procedures and rights, some others include essentially undisputed terms. OCDSA, however, seeks to add language to address what it identifies as problems that have occurred in the past, or simply to correct what it perceives as inequities.

Currently, investigations are conducted pursuant to a document entitled, "Policies and Procedures – Interview Guidelines." (County's LBO, Exhibit-J.) In addition, the Employer has leveled specific criticism against various of the 19 separate parts of the Association's LBO (and its sub-parts).

Once again, the County asserts that areas of the OCDSA proposals usurp the functions of the Sheriff, are, therefore, non-mandatory subjects of bargaining and, the Union's persistence in this regard constitutes an unfair labor practice that is the subject of pending charges before MERC. Furthermore, the Employer contends that various proposals of the Association are too broad, too vague, and too restrictive.

Insofar as the unfair labor practice is concerned, the Association's proposals seek to protect unit members who are the subject of investigation for possible wrongdoing, including criminal activity. To the extent that the proposed rules directly involve terms and conditions of employment, they do not appear to exceed the scope of legitimate, bargainable subjects.

Perhaps the easiest method of dealing with the OCDSA proposals is to review them side-by-side with the existing Guidelines.

Existing Guidelines	OCDSA/LBO
The Oakland County Sheriff's Office recognizes that from time-to-time, investigations of department members may be necessary. The purpose of investigatory interviews is to obtain the truth in a fair and controlled manner. It is understood and expected that employees will at all times be forthright and truthful in their answers. Interviews should be conducted in a respectful fashion which recognizes the inherently stressful nature of such interviews. Deputies are entitled to have the active assistance of a Union representative at such a critical juncture in an investigation. Accordingly, in normal circumstances, the guidelines set forth below will be followed.	The purpose of investigatory interviews is to get at the truth at a fair and controlled manner; as such interview should be conducted in a respectful fashion which recognizes the inherently stressful nature of such interviews; that officers are entitled to have the active assistance of a Union Representative at such a critical juncture in an investigation; therefore:

The Employer proposes to continue the "Guidelines," which, it contends, gives the Sheriff flexibility. It agrees that any changes to the Guidelines are to be negotiated with the Association. As a general proposition, it appears that the "Guideline" principle adequately protects unit employees. It should not be converted to an immutable set of rules, because every investigation is somewhat different, and fact driven. And, as such, it need not be incorporated into the CBA. The Guideline concept is to be maintained.

With regard to the Preamble, there is not much difference between the two. The LBO contains, for the most part, stylistic changes. Each of the points in the LBO is already set

forth in the Guidelines. For this reason, the existing preamble will be adopted.

Existing Guideline	OCDSA/LBO
1. Where the nature of the investigation permits, and without creating overtime, interviews shall be conducted on or adjacent to the employee's regular work hours.	1. Where the nature of the investigation permits[,] interviews shall be conducted during or adjacent to the employee's regular work hours, otherwise the interview shall be conducted at such other time as is reasonable under the circumstances, and with at least 24 hours' notice to the employee, when possible.

The County objects to the 24 hour notice, despite the limiting "if possible" language claiming that there may be situations in which an immediate response is required. Recognizing that an internal investigation may cause a deputy great anxiety, it would seem, at minimum, that some notice should be given and that the employee, upon requesting representation, is given a reasonable amount of time to consult with his representative. This leaves intact those situations in which, for sound reasons, the interview must be conducted promptly. A modification of the existing guideline and the OCDSA/LBO will be adopted.

It will read as follows: 1. Where the nature of the investigation permits, interviews shall be conducted during or adjacent to the employee's regular work hours, otherwise the interview shall be conducted at such other time as is reasonable under the circumstances.

Existing Guideline	OCDSA/LBO
2. Unless the nature of the allegation would negatively impact the investigation, employees will be notified of the suspected wrongdoing and/or infraction.	2. The Employer will provide the employee with notice of the specific allegations and a statement as to whether the interview could lead to disciplinary action and/or criminal liability. The Employer will also provide the employee with the name(s) of the complainants, unless revealing their identity would have a substantial adverse effect on the investigation.

Due process and a fair investigation require that the subject of the investigation be provided with basic details of the allegations. The name of the complainant need not be revealed at this juncture if, to do so, would breach confidentiality, raise privacy concerns, or would jeopardize the investigation process. However, the deputy should be provided with sufficient information that will enable him to respond to the questions asked. This should include the nature of the alleged misconduct, to the extent it is known at the time, where and when the incident occurred and, if specifics are available, what the deputy is alleged to have said or done.

The Association's LBO will be adopted as modified: The Employer will provide the employee with the allegations that have been made against him/her, including where and when the incident or conduct occurred, and a summary of what was said or done.

Existing Guideline	OCDSA/LBO
3. If a Union representative is requested, the Sheriff's Office will secure the presence of a Union representative, and will advise the Union representative of the nature of the investigation.	3. Any member, at their request, shall have the right to be represented by the Union's representative, or in a criminal matter, the counsel of their choice, prior to making any statements, and during any interview (written or oral), concerning any act, incident, or occurrence from which disciplinary action and/or criminal prosecution may result.

The Employer contends that the LBO is too broad, that it exceeds *Weingarten* requirements, and it seems to provide that any Union member, whether he is the subject of the investigation or simply a witness, is entitled to representation. There is no reason to extend *Weingarten* rights to other than an employee who reasonably believes that the interview could result in discipline.

The language proposed by the Association refers to any unit employee, not only the one who is the subject of an administrative investigation. As such it encompasses a unit employee who is a witness or even a complainant. To this extent, it is too broad. If the provision is limited to the unit employee who is under investigation, the LBO makes sense. This provision will read as follows: A unit employee who is the subject of an investigation shall, upon request, be entitled to the assistance of a union representative prior to making any statement, and before an interview (written or oral) concerning any act, incident, or occurrence that could reasonably result in disciplinary action.[34]

[34]I have eliminated reference to criminal investigations because they are covered in Guideline 15 and LBO 6. Presumably, they include the right to be represented by legal counsel.

Existing Guideline	OCDSA/LBO
	4. If a Union Representative is requested, the Employer will secure the presence of a union representative from a "duty roster" to be provided by the Union, and will advise the Union Representative of all allegations against the member that are the subject matter of the investigation or interview.

The Association's LBO will be adopted. There is one caveat. In the event all of the Representatives on the duty roster are unavailable and securing the presence of a Representative will unduly delay the interview, the deputy may request the presence of any Union Officer who is available and, failing that, he may be represented by another unit employee.

Existing Guideline	OCDSA/LBO
4. The union representative, after being given notice of the nature of the investigation, will be given an opportunity to confer with the deputy privately, and prior to the commencement of the questioning with the understanding that the questioning is not to be unduly delayed by such a conference.	5. The Union Representative, after being given notice of the nature of the investigation, will be given an opportunity to confer with the deputy privately, and prior to the commencement of questioning with the understanding that the questioning is not to be unduly delayed by such conference.

As these two provisions are virtually identical, Guideline 4 will be adopted.

Existing Guideline	OCDSA/LBO

5. The union representative is entitled to be present for the questioning.	7. The Union Representative is entitled to be present for any questioning or other discussion with the employee related to the investigation.
6. The union representative will not interfere in questioning, and may be asked to serve primarily as an observer during active questioning.	
7. The union representative may object to specific questions as being vague or unfair or the like. However, it is expected that such interruptions will be kept to a minimum. 8. The union representative is not to coach the deputy as to the answers during active questioning.	10. The Union Representative has the right to object during questioning to specific questions as being vague or unfair or the like, or ask for clarification of particular questions, or object to the conduct of the interviewers.
9. The union representative is not entitled to leave the room with the deputy during questioning. 10. The union representative will be given the opportunity at the conclusion of the Employer questioning to ask follow-up or clarification questions, or to make a statement or assist a deputy in making a statement.	11. The Union Representative may ask follow-up or clarification questions, or can make a statement, or assist the officer in making a statement. The employee may confer privately with the Union Representative prior to such follow-up questions or statements.
11. The interview will be conducted in a respectful manner.	8. The interview will be conducted in a respectful manner. Employees will not be threatened with discipline as a tool to elicit answers, and no promise or reward shall be offered as an inducement to answer any questions.

Interview Guideline 5 and LBO 7 accomplish essentially the same thing. The LBO, however, extends the right of representation to other than the interview; other discussions by the Employer with the employee related to the investigation. While there is no evidence that this has occurred, it is possible that a discussion initiated by the Employer, and dealing with the subject of the investigation, should also include the right to representation.[35]

Guideline 6 appears to relegate the representative to a passive presence. Guideline 7 indicates that he may take a limited active role. Guideline 6 will be eliminated. Guidelines 7 and 8 will be continued.

LBO 11 is an amalgam of Guidelines 9 and 10. It is reasonable to permit the deputy to confer with his representative after the Employer has completed questioning and before follow-up questions, if any, are asked. Guideline 9 will be continued with the understanding that it applies to questioning by the Employer. LBO 11 will be adopted replacing Guideline 10.

Guideline 11 and LBO 8 both state that the interview is to be conducted in a respectful manner. There is no evidence that employees have been threatened with discipline to elicit answers, or that promises have been made to them as an inducement to answer questions. This would be highly unusual and would likely nullify the statement The Employer has the right to advise employees of the need to answer questions truthfully, and what the

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[35]LBO 6 states that, "Employees under criminal investigation shall be afforded all of the rights under the law, *including the right to remain silent.*" *This "rule" need not be incorporated into the* Guidelines. It is not necessary to restate rights under the law in this document.

consequences of not doing so could be. Some might consider this a threat. The language proposed by the Association is too vague to be adopted. It will not be. Guideline 11 is to be maintained.

Insofar as the questioning is concerned, a Union Representative has the right to be more than an observer. Where, for example, a compound question is asked, a question is vague or unintelligible, the Representative has a right to register an objection. On the other hand, an investigation is not a court of law, and repeated objections cannot be permitted to derail the investigatory interview. Objections should be kept to a minimum. And the Association Representative may not coach the deputy as to answers during active questioning.

Reason and common sense must be used with regard to how long the interview session will last, and the deputy must be allowed a respite for personal needs and, depending on the length of time he has been working, for a rest break at appropriate times. These periods may not be used by the deputy to confer with his representative.

Existing Guideline	OCDSA/LBO
12. Under normal circumstances, when formal investigations over potentially major charges are conducted in the interview room at the Main Jail facility, the Sheriff's office will tape those interviews. The failure to tape an interview or any defect in the taping of the interview shall not affect the interview, its validity, its use, or the responses to the interview questions. The recording and file will be maintained in accordance with Sheriff's Office policy.	12. Where a formal investigatory interview is conducted in a facility with an interview room equipped with video recording capability, all questioning and break periods will be video recorded, if requested by either party, except under exigent circumstances. Such recordings will be preserved by the Employer and will not be destroyed unless the Employer provides 10 days notice to the OCDSA and an opportunity to object. Such objection shall be subject to the parties' Grievance Procedure, and recording shall be preserved during the pendency of same. All interviews will be audio recorded. The Union will have the option of making a separate recording at the time of the interview. The Employer will provide the OCDSA with a copy of any recordings of the accused at the time of issuance of any discipline and/or within 14 days of the Union filing a Grievance, unfair labor practice charge, or initiating other legal or administrative proceedings related to the interview or investigation. At the time discipline is issued, the Employer shall disclose the existence and contents of any exculpatory statements or evidence that may negate the culpability of the accused, mitigate the degree of the offense, or reduce the level of discipline.

The Sheriff has recording capabilities at its main facility, and in some cases, at those of the contracting municipalities. If video devices are operable, they shall be utilized for recording the interview of the deputy who is the subject of the investigation. If video

equipment is not available, but audio equipment is available, then it shall be used for the same purpose. When recorded, the interview of the deputy is to be preserved pending the conclusion of "litigation." In an arbitration, for example, this would extend to the date of the award, and the conclusion of any litigation instituted to vacate/enforce the award. The production of said interview is to be determined by the trier of fact, whether it be an Arbitrator, ALJ of MERC, or a Judge in a court of competent jurisdiction.

The Association's request that it be given the right to make an audio recording of the interview must be rejected. It must be kept in mind that this is an investigatory process, not a disciplinary one. While it may result in discipline, it also may not result in any action being taken against the deputy. If a session is not recorded or if the equipment malfunctions is not the basis for the Association to insist it be permitted to record the proceedings. The requirement that the Employer provide the employee will all copies of recordings, including those of witnesses, is overly broad and could have a chilling effect on members of the public and/or Oakland County employees reporting wrongdoing. Moreover, the courts have held that this information is confidential, and need not be disclosed.

Finally, the request that all exculpatory evidence be provided, coupled with the other requests in this LBO would change what has been an understandable procedure into a full blown court-like proceeding with all the trappings associated therewith. This should not be undertaken absent anecdotal evidence that the current system is inadequate to protect the due process interests of unit employees. With the changes and modifications referred to herein,

Guideline 12 will be adopted and will read as follows: Where a formal investigatory interview involving a major charge is conducted in a facility with an interview room equipped with video and/or audio recording capability, all questioning will, if possible, be video recorded. If this cannot be done, the interview shall, if possible, be audio recorded. If the investigation results in discipline, all recordings will be preserved by the Employer until the matter has been resolved (in arbitration or litigation).

Interview Guideline	OCDSA/LBO
13. Employees shall not discuss their interview or the investigation with anyone other than their legal or Union representatives.	

The thrust of this provision appears to be one involving the search for truth. The idea, is that a deputy under investigation not discuss their interview or the investigation with other unit employees or third parties who might have some direct or indirect involvement in the matter. The Guideline is reasonable, and will be continued.

Existing Guideline	OCDSA/LBO
14. When members are compelled to respond to questions or provide written statements as a condition of employment, those statements shall only be made available to the public as prescribed by law.	13. When members are ordered or otherwise required to respond to questions or provide a written statement as a condition of their employment, those statements will be considered coerced and shall only be used for departmental disciplinary proceedings, civil actions, or other grievance and/or labor proceedings. Any such statement, including any recordings, will only be made available to any third party when required by law.

The above provisions are similar. That of the Association is more comprehensive. With the following modification, LBO 13 will replace Guideline 14: When members are ordered or otherwise required to respond to questions or provide a written statement as a condition of their employment, those statements shall only be used for departmental disciplinary proceedings, civil actions, or other grievance and/or labor proceedings and such statements, including any recordings, will only be made available to third parties when required by law. .

Existing Guideline	OCDSA/LBO
15. Employees under criminal investigation shall be afforded all of the rights under the law, including the right to remain silent. Refusal to answer questions in non-criminal investigations may lead to discipline up to and including termination.	6. Employees under criminal investigation shall be afforded all of the rights under the law, including the right to remain silent.

I see no reason to change or alter Guideline 15. Both parties agree to the first

sentence. The Employer's added reference of a refusal to answer questions in a non-criminal investigation puts the employee on notice that such action could result in discipline. This Guideline will be continued.

Existing Guideline	OCDSA/LBO
16. No employee shall be assigned the duty of investigating a member of equal or higher classification.	16. No member shall be assigned the duty of investigating a member of equal or higher rank or classification.

The two provision are almost identical, but the LBO is slightly more accurate and it will be adopted.

Existing Guideline	OCDSA/LBO
17. Employees shall have the right to waive any or all of the rights contained in these guidelines	

Guideline 17 will be continued.

Existing Guideline	OCDSA/LBO
	17. No person in the employee's family shall be contacted in connection with an administrative departmental investigation without 24 hours notice to the employee, except under exigent circumstances.

LBO 17 is too broad a provision that has the potential to impede an investigation. If there is a need to contact a spouse or other family member, giving the employee 24 hour advance notice is an invitation to obscure the truth which, after all, is the purpose of the investigation. LBO 17 will not be adopted.

Existing Guideline	OCDSA/LBO
18. No employee shall be suspended without pay for three days or more unless they have been afforded the opportunity for a pre-suspension hearing.	15. Any member who is suspended pending the completion of an investigation shall continue to receive their regular pay during the time period of the suspension and until said suspension/ demotion, if challenged, is upheld.

The Sheriff objects to continuing the pay of an employee who is suspended or discharged as being illogical. I agree. An extreme example will suffice. A deputy is accused of gross misconduct. The parties agree that this would warrant discharge if proven by a preponderance of the evidence (or whatever other standard of proof might be used). If the trier of fact sustains discharge, it is difficult to justify pay continuation that might extend for a considerable period of time.[36]

On the other hand, when the grievance of a discharged employee is sustained, it is usually within the authority of the arbitrator to make the employee "whole," in which case the deputy will not have suffered a loss of pay and/or benefits (unless reinstatement is with no, back pay or less than full back pay). For these reasons Guideline 18 will be adopted.[37]

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[36]Although I am unaware of any statistic on this point, in a discharge case, it is likely to take upwards of a year from termination for the case to be decided in arbitration. If the LBO is construed to include an appeal from such an Award, the period would be considerably longer.

[37]This is an economic issue.

Existing Guidelines	OCDSA/LBO
	18. Discipline will be removed from an employee's file, and shall not be relied upon for progressive discipline in accordance with the following schedule: A. Written Reprimand – Removed from file 1 year after issuance. B. Suspension of 10 days of less – Removed from file 3 years after issuance. C. Discipline grater than a 10 day suspension – Removed from file 5 years after issuance.

The Association seeks a time period during which discipline will be removed from an employee's personnel file and record. The Employer suggests it is unfair to prevent an arbitrator from looking at an employee's record as a whole to decide if there was reasonable cause for discipline. The solution is to deny the Employer the right to use prior discipline for each of the time periods involved – 1, 3 and 5 years, to support progressive discipline, but to permit an arbitrator to give whatever weight s/he may deem appropriate for prior discipline in deciding the dispute. To that extent, LBO 18 will be adopted.[38]

A W A R D

For the reasons set forth in the Opinion, the Award on each of the issues in dispute is set forth below.

[38]I remand to the parties the task of renumbering the Guidelines.

RETROACTIVITY

All current employees shall be entitled to retroactive wage adjustments.[39] Employees no longer in the unit, but still employed by the Employer shall receive retroactive wage adjustments. All former employee who retired from the Employer shall receive retroactive wage adjustments. The estate or the beneficiary[40] of former employees who died during the term of the CBA shall receive retroactive wage adjustments. Former employees who were discharged for cause shall not be entitled to retroactive wage adjustments.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate

Former unit employees who voluntarily left employment with the County shall receive retroactive wage adjustments. The Association's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

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[39]This provision applies to employees who received compensation in the form of wages during the period October 1, 2003 through September 11, 2009.

[40]Under State law, wages owed to a deceased employee may be paid to certain individuals without the need to go through probate court.

Kenneth Hiller, Delegate

WAGES

Unit employees shall receive the following wage increases: For the years beginning October 1, 2003 – 2.0%; October 1, 2004 – 3.0%; October 1, 2006 – 2.0%.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate

Unit employees shall receive the following wage increases: For the years beginning October 1, 2005 – 3.0%; October 1, 2007 – 2.0%; October 1, 2008 – 2.0%. The Association's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

Kenneth Hiller, Delegate

COMMUNICATIONS AGENTS

Communications Agents are not entitled to enhanced wages over and above those percentages set forth above. The County's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate Dissenting

PENSIONS

The request by the Association to establish a Defined Benefit Plan to be administers by MERS is denied. The current DBP and DCP of the County shall be continued. The Employer's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate Dissenting

PENSION CONTRIBUTIONS

The parties agree that the Employer's contribution to the DCP will increase from 9.0% to 10.0% effective with the date of this Award.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate

The employee contribution to the DCP shall remain at 3.0%. The Association's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

Kenneth Hiller, Delegate

All future loans from the DCP will be prohibited.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate

PRESCRIPTION DRUGS CAP

The co-pays for prescription drugs will be $5.00 for generic prescriptions, $10.00 for brand name prescriptions and $25.00 for formulary prescriptions.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate

The proposal by the Association for the Employer to reimburse co-pays by unit employees in excess of 40 prescriptions annually is denied. The County's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate Dissenting

EMPLOYEE OFFICE VISIT CO-PAYS
HEALTH CARE DEDUCTIBLES
CASH INCENTIVE FOR SELECTING CERTAIN HEALTH CARE PLANS

There was mutual agreement in the LBOs submitted by the parties on these three issues. The office visit co-pays and health care deductibles are adopted and the incentive is eliminated.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate

HEALTH INSURANCE - HAP

The request by the Employer to eliminate HAP as a provider of health insurance for unit employees is denied. The Association's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

Kenneth Hiller, Delegate

EMPLOYEE HEALTHCARE CONTRIBUTIONS

The County's LBO for current employees is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate Dissenting

The Associations LBO for new hires is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

Kenneth Hiller, Delegate

RETIREE HEALTHCARE BENEFITS

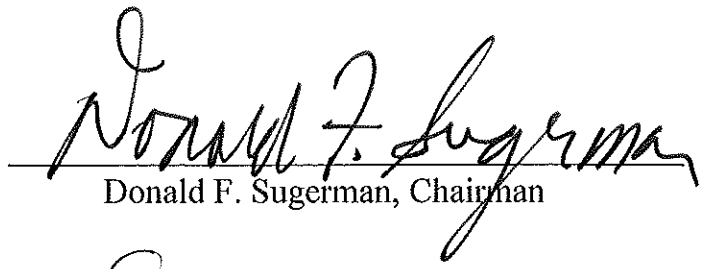
The Association's LBO to reject HSA's for employees retiring after the effective date of this Award is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

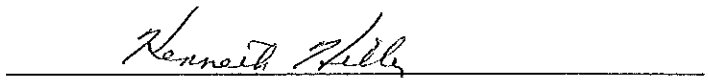
Kenneth Hiller, Delegate

The Association's LBO to "lock-in" retiree health care benefits as of the date of retirement is rejected in favor of treating all retirees of the County as a group. The Employer's LBO is adopted.



Donald F. Sugerman, Chairman

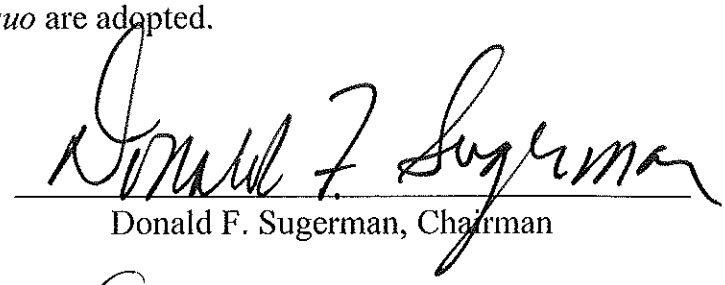
Thomas Eaton, Delegate



Kenneth Hiller, Delegate Dissenting

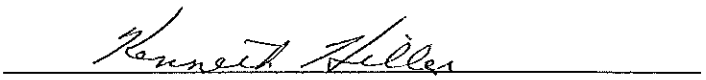
RELEASE TIME UNION PRESIDENT/BOARD MEMBERS

The Employer's LBOs of *status quo* are adopted.



Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

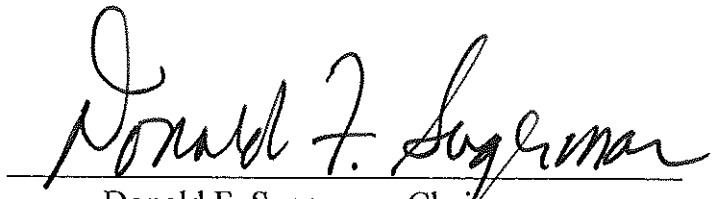


Kenneth Hiller, Delegate Dissenting

HOLIDAY PAY – CHRISTMAS EVE/NEW YEARS EVE

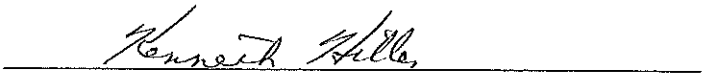
Employees are now paid for Christmas Eve Day and New Years Eve Day when Christmas and New Years Days fall on a Tuesday through Friday. They are entitled to pay regardless of the days on which Christmas and New Years fall. The Association's LBO is

adopted.



Donald F. Sugerman, Chairman

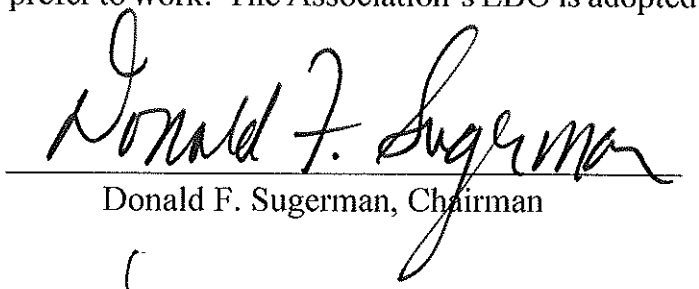
Thomas Eaton, Delegate Dissenting



Kenneth Hiller, Delegate

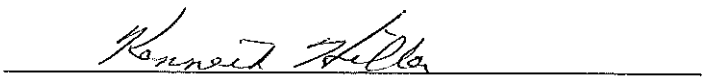
LOCATION PREFERENCE

The Association is to administer the annual program by which unit employees, by seniority, select the location and shift they prefer to work. The Association's LBO is adopted.



Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting



Kenneth Hiller, Delegate

SPECIAL ASSIGNMENTS

The County's LBO is adopted, in part. The *status quo* in maintaining deputies in special assignments will be continued.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate Dissenting

The Chairman has modified the LBO in the following regard: Within 120 days of this Award, the Sheriff shall establish a comprehensive set of qualifications for each special assignment. Selection of deputies for special assignment, shall for the most part, be based on objective criteria. Subjective considerations may play a minor role, and then, only to the extent that they are reasonably related to the ability of the applicant to fulfill the requirements of the position.

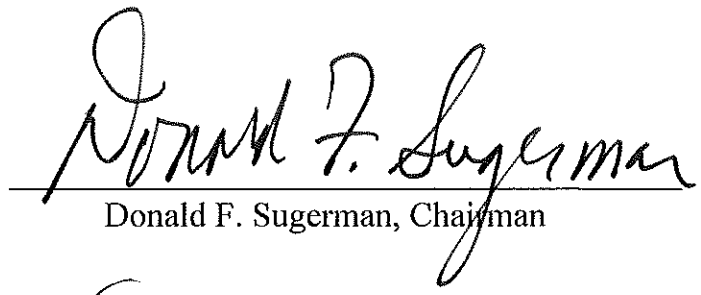
Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

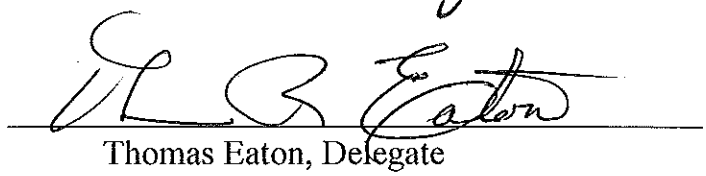
Kenneth Hiller, Delegate

COMPENSATORY TIME

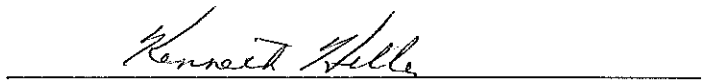
The Employer's LBO is adopted.



Donald F. Sugerman, Chairman



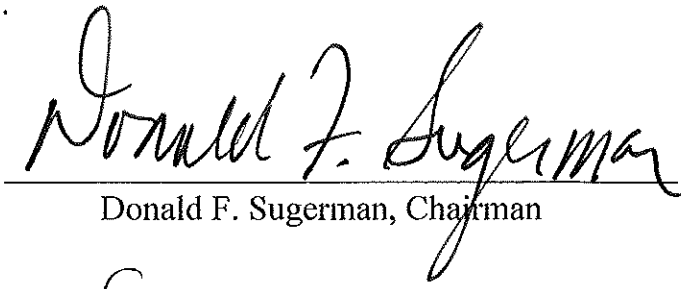
Thomas Eaton, Delegate



Kenneth Hiller, Delegate Dissenting

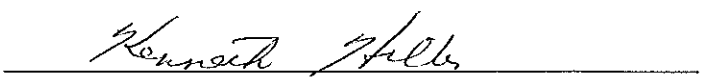
ADOPTION BY REFERENCE/RESOLUTIONS AND PERSONNEL POLICIES

The County's LBO is adopted with a minor change; setting the effective date of the provision which is the date of this Award.



Donald F. Sugerman, Chairman

Thomas Eaton, Delegate



Kenneth Hiller, Delegate Dissenting

FORENSIC LABORATORY POSITIONS

The Association's LBO is adopted.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate, Dissenting

Kenneth Hiller, Delegate

USE OF RESERVES

The Association's LBO is adopted and the Letter of Understanding will be added to the CBA as an appendix.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

Kenneth Hiller, Delegate

INVESTIGATORY/DISCIPLINARY PROCEEDINGS FOR OCDSA MEMBERS

The County's LBO is adopted on the Preamble and Items 4, 7, 8, 11, 13, 15, 17, 18 and as modified on Items 9 and 12.

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate

Kenneth Hiller, Delegate Dissenting

The Association's LBO is adopted on Items 7, 11, 16 and as modified on Items 1, 2, 3, 4, 13, 18

Donald F. Sugerman, Chairman

Thomas Eaton, Delegate Dissenting

Kenneth Hiller, Delegate

Sept. 11, 2009

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

In the Matter of the Arbitration between

OAKLAND COUNTY AND THE
OAKLAND COUNTY SHERIFF,

Employer

-and-

Interim Opinion and Award
of Panel Chairman
Donald F. Sugerman
In No. D05-A-0055

OAKLAND COUNTY DEPUTY
SHERIFFS' ASSOCIATION,

Association

_____/

APPEARANCES

For the Employer: Malcolm Brown, Esq., of Butzel, Long, Bloomfield Hills, MI

For the Association: L. Rodger Webb, of Webb, Englehardt, Fernandez, Troy, MI

OPINION

I
INTRODUCTION

This Interim Opinion deals exclusively with the issue of which communities proposed by each of the parties are to be considered comparable to Oakland County. The importance of the issue is derived from MCL 423.239, Findings and Orders; Factors Considered. Section 9 reads, in relevant part, as follows:

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

Under the Statute we are instructed to compare the wages, hours, conditions, in this case of sworn, law enforcement officers (generically sometimes called "deputies") of the Oakland County Sheriff, with those of employees performing similar functions and duties in comparable communities. It is not simply a comparison of wages, hours, conditions of Oakland deputies with those of similarly situated employees in other municipalities. On the

contrary, what is required is a careful examination of the wages, hours, conditions of said deputies with that of law enforcement officers in public employment in comparable communities. In other words, it is the communities proposed by the parties that must be comparable to Oakland County.

The Statute provides no guidance of how this comparison is to be achieved. Each panel is left to its own devices on this issue. This has resulted in a hodgepodge of findings. Complicating the process is that the panel is limited to considering the communities nominated by each of the parties.

Often the proposed communities are selected, not for altruistic reasons, but rather because the wages, hours, conditions of their employees are such that they will support the position being taken by the employer or the union in the immediate Act 312 proceeding. And simply because the parties jointly agree that one community, and perhaps others, too, are comparable to the subject community does not guarantee that such is the case. With this in mind, it is now appropriate to consider the statutory term, "comparable community."

Any analysis must begin with the term, "public employment in comparable communities." The focus of this, and the item that has cause great uncertainty, is the adjective "comparable." For a common word like comparable, we look to the dictionary definition. Webster's Third New International Dictionary of the English Language, Unabridged (Merriam-Webster, Inc., Springfield, MA, 2002 at p. 461) defines comparable as:

> **1:** Capable of being compared: **a:** having enough like characteristics or qualities to make comparison appropriate **b:** permitting or inviting comparison, often in one or two salient points only **2:** suitable for matching, coordinating, or contrasting: EQUIVALENT, SIMILAR . . .

Shakespeare's statement in "Much Ado About Nothing" that "comparisons are odorous" describes any attempt to compare municipalities with one another. The best that can be hoped for is to compare a few salient points. The ones most often used are: population, area, tax value, and size of the law enforcement unit.

When the communities are smaller in geographical area, such as townships, villages, small to mid-size cities, other factors may help refine whether comparisons exist. To mention a few, median home income, population per square mile, major crime rates, number of sworn law enforcement officers, ratio of officers per population.

Here, we begin with the only two communities both parties agree are comparable to Oakland County, namely Wayne County and Macomb County. Together, these three comprise the bloc customarily called the Tri-County Area, and sometimes generically referred to as Southeastern Michigan.

The 2000 U.S. Census and the 2006 estimate show the populations, in hundred thousands, as follows:

County	2000 Census	Estimate
Wayne	2061	1971
Macomb	788	833

Oakland	**1194**	**1214**
Genesee	436	442
Kent	575	600
Washtenaw	323	344

The first three counties, are by far, the largest in the State. Both parties agree that Wayne and Macomb counties are comparable to Oakland County.

The land area of the six counties, in square miles, is as follows:

Wayne	614
Macomb	480
Oakland	**872**
Genesee	640
Kent	856
Washtenaw	709

The taxable value of the six counties, in billions is:

Wayne	53
Macomb	32
Oakland	**65**
Genesee	12
Kent	21
Washtenaw	15.5

Finally, the size of the Sheriffs' Department (312 eligible, corrections, command) in the communities follow:

Wayne	1400
Macomb	500

Oakland	**1150**
Genesee	257
Kent	499
Washtenaw	290

The Employer proposes as comparable communities to Oakland, and in turn, to Wayne and Macomb, the additional counties of Genesee, Kent, and Washtenaw. The Association opposes the inclusion of the latter three counties as not being comparable.

Of the three nominees, Kent alone looks similar to Oakland, Wayne, and Macomb. It has a population slightly smaller than Macomb, whereas the population of Genesee and Washtenaw are considerably smaller.

The land area of Genesee, Kent, and Washtenaw compare favorably with that of Wayne, Macomb, and Oakland.

In terms of taxable value, only Kent approaches that of Macomb, 21 versus 32. Genesee and Washtenaw are much smaller in this category. Finally, there is department strength. Again, Kent looks like Macomb, while Genesee and Washtenaw are roughly half the size of Macomb which, once again, is the smallest of the stipulated comparable communities.

A word about the location of the comparable communities. Some time ago, an arbitrator, convinced by his own rhetoric (or that of an advocate) seized on the concept of a labor market criteria. Stated somewhat differently, a community was accepted or rejected

Let me briefly discuss the major contentions of the Association for adopting its nominees. It raises, what amounts to a past-practice argument. These townships and cities were used in prior Act 312 cases between these parties and, therefore, should be used here.

There were two prior Act 312 cases. One in 1983 involving this unit, in which the Panel Chairman was T. LoCicero. In that case, decided twenty-five years ago, the Chairman accepted as comparable communities those nominated by both parties. Oakland County nominated four contiguous or nearby counties (but not Wayne or Washtenaw), while the Association proposed Wayne and Macomb counties and 16 townships and cities (including three of those proposed in the immediate case – Livonia, Southfield, and Farmington Hills.) Chairman LoCicero's acceptance of all of the nominees is not explained in his decision. For that reason alone it is not accepted as binding precedent.

Furthermore, the LoCicero Award did not serve as precedent because in 1984, at the request of these parties, the arbitrator issued an amended award that dealt with four specific items, none of which involved comparable communities. The Amended Award stated that, except for the four specified items, the prior award was to "have no force or effect." Therefore, even if the original Award had some precedential value, it was extinguished with the subsequent Amended Award.

In 1997, Arbitrator D. Kruger issued a 312 Award involving the Command Officer Unit of the Oakland County Sheriff. They were represented at the time by the POAM, the same labor organization that had been representing the patrol and corrections unit at the time

of the initial LoCicero Award. In that case, the Union proposed the counties of Genesee, Livingston, Macomb, Washtenaw, Wayne, Clinton, and seven cities, including Farmington Hills, Livonia, and West Bloomfield. The Employer proposed Genesee, Ingham, Kent, Macomb, Washtenaw, and Wayne Counties.

Once again, without any explanation, the panel accepted all of the nominees. There is simply no way to determine why this was so. This being the case, it cannot serve as precedent. In addition, even were it otherwise, I take note of the great differences between the entities used by Arbitrator LoCicero and those used by Arbitrator Kruger. While I am reluctant to overrule another arbitrator because of the instability it may have on labor-management relations, where there is no clear pattern and where no explanation is provided as to why something was done, to accept the past as precedent, itself has a deleterious impact on such relationships and need not be routinely adopted.

Very few decisions where a combination of counties and cities/townships have been used explain the rationale for doing so. On the other hand, I find the decisions of Arbitrators Franklin (Livingston and Monroe Counties), Schneider (Monroe County), Long (Livingston County), better analyzed, and thus compelling.

While it may be possible to compare apples with oranges, and perhaps conclude they are both fruits, round, and about the same size, on closer inspection, they are known to have different tastes, textures, skins, appearances, and are, in fact, quite dissimilar. Parenthetically, I note that no one has ever said that something is as American as orange pie.

INTERIM AWARD

For the reasons set forth above, the comparable communities that will be used in this proceeding are Wayne, Macomb, and Kent counties.

Donald F. Sugerman, Arbitrator

June 18, 2008