In the Matter of Statutory Interest Arbitration between:

WAYNE COUNTY AIRPORT AUTHORITY,
Employer,

-and-

AFSCME, LOCAL 3317
Union (supervisory), and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 502,
Union (patrol officers)
_____/

MERC Case No. D04 A-0123 (Supervisory)
MERC Case No. D04 A-0109 (Patrol)

Hearings: March 22- Oct. 30, 2007

ARBITRATION PANELS' FINDINGS, OPINION, AND ORDERS

BEFORE TWO PANELS BOTH CONSISTING OF:

Benjamin A. Kerner, Chair
Joseph Martinico, Employer Delegate
Hugh Macdonald, Unions' Delegate

Appearances:

For the Employer: Gary R. Danielson and Kenneth M. Gonko
The Danielson Group

For the Unions: Jamil Akhtar
Akhtar, Webb and Abel

Present for part or all of the proceedings: Nevin Adams, Russell Arney, Timothy Calhoun, Nancy Ciccone, Mark DeBeau, Bruce Ellison, Michelle Farmer, Gerard J. Grysko, Laura Jackson, Richard Johnson, Aram T. Kaloian, Robert MacDonagh, Jennifer Mausolf, Kurt Metzger, Patrick Melton, Kevin Nalepa, Tom Naughton, John Olis, Lynda Racey, Mike Royal, Mike Seibert, Leigh Stepaniak, Gregory Surmont, Terry Teifer, Mike Wasiukanis, Geoffrey Wheeler, Jennifer Williams, Ronald Yee.

Dated: February 18, 2008

BACKGROUND.

Before August 2002, the Detroit Metropolitan Wayne County Airport (and Willow Run Airport) were operated by Wayne County. After that date, a new entity came into being by operation of the Public Airport Authority Act [2002 P.A. 90]. Wayne County continued to own both Detroit Metropolitan Wayne County Airport and Willow Run Airport. However, operational authority as well as responsibility for plant maintenance and improvement were vested in the new agency, Wayne County Airport Authority [WCAA]. WCAA acceded to the labor contracts of employees of the airports. If this were not clear then, it became clear in a Decision of the Michigan Employment Relations Commission in 2004 whereby it concluded,

> Based on our finding that the Wayne County Airport Authority is *a separate employer*, we grant the WCAA's petition in Case No. UC 04 C-009, and clarify the existing bargaining unit represented by Wayne County Law Enforcement Supervisory Local 3317, AFSCME….
> [Case Nos. UC04 C-009 and UC 04 C-010, Dec. 20, 04, emphases added]

Further in the same case, the Employment Relations Commission granted the unit clarification petition of the WCAA to sever the police officers' bargaining unit, Local 502 of SEIU, from the overall Wayne County Sheriff's Department bargaining unit, with the proviso, "that the WCAA shall remain a member of the multi-employer association comprised of the WCAA, Wayne County, and the Wayne County Sheriff for the purposes of bargaining the duration of transfer rights conferred by their Memorandum of Agreement with local 502."

The parties continued to live under labor contracts which expired on November 30, 2004. The Unions filed petitions for Act 312 arbitration on January 21, 2005, and I was appointed as Neutral Arbitrator on April 25, 2005. I remanded the case for further

bargaining. In September 2005 the Unions filed unfair labor practice charges alleging that the Airport sought to bargain about an illegal subject of bargaining, by proposing to eliminate the Union members' ability to engage in binding interest arbitration pursuant to Act 312. ALJ Roulhac found on May 12, 2006, that the employees were subject to the hazards of police work; and that their employing department—being the Wayne County Sheriffs Department, was a critical service department, such that under the mandate of *Metropolitan Council No. 23, AFSCME v. Oakland Co. Prosecutor*, 409 Mich 299 (1980) they were entitled to Act 312 procedures. He further found that under the Airport Enabling Act, police officers and other employees who enjoyed Act 312 protections and who transferred from Wayne County to WCAA had a right, under the terms of the statute, to continued protection of Act 312 procedures. [Case No. C05 H-187 and C05 H-196] [1] In May 2006 the parties resumed bargaining.

The bargaining continued, so far as I can judge, until near the end of 2006. The parties then advised me that they had gone as far as they could without formal hearings.

We had a pre-hearing conference on December 1, 2006, at which many of the ground rules for hearing were established, as well as some timelines. The first hearing dates (March 22 and March 28, 2007) were devoted to the Employer's claim that

[1] By decision on exception from AJL Roulhac's Recommended Order, the full Commission on April 17, 2007, determined that Act 312 eligibility, like interest arbitration in the private sector, is a non-mandatory subject of bargaining. Thus, a party can bring the subject to the bargaining table, but may not insist upon it to impasse. Correlatively, it was held "that it is not an unfair labor practice to propose, as did Respondent [WCAA] that language addressing Act 312 eligibility be removed from a collective bargaining agreement." The Commission went further and opined that it could not on the record taken "determine which bargaining unit classifications retain Act 312 eligibility as a statutory right."

members of the bargaining units were not eligible for Act 312 procedures and to the issue of comparable employees.

By decision dated May 9, 2007, I concluded that "the employees in the classification of police officer, corporal, detective, police sergeant, and police lieutenant appear by operation of 2002 P.A. 90 to have rights to have their contract disputes resolved by the procedures of Act 312." This decision had the concurrence of the Union member of the Panels.

Then, by decision dated May 1, 2007, the Panel considered the issue of the comparison of these employees' working conditions with those of "employees performing similar services and with other employees generally in public employment in comparable communities." [MCCL 423.239(d)]. On evidence presented by both parties, the Panel concluded that the following were comparables: the City of Detroit, the City of Dearborn, the City of Livonia, Oakland County Sheriff's Department, Michigan State Police, Wayne County Sheriff's Department, and the City of Taylor as well as the internal comparables of other non-police officer employees of the Employer.

With this framework of analysis in place, the parties proceeded to prepare their proposals and their evidence in support of their proposals. Eleven days of hearing were held between May 21, 2007, and October 30, 2007. The parties presented their last best offers on November 9, 2007, and briefed the issues by November 30, 2007.

There are 26 economic proposals (of which three, # 4, #5, and #24, are the subject of settlements) and 6 non-economic proposals. By the terms of Act 312 as to economic proposals, the Panel must adopt one or the other of the last best offers of the parties, "as more nearly complies with the applicable factor prescribed in section 9."

[MCL 423.238]. On non-economic proposals, the Panel is free to determine a result which comports with the section 9 factors, but which may or may not be one of the parties' last best offers. During the course of the hearings, the Panel Chair, with support, ruled that the duration of the contract to be established by this proceeding would be from December 1, 2004, to November 30, 2009. (5 year contract). The Panels are ready to present their findings, conclusions and orders.

ABILITY TO PAY.

Factor 9(c) of Act 312 says the panel shall base its findings, opinions and order on a number of factors, including, "The interests and welfare of the public and the financial ability of the unit of government to meet these costs." This factor is frequently cited as "the ability to pay" but what it invariably means is the governmental unit's *inability* to pay. A public employer can make a valid case to avoid certain wage or benefit increases if it can show *inability* to pay. With these clarifications in mind, the W.C.A.A. attempted to show herein its inability to pay the wage increases demanded by the Unions and/or the pension improvements demanded by the Unions.

The proposed budget for FY 2008 [E'er. Exh. 574] shows airline revenue of $102m. and non-airline revenue of $143m. The budgetted number of enplanements is 18,400, for an anticipated cost per enplanement of $5.54 (an increase of $0.50 over the 2007 budgetted amount).

Regarding the costs for 2006, Standard & Poor's rated the W.C.A.A. as having a strength in that, "Cost structure is moderate, with cost per enplanement at $5.16 in 2006. Cost per enplanement has declined each year since 2002, and peaked at $6.29

in 2013, over a 10-year (to 2016) forecast period." Credit weaknesses included the fact that W.C.A.A. was dependent on a single carrier. Another weakness was cited as, "Liquidity is somewhat weak compared with similar-rated airports, with 206 days' unrestricted cash on hand, though this figure has increased year-over-year since 2002 and is more than double the fiscal 2000 figure." Standard & Poor's on June 6, 2007, affirmed its "A" ratings on most bonds.

The Employer presented Geoffrey Wheeler, a national consultant for financial services to airports. He cited examples of high-cost airports that have discouraged some airlines from initiating or continuing service at some airports. Mr. Wheeler opined, "Detroit is a very vulnerable airport with Northwest as its major carrier and a hub in both Detroit and Minneapolis…" [Tr. 1269] It is a relatively easy matter for an airline to divert flights from one hub to another, whether the reason for the underlying change of hubs is airline merger or purely economic.

One of the key factors in airline decisions about placing hubs is enplanement cost per passenger. One low-cost airline, Southwest, left Seattle-Takoma Airport when that airport , already a high cost airport, undertook a major capital improvement plan. Another so-called legacy carrier, Delta, left its long-time hub of Dallas just as Dallas was building a new terminal. Said Mr. Wheeler, "When one airline leaves an airport like that, it leaves the costs behind, and the carriers who are left behind are left to absorb that cost." [Tr. 1283]

Regarding Detroit specifically, Mr. Wheeler opined that Northwest is looking for a reduction in costs, not just modest increases. The Airlines, in this case Northwest, expect the hub airport to take any measures it can to reduce costs.

These comments suffice to show that W.C.A.A. must be prudent in its decisions regarding all kinds of operating expenses; and, these comments dictate prudence in the matter of employee salary increases and benefit increases. However, these comments do not show that the airport is financially unable to meet its bills; or is in a deficit situation; or is in a threatened deficit position. Thus, the evidence of record shows that W.C.A.A. is constrained by certain market factors and must be cautious about any increases in employee costs; but at the same time, the evidence does not establish that W.C.A.A. has no ability to pay otherwise warranted employee costs.

ISSUE 1: OVERTIME. (Local 3317-Article 24.01-24.12 / Local 502-Article 17.01-17.07)

LAST BEST OFFERS

Employer's Last Best Offer

The Employer offers essentially the status quo, with changes in nomenclature, and one substantive change in Local 3317, Article 24.06(E). The change therein would provide that a command officer will not be ordered to work in excess of 56 hours, "Except in an emergency." A parallel provision already occurs in Local 501-Article 17.05(G).

The text of current Local 502, Article 17.01 is as follows:

A. Time and one-half (150%) of the regular hourly rate shall be paid to all employees as follows:
   1. For all hours of work performed in excess of eight (8) hours in any one (1) day.
   2. For all hours of work performed on the sixth (6^{th}) day of the employee's workweek provided the employee actually works the regular forty (40) hours of straight time in the work week. If not, hours worked on the sixth day will be

compensated at straight time until the 40-hour requirement is met. For purposes of this paragraph, paid time off shall not constitute hours worked. The use of either personal business leave as provided under Article 22 or bereavement leave as provided under Article 23 will constitute hours worked.

Article 17.02:

Double time (200%) of the regular hourly rate shall be paid to all employees as follows:

A. For all hours of work performed on the seventh (7th) day of the employee's workweek provided the employee worked the preceding leave day in addition to actually working the regular forty (40) hours of straight time in the workweek….For purposes of this paragraph, paid time off shall not constitute hours worked. The use of either personal business leave as provided under Article 22 or bereavement leave as provided under Article 23 will constitute hours worked.

Unions' Last Best Offer.

Local 502, Article 17.01:

A. Time and one-half (150%) of the regular hourly rate shall be paid to all employees as follows:
1. For all hours of work performed in excess of eight (8) hours in any one (1) day.
2. For all hours of work performed on the sixth (6th) day of the employee's workweek provided the employee receives forty (40) hours paid time in the workweek. If not, hours worked on the sixth day will be compensated at straight time until the 40-hour requirement is met.

Local 502, Article 17.02:

Double time (200%) of the regular hourly rate shall be paid to all employees as follows:

A. Double time the employee's regular rate of pay for all work performed on the second (2nd) leave day of the employee's work week, providing the employee receives forty (40) hours of paid time for the week (vacation, sick, holiday, and PBL days shall be included as hours worked).

POSITIONS OF THE PARTIES

The Union's suggested amendment would allow payment of double overtime for the 6th day of the workweek, provided the employee receives 40 hours of paid time

during the preceding week (including vacation time, sick time, holiday pay, and personal business leave pay). The Union's proposal would allow double time on the 2nd leave day of service provided that the employee has received 40 hours of paid time for the week (including vacation time, sick time, holiday pay, and personal business leave pay).

The Union offered the testimony of Michelle Farmer, Chief Steward, as to how the current system works. [Tr. 663-670] She confirmed that the employee must actually work the shifts preceding the requested overtime, in order to be eligible for overtime pay. This would be in accordance with the language shown above at Local 502, Article 17.01 and 17.02.

The Union also offered the testimony of Richard Johnson, Staff representative of AFSCME, Michigan Council 25. He testified that the provisions of the AFSCME Local 101 contract (covering 200+ employees at the Airport) allow for double time pay on the second regular day off. It is not required under the Local 101 contract for the employee to have actually worked 40 hours in the preceding week. [Tr. 659]

The Employer says that the record establishes that the patrol officers and command officers of these two bargaining units already work higher amounts of overtime than most of the other employees of this Employer. "The cost of the Unions' proposal will exacerbate an already untenable situation particularly when a substantial amount of overtime is due to heightened federal security requirements that are beyond the Authority's control. [E'er. Brief, p. 23]

DISCUSSION

The Panel is bound to based its findings on the evidence of record that addresses the Act 312, Section 9 factors. On this issue, the Panel received evidence on

internal comparables, i.e., the practices and contract provisions of comparable bargaining units of the same Employer. The evidence establishes that the working condition sought by the Unions here is applicable in at least one major bargaining unit of the Employer. There was no testimony or evidence addressing the situation in comparable Employers. There was no bargaining history. There was no quantification of the cost of the Unions' proposal or suggestion that the Employer cannot afford to pay, specifically, the amounts required under the Unions' requested working condition. There were no "other factors" addressed in this record. Based on the evidence received, and in reliance on the factor of internal comparables [Act 312, Section 9(d)] the Panel concludes that the Unions' requested language on Overtime in both the Local 502 contract and the Local 3317 contract is more nearly supported by the statutory factors.

ORDER—OVERTIME.

In accordance with the above, the Unions' Last Best Offers on Overtime are adopted.

ISSUE 2: ANNUAL LEAVE(Local 3317-Article 24 / Local 502-Article 20)

LAST BEST OFFERS

Employer's Last Best Offer [Status quo]

The Employer offers to continue the current system by which employees accrue time for annual leave on the following schedule:

1-5 years of service	8 hours per month
6-10 years of service	10 hours per month
11-15 years of service	12 hours per month
16-20 years of service	14 hours per month
21 or more years of service	16 hours per month

Unions' Last Best Offer

The Union would change the schedule of annual leave accrual, as follows:

1-5 years of service	8 hours per month
6-10 years of service	12 hours per month
11-15 years of service	14 hours per month
16-20 years of service	16 hours per month
21 or more years of service	18 hours per month.

POSITIONS OF THE PARTIES

The Employer takes the position that the current schedule is generous, affording a ten-year employee 120 hours, or 15 days of annual leave; and affording a 20-year employee 168 hours or 21 days of annual leave time. There is a cost of 3 days per year per employee for the increases the Union seeks. They are not warranted, says the Employer, by either the internal comparables or the external comparables. The internals comparables show that the Firefighters, as well as all the other 6 bargaining units have a schedule of Annual Leave as shown in the currently-effective collective bargaining agreement for both Local 502 and Local 3317.

The Union says that the increases are warranted. The Union cites external comparables. For instance, Dearborn has 20 days per year annual leave (5 years of service); 20 days (for 10 years of service); 25 days (for 15 years of service), 25 days (for 20 years of service) and 25 days (for years 25 or more years of service). The averages over the 6 external comparables are: 20 days of annual leave (for 5 years of service); 22 days (for 10 years of service); 24 days (for 15 years of service); 25 days (for 20 years of service); 27 days (for 25 years of service); and 28 days (for 30 or more years of service). [U. Exh. 82, tab 6] In addition, the Unions say that the Executive and Non-Executive Exempt employees have a better vacation package.

The present contract for Local 502 and Local 3317 translates to 12 days (for 1-5 years of service); 15 days (for 6-10 years of service); 18 days (for 11-15 years of service); 21 days (for 16-20 years of service); 24 days (for 21 and more years of service). The requested improvements, say the Unions, would bring the Unions more into line with the external comparables.

DISCUSSION

The Unions' evidence shows that the external comparables, as a general matter, have slightly better Annual Leave provisions. However, the internal comparables, including the Firefighters' unit, have the same benefit as now proposed by the Employer. The Panel believes that the internal bargaining units (and not the Executive and Non-Executive Exempt Employees plan) serve as the most significant standard of comparison for this subject. To award any greater amount of Annual Leave than is currently available to the members of the Local 502 and Local 3317 would be to introduce disparities in the local, Airport-based bargaining units. A majority of the panel is persuaded that the introduction of such disparities is not warranted, and is contrary to Act 312, Section 8(d). For these reasons, the Employer's Last Best Offer is found to be more consistent with the statutory factors than the Unions' Last Best Offers.

ORDER—ANNUAL LEAVE.

The Employer's Last Best Offer on the subject of Annual Leave is accepted.

ISSUE 3: SICK LEAVE. (Local 3317-Article 28/ Local 502-Article 21)

LAST BEST OFFERS

Employer's Last Best Offer

The Employer offers nomenclature changes and to continue the status quo, by which employees have the opportunity (for those hired after Oct. 1, 1983) of being annually paid for their sick time accumulations, as follows:

1. For sick leave accumulation in excess of 40 days by 10, 11, or 12 days, the employee shall be paid for those excess days at the rate of 100%.
2. For sick leave accumulation in excess of 40 days by 7, 8, or 9 days, the employee shall be paid for those excess days at the rate of 75%.
3. For sick leave accumulation in excess of 40 days by 6 or fewer days, the employee shall be paid for those excess days at the rate of 50%.

Unions' Last Best Offer

The Unions offer to change the status quo, so that employees who have been hired after Oct. 1, 2003, would be paid annually for sick time accumulations, as follows:

1. For sick leave accumulation in excess of 40 days by 6 or more days, the employee shall be paid for those excess days at the rate of 100%.
2. For sick leave accumulation in excess of 40 days by fewer than 6 days, the employee shall be paid at the rate of 50%.

POSITIONS OF THE PARTIES

The Union's request for a change in this condition of employment is grounded on the change introduced in the bargaining for the Wayne County Sheriff's Department and the Wayne County Sheriffs, Sergeants and Lieutenants, Local 3317. Those parties were the subject of an Act 312 proceeding concluded earlier this year (Roumell Award dated May 2, 2007,U. Exh. 81) In his recitation of the provisions accepted (or bargained by the parties) Arbitrator Roumell references this sick time payout and the parties' bargained change for 100% pay for 6 or more days in excess of 40 hours of sick leave; 50% pay for accumulated sick days of fewer than 6 days.

The Employer argues that the external comparables do not support the Unions' demand for change. The City of Livonia and the Michigan State Police have no

provision for pay-out of accrued sick time. The City of Dearborn has a provision for payout of 5 days (if an officer has accrued 60 days); and 10 days (if an officer has accrued 120 days). The City of Detroit has a limited sick leave pay out provision up to a maximum of 50% of 6 sick days. The Oakland County Sheriff's Department for a provision allowing payout of up to 50% of sick time, if the officer has at least 100 days. The City of Taylor has a provision allowing payout of sick days, if the officer has $22,,0000 of banked sick time. The Employer points out that it is a rare employer which allows cash-out of sick time at 100% of earned time.

Looking at the internal comparables, the Employer says that the most comparable unit, the Firefighters' contract, allows for payout of sick leave in excess of 320 hours (40 days) but I it is only at 50% of the leave time accrued. The Executive and Non-Exempt Employees plan [U. Exh. 91] allows for the payout of unused sick time but only in the event of separation, retirement or death. It is not an annual entitlement.

DISCUSSION

The evidence of record indicates that the external comparables provide scant support for the Unions' proposal, in fact only the County of Wayne (Sheriff's Department) offers support for the Unions' position. In regard to internal comparables, the conclusion is inescapable that the provisions of the Firefighters' contract is not as beneficial as the current Local 3317 and Local 502 contracts. The firefighters get a payout of only 50% of accrued sick time, whereas Local 3317 and 502 members get *at least* a 50% payout. The Executive and Non-Executive Exempt plan does not afford a ready comparison, because the pay out is not available except upon separation from service. [To the extent that an annual benefit is provided, the Local 3317 and 502

current payout is superior.] In view of this evidence, the Employer's Last Best Offer is found to be more consistent with the statutory factors than the Unions' Last Best Offers.

ORDER—SICK LEAVE.

The Employer's Last Best Offer on the subject of Sick Leave is accepted.

ISSUE 4: MILEAGE ALLOWANCE

This issue has been resolved by the parties in negotiations. There is no need for discussion or award on this issue.

ISSUE 5: UNIFORM, CLOTHING AND CLEANING ALLOWANCE

This issue has been resolved by the parties in negotiations. There is no need for discussion or award on this issue.

ISSUE 6: HEALTH AND WELFARE PLAN. (Local 3317-Article 37.01/ Local 502-Article 31.01)

LAST BEST OFFERS

Employer's Last Best Offer

The Employer proposes a variant on the current language, substituting "Wayne County Airport Authority Health and Welfare Benefit Plan" where the old language referred to the "Wayne County Health and Welfare Benefit Plan." In addition, the Employer would excise the last sentence of Article 31.01 as follows:

> Except where it is in conflict with the express terms of this agreement the Wayne County Airport Authority Health and Welfare Benefit Plan ("the Plan") is hereby incorporated by reference. ~~This benefit summary is not intended to replace or~~

~~supersede the Collective Bargaining Agreement and /or past practices thereunder.~~

Unions' Last Best Offer

The Unions would state expressly that , "The Wayne County Airport Authority Health and Welfare Plan shall not apply to members of the Bargaining Unit."

POSITIONS OF THE PARTIES

The Employer says that the reference to the Health and Welfare Plan is innocuous and may provide a grounds for interpretation where provisions of the collective bargaining agreement may leave a gap. "[D]espite the care to which the parties have memorialized their 'core' insurance benefits packages, it is virtually impossible to set for the each and every minute detail of the various benefit plans and their operating protocols….The purpose of this language is to allow insignificant, non-substantive changes to be made to the insurance plans typically by the carriers…." [E'er. Brief, p. 31, 32]. The Employer also points out that the provision referencing the Health and Welfare plan is in the collective bargaining agreement of each of the 7 other, remaining bargaining units.

The Unions say that there is no place in a collective bargaining agreement for reference to any outside plan, other than those that the parties mutually wish to incorporate into the collective bargaining agreement. There is no such mutual desire here, so the Employer's reference to the Plan is out of place.

DISCUSSION

The Employer points out that the Plan is a place where certain details of the health insurance plans, the life insurance plan, etc. can be specified, if not included in

the over-arching collective bargaining provisions. The Employer has recognizes that it cannot supplant bargaining on bargainable subjects.[2]

The Panel takes notice of the fact that a reference to a plan, outside the scope of the bargained-for collective bargaining agreement, itself, is not uncommon, particularly in the public sector. It is felt that the introductory clause of the Employer's proposal, "Except where it is in conflict with the express terms of this agreement" is sufficient protection for the Unions against unwarranted introduction of program changes, and / or retrenchments of any kind. The Plan may serve a useful purpose, as adverted to in the Employer's brief, quoted above. It has been found non-objectionable by 7 of the 9 unions to whom the language has been proposed. A majority of the panel is persuaded that the traditional factor—that such contract language is generally accepted in public sector collective bargaining—and the approval of this proposal in all of the other bargaining units indicates that the Employer's LBO is more consistent with the statutory factors than the Unions' Last Best Offers.

ORDER-HEALTH & WELFARE PLAN

The Employer's Last Best Offer on the subject of Health & Welfare Plan is accepted.

ISSUE 7: HEALTH INSURANCE Proposal 1-A (Local 3317-Article 37.02 / Local 502-Article 31.02)

LAST BEST OFFERS

[2] From the testimony of Mr. Martinico: Q: And if this is incorporated in the contract, you have the right to eliminate retirees' medical, right?
A: No more so than has always been the case. It would be my opinion that the proposals we've made relative to retiree insurance make the prospect of this [H & W plan] ever having to be referred to much more remote. [Tr. 948]

Employer's Last Best Offer.

The Employer makes a comprehensive offer of health insurance that includes coverage equal to a specified Blue Cross Blue Shield PPO plan. ("Community Blue"). Employees have the option of enrolling in an HMO plan, but are required to pay 5% of the premium for such plan. The remaining current options for health insurance would be eliminated. However, the "opt-out" provisions of the current contract are continued, with the Employer proposing to increase the opt-out rebate from %950 to $1,250.

The Employer proposes effective April 1, 2008, that there shall be a prescription co-pay of $10 for generic, $20 for brand name drugs. Maintenance drugs (available for a 90-day supply) are also offered, with a co-pay of $20/$40.

The Employer proposes an optical program, to cover optical benefits for both employees and retirees. (The current program covers only employees.) There are some improvements in benefits available under the optical program.

The Employer proposes a cost containment program. It allows the Employer to select different service providers provided the contractual level of benefits is maintained. The Employer may also change dental or life insurance providers, with notice, provided the contractual level of benefits is maintained.

In addition, the Employer provides that new retirees (those who retire on or after the 1st of the month following issuance of the Act 312 award) and who are otherwise eligible for retiree medical coverage participate in the above-described comprehensive health insurance plan.

Union's Last Best Offer.

The Union generally agrees to the terms of the Employer's LBO, but incorporates four significant changes in its version of the health insurance article. First, the Union would make the terms of the offer effective 60 days from the date the contract is signed by the parties, instead of on the first of the month following issuance of the Act 312 award. Second, the Union would require a contribution for HMO insurance coverage that is pegged to 25C/hour for family coverage (rather than the 5% defined in the Employer's plan (and the Union would require declining amounts, expressed in cents/hour for two-person coverage, and for single person coverage). Thirdly, the Unions would delete the cost containment section from the article. And, fourthly, the Unions would delete the work "accidental" from this sentence of the proposal: "In the event of the ~~accidental~~ death of an employee, resulting from the performance of his or her duties, the Employer shall provide, at its expense medical, optical and dental benefits for the surviving legal dependents."

POSITIONS OF THE PARTIES

The Employer takes the viewpoint that the comprehensive proposal has been incorporated in the Firefighters' contract, as well as the contracts of all other remaining bargaining units. There is no cause to pick apart some of the proposals. For instance, the Employer says that the Unions' proposal on HMO coverage is retrogressive, and places a burden on the Employer as health insurance rates continue to increase, without a corresponding increase in contribution from the employee. The Employer points out that the Union-proposed contribution rates are out-of-step with the rates now being paid "by every other internal union, non-union, management and staff employee at the Airport."

The Union –proposed elimination of the cost containment feature of the health insurance program would deprive the Employer of the ability to seek “carve out” programs which have an advantageous rate for this group of employees.

The Union argues that it is already giving a large concession by agreeing to the general terms of the health insurance program as outlined in the Employer’s proposal. In addition, the Union, by its stance in bargaining on this subject, has agreed to have co-pays, premium sharing and other changes become applicable in the future to retirees. “In the past, once an employee retired, their medical was set for life with no changes.”

DISCUSSION.

The question, for this article, is whether the changes requested by the Unions, as departures from the comprehensive health insurance plan offered by the Employer, are supported by the evidence in regard to Act 312, Section 9 factors. The Union say that the cost of health insurance at the externals is lower than the premium cost sharing and co-pays demanded here by the Employer in its proposal. For instance, in Dearborn, the cost of the BC/BS Dimension III plan is fully paid by the Employer. In the City of Detroit, the BC/BS CMM plan is fully paid by the employer, with the employee paying the premium difference for any other option selected. In the Michigan State Police the cost of BC/BS Community Blue is paid by the employer, with the employee paying the premium difference for selecting an HMO. In Oakland County, the cost of health insurance is fully paid by the employer unless an HMO is selected, and then the employee pays the difference. [U. Exh. 82, tab 12 and U. Exh. 83, tab 11].

However, on the subject of internal comparables, the evidence clearly supports the Employer.

The Employer also cites certain national survey data, which may have greater relevance to the following health insurance Article. Suffice to say that when the premium contributions demanded in proposal 1-A were compared to a national survey of health insurance trends, the opinion of the Employer's health insurance professional Greg Surmont was as follows:

> I think it's very fair, that's a good term to use. Perhaps it does not go far enough in the context of what other employers are doing in the marketplace and the daunting aspect of continuing how single digit or double digit trend is compounding year to year.
> The cost share component of the proposal [Proposal 1-A] is relative to our survey information, rather minor in the context of the amount of cost increase and the disproportionate share of costs that the employer will assume over time, in the length of the agreement.
> [Tr. 1500]

On the whole, the changes instituted by the Employer in the other bargaining units provide a beacon for the changes sought here. The Employer's proposal conforms to the changes it has sought and obtained in other bargaining relationships. The Unions have not shown that the Employer's proposal, in the four particulars it seeks to amend, is deficient, or over-reaching, or not on a par with national trends in premium sharing. Thus, based on the factors of what is comparable in other internal bargaining units and what is appropriate on a national basis (Section 9--other factors utilized in collective bargaining), the Employer's Last Best Offer is found to be more consistent with the statutory factors than the Unions' Last Best Offers.

ORDER—HEALTH INSURANCE PROPOSAL 1-A

The Employer's LBO on Health Insurance, Proposal 1-A is accepted.

ISSUE 8: HEALTH INSURANCE—Proposal 1-B (Local 3317-37.02 /Local 502-Article 31.02)

LAST BEST OFFERS

The Employer proposal is to continue its health insurance program into 2008 and following years. For employees enrolled in the BC/BS Community Blue PPO, the Employer proposes a 10% premium sharing by employees to be effective October 1, 2008. For employees enrolled in the HMO option, the Employer proposes a 10% premium sharing by employees to be effective October 1, 2008. And, the alternative of a BC/BS Community Blue Plan #4 will be available with no premium sharing (but with relatively high deductibles, co-pays and annual stop-losses). Furthermore, the alternative of an employee "opt-out" is available for employees who can show health insurance elsewhere.

The Employer-proposed BC/BS Community Blue Plan #4 would involve the following elements:

-$250/$500 deductible in network; $1000/$2000 deductible out-of-network
-20% in-network co-pay and $1500/$3000 annual stop-loss; 40% out-of-network co-pay and $3000/$6000 annual stop-loss;
-$20 office visit co-pay in-network; $50 emergency room co-pay
-50% mental health co-pay
-$250 annual preventative maximum
-prescription drug co-pay of $10 generic/$20 formulary brand/$40 non-formulary

The Employer represents that the options to be made available to these bargaining unit employees under these proposals (Proposals 1-A and 1-B) are the same that it will propose to the other 7 bargaining units, including employee premium contributions for the BC/BS Community Blue PPO and the HMO options (10% to be paid by payroll deduction). The working conditions defined by Proposal 1-A are already in effect for the other 7 bargaining units plus the non-represented employees of the W.C.A.A.

The Unions "do not take a position as to the inclusion of this added provision [above-summarized BC/BS Community Blue Plan #4] in the contract. It is a lesser benefit which the employee, based upon their own investigation and initiative can accept or reject and this would be done on an individual basis. There is no requirement that the employee accept the BC/BS Community Blue Plan #4 as proposed by the WCAA and the inclusion of this proposal by the panel, if the panel decides to do so, will not affect the Unions' last best offer as to the medical insurance provisions of the collective bargaining agreement." [U. Brief, p. 29-30]

POSITIONS OF THE PARTIES

The Employer's position was largely presented through the testimony of Greg Surmont, an account director with McGraw Wentworth, which is a health and welfare agency with an extensive research arm. In its surveys, according to Mr. Surmont, the McGraw Wentworth surveys show that in general the plan design in Southeastern Michigan is very rich, "very high level of protection and security. [Tr. 1485]. In terms of the 5%-10% premium contributions, Mr. Surmont opined that "9 percent [is] the most prevalent for the average cost share for HMO's and PPOs, for municipalities, organizations, some of that relates back to '06 and '07" [Tr. 1501]. Further, he stated that these numbers will increase over the next 5 years and that, "Certainly 5 to 10 percent is a fair and reasonable number." [Tr. 1502].

DISCUSSION

The record evidence in the form of the opinion testimony of Greg Surmont, as to state-wide and national trends in health insurance indicates that the Employer's plan is fair and reasonable. Furthermore, the Employer has already instituted the health

insurance changes summarized in Proposal 1-A above for other bargaining units and non-bargaining units employees. It proposes to introduce the changes indicated in Proposal 1-B here in the 2008 fiscal year. The Employer has represented that it will attempt to achieve consistent results with the 5 bargaining units whose contracts expire on November 30, 2007, when it comes to health insurance for 2008.

As shown above, the Union hasn't put forth a specific proposal on this subject.

Based on the "Other Factor" of state-wide and national collective bargaining trends, the Employer has established that Proposal 1-B conforms to the factors of Act 312 ["Other Factors", Section 9(h)].

ORDER

The Employer's LBO on the subject of Health Insurance, Proposal 1-B is accepted.

ISSUE 9: HEALTH INSURANCE Proposal 1-C.(Local 3317-Article 37.xx / Local 502-Article 31.xx)

LAST BEST OFFERS

Employer's Last Best Offer.

The Employer here introduces a new concept to finance retiree medical insurance coverage, effective for new hires after the date of the Act 312 award. The proposal does not affect the health insurance coverage of current employees, except if they choose to transfer into the new program. The terms of the proposal are as follows:

1. Employees hired after the effective date of the Act 312 award
a. Employees hired on or after the effective date of this Act 312 Award shall not be eligible to receive retiree medical coverage offered under the Wayne County Airport Authority Health and Welfare Benefit plan or any retirement Plan specified in Article 38 of this Agreement. Such employees will be

enrolled, beginning the first day of the month following their date of hire, in the WCAA Health Care Savings Program (HCSP) in the form provided by the Municipal Employees Retirement System of Michigan (MERS). Each employee will be required to make mandatory contributions in the amount of 2% of their base wages to this HCSP Plan. The Employer will contribute 2% of the employee's base wages [but in no event less than One Thousand Dollars ($1,000.00) for each full calendar year of employment] into the HCSP Plan. All employee contributions (and investment earnings thereon) shall be immediately vested in the employee's account; employer contributions (and investment earnings thereon) shall vest in accordance with the following schedule:

After 10 years of employment	33%
After 20 years of employment	66%
After 30 years of employment	100%

b. Those participants in the HCSP Plan who satisfy requirement for retirement eligibility and who retire with entitlement to pension benefits from WCAA employment may elect to use their vested HCSP account funds to purchase post-employment health care insurance through the WCAA, from among the health care plans available to active employees, at full rate cost, or alternatively may elect to purchase medical insurance coverage from a provider other than that offered by WCAA. It is understood that the medical plans available for the retired employee to purchase through WCAA shall be those being offered to active employees at the time; i.e., the nature of the plan benefits will be subject to change over time consistent with changes that apply to active employees. Further, such retiree may also elect to use their vested account balance for reimbursement of post employment "medical expenses" as allowed under Section 213 of the Internal Revenue Code of 1986 (IRC).
c. Thos participants in the HCSP Plan who terminate employment prior to eligibility for retirement may elect to use their vested account balances for reimbursement of post-employment "medical expenses" as allowed under Section 213 of the IRC.
d. The HCSP Plan shall be administered by MERS pursuant to a Plan document, a copy of which shall be available to all participants.

2. Employees hired prior to the effective date of the Act 312 Award who elect to waive retiree medical benefits and not participate in the WCAA Health and Welfare Benefit Plan.
   a. Employees hired before the effective date of this Act 312 Award will be allowed to permanently and irrevocably waive eligibility for retiree medical benefits pursuant to the WCAA Health and Welfare Benefit Plan and/ or any Retirement Plan provided under Article 38 of this Agreement and to elect to participate in the HCSP Plan as described in the paragraph above. The employee's election to participate in the HCSP and to waive eligibility for any other retiree medical benefits shall be permanent and irrevocable. The Employer shall contribute 4% of such employee's base wages into the HCSP Plan. Employees may elect to make additional post-tax

contributions from their wages. Employee contributions (if any) shall vest immediately in the employee's account. Employer contributions shall be vested in accordance with the vesting schedule set forth in paragraph 1(a) above.

b. The provisions of Article 1(b),(c), and (d) above shall also apply.

Unions' Last Best Offer.

The Unions' Last Best Offer "as it relates to post retirement medical is to remain as it presently is, that being that retirees from the WCAA will continue to receive medical benefits under the same terms and conditions they received as active employees. This would require the employee to pay any premiums, co-pays and other deductibles which they were paying as active employees. The Unions' last best offer requires that there be no changes in retirees' medical benefits after [retirement]; with the exception for those added for diminished costs and spelled out in the Fire Fighters contract." [Brief, p. 32]

In the alternative, the Unions propose that if the panel adopts the health care saving plan concept of the Employer' s proposal and creates a post-retirement health insurance trust that the trust will be administered by the Wayne County Employees Retirement System.

POSITIONS OF THE PARTIES

The Employer says the impetus for this proposal is the current and new requirement of the Governmental Accounting Standards Board that governmental entities recognize the costs of retiree health insurance as liabilities on their books. These regulation , referred to as GASB 45, has created difficulties for many governmental entities; and as it affects the financial picture of the W.C.A.A, it "makes the Authority appear substantially in debt and therefore makes it more onerous and expensive to raise revenue through the loan and bond markets." [E'er. Brief, p. 47].

The current unfunded liability for retiree medical, for three bargaining units—police patrol, police command, and fire fighters—is $11,453,000. The unfunded liability for the several AFSCME bargaining units is $17,405,000. For the W.C.A.A. as a whole, the unfunded liability for retiree health benefits is $33,199,000. (Figures based on Oct 03 actuarial valuations, E'er. Exh. 468, tab 16, p.3). The Employer says that these daunting numbers can be greatly reduced (or reduced as to the future) if the Employer places a cash offer on its books for the payment of retirees' health benefits.

As to the propriety of having the Michigan Employees' Retirement System [MERS] be the trustee of the Health Care Savings Plan, the Employer says that the record, in particular the testimony of Jennifer Mausolf, Marketing Director of MERS, supports MERS participation based on its experience as a fund manager for health care savings plans (and retirement funds); based on its having already passed the legal hurdles of getting a private letter ruling from the IRS concerning this Health Care Saving Program offering; based on the simplicity of plan administration that the MERS has adopted. In addition, the test of the marketplace shows that the MERS program has already been accepted by 78 governmental participants to administer some form of Health Care Savings Program. According to Ms. Mausolf, more than 100 additional governmental entities are interested in joining.

Of some significance to the employees who may have their funds invested with the MERS, the board of the organization includes a currently active (non-management)

employee and a retiree. There is also a representative of the municipalities and two public members. The board is not a “management” board. [Tr. 1714-15].

Finally, the Employer points out that the Local 3317-Wayne County Sheriff’s Department May 2007 Act 312 award included a new provision for an Employee Health Care Benefit Trust. [U. Exh.81, p. 78-80]. It provides for new hires to be covered by the new trust arrangement, rather than Employer-sponsored insurance upon retirement. Employees will make contributions of 2% of their wages to the Trust, by payroll deduction. The Employer will contribute 5% of wages to the Trust. There is a provision for employees who have achieved 10 years of service under the plan to withdraw from the Trust and become eligible for post-retirement insurance benefits (with recoupment of their employee contributions plus interest, but forfeiting any Employer contributions over the 10 years period). However, it must be assumed, since this is a brand new program, that the Trust has not yet obtained a letter ruling from the IRS showing that it is in compliance with IRC Section 115. And, it is not clear whether this post-retirement Health Care Benefit Trust, as described in the terms of the Act 312 award, will be able to clear the hurdle of obtaining IRS approval as a Section 115 plan.

The Unions point out that executives under the Employer-proposed Health Care Saving Program would earn more for their post-retirement health care needs than would patrol officers or lieutenants. “The inequities of this program are glaring, and also show the true intent of management in making this proposal. A member of Local 502, after 25 years of service will retire with slightly over $150,000 whereas an executive making in excess of $100,000 a year will retire with an amount close to $500,000.” [U. Brief, p. 31]

The amount of this disparity, according to the Unions, is enough to shock the conscience of a reasonable person.

In regard to the administration of the Health Care Saving Program, the Unions point out that employees (and retirees) will have direct access to trustees of the Wayne County Employees retirement System, and can participate in meetings of its board. It would be a more suitable administrative structure for the receipt, management, and investment of employee funds.

DISCUSSION

The single most compelling fact to emerge from this record is the high cost of retiree health care benefits. The legal and administrative context of this fact is that governmental entities are now required to show the unfunded promise to provide health care as a liability on their books, in accordance with GASB 45. The legal and administrative context carries with it the possibility of sanction for not recognizing the unfunded liability. Thus, there is a wholesale change in the way that governmental entities must do business, with respect to retirees health care benefits. One methodology for coping with this difficult situation is to make a “pay as you go” system for funding retiree health benefits. That is the system which the Employer would like to institute here.

It must be said that the system proposed by the Employer is a reasonable adaptation to the realities of GASB 45. The Employer frankly admits that it is a relatively new concept, calling it “an emerging trend.” However, the record amply supports the conclusion that public sector employers in the state of Michigan have entered into

Health Care Savings Plan arrangements with their employees, both unionized and non-unionized. And, as reflected in the testimony of Ms. Mausolf, are increasingly interested in setting up such plans. The fact that only one of the external comparables surveyed on this record (Wayne County Sheriff's Department) has done so does not mean that the concept is inappropriate. It means that Wayne County Sheriff's Department and W.C.A.A. are the leaders.

Secondly, the plan requires the participation of employees and the Employer, alike. The percentage amount of the contribution is the same. Thus, the amount of the contribution of a high-earning executive is going to be higher than the contribution of an entry-level patrol officer. That, in itself, does not make the program inequitable. The question is does it provide for the post-retirement needs of the employees in these two bargaining units. The answer is not in, definitively. Yet, given that an employee is eligible for full vesting only after 30 years, and taking the Unions' estimate of earnings in the Health Savings Plan at $150,000 (a conservative figure); it would appear that the employee retiring at age 55 would have $15,000 per year available to him until he reaches age 65 and is eligible for Medicare. Even assuming continuing escalation of health insurance prices, it would seem that this hypothetical employee would be able to cover his basic health insurance needs from savings in the Health Care Savings Plan.

Thirdly, the trustee of the plan, as proposed by the Employer, is a well-respected long-term player in the retirement business. It has established the protocols necessary to win IRS approval of its Health Care Savings plans. It has a proven track record of solid investing, having a 10-year average rate of return of over 9% [Tr. 1718]. The management, or board of the organization includes an employee representative and a

retiree. The overall picture of the Michigan Employees' Retirement System as a potential trustee for the funds to be generated in this Health Care Savings Plan is very positive. It is no reflection on the Wayne County Employees Retirement System to say that the MERS appears at this juncture to be ideally suited to handle the employee and Employer funds that this program will generate.

In short, based on other factors [Act 312, Section 9(h)] including the changing legal and administrative environment, and the trend among public sector employers in the state of Michigan, it appears that the Employer's proposal more nearly comports with the statutory factors of Act 312 than the Unions' proposal on this subject.

ORDER-Health Insurance, Proposal 1-C

The Employer's LBO on Health Insurance, Proposal 1-C is accepted.

ISSUE 10: HEALTH INSURANCE Proposal 1-D

This issue has been withdrawn by the Employer. Thus, there is no need for discussion or award on this issue.

ISSUE 11: LIFE INSURANCE (Local 3317-Article 37.09 / Local 502-Article 31.04.

LAST BEST OFFERS

The parties agree on certain basics, such as increasing the amount of regular life insurance coverage from $25,000 to $30,000. In addition, the parties agree on extending additional life insurance /dismemberment insurance to officers assigned to the S.W.A.T. unit, the bomb squad (officers who actually handle explosive devices) and the canine unit. The parties disagree on how much the coverage should be for this

additional insurance. The Unions' last best offer is $90,000. The Employer's LBO is $60,000.

In addition, the Employer offers to change the language of Local 502's contract, Article 31.04(D) to provide (parallel to Article 37.12 of Local 3317's contract), "Except for employees provided for in Article 31.04(C), any employee who is killed in the line of duty shall have his or her Authority-provided life insurance doubled."

POSITIONS OF THE PARTIES.

The Employer argues that the external comparables, generally, do not provide a guide for decision here, because only one—Wayne County Sheriff's Department—provides for additional life and dismemberment insurance for officers assigned to specialty details. In Wayne County, the Act 312 award in the Supervisory unit provided for $25,000 basic life plus $50,000 for additional life /dismemberment insurance. Thus, says the Employer, the only guidance available from the external comparables indicates that its offer is more reasonable.

The Unions cite the provisions o f the Executive and Non-Executive Exempt Employees plan for the proposition that their proposals are modest by comparison to the Executive compensation plan. Executives are entitled to $100,000 for death from any cause, "except in the case of accidental death," in which case the benefit is $200,000. "The Unions' demand for increased life insurance are reasonable under all circumstances, " says the Union.

DISCUSSION

There has been no evidence to suggest that the level of additional life /

dismemberment insurance should be higher than $60,000. The terms of the Executive and Non-Executive Exempt Employees plan generally do not afford a sound basis of comparison with the working conditions of patrol officers and supervisory police officers. (The exception may be in the area of medical insurance benefits, where the record indicates that it is common for one set of benefits to be applied across-the-board to all employees of an organization.) Here, however, the death benefit for executives does not afford a solid basis of comparison.

The Employer's LBO is supported by the external comparable of Wayne County Sheriff's Department.

ORDER—Life Insurance

The LBO of the Employer on the subject of life insurance is accepted, including the amendment to Article 31.04(D) of the Local 502 contract, exactly as shown above.

ISSUE 12: DENTAL INSURANCE. (Local 3317-Article 37.04 / Local 502-Article 31.05)

LAST BEST OFFERS

The parties are in general agreement about eligibility, coverages, and benefit levels applicable under these contractual provisions. They differ, however, on whether the service provider for those employees who select a dental maintenance organization should be included in the contracts. The Unions would have the contracts reflect that Golden Dental should be the service provider in the case of Local 3317, and should be *continued* as the service provider in the case of Local 502. The Employer would eliminate the reference to Golden Dental Plan in the Local 502 contract [Article

31.05(B)] and would indicate in both contracts that the Employer may select the dental maintenance organization.

POSITIONS OF THE PARTIES

The Employer takes the view that, although it presently does business with Golden Dental, it should be afforded the latitude to shop for other dental maintenance organizations that can offer a cost savings or a service advantage. The Unions have indicated that they wish to adopt the dental insurance program contained in the Fire Fighters' agreement, but with modifications, one of which is that "in addition to the DMO provided by the Authority, employees may elect to be covered by the Golden Dental DMO program."

DISCUSSION

The Fire Fighters' contract says that the Authority will select the DMO carrier. The levels of services and benefits are specified, as they are in the Local 502 and Local 3317 contracts. The Unions have offered no justification for including a specific dental Health Maintenance Organization in the contract, other than the fact that a specific provider is referenced in the current, or expired contract with Local 502. The factor of internal comparables---what is provided in the Fire Fighters' contract—is determinative. Based on this factor, the Panel determines that the Last Best Offer of the Employer should be accepted.

ORDER—Dental Insurance

The Employer's LBO on the subject of dental insurance is accepted.

ISSUE 13: PRE-PAID LEGAL PLAN (Local 3317-Article 37.14 / Local 502-Article 31.07)

LAST BEST OFFERS

The Benefits to be provided under this plan were not the subject of testimony. On many points, the parties are agreed. The level of contribution by the Employer is currently $4 per member per month for Local 502 and $8 per member per month for Local 3317. Both parties agree to have a plan which provides an Employer contribution of $8 per employee per month for employees in both bargaining units.

The Employer would add language stating that:

> said plan shall be recognized and established as an existing legal service plan and shall not include nor be a substitute for legal services provided by the union as part of its representational obligation (e.g. grievance representation, unfair labor practice litigation, collective bargaining, including Act 312 proceedings, or other related judicial proceedings.)

POSITIONS OF THE PARTIES

The Employer offered testimony through adverse witness Gerard Grysko, President of Local 3317, that Mr. Akhtar's firm provides the pre-paid employee legal services currently offered under the Local 3317 contract. Those services include "wills , estates, things of that nature." [Tr. 826] Mr. Grysko wasn't sure whether the allegation of harassment made by an individual member of the bargaining unit would be a matter within the scope of Mr. Akhtar's firm's work as the pre-paid legal provider.

There was no testimony offered as to the identity of or services offered by the pre-paid legal provider for the Local 502 bargaining unit.

Based on the above summarized testimony, the Employer would like to limit the identity of the service provider to a "recognized and established pre-paid legal plan." It

would furthermore like the opportunity to "approve" the legal plan which the Union selects.

DISCUSSION

There has been no showing that the work performed by Mr. Akhtar's firm as a pre-paid legal provider is in any way the work required by Local 3317 for union representation, including such matters as grievance handling, collective bargaining, unfair labor practice or other administrative proceedings. On the other hand, there has been no affirmative representation of the limits or service requirements under which Mr. Akhtar's firm represents members of the bargaining unit. Thus, the potential for overlap exists.

The Employer's language delineating that the plan shall not include "legal service provided by the Union as part of its representational obligation" is entirely appropriate. On the other hand, it may not be necessary or appropriate to limit the selection of the legal provider to "recognized and established pre-paid legal plans." And, in any event, Mr. Akhtar's firm has apparently been providing legal services to members of the Local 3317 unit since as far back as 1987. [Tr. 831] It thus seems possible that his firm would qualify as a "recognized and established pre-paid legal plan." On balance, it would seem that restrictions of the type that the Employer demands would be reasonable, and within the scope of traditional factors taken into consideration in the setting of the terms of a pre-paid legal plan. In reliance on Act 312, Section 9(h), it appears that the evidence more nearly supports the LBO of the Employer.

ORDER

The Employer's LBO on the subject of pre-paid legal plans is accepted.

ISSUE 14: JOINT HEALTH COMMITTEE (Local 3317-none /Local 502-Article 31.08)

LAST BEST OFFERS

Local 502 offers to continue the Joint Health Care Benefits Committee, and Local 3317 offers to institute such a committee for the benefit of its members. The purpose of the Committee is to "review cost containment programs to cover active employees." In determining alternative to health care benefits, "the Committee will review the benefits structure, utilization analysis and the provider network." [Article 31.08]

The Employer proposes elimination of the Joint Health Care Benefits Committee, as it is provided for in Local 502's contract, Article 31.08.

POSITIONS OF THE PARTIES

The Unions indicate this provision would be beneficial to the parties.

The Employer says the provision sets up an advisory body only. The Employer opines that the Committee's work has not been instrumental in helping to pick or change health insurance carriers nor has the Committee been able to realize savings in other ways.

DISCUSSION

It would appear that as the picture for health insurance benefits changes, there will be an opportunity for cost savings to be realized. For this traditional reason, and in reliance on Act 312, Section 9(h), it is found that the statutory factors support the Union's Last Best Offer.

ORDER-Joint Health Committee

The Union's Last Best Offer on the subject of Joint Health Care Committee is accepted.

ISSUE 15: CERTAIN RETIREMENT LANGUAGE (Local 3317-Article 38.01/ Local 502-Article 37.01)

The parties appear to have identical, or nearly identical, last best offers. Thus, there is no need for further discussion of this item and the award is based upon the stipulation of the parties [Act 312, Section (b)]. The parties are directed to incorporate the following language in Local 3317, Article 38.01(F) and in Local 502, Article 37.01(F):

> Regardless of the Retirement Plan, all employees hired, re-employed, reinstated except by an arbitrator, administrative law judge or court of law and rehired after December 1, 1990, shall not be eligible for insurance and health care benefits upon retirement unless they retire with thirty (30) or more years of service.

ISSUE 16: RETIREMENT/ DEFINED BENEFIT PLAN #3 (Local 3317--Article 38.04/Local 502--37.04)

LAST BEST OFFERS

The Union offers to adopt the provisions of the Local 3317-Wayne County Sheriff's Department Act 312 award on this subject [U. Exh. 81, p. 69] with modifications. The terms of the May 2007 Act 312 award referenced in the Unions' last best offer are the following.

> For employees who are members of Defined Benefit Plan #3, the detailed provisions of the Wayne County Employees Retirement System shall control except where changed or amended below.
>
> A. Normal retirement shall mean twenty-five (25) years of credited service without any age requirement. An employee hired prior to the date of execution of this Agreement by the County Executive who retires with twenty-five (25) years of credited service shall receive all medical benefits as otherwise provided under the terms of this Agreement.
> B. Effective upon the date of execution of this Agreement by the County Executive, the amount of normal retirement compensation shall be equal to the sum of two percent (2.00%) of average final compensation multiplied by credited service for the first twenty (20) years; two and one-half percent (2.50%) of average final compensation multiplied by credited service for the next five (5) years; and three

percent (3.00%) of average final compensation multiplied by credited service for years over twenty-five (25).
Effective the date of execution of this Agreement by the County Executive, Average Final Compensation will also include final payouts of excess sick and annual leave …, overtime, and accumulated holiday reserve time. In addition, the member contribution rate will include payouts of excess sick and annual leave made pursuant to Articles 27.07 and 28.03, overtime, and any payment of accumulated holiday reserve time.

C. Eligible employees shall receive a duty disability retirement benefit which shall equal seventy-five percent (75%) of the employee's average annual compensation as otherwise provided in Defined Benefit Plan #1.
D. Employees in Defined Benefit Plan #2 [viz. #3] may, in accord with Article 38.06(A)(2), elect to transfer to the Hybrid Retirement Plan.
E. Once an employee has elected to withdraw from Defined Benefit Plan #3, that employee may not return.
F. Employees in Plan 3 who elect to purchase up to two (2) years of credited service toward requirement eligibility pursuant to subsection 38.01(K) above will be allowed to purchase the first (1st) year at the total actuarial cost not to exceed $12,000.00. However, the second (2nd) year must be purchased at the total "uncapped" actuarial cost regardless of the time of purchase.
G. Employees in Plan 3 may also purchase, at total actuarial cost, years of credited service earned by the employee while employed with a previous governmental Employer, not to exceed the total number of years earned with that Employer.

The exceptions or additions which the Unions would add to the terms of the above-recited Act 312 award are as follows:

1) Retroactive pay shall not be counted as part of the employee's final average compensation.

2) Employees will not be able to purchase two years of credited service.

3) Payments received for uniform allowance, gun allowance, tuition reimbursement and mileage shall not be used to determine final average compensation.

4) Effective Dec. 1, 2008, employees in Plan #3 will be required to pay an additional one percent of their total wages as an employee contribution to the pension system.

The changes evidenced by the Wayne County Sheriff's Department Act 312 award are in the multiplier—from 1.5% to 2.0% for 1-20 years of service; from 2.0% to 2.5% for 21-25 years of service; and from 2.5% to 3.0% for years 25 +. The components of final average compensation were amended, now to include overtime, holiday banks, sick pay-offs, and vacation pay-offs. The calculation of average final compensation would be based on the best 5 years, rather than the last 5 years.

The Employer provides as its last best offer that no changes be made in Defined Benefit Plan #3. It notes that there are currently only two employees enrolled in this plan.

POSITIONS OF THE PARTIES

The testimony and exhibits introduced by the Employer through John Teifer, Treasurer of W.C.A.A., showed that the cost of making the change in Defined Benefit Plan #3 demanded by Local 3317 is $500,000 (unfunded accrued liability), with an increase in costs from 2007 to 2008 of $55,647. The cost associated with Defined Benefit Plan #3, if implemented for Local 502, would be $200,000 (unfunded accrued liability) with an increase in costs from 2007 to 2008 of $24,096. Furthermore, Mr. Teifer testified that bargaining histories of the units at W.C.A.A. indicate that it is reasonable to expect that any pension improvement granted to one unit will be incorporated and carried over into the contracts of the other units. Thus, the costs associated with the Defined Benefit Plan #3, if it were implemented for all employees of the Airport, would be $700,000 (unfunded accrued liability) with an increase in costs from 2007 to 2008 of $79,744. [E'er. Exh. 567, tab 21(b)].

Aside from these estimates, which were provided by the Employer, the Union, says the Employer, has not provided any costing data, to determine the impact of the revised Defined Benefit Plan #3. The Union, says the Employer, want the Panel to go along with another employer's Act 312 award, merely based on the history that the employees of Local 502 were once associated with the sheriff's deputies, who are also currently represented by Local 502. The Union's position on the subject of pensions, says the Employer, ignores the development of different bargaining histories since 2002 when the bargaining units were split, and since 2004, when MERC declared that the two employers were not co-employers, but separate employers.

The Union concludes that its plan is reasonable, and factors out the costs in the following way: Mr. Teifer's estimated cost per employee for all "other employees" of the Airport is $2,405.

> (And, under the Hybrid Plan #5, employees will be required to contribute an additional 2% of their wages.) Assuming that the average employee earns $60,000 per year, 2% is $1,200. Therefore, assuming that the WCAA extends these benefits to all WCAA employees, the aggregate cost which is stated in Exhibit 21-B, of $2,405 per employee would be reduced by $1,200, when the employee pays an additional 2% towards the plan. Therefore, the costs to the WCAA would be $1,200 and not $2,405 per year per employee.
> [Union Brief, p. 45]

The Union concludes that the improvements in the pension plan are necessary in order to attract high caliber law enforcement officers and in order "to approach" the benefits provided to police officers in Dearborn, Detroit, Taylor and the Michigan State Police.

DISCUSSION

The Employer's costing out of current proposed payments, and unfunded accrued liability shows that the cost of this benefit to the Airport in current payments is

$79,744. That leaves an unfunded accrued liability of $700,000. That liability must be funded over the next 20 or 30 years.

The Union's case rests heavily on the fact that their brothers and sisters at the Wayne County Sheriff's Department have come into an enhancement of Defined Benefit Plan #3 through Act 312 arbitration. More specifically, what is shown is that the Supervisory unit has come into certain enhancements. [The Local 502 –Wayne County Act 312 Award is outside the scope of the agreed dates for receiving settlements or Act 312 awards in comparable communities; thus, the Panel has not received the Local 502-Wayne County Act 312 award.] With respect to the Local 3317-Wayne County Act 312 award, what is shown as the basis for the Act 312 Panel's award in that case is the following : "The Chairman, considering the County's financial ability, the need to address GASB 45, and the concerns over disability pension provisions as well as the multiplier, coupled with the Art of the Possible, concludes with the majority of the Panel that the Last Best Offer as to retirement proffered by Local 3317 should be adopted…." [U. Exh. 81, p. 40]

There has been no affirmative showing by the Union of what the retirement benefits are in other external comparable communities. However, we know that at least in the case of Dearborn, Taylor and the Michigan State Police, it could be argued that the external comparables are not truly comparable, because those police departments do not pay Social Security. In any event, retirement benefits realized by their officers must show an off-set of the value of Social Security benefits that officers at W.C.A.A. receive.

In regard to internal comparables, there has been no showing that the Local 3317 and Local 502 proposals for Defined Pension Plan #3 is not comparable to the Fire Fighters' Defined Pension Plan #1. Nor is there evidence showing that the Unions' proposed improvements in Benefit Plan #3 are necessary in order to compare favorably with any of the pension plan provisions in other internal comparable bargaining units.

Based on the Other Factor [Act 312, Section 9(h)] of No need for a change, and on lack of showing that benefit improvements are appropriate in view of the comparables' benefits and on the identified extra costs to the Employer, the Panel has concluded that the statutory factors support the Employer's LBO.

ORDER-Retirement/ Defined Benefit Plan #3.

The LBO of the Employer on the subject of Retirement-Defined Benefit Plan #3 is accepted.

ISSUE 17: RETIREMENET/ DEFINED CONTRIBUTION PLAN #4.(Local 3317-Article 38.05 / Local 502-Article 37.05)

LAST BEST OFFERS

The Unions offers to amend the terms of Defined Contribution Plan #4 so as to coordinate with the terms of that pension plan as awarded in the Local 3317-Wayne County Act 312 Award. The principal changes therein are shown at p. 73 of the Local 3317-Wayne County Award [U. Exh. 81]:

> Employees hired, re-employed, reinstated or rehired prior to October 1, 2001 may elect to transfer from their current retirement Plan to the Hybrid retirement Plan during a one-time window period of one hundred and eighty (180) calendar days following the date of execution of this Agreement by the County Executive. Employees electing to transfer into the Hybrid Retirement Plan must fully

purchase their entire credited service into the Plan within the 180 calendar day window period or they will forfeit eligibility for transfer into the Plan.

For eligible employees electing to transfer into the Hybrid Retirement Plan within the first ninety (90) calendar days of the 180 calendar day transfer period, the method used to calculate the cost of purchasing credited service will be the same as that used for employees who previously transferred into the Hybrid Retirement Plan under the 2000-2004 collective bargaining agreement, including the former average final compensation multipliers of 1.25% and 1.5% outlined in section 38.06(B)(2), paragraph 1, below.

For eligible employees electing to transfer into the Hybrid Retirement Plan after the first ninety (90) calendar days of the 180 calendar day transfer period, the method used to calculate the cost of purchasing credited service will also be the same as that used for employees who previously transferred into the Hybrid Retirement Plan under the 2000-2004 collective bargaining agreement except that the new average final compensation multiplier of 2.0%, outlined in section 38.06(B)(2), paragraph 2 will be used.

Transferring employee shall be responsible for the full actuarial cost of purchasing credited service.

The Employer offers to maintain the status quo.

POSITIONS OF THE PARTIES

The Employer points out that there are currently 13 supervisory officers and 44 patrol officer enrolled in the plan. There is no continuing stream of new enrollees, since new hires are required to enroll in Hybrid Plan #5. Under Plan #4, an employee can contribute up to 2% of his or her pre-tax earnings (for the first 20 years) and the employer matches that contribution 4:1. After 20 years, the employee may contribute up to 3% of pre-tax earnings; the Employer matches those contributions 5:1. Additionally, Plan #4 participants are permitted to contribute up to 7-1/2% in post-tax earnings.

The Employer shows that the Wayne County Retirement System calculated that under Defined Pension Plan #4, currently, an employee with 25 years of service can

obtain a monthly pension of $4044. The Social security earnings of an average employee at W.C.A.A. with 25 years of service would be $2737 per month, for a total monthly benefit of $6781. If the employee were to retire with 30 years of service, these figures would be $6827 and $2835 for a total monthly benefit of $9662. Thus, the Employer concludes, “Plan #4 already provides an extremely generous benefit.” [E’er. Brief, p. 70] The Employer also points out that under the transfer provisions of the modified Defined Contribution Plan #4, employees can purchase benefits on the defined benefit side of Plan #5, with a 2.0% multiplier, while using a 1.25% multiplier purchase price as specified in the 2001-04 collective bargaining agreement. So, “our proposal is that either the [Wayne County Retirement] trust is going to make up that other part of it or the county or the airport is going to have to fund the rest of that [unfunded portion],” in the testimony of Patrick Melton. [Tr. 1020]

The Unions say that the Act 312 award in favor of Local 3317 at the Wayne County Sheriff’s Department should be adopted as a fair benefit for members of these two units.

DISCUSSION

The same factors that defined why the Defined Benefit Plan #3 in the Employer version (status quo) are applicable here. There has been no showing that proposed improvements in Defined Contribution Plan #4 are necessary in order to compare favorably with either external comparables or internal comparables. Based on the Other Factor [Act 312, Section 9(h)] of No need for a change, and on lack of showing that benefit improvements are appropriate in view of the comparables’ benefits and on the

identified extra costs to the Employer, the Panel has concluded that the statutory factors support the Employer's LBO.

ORDER-Retirement- Defined Contribution Plan #4.

The LBO of the Employer on Retirement, Defined Contribution Plan #4 is accepted.

ISSUE 18: Retirement, Hybrid Plan #5. (Local 3317—38.06/ Local 502—Article 37.06)

LAST BEST OFFERS

The Unions offer to incorporate the changes awarded in the Local 3317-Wayne County Act 312 award and add the following exceptions:

1) Normal retirement shall be 25 years of service at age 50. (not as contained in the Local 3317 award, 25 years of service at age 55).

2) Retroactive pay shall not be counted as part of the employee's final average compensation. (The Local 3317 award is silent on this point.)

3) Benefits shall be calculated on the employee's 5 last years of service (not on the employee's best 5 years of service).

4) Employees will not be able to purchase two years of credited service.

5) Payments received for uniform allowance, gun allowance, tuition reimbursement and mileage shall not be used to determine average final compensation.

6) Effective December 1, 2008, employees in Plan #5 will be required to pay an additional 2% of their total wages as an employee contribution.

The Employer proposes no change in the Hybrid Plan #5, except in regard to Duty Disability, which is the subject of another proposal. (Item 19, below)

POSITIONS OF THE PARTIES

The Unions refer to Ex. Exh. 567, tab 21(b) in which Mr. Teifer estimated the costs of various pension improvements, by bargaining unit. The Unions would show that

the cost per employee of all three pension improvements—to Defined Benefit #3, to Defined Contribution #4, and to Hybrid #5—for employees of Local 3317 is $9460. The cost of all such improvements for employees of Local 502, say the Unions, is $7037. And the cost of such improvements for all employees of the WCAA is $2405. Then, the Unions figure in the "additional contribution" of 2% of employee earnings, which on an average salary of $60,000 per year is $1200; it is evident that the cost per employee of implementing all three pension improvements is not $2405 but is approximately $1200. ($2405-1200).

The Employer says that its pension expert, Nevin Adams, testified that there is a definite trend in both the private sector and the public sector away from defined benefit plans and towards defined contribution plans.

The Employer shows that for external comparables of Local 3317, there has been no shift from defined contribution plans back to defined benefits plans; there has been no shift from defined contribution to hybrid plans; and there has been one community that moved from a defined benefit plan to a defined contribution plan.

In regard to internal comparables, the Employer shows that there have not been any substantive changes in type of pension plans available for any of the 7 internal comparables. All but one of those comparables have contract termination dates in 2007. (The Government Bar Association has a contract termination date in 2008.)

DISCUSSION

The Unions' computation of the additional current cost to the Employer of modifications to all three pension plans is suspect: In Teifer's Exh. 567, tab 21(b) the total cost per employee is $3,432, not $2,405. And in any event, the crucial comparison

is between the cost to the Employer of improvements for members of the Local 3317 bargaining unit and the status quo; also, between the cost to the Employer of improvements in the pension plans for members of the Local 502 bargaining unit and the status quo. The Employer has demonstrated convincingly—by the testimony of Mr. Nevins and the testimony of Mr. Teifer, along with associated exhibits—that the cost to the Employer of the Hybrid Plan #5 improvements would be non-trivial, amounting to $76,000 for members of Local 3317; and $286,787 for members of Local 502. Even more significant than the current year's cost is the amount of unfunded accrued liability. For supervisors, the cost of all three pension plan improvements is $2,174,000. For patrol officers, the cost of all three pension plan improvements is $6,998,000. Of course, most of this liability is not paid immediately; but it must be paid.

The basic problem with the Unions' proposal for improvement of Hybrid Plan #5 is that it "reduces contributions made to the defined contribution side of the plan and increases contributions to the defined benefit side of the plan" in opposition to the trend in which public sector employers are moving away from defined benefit plans. [E'er. Brief p. 76]. The existence of a national trend is certainly a fact within the scope of traditional factors which the Panel should examine.

Based on the Other Factor [Act 312, Section 9(h)] of National Trend, and on lack of showing that benefit improvements are appropriate in view of the comparables' benefits and on the identified extra costs to the Employer, the Panel has concluded that the statutory factors support the Employer's LBO.

ORDER-Retirement/Hybrid Plan #5.

The LBO of the Employer on the subject of Retirement-Hybrid Plan #5 is accepted.

ISSUE 19: DUTY DISABILITY RETIREMENT (Local 3317-Article 38.05-.06/ Local 502-Article 37.05-.06)

LAST BEST OFFERS

The Unions offer to amend Defined Contribution Plan #4 to add the following:

> Effective upon execution of this Agreement by the County Executive, eligible employees may receive a duty disability retirement benefit in the form of an annuity purchased from available, vested Plan 4 contributions equal to seventy-five percent (75%) of the employee's average annual compensation as otherwise provided in Defined Benefit Plan #1. The employee will be required to surrender all funds in the Plan, including both employee and vested Employer contributions. In the event an employee has an outstanding loan from the Plan, loan payments shall continue as scheduled through equivalent withholding from the employee's monthly disability retirement benefit until such loan is repaid in full. Should the employee become deceased prior to full repayment, the employee's estate shall be responsible for any outstanding amount.

The Unions propose a similar amendment to Hybrid Plan #5.

The Employer proposes to add language to Defined Contribution Plan #4, as follows:

> An employee who sustains a duty-related disability may elect to utilize his or her contributions in the Defined Contribution #4 to purchase credit in the defined benefit portion of the Hybrid Retirement Plan #5 for the purpose of obtaining a duty disability retirement under the terms of Article 38.06(B)(5) of that Plan. The cost of purchasing this credit will be determined by the Plan's actuary. An employee will be granted additional service credit from the date of retirement until age 60 even though he or she may have insufficient contributions in the Defined Contribution Plan #4 to purchase this credit. If an employee has more contributions in the Defined Contributions Plan #4 than is required to purchase the credit needed for a duty disability retirement in the Hybrid Retirement Plan #5, the surplus contributions shall be transferred to the defined contribution portion of Hybrid Retirement Plan #5.
> An employee's decision to transfer contributions from Plan #4 to Plan #5 will be permanent and irrevocable. Upon an employee's election to purchase credit in Plan #5 for duty disability purposes, any and all rights he or she may have had in Plan #4 shall be permanently forfeited.

POSITIONS OF THE PARTIES

The Unions take the view that equity demands the equal treatment of employees in similar situations. Thus, an employee who is injured, and who happens to have his retirement funds in a Defined Contribution #4 plan, should not be penalized by being denied the 75% of average final compensation as a duty disability pension that his fellow officer would receive under the Defined Benefit #3 Plan.

The Employer says that its method of providing equitable protection to two employees who happen to be covered under different retirement plans is the more reasonable. A younger, less senior participant in Defined Contribution Plan #4 will be allowed to purchase credit in Plan #5 ‘and he or she will be granted additional service credit from the date of retirement until age 60 even though he or she may have insufficient contributions in Plan #4 to purchase this credit.” [E’er. Brief p. 82]

Under the Employer’s plan, a more senior Plan #4 participant would be permitted to transfer his or her retirement assets to Plan #5, purchase a retirement annuity, and pour over any excess into the defined contribution side of Plan #5. This would allow the senior employee to purchase the retirement annuity that he needs, upon disability retirement, and still have the benefit of funds received during the course of a working lifetime credited to the cash contribution side of Plan #5.

DISCUSSION

ORDER

ISSUE 20: CAP ON OVERTIME (Local 3317- Article 38.01/ Local 502- Article 37.01)

LAST BEST OFFERS

The Employer proposes a cap on amount of overtime pay that can be recognized as pay for the purpose of computing average final compensation under its defined benefit pension plans. The amendment which the Employer would introduce to both contracts is as follows:

> For purposes of the defined benefit portion of Pension Plans 1,2,3, and 5, an employee's "average final compensation (AFC)" shall not include any overtime compensation received in excess of fifteen percent (15%) of the employee's annual based wage rate for each year of compensation. Any amount of overtime compensation received by the employee in excess of fifteen percent (15%) of this or her annual base wage rate shall not be considered in the calculation of AFC. For purposes of the defined contribution as outlined in Pension Plan 4, the amount the employee can contribute shall be based on the employee's "gross wages." However, gross wages shall not include any overtime compensation paid to the employee in excess of fifteen percent (15%) of the employee's annual base wage.

The Unions' LBO is the status quo, whereby all earned overtime is included in the computation of average final compensation.

POSITIONS OF THE PARTIES

The Employer points out that 97 patrol officers worked a total of 44,982 hours of overtime during a nine month period in 2006/ 07. That averages out to 464 hours per patrol officer. During the same period, the Employer shows that members of other bargaining units worked considerably less overtime.

The Employer points out that it is largely not in control of the number of overtime hours worked. That is because it must respond to the Transportation Safety Administration' s increase in national security levels from yellow to orange or from orange to red. These security requirements do not affect any other bargaining units of

the Airport nearly as immediately and directly as they affect the members of these two bargaining units. The Authority says that its police officers and police supervisors are entitled to every bit of overtime pay they earn; but that under the "current method of computing final average compensation, an Authority patrol or command officer could easily retire with a defined benefit that would pay him or her in excess of the base rate of pay they were making at the time they retired." In order to curtail that possibility, the Authority would limit the amount of overtime that could be counted in average final compensation.

The Unions point out that one of the reasons why there is such a high amount of overtime worked in both units is the attrition in the numbers of officers. From 2003 to 2007, the size of the Local 502 unit has gone down from 175 to 141. The size of the work force is within the control of management, say the Unions, and the fact that management has allowed it to be cut 20% has significant, predictable effects, including the amount of overtime worked. Management can choose another alternative. The Unions contend that the problem is a management-made problem, and the solution is a management-initiated solution. There is no need to reduce the impact that extra amounts of overtime have, at the expense of police officers and their supervisors, say the Union.

DISCUSSION

The Employer has not pointed out any external comparable which allows overtime to be credited in the manner sought by this proposal. Furthermore, the Employer has not pointed to any internal comparable that has overtime credited to average final compensation in the restricted manner sought by this proposal. While it

cannot be gainsaid that the amount of overtime worked by members of Local 502 is daunting, it is part and parcel of the solution which the Employer has voluntarily adopted to deal with the uncertain and fluctuating demands of the T.S.A. for heightened security at the Airport and in response to those changing security levels. In short, the proposal makes good economic sense from the point of view of management, but has no collective bargaining justification. Thus, in reliance on the external and the internal comparables [Act 312, Section 9(d)], the panel finds that the statutory factors more nearly support the Union's position on the subject of cap for overtime credited to average final compensation.

ORDER

The Union's position is accepted on the subject of cap for overtime.

ISSUE 21: SPECIALTY PAY (Local 3317-Article 39.01/ Local 502-38.01)

LAST BEST OFFERS.

Local 3317.

Local 3317 has set forth in Article 39.01the special skill positions of motorcycle unit, canine unit, S.W.A.T. unit, investigative unit, marine safety unit, communications unit, and crime lab (I.D. and Central photo) , polygraph operator, bomb technician and FTO/AI (field training officer/ accident investigation). The occupants of these special skill positions earn an additional $1,500 per year above the contractual base wage rate. Local 3317 proposes to add the position of Field Training Officer / Accident Investigator. Local 3317 proposes to continue the level of specialty pay for all of the above special skills positions at $1,500 per year.

The Employer does not object to the addition of the Field Training Officer/ Accident Investigator. The Employer also offers to pay $1,500 to members of the Local 3317 unit who occupy specialty skill positions.

Local 502.

Local 502 currently has special skill positions for the computer programmer position, the helicopter pilot, the marine safety officer (diving) and the bomb squad technician. These special skill positions earn $700 per year above the contractual base wage rate.

The Union seeks to add the motorcycle unit, canine unit, S.W.A.T. unit, communication officers, crime lab (I.D. and central photo) , the field training officer/ accident investigator and the range officer. The Union proposes an increase in specialty pay for members of its bargaining unit to $1,500 per year above base wage rate.

The Employer does not object to the inclusion of the range officer, and would “describe the special skill positions as they are presently known at the Airport” but does not thereby propose any substantive change in the scope of specialty skill positions.

The Employer offers to pay Local 502 bargaining unit members in specialty pay positions $1,000 above base wage rate.

POSITIONS OF THE PARTIES

The Employer says, with respect to Local 502 specialty pay that the external comparables support its wage offer. In Dearborn, specialty pay is available to Evidence Technicians who earn 1additional hour of pay for every 4 hours of work performed in the special skills position.

In the City of Detroit, specialty pay is extended to Communications Officers, who receive $450 per year above base wage; and to Radio Maintenance Officers, who receive $862 above base wage; and to Data Processing Programmers, who receive $489-$1,738 per year above base wage; and to the Assistant Supervisor of Motor Vehicles, who receives $862 above base wage.

In the Oakland County Sheriff's Department, specialty pay is extended to the Helicopter Pilots, who receive $400 above base wage; to Protective and Technical Service Officers, who receive $,1000 above base wage, to diverse, who receive between 4-8 per hour for time spent diving.

In the Michigan State Police, specialty pay is extended to the Bomb Squad Officer, who earns 5% above base wage. In the City of Taylor, specialty pay is extended to the Field Training Officer, who receives 5% above base wage. In the City of Livonia, there are no recognized specialty pay positions.

The Union says that in essence specialty pay positions in Local 502's bargaining unit should be paid the same specialty pay increment as positions in the Local 3317 unit.

DISCUSSION

The need for specialty pay for specialized services has been addressed in these contracts, and has been set at $1,000 for the supervisory unit; and at $700 for the patrol unit (in 2000-2004). There appears to be agreement as to the appropriate level of increase for Supervisory officers (an increase up to $1,500 above base pay). The only disagreement on this article appears to be the appropriate amount of pay for Local 502 specialty positions. The external comparables appear more strongly to support the

Employer's position than Local 502's position. Thus, based on the factor of Act 312, Section 9(d), the Panel finds that the statutory factors more nearly support the position of the Employer than the position of Local 502.

ORDER

The last best offer of the Employer is accepted on the subject of specialty pay.

ISSUE 22: BASE WAGES (Local 3317-Article 39.03/ Local 502-Article 38.02)

LAST BEST OFFERS

The Employer's offer to Local 3317 is:
3% effective December 1, 2004
3% effective December 1, 2006
3% effective July 1, 2007
3% effective December 1, 2007
and: 3% effective December 1, 2008.

The Employer's offer to Local 502 is:
3% effective December 1, 2004
3% effective December 1, 2006
3% effective November 1, 2007
3% effective December 1, 2007
and: 3% effective December 1, 2008.

The Unions' demand for both units is:
3% effective December 1, 2004
3% effective December 1, 2005
3% effective December 1, 2006
3% effective December 1, 2007
and: 3% effective December 1, 2008.

POSITIONS OF THE PARTIES

The level of 3% pay increases has been effective at the other bargaining units of this Employer, including AFSMCE Locals 1862, 2057, and 2926 (through 12/06); AFSCME, Local 101 (through 12/06); Government Bar Association (through 12/07); IUOE, Local 547 (through 12/06); IAFF, Local 741 (through 12/07); Government Administrators Association (through 12/06); and LUOE, Local 547 (through 12/06). The

concept which the Employer has introduced here is to delay the effective date of the December 2005 pay increase, “so as to recognize full retroactive application for wage increases, but also to recognize the lost savings opportunity that the Authority experienced as a result of being unable to implement its revised insurance plan.” [testimony of Mr. Martinico, Tr. 1603]. Thus, where the Authority estimated that it was required to spend $92,000 to maintain supervisory officers at the levels of health care they enjoyed under the old agreement, the Authority calculated a deferral of 2005 wage increments from December 1, 2005, to July 1, 2007, to recoup these health care costs. And, where the Authority estimated that it was required to spend $233,000 to maintain the patrol officers at the levels of health care they enjoyed under the old agreement, the Authority calculated a deferral of 2005 wage increments from December 1, 2005, to November 1, 2007, to recoup these health care costs. Unlike the other non-Act 312-eligible bargaining units at the Airport, says the Employer, “the patrol and command officers have enjoyed a windfall by simply delaying any agreement with the Authority that would have reformed the health care insurance benefit structure.” [E’er. Brief, p. 97]

The Unions argue that the Government Bar Association completed their contract in July 2007; yet, they were afforded full retroactive pay increases, without any set-offs for unrealized health insurance savings. Likewise, say the Unions, the Fire Fighters negotiated a contract that went into effect in mid-2006; and they negotiated 3% increases effective on December 1, 2004, 2005, 2006, and 2007 without any set-off for unrealized health insurance savings.

Further, say the Unions, the delay in the formation of these contracts (with Local 3317 and Local 502) “is clearly in the hands of the WCAA,” based on its challenge to

the Unions' right to Act 312 arbitration [in proceedings before MERC and before this Panel].

DISCUSSION

The uniformity which the Employer seeks to realize with all its bargaining units was broken, when these two bargaining units filed unfair labor practices, and correlatively decided not to bargain during the pendency of those unfair labor practices. [See Introduction, p. 3] The delay in achieving collective bargaining agreements cannot be laid at the feet exclusively of either the Employer or the Unions. The bargaining decisions were choices each party made, in their wisdom, "in the heat of battle." Now comes the time for resolving the differences between the parties. That is the charge of the Panel. And, it cannot be said that it is reasonable to charge the Unions with all the health insurance repercussions from the delay in starting and continuing these proceedings.

The Panel is also persuaded that this situation is not unique in the annals of Act 312 litigation. In fact, it is not uncommon for one party or the other to charge "delay," and to attempt to recoup the costs of delay in its proposals. No precedent has been cited to us wherein an Act 312 panel has allowed the delay in pre-312 bargaining or in the conduct of the Act 312 case to form the basis of a wage proposal, as the Authority has attempted to do here. Rather, it seems to be the rule that whatever delay was experienced in the pre-312 bargaining or in the conduct of the Act 312 case is simply absorbed by the party which must continue to pay the costs of doing business under the terms of the old contract. It would be anomalous in this first-time contract for the Panel to award a wage increase which is characterized by a set-off of costs incurred during

bargaining. The Panel notes that the parties have had their fair share of difficulties in getting to the juncture where an award is issued. The panel declines the invitation to complicate the collective bargaining lives of these parties any further by issuing an award which explicitly indicates a set-off for the costs of doing business under the old contract, while the parties were engaged in pre-312 bargaining and Act 312 proceedings.

For the traditional reason [Act 312,Section 9(h)] that the parties are assumed to bear their own costs during the pre-312 bargaining and Act 312 proceedings, the Panel is persuaded that the statutory factors support the Unions' last best offers on the subject of base wages.

ORDER

The last best offer of the Unions on base wages is accepted

ISSUE 23: Long-Term Disability Insurance (Local 3317-37.25-37.31/ Local 502-Article 32)

LAST BEST OFFERS

The Union offers to instate the provisions of the LTD Plan currently in effect for the Executives and Non-Executive Exempt Employees with several modifications. The Employer offers the current LTD Plan in effect for all the other bargaining units of the Employer

The Union's last best offer would provide no cap on maximum benefit, and no coordination of benefits. The Employer's offer would cap benefits at 60% of pay or $2400, whichever is less, after 60 days. Benefits would be coordinated with Workers' Compensation. Under the Union's proposal, medical insurance benefits would be

available for 3-1/2 years (as they are for Executive employees); under the Employer's proposal, they would be available for 2 years. Under the Union's proposal, an officer could purhcase additional disability insurance, such that he or she would receive more than 100% of wages, while disabled. There is no similar provision in the Employer's proposal.

There are other differences between the proposals. But the above summarizes several of the most important differences.

POSITIONS OF THE PARTIES

The Unions rely upon the testimony of Employer expert Greg Surmont, saying that Mr. Surmont "testified that it is the universal practice that all employees from the executive to the janitor receive the same social welfare benefits, such as medical benefits, dental benefits, LTD benefits and the like." [Union Brief, p. 55]

The Employer defends its insistence on the status quo based on the fact that the other bargaining units at the Airport, including the Fire Fighters, participate in the same LTD Benefit Plan.

DISCUSSION

The testimony of Mr. Surmont was as follows:

> Q (by Mr. Akhtar): Traditionally, southeast Michigan, do you find that management employees get better medical benefits that the Rankin file employees, or is it primarily in a municipality where all employees get the same type of medical benefits?
> A: I would say it's almost universally the case private and public sector, that there is an equality in the health and welfare portion of the medical offering.
> Q: So health and welfare would you say, medical insurance, long-term disability—
> A: Right.
> Q: --benefits, universally they're the same from the top the bottom?
> A: Generally, yes.

[Tr. 1507]

As against the testimony of Mr. Surmont, we have the practice evident in the internal comparables of having one benefit plan available for the 9 bargaining units; and a different plan available for the Executive and Non-Executive Exempt employees. The Employer supported that practice by showing that the cost and utilization of the Executive Plan is greatly different that the cost and utilization of the police officers—and other unionized employees'—plan. The Executive plan costs $0.35 / $100 of payroll, whereas the police officers' plan costs $3.83 /$100 of payroll [Tr. 890, testimony of risk management executive Leigh Stepaniak] The Executive benefit, according to Mr. Stepaniak, is "almost a hollow benefit" because it is rarely used; whereas the police officers' benefit is regularly used.

The Panel is of the opinion that the factor of the internal comparables establishes the group with whom the police officers' benefit should be compared. And, in reliance on this factor [Act 312, Section 9(d)] the Panel determines that the Employer's last best offer more nearly complies with the statutory factors.

ORDER

The Employer's last best offer on the subject of Long Term Disability benefit plan is accepted.

ISSUE 24: TUITION REIMBURSEMENT.

This issue has been resolved by the parties in negotiations. There is no need for discussion or award on this issue.

ISSUE 25: DIFFERENTIAL PAY.(Local 3317-Article 40.01, 40.02/ Local 502-Article 39.01, 39.02)

This issue has, essentially, been resolved by the parties in negotiations. The parties are urged to adopt the following provisions:

> Shift differential of sixty cents per hour for assignment to a regular afternoon or night shift of which four or more hours fall between 6:00 p.m. and 6:00 a.m. for all hours worked during those regular shifts and for all additional hours worked in excess of the regular shift.
> Weekend differential of sixty cents per hour for shifts assigned on the weekend.

ISSUE 26: PERSONAL BUISNESS LEAVE (Local 3317-Article 29 /Local 502-Article 22)

LAST BEST OFFERS

The Union offers to keep the status quo, by which officers are entitled to 2 days of paid personal business leave, over and above sick leave.

The Employer offers to provide 4 personal business days in a year, which are all chargeable to sick time.

POSITIONS OF THE PARTIES

The Union says that the Panel should adopt the status quo.

The Employer points to the existence of 4 personal business days, all chargeable to sick bank as the condition of employment applicable in the two AFSCME contracts; in the two Operating Engineers' contracts; in the Fire Fighters' contract; in the Government Bar Association and the Government Administrators Association contracts. In addition, says the Employer, to the extent that external comparables provide personal business leave days, the practice appears to be uniform. The City of Taylor provides 3 personal

business days, all chargeable to sick bank; and the Michigan State Police provides 3 personal business leave days, all chargeable to annual leave time.

DISCUSSION

This issue has apparently been the subject of crossing proposals in bargaining. However, the Panel is limited to looking at the last best offers of the parties. It is clear that the universal condition of employment applicable under the contracts of all the Employer's bargaining units is 4 personal leave days, all of which are chargeable to sick bank. In reliance upon this factor [Act 312, Section 9(d)], the Panel finds that the last best offer of the Employer is more nearly supported by the statutory factors than the Union's proposal.

ORDER

The Employer's last best offer is accepted.

ISSUE 27: SETTLEMENT OF DISPUTES. (Local 3317-Article 12/Local 502-Article 8) Non-Economic condition of employment.

LAST BEST OFFERS

Local 3317's Last Best Offer.

The Union would eliminate Step 3 (appeal to Labor Relations Director) from the grievance procedure. The Union would also reserve 1 day per month (instead of 3) for arbitration hearings.

The Union offers to introduce language that provides that in the event a grievance is not answered in a timely manner by "the next highest, non-Union

command officer" in Step 1 or the Employer's Chief Executive Officer in Step 2, then the grievance shall be deemed granted.

Claims of non-statutory discrimination would be filed at Step 2. No indication is given as to what should be done with claims of statutory discrimination.

Finally, the Union would allow backpay awards to include overtime and shift premiums, where the expired collective bargaining agreement excludes overtime and shift premiums.

Local 502's Last Best Offer.

Local 502 would eliminate the 4th Step of the grievance procedure (appeal to Labor Relations). Local 502 would also reserve one day per month for grievance arbitration.

The Local 502 would require that all grievances not answered on a timely basis would result in their being deemed granted.

Claims of *non-statutory* discrimination would be filed at Step 2. No indication is given as to what should be done with claims of *statutory* discrimination.

Finally, Local 502 would allow backpay awards to include overtime and shift premiums, where the expired collective bargaining agreement excludes overtime and shift premiums.

The Employer's Last Best Offer.

The Employer offers to consolidate the grievance steps into 4 steps, 1st—immediate, "designated' supervisor; 2nd—Chief of Police; 3rd—Labor Relations, and 4th—arbitration. Arbitration may be invoked by serving notice on the appropriate permanent arbitrator and the other party. The Employer would require timely (30 day)

filing of a Demand for Arbitration with the appropriate permanent arbitrator, with service on the Employer.

The Employer would excise language from Local 502, Article 8.02(C) whereby a grievance is deemed granted if the Employer fails to timely answer at step 4.

The Employer would keep the provisions regarding backpay to exclude overtime and shift premium pay from the pay the employee otherwise would have earned.

The Employer would eliminate the 10% interest provision in regard to unpaid backpay awards.

POSITIONS OF THE PARTIES.

As shown above.

DISCUSSION.

The streamlining of the grievance process should not be accomplished at the expense of the involvement of the Employer's Labor Relations Director. This official is charged with the duty of administering collective bargaining agreements, and providing for fair resolutions of grievances in all 9 Employer bargaining units. Likewise, the Labor Relations Director is responsible for overseeing compliance with all statutory norms, such as Title VII's promise of non-discriminatory treatment on the basis of race, creed, color, sex, or religion and the provisions of the Family Medical Leave Act, to name just a few. It is imperative that the Labor Relations Director be a part of the grievance process, if not the last step in the grievance process, preliminary to arbitration. It is submitted that the streamlining of grievance steps and reducing the number of such steps can be accomplished, while keeping the Director of Labor Relations as the last, pre-arbitration step.

It would behoove both Unions to have both statutory and non-statutory discrimination claims submitted at step 2. By far the vast majority of discrimination complaints are going to allege some form of statutorily-based discrimination, such as sex-based or age-based discrimination. The Union will want to have these grievances heard in the parties' grievance procedure, and have a chance to resolve them internally, rather than by employee access to court. Thus, the parties are directed to use the language found in Local 3317, Article 12.04, "Any form of discrimination or harassment shall be grieved at Step 2 of the grievance procedure within ten working days of the alleged discrimination or harassment."

Regarding the affect of the running of time on an unresolved grievance, the Union's failure to appeal must necessarily result in a settlement of the grievance at the last answer given by management. Management's failure to respond to a grievance lodged at any given level should result in moving the grievance to the next step. Included in this concept should be the idea that management's failure to respond at the 3rd step (or the 4th step, as the case may be) results in the case being deemed ripe for determination by a permanent arbitrator. The process for invoking arbitration, generally, would be for the Union to file a Demand for Arbitration with the next-in-line permanent arbitrator (whose business addresses could be listed in the contracts), together with a notice of that Demand on the Employer's Director of Labor Relations within 30 days of the Union's receiving the last step response. Regarding the number of days which the parties choose to set aside for arbitration, it is suggested that 1 day per month (for each bargaining unit) should be sufficient, based on recent experience.

As to what elements should be included in backpay awarded by a permanent arbitrator, the overarching concept is that only predictable elements of backpay should be awarded in an arbitration proceeding. Discretionary elements of pay; or uncertain aspects of pay would generally not be appropriate for a backpay award. Thus, to the extent that overtime and shift premium pay are predictable aspects of an employee's pay, they can and should be included in a backpay award. It is suggested that the award of overtime pay be limited to *scheduled* overtime.

In regard to interest on backpay awards, the contract can specify that the statutory rate of interest on judgments should apply. Beyond that, the call for 10% interest on backpay awards is punitive and (hopefully) unnecessary.

ORDER-Settlement of Disputes.

The parties are commended to develop contract language in accordance with the concepts shown in the Discussion above.

ISSUE 28: DISCIPLINARY PROCEDURE. (Local 3317-Article 14/ Local 502-Article 9) Non-economic condition of employment.

LAST BEST OFFERS

Last Best Offer of the Unions:

The Unions propose changes in the disciplinary procedures presently contained In Article 9 (Local 502) and Article14 (Local 3317). First the Union would change the reference to the right of an employee to be represented, if requested, by a Union official to include, not just Administrative Reviews but also Trial Board hearings. Secondly, the Union would make a change in the duration for which disciplinary action is effective in

later proceedings, limiting its effect to 12 months. Thirdly, the Union would add a section to the Police Officers' Bill of Rights to allow it to challenge administrative subpoenas for *Garrity* statements, before they area turned over to a Prosecutor.

The current contract calls for removal of disciplinary matters from the personnel record after 24 months.(Local 502, Article 9.05) The Unions propose:

> Any disciplinary matters shall be removed and destroyed from the personnel record upon completion of twelve (12) months of satisfactory service. The twelve (12) months shall commence on the date that the employee is served with a conduct incident report. Any disciplinary action which occurred more than twelve (12) months earlier shall not be used in any subsequent disciplinary hearing, nor shall it be taken into consideration in determining to file a conduct incident report against a member of Local 502, nor shall it be used for the purpose of progressive discipline. Records shall include electronic records maintained on any computer system or computer database within [the Wayne County Airport Authority]….
>
> Time spent in the armed forces, on worker's compensation status, long-term disability status or on approved leave of absence shall count towards the twelve (12) month period.

The new section, Section 9.11(N), referencing *Garrity* rights is as follows:

> In the event the Department [viz. the Employer] receives an administrative subpoena from the Wayne County Prosecuting Attorney's office, the U.S. Attorney's Office, or the Michigan Attorney General's Office requesting Garrity statements, the Sheriff's Department and/or Airport Police Department [viz., the Employer] shall notify the Union of receipt of said subpoena. The Garrity statements shall not be turned over to the Prosecutor's Office, U.S. Attorney's Office or State Attorney General's Office without giving the Union an opportunity to seek an injunction in the appropriate court of law.

<u>Last Best Offer of the Employer:</u>

The Employer rejects the changes recommended by the Union and as its last best offer, the Employer proposes in Article 9.03 (Local 502) to specify that an employee shall have the right to review his or her personnel file at reasonable times, "but no more than once every six months." The Employer proposes to specify which

union officers can be present at all levels of disciplinary proceedings, limiting it to Chief Steward or Alternate Steward, and excluding the Union President. (Article 9.04). The Employer offers that the initial sentence of Local 502, Article 9.01 should be changed as follows:

> An employee summoned by a superior officer *or supervisor* for questioning or to discuss matters that could result in disciplinary action *against that employee* shall be entitled to Union representation pursuant to Article 7, Section 7.06.

In relation to length of time a discipline may stay active, the Employer proposes:

> The Employer shall not take into consideration any prior discipline if the employee has been free of documented disciplines for 24 months from the date of the last discipline, except for discipline related to airfield incursions (which may always be taken into consideration).

In relation to the Police Officers' Bill of Rights, the Employer proposes that the article be limited to "police officers" as opposed to employees of the bargaining unit. (Local 502, Article 9.11). The Employer proposes changes in sections J, K, and L, to the effect that the Employer may suspend any employee without pay prior to Administrative review; may re-assign employees; and if it suspends an employee, it may do so without paying the employee or continuing to provide contractual insurance premiums.

POSITIONS OF THE PARTIES

The Union indicates that the current system of keeping discipline "alive" for 24 months allows the Employer two bites at the apple, in many cases where discipline is rendered and then referred to in later proceedings. The Union would limit the Employer's opportunity to do this to 12 months. The Employer defends that the time period of 24 months is reasonable.

In regard to the change referencing Trial Board proceedings, the Union contends that the failure to include trial board proceedings is an oversight. The Employer showed

through its witness, Deputy Chief Jennifer Williams, that the term “Trial Board” is an anachronism, as applied to this Employer, because in 13 years it has not utilized trial boards. The term survives, unfortunately, says Ms. Williams, in some of the forms used in discipline.

The Employer has presented evidence in support of its contention in Article 9.04 that “Vice President of the Union” should be stricken, and likewise that the concluding clause of the article should be stricken, viz., “this shall not preclude the Union President from participating in all levels of discipline.” Its evidence is that the current holders of these Union offices (Local 502) are non-employees of the Airport, but are in fact employees of Wayne County Sheriff’s Department. The Union is of the view that the availability of Union assistance in disciplinary proceedings should include whatever Union personnel it feels are suited to the task.

The Employer presents evidence that changes in Sections J, K, and L are warranted, in view of the restrictions applicable in other bargaining units. The evidence shows that these restrictions apply in all the other non-police bargaining units of this Employer.

Finally, the Union in reference to the opportunity to contest turning over *Garrity* statements, says that there is a live and continuing controversy in the U.S. Courts of Appeals about whether the administrative subpoena of *Garrity* statements contravenes an officer’s right against self-incrimination. It should have the ability to challenge the subpoena in a request for preliminary injunction proceeding, prior to the Employer’s turning over *Garrity* statements to the public Prosecutor.

DISCUSSION.

In regard to Local 502, Article 9.1, there is reason to believe that the initial sentence, as currently written, contains the seeds of ambiguity, namely that an interviewee could request the presence of Union representation, even if he or she is not the subject of an investigation and is not charged with any wrong-doing. Thus, the Employer's requested change to the first sentence of Article 9.01 is accepted by the Panel.

In regard to Local 502, Article 9.03, the position that limiting an employee's review of his personnel file to once in every 6 months is reasonable. The Employer's view on amending Article 9.03 is accordingly accepted.

The Employer has proferred evidence tending to establish that the inclusion of the reference in Local 502, Article 9.04 to "Vice-President of the Union" or to the final clause, "this shall not preclude the Union President from participating in all levels of discipline" is intended to cover personnel of the Union who at the present time are not employees of the Airport Authority. However, it has not been shown that the resort to the Vice President or the President (Local 502) has a refractory impact on discipline proceedings. The traditional language appears to be suited to the Union's utilizing whichever personnel are effective and/or available for the purpose of assisting in disciplinary proceedings. And, is has not been established that there should be some prohibition against the Union's utilizing officers it feels are effective. Thus, the Employer's requested changes in Article 9.04 are rejected; and, the status quo on that item is accepted.

In regard to Local 502, Article 9.5, the Union has not shown that maintenance of disciplinary record on an employee for a period of twenty-four months is unusual, or

onerous in any way. Thus, in reference to the statutory factor “Other” and in reference to the dictum, “No need for change” this factor supports the concept of a 24-months’ retrospective review of disciplinary records. The Employer has not shown that incursions on the airfield, as serious as they are, should be exempted from the 24-month limitation.

In regard to Local 502, Article 9.07, the Employer proffers the rationale that officials of the Airport, beside the Airport Director are frequently authorized, by delegation, to administer discipline. This is no doubt true. It behooves the parties to amend their language to show the actual state of affairs, instead of some hypothetical. Thus, the Panel endorses the change sought by the Employer in regard to Article 9.07 to include “a designated Management representative.”

The Employer proposes to eliminate Local 502, Article 9.09, “An employee suspended without pay may forfeit, in lieu of a suspension, an equal number of accumulated annual leave days or holidays.” The Employer proposes that such a substitution should be allowed only at the discretion of the Chief of Police. The Panel believes that the option included in Article 9.09 is unusual in public sector practice, and should be deleted from the contracts, or re-formulated to show that it may be done only at the discretion of the Chief of Police.

In the Police Officers’ Bill of Rights, Local 502, Article 9.11, the Employer contests Item (J) as written:

> The Sheriff or Airport Director may suspend without pay any employee prior to an Administrative review, who is criminally charged with the commission of any felony, or a misdemeanor involving narcotics.

The Employer says the opportunity *to suspend* applies to any charged misconduct. The language should make that clear. The Union does not take a position on this subject. The Panel believes that adoption of the Employer's viewpoint will contribute to fair, and properly stated procedure. The entirety of item (J) should be rewritten as follows;

> The Employer may suspend with or without pay any employee who is charged with an infraction of the rules prior to an Administrative Review.

The Employer offers that item (K) should be reformed. Currently, item (K) says:

> If an employee is charged with the commission of a misdemeanor not involving narcotics or a violation of departmental rules or regulations, he or she may be suspended with pay until such time as an Administrative Review renders a decision as to the alleged charges. In this event, the Employer shall continue to pay the employee's salary and all other benefits provided. Employee s charged with the commission of a misdemeanor may be assigned within the department at Management's discretion in the event Management has determined not to suspend the employee.

The concept in the Employer's eyes is that permission should be given to reassign an employee, in lieu of suspension. The Employer's viewpoint has the benefit of good sense and clarity of expression . The provision should read in its entirety:

> The Employer may choose to reassign any employee charged with a violation of the rules, pending decision at Administrative Review.

The Employer has enunciated its objection to item (L) that it should not be required to pay the insurance package of an employee who is discharged through his appeal to arbitration or a court decision. The Unions respond that this provision has been embedded in the police officers' contracts for many years, and should not be changed, absent a showing of abuse.

PANEL, GIVE ME GUIDANCE !

Finally, the Union has referenced current litigation involving an officer's right against self-incrimination in not turning over *Garrity* statements in response to administrative subpoenas. The request to have an opportunity to contest such requests by an application for injunction appears to be well-founded, in view of the uncertainty of current constitutional law. Thus, the Union's request for paragraph N in the Police Officers' Bill of Rights (Article 9.11) is supported by "Other" factors, namely the Adherence to constitutional limitations. However, the Union should be given notice of the Prosecutor's request for *Garrity* statements; it would be impractical for the Employer to wait until the Union has exhausted an opportunity to contest such turnover of *Garrity* statements.

ORDER—DISCIPLINARY PROCEDURE.

The parties are commended to re-state their Disciplinary Procedures taking into account the conclusions expressed in the above Discussion.

ISSUE 29: ADMINISTRATIVE REVIEW. (Local 3317-Article 14/ Local 502-Article 9.13-9.25). Non-economic condition of employment.

LAST BEST OFFERS

Last Best Offer of the Employer.

The procedure for police officers provides for a hearing within 14 days of the completion of an Internal Affairs Investigation or upon recommendation for a hearing by the Police Chief. Written specifications are to be offered, with copy to the Union. The

hearing is “off the record and shall provide for a free flow of information and discussion.” Local 502, Section 9.13.D.

The employee shall receive notification of the Administrative Review 3 or more days in advance, as shall the Union. The Employee is entitled to “all available documents and other evidence” which the employer will use at the hearing. The hearing shall be conducted by the CEO of the Airport or his designated representative. Labor Relations is specifically not included in an Administrative Review. Notice of the determination shall be within 13 days of the hearing, with disciplinary action effective upon issuance of the written determination.

Determinations of the police officers’ administrative review are appealable to arbitration (except in the case of an oral reprimand). “In all disciplinary proceedings [including, by context, arbitration proceedings], the department shall carry the burden of proof in order to substantiate the charges and the standard shall be proof by a preponderance of the evidence.” Local 502, Section 9.21.

The Employer offers to change certain aspects of the Administrative Review procedures. Specifically, it seeks to delete any reference to a “trial board” which the Employer says is an antiquated procedure, not utilized, and not useful.

The Employer proposes a bilateral exchange of information, prior to arbitration. The current procedure requires the Employer to provide the Union with all documents it intends to use in arbitration and a witness list. The Employer seeks to have the same treatment afforded to it.

The Employer seeks a role for its Labor Relations staff. Currently, the procedure for Administrative Hearings excludes participation by the Labor Relations Division.

The Employer seeks to extend the time for rendering a decision from 7 to 13 days.(Local 3317)

The Employer proposes to eliminate the provision in Local 3317's agreement that says in the event of a disciplinary case not heard by an arbitrator within 30 days of the Union's appeal to arbitration, the officer shall be reinstated.

The Employer proposes deleting from Local 3317's contract the reference to "beyond a reasonable doubt." It notes that the Union seeks to retain the criminal burden of proof for any type of disciplinary offense.

The Employer proposes to specify 30 days for the filing of post-hearing arbitration briefs, rather than 15 days.

The Employer would amend the Local 3317 contract , Article 14.14 to show that, "All past arbitration decisions as they relate to disciplinary provisions of the Collective Bargaining Agreement, *and not in conflict with this Agreement*, shall continue to apply and be binding as to procedural requirements."

Last Best Offer of the Unions.

The Unions offer that the conduct of the Administrative Review hearing shall not be "off the record" but rather shall be electronically recorded, subject to being reduced to a transcribed record. The Unions specify that the officer conducting the Administrative Review shall not be a command officer involved in the initial review of the charges nor one was involved in the investigation of the matter. Within the context of several sections on arbitration, the Unions specify that "In all disciplinary proceedings, the department shall carry the burden of proof in order to substantiate the charges and the standard shall be proof beyond a reasonable doubt."

POSITIONS OF THE PARTIES.

As stated above.

DISCUSSION

The purpose of an Administrative Review is to provide police officers who are subject tto charges of any rule violation with a formalized procedure by which the Employer sizes up the evidence against the officer and makes a good faith, unbiased determination as to whether the charges are supported; and if so, as to what level of discipline is supported. It should be obvious that the purpose of the proceedings can only be accomplished if the basics of due process are observed. One such basic is that the officer who formulates or investigates the charges should not be the hearing officer in the Administrative Hearing. Due process demands that an uninvolved person be the hearing officer. It is not required by any canon of procedure that the person who conducts the Administrative Review be in the police service. There is no reason why the person conducting the hearing cannot be a member of the Labor Relations staff. This matter should be left entirely to the discretion of the CEO of the Airport or the Airport Chief of Police, with the sole limitation that the individual appointed to conduct the Administrative Review should not be the officer who formulated or investigated the charges.

The contention of the Unions that a record should be made, and, if needed, transcribed for the eventual arbitration hearing is counter-productive. The current provision of Local 502, Article 9.13.D, that “The conduct of the hearing shall be off the record and shall provide for a free flow of information and discussion,” seems much more conducive to the parties’ free exchange of information; free opportunity for

admissions to be made; and for compromises to be reached. The opportunity for conducting an “on the record” hearing comes with the arbitration hearing. Furthermore, at an arbitration, the parties must prove their cases *de novo* and without reference to what was said at the Administrative Hearing. It appears that the opportunity for an “on the record” arbitration hearing is sufficient, and a “mini-hearing” need not be conducted under the guise of an Administrative Review.

The present language in Local 502, Article 9.13.B tends to run together the obligation to share documents and other evidence in the Administrative Hearing level and at the Arbitration level. This section should be re-written to provide for notification and provision of available documents and other evidence which the department has in its possession or will use at the Administrative Review hearing. Separately, the Section should reference the obligation of the Employer, once the case has been filed for arbitration, *and of the Union* to provide available documents, other evidence, and a witness list to the other side. The Employer’s request on this point resounds in fair procedure, and should be incorporated by the parties.

The Employer’s proposal to change the amount of time for delivery of the Administrative Hearing determination from 7 to 13 days is accepted as necessary and reasonable. Likewise, the Employer’s proposal relevant to the effect of an arbitration hearing not being provided within 30 days of the appeal to arbitration is accepted. [In the event of a disciplinary case not heard by an arbitrator within 30 days of the Union’s appeal to arbitration, the officer shall be reinstated.] This requirement is impractical in today’s world of outside counsel and arbitration schedules.

The Employer's proposal to include the standard in arbitration for showing misconduct is accepted. It is near universal today for arbitrators to accept the standard of "preponderance of the evidence." What that means in practice is that you must convince the arbitrator. In a case involving criminal responsibility, the particular arbitrator chosen may require a rigorous showing. However, even that showing can still be accommodated by a showing of "by the preponderance of the evidence."

The Employer's proposal on the filing of arbitration briefs [30 days, not 15 days] is accepted as the more reasonable proposal.

The Employer's proposal amending Local 3317's contract (Article 14.14), as follows is accepted: "All past arbitration decisions as they relate to disciplinary provisions of the Collective Bargaining Agreement, *and not in conflict with this Agreement*, shall continue to apply and be binding as to procedural requirements."

ORDER—ADMINISTRATIVE REVIEW

The parties are commended to revise their sections on Administrative Review and to adopt the proposals shown in the Discussion section above.

ISSUE 30—INDEMNIFICATION.(local 3317-Article 15/ Local 502-Article 26) Non-economic condition of employment.

LAST BEST OFFERS

Unions' Last Best Offer.

The Union offers that, "In the event the [Employer] has made the decision to defend, hold harmless and indemnify an employee but cannot represent that employee

due to a conflict of interest, the Wayne County Airport Authority shall pay monthly the employee's personal attorney fees and cost; said fees and cost shall be paid in accordance with Section 26.02."

The Employer's Last Best Offer.

The Employer offers to retain the status quo by which the Employer shall appoint the attorney who will represent the employee.

POSITIONS OF THE PARTIES.

The Union-proposed amendment to the Article on Indemnification is necessitated, say the Unions, by the occasional divergence of the employee's interests and the Employer's interests, when both are jointly sued. The employee should be able to have an attorney in whom he or she has personal confidence.

The Employer says that the Employer not only currently appoints the attorney to represent the employee, but also pays him or her. The Employer's insurance broker, according to the Labor Relations Deputy Director Lynda Racey has the main say about who is appointed. Further, if the employee picked his or her own attorney, the Employer's insurance broker, according to the Labor Relations Deputy Director, might not approve coverage.

Further, in the words of Counsel for the Union :

> I would like to point out that in my 40 years of experience in this matter with both the county and the airport, the officer has never been consulted as to who will represent him. That decision is made unilaterally by either the county or the Airport Authority.
> [Tr. 313]

DISCUSSION.

In view of the admission of Counsel for the Union, it would appear that it is historical tradition for the Employer to appoint counsel for an officer who is named in a lawsuit, and whom the Employer has agreed to defend. Thus, in view of the Other factor of the tradition of the parties, a majority of the Panel is of the opinion that the Employer's proposal on Indemnification should be adopted.

ORDER--INDEMNIFICATION.

The Employer's last best offer is adopted.

ISSUE 31—GENERAL PROVISIONS (Local 3317-Article 43/ Local 502-Article 44.02) (Savings Clause) Non-economic condition of employment.

LAST BEST OFFERS

The Employer's Last Best Offer.

The Employer offers to have the current contract language, Local 502, Section 44.02 continued in the new contract. This article, entitled Saving Clause, says in full:

> Except for workers' compensation claims, employees separating from County service by resignation, retirement or discharge shall have one hundred eighty (180) days from the effective date of separation to file any claims, civil actions, lawsuits or administrative charges related to their employment with the County. Failure to file such claims or charges within that time period shall result in a complete release and waiver of all claims or actions that the employee could have instituted or asserted concerning his or her employment with the [Wayne County Airport Authority].

The Employer's rationale is that the existence of any cause of action should be known to the employee within the time frame of 180 days after separation from employment. This provision puts a cap on the liability of the Employer and creates stability in matters relating to discharge of an employee.

Unions' Last Best Offer.

The Union would delete the limitation of 180 days, and refer to the statute of limitations applicable to each of the possible actions an employee might have for wrongful termination from employment.

POSITIONS OF THE PARTIES.

The Employer's position is supported by the history of this section's being in the 2000-2004 contract. It is further supported by considerations of efficiency, and predictability in the handling of claims of former employees.

The Union's position is that the collective bargaining agreement should not eclipse the applicable statutes of limitations of any of the statutes which might apply to discharged employees.

DISCUSSION.

The history of the section's being in the 2000-2004 contract is some evidence that the limitations of a 180-day period to file claims is workable. There is also some merit in the view that the Employer needs to be able to count on the sunset of liability for any discharge decision. Thus, the Other factor of the traditions of the parties is governing. It should be noted that the 180-day period is reasonable, and not an imposition on the discharged employee. The Employer's last best offer is more consistent with the statutory factors than the Union's last best offer on the subject of Section 44.02. (savings clause).

ORDER—SAVINGS CLAUSE.

The last best offer of the Employer is accepted.

ISSUE 32: SUPPLEMENTARY PERSONNEL RULES.(Local 3317-Article 17/ Local 502—Article 12) Non-economic condition of employment.

LAST BEST OFFERS

The Employer's Last Best Offer.

The Employer offers a complete set of work rules which it says were negotiated with the union representing employees at the airport. The rules cover at least the following subjects: job announcements, promotional exams, appeals from ratings, transfers, demotions, probationary period, annual leave, sick leave, military leave, bereavement leave, cause for discipline, resignations, retirement, layoffs, training programs, personnel records. The Employer, having opened the process for adopting these rules to input from all affected bargaining units, says that the Rules should be adopted by this Act 312 panel for employees represented by both Local 502 and Local 3317.

The Unions' Last Best Offer.

The Union requests that the Panel provide for a committee to study and replace the civil service rules formerly in effect. The Union argues that "[the civil service personnel policies] also talk about provisional appointments, limited-term appointments, how a person gains status, how they request a reclassification of his job assignment…." [Tr. 199] And, these issues, say the Unions, are no longer applicable to employees of the Airport.

POSITIONS OF THE PARITES

The Employer argues that it has already engaged in a bargaining process by which representatives of all union including Local 502 and Local 3317 were invited to

review and revise the civil service rules. The process extended over 4 years. The two police unions attended these meetings initially, but stopped attending after awhile. The Employer takes the position that it has offered a full opportunity to bargain the personnel rules.

The Unions believe that further bargaining, post-Act 312 award, is warranted.

DISCUSSSION

The evidence establishes that the Employer made efforts to involve all of its unions in the rewriting of Wayne County civil service personnel policies. The evidence show that 7 unions did attend the meetings and involve themselves in the process of rewriting the civil service rules into Supplementary Personnel Rules. Local 502 and Local 3317 attended only the initial meetings. It must be concluded that both unions had an opportunity to participate in bargaining the new Supplementary Personnel Rules. No further opportunity is necessary or appropriate after a 4-year period of intermittent work on these Rules.

As regards the relationship of the rules to the collective bargaining agreements, the Rules themselves say, “In the event that there are provisions in collective bargaining agreements which differ from these supplementary personnel rules, such provisions shall be controlling for positions covered by said agreements.” [E’er. Exh. 520] Based on traditional factors, the opportunity to bargain was present and available to Local 3317 and Local 502, it is concluded that the statutory factors favor the Employer’s LBO.

ORDER—Supplementary Personnel Rules

The Employer’s Last Best Offer on Supplementary Personnel Rules is accepted.

ISSUE 33-REPRESENTATION (Local 3317-Article 10/ Local 502-Article 7). non-economic condition of employment.

LAST BEST OFFERS

The Unions offer language requiring the Employer to meet with officers of the local unions, including President, Vice President and Benefit Representative.

The Employer offers to adjust the language in the local unions' expired agreements relative to the number of union officials who are authorized to be released with pay to attend the needs of bargaining unit members. Specifically, the Employer offers that two officials, such as a Chief Steward and an Alternate Steward, are sufficient for the needs of Local 3317; and, a Chief Steward and two Alternates (one per shift) are sufficient to attend the needs of Local 502 bargaining units members. The Employer recognizes that the patrol officers at the Authority will continue to be represented by the Local 502 officers, including a President who is not currently employed by the Authority.

Furthermore, the Employer offers to take away the language in the old contracts exempting union officers from transfers or re-assignments (Local 3317, Article 7.04 (B) and (C) and Local 502, Article 7.05(C) and (D)]. The Employer says that the much smaller Wayne County Airport Authority does not have the luxury that the Wayne County Sheriff may have had to exempt a steward from being transferred in the ordinary course of business.

The Employer also would amend certain provisions of the old contract to show that the Chief Stewards and Alternative Stewards are confined to dealing with the representational needs of patrol and command officers of the Airport, not of some other

employer. Thus, for example, in Local 502, Article 7.04.a, the Employer would amend the language to read as follows:

> All Stewards, during their working hours, without either loss of time or pay, may investigate and present grievance *pertaining to members of the WCAA bargaining unit* in accordance with Article 8 including attendance at special conference, after notification to their supervisors so that arrangements can be made for their release.

POSITIONS OF THE PARTIES

As shown above.

DISCUSSION

The Unions' concern that the duly elected officers of the Unions will not be credited or recognized in dealing with employee grievances or benefit problems appears to be over-stated. The Employer clearly in its brief, if not in its proposals, recognizes that the Unions may elect a President or a Vice President or a Benefits Representative who is not an employee of the W.C.A.A. and that such individuals are appropriate for the Employer to meet with. The Unions' language can be added to the parties' representational article.

The Employer's concern is with the number of employees who are given leave status to deal with Union business. The Employer's proposal to limit the number in the case of Local 3317 to 2; and in the case of Local 502 to 3 are reasonable, in view of the size of the units (97 individuals in the case of Local 502, and 27 in the case of Local 3317).

Furthermore, the language of Local 502, Article 7.04(D) and (E) could and should be amended to state that a Chief Steward shall be assigned to a day shift job; and that Chief Stewards and Alternate Stewards will not be transferred out of their shift

assignments, “except by mutual agreement of the Union and the CEO of the Authority.” This is protection for the Union against arbitrary, capricious, or ill-conceived transfer of officers who are selected to deal with members’ grievances *on a particular shift*. But the suggested language would also allow the Authority to re-assign such employees, while retaining them on their selected shifts.

Finally, the language proposed by the employer of showing “pertaining to members of the WCAA bargaining units” as shown in the proposal above and as reiterated throughout the language of Article 7.04 A, B, C, and Article 7.05A is appropriate to indicate the limitation intended that stewards shall service members of the W.C.A.A. bargaining units.

ORDER

The parties are commended to re-write the representation Articles consistently with the determinations made in the Discussion section, above.

ISSUE 34: DURATION OF RIGHTS UNDER TRANSFER AGREMEENT.

The MERC in deciding the unit clarification in December 2004, adverted in its Order to the existence of a multi-Employer association of Wayne County, Wayne County Sheriff’s Department and Wayne County Airport Authority existing for the purpose of bargaining on the subject of the duration of the bargaining unit members’ transfer rights. It has been reported to the Chairman by MERC staff that bargaining and mediation have occurred on this subject. It is also apparent that the parties have not been able to reach agreement. It therefore appears that the duration of bargaining unit members’ transfer rights pursuant to the Memorandum of Understanding is a proper

subject for Act 312, both in the W.C.A.A. proceedings which I have administered and in the Wayne County proceedings which Mr. George Roumell administered in Case No. . Pursuant to the direction of the Commission, the Panel reserves decision on that issue; and this hearing is left open specifically *and solely* for the purpose of receiving evidence on the subject of duration of bargaining units members' transfer rights, until such time as the two panels (in Wayne County Sheriff's case and in the WCAA case) can be convened to deal with that subject.

/s/_____
Benjamin A. Kerner-Panel Chair, both panels

/s/_____
Hugh Macdonald-Union delegate, both panels.*

/s/_____
Joseph P. Martinico-Employer delegate, both panels **

* The Union delegate concurs on all awards for the Unions and dissents on all awards for the Employer
** The Employer delegate concurs on all awards for the Employer and dissents on all awards for the Union.