2401

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding Between:

OAKLAND COUNTY AND OAKLAND COUNTY SHERIFF'S DEPARTMENT,

Employer,

and

OAKLAND COUNTY DEPUTY SHERIFF'S ASSOCIATION,

Union.

MERC Case No. D09 G-0807

Fact Finder: Jerold Lax

Appearances:

For the Employer: Malcolm D. Brown, Esq.
For the Union: James M. Moore, Esq.

REPORT OF FACT FINDER

I. Procedural Background

The approximately 1,000-person work force of the Oakland County Sheriff's Department is divided into three principal groups, Law Enforcement Services, Corrections and Court Services, and Administrative Services. This fact finding proceeding, commenced by a petition filed February 3, 2011, relates to the potential terms of a collective bargaining agreement for the approximately 370-person Corrections and Court Services Group (which includes deputies providing security in jail and court facilities as well as Forensic Laboratory Specialists, and which will be referred

to herein as the Corrections unit), whose prior collective bargaining agreement expired on September 30, 2010.

Prior to August, 2007, both the Law Enforcement group and the Corrections group were part of the same collective bargaining unit, a unit eligible for Act 312 compulsory arbitration to resolve collective bargaining agreement terms. In 2007, however, MERC rendered a decision severing the unit into two separate units, with the Law Enforcement group remaining subject to Act 312 and the Corrections Group no longer subject to the statute; this MERC ruling was affirmed in a 2-1 decision of the Michigan Court of Appeals, 282 Mich App 266, 765 NW2d 373 (2009). Simultaneously with the pendency of this fact finding proceeding, Act 312 proceedings occurred relating to the Law Enforcement group and the command officers of the Sheriff's Department, both of whose prior collective bargaining agreements had expired on September 30, 2009, an award relating to the command officers being issued on July 6, 2011 (MERC Case No. D09 G-0806) and an award relating to the Law Enforcement group being issued on February 9, 2012 (MERC Case No. D09 G-0805).

After an initial prehearing conference, formal hearings were conducted by the undersigned fact finder on August 11 and August 16, 2011. The parties agreed that with regard to the issue of ability to pay as well as certain pension issues, the transcript of the Law Enforcement Act 312 hearing could be submitted in lieu of taking extensive testimony on these matters. Briefs were submitted on behalf of the parties on January 12, 2012. A subsequent conference was held with party representatives and counsel on January 20, 2012, at which further arguments were considered.

II. Summary of Contractual Issues

The issues in dispute in this proceeding are these:

1. Duration of Agreement. The Union seeks a 3-year agreement, expiring September 20, 2013. The Employer seeks a 2-year agreement, expiring September 30, 2012.

2. Wages. The Union seeks no wage increases for fiscal years 2011 and 2012, and an increase of 1% for fiscal year 2013. The Employer seeks a decrease of 1.5% for 2011 and no increase for 2012.

3. Retroactivity. The Employer seeks that its requested wage decrease for 2011 be applied retroactively, with future wages being reduced to account for the fact that wages have already been paid in excess of the Employer's requested levels.

4. Forensic Laboratory Specialist Wages. The Union requests that Forensic Laboratory Specialists be compensated at the same rate as Deputies II in the Law Enforcement unit; the Employer rejects this request.

5. Forensic Laboratory Specialist Vacancies. The Union requests that there be a preference for Corrections unit members in filling vacant Forensic Laboratory Specialist positions; the Employer rejects this request.

6. Defined Benefit Plan Multiplier. The Union requests the multiplier in the defined benefit retirement plan be increased for the first 14 years from 2.2% to the 2.5% now provided for years of service beyond 14 years; the Employer rejects this request.

7. Defined Contribution Plan Contributions. The Union request that contributions by employer and employee to the defined contribution retirement plan be

increased from 9% and 3%, respectively, to 12% and 5%; the Employer rejects this request.

8. Annual Leave Accumulation. The Union requests a 10% increase in the number of annual leave days to which unit employees are entitled; the Employer rejects this request.

9. Compensatory Time. The Union requests that a compensatory time bank be created as an alternative to payment for overtime work; the Employer rejects this request.

10. Shift Differential. The Union requests premium pay for employees who work afternoon and midnight shifts; the Employer rejects this request.

11. Missed Overtime Opportunity. The Union requests that employees receive 2 hours' pay for missed overtime opportunities; the employer rejects this request.

12. Overtime Eligibility. The Union requests that employees be entitled to overtime pay for hours in excess of 8 hours of time worked or for which the employee was paid rather than just time worked; the Employer rejects this request.

III. Preliminary Legal Concerns

Prior to discussing the disputed contractual issues, it should be noted that the parties have raised at least two underlying legal issues which they deem relevant to any fact finding recommendations which will be made, one concerning the criteria to be used by the fact finder in evaluating the position of the parties and one concerning the legality of retroactive wage decreases should the fact finder determine that such retroactive decreases are justified by the circumstances.

With regard to criteria to be used by a fact finder, while no statute specifically identifies such criteria, fact finders have typically relied on the factors listed in Section 9 of Act 312, which, prior to amendment of Act 312 by P.A. 116 of 2011 in July, 2011, were as follows:

a. The lawful authority of the employer.

b. Stipulations of the parties.

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

d. Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

   (i). In public employment in comparable communities.

   (ii). In private employment in comparable communities.

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

f. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pension , medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public services or in private employment.

The Act 116 amendments, among other things, specified that an Act 312 panel, in addition to considering wages, hours, and conditions of employment in comparable communities and in private employment, should also consider the wages, hours, and conditions of employment of other employees of the governmental entity involved in the 312 proceeding – in other words, internal as well as external comparables. Further, Act 116 required the arbitration panel to give 'the most significance" to the factor of ability to pay. Since Act 116 took effect after the commencement of this fact finding as well as after commencement of the Act 312 arbitration relating to the Employer's Law Enforcement unit, the parties in both proceedings debated whether the original or amended Section 9 factors should be used, with the Union arguing that the original factors should be used and the Employer arguing for the amended factors, with their greater emphasis on internal comparables and ability to pay.

As a practical matter, Act 312 arbitrators and fact finders appear to have given significant attention both to internal comparables and ability to pay even in the absence of Act 116, and the ultimate effect of At 116 therefore remains to be seen. Without detailing the arguments of the parties, it should be noted that the Act 312 panel in the case involving the Employer's Law Enforcement unit ruled that Section 9 should be applied in its original form. For purposes of this fact finding, I will also make principal

reference to Section 9 as it existed prior to Act 116, while assuring that internal comparables will be regarded as relevant and that appropriate attention will be given to the parties' arguments concerning ability to pay.

With regard to the issue of the legality of retroactive wage decreases, the Union argues that the Employer's demand for such retroactivity constitutes an unfair labor practice as dealing with a non-mandatory bargaining subject, and the Union has filed an unfair labor practice charge with MERC to determine this issue, with no decision yet having been rendered. The Union further contends that Act 312 and PERA, particularly taking into account the amendments to Act 312 contained in Act 116 and the amendments to PERA contained in Act 54 of 2011, support the conclusion that retroactivity is impermissible. The Employer contends that neither Act 312 nor PERA preclude retroactivity. The Act 312 panel in the Law Enforcement case determined that retroactivity was legally impermissible, principally because language in Section 10 of Act 312 authorizing retroactive wage increases should, because decreases were not mentioned, be interpreted to preclude such retroactive decreases. The Act 312 panel also concluded that retroactive application of the wage decrease it ordered for fiscal year 2010 would be inappropriate even if legally permissible. For purposes of this fact finding, it is unnecessary to express a view on the retroactivity issue still pending before MERC and already decided by the Act 312 panel because, as will be discussed further below, my recommendations concerning the parties' wage requests render extended discussion of the legality of retroactivity superfluous. It might be added that these recommendations are not made for the purpose of avoiding consideration of the legality

of retroactivity, but rather on the merits; the legal issue remains important and has been argued competently and vigorously by both parties.

IV. General Comments regarding Certain Section 9 Factors

While the factors listed in Section 9 of Act 312 will be considered in the discussion of each of the disputed contractual issues, general comments can be made at the outset concerning some factors which are of particular relevance to all of the disputed issues.

First, as already indicated, with or without the Act 312 amendments contained in Act 116 the ability of the Employer to pay for benefits sought by the Union is an important concern. In this regard, the Employer offered substantial evidence by way of exhibits and testimony supporting the conclusion that during the period from 2008 to the present, the economic condition of the County has significantly deteriorated, principally as a result of decline in property value and consequent reduction in the tax revenues which are dependent on that value. More specifically, David Hieber, manager of the Employer's equalization department, testified that between 2001 and 2007, property values increased each year, but that from 2008 through 2011, values decreased each year, and were expected to continue to decline at least through 2014, though the rate of decline in decreasing. Employer witnesses also testified that it was unlikely the County could rely in any significant way on state or federal aid to relieve decline in County tax revenue. Deputy County Executive Robert Daddow testified regarding the County's framework for dealing with these economic concerns, of which he was a principal author, which includes, among other elements, increasing the County's equity to enable the County to restructure and finance its operations over the next several years and, in

the area of personnel administration, hiring freezes, use of part-time employees, and shared sacrifice by employees, including reduced wage rates.

The Union did not seriously question the Employer's statistics regarding reduced revenues, but did note that the County has been able to maintain its AAA bond rating and that the County has not availed itself of its ability to raise its millage rate, without public vote, from 4.19 mills to 4.23 mills, thereby producing some $1.6 million in additional revenue. The Union further noted recent statements of the County Executive highlighting favorable economic developments in the County including establishment of the Oakland University Beaumont School of Medicine, with the potential for significantly increasing employment. (The Employer unsurprisingly suggests that in making such statements, the County Executive is fulfilling his role of attracting business to the County and did not mean to detract from the County's present financial problems.) The Union notes that Section 9 of PERA, in listing ability to pay as a factor, requires that "the interests and welfare of the public" be considered in conjunction with ability to pay, and argues that adequate compensation for public safety personnel is an important concern which must be balanced against any Employer contention that its limited ability to pay should be addressed by reliance on reduction of employee benefits.

The general conclusion to be drawn from the record is that the Employer has been faced recently with significant reductions in available revenue, and has attempted in a rational manner to develop a long-range plan for dealing with this problem, but that under such circumstances choices are available as to the manner in which particular elements of revenue and expenses should be balanced. As the Act 312 panel in the Law Enforcement 312 award recently observed:

> So when all is said and done, the majority of the Panel finds that the Employer is likely justified in pursuing the plan it has developed. And while the Panel finds the evidence in this case demonstrates the Employer may have the ability to pay the benefits sought by the Association if it alters some of the elements of the plan it has developed, the question still remains whether it would be prudent to do so as well as what is supported by the statutory criteria.

With regard to the Section 9 factor of comparison of wages, hours and conditions of employment of employees in the unit involved to those of employees performing similar services in other communities, the parties have agreed that Kent, Wayne, and Macomb counties are the relevant communities for purposes of evaluating the matters at issue in this proceeding. It should be noted that while considerable testimony was offered as to such matters as which benefits should be taken into account in an effort to calculate levels of compensation in the communities involved, the parties agreed that whether the Union's position of the Employer's position were adopted concerning the appropriate compensation for unit employees in the forthcoming contract, the Oakland County employees would maintain their second-place position, after Kent and ahead of Macomb and Wayne, albeit with lesser compensation in absolute terms if the Employer's position were adopted. This conclusion does not of course resolve the issue of whose position should be adopted on any particular disputed issue, but may nonetheless provide some perspective as to the implications of any such decision.

Finally, Section 9 directs that some attention be given to changes in circumstances during the pendency of the fact finding proceedings. Both parties note the passage of Acts 54 and 116 subsequent to the commencement of these proceedings, and the implications of these statutes have already been discussed to some extent above. Also of some significance is the issuance of Act 312 awards in the

proceedings relative to the Sheriff's Department Law Enforcement and Command units. While the Corrections unit involved in this fact finding has, as earlier indicated, been determined not to be Act 312 eligible, and the Employer therefore retains discretion in the determination of contractual terms for the Corrections unit not available to it in the case of Law Enforcement and Command unit contracts, the recently-determined contractual terms for the Law Enforcement and Command units nonetheless provide relevant internal comparables which can appropriately be considered in making recommendations concerning the Corrections unit. It might be noted in this regard that the Union devoted considerable attention in its presentation to the contention that corrections unit members shared many of the same risks and hazards to which Law Enforcement unit members are subjected, and while this fact finding is not an occasion to relitigate unit severance issues already addressed by MERC and the appellate courts, it may nonetheless be of relevance that the Corrections unit employees share some community of interests with the Law Enforcement and Command employees when assessing the significance of those internal comparables.

IV. Recommendations Concerning Disputed Issues

1. Duration of Collective Bargaining Agreement

The Employer, which originally sought a 1-year contract for the period October 1, 2010 through September 20, 2011, now seeks a 2-year agreement expiring September 30, 2012. The Union seeks an additional year, with the contract to expire September 30, 2013. The Union argues that a longer agreement will provide greater stability than would an agreement which will expire only a few months after conclusion of these proceedings. Further, the Union argues that in several comparable

communities and in several Oakland County units, employees are working under 3-year contracts. The Employer argues that under existing uncertain economic conditions, a 3-year agreement undermines the ability of the Employer to take developing economic circumstances into account in determining appropriate contractual terms, and that although contracts in several comparable external and internal situations extend for a 3-year period, none of them extend beyond 2012.

It is my recommendation that a 2-year contract be adopted, expiring September 30, 2012. While such a contract would dictate that bargaining commence promptly regarding a successor contract and would thereby to an extent reduce stability and certainty, it would enable the parties to take changing economic circumstances into account and would avoid having presently to determine benefits for a third year based largely on speculation as to conditions which may prevail in fiscal year 2013. Particularly in the event the wage recommendations made below are adopted, a shorter agreement would enable the parties to determine with greater precision what terms should prevail beyond 2012 in the event that a 2-year agreement is found to have produced conditions creating undue burdens or benefits for either party.

2. Wages

The parties agree that wages should be determined separately for each year of the proposed agreement. The Union seeks no wage increases for fiscal years 2011 and 2012, and an increase of 1% for 2013 if a 3-year contract is negotiated. The Employer seeks a 1.5% decrease for 2011 and no increase for 2012, with the 2011 decrease to be applied retroactively.

The Employer notes that as part of the concept of shared sacrifice which is included in its framework for dealing with the County's economic difficulties, it has consistently sought wage decreases among its employee groups of 2.5% for fiscal year 2010 and 1.5% for fiscal year 2011, and its Exhibit 552 indicates that at least five units have not only incurred the 1.5% decrease for 2011 but have done so retroactively with deductions made in the subsequent year in the even that wages had been paid in fiscal 2011 at a level which did not incorporate the 1.5% reduction. Testimony indicated that several units also incurred the requested 2.5% reduction for fiscal 2010, including the Corrections unit involved in this fact finding; the Union indicated that its "agreement" with the 2.5% reduction was reluctant, and was based on an earlier fact finding proceeding which had recommended the reduction in the context of increases for prior years. The employer's request in this fact finding that wages for 2011 include a 1.5% reduction is based in significant part on the desire to achieve consistency with what has been included in agreements with other County units not eligible for Act 312 arbitration.

As indicated in the earlier discussion of the Act 312 factor of external comparability, either party's wage proposal would maintain the relative position of the Corrections unit with respect to the agreed external comparables of Kent, Wayne and Macomb counties. Hence, other factors may be of more significance in determining an appropriate recommendation.

Upon consideration of the Act 312 factors, and in particular ability to pay and internal and external comparability, it is my recommendation that the Union's wage proposals be adopted. The rationale for this recommendation includes the following: (1) While acknowledging that the Corrections unit, unlike the Law Enforcement unit, is

not Act 312 eligible, the recent Act 312 award concerning the Law Enforcement unit nonetheless provides a recent an relevant internal comparable regarding wages which will apply for the 2011 fiscal year, and the 312 panel in that case awarded the 0% increase proposed by the Union rather than the 1.5% decrease proposed by the Employer, while also awarding the Employer's requested 2.5% decrease for 2010, a decrease which the Corrections unit has already incurred as a result of earlier proceedings; the recent Act 312 award concerning the Command unit tracked the conclusions of the Law Enforcement unit award. (2) To the extent that the Employer may view the maintenance of wages at existing levels for 2011 and 2012 as impeding its overall financial planning, it can take this into account in the negotiations which are anticipated will soon commence concerning years beyond 2012; in so doing, it will continue to have at its disposal, among other available tools, both the ability to raise taxes and the ability to impose layoffs beyond any which have already occurred. This is not of course to say that any of these approaches would be found to be in the interests of the parties or the public but only – as already discussed above in the context of the general discussion of ability to pay – that even in difficult economic times a degree of flexibility exists as to how economic problems are most appropriately addressed.

3. Retroactivity

Consistent with the foregoing recommendation concerning wages, it is unnecessary to consider at any length the legal or substantive positions of the parties concerning whether any recommended wage decrease should be retroactive, other than perhaps to note that neither of the recent Act 312 awards in the cases involving the Law Enforcement and Command units of the Sheriff's Department required that the wage

decreases contained in those awards be applied retroactively; in the Law Enforcement case, this conclusion was based not only on the perceived illegality of applying decreases retroactively but also on the merits.

4. Forensic Laboratory Specialized Wages

The Union requests that the Forensic Laboratory Specialists in the Corrections unit be paid at the same level as a Deputy II in the Law Enforcement unit, as had been the case prior to the severing of the Corrections and Law Enforcement units in 2007. The Employer argues that subsequent to the severing of the units, the Forensic Laboratory Specialists continued to be paid at a level at or exceeding the wage level of Deputies II in the Corrections unit, albeit Deputies II in the Corrections unit are paid at a lower rate than the 312-eligible Law Enforcement Deputies II, and that there is no justification for increasing the rate. The Union acknowledges that there is no external or internal comparable data which would lend support to its position, the historical justification notwithstanding. Section 9 of Act 312 suggests as a factor that the overall compensation of the involved employees be taken into account in making a recommendation, and particularly in light of the foregoing recommendation concerning general wage levels, I recommend that the Employer's position on this issue be adopted and that no additional wage increase be made available to the Forensic Laboratory Specialists despite the valuable services which the record indicates they perform.

5. Forensic Laboratory Specialist Vacancies

The Union requests that Corrections unit employees be given preference in filling vacancies in the position of Forensic Laboratory Specialists, while the Employer rejects this request based on its view that in light of the special skills often required of a

Forensic Laboratory Specialist concerning such matters as ability to testify competently, the Employer should be free to fill these positions from outside the unit with no obligation to provide unit members the first opportunity to apply. Neither party makes reference to any Section 9 factors which have particular relevance to resolution of this issue. Since the Union's proposal in no way precludes the Employer from hiring outside the unit if no qualified individuals are available within the unit, and since the Union's proposal appears to provide opportunity for advancement of unit employees with no cost and no significant detriment to the Employer's operations, it is my recommendation that the Union's proposal be adopted.

6. Defined Benefit Plan Multiplier

With regard to both this issue and the next, the Union seeks modifications to existing retirement plans. Prior to 1995, unit employees were covered by a defined benefit plan. In 1995, a defined contribution plan was created; this plan was the only plan available to new employees, and existing employees, while able to remain part of the defined benefit plan, were offered incentives in the form of employer contributions greater than those provided new employees if the existing employee moved to the defined contribution plan. For those Corrections employees who have remained within the defined benefit plan, the Union requests that the multiplier, which is now 2.5 for years of service beyond 14 and 2.2 for lesser years of service, be increased to 2.5 for all years. The Employer rejects any increase in the multiplier.

The Union's principal justification for its position is that an increase in the multiplier would shorten the time it would take for an employee to reach the cap of 75% of final average compensation, and would therefore enable employees to retire with

maximum benefits at an earlier age, a possibility regarded by the Union as appropriate for employees subject to the risks and hazards present in the work of the Corrections unit. The Employer argues that, in addition to its general financial constraints, the Union's proposal would cost $2.1 million, that neither internal nor external comparables support the Union's request, and that the Union's desire that unit employees be able to retire with maximum benefits at an earlier age does not justify the modification which the Union seeks.

Because of differences in the details of the retirement plans of Kent, Wayne and Macomb Counties, it is difficult to draw any conclusive support for either party's position through examination of external comparables. With regard to internal comparables, only the Command unit now appears to enjoy the 2.5% multiplier sought by the Union; the plan of the Employer's general employees has a multiplier ranging from 1.8 to 2.2%, and the recent Law Enforcement Act 312 award rejected a Union request comparable to that made by the Union in the present case. In light of these facts and also in light of the wage recommendations earlier made, I recommend that the position of the Employer be adopted regarding this issue.

7. Defined contribution plan contributions

The majority of employees participate in the Employer's defined contribution plan rather than its defined benefit plan. The respective Employer and employee contributions differ among various County employee groups: for Employees hired before 1995 who had been part of the defined benefit plan but who moved to the defined contribution plan, the respective contributions for Employer and employee are 12% and 5%; for general non-unionized County employees, the contributions are 8% and 3%; for

Law Enforcement unit members, the contributions are 10% and 3%; for Command unit members, the contributions are 10% and 5%, and for Corrections unit members, the contributions are 9% and 3%. The Union requests that the contribution levels for Correction employees be raised to 12% and 5%. While offering Wayne County as an external comparable arguably justifying this request, the details of the Wayne County plan are too dissimilar to offer significant support, and the basic justification for the Union's position is much the same as that offered in the case of the defined benefit plan: the provision of timely and adequate retirement benefits to employees at a time when economic conditions have rendered defined contribution plans far less valuable than they have been in the past. The Employer argues that it should not be required to bear the additional cost of the requested contributions, both because of its general economic circumstances and because the Union's requested increase would be inconsistent with relevant internal comparables.

It is my recommendation, based on evaluation of relevant comparables as well as on the wage recommendations earlier made, that the Employer's position on this issue is adopted.

8. Annual Leave Accumulation

The Union seeks to increase annual leave available to unit employees who have worked for 10 years by one additional day, and to increase annual leave available to employees who have worked in excess of 10 years by two additional days (in the latter case, from 18 leave days to 20). The Union notes that in addition to annual leave, employees also are entitled to additional leave for holidays, personal leave, and funerals and suggests that when leave periods of other comparable jurisdictions are

calculated, its employees have less available leave time than employees in the comparable counties. The Employer, in urging rejection of the Union's request, argues that the leave time available to Corrections unit employees is entirely consistent with that available to all other unionized and non-unionized employees of the County, that the data concerning leave in other counties is unhelpful because of the disparate leave elements involved, and that the projected $143,000 cost of the additional requested leave days is unjustified.

It is my recommendation, based principally on internal comparables data and the wage recommendations earlier made, that the Employer's position on this issue be adopted.

9. Compensatory Time

The Union requests that a compensatory time bank be created which may be used by employees as an alternative to overtime compensation, suggesting that compensatory time is available to Macomb County employees and has been used in Oakland County on occasion at the discretion of some supervisors. The Union characterizes its request as achievable on a no-cost basis, with employees being provided greater flexibility in dealing with overtime work. The Employer rejects the request as likely to create administrative difficulties and inconsistent with the County policy of not allowing compensatory time in lieu of overtime pay.

It is my recommendation, based principally on the absence of compelling reason to deviate from existing County policy and the potential for creation of unnecessary administrative burden, that the Employer's position on this issue be adopted.

10. Shift Differential

The Union requests that a 30¢ per hour shift differential be provided for unit employees working afternoon or midnight shifts for the reason that such a differential might encourage older workers with more seniority to work those shifts, thereby increasing the likelihood that younger workers would be able to work the more desirable day shift and have the opportunity to spend more time with their families later in the day. The Employer rejects this proposal on historical grounds as well as on the grounds that examination of internal and external comparables provide no justification for the added cost of providing such a differential.

County witness Tom Eaton testified that while dispatchers have long had, and continue to have, a shift differential, collective bargaining agreements negotiated in the 1980's provided, in exchange for the opportunity to bid on permanent shift assignments by seniority, that no differential would be provided for less desirable shift assignments. Eaton also indicated that while shift differentials are available in Wayne and Macomb Counties, they are unavailable in Kent County and no Oakland County position other than dispatcher enjoys a shift differential. He further expressed doubt that the shift differential requested by the Union was of sufficient magnitude to alter employee shift choices in any significant manner.

While the historical negotiations resulting in the absence of shift differential for any category but dispatcher do not provide a persuasive reason for rejecting the Union's proposal in the present case; the absence of compelling evidence based on internal or external comparables, as well as the wage recommendations earlier made, lead me to recommend that the position of the Employer be adopted on this issue.

11. Missed Overtime Opportunity

The Union requests that if a unit employee misses an opportunity for working overtime through no fault of his own, he be paid 2 hours' pay. The County, in urging rejection of this proposal, argues that the present system of providing employees who have missed overtime with the next available opportunity for overtime appears to have worked sufficiently well in practice that no grievance has ever been filed with regard to missed overtime. There appears to be no compelling reason for altering the present practice, and it is my recommendation that the Employer's position on this issue be adopted.

12. Overtime Eligibility

The Union requests that an employee be eligible for overtime pay for work in excess of 8 hours in any 24 hour period in which he has worked, or for which he has been paid, rather than the present system in which an employee is eligible for overtime only for hours in excess of hours actually worked. The Union argues that if overtime work were required on any particular day, the County would be required to pay this overtime to some employee, and there is no reason it should not be an employee who had been on paid leave on the day in question and then returned to work the required overtime. There is support in the record (Ex. 118) that the Union's approach is followed in Kent and Wayne Counties, although it has not been followed in Macomb and Oakland Counties.

It should be noted that the recent Law Enforcement Act 312 award adopts the Union position on this issue, based both on the likelihood that the Union's proposal will not increase the Employer's financial burdens and that some external comparables

follow an approach similar to that proposed by the Union. Thus, there is now some internal comparable support for the Union's position, and I recommend that it be adopted.

Date: 2/21/12

Jerold Lax, Fact Finder