2403

IN THE MATTER OF THE
ARBITRATION BETWEEN:

Oakland County and Oakland County Sheriff's Office

And MERC Case No. D09 G-0805

Oakland County Deputy Sheriff's Association
_____/

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

Opinion and Award

Arbitration Panel

Arbitrator/Chair
William E. Long

Employer Delegate:
Thomas Eaton, Deputy Director, Oakland Co. Human Resources

Union Delegate:
Bill Christensen, Oakland County Deputy Sheriff's Association President

Appearances

Malcolm D. Brown, Attorney
Oakland County and Oakland County Sheriff's Office

James Moore, Attorney
Oakland County Deputy Sheriff's Association

Date of Award: February 9, 2012

INTRODUCTION

The Oakland County Deputy Sheriff's Association (referred to as the Association or Union) is recognized as the exclusive representative for collective bargaining for all Deputies in the Law Enforcement Group of the Oakland County Sheriff's Office. The services provided by members of this bargaining unit include: patrol, investigative and forensic services, emergency response, communication including dispatch, aviation, canine, marine, traffic, and parks. A major percentage of the patrol and communications unit staff provides services to municipalities within the County through contracts between the County and those municipalities, including the cities of Pontiac and Rochester Hills (E 504). The contract communities pay the County for services provided. The County does not subsidize the services provided to the municipalities. Including the City of Pontiac, there are 390 Deputies and Communications staff in the Law Enforcement Division, 312 of which (80%) are paid for by the contract municipalities, leaving 78 staff not funded by the contract communities (E 508). New Deputies entering this unit are generally hired from the Corrections and Court Services group and Deputies in this unit generally seek and achieve promotions out of this Unit to fill vacancies in the Command unit.

The parties entered into a Collective Bargaining Agreement (CBA) for the period October 1, 2003 through September 30, 2009 (J-4).[*1] The parties began negotiating a successor agreement prior to the expiration of the October 1, 2003 – September 30, 2009 CBA, but negotiation sessions resulted in no settlement. The Employer petitioned for Act 312 Arbitration on October 14, 2010 (J-1). As required by Section 13 of Act 312, unless otherwise agreed to by the parties, the 2003-2009 agreement has continued in effect. This impartial Arbitrator was appointed by MERC March 22, 2011.

A pre-hearing conference was held April 21, 2011. The Association chose Bill Christensen as its Arbitration Panel Delegate. The Employer chose Tom Eaton as its Panel Delegate. During the pre-hearing conference, the parties agreed to waive the time limits in Section 6 of Act 312 and stipulated that the external comparables would be the same as in the most recent Act 312 case between the parties. Those external comparables are the Counties of Kent, Macomb and Wayne. The parties stipulated that the selection of these Counties as comparables for this hearing would set no precedent for any future case.

[*1] Throughout this Opinion references will be made to Exhibits as (Exhibit J, U, E #, pg #) and Transcripts as (Tr. #, pg#).

During the pre-hearing conference a schedule was set for exchange of issues, exhibits and witness lists and a schedule for hearing dates. The number of hearing dates originally scheduled was reduced and revised somewhat, but hearings were held on June 20, August 18, August 19 and October 18, 2011. The County was represented by Attorney Malcolm D. Brown. The Association was represented by Attorney James Moore. The record consists of 715 pages in 4 volumes. One hundred thirty-eight (138) Exhibits were accepted into the record, 16 Joint Exhibits, 35 Association Exhibits and 87 Employer Exhibits. Last offers of settlement were submitted by the parties on November 8, 2011 and post-hearing briefs, at the request of and stipulation of the parties for extensions, were submitted January 12, 2012. A post hearing conference of the Panel was held January 30, 2012. The Panel delegates have placed their signatures on each specific Award in support of or in opposition to the finding and award on each issue and have also placed their signatures at the conclusion of the Award along with the signature of the Independent Arbitrator to represent that there is a majority on each issue presented.

ORGANIZATION OF OPINION

The Opinion first discusses the procedural issues that have been raised by the parties. Next is an identification of the economic issues presented to the Panel followed by the statutory criteria to be applied and then the Panel's findings and opinion on the comparables. The ability to pay is then addressed under the economic issues heading followed by each of the issues presented to the Panel for decision. It has been determined that all of the issues presented to the Panel for consideration are economic issues (Tr 4, pg 712).

Several issues that were initially identified as issues in dispute were resolved, withdrawn, or stipulated to by the parties. They will not be addressed in this Opinion and Order. Issues which the parties reached agreement on through negotiation or a stipulated agreement will be incorporated into the new agreement. In addition to those issues agreed to by the parties during this proceeding, contract provisions not before the Panel for determination that are in the current collective bargaining agreement will be advanced into the new agreement the same as under the old agreement.

PROCEDURAL ISSUES

During the course of these proceedings, two acts were passed by the Michigan Legislature, one amending Act 312 and one amending PERA, and an unfair labor practice complaint was filed by the OCDSA against the County.

After this case was filed, Act 312 was amended by P.A. 116 of 2011, which took effect July 20, 2011 (J-14). Because this case was initiated with the Michigan Employment Relations Commission (MERC) on October 14, 2010, but has yet to be concluded, the question arises as to whether the Panel should apply the provisions of Act 312 as amended by Act 116 in July of 2011 or whether the Panel should apply the provisions of Act 312 that were in effect when the case was initiated.

Among the provisions that were modified by P.A. 116 of 2011 were amendments to Section 9 of Act 312 to more clearly describe the factors, which the Panel is required to consider when making its determination of the ability of the unit of government to pay. Three of those modifications were to require the Panel to consider: (i) the financial impact on the community of any award made by the Arbitration Panel, (iii) all liabilities, whether or not they appear on the balance sheet of the unit of government, and (e) comparison of the wages, hours and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.

P.A. 116 of 2011 also added new language setting forth the weight to be given the various factors listed in Section 9 by specifying the following: "(2) The Arbitration Panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence."

During the course of the proceeding the Panel was made aware of the party's differences of opinion on the applicability of Act 116 to this case (Tr. 2, Pgs 236-237). The Employer took the position that Act 116 should apply to this case and the Union took the opposite position. It was agreed that the parties would present their arguments in support of their respective positions in their post hearing briefs.

On June 8, 2011, P.A. 54 of 2011 was enacted which amended PERA by adding a new section 15b. Among the provisions of the new section 15b were:

> "(2) Except as provided in subsection (3), the parties to a collective bargaining agreement shall not agree to, and an Arbitration Panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement.
> (3) For a collective bargaining agreement that expired before the effective date of this section, the requirements of this section apply to limit wages

and benefits to the levels and amounts in effect on the effective date of this section.

(4) As used in this section:

(a) "Expiration date" means the expiration date set forth in a collective bargaining agreement without regard to any agreement of the parties to extend or honor the collective bargaining agreement during the pending negotiations for a successor collective bargaining agreement."

On July 21, 2011, the Union filed an unfair labor practice at MERC against the Employer asserting that the Employer's proposal for retroactive wage decreases for FY 2010 and FY 2011 violated PERA because they were a non-mandatory subject of bargaining and, therefore, an unfair labor practice. The parties advised this Arbitrator that in September 2011 they conducted a phone conference between the parties and the MERC Administrative Law Judge assigned to address this ULP charge. It was agreed during that phone conference that the issue would be determined by a Motion for Summary Judgment to be filed by the Employer. The matter is still pending.

At the January 30, 2012 post-hearing meeting with the Arbitrator, Panel members and attorney representatives, the Employer's Attorney raised the issue of whether the subject matter of the ULP complaint (i.e. were retroactive wage decreases a mandatory subject of bargaining) would be addressed by this Panel. He noted that he had not addressed the issue in his brief but the Attorney for the Union had addressed it in the Union's brief. He said he had not addressed it in the Employer's post hearing brief because of the following statement made by the Union's attorney at the August 18, 2011 hearing:

> "And although I don't recall if this has already been placed on the record, it's the position of the Association that a request for a retroactive wage reduction is a non-mandatory subject of bargaining. And that is currently the subject of an unfair labor practice preceding that's before MERC and scheduled for an Administrative Law Judge hearing I believe on the 6th of October. That's an issue, we believe, for MERC to decide." (Tr 2, pg 269).

The Attorney for the Association stated that his statement in August was not intended that this Panel be precluded from addressing it and felt that, while MERC might be a "higher authority," it would be valuable that this Panel address the issue raised in the ULP Complaint. He noted that the Employer's retroactive wage reduction proposals are directly related to the question of the applicability of the recent amendments to PERA. The Employer objected[1] to this Panel addressing the issues involving recent amendments to PERA and the ULP issues, i.e. the issue now pending

[1] The Employer also asserted that filing the ULP Complaint at MERC constituted a waiver or election of remedies/forums.

at MERC, but indicated that if the Panel decided to address those issues, the Panel should accept the Employer's supplemental brief addressing the issue concerning retroactive wage proposals which he had prepared and was ready to provide to the Panel. The Association attorney objected to having the Employer's supplemental brief received by the Panel at this point in the proceeding.

Following thorough discussion the Panel majority decided it would address the issues raised in the ULP issue before MERC, which is whether retroactive wage decreases are or are not a non-mandatory subject of bargaining as a result of the recent amendments to PERA or otherwise and, therefore, within or not within this Panel's jurisdiction. The Panel majority also determined it was appropriate to address the relevance of the PERA amendments to this case because it would result in more efficient administrative process. It is unknown how MERC might rule on the matter before it. But regardless of how MERC rules, having this Panel clarify its position and rule on the Employer's proposal for retroactive wage and benefit decreases, may avoid having to later return this issue to this Panel for a decision. The Employer objects to the Panel addressing this issue.

Having decided to address the issue relative to the PERA amendments and whether a retroactive wage decrease was a mandatory subject of bargaining, the Panel, over the objection of the Association attorney, accepted the Employer's supplemental brief addressing the issue concerning retroactive wage proposals. The Panel accepted the supplemental brief in part because it believed, based on the statement of the Association attorney during the August 18, 2011 hearing cited above, it was not unreasonable to assume the issue would not be considered by the Panel and, therefore, not addressed by the attorney for the Employer in the Employer's post hearing brief. Also, the Panel felt accepting it would provide the Panel with a more balanced record putting forth the respective party's positions and result in a more informed decision. The Panel did not feel allowing the Employer the opportunity to submit its position and arguments on the issue after it had the opportunity to receive the Association's post hearing brief provided a substantial advantage to the Employer, or substantially deprived the Association from advancing its best arguments, as it did, in its post hearing brief.

Therefore, the Panel will address the positions put forth by the parties on these issues and reach a decision and finding.

EMPLOYER POSITION ON AMENDMENTS TO ACT 312

With respect to the amendments to Act 312, the Employer's position is that the procedural changes made in Act 312 by P.A. 116 of 2011 should not apply to this proceeding because many of the changes in procedure made by P.A. 116 could not be followed because the time to take these steps in this case occurred long ago. However, the Employer argues that the substantive portions of P.A. 116 of 2011 should apply to this proceeding and the Panel should base its Opinion and Order on the factors as enumerated in Section 9 of Act 312 as specified in P.A. 116 of 2011. The Employer, in its post hearing brief, cites several Michigan Court cases and rules of construction to support its position that the substantive provisions of P.A. 116 of 2011 should be applied retrospectively. The Employer refers to *In re Certified Questions (Karl v Bryant Air Conditioning Co.)*, 416 Mich 558, 570-71; 331 NW2d 456 (1982) and says "Of significance to the retroactive application of Act 116 is the rule that 'a remedial or procedural act which does not destroy a vested right will be given effect where the injury or claim is antecedent to the enactment of the statute.'" The Employer cites a holding in *Selk v Detroit Plastic Products*, 419 Mich 1, 9; 345 NW2d 184 (1984) which held that remedial statutes, which "operate in furtherance of a remedy already existing and which neither create new rights nor destroy existing rights, are held to operate retrospectively."

The Employer argues that these cases support its position that the proper application of the rule of construction compels the Panel to determine that the amendment to Section 9, which only enumerates factors to be considered in furtherance of an already-existing remedy, is remedial in nature and should therefore be applied retrospectively. The Employer says this conclusion is also consistent with general rules of statutory construction recognized in Michigan, including the rule that "an act amending a specific act will be applied retroactively." *Selk*, 419 Mich at 10 (citing *Rookledge v Garwood*, 340 Mich 444; 65NW2d 785 (1954). The Employer says no vested rights are either created or eliminated by Act 116 because Act 116 provisions only address factors upon which the Panel must base its findings, opinions and orders. As such, it operates only in furtherance of existing remedies and rights and, therefore, Act 116 amendments to the factors to be considered by this Panel should be applied to this arbitration.

UNION POSITION ON AMENDMENTS TO ACT 312

The Union's position is that the amendments to Act 312 that were contained in P.A. 116 of 2011 should not apply to this proceeding and the Employer's arguments that

they should apply should be rejected. The Union first notes, in support of its position, that this Arbitrator stated on the record during the hearing held October 18, 2011, that in discussions with MERC staff it was decided that because the petition in this case had been filed prior to the effective date of the amendments, the Panel would treat this proceeding under the Act that was in effect when the case was filed and, therefore, the amendments to Act 312 would not apply to this case (Tr 4, pg 496).

The Union says the new law changing the factors involving how the Panel would decide the ability to pay took effect July 20, 2011, long after the petition was filed in this case. The Union says that it is noteworthy that after the enactment of either P.A. 116 of 2011 neither party made any effort to apply other amendments to Act 312 embodied in P.A. 116 of 2011, such as those dealing with the timing of certain procedural matters.

Just as the Employer did in its post hearing brief, the Union cited several Michigan court cases in support of its position. It cited *Karl v Bryant Air Conditioning*, 416 Mich 558, 570-571 (1982) in which the Court identified four "rules" when determining whether the presumption of prospective application should not be applied. The Court described the rules as (1) whether "there [is] specific language in the new act which states that it should be given retrospective or prospective application;" (2) "[a] statute is not regarded as operating retrospectively [solely] because it relates to an antecedent event; (3) "retrospective application of a law is improper where the law takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past;" and (4) "a remedial or procedural act which does not destroy a vested right will be given effect where the injury or claim is antecedent to the enactment of the statute."

The Union says rules (3) and (4) apply to this case. The Union says that applying the revised Section 9 factors impairs the rights of the Union members, as they existed at the time of the filing of the petition. It says the Union now has an arguably greater burden to overcome because of the change in the factors the Panel must consider when addressing the issue of ability to pay. The Union says in this case, the Union's right to rely on the factors in Section 9 and the weight given those factors when the case was filed would be arguably impaired – and a new obligation created – if the Panel were to apply the revised factors enacted in P.A. 116 of 2011.

The Union notes, with respect to the fourth rule, that the Employer has taken the position those portions of P.A. 116 of 2011 involving procedural matters need not be given retroactive effect but selected substantive changes – notably "ability to pay"

should be applied retroactively. The Union says not only was the petition filed prior to the effective date of P.A. 116 of 2011 but a substantial part of the "claim" – the terms and conditions of the CBA, predate the enactment of P.A. 116 of 2011. The Union says retroactive application of P.A. 116 of 2011 would diminish the substantive rights of the Union that existed when the "claims" at issue were asserted.

DISCUSSION AND FINDINGS

Discussion

The attorneys representing the parties have made vigorous arguments on behalf of their clients in defense of their positions on these procedural issues. Both have cited court cases and statutes to support their positions. One of the more striking differences in their positions is whether applying the provisions of P.A. 116 of 2011, and in particular the revisions to the factors the Panel must consider relative to the factor of ability to pay, would "take away any vested rights" of the Union. The Employer's position is that it would not. The Union's position is that it would. The Employer says the amendments in P.A. 116 of 2011 only operate in furtherance of existing remedies and rights and do not take away any rights. The Union says that it had the right to rely on the provisions of the statute when the case was filed with MERC and the Panel application of changed factors enacted in P.A. 116 of 2011 relative to the ability to pay would take away or impair that vested right under the law in effect when the case was filed with MERC.

The Panel majority is of the opinion that the Union has a stronger argument in support of its position. A review of the procedure and progress of this case reveals the following:

10/14/2010 – the petition is filed with MERC (J-1)
03/22/2011 – Arbitrator appointed
04/21/2011 – pre-hearing conference held, parties stipulate to comparables and agree on a schedule
05/27/2011 – parties exchange the issues each proposes to present to the Panel
06/07/2011 – parties exchange proposed exhibits and witness lists pertaining to the issues involving Section 9(c), "The interests and welfare of the public and the financial ability of the unit of government to meet those costs."
06/20/2011 – first day of hearing with testimony and exhibits focusing on ability to pay
07/20/2011 – effective date of enactment of P.A. 116 of 2011, amendments to Act 312.

The Panel majority believes that both parties, but particularly the Union, may have prepared differently and made different decisions on the comparable communities and may have chosen different exhibits and witnesses for the hearing on 06/20/2011

had they known the Panel would be considering the ability to pay based on the provisions of P.A. 116 of 2011. The Employer's view that the provisions of P.A. 116 of 2011 only operate in furtherance of existing remedies and rights and do not take away any rights is difficult to accept. Both parties would be deprived of the right to adequately prepare their respective cases on the issues, particularly involving ability to pay, if the Panel were to consider the ability to pay based on the factors enacted in P.A. 116 of 2011. The parties' inability to adequately prepare could impact the Panel's decisions on the issues and in so doing potentially take away a vested right of the parties.

Findings

For the above stated reasons, the Panel majority finds that the Panel will consider the Section 9 factors contained in Act 312 of 1969, as they existed prior to the amendments enacted in P.A. 116 of 2011.

Employer: Agree_____ Disagree DE

Union: Agree WE Disagree_____

EMPLOYER POSITION ON AMENDMENTS TO PERA

With respect to the amendments to PERA, the Employer's position is that the provisions in subsections (2) and (3) of P.A. 54 of 2011 do not prohibit the Panel from *reducing* (emphasis added) wages and benefits retroactively as proposed by the Employer, in issues 2, 3, and 7, because the provisions only prohibit retroactive increases.

The Employer argues that the Employer's position on wage rate reductions of 2.5% effective October 1, 2009 and a 1.5% reduction effective October 1, 2010 was clear from the beginning of negotiations and without the ability to make retroactive wage reductions the Employer has no way to regain labor cost savings for these two years. The Employer says it is not proposing to make wage reductions effective prior to the effective date of the October 1, 2003 to September 30, 2009 agreement. Its proposals only seek wage and benefit reductions beginning at the start date of the new collective bargaining agreement, which is the subject of this proceeding.

With regard to the Association's position on the issue, the Employer says the Association's theory of a violation of PERA is a misreading of NLRB case law and incorrectly applies Act 312. The Association position is that employees have already worked and been paid for the period in question and the Employer's demands to

modify contractual rights that have already accrued are a non-mandatory subject of bargaining. The Employer says under NLRB case law, it is only a non-mandatory subject of bargaining for an employer to seek modification of wages, benefits, or other employee entitlements, *which have already been agreed to and settled in a finalized collective bargaining agreement* (emphasis added). The Employer says that is not the situation here because the Employer does not seek wage reductions for a time period covered by the prior collective bargaining agreement, which is the only agreement settled and finalized in a collective bargaining agreement. The Employer says the parties in this case are bargaining a new collective bargaining agreement and the Employer has the same right to negotiate and demand retroactive wage decreases as unions had the right (prior to enactment of P.A. 54 of 2011) to negotiate retroactive increases. In essence the Employer is saying that the wages paid to Association members for FY 2010 and FY 2011, after the expiration of the previous contract, have not yet "accrued" to the employees and, therefore, are mandatory and not permissive subjects of bargaining. Moreover, the Employer argues, while the recent enactment of P.A. 54 of 2011 prohibits an Act 312 Panel from ordering a retroactive wage increase, there is no limitation on it being able to award a retroactive decrease.

The Employer argues that the NLRB has held that wages and benefits that have already accrued *under the terms of collective bargaining agreement* (emphasis added) are a non-mandatory subject of bargaining, but the clear basis for this principle is that a party cannot be required to bargain over monies that have *already* (emphasis added) been the subject of the agreement. The Employer sites a NLRB decision in *R.E.Dietz*, 311 NLRB 1259 (1993) that states:

> "In *Harvstone Mfg. Co.*, 272 NLRB 939 (1984) ... the Board held that the term "wages, hours and terms and conditions of employment" as used in Section 8(d) of the Act refers only to future wages and conditions, not to past wages which have already accrued and which are due and owing. *The latter sums are debts arising out of contracts already concluded, so any effort to go back and renegotiate settled deals is a non-mandatory subject of bargaining.* 311 NLRB 1266, (emphasis added).

The Employer says it is not seeking a reduction in wages for "contracts already concluded;" rather it is proposing that any <u>new</u> contract pay employees a reduced wage rate from its effective date. The Employer says once a collective bargaining agreement expires, wage rates for any portion of a new contract are a mandatory subject of bargaining. Therefore, the Employer does not violate PERA by seeking a wage

reduction retroactive to the start date of the new contract. The Employer says its proposals are consistent with P.A. 54 of 2011, which provided that:

> "The parties to a collective bargaining agreement shall not agree to, and an Arbitration Panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect at the expiration date of the collective bargaining agreement" (J-15).

The Employer says the Legislature's use of the term "greater" is unambiguous and obvious; parties are prohibited from agreeing to, and an Act 312 Panel is prohibited from awarding retroactive wage increases for any part of a contract hiatus period, but there is nothing in the statute that prohibits decreases after contract expiration. If the Legislature had intended such a result, the Employer argues, it would have included that language.

UNION POSITION ON AMENDMENTS TO PERA

With respect to the amendments to PERA, the Union's position is that the provisions in subsections (2) and (3) of P.A. 54 of 2011 do not impact the fact that the Panel is prohibited from reducing wages and benefits retroactively as proposed by the Employer. The Union states that retroactive wage reductions are outside the jurisdiction of this Panel because it is a permissive subject of bargaining and would be a violation of PERA. The Union also notes that this issue of the applicability of the P.A. 54 of 2011 amendments relative to proposed wage and benefit reductions is presently before MERC and it would be unwise for the Panel to award retroactive wage reductions when there is the possibility that a future decision by MERC or some other body may find it to be in violation of PERA. The Union also notes that Section 10 of Act 312 (MCL 423.240) states, *"Increases* in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, *any other statute or charter provisions to the contrary notwithstanding"* (emphasis added). The Union says this very specific language in Act 312 states that only *increases* (emphasis added) in wages and benefits can be awarded retroactively, not decreases.

The Union cites several NLRB decisions that held that "wages, hours and terms and conditions of employment" refers to *future* (emphasis added) wages and benefits. In other words, the Association's view is that retroactive wages and other benefits are a permissive and, therefore, a non-mandatory subject of bargaining. And Michigan law does not provide an Act 312 Panel with jurisdiction to consider non-mandatory subjects of bargaining.

The Union says nothing in P.A. 54 of 2011 requires a conclusion that retroactive wage reductions are now a mandatory subject of bargaining. P.A. 54 of 2011 does not amend Act 312. The Union acknowledges that subsection (2) of P.A. 54 of 2011 may be interpreted to prohibit retroactive increases but it points out that that language is an amendment to PERA, not Act 312.

Discussion and Findings

Much of the Employer's position is based on its view that the Panel is not precluded from ruling on the issue of retroactive wages by PERA or NLRB case law because benefits have not accrued to the Employees in this situation. The Employer's position is that the previous contract expired September 30, 2009. Therefore, the Employer says, the money the Employer now proposes to take back from the employees from the money it has paid the employees during FY 2010 and FY 2011 has not accrued to the employees. Upon a closer examination of the language of Section 15b of PERA, which was added to PERA in P.A. 54 of 2011, the Panel disagrees with the Employer's position. The pertinent language in P.A. 54 of 2011 is:

> "(2) *Except as provided in subsection (3),* the parties to a collective bargaining agreement shall not agree to, and an Arbitration Panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement.
> (3) *For a collective bargaining agreement that expired before the effective date of this section, the requirements of this section apply to limit wages and benefits to the levels and amounts in effect on the effective date of this section.*
> (4) As used in this section:
> (a) "Expiration date" means the expiration date set forth in a collective bargaining agreement without regard to any agreement of the parties to extend or honor the collective bargaining agreement during the pending negotiations for a successor collective bargaining agreement" (emphasis added).

The collective bargaining agreement in this proceeding that was in effect for the period October 1, 2003 to September 30, 2009 includes the statement that, "This agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph" (J-4, pg 31). There was no evidence presented in this proceeding that either party took the prescribed action to terminate the agreement. However, the provision of subsection (4)(a) of P.A. 54 of 2011 would appear to negate the agreement between the parties to have the CBA for the period October 1, 2003 to September 30, 2009 remain in effect during the period of negotiations. This would support the Employer's position that the agreement did expire on

September 30, 2009 and, therefore, the benefits they seek from the employees had not accrued to the employees, but instead were subject to the negotiations after the contract had expired.

However, the Employer overlooks the language in subsection (2) which states: *"Except as provided in subsection (3),"* etc.

Subsection (3) applies in this case. The collective bargaining agreement, using the definition of expiration date in subsection 4(a), expired before the effective date of P.A. 54 of 2011. Subsection (3) states:

> *"For a collective bargaining agreement that expired before the effective date of this section the requirements of this section apply to limit wages and benefits to the levels and amounts in effect on the effective date of this section."*

The majority of the Panel believes the language in subsection (3) limits the Employer from changing wages and benefits in effect on or before the effective date of that section, i.e. July 7, 2011. Therefore, the Employer's proposals to change wages beginning October 1, 2010 and October 1, 2011 cannot be ordered by this Panel. Subsection (3) of P.A. 54 of 2011 prohibits a change in wages and benefits from those in effect in the prior CBA until at least July 7, 2011 at the earliest.

There remains the question of whether PERA prohibits the Panel from ruling on the issue because it is a permissive subject of bargaining. The majority of the Panel interprets the language in P.A. 54 of 2011, *when read only in the context of P.A. 54 of 2011,* (emphasis added) to not preclude the Employer from seeking an order from an Act 312 Panel to decrease wages and benefits provided it does so within the appropriate time period allowed by the statute as discussed above. This interpretation is based on the language in P.A. 54 of 2011 which states "(2) *Except as provided in subsection (3),* the parties to a collective bargaining agreement shall not agree to, and an Arbitration Panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement. The fact that the language specifies "amounts that are greater than," but does not include language prohibiting an Arbitration Panel from ordering amounts that are "lesser than" those in effect on the expiration date of the collective bargaining agreement, is interpreted to mean the Legislature did not intend that same limitation on the ability to order lesser amounts.

However, the Panel majority agrees with the Association's position that the language in P.A. 54 of 2011 should be interpreted and applied in the context of language in Section 10 of Act 312 and cannot be interpreted only in the context of P.A. 54 of 2011.

As noted by the Association, Section 10 of Act 312 (MCL 423.240) states, *"Increases* in rates of compensation or other benefits may be awarded retroactively to the commencement of any period(s) in dispute, *any other statute or charter provisions to the contrary notwithstanding"* (emphasis added). The Union says this very specific language in Act 312 states that only *increases* (emphasis added) in wages and benefits can be awarded retroactively, not decreases. Because of the specificity of the language in Section 10 of Act 312 which refers to increases only, and not decreases, the Panel majority interprets this to mean the Legislature did not intend to permit decreases in rates of compensation or other benefits to be awarded retroactively. And because it states this language takes precedence over *"any other statute or charter provisions to the contrary notwithstanding."* And because P.A. 54 of 2011 is an amendment to PERA, and not Act 312, the majority of the Panel finds that decreases in rates of compensation or other benefits may not be awarded retroactively to the commencement of any period(s) in dispute. That is what the Employer is asking the Panel to do in this case. The Panel is of the opinion that it is not authorized to do that.

As to the determination of issues involving retroactivity of wage and benefit decreases as a result of enactment of P.A. 54 of 2011, the Panel majority finds that it is not authorized to do that pursuant to Act 312 of 1969.

Employer: Agree_____ Disagree JE

Union: Agree WE Disagree_____

ECONOMIC ISSUES

The economic issues are listed below in the order in which they will be addressed in this Opinion and Order.

Issue	Article	Description
1.	XXVI	Duration, pg. 23
2.	Appendix A-1	Wages, pg. 23
3.	Appendix A-1	Retroactivity of Wages, pg. 28
4.	Appendix B – II	Employee Health Care Premium Contribution, pg. 30
5.	Appendix B-II-A	Elimination of HAP as Healthcare Choice for new hires, pg. 33
6.	XXII	Retiree Healthcare Savings Account for new hires, pg. 35
7.	Appendix B-I	Elimination of Employer Contribution to 457 Plan, pg. 38
8.	XXI	Defined Benefit Multiplier, pg. 42
9.	XXII	Defined Contribution Plan – Employer Contribution, pg. 46
10.	New Article	Annual Leave Accumulation, pg. 48

11.	New Article	Compensatory Time, pg. 50
12.	New Article	Shift Differential, pg. 53
13.	XIX	Missed Overtime Procedure, pg. 55
14.	XIX	Overtime Eligibility (time worked v time paid), pg. 57

STATUTORY CRITERIA

When considering the economic issues in this proceeding, the Panel was guided by Section 8 of Act 312. The section provides that "as to each economic issue, the Arbitration Panel shall adopt the last offer of settlement which, in the opinion of the Arbitration Panel, more nearly complies with the applicable factors prescribed in Section 9."

The applicable factors to be considered as set forth in Section 9 are 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 pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

COMPARABLE COMMUNITIES

Section 9(d) of Act 312 directs the Panel to consider a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services, and with other employees generally in public and private employment in comparable communities. As noted in the introduction, the parties have stipulated that the Counties of Wayne, Kent and Macomb be considered as comparable communities in this case.

Therefore, the Panel chooses the following communities as comparable to the County of Oakland in this proceeding: the Counties of Wayne, Kent and Macomb.

Employer: Agree VE _____ Disagree _____

Union: Agree VE _____ Disagree _____

ECONOMIC ISSUES

ABILITY TO PAY

Employer Position

The Employer's position on ability to pay was supported by the testimony of David Hieber, Manager of the Employer's Equalization Department, Tim Soave, Manager of the Fiscal Services Division within the Department of Management and Budget, and Robert Daddow, Deputy County Executive.

Employer witness Hieber's testimony focused on property values and the taxable value of properties. His testimony revealed what nearly everyone in Michigan and the Nation knows; property values have declined significantly over the past few years, which have meant a corresponding decline in the taxable value of property and a resultant decline in revenue for local governments. He stated that property tax is the County's largest revenue source and that 69% of the County's taxable value is based on residential property (E 510, pg 7). Employer Exhibit (E 512) displays actual and projected percentage changes in assessed and taxable values for the period 2001-2014. (E-512) demonstrates that between 2001–2007 changes in property values and taxable values increased each year within the County, but beginning 2008 through 2011 property values and taxable values have declined each year and it is projected that they will continue to decline, although at a lesser percentage each year, for the years 2012 through 2014. The percentage decline in taxable value was the greatest in 2010 at 11.75% followed by 2011 at 7.78%. Employer exhibit (E 519) shows the decline in real property taxable value in the municipalities that contract for services from the County which reveals declines in taxable values in those communities between 2007–2011 ranging from 12% to 50% and a projected higher percentage decline between 2007 and 2012 (E 519).

Mr. Hieber testified on June 20, 2011 and October 18, 2011 during which he spoke to his method of estimating projected taxable values for the years 2012 through 2014 and what those projections are. In June he estimated the taxable values would decline 3% in 2012; 1% in 2013; and 0% in 2014. His testimony October 18, 2011 referred to an updated Employer (E 511), which displays changes in taxable value years from 2011 to 2012. He said, based on additional data for the period October 1, 2010 through June 30, 2011, the estimated decline in taxable value from 2011 to 2012 would be 3.69% as shown on the updated (E 511) and that he would estimate that when the last quarter data was factored in it would be a 3.5% decline from 2011 to 2012 (Tr 4, pg 503).

Witness Hieber also testified that the data on foreclosures revealed the County has had, and it is projected will continue to have, high levels of foreclosures (E 515) (Tr 1, pgs 92, 93). Mr. Hieber testified that in addition to the projected slow recovery of the housing market and, therefore, the slow growth in taxable value; the provisions of the Headlee Amendment and Proposal A have the affect of limiting increases in taxable value and tax revenue.

Employer witness Tim Soave reviewed the County's budget and what actions it has taken and its plans to continue to balance its budget in light of declining revenues. He noted that total property tax revenue decreased from $260 million in FY 2008 to $204 million in FY 2011 and decreased as a percentage of total County revenue from 62% to 50% over that same time period. Testimony of both Employer witness Hieber and Soave indicated in addition to these lower revenues, it was not expected that State or Federal funds to the County would be increasing, and more likely be decreasing for the near future. Mr. Soave spoke to Employer Exhibit (E 533), which describes the County General Fund/General Purpose Revenue History. He noted that intergovernmental/revenue sharing had remained rather stable on this chart, but it was due to the way the state, in 2005 or 2006, changed the timing for collection of taxes by the Counties. The Counties, in effect, collected four years of property taxes in three years. That permitted the County to collect approximately $220 million more in taxes that year. But the state required counties to establish a "revenue sharing reserve fund" with those additional funds and the state specifies how much can be drawn from that reserve fund each year. The County draws out an amount each year roughly equal to what the state revenue sharing would have been, approximately $20 to $21 million dollars, which goes into the general fund for operations. Mr. Soave said the Oakland County revenue sharing reserve fund is expected to be totally withdrawn in 2015 (Tr 1, pgs 208,209).

Mr. Soave referred to Employer Exhibit (E 538), which described the comparison of the County's GF/GP revenues and expenditures for the period 2003 to 2010 and estimates for 2011 through 2014. This chart reveals that GF/GP revenues exceeded expenditures slightly in 2003, 2009, and 2010; expenditures exceeded revenues in 2004 through 2008 and expenditures are projected to slightly exceed revenues for the years 2011 through 2014 (E 538). Mr. Soave pointed out that the budget is balanced each year that expenditures exceed revenue by drawing from the fund balance (Tr 1, pg 216).

Mr. Soave described (E 537) as a history of expenditures broken down by two main sources, personnel and "basically everything else" related to operating expenses

(Tr 1, pg 215). (E 537) shows amounts from 2003 through 2010, an estimated amount for 2011, and a projected amount for 2012 through 2014. The expenditures for both personnel and everything else declined from 2008 to 2010. However, the expenditures for non-personnel increased from 2010 to the proposed budget for 2011 and are estimated to increase each year for 2012 through 2014, whereas the personnel expenditures are projected to decline from 2010 to 2011, remain about the same from 2011 to 2012, and increase by about 1% (the same as the percentage increase for the non-personnel expenditures) from 2013 to 2014 (E 537).

Mr. Soave testified to the Employer's actions to reduce expenditures. He referred to (E 542) which lists a number of reductions related to personnel and non-personnel expenditures. He said 175 full time positions were deleted, many of which were vacant positions, but probably also including some layoffs. Wage reductions of 2.5% in FY 2010 and another 1.5% in FY 2011 were imposed on all employees except those in bargaining units that fall within Act 312 – such as this one. Employees outside of the Act 312 bargaining units were required to increase medical contributions and a hiring freeze has been imposed on all full time positions (Tr 1, pg 219). Mr. Soave said the hiring freeze was not imposed on those working in 24/7 operations because they are dealing with public safety, but that the Sheriff has held positions vacant because his budget assumed that all employees would take the wage reductions. So, in order to compensate positions have been held vacant.

County witness Daddow reviewed (E 522) which was a summary of Federal, State and Regional fiscal affairs that he said has and will have an impact on the County's fiscal situation. Materials presented in (E 522) and Mr. Daddow's testimony revealed, in short, that Oakland County cannot expect the federal government or the state to assist in addressing the declining revenues available to the County. He observed that the state has only minimally addressed its long-term financial pension and retiree health care obligations and the federal deficit has not been addressed as a result of the gridlock at the federal level. He observed that the economy cannot improve until the unemployment rate goes down and that Oakland County had a net decrease in jobs of approximately 115,695 jobs for the period 2002 through 2010 (E 522, pg 8).

Mr. Daddow said the County has developed a comprehensive plan to permit the County to maintain its sound fiscal position while it restructures itself to operate within anticipated reduced revenues for the next several years. The personnel implications of that plan are summarized on (E 522, pg 22). They are: a) hiring freeze and restructuring operations, b) filling vacant positions with part time employees who would not be

eligible for fringe benefits, c) restructure compensation packages. The non-personnel measures would include: d) increasing the County's equity to finance restructuring, and e) no capital improvements without a high return. The basic approach is to put in place structural changes early that permits the County to adjust to financial realities incrementally over the next three to four years in an attempt to minimize disruption in services. The strategic budget plan described in (E-539) would provide for an equity balance ending September 30, 2011 of $148 million; ending September 30, 2012 of $134 ending September 30, 2013 of $89 million and September 30, 2014 of $85 million. The plan is designed to bring the County's operational costs in line with the revenue the County expects to receive in FY 2014 and subsequent years. The plan is also designed to require "shared sacrifice" from all employees involving wage reductions and healthcare cost sharing.

In its post hearing brief, the Employer notes that what the Association seeks in this proceeding is "moderate improvements." But no other personnel in the County is receiving any improvements and in fact have sacrificed. The Employer says it would be unfair for the Association members to avoid its fair share of the sacrifices or to receive improvements. The Employer also points out that the interests and welfare of the public require the County take the action it proposes by not increasing taxing or spending to improve benefits for a few employees.

Union Position

The Union notes that the language in Section 9 in both the pre or post enactment of P.A. 116 of 2011 versions continues to include "the interests and welfare of the public" as one of the factors it must apply when determining the unit of governments' "ability to pay." The Union says regardless of the weight given the "ability to pay," the interests and welfare of the public are not served where limited resources are a justification for neglecting to recognize the services provided by law enforcement and the economic benefits commensurate with those services. The Association says its members are entitled not only to the singular provisions of Act 312, but economic rewards in line with the work they perform.

The Association says despite the doom and gloom presented by the Employer's witnesses, the County is financially capable of affording the relatively limited demands found in the Association's LOS. It says there are signs of economic heath and positive indicators for the future. Referring to the testimony of Employer witnesses, the Association points out that the Employer's millage rate has been at 4.19 mills for over 10 years, not at the maximum level that it could be of 4.23 mills. Employer witness

Daddow testified that raising it to 4.23 mills would generate about $1.6 million additional revenue. Testimony revealed that the County Administration could request of the Board of Commissioners that the rate be raised to 4.23 mills and the Board has the authority to raise the rate without a vote of its citizens. Mr. Daddow acknowledged, during cross-examination, that the Administration had not requested the Board raise the millage rate (Tr 1, pg 190).

The Association also points out that 75% to 80% of the members of the bargaining unit are paid through contracts with local communities within the County. It says the true measure of ability to pay is the financial situation of those municipalities. It says there is record evidence to demonstrate that some of those communities have raised their millage to pay for services.

The Association identifies several reasons to conclude the Employer has the ability to pay for the proposals advanced by the Association. Among them are, the County enjoys an AAA bond rating (U-103, 104, 105). It says there is nothing in the record that demonstrates that bond rating would change if the Panel were to adopt the Associations' rather than the Employers' LOS. The Association, in its post hearing brief refers to (E-120), which is the County Executive's 2011 State of the County address. In it, the County Executive refers to several positive economic developments within the County that have the potential of generating revenue. The Association says, despite the challenges the County faces, which are faced by all government entities, Oakland County has the capacity to compensate its law enforcement officers who serve and protect its citizens.

Discussion and Findings

The evidence clearly demonstrates that the County's revenues have been impacted by the decline in property values. They have been, and are likely to be in the near future, also impacted by the state financial obligations and uncertainty of the federal government to address its budget deficits. There is also evidence that the County has taken steps to address its financial situation that has resulted in reductions in pay and benefits for its employees, but maintained financial stability.

In fact, the County's bond rating has remained solid. And the County acknowledges it could raise the millage rate but has chosen not to. (E 533) also shows that the County currently has and, under its financial plan, expects to maintain a relatively adequate fund balance, which some might call a surplus (E- 533). But this was addressed by County witness Soave who indicated that that was built into the longer-term financial plan. He stated:

> "Yeah, the decision was whatever we get from our immediate cuts; let's build in the fund balance. That gives us time to thoughtfully make those structural cuts. So --- we're not adversely affecting services. We're not adversely affecting employees. We can make a rational move rather than an immediate move" (Tr 1. pg 227).

The fact that the County has developed this longer-term approach to address the current and projected near term future economic situation is not a bad thing. Union Exhibit (E 105) contains a quote from Moody's Investors Service, in announcing its AAA bond rating for the County in April 2011 as stating: "The long-term planning positions the County to successfully weather the economic downturn" (E 105).

The question is, how soon will the economy, and potential revenues to the County, improve so that it no longer needs to seek "shared sacrifice" from its employees to balance its budget? And also, how much can the County and other units of government cut back services before it impacts the "interest and welfare of the public." There are signs of optimism. Employer Exhibit (E 522, pg 8) projects that Oakland County jobs will increase by nearly 11,000 in 2011; another 8,000 in 2012; and another 9,000 in 2013.

There was evidence that 80% of the members within this unit are actually dependent on the local governments within the County that have contracts with the County for their services. There is also evidence these municipalities are struggling to maintain services for law enforcement. (E 506) lists the municipalities that have contracts with the County for services. That exhibit shows that the number of personnel contracted for by those municipalities has decreased from 247 in 2007 to 229 in 2011. One must question when decreases get to the point where it truly impacts the safety and the "interest and welfare of the public."

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. Those questions will be addressed in the context of addressing the individual issues.

Issue # 1 – Duration (ARTICLE XXVI)

Employer Position

The Employer proposes that Article XXVI be amended to state: "This Agreement shall remain in full force and effect until midnight, September 30, ~~2009~~ **2012.** "

Union Position

The Union proposes that Article XXVI be amended to state: "This Agreement shall remain in full force and effect until midnight, September 30, ~~2009~~ **2012.** "

Discussion and Findings

The duration of the agreement was an issue in dispute at the close of the hearing. However, when the parties presented their last offers of settlement they both proposed an extension of the CBA for a three-year period; from October 1, 2009 until midnight September 30, 2012.

Therefore, on the issue of the duration of the CBA, the CBA will be for the period beginning October 1, 2009 and remain in full force and effect until midnight, September 30, 2012.

Employer: Agree VE _____ Disagree _____

Union: Agree WE _____ Disagree _____

ISSUE # 2 - WAGES – (APPENDIX A-1)

Employer Position

The Employer proposes the following wage rates:

a. FY 2010 (10-01-09 to 9-30-10): -2.5%
b. FY 2011 (10-01-10 to 9-30-11): -1.5%
c. FY 2012 (10-01-11 to 9-30-12): 0%

The Employer points out in its post hearing brief that the wage and retroactivity issues are complicated by the fact that the Act 312 award by the Arbitration Panel involving the Command Officer's issued July 6, 2011 ruled that Command Officer's wages for the period 10/01/09 to 09/30/10 and for the period 10/01/10 to 09/30/11 would be determined by the Award in this case. In other words, the Command Officers will get the same wage decrease or increase that is awarded to the Deputies in this case for FY 2010 and FY 2011 (J-9, pgs 6, 7, 9). Additionally, the Command Union agreed that for FY 2012 (10/01/11 to 09/30/12) the Command members would receive no increase. Also, the Act 312 Award for the Command Union provides that there will be no retroactivity regarding the wages, meaning that if this Panel were to grant either an

increase or decrease in wages for FY 2010 and FY 2011 that increase or decrease would not be applied retroactively to the Command Officers (J-9).

The Employer, in its post hearing brief, says the Association's LOS changing its proposal for the last year of the agreement (10/01/11 to 09/30/12) from a .5% increase to a 2.5% decrease poses another issue. If the Panel adopts the Association's proposal for each of the three years then the Command Officers would have three years with no wage decreases while all other employees, including members of this bargaining unit, would have a decrease in wages. The Employer says that outcome would be inequitable and also create an unjustified wage disparity between the Command Officers and the Deputies.

The Employer says the Panel should adopt its proposals based on both what has been established for all other County employees and in comparing the wages paid to law enforcement officers in comparable communities. The Employer refers to Employer Exhibits (E 547 through E 554) in displaying the various wage comparisons and proposals applicable to Deputies, and Exhibits (E 555 through E 562) applicable to Dispatchers, in comparison to those paid to Deputies and Dispatchers in the comparable communities. Those will not be addressed in detail here but the overall result of those comparisons is that, in general, Oakland County wages for its Deputies and Dispatchers fell behind those for Kent County, but above or equal to Macomb and Wayne County. This is generally the case whether considering wages alone or total compensation. And of course, the Panel recognizes the parties disagree somewhat on what should be considered in total compensation.

The Employer says the evidence in this case supports the Employer's position on wages and that the Panel should also grant the Employer's proposal on retroactive wage reductions because other County employees have had to take wage reductions of 1.5% for FY 2011, beginning October 1, 2010 and some took additional wage and benefit reductions in FY 2010 (E- 566).

Association Position

The Association proposes the following wage rates:

a. FY 2010 (10-01-09 to 9-30-10): 0%
b. FY 2011 (10-01-10 to 9-30-11): 0%
c. FY 2012 (10-01-11 to 9-30-12): - 2.5%

The Association proposes the reduction for FY 2012 (10/01/11 to 9/30/12) become effective with the effective date of this award; in other words, not retroactive.

The Association urges the Panel to focus on the external comparables when

considering this issue. It says in so doing, wages of its members will be maintained at a fair market value for services they provide. The Association emphasizes the point that the "market" it talks about is the wages and benefits provided to law enforcement personnel in comparable communities, not necessarily the other employees of the County who have taken the wage reductions proposed by the Employer in its proposal. The Association argues that the wage reductions taken by other employees were not necessarily "agreed to" by those employees, but rather imposed upon them by the Employer. The Association says, given that public safety is a major function of local government, it is important to consider the interests and welfare of the public in administering such services.

The Association, in its post hearing brief, points out that between September 2009 and May 2011 the CPI increased by 4.62%. It notes that under either the Association or Employer proposal those employed as Deputy II with at least five years experience would fall further behind the cost of living. The Association notes that if the Panel adopts the Employer's proposal, as of May 2011, a Deputy's wages would fall behind the CPI by about 8.68 % and under the Association's proposal, about 4.68%. Of course if the Panel were adopt the Association's proposal for a 2.5% reduction when this Award takes effect the wages would fall further behind the CPI.

The Association says it recognizes the current economic realities facing all Michigan governments and that is why it proposed the LOS as it did. It says adoption of the Employer's LOS there will be little likelihood its members will ever have a chance to regain their position relative to the CPI and their quality of life will diminish with each passing contract. The Association, in its post hearing brief, says in the final analysis, the Panel's acceptance of the its proposal for a 0% increase the first two years and the Employer's proposal for a 0% increase the third year would result in the fairest and most equitable wage structure for its members. It says this is especially so if the Panel does not award the other economic improvements sought by the Association.

The Association's post hearing brief describes in significant detail the relative comparisons of Deputy and Dispatcher wages and benefits in the Association and Employer proposals and the external comparables. It notes the differences in impact on wages in the Employer and the Association proposals involving the inclusion and exclusion of certain elements of compensation in their respective calculations. Those differences and details will not be reiterated here. Suffice it to say, in general, the Association members' wages, if the Panel was to adopt either the Employer's or the

Association's proposals would be in the mid to upper range of those of the comparable communities.

Discussion and Findings

The parties agreed that their wage proposals would be addressed year by year. The Panel adopts the following:

a. the Employer's proposal for FY 2010 (10-01-09 to 9-30-10): - 2.5%
b. the Association's proposal for FY 2011 (10-01-10 to 9-30-11): 0%
c. the Employer's proposal for FY 2012 (10-01-11 to 9-30-12): 0%

The Panel has considered this issue in the context of balancing the interests of the community, the employees and the Employer. Act 312, Section 9 (c) requires the Panel to consider the interests and welfare of the public and the financial ability to pay. As discussed in the ability to pay section of this Award, while it is viewed that the Employer has the ability to pay, it also has to be prudent as it manages its way through the current economic restraints. The Panel majority believes the action on wages outlined above provides that proper balance. The Employer and the Association members both want to provide the best services to the citizens they serve with the resources available to them. Some reduction in wages for all is better than laying off additional public safety personnel or not filling critical positions that become vacant and thereby jeopardize the public safety. And the assessment of ability to pay indicates the Employer will be able to accommodate the wages ordered here and still continue on its planned economic plan.

The Impartial Arbitrator believes that the Association's willingness, undoubtedly with reluctance, to propose a wage reduction, was done not only in recognition of the even lower wage reductions that are already in place for all other County employees, including members of the Association's Corrections and Court Services bargaining unit, but also was likely an acknowledgement of the undeniable economic realities. Now is a time when even the status quo is in jeopardy and some sacrifices are inevitable. The Association's position was an important factor in reaching the proper balance that is the goal of this decision.

Section 9(d) of Act 312 requires the Panel to consider the comparison of wages and other conditions of employment with other employees performing similar services. The parties have provided the Panel with a wealth of information to assist in making that comparison. The respective positions of the parties are presented above. They have been examined carefully, but that examination won't be detailed here. The Panel majority believes the action on wages outlined above maintains the wages for the

Association members at a reasonable level in relationship to their peers in comparable communities and is generally consistent with the manner in which the wages of other County employees have been addressed.

Act 312, Section 9(e) requires consideration of the CPI. The Panel majority believes the action on wages outlined above provides a proper balance between the Association's and the Employer's proposal relative to the CPI, particularly in light of the current economic situation.

Section 9(f) of Act 312 requires consideration of the overall compensation along with the continuity and stability of employment. As noted previously, it is important to balance the needs of the community by ensuring proper staffing for public safety with the needs of the members to maintain a reasonable standard of living. The Panel majority believes the action on wages outlined above, and as will be addressed later, the action the Panel has taken on other economic issues, provides that proper balance.

Act 312, sections 9(f) and 9(g) require the Panel to consider any changes during the pendency of the arbitration proceedings and such other factors normally considered in determining wages, hours and conditions of employment between the parties, in the public service or in private employment. The Act 312 Award that was issued for the Command Officer members July 6, 2011 (J-9) required consideration of the relationship between the Employers' needs and the Command Officers' needs and the relationship of the wages for the Command Officers to those of the members of this bargaining unit. The Panel majority believes the action on wages outlined above provides a proper balance in those relationships.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on the issue of wages for FY 2010 (10-01-09 to 09-30-10) the more reasonable position. Therefore, effective the date this Award is issued, or as immediately following that date as feasible, the wage rates proposed by the Employer in its LOS on this issue will take effect and be inserted into Appendix A-I accordingly.

Employer: Agree JE Disagree_____

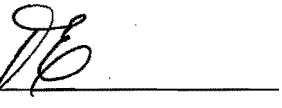
Union: Agree_____ Disagree JE

Taking all of these factors into consideration, the Panel finds the Association's last offer of settlement on the issue of wages for FY 2011 (10-01-10 to 09-30-11) the more reasonable position. Therefore, new wage rates will be inserted into Appendix A-I accordingly.

Employer: Agree_____ Disagree JE

Union: Agree JE Disagree_____

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on the issue of wages for FY 2012 (10-01-11 to 09-30-12) the more reasonable position. Therefore, new wage rates will be inserted into Appendix A-I accordingly.

Employer: Agree  Disagree_____

Union: Agree  Disagree_____

ISSUE # 3 – RETROACTIVITY OF WAGES (NEW LANGUAGE APPENDIX A-I)

Employer Position

The Employer proposes that Appendix A-I contain the following language:

"a. FY 2010 (10-01-09 to 9-30-10):
Any wage decrease shall be retroactive. The amount of any retroactive wage decrease granted for FY2010 (10/1/09 to 9/30/10) shall be deducted from the employees' bi-weekly paychecks over a six month period in equal installments beginning thirty days from the date of the Act 312 Award."

"b. FY 2011 (10-01-10 to 9-30-11):
Any wage decrease shall be retroactive. The amount of any retroactive wage decrease granted for FY2011 (10/1/10 to 9/30/11) shall be deducted from the employees' bi-weekly paychecks over a six month period in equal installments beginning thirty days from the date of the Act 312 Award."

The Employer says this proposal is consistent with what has been expected of other County employees and under its concept of "shared sacrifice" members of this bargaining unit should be treated the same. It also is consistent with the Employer's plan to manage resources over the next few years to weather the current economic climate. The issue of the procedural question on retroactivity was addressed in the procedural issues portion of this Award and will not be repeated here.

Union Position

The Union's LOS was that this language not be included in the CBA. In addition to the Association's position presented in its post hearing brief presented in the procedural issues section of this Award, states that the Employer's proposal should be rejected because it is a violation of PERA.

The Association notes the economic impact it would have on its members. The Association says if the Employer's retroactive decreases are awarded by this Panel, the Deputy II will be forced to repay a total of approximately $4,187 ($345/pay period) during the first six months following the issuance of this award. Dispatch Specialists would be required to repay $3,133 and Shift Leaders $3,379 during the first six months

after the Award is issued. The Union says this could have disastrous financial consequences for employees who may have economic commitments based on their current earnings. The Association says its proposal in its LOS is equitable when considered in the context of other employees performing similar duties.

Discussion and Finding

The Panel refers the reader to the discussion and findings in the section on procedural issues. The Panel majority believes, for the reasons stated in its findings and decisions in that section, that it is not appropriate, nor is the Panel permitted, to order wage reductions to apply retroactively from the date of the Order in this proceeding.

To be clear, regardless of the decision based on the procedural matters, and in the event the parties choose to pursue the question of the legal interpretation of the statutes addressed in the procedural issues section by way of the issue currently pending at MERC or in other forums, the Panel majority finds the record supports ordering the reduction in wages that was approved by the Panel for FY 2010, (10/01/09 to 9/30/10): -2.5%, prospectively from the date of this order, rather than retrospectively. The basis for this finding is the same as those spoken to in the discussion and findings sections addressing ability to pay and wages.

Taking all of these factors into consideration, the Panel finds the Association's last offer of settlement on the issue of retroactivity the more reasonable. Therefore, there will be no language addressing retroactivity added in Appendix A-I.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ISSUE # 4 – EMPLOYEE HEALTHCARE PREMIUM CONTRIBUTION (APPENDIX B-II-A)

Employer Position

The Employer proposes the following revisions to the Employer's contribution to the employee health care premium:

> "A. Effective [Date of the Award], the employees in this bargaining unit shall make the following healthcare contributions (contributions are bi-weekly, pre-tax). Employees will no longer receive a cash incentive for selecting the PPO or CMM plans:
>
> | | Single | 2 Person | Family |
> |---|---|---|---|
> | PPO | $32 ~~$20~~ | $65 ~~$42~~ | $75 ~~$50~~ |
> | CMM | $8 ~~$4~~ | $20 ~~$10~~ | $32 ~~$16~~ |
> | HAP | $52 ~~$33~~ | $89 ~~$57~~ | $94 ~~$63~~ |
> | Traditional BC/BS* | $52 ~~$33~~ | $89 ~~$57~~ | $94 ~~$63~~ |
>
> *Employees hired on of after 1/1/2000 or any employee who was eligible and subsequently elected a different plan is not eligible for the traditional health plan."

The Employer proposal to increase the amount the employees would contribute monthly to their health care premium would result in an increase in employee contribution of $25 bi-weekly for PPO family coverage. That would increase the total annual amount paid by the employee from the current $1,300.00 per year to $1,950.00 per year equaling a $650 per year increase. The majority of employees are covered by the family PPO. The Employer points out that every other County employee, except the members of this bargaining unit, pays the amount the Employer proposes be paid. These are referred to as the 2009 rates. The Employer refers to (E 570), which indicates a number or employees began paying this amount beginning in the January to May 2009 period and Correction Officers began paying these amounts in February 2010 and Command Officers began paying this amount July 6, 2011 as a result of the Arbitration Award issued July 6, 2011 (E 570).

The Employer acknowledges that a review of (E 571 and E 572) reveals that Kent County and Wayne County employees currently pay an annual premium contribution of $1,344.00 and $1,144.00 respectively. Of course, these figures are close to what employees in this bargaining unit currently pay without the proposed $650.00 annual increase. But the Employer points out that Oakland County's required employee co-payments for prescriptions and office visits are less than those required of Kent and Macomb employees and the deductibles for Kent and Macomb employees are higher than those for Oakland employees. Wayne County employees pay a slightly higher co-

pay than Oakland employees for non-generic prescriptions and office visits but have a lower deductable.

The Employer argues that all other County employees have either agreed to or been required to pay the amount of employee contribution toward the insurance premium that it now asks of the members of this bargaining unit. It says members in this bargaining unit should also be required to share in the sacrifice other employees are making in efforts to address budget constraints.

Union Position

The Union proposes no change be made to this provision of the CBA. The Union points out that the Employer's reliance on the internal comparables needs to be put in the context of the relationship between the Employer with the other employees. The Union says many of the employees who are currently making this "shared sacrifice" had very little bargaining power. The Union notes that the Command Unit, which is now paying the employee shared premium contribution requested by the Employer here, is doing so as a result of an Act 312 Award that the Union says gave little analysis of the weight given external and internal comparables and other Act 312, Section 9 factors when supporting the Employer's request for the 2009 rate level (J 9, pg 4).

The Union points to the most recent Act 312 Award issued September 11, 2009 involving these parties on this issue in support of the Union's position that the external comparables should be given more weight when considering this issue (J 7, pgs 27-29). In that Award, the Panel compared the Association's proposed rates and the County's proposed rates to those of the same comparables used in this proceeding and found that the County's LBO on rates offered in that case were closer to the external comparables than was the Association's LBO on rates and, therefore, adopted the County's LBO which was the 2008 rates. The Union says maintaining the status quo as the Union proposes is clearly more in line with the external comparables than is the County's proposal, which would increase the employee contribution by 50% and would make the County's rates significantly higher than those of the comparable communities.

The Union also says the Panel should not rely on Employer Exhibit (E 569) when considering this issue. That exhibit describes the results of a 2010 Kaiser Family Foundation national survey of the average annual employee contributions to health premium costs for 2009 and 2010. It indicates that the Employer's proposed amount is significantly less than the average noted from that survey. But the Union says it is inappropriate for the Panel to rely on that information because it is not based on any

comparable communities and Act 312, Section 9 does not permit such sweeping use of averages, particularly taken from public and private employer sectors.

The Union also points out that each of the external comparable communities provides that an employee may opt-out of health care coverage, presumably if a spouse's health care plan can cover the employee's health care. In so doing the Employer saves the cost of that coverage and in Kent County the employee would be provided $910 per year instead of having to pay $1,344. Each of the other two comparable Counties has similar provisions that would provide some payment to the employee as a result of the employee opting-out of health care coverage. The Union says this Employer could also have a similar plan that would perhaps assist in reducing Employer costs but it has chosen not to pursue that course. The Union says the external comparables and the magnitude of the Employer's proposed increase justify the Panel's acceptance of the Union's, not the Employer's LOS.

Discussion and Findings

The Panel has again turned to the factors listed in Section 9 of Act 312 for guidance in deciding this issue. A review of the comparison of what other County employees now pay and the dates they began paying the rates now proposed by the Employer favor the Employer's proposal. The external comparables indicate the current rates, without the proposed increase requested by the Employer, are closer to the Association's, rather than the Employer's proposal. But record evidence also reveals that each of the agreements of those comparable communities, which were presented in this record expired on or before December 20, 2011 (U- 126D). Of course, it is uncertain whether the provisions of those agreements will change in the successor agreements, but given the economic conditions and the costs of health care it is likely to be an issue as those parties negotiate a new agreement.

But, as in other decisions involving the major economic issues in this proceeding, the Panel has considered and attempted to balance all of the various factors in Section 9 of Act 312 as it has reached its findings on this issue. It has balanced the interest of the public, the resources available to the Employer and the impact on the employees in the context of overall compensation for the employees.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, effective the date this award is issued, or as immediately following that date as feasible, the healthcare rates proposed by the Employer in its LOS on this issue will take effect and be inserted into Appendix B II A accordingly.

Employer: Agree JE Disagree_____

Union: Agree_____ Disagree JE

ISSUE # 5 – ELIMINATION OF HAP AS A HEALTHCARE CHOICE FOR EMPLOYEES HIRED AFTER THE DATE OF THE AWARD (APPENDIX B, II-A)

Employer Position

The Employer proposes the following language be added to Appendix B, II-A:

"Employees hired on or after [date of award] or any employee who was eligible and subsequently elected a different plan is not eligible to enroll in the Health Alliance Plan (HAP)."

The Employer seeks to eliminate the HAP as a health care plan option for new employees hired on or after the date of the award in this case because it is the only plan that is not self-insured by the County. The Employer says it is more costly than self insured plans because insurance premiums are charged to the County, which includes the cost of insurance reserves and a charge for risk. The Employer notes the internal comparables support its position because HAP has been eliminated as a choice for all other County employees including the Corrections Officers and the Command Officers. It points out that it is inconsistent to have this plan available to Deputies when it is not available to Corrections Officers for whom it is not available but who might get appointed to Road Patrol and become part of this bargaining unit and have it available and then not available to a Deputy who gets promoted to a Command Officer position. The Employer notes there are currently only 34 Deputies who have selected HAP (approximately 10 % employees in this unit) and that would indicate that if only 10% of new hires would likely choose HAP it would affect very few potential new hires.

Union Position

The Union proposes no change be made to this provision of the CBA. The Union says the Employer has not presented any evidence demonstrating how the elimination of this health care option to new employees would bring about cost efficiencies other than to allow the Employer to hold on to its money that it now pays HAP and assume the risk. Union witness Christensen testified that he questioned any cost savings to the

Employer resulting from this proposal and that the Union objected to it because if adopted it would eliminate a new member joining the bargaining unit from having the choice to become enrolled in HAP, the only HMO plan offered. The Union referred to the external comparables and noted that Macomb County provides a HAP option and Kent and Wayne Counties each have HMO insurance plans. The Union says there is no legitimate reason to eliminate HAP.

Discussion and Findings

This issue was presented in the previous Act 312 case between these parties. In that case the Panel rejected the Employer's proposal to eliminate HAP. It did so primarily from the view that continuing the HAP option would have little impact since new hires will come from the Corrections Unit and the experience of about 10% of the current employees choosing HAP leads to an assumption there would be a very small percentage of new employees choosing HAP (J 7, pg 27). It is also noted that the Panel in that proceeding indicated that at the time the Opinion and Award was issued, (September 11, 2009), 39 of the 320 unit employees were enrolled in HAP (J 7, pg 26). Employer Exhibit (E 575) in this case indicates that currently there are 34 of the 338 unit employees enrolled in HAP.

It is true that the external comparables have some form of HMO that is offered to their employees. On the other hand, the internal comparables in this case favor the Employer's position that it is more consistent to discontinue offering this plan for all newly hired employees, particularly since many of those who would likely enter and leave this unit as a result of promotions would have to choose another plan other than an HMO prior to entering or after leaving this bargaining unit. There also comes a time when the numbers in the plan are reduced to a point when it is not cost effective administratively to continue to have to administer the plan with so few employees covered by it. The longer the plan remains open for new employees in this unit, the more elongated the time when it has a dwindling number of employees enrolled in it.

Considering the factors in Act 312, Section (9) the Panel believes the comparison of benefits of the employees of the external comparables and the internal comparables generally offset each other. While the external comparables [Section 9(d)] do support maintaining an HMO of some sort as an option, it is unclear from the evidence presented in this case whether those units of government offer that option only to members of a comparable bargaining unit or to new employees of that bargaining unit or to all of their employees. In this case, we know that if the Union's position is accepted by the Panel, this option will only be available for newly hired employees in this

bargaining unit. It may be true that there will be minimal savings in actual cash to the Employer by adoption of the Employer's proposal. However as a practical matter, the amount of time administrative staff have to administer this plan for a shrinking number of employees remains the same and gradually becomes less and less efficient. In this economic environment Employers need to find efficiencies wherever possible. If the Employer can save the cost of employee time needed to administer this option for 10% of the members of this bargaining unit, that savings may be available for other benefits which benefit all or at least a majority of the employees.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, the Elimination of HAP as a healthcare choice for employees hired after the date of this Award will take effect the date this Award is issued and the following language shall be added to Appendix B, II-A:

> **"Employees hired on or after [date of award] or any employee who was eligible and subsequently elected a different plan is not eligible to enroll in the Health Alliance Plan (HAP)."**

Employer: Agree DE Disagree_____

Union: Agree_____ Disagree UE

ISSUE # 6 – RETIREE HEALTHCARE SAVINGS ACCOUNT FOR EMPLOYEES HIRED AFTER THE DATE OF THE AWARD (ARTICLE XXII)

Employer Position

The Employer proposes the following subsection D be added to Article XXII:

> "The Retirement Health Savings Plan, as passed by the Board of Commissioners in Miscellaneous Resolution #05258, shall apply to all employees hired after [date of the Act 312 Award], except that the annual amount to be contributed by the County each year shall be Three Thousand Two Hundred Fifty ($3,250.00) Dollars. Such employees shall not be eligible to participate in the Retiree Healthcare System as set forth in Appendix B."

The Employer says its LOS on this issue should be accepted by the Panel because all other County Employees, including the Corrections employees and the Command Union, have accepted this same HSA except the annual contribution to their HSA is only $1,300. The contribution proposed by the Employer for this unit is $3,250 per year, over 150% higher than the amount currently contributed for all other County employees. The Employer points to testimony provided by Employer witness Esuchanko, an Actuary, and refers to a report by Mr. Esuchanko (E 607) in support of its position that a $2000 annual contribution to an employee HSA would provide ample

funds to support healthcare for that employee upon retirement and, therefore, its proposal for $3,250 is more than adequate. The Employer says that its proposal for this amount is made in order to reach agreement but that the Panel must view this proposed expenditure in the context of its other financial constraints and obligations. Therefore, the Employer says, the Panel should accept its proposal and not that of the Union in the Union's LOS which calls for an even higher annual contribution.

Union Position

In its LOS the Union accepts the Employer proposal to the extent that new hires be required to accept the HSA approach for the Employer funding for health care. But the Union proposes the annual Employer contribution for the HSA account be $3,500 rather than $3,250. The Union challenges Employer Witness Esuchanko's conclusions that the Employer has met its obligations for retiree health care because it would be expected that the employee would continue to work well after she/he was eligible for retirement. The Union relies on testimony from its witness, Charles Monroe, an Actuary, to point out that in order to accept Mr. Esuchanko's figures, employees would have to be employed to age 65 years to receive maximum benefit, and if they did retire earlier than age 65 they should leave their account in the plan and not draw on it until 65. Union witness Monroe testified that his analysis revealed that the jobs of police and fire fighters historically had retirement ages earlier than 65. The Union noted that witness Esuchanko acknowledged that if the amount of money contributed to the HSA remained at $2000 annually for 25 years it would provide approximately $115,932 for an employee to purchase health insurance if that employee retired with 25 years of service. Mr. Esuchanko acknowledged that if the employee retired with 25 years of service at age 45, that $115,932 would not be an adequate amount to pay for health insurance until age 65. Witness Esuchanko indicated that he expected in future negotiations the contribution amount would likely increase (Tr 4, pgs 621,622). The Union says its proposal would begin the annual contribution at a higher level now, rather than later.

Discussion and Findings

The Employer's proposal was presented in the last Act 312 proceeding involving these parties. The Employer's proposed contribution to a HSA account in that proceeding was $2,000 per year per employee which was more than the $1,300 per year contribution being made then, and currently being made on behalf of other County employees, including the Corrections employees and the Command Union. The Union's position in that proceeding was to reject the Employer's proposal and not establish an

HSA. That Panel did not adopt the Employer's proposal in that proceeding. The Independent Arbitrator noted, in that Opinion and Award, the potential underfunding of the HSA at $2000 annually if the employee were to retire much before age 65 and stated "given the career hiring path, any application of an HSA to employees hired after the date of this Award is probably several years off. The Association's LBO will be accepted."

In this proceeding the parties have agreed to have a HSA for new hires. The only difference is the annual amount that will be contributed to it. It is most likely that whatever figure is chosen will have to be reviewed and revised in future negotiations based on a number of unknown factors at this time. Neither party justified how it had reached the proposed number it did in its LOS other than, as the Employer said in its post hearing brief, it was offered "in order to close the issue." The Union says, in its post hearing brief, "rather than rely on Mr. Esuchanko's wishful thinking about future negotiations, any HSA should commence with at least $3500 annually with increases in that amount sooner rather than later." The statements by both parties sound a lot like negotiations. It is likely that other groups of employees, including other collective bargaining units, will use the figure adopted in this proceeding in future negotiations with the Employer. Given the uncertainty of the short term economic and health cost environments, the Employer's LOS seems to be a reasonable position. Either party could pick a figure. Negotiations might arrive at a figure between the two offered by each party. But we are not in negotiations. The Panel must pick one of the figures presented. The Panel finds the Employer's figure, given the current economic and health care cost uncertainties, to be the preferred figure.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of establishing a retiree healthcare savings account for employees hired after the date of the Award, the Employer's proposal will take effect the date this Award is issued and the following language shall be added to Article XXII:

> **"The Retirement Health Saving Plan, as passed by the Board of Commissioners in Miscellaneous Resolution #05258, shall apply to all employees hired after [date of the Act 312 Award], except that the annual amount to be contributed by the County each year shall be Three Thousand Two Hundred Fifty ($3,250.00) Dollars. Such employees shall not be eligible to participate in the Retiree Healthcare System as set forth in Appendix B."**

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

ISSUE # 7 – ELIMINATION OF EMPLOYER CONTRIBUTION TO THE 457 PLAN (APPENDIX B-I)

Employer Position

The Employer proposes the following language be added to Appendix B-I:

"C. The County's match to the 457 Plan shall cease effective December 31, 2010."

Employer witness Thomas Eaton described the background leading up to the Employer's proposal. He testified that the Employer voluntarily established this deferred compensation plan several years ago, whereby it would annually match any employee contribution to a 457 plan up to $300. He testified that the Employer is now seeking to eliminate the Employer contribution to achieve a cost savings (Tr 3, pg 457). Even though there is not language in the current CBA establishing this as a benefit, the Employer is proposing this language because it recognizes this has been an economic benefit to members of this bargaining unit and they have not agreed to eliminate it.

Mr. Eaton testified that the Employer contribution to the 457 plan has been eliminated for all other employees. Employer Exhibit (E 577) describes the dates that this Employer match was discontinued for each employee group. The most recent group that this provision applied to was the Command Officers when the Act 312 Award approved the Employer's proposal that it be discontinued for that group beginning January 1, 2011 (J 9, pg 7). The Employer also referred to (E 578), which summarizes how the external comparable communities address this issue. That exhibit reveals that two of the three comparable communities have established a 457 plan, but neither of them provide an Employer match and one community has not established a 457 plan.

Referring to the Union's LOS, the Employer says the Union's LOS would result in the members of this unit receiving an Employer match for calendar years 2011 and 2012 which would be two years longer than its match for the Command Union and three years longer than for other County employees. The Employer says there is no basis for this.

Union Position

The Union proposes the following language be added to Appendix B-I:

> "The County's $300 match to the 457 Plan shall be eliminated provided, however, that one final match, up to $300, shall be paid in the calendar year in which the Act 312 award is issued."

The Union points out in its post hearing brief that the Employer was not able to state a specific amount of savings that would occur from the Employer's elimination of this contribution. Nevertheless, in its LOS the Union did accept the elimination of the

Employer's $300 match, but proposed language that would require the Employer to make one final match of up to $300 in the calendar year in which this Award will be issued, i.e. 2012. The Union noted in its post hearing brief that the Employer had initially proposed the elimination of the match beginning calendar year 2010, but that in its LOS it proposed it be eliminated beginning calendar year 2011. The Union speculates that this change may have been a result of the Act 312 Panel acceptance of the Employer's proposal that the match be eliminated for the Command Officers beginning calendar year 2011.

The Union says that it is prepared to accept the elimination of the Employer match, but proposes that it apply prospectively. It says the retroactive application of this benefit is questionable in light of P.A. 54. It says to apply the benefit to a year that has passed does not give unit members the opportunity to make an informed decision since whether or not they contributed in 2010 could have been dependant upon whether the Employer would match it or not. The Union says its members should have had the opportunity to defer compensation prospectively with the full knowledge of the match that will be made by the Employer. The Union says the Employer's unilateral decision to eliminate a benefit is a violation of Act 312, Section 13, which mandates that during the pendency of the proceeding "existing wages, hours and other conditions of employment shall not be changed by action of either party" (MCL 423.423). The Union says this Act 312 Panel should adopt its LOS.

Discussion and Findings

The Association argues that one of the reasons to reject the Employer's LOS is because it does not give unit members the opportunity to make an informed decision whether or not to contribute to their 457 plan since they wouldn't know whether the Employer would match it or not. The Union says its members should have the opportunity to defer compensation prospectively with the full knowledge of the match that will be made by the Employer. That knowledge would be clear if the Association's proposal were adopted. The Employer says its proposal would provide the same benefit to this Union as was provided to the Command Union.

The testimony of Employer witness Eaton and the language in the Arbitration Award issued July 6, 2011 in the Command Officers Act 312 proceeding reveals that the Employer stopped making its contribution in the year 2010 (J 9, pg 7) (Tr 3, pg 460). However, the Act 312 Order issued July 6, 2011 for the Command Officers states:

> "The County for calendar year 2010 has agreed to continue to match up to $300, but to eliminate it for the calendar year 2011. The Chairman agrees

with the County on its Last Best Offer with the Union Delegate dissenting. The reason the Chairman agrees is that the County has taken this position County-side and, therefore, there is no basis to treat the Command any differently than a majority of the County employees" (J 9, pg7).

The Panel believes the record evidence supports the Employer's position that the Employer's contribution be discontinued. The date the Employer proposes to discontinue the contribution is the same date the Employer agreed to with the Command Officers, i.e. to continue an Employer match up to $300 for any contributions made by the Employee prior to January 1, 2011. However, given the Panel's findings and decisions pertaining to retroactivity, the Panel is faced with a dilemma. As noted in the discussion and findings related the application of retroactive decreases contained in the procedural issues section of this Award, the Panel does not believe it is authorized to order the discontinuance of the Employer match contribution prior to the date of this Order. The Panel recognizes that this will mean that members of this bargaining unit may receive the benefit of the Employer match approximately 13 months longer than the Command Officers. However, as evidenced by a review of (E 577), the Command Officers received this benefit 12 months longer than other County employees. As our mothers always said, "not everything is fair and equal."

Just to be clear, the Panel recognizes, and the record reveals, that prior to negotiations involving this agreement there had been no language in the agreement addressing the Employer's matching contribution. However, there is record evidence that this was clearly a benefit provided to the Employees and had been a practice for sometime. It was also an item of negotiation between the Employer and the Command Officers unit in their last negotiation (J –9). The testimony of Employer witness Eaton during cross examination on this issue is further evidence that this issue should be treated as a benefit to the Employees and, therefore, subject to the limitations on retroactive reductions the same as wages. The exchange between Mr. Eaton and the Association's Attorney is:

"Q Mr. Eaton, so the command didn't agree to the elimination of the 457 match; it was the product of an Act 312 compulsory arbitration?
A It was all part --- yes, it was all part of a 312 compulsory arbitration.

Q And in fact, the County hasn't paid the match to members of this bargaining unit for a couple years, has it?
A It has not.

Q Okay. So the County unilaterally stopped making the match, but nevertheless brought it as an issue in this proceeding?
A True

Mr. Long: I just would, I guess, explore that a little bit more. What's the County's position on that? I mean, are you saying that you – I just heard you say that you felt obligated, that you've been doing this. What would the County do relative to past practice?
A We have not paid it up to this point. It was unilaterally stopped. We tried – we have continued to try to make it a part of negotiations to get an agreement on it. We did the same thing with command.

Mr. Long: Well, that's what I was going to ask. So what was the situation there?
A We did the same thing with command, and the Arbitrator there awarded them the first year that we had stopped.

Mr. Long: The retroactive payments?
A Awarded it retroactively, correct, and then approved or agreed with our position in the second year. So it was somewhat of a compromise (Tr 3, pgs 459-461)."

Comparing what the Employer proposed in this case with what was applied to the Command Officers as a result of the Act 312 Award on July 6, 2011, one finds that that Award was in essence applied retroactively for Command Officers in that they would not have known whether any contribution made to their 457 plan between January 1, 2011 and July 6, 2011, when the Act 312 Award was issued, would be matched by the Employer up to $300. And it is quite likely they would not have known that for all of calendar year 2010 if the Employer was not putting that match in during that calendar year. In that respect, the members of this bargaining unit are being treated no differently under the Employer's proposal or by the decision of this Panel than those in the Command Unit.

On the other hand, under the Union's proposed LOS it is unclear from the wording exactly how it would be applied. The Union's LOS does not specify exactly when the County's 457 plan match would be eliminated. If it is eliminated effective December 31, 2010, as proposed by the Employer, and the Employer has not paid any match for 2010 or 2011 then the members of this unit would not receive an Employer match for any contributions made to their 457 plan for 2010 or 2011, but would receive a match under the Union's proposal for any contributions made between the period January 1 and December 1, 2012. If the match is eliminated effective on the date the Order is issued in this case, which is likely the intent of the Union in crafting its proposal, then the members of this Unit would have the benefit of having the Employer required to match any contributions made to their 457 plans during 2010 and 2011 and the Employee would have the opportunity to contribute to their 457 plan any time

during 2012 knowing that the Employer would match up to $300 of that contribution. Either way, the members of this Unit would be receiving a benefit beyond that of other County employees, including those in the Command unit.

The Panel finds that the Employer's proposal more nearly complies with the provisions of Act 312, Section 9, in that it is more consistent with the approach used for employees in comparable communities and with other employees of the Employer.

Given the Panel's decision involving retroactivity however, the Panel believes the Employer's proposal can only be applied prospectively. Therefore, the Panel believes the language proposed by the Employer must be modified to reflect that.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of elimination of Employer Contribution to the 457 Plan, the following language will be added to Appendix B-I:

"C. The County's match to the 457 Plan shall cease effective [date of the Act 312 Award]."

Employer: Agree DE Disagree_____

Union: Agree_____ Disagree WE

ISSUE # 8 – DEFINED BENEFIT PLAN MULITPLIER (ARTICLE XXI)

Union Position

The Union proposes subsection D of Article XXI be amended as follows:

"D. Effective with the execution of this Agreement the pension multiplier factor and employee contribution rate for employees of the Sheriff's Office covered by the Agreement who participate in the Defined Benefit Retirement Plan shall be as follows:

1. For the first 14 full years of service in the Sheriff's Office, the employee ~~shall have a multiplier of 2.2% and the employee~~ shall contribute 3% of the gross wages to the Retirement Plan during this time period.
2. Thereafter, For every year of service in the Sheriff's Office ~~beginning with the employee's 15th year of service in the Department~~, the employee shall have a multiplier of 2.5% and, **beginning with the employee's 15th year of service in the Department the employee** shall contribute 5% of gross wages to the Retirement Plan. **The cap on retirement benefits shall be up to a maximum of 75% of final average compensation.**
3. ~~The following cap on retirement benefits shall apply: The first 14 full years of service in the bargaining unit will be based on a 2.2% factor (multiplier) with all subsequent years of service in the bargaining unit based on a 2.5% factor (multiplier) up to a maximum of 75% of final average compensation."~~

The Union's proposal is an effort to assist the employees who remained in the defined benefit pension plan in 1995 when the employees were given the option to move to the defined contribution plan. Under the Union's proposal, the pension multiplier will increase from 2.2 to 2.5 and beginning with the 15th year of service the employee contribution will increase from 3% of gross wages to 5% of gross wages. The cap on retirement benefits will not change from the current cap of 75% of final average compensation.

Association witness Christensen testified that with the current multiplier deputies have to work well beyond 25 years in order to receive the maximum FAC benefit. But with the multiplier increased to 2.5 for all years of service they will be able to reach the maximum level quicker and retire sooner with the maximum level. Increasing the multiplier would of course also increase their pension benefit (Tr. 4, pg 508).

The Association pointed out that until the year beginning September 30, 2010 there was no need for the Employer to contribute to the plan. It did acknowledge, however, that beginning September 30, 2010 that actuaries had projected a need to contribute a little over $5.2 million (E 626, pg E-2).

Employer witness Gates, an Actuary employed with Gabriel, Roeder, Smith and Company, testified that in response to the County's desire to avoid making the required level of annual contribution under the current formula at that time, the County asked, and the retirement board approved, a change in the "asset smoothing" formula for calculating assets from a period of 3 years to 5 years, which resulted in an increase in the funding value of assets (Tr 4, pg 636). That resulted in reducing the annual contribution from $3.1 million to $1.8 or $1.9 million (Tr 4, pg 637). The Association says, given the modest cost associated with this improvement and the willingness of the County to use creative and actuarially sound methods to address costs to the system, the Panel should award this Association proposal.

The Association, in its post hearing brief, provided an extensive analysis of the pension plans of the comparable communities. The details of that analysis will not be elaborated here, but in short, the Association's position is that the external comparables support adoption of the Association's proposal.

The Association also says it should not be overlooked that a need to increase contributions to the plan is because it is closed. It is closed to all new employees and those who chose the defined contribution plan when that option was provided. The

Association says the County has saved money as a result of switching to the DC plan and those savings should be viewed as one source to adequately fund the DB plan.

Employer Position

The Employer proposes no change be made to this provision of the CBA.

The Employer described the general structure of the defined benefit plan. For the past 13 years the DB Plan has been comprised of three separate groups. The general group comprised of non-union employees and the employees in all other unions except the members of this Union and the Command Officers Union. This Union, (Corrections and Road Patrol), forms the second group, and the third group is the Command Officers. The general employee group has a multiplier between 1.8% and 2.2% and a retirement age of 55 with 25 years of service or age 60 with eight years. This Union has 2.2% multiplier with 25 years of service and fully paid retiree healthcare until 1995 when the multiplier was increase to 2.5% for years 15 and above. The Command Officers have a 2.5% multiplier for all years (E 613, 614, 615). The Employer says the fact that the County had to use the "smoothing formula" to is evidence that this is not the time to be increasing the cost of funding the plan. The County says this change does not mean there are more assets in the plan. This just means that the longer asset smoothing period for losses lowers the amount that must be contributed to the plan by the County; or, if there are sufficient assets in the general employee group plan, that must be transferred from the general employee group plan to this group or the Command group (E 610).

The Employer presented the testimony of Louise Gates, a consultant with Gabriel Roeder in support of its position. She testified that the latest Annual Report dated September 30, 2010 showed the decline in the stock market over the past two to three years showed all three DB groups were underfunded. A total of $5.2 million was required (Tr 634, 637-638) (E 626, E-2). In response to this, the County implemented the "asset smoothing formula" as described above.

The Employer notes that a report on the DB plan assets for the period ending September 30, 2011 shows the assets suffered a $30 million loss from the prior year (E 638). Employer witness Gates calculated that the Association's proposed change for the multiplier to go to 2.5% would result in a cost of $2.5 million; meaning that would be the increase in value in today's dollars for every plan member (Tr 4, pg 630).

The Employer, like the Association, provided a detailed summary of the comparables in its post hearing brief. Again, those will not be reiterated here. In short, the Association's position on the comparables is that collectively they are comparable to

the Association's current plan. The Employer says the County can ill afford an increase in the multiplier and none is warranted by the internal or external comparisons.

Discussion and Findings

The Union objects to the position taken by Employer witness Joseph Esuchanko, an actuary, who contends that deputies do not have a "full career" before age 65 and should not have a full retirement before that age. Mr. Escushosko also contends that employees who retire before age 65 should find other employment to supplement their pension (Tr 4, pgs 613, 614).

The Employer has made a strong case that granting this proposal will have a negative impact on the Employer's financial obligations at a time it can ill afford additional costs, be they immediate or in the future. The internal comparables support both parties' positions somewhat in that the Command Officers plan is comparable to the Association's request while the other non-bargaining and bargaining groups support the Employer's position. Both parties have pointed to the external comparables in support of their position but, quite frankly, it is difficult to determine which, if either party has the stronger evidence to support their position.

What is evident is that when considering all of the factors in Section 9 of Act 312, as it has in other decisions involving the major economic issues in this proceeding, the Panel has considered and attempted to balance all of the various factors in Section 9 of Act 312 as it has reached its findings on this issue in the same way it did on the issue of Wages. It has balanced the interest of the public, the resources available to the Employer and the impact on the employees in the context of overall compensation for the Employees.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of revising the defined benefit plan there will be no change from the current contract.

Employer: Agree JE Disagree_____

Union: Agree_____ Disagree WE

ISSUE # 9– DEFINED CONTRIBUTION PLAN – EMPLOYER/EMPLOYEE CONTRIBUTION (ARTICLE XXII)

Union Position

The Union proposes Article XXII, subsection A be amended as follows:

"All bargaining unit employees hired on or after May 27, 1995, shall only be eligible to participate in the Defined Contribution Retirement Plan, as adopted by the Board of Commissioners in Miscellaneous Resolution #94185.
A. The County and the employee shall make the following contributions to the Defined Contribution Retirement Plan: Effective with the pay period following September 11, 2009, the County shall contribute **12** ~~10~~% of base wages to the Defined Contribution Retirement Plan and the employee shall contribute **5** ~~3~~% of base wages to the Defined Contribution Retirement Plan. "

As with issue #8, the Union seeks to "modestly" improve the Employer's "largely inadequate" Defined Contribution plan, by increasing the contribution from both the Employer and the Employees. The fund has suffered due to the economic downturn. Deputies who opted into the fund in 1995, such as OCDSA President Bill Christensen, have been disappointed with the results. The deputies now fear the DC plan will not provide adequate retirement income.

The Union points out that both actuarial witnesses, Employer witness, Mr. Esuchanko and Union Witness, Mr. Monroe, agree that the current plan will not provide an adequate income -replacement ratio- unless the deputies "wait until 60 or 65 to retire." Retirement before that age will require supplemental income from employee personal savings or other work. Mr. Monroe pointed out, however, that "cops and firefighters... have historically had earlier retirement ages...for a reason. It's a young man's job" (Tr. 4, pg 554). The Union believes the DC Plan contribution should be modified so that Deputies can reach full retirement benefits before age 65. It believes its proposal will assist in doing that.

The Association says its proposal is in line with the only external comparable that has a defined contribution plan.

Employer Position

The Employer proposes no change be made to this provision of the CBA.

The County acknowledges that as of 1995 all new employees were switched to the DC benefit retirement plan as a cost saving method. The remaining employees in the DB plan were offered an incentive to move to the DC plan with a 10% employer contribution and 3% employee contribution which is second only to the Command Officer with 10% employer contribution and a 5% employee contribution. The

Employer also notes that in the last Act 312 Arbitration with the Association the County proposed increasing the County contribution to 10% and the employee contribution to 4%. The Association opposed the increase in the Employee contribution and prevailed (J 7, pg 27).

The Employer notes that the current structure has been in place for some time with the Command Officers able to make the greatest contribution to the DC plan (10% County, 5% employee). It says it would be unfair to increase the contribution from the County for the Deputies from 10% to 12%, which would leapfrog the Deputies over the Command Officers. The Employer points out that the cost to the County would be $296,000 per year, which is not warranted in light of the current financial situation and the efforts to restructure County operations to meet future budget goals.

According to the report of Joseph Esuchanko (E 624), the DC Plan participants have sufficient retirement funds based on current contribution levels, especially considering these employees have fully- paid retiree health insurance and social security. Mr. Escuchanko's retirement model did assume that the employees would remain employed in some capacity until age 65. There is no mandatory retirement age at the County. Deputies can maintain their employment until age 65 or beyond.

Discussion and Findings

As in other decisions involving the major economic issues in this proceeding, the Panel has considered and attempted to balance all of the various factors in Section 9 of Act 312 as it has reached its findings on this issue in the same way it did on the issue of Wages and others. It has balanced the interest of the public, the resources available to the Employer and the impact on the employees in the context of overall compensation for the Employees.

The Independent Arbitrator observes that there is some distinction to be made between the employment of law enforcement personnel and other personnel within a County. This may require a consideration of when a reasonable retirement age might be expected and the amount of retirement benefits available to the employee at that time and a conclusion that those benefits should differ somewhat from other employees.

However, given the current economic climate, the balancing of the factors in Section 9 of Act 312 does not warrant the adoption of the Association's proposal at this time.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore on the issue of revising the defined contribution plan there will be no change from the current contract.

Employer: Agree JEP Disagree_____

Union: Agree_____ Disagree WE

ISSUE # 10 – ANNUAL LEAVE ACCUMULATION (NEW ARTICLE)

Union Position

The Union proposes a new Article be added to the CBA titled **Annual Leave Accumulation.** The new Article proposes to, in effect; revise Merit Rule 23.3.1 as follows:

"The rate of accumulation of annual leave, set forth in Merit Rule 23.3.1, shall be increased as follows:

LENGTH OF ELIGIBLE COUNTY SERVICE (SEE RULE 22)		DAYS OF ANNUAL LEAVE EARNED			
From	Through	Hours Per Pay		In 12 Months	
0	1 Year	~~3.07~~	3.38	11	~~10~~ Days
1 Yrs	4 Years	~~3.69~~	4.06	13	~~12~~ Days
5 Yrs	9 Years	~~4.61~~	5.07	16	~~15~~ Days
10 Yrs	14 Years	~~5.53~~	6.08	20	~~18~~ Days
15 Yrs	19 Years	~~6.15~~	6.77	22	~~20~~ Days
20 Yrs	24 Years	~~6.76~~	7.44	24	~~22~~ Days
25 Yrs	Remainder of	~~7.38~~	8.12	26	~~24~~ Days

Association President Christiansen testified that there has been no improvement in this benefit for at least 23 years (Tr 3, pg 380). He observed that time off would reduce stress and be a morale booster. He noted that the older you get, it's nice to have a couple more days off (Tr 2, pg 381).

Under the current leave schedule the average Law Enforcement Unit employee with 13 years experience earns 18 days. The Union seeks to increase that amount to 20 days. The OCDSA has proposed that unit members with less than 10 years of service earn one additional day, members with at least 10 years of service earn two additional days. He said the unit consists of at least 50% or more members who have at least 10 years of service and some with over 30 years of service.

External comparables show Kent County enjoys annual leave of 25 days totaling 59.5 with all other leave included. Wayne County enjoys annual leave of 24 days

totaling 54.5 with all other leave included. Macomb County enjoys annual leave of 27 days and a total of 56.5 with all other leave included. Oakland County enjoys 29 annual leave days totaling 51 days with all other leave included (2nd Amended U -138). The Union contends that this proposal is only a minimal increase in the days off for members of this bargaining unit.

Employer Position

The Employer proposes no change be made to this provision of the CBA.

The Employer opposes the Association's proposal for several reasons. 1) It says it would cost the County approximately $135,000 per year (E-592) and 2) All non Union and Union employees have the same annual leave accrual and accumulation schedule currently applied to the members of this bargaining unit (E-591). There are no exceptions and the Association has failed to justify a need to deviate from this uniform system.

Discussion and Findings

The Panel finds that the Employer's proposal more nearly complies with the provisions of Act 312, Section 9. While it is true that evidence involving the comparable communities on this issue favor the Association's proposal it is clear that the increase in annual leave time as proposed here is not provided to any other County employees. The Panel appreciates the fact that its members are seeking some way to adjust compensation so that they cannot fall further behind in overall compensation, particularly since they are proposing to take a pay reduction. However, the interests and the welfare of the public, given the pressure on the County to live within its means in the current economic climate, outweigh the negative effect of increasing the Employer's annual expenditures by $135,000. This is particularly true when it is unclear how many of the employees would actually take the maximum number of annual leave days if they are increased rather than to just let them accumulate and get paid for them upon separation from County employment. If not taken, they would not reduce stress.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of Annual Leave Accumulation there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ISSUE # 11 – COMPENSATORY TIME (NEW ARTICLE)

Union Position

The Union proposes a new Article be added to the CBA as follows:

> **"Compensatory Time.**
> Unit employees shall have the option of earning compensatory time off at a rate of time and one-half in lieu of receiving payment for overtime or other types of compensation, not to exceed a 60 hour cap in a replenish able bank, in accordance with the following:
>
> In order to exercise this option, employees may provide written notice of change from one to the other concurrent with County payroll periods. Compensatory time off shall be granted with the permission of the sergeant/lieutenant, and may be utilized in increments of one hour or more. A request to use compensatory time may be denied if it would result in overtime compensation for another deputy, and in the event of a change in circumstances resulting in potential overtime compensation for another deputy; the requesting deputy may be required to utilize annual or personal leave for the absence. Any compensatory time not utilized by October 1 shall be paid to the employee at the rate in effect as of October 30 of the fiscal year, by a lump sum payment no later than November 15, provided that no compensatory time shall be allowed after October 1 of the fiscal year in which it was earned, nor may an employee carry compensatory time over from one fiscal year to the next fiscal year. The Association shall hold the County harmless for any legal challenge to the compensatory time program."

The Association presented the testimony of Association President Christensen in support of its proposal. He indicted the proposal was intended to establish a comp time bank similar to an annual leave or personal leave bank. Instead of being directly compensated for overtime, a deputy could bank the time and use it to take time off at a later date. A similar proposal was presented in the previous Act 312 proceeding with these parties and rejected by that Panel (J- 9, pgs 46-47). Witness Christensen testified that a vast majority of the time employees do not work overtime just because someone else takes the day off but did acknowledge that a "fair amount" of overtime is used by deputies assigned to both the road patrol and investigative and forensic services (Tr.2, pg 319). The Association says that in the final analysis the proposal does nothing more than create another bank of earned time that a deputy could use with management approval without generating significant cost. Witness Christensen said in the Association's opinion it will ultimately provide a savings to the County by replacing a cash payout with vacation time (Tr 2, pg 319).

The Association revised the proposal in its LOS from that presented at the hearing. The LOS proposal added the following language:

"A request to use compensatory time may be denied if it would result in overtime compensation for another deputy, and in the event of a change in circumstances resulting in potential overtime compensation for another deputy; the requesting deputy may be required to utilize annual or personal leave for the absence."

The Association, in its post hearing brief, said this was added to the proposal in response to Employer witness Cunningham's testimony that one of the reasons the Employer objected to the proposal was because the more leave time, or in this case comp time, you have the more it creates overtime (Tr 2, pg 341). Responding to Mr. Cunningham's objection to the proposal to permit the 60 hour bank to be replenished, the Association says yes, that could result in the use of more than 60 hours comp time but that's a result of a deputy working lots of overtime, which is within the Employer's control. The Association says the Employer's objection on the basis that it will create more administrative burden is not supported by the Employer with any financial data.

The Association says its proposal is generally consistent with the external comparables. Those comparables demonstrate that Macomb County has a comp time procedure similar to what the Association proposes here; Kent County allows comp time only in the discretion of the Sheriff and Wayne County has no provision for banking comp time (E-586).

Employer Position

The Employer proposes no change be made to this provision of the CBA. The Employer says it opposes this proposal for several reasons: a) no other bargaining unit in the County has this provision; b) it is contrary to the applicable Merit System Rule (E 583); c) the external comparables do not support its adoption; d) the provision allowing the 60 hour bank to be replenished would permit a deputy to earn more than 60 hours of comp time a year; e) the Panel in the last Act 312 with these parties denied it; and f) it would be difficult to administer. On this last point, Employer witness Cunningham notes that the County has various contracts with municipalities in the County and often transfers deputies from one jurisdiction to another. Each municipality is charged for the deputies' time, including overtime. If this system were adopted, every time a deputy transferred, the Employer would have to determine how that time would be charged to the Deputy's prior municipality. He stated in 2010 there were 160 transfers (Tr 2, pg 336).

Discussion and Findings

The Panel finds that the Employer's proposal more nearly complies with the provisions of Act 312, Section 9. The provisions for comp time in the comparable communities favor neither the Employer nor the Association's position. On the other hand, it is clear that a comp time bank as proposed here is not provided to any other County employees. The administrative costs are not really known. It is apparent however, that there would be additional costs to the Employer in administrative time spent on implementing and administering a comp time bank.

The Association's attempt to address some of the Employer's concerns, by revising the proposal in its LOS, also results in an inability to thoroughly present to the Panel what implications, if any that would have on the administration of and cost of administering the program. For example, if the request to use the comp time can be denied if it would result in overtime for another deputy, what would prevent the Employer from denying the request each time on the basis that it would result in overtime?

The Panel's basis for its finding is a result of: 1) the uncertainty of the true economic impact if it were to be put in place; 2) the fact that the current economic conditions limit the time and resources that would be available to implement it; 3) the questions of how it would be implemented; 4) the fact that some of the comparable communities may have experience administering it that could provide information to answer those questions; and 5) that the parties will have the opportunity in the near future to explore these issues further and perhaps come to a negotiated agreement on the issue as they enter in to negotiations for their next agreement.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of the Association's proposal to place in the Agreement a compensatory time proposal, there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ISSUE # 12 – SHIFT DIFFERENTIAL (NEW ARTICLE)

Union Position

The Union proposes a new Article be added to the CBA as follows:

> **"Shift Differential**
> Beginning with the effective date of the Act 312 Award, deputies shall receive a shift premium of 30 cents per hour for hours worked on the afternoon shift and 30 cents per hour for hours worked on the midnight shift. The afternoon shift is defined as any shift that begins between 11:00 a.m. and 6:59 p.m. The midnight shift is defined as any shift that begins between 7:00 p.m. and 3:59 a.m."

Association witness Christensen testified in support of this proposal. He said it is an attempt to compensate members who work less desirable shifts, noting that both the afternoon and midnight shifts include a busier time of the day (Tr 2, pg. 360). He explained that shift selections are based primarily on seniority and, therefore, a certain percentage of members are going to be stuck on these busier shifts. The Association said with its proposed shift premium, some of the more senior members might select or remain on an afternoon or midnight shift, thereby creating an opportunity for a less senior deputy to work the day shift. And this could result in a more evenly balanced (by seniority) complement of deputies on each shift.

The Association noted that the dispatcher's already have a shift premium. Record evidence indicated that their shift premium was maintained when this bargaining unit, then represented by a different union, negotiated permanent non-rotating shifts with the condition that, in return to going to permanent, non-rotating shifts, shift premiums would not be provided to other bargaining unit members; only dispatchers would receive a shift premium (E 588). This Association, in its post hearing brief, says at one time the law enforcement environment felt that rotating shifts was important, but no longer. With adequate safeguards such as a selection procedure, rotating shifts is not necessary. But non-rotating of shifts should not condemn all new employees to the afternoon shift, and if the selection process places them there, there should be some additional compensation.

The Association says whatever prompted the parties to agree to permanent shifts with no cost increase in cost to the employer, i.e. no shift premiums, years ago should not bar this proposal now. The Association says the Employer has little basis to argue against the cost of this proposal other than its fear that it will provide a foot-in-the-door for increases later.

Employer Position

The Employer proposes no change be made to this provision of the CBA. Employer witness Tom Eaton provided background on the issue. He presented (E 588) which is a section of a contract made when a previous union represented the members of this unit. He noted that at that time the unit shifted from a rotating shift to a permanent shift procedure based on seniority and it did so on the basis that deputies would not receive a shift premium. Witness Eaton also said the Employer objected to the proposal because it would result in more cost to the County which the County could not afford at this time. He also noted that the dispatchers are currently receiving 50 cents per hour shift differential and he felt this would be just a foot-in-the-door for the deputies to seek an increase later. He also questioned whether the $2.40 per work day paid to those who chose these shifts would cause anyone working days to shift to afternoon or midnights, which was one of the purported reasons the Association gave in support of the proposal.

Discussion and Findings

The Panel finds that the Employer's proposal more nearly complies with the provisions of Act 312, Section 9. While it is noted that of the external comparable communities, two of the three do have some form of shift differential and of course the dispatchers have a shift differential, a combination of other factors in Section 9 outweigh that factor. There will be a certain economic impact on the County if this proposal is granted but it is unclear what, if any benefit, other than paying some members of the bargaining unit more money, will actually be achieved. Testimony revealed that it was questionable whether this change would result in many more senior deputies switching to these shifts. The current overall economic climate does not support making this change at this time.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of the Association's proposal to place in the Agreement a shift differential there will be no change from the current contract.

Employer: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ISSUE # 13 – MISSED OVERTIME PROCEDURE (ARTICLE XIX)

Union Position

The Union proposes Article XIX (Overtime) be amended by adding a new subsection L to read as follows:

> "L. Any employee who is eligible and available for an overtime opportunity and is not offered the opportunity to work due to the failure of management to follow the overtime procedure shall be compensated with two (2) hours pay and, in addition, shall be offered the next overtime opportunity equal to the number of hours worked in the missed overtime opportunity."

Association Chief Steward Brian Partogian testified that the present practice for overtime usually works well. In the event of an overtime opportunity, supervisors attempt to make contact with members to offer overtime based on interest and seniority. However, "there have been occasions when our members...have missed an overtime activity through no fault of their own" (Tr 2, pg 398). When an employee is skipped, the deputy is offered the next available overtime. The Union contends that this resolution is not always acceptable because the next opportunity may not be convenient for the deputy and the next available opportunity may not be payable until after the next 28 day work cycle.

Although Deputy Partogian acknowledged that skipped overtime opportunities did not occur often and that no grievances had been filed relative to this matter, he did emphasize the matter is a problem. He stated the problem had been discussed with the Employer, examples had been identified and problems worked out. The Union contends that the current practice is not acceptable and that the 2 hour pay requirement is reasonable and should not impose a financial burden on the employer because there are so few occurrences.

Employer Position

The Employer proposes no change be made to this provision of the CBA.

Major Robert Smith of the Law Enforcement Group refuted the testimony of Deputy Partogian. Major Smith reviewed the overtime procedure used in the Law Enforcement Group. The following steps are taken to fill overtime positions. First, the sergeant at the substation is required to call the contract reinforcement car. If the contract reinforcement car cannot be used the overtime procedure begins.

1. If the first deputy he calls cannot be reached, he indicates that and the deputy remains in the same position on the overtime list.

2. If the next deputy refuses, he goes to the bottom of the list.
3. If the next deputy accepts, he comes in and goes to the bottom of the list.
4. If the position cannot be filled, the Sergeant calls Central Dispatch, and the Sergeant in Central Dispatch starts a general overtime call out by seniority in the other substations who have signed up for overtime in the same manner as described above.

The Sergeant or Central Dispatch may leave a message if they cannot reach the deputy asking for a call back but, they are unable to wait long for a call back if the overtime is to start in a few hours (Tr 2, pgs 422-427).

Major Smith also stated that in the instance where the 28-day cycle ended, it would be unfair for the deputy to go to the bottom of the seniority list and wait to be called again the next cycle. In fact, a person who has missed overtime through no fault of his own remains at the top of the list until he/she is called in for an overtime opportunity.

The Employer cited the Union comparables and contends that the comparables do not support the Union position.

Comparables - UX142

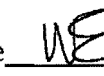
- Kent County - has no provision for missed overtime.
- Wayne County – placed on "Overtime Roster" for next opportunity. If passed over while on the roster, will be compensated.
- Macomb County – 2 hours straight time pay and first in line for next opportunity for equal length.

Discussion and Findings

The Panel finds that the Employer's proposal more nearly complies with the provisions of Act 312, Section 9. The Union's position is weakened by the fact that there has never been a grievance filed on this issue and there were no instances of missing overtime offered into evidence. If there was a clear record that management handled overtime in a sloppy or cavalier manner, a monetary penalty might be appropriate and act as an incentive to improve the process. In this case, there is a clear procedure for the assignment of overtime that usually works. On the rare occasions when it does not work, the remedy is to offer the deputy the next available overtime. The comparables slightly favor the Employer.

Taking all of these factors into consideration, the Panel finds the Employer's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of missed overtime procedure there will be no change from the current contract.

Employer: Agree  Disagree_____

Union: Agree_____ Disagree 

ISSUE # 14 – OVERTIME ELIGIBILITY (TIME WORKED V TIME PAID) (ARTICLE XIX)

Union Position

The Union proposes the first sentence of Article XIX (Overtime) be amended as follows:

> "All time, **whether** worked **or compensated through an employee's use of leave time**, in excess of a normal eight hour working day, in a 24 hour period beginning with the start of the employee's normal working shift that day, shall be considered as overtime and credited to the calendar on which the 24 hour period began."

Chief Steward Brian Partogian testified that the current system makes no sense and the Union proposal will not cost the County "any more money" (Tr2, pg 412). He used a personal situation as an example. He took eight hours of vacation time, day shift, on a Saturday to attend his son's baseball game. He was called into work on midnight shift that night. He was informed that he would not be eligible for overtime at time and a half; that he would have eight hours time put back into his vacation bank and would be paid straight time for the midnight shift.

The Union cited the overtime provisions in the contracts for the comparable communities in support of its proposal (U 141).

Kent County – Time and a half is paid for all hours over forty (40) in any work week. Holidays, compensatory time, vacation, and funeral leave which has been paid shall be counted as time worked up to 8 hours.

Wayne County – Employees are paid for all hours of work performed in excess of eight hours in any one day and for all hours of work performed on the 6th day of the employee's workweek. Vacation, sick, holiday, personal business leave and bereavement shall be included as hours worked.

Macomb County – Overtime pay at time and a half shall be allowed for work in excess of eight hours

Employer Position

The Employer proposes no change be made to this provision of the CBA.

Employer witness Eaton testified that the present rule for overtime has been the rule as long as he can recall. Further, it was his opinion that the proposed change could potentially cost the county additional money if an employee was paid eight hours while on leave time and then called in to work eight hours overtime on another shift within that 24 hours period and get paid at time and a half. The employee could potentially be paid 20 hours in a 24-hour period.

Employer Exhibit 596 - Hours Worked v Hours Paid, shows that all internal groups are paid overtime for hours worked.

Discussion and Findings

The Panel finds that the Association's proposal more nearly complies with the provisions of Act 312; Section 9 in that it is more consistent with the approach used for employees in comparable communities and should not pose any significant additional cost to the Employer.

The Employer expressed concern that an employee called in to work within 24 hours of a leave period will be paid for 20 hours in a 24-hour period. What the Employer did not address is the fact that the Employer is generally in control of whether the employee is called into work in that situation. There is no evidence that Employees would try to "game" the system. Additionally, two of the three external comparables support the union's position (U-141).

Taking all of these factors into consideration, the Panel finds the Union's last offer of settlement on this issue the more reasonable position. Therefore, on the issue of overtime eligibility, effective on the [date the Order is issued] the first sentence of Article XIX (Overtime) shall be amended as follows:

> "All time, **whether** worked **or compensated through an employee's use of leave time,** in excess of a normal eight hour working day, in a 24 hour period beginning with the start of the employee's normal working shift that day, shall be considered as overtime and credited to the calendar on which the 24 hour period began."

Employer: Agree_____ Disagree JE

Union: Agree JE Disagree_____

SUMMARY

This concludes the award of the Panel. The signature of the delegates herein and below along with the signature of the Independent Arbitrator below indicates that the Award as recited in this Opinion and Award is a true restatement of the Award. All agreements reached in negotiations during the course of this proceeding and within the submission of last offers of settlement and stipulated to by the parties as noted herein, as well as all mandatory subjects of bargaining contained in the prior contract, will be carried forward into the collective bargaining agreement reached by the Panel.

Re: Oakland County and Oakland County Sheriff's Office & Oakland County Deputy Sheriff's Association
MERC Case No. D09 G-0805(Act 312)

Date: 2/9/2012

William E. Long
Arbitrator/Chair

Date: 2/9/2012

Tom Eaton
Employer Delegate

Date: 2/9/2012

Bill Christensen
Association Delegate