

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:  
POLICE OFFICERS ASSOCIATION OF MICHIGAN

-and-

KALAMAZOO COUNTY AND 9<sup>TH</sup> CIRCUIT COURT

MERC CASE NO.: L17 J-0990

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended)  
[MCL 423.1, et seq], and Public Employment Relations Act (P.A. 336 of 1947 as amended)  
[MCL 423.201, et seq]

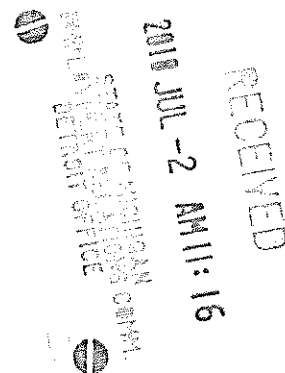
Fact Finder  
C. Barry Ott

Advocates

Employer: Mattis Nordfjord, Esquire  
Cohl, Stoker & Toskey, P.C.  
601 N. Capitol Ave.  
Lansing, MI 48933

Union: Dave La Montaine, Business Agent  
Police Officers Association of Michigan  
27056 Joy Road  
Redford, MI 48239

PETITION FILED: FEBRUARY 26, 2018  
FACT FINDER APPOINTED: March 23, 2018  
SCHEDULING CONFERENCE HELD: APRIL 11, 2018  
HEARING DATE: June 14, 2018



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### WITNESS LIST

Bill Rosol, Youth Specialist  
Bobby Hicks, Youth Specialist  
Todd Wigg, Youth Specialist

Kristine Cumingham, HR Director  
Peter Holt, JH Director

## 1. INTRODUCTION AND BACKGROUND

The Union represents a bargaining unit composed of all regular part-time and full time employees of the Kalamazoo County Juvenile Home holding the positions of Youth Specialist, Head Cook, Cook and Detention Secretary. The Unit consists of some 45 employees. The facility operates seven days per week, twenty four hours per day. The last collective bargaining agreement expired on December 31, 2017. Bargaining efforts to reach a new agreement, including two mediation sessions failed to produce an agreement. Only one issue remains in dispute, holidays. The Union filed a petition for Fact Finding on February 26, 2018. A prehearing conference call was held on April 11, 2018. The parties filed their respective position statements on April 27, 2018 and exchanged their proposed exhibits on June 1, 2018. A hearing was held on June 14, 2018.

## 2. STATUTORY CRITERIA

Since there are no statutory criteria governing fact finding matters many Fact Finders elected to utilize the criteria provided in Section 9 of Act 312 where they are reasonably applicable in a Fact Finding situation. In the instant case, the parties have elected to compare Holiday leave and other paid leave provisions with benefits provided by other comparable county jurisdictions and that of other internal bargaining units and non-union employees.

## 3. STIPULATIONS

The parties agree that the only issue in dispute is the Employer's proposal to reduce the number of paid holidays from twelve to eight.

All other issues have been resolved as reflected in the Tentative Agreement reached on February 6, 2018 (Employer Exhibit 13) and that agreement is incorporated herein.

## 4. COMPARABLES

The parties have agreed to the following list of external comparable counties:  
Berrien, Genesee, Jackson, Monroe and Ottawa.

## 5. ISSUE BEFORE FACT FINDING (ECONOMIC)

### ARTICLE 19 HOLIDAYS

The Employer proposes to reduce the number of days from twelve to eight.  
The Union proposes to maintain the status quo.

## EMPLOYER'S PROPOSAL

The Employer's proposal is set forth in their position statement of April 26, 2018 as follows:

### ARTICLE 19 – HOLIDAYS

Section 1. The paid holidays are designated as:

New Year's Day	January 1
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November
Friday following Thanksgiving Day	
Christmas Eve Day	December 24
Christmas Day	December 25

Employees will be paid their current rates based on an eight (8) hour day or ten (10) hour day for said holidays.

Section 2: When any holiday enumerated above falls on Sunday, the immediately following Monday shall be observed as the holiday. When any enumerated holiday falls on Saturday, the immediately preceding Friday will be observed as the holiday. When December 25<sup>th</sup> falls on a Saturday, causing the observance of the holiday on Friday, December 24<sup>th</sup>, then December 23<sup>rd</sup> will be the observance day for the December 24<sup>th</sup> holiday. When December 24<sup>th</sup> falls on Sunday, the observance day will then be Friday, December 22<sup>nd</sup>.

Section 3: If an employee is assigned to work a holiday, he/she shall receive, in addition to the aforementioned holiday pay, time and one-half the employee's regular hourly rate for all hours worked on said holiday.

Section 4: It has been agreed by the parties that management has the right to schedule and staff the facility with temporary employees for all holiday periods. If management requires a Bargaining Unit employee to work on a holiday, that employee will receive the additional compensation as outlined in this Article. In lieu of the time and one-half paid for working a scheduled holiday, the employee may request comp time at the rate of 1 ½ times for all hours worked. However, such time may not be utilized by the employee in such a manner which would require the Employer to pay another individual at an overtime rate.

Section 5: When part of an employee's shift falls on a holiday and part falls on a non-holiday, the employee is deemed to work all of his/her hours of the day on which the majority of hours worked in one continuous shift fall.

Section 6: The parties have agreed that even though management will try to honor requests for time off on a scheduled holiday, those employees scheduled to work on a holiday must work if management is unable to secure an adequate replacement.

Section 7: Employees, who receive payment for the standard work shift on the regularly scheduled workdays immediately preceding and following the observed holiday, shall be eligible to receive payment for the holiday.

Section 8: Part Time Employees. ARTICLE 19, Sections 1-7, shall not apply to employees hired into or transferring into a part-time (less than .8 fte) position after December 31, 2011. If the employee is moved to part-time status by the Employer, that employee will retain the benefits previously provided in the applicable Section(s) for a term not to exceed 7 months or upon turning down a full-time position within the County, whichever occurs first. Benefits accrued prior to part-time status and those accrued during the eligible period (not to exceed 7 months) may be used by the employees moved to part-time status by the Employer until such benefits are exhausted. However, any part-time employee who works on a holiday shall receive holiday pay at the rate of 1 ½ times for all hours worked.

#### UNION'S PROPOSAL

The Union objects to the proposed reduction in the number of paid holidays and proposes to maintain the status quo.

#### ANALYSIS AND RECOMMENDATION

According to the Employer, the proposed reduction in the number of paid holidays is part of a County-wide change to align the various non-Act 312 bargaining units, Courts and non-union employees paid leave structure. The County seeks to combine vacation and personal leave into annual leave and adjust the number of holidays for internal consistency based upon the total amount of paid leave County employees receive. Employer Exhibit 1 is a chart of the number of paid holidays, number of paid holiday hours and the number of personal leave hours provided to the County Non-Union Employees, Circuit Court Employees, AFSCME – Animal Services, Building & Ground, and Park Employees, AFSCME- Airport Employees, AFSCME – Juvenile, and UAW – Juvenile Probation Employees and the total annual leave hours for the year 2017. The chart also shows the same for the year 2018 and reflects the various adjustments resulting from negotiated changes and changes for non-union employees together with the proposed changes for POAM – Juvenile Home unit. For the year 2018, three of the units have 8 paid holidays, the same as proposed for the Juvenile Home unit and two units have 12 paid holidays. The Circuit Court Employees (non-union and the UAW Juvenile Probation Unit each have 12 holidays as established by the Court, but have a corresponding reduction in annual leave hours.

If the Employer's proposal is adopted all the units would have 8 holidays except the Circuit Court Employees and the UAW – Juvenile Probation with 12. The chart indicates that after all adjustments the four non- Act 312 units would have a total of 112 paid leave hours annually with the slight variance of two hours since the AFSCME – Airport Unit which works a uniform 10 hour shift.

The Employer has excluded the County bargaining units that are Act 312 eligible on the grounds that those units have contracts that expire December 31, 2018. The Union offers holiday data for a number of Act 312 eligible classifications that indicates a range of 11 to 11 ½ days (Union Exhibit 2). The Employer asserts that it will attempt to negotiate a change when those contracts expire on December 31, 2018. The fact remains however, that the Act 312 eligible units of the County enjoy 12 paid holidays and two Circuit Court groups also have 12 paid holidays, but the two Circuit Court employee groups have fewer hours of annual leave.

A review of the exhibits for the agreed upon external comparables (Union Exhibit 3 and Employer Exhibit 7) reveals that all of those County Juvenile Home Specialists have paid holidays ranging from 11 to 14 days as follows: Berrien County 12 days, Genesee County 14 days, Jackson County 11 days, Monroe County 12.5 days and Ottawa County 13 days. When annual leave/personal leave and sick leave hours are factored in, total leave hours are as follows Berrien County 112 hours, Genesee County 176 hours, Jackson County 88 hours, Monroe County 132 hours and Ottawa County 152 hours. Under the Employer's proposal, the Juvenile Home employees would have 8 holidays and 112 hours of total paid leave, a reduction of four holidays and after the adjustment to personal leave hours a reduction of 26 hours of total paid leave time. The Union argues that such a reduction results in a significant loss of paid leave time and loss of income. It is noted that the reduction in holidays means the loss of holiday premium pay for those employees required to work on a holiday at 1 ½ times their regular rate of pay, which translates to 32 hours of lost overtime pay. The record testimony in this case indicates that the County conducted a wage/salary survey dated 9/21/2016 in accordance with Personnel Policy 4.09 (Union Exhibit 4). The record testimony indicated that the salary schedule for Juvenile Home Youth Specialist was substantially below that of the comparable Counties. The record also indicates that the County has made an effort to adjust the salary in the last year or so but nowhere near that of the deficit. I recognize that salary is not at issue in this case but the impact of the proposed reduction in holidays should not be ignored by the Employer. At the same time I also appreciate the desire of the Employer to establish some uniformity in the holiday leave and total paid leave provisions of the various employee groups.

Clearly the holiday leave data for the comparable counties does not support Kalamazoo County's proposal to reduce the number of paid holidays.

The internal comparative data, as illustrated by Employer's Exhibit 1, is mixed, three of the six employee groups presently have 12 holidays (including the Juvenile Home group) and three have 8 holidays. If the Act 312 groups are considered, the weight of the evidence supports 12 paid holidays.

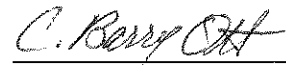
The County's effort to establish a uniform level of paid holidays for the various employee groups if successful, generates the necessity to adjust the number of paid annual leave hours, if the end goal is to achieve a uniform level of total paid leave time for all employee groups. Such an endeavor can be very difficult when dealing with multiple independent bargaining units, some with access to Act 312 procedures.

RECOMMENDATION:

In my opinion, the weight of the evidence of the external and internal comparables does not support the Employers proposal. I urge the parties to seek an alternative compromise in an effort to reach a negotiated agreement. If that effort is unsuccessful, I recommend that the current contract language be retained.

Dated: June 22, 2018

Respectfully Submitted,

A handwritten signature in cursive script, reading "C. Barry Ott", written over a horizontal line.

C. Barry Ott, Fact Finder