

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

PETITIONING PARTY:

Michigan Fraternal Order of Police Labor Council

And

RESPONDING PARTY:

Kent County and Kent County Sheriff Office

MERC CASE NO.: L 17 J- 0985 (Act 312)



COMPULSORY ARBITRATION

Pursuant to Public Act 312 of 1969, as amended
[MCL 423.231, *et seq*]

OPINION AND AWARD

Arbitration Panel

Chair: William E. Long
Employer Delegate: Robert Chovanec
Union Delegate: Heather Cummings

PETITION FILED: April 9, 2018

PANEL CHAIR APPOINTED: April 27, 2018

SCHEDULING CONFERENCE HELD: May 10, 2018

HEARING DATES Scheduled: September 5, 6, 7, 2018. – Parties reached agreement on all economic and non-economic issues August 22, 2018 and the Panel agreed to issue a stipulated award adopting those agreements and incorporating them into the CBA.

AWARD ISSUED: September 6, 2018

TABLE OF CONTENTS

1.	Introduction and Background.....	Page 2
2.	Statutory Criteria.....	Page 3
3.	Stipulations and Preliminary Rulings	Page 4
4.	Comparables	Page 4
5.	Issues before the Panel	Page 5
6.	Discussion and Findings	Page 5
7.	Summary of Award	Page 6

1. INTRODUCTION AND BACKGROUND

The Michigan Fraternal Order of Police Labor Council representing the Kent County Law Enforcement Officers Association (referred to as the Union in this Opinion and Award) and Kent County Michigan and the Sheriff of Kent County (referred to as the Employer in this Opinion and Award) entered into negotiations for a Collective Bargaining Agreement (CBA) that would be a successor agreement to an agreement between the Union and the Employer for the period January 1, 2015 through December 31, 2017.

The parties recognize the Michigan Fraternal Order of Police Labor Council Union as the exclusive representative for collective bargaining for approximately 235 full time employees in the Sheriff’s Department of Kent County in the positions of County patrol sergeant, patrol officer, emergency communications Supervisor I and II, Emergency communication operator I and II and, regular part-time emergency communications operator. The Union and the Employer were unable to resolve disputed matters leading to a CBA and the Union filed a petition with the Michigan Employment Relations Commission (MERC) for Act 312 Arbitration on April 9, 2018. This impartial Arbitrator was appointed by MERC on April 27, 2018.

At a May 10, 2018 pre-hearing phone conference the parties agreed upon the following comparable communities as acceptable for presentation at the hearing: The Counties of Oakland, Macomb, Kalamazoo, Ingham, and Ottawa. The Employer proposed the County of Genesee be included as a comparable community and the Union proposed that the City of Grand Rapids be included as a comparable community.

During the pre-hearing phone conference the parties also expressed differing positions on the duration of the Collective Bargaining Agreement (CBA). The Employer proposed the CBA be for a five-year period beginning 01/01/18 through 12/31/22 with a provision for wage reopeners for the years 01/01/21 through 12/31/21 and 01/01/22 through 12/31/22. The Union proposed the CBA be for a three-year period beginning 01/01/18 through 12/31/20.

The parties agreed the comparable communities and duration of the CBA should be determined before submission of economic issues and agreed to submit briefs to the Independent Arbitrator and allow the Arbitrator to rule on the issues of comparable communities and CBA duration. The parties submitted Briefs on June 4, 2018 and this Independent Arbitrator issued an Interim Opinion and Award on June 12, 2018 addressing the issues of Contract Duration and External Comparable Communities. That Interim Opinion and Award will be submitted as part of the record in this case. The Interim Opinion and Award ruled that the City of Grand Rapids and Genesee County be included as comparable communities and that the Contract that results from this Act 312 proceeding be for three (3) years beginning 01/01/18 through 12/31/20.

Hearing dates were set for September 5, 6, 7, 2018. On July 16, 2018 the parties exchanged, with a copy to the Independent Arbitrator, their respective proposed economic and non-economic issues to be presented at the hearing. Last offers of settlement were scheduled to have been exchanged on August 27, 2018.

On August 22, 2018 the parties' notified this Arbitrator that they had reached agreement on all economic and non-economic issues and requested the Panel issue a stipulated Act 312 Award inserting the revisions to the new CBA agreed to by the parties into a new CBA.

2. STATUTORY CRITERIA

When considering the issues in this proceeding, Section 8 of Act 312 guided the Panel. 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 findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9." Section 9(1) and (2) states "(1) the arbitration panel shall base its findings, opinions, and order upon the following factors:

- (a) *The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:*

- (i) *The financial impact on the community of any award made by the arbitration panel.*
- (ii) *The interests and welfare of the public*
- (iii) *All liabilities, whether or not they appear on the balance sheet of the unit of government.*
- (iv) *Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.*
- (b) *The lawful authority of the employer*
- (c) *Stipulations of the parties.*
- (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 in both of the following:*
 - (i) *In public employment in comparable communities.*
 - (ii) *In private employment in comparable communities.*
- (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.*
- (f) *The average consumer prices for goods and services, commonly known as the cost of living.*
- (g) *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.*
- (h) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
 - (i) *Other factors that 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.*
- (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."*

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

3. STIPULATIONS AND PRELIMINARY RULINGS

As noted, a preliminary ruling was made in the Interim Opinion and Award that the City of Grand Rapids and Genesee County be included as comparable communities and that the Contract that results from this Act 312 proceeding be for three (3) years beginning 01/01/18 through 12/31/20. On August 22, 2018 the parties' notified this Arbitrator that they had reached agreement on all economic and non-economic issues and requested the Panel issue a stipulated Act 312 Award incorporating the agreements into a new CBA. On August 31, 2018 the parties

provided a document to this Arbitrator summarizing the agreements they reached for revisions to the CBA for the period beginning 01/01/18 through 12/31/2023. (See attachment #1 – one (1) page E-mail and three-(3) page summary of changes made to the new CBA). The parties also requested that the CBA be included in the Award.

4. COMPARABLES

Based on the findings and conclusions in the Interim Opinion and Award issued June 12, 2018 and made a part of the record in this case:

The Panel chooses the following communities as comparable to Kent County in this proceeding: the Counties of Oakland, Macomb, Kalamazoo, Ingham, Ottawa, Genesee and the City of Grand Rapids.

5. ISSUES BEFORE THE PANEL

The issues before the panel are those stipulated to by the parties. They are identified in Attachment #1 and listed in the Summary of Award section of this Opinion and Award.

Discussion and Findings

Discussion

The parties were successful in reaching agreement on issues identified in Attachment #1 they felt necessary to incorporate in the CBA. The Panel has reviewed those issues and believes they are all appropriate for inclusion in the CBA and within the Panel's authority to Order be incorporated into the CBA.

Findings

Therefore, on all issues identified in Attachment #1 and listed in the Summary of Award section of this Opinion and Award, the Panel finds the parties' request that the Panel issue a stipulated award incorporating into the Collective Bargaining Agreement for the period beginning 01/01/18 through 12/31/2023 the language agreed to by the parties on each issue, complies with the applicable factors prescribed in Section 9 of Act 312 and the Panel orders that the language listed in the Summary of Award be incorporated into the Collective Bargaining Agreement for the period beginning 01/01/18 through 12/31/2023.

Effective Date: Date of the Award.

6. SUMMARY OF AWARD

ISSUE	AWARD
<p>Section 9.2 Sick Leave</p>	<p>9.2: <u>Sick Leave</u>. This Section applies to employees hired before January 1, 2019. It is agreed that employees shall earn and be granted sick leave of absence under the following conditions and qualifications:</p> <p>A. After the completion of the six (6) months of employment, each full-time employee shall be credited with forty-eight (48) hours of sick leave and will accumulate sick leave with pay at the rate of eight (8) hours for each full month of employment exclusive of unpaid leaves of absence. Full-time and full-time/part-time employees shall earn and accrue sick leave at the rate of eight (8) hours sick leave for each one hundred seventy-three (173) straight time hours worked, however, no paid sick leave may be taken until an employee has worked six (6) months. The maximum accrued sick time shall be fourteen hundred and forty (1440) hours.</p> <p>B. The hours of sick leave that would have been earned when an employee is at the 1440 maximum shall be placed in a retirement ‘bonus bank’ which can only be used to receive pension credit pursuant to 12.10. At no time can hours in the retirement ‘bonus bank’ be added or returned to the sick leave accrual.</p> <p>C. All payments for sick leave shall be made at the employee's rate of pay when he takes his sick leave.</p> <p>D. Sick leave, when approved by the Sheriff and Human Resources Director, shall be granted:</p> <ol style="list-style-type: none"> 1. When it is established to the Employer's satisfaction that an employee is incapacitated for the safe performance of his duty because of illness or injury. 2. When unusual situations or emergencies exist in the employee's immediate household. 3. A full-time employee shall be allowed up to

	<p>ten (10) hours each year for doctor and dental appointments. Time spent at doctor and dental appointments in excess of the ten (10) hours provided herein shall be deducted from the employee's paid sick leave. The Employee must submit a signed verification from the doctor/dentist substantiating the appointment.</p> <p>E. No sick leave shall be granted for minor illnesses which would not affect the safety of the employee, or of other persons, or of property, while performing job duties.</p> <p>F. Disability due to pregnancy shall be treated as any other disability.</p> <p>G. Medical certification will not be generally required to substantiate sick leave of absence of three (3) consecutive working days or less; however, medical certificates, or in lieu thereof, a signed written statement from the employee setting forth the reasons for the sick leave, may be required at the discretion of the Employer, for each absence, regardless of duration, if the Employer has reason to believe that the employee is abusing his sick leave privileges. Falsification of the medical certificate or falsely setting forth the reasons for the absence shall constitute just cause for dismissal.</p> <p>H. Before an employee absent from his duties for twelve (12) consecutive days returns to work, he shall satisfy the Employer that he is fit to again perform his duties.</p>
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Section 10.1
Vacation

10.1: Vacations. Full-time employees shall earn and accrue vacation on a monthly basis, in accordance with the following schedules.

Employees hired before January 1, 2019

Seniority Level (Years)	Monthly Vacation Accrual	12 months equals
1/2 to < 6	6 hr. 40 min.	80 hrs.
6 to < 10	10 hr.	120 hrs.
10	10 hr. 40 min.	128 hrs.
11	11 hr. 20 min.	136 hrs.
12	12 hr.	144 hrs.
13	12 hr. 40 min.	152 hrs.
14	13 hr. 20 min.	160 hrs.
15	14 hr.	168 hrs.
16	14 hr. 40 min	176 hrs.
17	15hr. 20 min.	184 hrs.
18	16 hr.	192 hrs.
19+	16 hr. 40 min.	200 hrs.

Employees hired on or after January 1, 2019

Seniority Level (Years)	Monthly Vacation Accrual	12 Months Equals
< 6	8 hr.	96 hrs.
6	8 hr. 40 min.	104 hrs.
7	9 hr. 20 min.	112 hrs.
8	10 hr.	120 hrs.
9	10 hr. 40 min.	128 hrs.
10 to < 16	11 hr. 20 min.	136 hrs.
16	12 hr.	144 hrs.
17	12 hr. 40 min.	152 hrs.

	18	13 hr. 20 min.	160 hrs.
	19	14 hr.	168 hrs.
	20	14 hr. 40 min.	176 hrs.
<p style="text-align: center;">Section 10.4 Vacation Credits During Leaves of a Absence</p>	<p style="text-align: center;">This Section is deleted.</p>		

An employee will receive a vacation accrual on the first pay date of a month if the employee has any time worked, or paid time as provided in the contract, in the pay period that is paid on that pay date. The accrual on the first pay date of a month will be for that month, and will equal 1/12th of the current annual accrual (which is based on 2080 hours worked).

The accrual process for employees who have absences from work will be based on whether the employee is paid for any time as provided above during the pay period that is paid on the first pay date in the month.

Upon termination, vacation payout will still occur. As at present, payout of banked vacation time upon termination of employment does not result in additional vacation accrual.

For purposes of this section, paid time shall include paid holidays, vacations, paid sick leave time under Section 9.2, paid personal leave time under Section 11.4(a) or paid time off under Section 11.4(b), workers compensation leave that is supplemented by the County (26 to 52 weeks). Once the County supplement ceases, vacation accrual shall be based on the hours paid from the employee's paid time off as a supplement. Vacation accumulation shall be two hundred eighty (280) hours.

this Section, with the approval of the Sheriff or designee. Personal time not taken will be forfeited. New annual personal time will be added on the same date as the wage increase for the year under Section 13.1; these hours may be used through the end of the pay period before the next annual addition of credited hours, with the approval of the Sheriff or designee.

(b) Paid Time Off.

- i. Each full-time employee hired on or after January 1, 2019 who has completed their probationary period as of December 31 will be credited with forty (40) hours of paid time off on the same date as the wage increase for the year under Section 13.1; these hours may be used through the end of the pay period before the next annual addition of credited hours, with the approval of the Sheriff or designee.
- ii. Employees who complete six (6) months of service during the year will be given paid time off on a pro-rata basis.
- iii. Unused paid time off at the end of each annual period under (i) above will accumulate up to a total of one hundred twenty (120) hours. Any balance in excess of one hundred twenty (120) hours will be placed in the Retirement Bonus Bank and will be converted to pension service credit at retirement as provided in Section 12.10 (b).
- iv. An employee requesting to use paid time off must speak directly to a supervisor, either in person (face to face) or by telephone or email (acknowledgment of receipt of message required). No messages will be left with Dispatch or any other person instead of speaking to a supervisor.

1. Paid time off for personal reasons must be requested in advance of the time requested. The granting of paid time off for personal

	<p>reasons will conform to the manpower needs as determined by the Sheriff or designee. Paid Time Off granted under this subsection will be considered as scheduled Paid Time Off.</p> <p>2. Paid Time Off without pre-approval shall be granted for emergency personal reasons, when unusual situations or emergencies exist in the employee's immediate household, when an employee is unable to perform his duties because of illness or injury, pregnancy, or the illness or injury of the employee's spouse, child, or parent, provided the employee gives as much advance notice as possible; disability due to pregnancy shall be treated the same as any other disability. In cases where paid time off is used for employee illness, injury, or pregnancy, or for the illness or injury of the employee's spouse, child or parent, medical certification will not be generally required by the Sheriff's Office to substantiate a leave of absence of three (3) consecutive working days or less; however, medical certification, or in lieu thereof, a signed written statement from the employee and acceptable to the Sheriff or designee, setting forth the reasons for the paid time off,</p>
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	<p>may be required at the discretion of the Sheriff or designee for each absence, regardless of duration. Falsification of the medical certificate or falsely setting forth the reasons for the absence shall constitute Just Cause for dismissal. Paid Time Off granted under this subsection will be considered unscheduled Paid Time Off.</p> <p>3. Paid Time Off shall be charged against the employee's Paid Time Off Account in the amount taken. Paid Time Off may be taken in one (1) hour increments with the permission of the employee's supervisor.</p> <p>v. Each employee covered by this subsection (b) will be credited after their first six months of employment with a one-time S&A Bank of 48 hours, in addition to their first paid time off accrual under (b)(1) above. This bank may be used by an employee approved for S&A benefits under Section 12.15 to cover time missed from the employee's normal work schedule during a waiting period applicable under Section 12.15 (which provides that S&A benefits begin on the first (1st) day of disability due to accident, surgery (both inpatient and outpatient), and hospitalization or the eighth (8th) day of illness). Any hours remaining in this bank upon the employee's retirement will be placed in the Retirement Bonus Bank under Section 12.10(b).</p>
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<p style="text-align: center;">Section 11.5 Holiday and Personal Leave Usages</p>	<p>11.5: <u>Holiday and Personal Leave/Paid Time Off Usages.</u> The granting of employee requests for holiday and personal time off under Section 11.4(a), or paid time off under Section 11.4(b), shall conform to staffing needs as determined by the Department.</p>
<p style="text-align: center;">Section 12.1 Health Insurance</p>	<p>12.1: <u>Health Insurance.</u> All full time employees and eligible dependents shall be provided with Kent County Wellness PPO Plan and prescription drug plan. Employees must have the same enrollment for both the health and prescription plans (e.g. an employee cannot select one but not the other, or have different employee/dependent coverage in the health and prescription plans).</p> <p style="padding-left: 40px;">A. Employees shall contribute twenty percent (20%) of their applicable health care premiums through payroll deduction.</p> <p style="padding-left: 40px;">The employee is eligible for a wellness incentive equal to two and one-half percent (2½%) if the employee has participated in the wellness program including the completion of an annual preventive physical examination. (The Employer strongly encourages employee and family participation.) An additional two and one-half percent (2½%) incentive will be applied if the employee is a non-smoker or is participating in a smoking cessation program.</p> <p style="padding-left: 40px;">Effective July 1, 2012, elective abortions will no longer be a covered benefit under County health insurance plans.</p> <p style="padding-left: 40px;">Effective January 1, 2013, generic prescription drugs and supplies, requiring a prescription, used for the treatment of diabetes and/or hypertension will be provided without the generic co-pay. Additionally, insulin available under the brand name/formulary benefit schedule will be provided at the generic co-pay. Effective January 1, 2019 prescription drug insurance coverage will include the step therapy program of the insurance carrier utilizing generic and preferred options prior to usage of non-preferred or specialty drug</p>

	<p>regimens, provided that the step therapy program will not apply to a current employee or dependent as to that individual's prescriptions in effect on the above date, provided that the employee and dependent is covered by a County plan on the above date inclusive of a Medicare Supplement plan.</p> <p>Appendix B to the 2015-2017 contract will remain in effect until January 1, 2019, at which time Appendix B as included in this contract will take effect. Wellness PPO plan design changes including revisions to co-insurance and out of pocket maximum amounts will be implemented as summarized in Appendix B.</p> <p>Each year's open enrollment email notifications include a link to the coming year's benefit book, which will include the coming year's illustrative rates and HMO premiums and will specifically note any change to out of pocket maximums.</p> <p>B. 1. As an alternative to the County health insurance program, full-time employees are eligible to enroll in a Health Maintenance Organization (HMO) offered by the County (currently Blue Care Network) at the same employee contribution percentages described in 12.1 (A).</p> <p>All medical insurance programs shall provide for coordination of benefits among members of the same family by the Employer. Effective January 1, 2019, co-payments, deductibles, co-insurance maximums and out-of pocket maximums will be as summarized in Appendix B.</p> <p>2. In addition to the Kent County Wellness PPO Plan and prescription drug plan, and to the HMO program, the County may offer a lower cost health care and prescription program as a voluntary option</p>
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	<p>for employees otherwise eligible to participate in the PPO or HMO program.</p> <p>C. If the County determines that changes are needed to keep plan cost below the level that would result in application of the federal Affordable Health Care Act “Cadillac” tax during the term of this Agreement, then not later than September of the year before changes are to be made the County will advise the FOPLC of the change options it is considering and will discuss those options and others that the FOPLC presents. If the parties do not agree on changes the following changes will be made to achieve plan cost below the level that would result in application of the “Cadillac” tax: first, health care Flexible Spending Accounts will be deleted, and second, if the FSA account deletion may not be sufficient, deductibles will be increased in \$50 increments to the extent needed to lower plan cost sufficiently.</p>
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<p>Section 12.6 Pension</p>	<p><u>12.6: Pension (Multiplier, FAC and Retirement Eligibility).</u> The present retirement plan for employees of the department shall be continued and shall provide normal retirement benefits at two and one-half percent (2.50%) of the employee's annual compensation as defined by the "plan" with final average compensation (FAC) of 3.</p> <p>Effective July 1st, 2011, Final Average Compensation shall be the highest earnings in a thirty six (36) consecutive months period out of the last sixty (60) consecutive months of employment. Overtime earnings shall be averaged over one hundred twenty months (120) prior to retirement.</p> <p>The employee's pension contribution shall be one-half (1/2) of the annual amortized, actuarial valuation and shall not exceed 8.5% of the employee's annual compensation. Effective in the first pay period that begins in January 2020, the pension contribution shall be one-half (1/2) of the annual amortized actuarial valuation not to exceed 9.5% of the employee's annual compensation. The annual amortized actuarial valuation shall be based on the actuarial assumptions and amortization periods established by the Board of Trustees of the Kent County Retirement Plan and the Kent County Board of Commissioners in their sole discretion.</p> <p>Employees hired prior to January 1, 2015 shall be eligible for retirement under any of the following:</p> <ol style="list-style-type: none"> 1. 25 years of credited service at any age. 2. 5 years of credited service and age 60. 3. 15 years of credited service and age 55. <p>(Early retirement).</p> <p>Employees hired on or after January 1, 2015 shall be eligible for retirement under any of the following:</p> <ol style="list-style-type: none"> 1. 25 years of credited service and age 50. 2. 5 years of credited service and age 60. 3. 15 years of credited service and age 55. <p>(Early retirement).</p> <p>The existing Plan provisions for early retirement, including benefit reduction, will not be changed.</p>
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<p>Section 12.10 Retirement Bonus</p>	<p>12.10: <u>Retirement Bonus.</u></p> <p>(a) An employee hired before January 1, 2019 who retires under the Kent County Retirement Plan on or after July 1, 1999 (other than a deferred retirement) who as of the date of retirement has unused sick leave shall receive pension service credit (not service eligibility) for all unused sick leave time up to a maximum of 1440 hours and any additional hours included in the retirement ‘bonus bank.’</p> <p>(b) Each employee hired on or <u>after January 1, 2019</u> will have a Retirement Bonus Bank under Section 11.4, and upon retirement will receive pension service credit (not service eligibility) under Section 12.10 for all hours in the Retirement Bonus Bank.</p>
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<p style="text-align: center;">Section 12.11 Retirees Health Insurance</p>	<p>12.11: <u>Retirees Health Insurance</u>. In lieu of any payout for accumulated sick leave, the Employer will provide health care insurance for employees who retire under the Employer's retirement plan on January 1, 1987, or thereafter, in accordance with the following:</p> <p style="margin-left: 40px;">A. Employees who retire on or after July 1, 2006, who have a minimum of twenty-five (25) years of service or employees who receive a duty disability retirement on or after July 1, 2006, shall receive, at the Employer's expense, the lowest single subscriber health insurance currently available to bargaining unit members, up to a maximum of three hundred dollars (\$300.00) per month. Retirees may, at their own expense, be allowed to pay the difference between the premium amount paid by the Employer and the premium amount for any other Employer provided insurance plan selected by the retiree inclusive of a Medicare supplement plan.</p> <p>When the retiree is eligible for Medicare, the Employer shall provide to the retiree Medicare supplement health and prescription insurance at an amount not to exceed the lowest single subscriber rate available under the Employer's insurance programs, not to exceed three hundred dollars (\$300.00) per month. Retirees and their dependents age 65 or over who wish to elect a County plan must elect the Medicare supplement health and prescription plans, except that: (i) a retiree age sixty-five or over who has two or more covered dependents under age 65 may elect the County Family Health plan for the retiree and dependents, and (ii) this requirement does not apply to retirees and their dependents over age 65 who are enrolled in another County plan as of January 1, 2018, unless and until they elect a Medicare supplement plan. For employees who retire on or after January 1, 2009, the maximum amount paid by the Employer shall be three hundred and fifty dollars</p>
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	<p>(\$350.00) per month. For employees who retire on or after January 1, 2019, the maximum amount paid by the Employer shall be four hundred dollars (\$400) per month.</p> <p>Employees hired on or after January 1, 2015, upon their retirement, will be in a separate group for retiree health premium rating purposes.</p> <p>B. Retirees with less than twenty-five (25) years of continuous service at the time of retirement shall have a monthly pro-rata care credit based on years of credited service in relation to twenty five (25) years, not to exceed the lowest single subscriber rate.</p> <p>For employees who retire on or after July 1, 2006, because of an on duty disability, shall be eligible for up to three hundred (\$300) dollars per month toward retiree health insurance. If the disabled employee has less than twenty five (25) years of service, the three hundred (\$300) dollars per month shall be pro-rata, based on the years of service at the time of the duty disability retirement.</p> <p>For employees who retire on or after January 1, 2009, the maximum amount paid by the Employer shall be three hundred and fifty dollars (\$350) per month. For employees who retire on or after January 1, 2019, the maximum amount paid by the Employer shall be four hundred dollars (\$400) per month.</p> <p>C. Dependent health insurance coverage may be purchased by the retiree at the retiree's expense. A retiree's surviving spouse may continue to purchase health insurance provided by the Employer at the Employer's group rates, subject to the carrier's rules.</p> <p>D. Insurance premiums shall be paid commencing the first full month following retirement, including disability but</p>
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	<p>excluding deferred, and ending on the death of the employee.</p> <p>E. No payments shall be made by the Employer if:</p> <ol style="list-style-type: none"> 1. The employee receives a deferred pension; 2. The employee, after retirement, is employed by another employer who provides a health care program or insurance for its employees; 3. The retiree is covered by a health care program or insurance under his spouse's employment; 4. The balance of the required premiums required by the carrier in excess of those paid by the Employer, are not paid by the employee; <p>F. Employer contributions toward health care premiums for retirees is conditioned upon the retiree participating in the County's health care program that is provided to members of the bargaining unit and such benefits are subject to negotiations between the parties and the provisions of Section 12.1.</p>
<p>Section 12.15 Sickness and Accident Benefits (new section)</p>	<p><u>12.15. Sickness and Accident Benefits (S&A).</u> The Employer shall provide sickness and accident benefits for full-time and regular part-time employees hired on or after January 1, 2019. This coverage shall become effective when the employee has completed six months of service. Employees who are eligible for disability benefits shall receive weekly indemnity payments consisting of sixty-seven percent (67%) of their normal gross straight time wages. These benefits are payable from the first (1st) day of disability due to accident, surgery (both inpatient and outpatient), and hospitalization or the eighth (8th) day of</p>

illness, for a period not to exceed twenty-six (26) weeks for any one period of disability. No S&A benefits will be payable for more than 182 days of disability with the same cause or causes during any 12-month period.

- (a) Employees are not entitled to S&A benefits for any disability for which they may be entitled to indemnity or compensation under the Kent County Retirement Plan, Social Security, Workers' Compensation or any other disability benefit program.
- (b) The employee will be given pension service credit under the County retirement plan for the period of time during which S&A insurance benefits are received, provided that the employee pays the employee pension contribution on 100% of the employee's gross weekly wage for the entire period in which S&A benefits are paid.
- (c) The employer portion of all insurance premiums will be paid while an employee is receiving S&A benefits, provided the employee pays the employee portion. FMLA and S&A programs run concurrently.
- (d) An employee who is receiving S&A insurance benefits is eligible to return to his former or comparable position consistent with the FMLA. The employee must present a proper medical release from the employee's health care provider to return to work.

<p>Section 13.1 Classifications and Rates, and Appendix A</p>	<p>13.1: <u>Classification and Rates</u>. Salary Steps (A, B, C, D, E, F, G) are based on the County's pay plan and intervals for advancement provided therein. Annual salaries are based on 2080 hours. For annual pay increases other than Step increases, if January 1 falls in the first week of the pay period, then the pay increase will take effect on the first day of the pay period on which January 1 falls or, if January 1 falls in the second week of the pay period, then the pay increase will take effect on the first day of the following pay period.</p> <p>New <u>Appendix A</u> will increase the <u>Appendix A</u> wage rates as follows:</p> <ul style="list-style-type: none">• 2018: 2% wage increase retroactive to January 1, 2018.• 2019: 2.5% wage increase effective December 31, 2018.• 2020: 2.5% wage increase effective December 30, 2019• 2021: 2.5% wage increase effective December 28, 2020.• If this Agreement is not reopened under Section 16.2 the 2021 salary rates will be increased 2% for 2022 and an additional 2% for 2023, on the dates determined under this Section.
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<p>Section 15.27 Alcohol, Drug Testing</p>	<p>15.27: <u>ALCOHOL, DRUG TESTING. Prohibitions:</u></p> <p>The Employer strictly prohibits the manufacture, unauthorized use or possession, sale or distribution of alcohol/drugs by its employees on the Employer's premises (including parking lots and in the Employer's vehicles) or during work time.</p> <p><u>A. Condition of Employment:</u></p> <p>Compliance with the Employer's Alcohol and Drug Policy is a condition of continued employment.</p> <p><u>B. Purposes:</u></p> <p>The purposes of this policy are:</p> <ol style="list-style-type: none"> 1. To establish and maintain a healthy and safe working environment for all employees; 2. To ensure the reputation of the Kent County Sheriff Department and the County of Kent and its employees as good, responsible citizens; 3. To reduce accidental injury to person(s) or property; 4. To reduce absenteeism, tardiness, and indifferent job performance; 5. At the Employer's sole discretion to provide assistance towards rehabilitation for affected employees in appropriate cases; and 6. To Maintain Officer Safety. <p><u>C. Garrity Rights:</u></p> <p>The Sheriff shall administer each Bargaining Unit Member his Garrity Rights prior to any questions in reference to Random drug test. The results of any random drug test shall not be released to a third party or Prosecutor unless mandated by law or court order. If any request for drug results are made the employee in question and the Association President shall be notified within 48 hours of any such request.</p> <p><u>D. Reasonable Suspicion Testing:</u></p>
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If the Employer has reasonable suspicion that the employee in question is:

1. Under the influence, impaired, or otherwise affected by the use of drugs/alcohol, or
2. Is currently possessing on the Employer's premises (or in the Employer's vehicle(s)) unauthorized drugs/alcohol, or
3. Has sold, used, distributed drugs/alcohol, on or off the Employer's premises or attempted the same.

E.

The Employer may require the employee to undergo a Preliminary Breath Test (PBT) which will be verified by a breathalyzer test at the Employer's Occupational Health Service provider, or if necessary, a neighboring Sheriff's Department. The employee may elect to have an independent test of his choosing. The test shall be conducted in a reasonable amount of time after the Employer's last test. The cost of the independent test shall be the responsibility of the Employer.

F. Consequences for Violation of this Policy:

Violation of the Employer's alcohol and drug policy may result in severe disciplinary action, up to and including discharge for a FIRST OFFENSE, except that the consequences for a positive test under the "Random Drug Testing" portion of this policy shall be solely as provided under that heading. In addition to any disciplinary action for alcohol or drug abuse, the Employer, at its sole discretion, may refer an employee to a program for assessment, counseling and referral to a treatment program for alcohol and drug abuse. Employees who undergo counseling and treatment for substance abuse and who continue to work must meet all established standards of conduct and job performance. A voluntary request for assistance prior to detection of a violation of such policy will not result in discipline, provided that: (1) such disclosure is the first and only involvement with drugs/alcohol for the employee, and (2) the employee satisfactorily completes the detoxification treatment

program as prescribed, and (3) the employee remains free of drug/alcohol use and strictly complies with the Employer's drug free policy. However, such requests and participation in counseling/treatment will not prevent disciplinary action for other violation(s) of this Alcohol and Drug Abuse Policy.

G. Case Specific Drug Testing:

An employee may be subjected to alcohol/drug testing (1) as part of an employee's reinstatement after successfully completing an alcohol or drug rehabilitation program, (2) during an employee's probationary period, (3) upon return to work from a leave of absence of more than thirty (30) days, (4) as part of a routine departmental scheduled physical examination.

H. Random Drug Testing:

All Bargaining Unit Members will be subject to a random drug test under the following circumstances:

- a. Selections shall be conducted by a third party using a computer-based random number generator that is matched with the employee's payroll number, which will ensure that each employee has an equal chance of being selected each time selections are made.
- b. Selections will be made from a list of all Bargaining Unit Members, and a maximum of four (4) Bargaining Unit members shall be tested each month.
- c. The drugs to be tested for under this Random Drug Testing program are:

Marijuana metabolite
Cocaine metabolite
Opiates metabolite
Phencyclidine
Amphetamines
Barbituates

The initial and confirmatory test cutoff levels will be determined by the Accredited Laboratory

and approved by the FOPLC and the Sheriff's Office.

- d. The testing procedure to be utilized for any random drug test shall be a saliva (oral fluid) test.

I. Consequences for Positive Random Test:

1st Offense: Letter of Reprimand
Mandatory Substance Abuse Counseling
Random Drug Testing for 2 years

2nd Offense: Last Chance Agreement
Suspension up to 80 hours
Mandatory Substance Abuse
Counseling/Treatment
Random Drug Testing for 2 years

3rd Offense at any time and regardless of any other provision of this Agreement: Termination

A voluntary request for assistance prior to detection of a violation of the alcohol and drug policy, and prior to selection for a Random drug test under this policy, will not result in discipline, provided that: (1) such disclosure is the first and only involvement with drugs/alcohol for the employee, and (2) the employee satisfactorily completes the detoxification treatment program as prescribed, and (3) the employee remains free of drug/alcohol use and strictly complies with the Employer's drug free policy. A request for a leave of absence for drug or alcohol treatment shall not be denied if it is a voluntary request under this paragraph.

J. Last Chance Agreement:

Individuals subject to discharge for violation of the Employer's Alcohol and Drug Policy may be offered the opportunity to enter into a "Last Chance" agreement.

The last chance agreement provides that an employee may continue employment under the following conditions:

- 1) The employee acknowledges in writing that he/she has a substance abuse problem.

- 2) The employee successfully completes an Employer approved, assessment and, if recommended, a supervised treatment program.
- 3) The employee agrees in writing to remain free of alcohol/drug use and strictly complies with the Employer's alcohol and drug policy.
- 4) The employee is subject to automatic discharge for any violation of the Last Chance Agreement or this policy while on the Last Chance Agreement and the employee and Association waives the right to grieve and arbitrate such discharge.
- 5) The term of a Last Chance Agreement for a positive random drug test shall be no longer than two (2) years.

K.

When Reasonable Suspicion under Section D exists that the Employee is under the influence, impaired, or otherwise affected by a substance other than alcohol, the Employee shall submit to a urine drug test at the Employer's Occupational Health Service Provider.

L. Chain of Possession Procedures/Split Sample Procedure:

At the time specimens are collected for any testing, the employee shall be given a copy of the specimen collection procedures. The specimens must be immediately sealed, labeled, and initialed by the employee to ensure that the specimens tested by the laboratory are those of the employee. The two (2) containers shall be sealed in the employee's presence and the employee given the opportunity to initial the containers and witness his social security number placed on the containers. Both shall then be forwarded to an approved laboratory for testing. If an employee is told that the first sample tested positive, the employee may, within 72 hours of receipt of actual notice, request that the second specimen be forwarded by the first laboratory to another independent and unrelated, approved

laboratory of the parties' choice for confirmatory testing of the presence of the drug. If the employee refuses to comply with this procedure it shall be a presumption of guilt and the employee may be subject to discharge.

M. Laboratory Accreditation:

All laboratories used to perform testing must be accredited by the National Institute on Drug Abuse (NIDA).

N. Certification of Test Results:

All test results must be certified by the laboratory as accurate.

O. Leave of Absence:

At the Employer's sole discretion, an employee may be given a leave of absence for the purpose of undergoing treatment pursuant to an Employer-approved program of alcoholism or drug use of up to ninety (90) days.

P. Confidentiality:

All information obtained in the course of testing, rehabilitation, and treatment of employees with alcohol and drug abuse problems shall be protected as confidential medical information and shall be kept separate from the employee's personnel file. Only those who have a need to know shall be given access to this information. Upon the signed authorization by the employee, the President of the Association and the Counsel of the Association shall have access to such records. The importance of the confidentiality to the employer and its employees cannot be overemphasized.

Q. Specimen Retention:

All specimens deemed "positive" by the laboratory must be sealed and retained, by the laboratory if possible, for a period of one (1) year.

R. Laboratory Methodology:

Approved testing techniques known at the time for

	<p>specimen testing of blood, urinalysis and hair follicle shall be employed.</p>
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<p>Section 16.1 Termination</p>	<p style="text-align: center;"><u>DURATION</u></p> <p>16.1: <u>Termination</u>. This Agreement, including the attached Letters of Understanding, shall remain in force until midnight, December 31, 2023, and thereafter for successive periods of one (1) year unless either party shall, on or before the sixtieth (60th) day prior to expiration, serve written notice on the other party of a desire to terminate, modify, alter, negotiate, change or amend this Agreement.</p> <p>A notice of desire to modify, alter, amend, negotiate or change, or any combination thereof, shall have the effect of terminating the entire Agreement on the expiration date in the same manner as a notice of desire to terminate unless before that date all subjects of amendment proposed by either party have been disposed of by the party proposing amendment, modification or alteration, negotiation, change or any combination thereof.</p> <p>Section 16.2 <u>Reopening</u>. Either party may reopen this Agreement during 2021, only with regard to salaries under Section 13.1 for 2022 and 2023, by giving advance written notice to the other party as provided in this Section. Such written notice must be given not later than April 30, 2021. If such notice is given, the parties will negotiate. Any tentatively agreed changes must be ratified by the FOPLC and submitted by the County Human Resources Department for consideration on the County Board of Commissioners agenda, not later than 30 days after the end of the above negotiation period.</p> <p>If this Agreement is reopened as provided above, each party will have the same rights as in negotiations for a renewal agreement at the end of the term of this Agreement, including the right to invoke Michigan Public Act 312 arbitration, except that negotiations, and Act 312 arbitration if applicable, will be limited to salaries under Section 13.1 for 2022 and 2023.</p> <p>16.3 Emergency Manager. An Emergency Manager appointed under the Local Financial Stability and Choice Act may reject, modify or terminate this collective bargaining agreement as provided within the Local Financial Stability and Choice Act 2012 PA 436, MCL 141.1541 to 141.1575.</p>
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Appendix B (To take effect January 1, 2019)	APPENDIX B: This revised Appendix B will take effect January 1, 2019.
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Appendix B	PPO Plan	HMO Plan
Office Visit PCP		
· In Network	\$25	\$20
· In Network Specialist	\$25	\$40
· Out of Network	Ded./Coins.	
Wellness		
· In Network	100% Covered	100% Covered
· Out of Network	Ded./Coins.	
Emergency Room Copay	\$125	\$100
Individual Deductible		
· In Network	\$300	\$250
· Out of Network	\$600	
Family Deductible		
· In Network	\$600	\$500
· Out of Network	\$1,200	
Coinsurance		
· In Network	85%	90%
· Out of Network	65%	
Individual Annual Out-of-Pocket Maximum***		
· In Network***	\$3,150***	\$3,150***
· Out of Network***	\$6,300***	
Family Annual Out-of-Pocket Maximum***		
· In Network***	\$6,300***	\$6,300***
· Out of Network***	\$12,600***	

Prescription Plan	
Deductible	None
Annual Out-of-Pocket Maximum***	
· Individual***	\$4,200***
· Family ***	\$8,400***
Coinsurance/ Copays	

· Generic	\$15
· Generic for treatment of diabetes or hypertension	\$0
· Brand Name-Formulary	\$25
· Brand Name- Non-Formulary	\$45
· 90 day co-pay for Maintenance Drugs	2X Co-pay for 90 Day Supply

***ACA Out-of-Pocket Maximums are subject to indexing annually and include employee cost towards: Deductible, Co-pays and Coinsurance. Total combined employee costs for medical and prescriptions cannot exceed Federal Annual limit.- Adjusted Annually.

<p style="text-align: center;">Article III Union Security and Checkoff (Non-Economic)</p>	<p style="text-align: center;">ARTICLE III <u>UNION SECURITY AND CHECKOFF</u></p> <p>3.1: <u>Agency Shop</u>. This Article III is subject to, and it is the express intent of the Employers and the FOPLC to follow the law as currently defined by, the United States Supreme Court decision of <i>Janus v. AFSCME</i>, 138 S. Ct. 2448 (June 27, 2018), as well as 2012 PA 349, at MCL 423.209 and MCL 423.210. Language requiring fee/assessment payment is to be construed to make such payment voluntary unless and until agreed otherwise by the parties.</p> <p>As a condition of employment, all employees covered by this Agreement shall, no later than thirty-one (31) days after the start of their employment with the Employer, either become members of the FOPLC and pay to the FOPLC the dues, initiation fees and assessments uniformly required of all FOPLC members or pay to the FOPLC a service fee equivalent to the periodic monthly dues uniformly required of Association members.</p> <p style="padding-left: 40px;">A. Members of the Association executive board shall not have FOPLC dues deducted from their pay. The FOPLC shall provide the Employer with updated lists of employee's occupying executive board positions.</p> <p>3.2: <u>Checkoff</u>. The Employer agrees to deduct from the salary of each individual employee in the bargaining unit who voluntarily becomes a member, the FOPLC's dues subject to all of the following subsections:</p> <p style="padding-left: 40px;">A. The FOPLC shall obtain from each of its members a completed Checkoff Authorization Form which shall conform to the respective state and federal law(s) concerning that subject, or any interpretation(s) made thereof.</p> <p style="padding-left: 40px;">B. All Checkoff Authorization Forms shall be filed with the Employer's Director of Human Resources who may return any incomplete or incorrectly completed form to the Association's treasurer, and no checkoff shall be made until such deficiency is corrected.</p>
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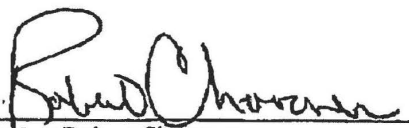
	<p>C. All other employees covered under this Agreement who do not voluntarily choose membership in the FOPLC shall have deducted from their wages a percentage of the membership dues which sum shall be less than 100% of said dues and which sum shall accurately represent the amount for said employee due the FOPLC as their fair share of costs attributable to negotiating the terms of this Agreement, which sum shall include by way of example but not by way of limitation, state, national or other dues and assessments or other amounts for other Association activities.</p> <p>D. The Employer shall checkoff only obligations which come due at the time of checkoff, and will make checkoff deduction only if the employee has enough pay due to cover such obligation, and will not be responsible to refund to the employee if he has duplicated a checkoff deduction by direct payment to the Association.</p> <p>E. The Employer's remittance will be deemed correct if the Association does not give written notice to the Human Resources Director within two (2) calendar weeks after a remittance is sent, of its belief, with reasons stated therefore, that the remittance is incorrect.</p> <p>F. A bargaining unit member may revoke their authorization for the Employer to make payroll deduction of Association and FOPLC dues. Prior to the beginning of the payroll period before that in which the revocation is to take effect, the bargaining unit member must send the Association President a certified letter stating the member's intent to revoke the payroll deduction authorization. The member should send a copy of the letter by first class mail, email, or other delivery method to the Kent County Human Resources</p>
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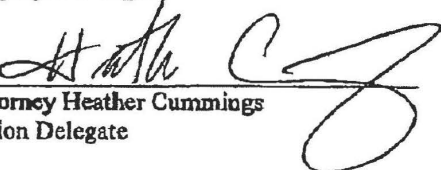
	<p>Director. The Association President will promptly notify the County Human Resources Director in writing by mail, email, or other delivery method of the receipt of the revocation letter identifying the bargaining unit member and the date the letter was received, with a copy to the FOPLC. The Human Resources Department will notify the Payroll Department of the date on which union dues deductions are to end. The Association will notify the County's Representative of the Association's address to which bargaining unit members certified letters are to be sent. The Association may change that address, or the County may change its designated representative above, with a two week advance written notice to the other party by mail, email, or other delivery method.</p> <p>G. The Association shall provide at least thirty (30) days' written notice to the Human Resources Director of the amount of the dues and/or representation fee to be deducted from the wages of County employees as in accordance with this Section. Any change in the amounts determined will also be provided to the Human Resources Director at least thirty (30) days prior to its implementation.</p> <p>H. The FOPLC agrees to defend, indemnify, and save the Employer harmless against any and all claims, suits, or other forms of liability arising out of its deduction from an employee's pay of FOPLC dues or in reliance on any list, notice, certification, or authorization furnished under this Section. The FOPLC assumes full responsibility for the disposition of the deductions so made, once they have been sent to the Association.</p>
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SUMMARY

This concludes the award of the Panel. The signature of the delegates and of the Independent Arbitrator below indicates that the Award as recited in this Opinion and Award is a true restatement of the Award.

Re: Kent County and Kent County Sheriff & Michigan Fraternal Order of Police Labor Council
MERC Case No. L 17 J-0985 (Act 312)

Date: Sept. 5, 2018 
Attorney Robert Chovanec
Employer Delegate

Date: September 5, 2018 
Attorney Heather Cummings
Union Delegate

Date: September 6, 2018 
William E. Long
Arbitrator/Chair

ATTACHMENT 1

From: Heather Cummings <heather@cummingslawpllc.com>
Subject: RE: Kent Co & Michigan FOP Labor Council Act 312 Case L 17 J-0985 (Act 312)
Date: August 31, 2018 at 11:18:03 AM EDT
To: Bill Long <long.w@sbcglobal.net>
Cc: "Chovanec,Robert" <robert.chovanec@kentcountymi.gov>, David Willis <Labor@mifop.com>, Larry Orłowski <orłowski@mifop.com>

Good morning Bill:

Attached please find the joint draft Summary for the Stipulated Award and the final, unsigned CBA.

The Stipulated Award references sections and attachments in the CBA; therefore, we prefer that the CBA be included in the award.

Please let us know if you have any questions and concerns.

Much thanks,

Heather

ATTACHMENT 1

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

ACT 312 ARBITRATION

**FRATERNAL ORDER OF POLICE
LABOR COUNCIL,**

Petitioner/Union,

-and-

**KENT COUNTY and
KENT COUNTY SHERIFF,**

Respondents/Co-Employers.

**Impartial Chairperson:
William E. Long**

MERC Case No. L17 J-0985

STIPULATED ACT 312 ARBITRATION AWARD

The parties have reached a new Agreement (“Attachment A”), subject to final proofreading and preparation of a final unmarked signature copy. The new Agreement includes current agreement text, changes from the parties Tentative Agreements document, and text resolving all issues in this Act 312 Arbitration case.

Following are summaries of Attachment A text resolving the issues pending before the Arbitrator. Section number references are to Attachment A. The Tentative Agreement changes are included in Attachment A but not summarized below.

1. Section 9.2. Sick Leave (Economic). Section 9.2 will remain applicable to employees hired before January 1, 2019, and a new Letter of Understanding #2 regarding Sick Leave under Section 9.2 is added regarding those employees. Section 9.2 will not apply for employees hired on or after January 1, 2019. These employees will instead be covered by new Section 11.4(b), providing for annual paid time off, and by the County’s Sickness and Accident

Benefit program (new Section 12.15, see 12 below). Paid time off for employees hired on or after January 1, 2019 will be 40 hours annually, which may be accumulated to 120 hours of unused paid time off, with any excess transferred to a Retirement Bonus bank for retirement plan service credit. In addition, each new employee will have a 48 hour “one-time” bank under Section 11.4(b)(v), to be used to cover Sickness and Accident program waiting days under Section 12.15.

2. Section 10.1. Vacation (Economic). The parties’ 2017 Vacation Letter of Understanding is substituted for the vacation schedule in the current contract, with agreed language changes included in Attachment A. In addition, a new vacation schedule is added for employees hired on or after January 1, 2019.

3. Section 10.4. Vacation Credits During Leaves of Absence (Economic). This Section is deleted.

4. Section 10.6. Payout of Vacation Upon Termination (Economic). This Section is renumbered as Section 10.5 and modified to limit payout to 200 hours for employees hired on or after January 1, 2019.

5. Section 10.8. Vacation Buyback (Economic). This Section is renumbered as Section 10.7. The annual 40-hour vacation buyback opportunity is amended to determine eligibility based on years of seniority rather than vacation hours, and the eligibility standard is changed from 14 to 10 years of seniority effective in 2019. The requirement that an employee must have taken at least 80 hours of vacation in the current year to exercise the buyback right is deleted.

6. Section 11.4(a) Personal Time (Economic). Section 11.4(a) is amended to accrue annual personal time on the same date as the annual wage increase, to synchronize with County pay periods.

New Section 11.4(b) establishes paid time off and County Sickness and Accident Benefit program coverage rather than personal time and sick leave for employees hired on or after January 1, 2019, as provided under item 1 above.

7. Section 11.5. Holiday and Personal Leave Usages (Economic). Revised to refer to paid time off for employees hired on or after January 1, 2019.

8. Section 12.1. Health Insurance (Economic). New Appendix B will take effect on January 1, 2019 (see item 17 below). Language is added confirming the County’s commitment to furnish information about plan changes as part of the annual open enrollment process.

9. Section 12.6. Pension (Economic). The 8.5% employee contribution cap will change to 9.5%, effective in the first pay period that begins in January 2020.

10. Section 12.10. Retirement Bonus (Economic). Reference is added to the new Retirement Bonus Bank for Employees hired on or after January 1, 2019, as provided in Section 11.4(b).

11. Section 12.11. Retirees Health Insurance (Economic). Subsections (A) and (B) are amended to increase the maximum retiree health payment from \$350 per month to \$400 per month, for employees who retire on or after January 1, 2019.

12. Section 12.15. Sickness and Accident Benefits (proposed new Section) (Economic). New Section 12.15 is added providing the County Sickness and Accident Benefit program for employees hired on or after January 1, 2019 instead of sick leave under Section 9.2.

13. Section 12.16. Long-Term Disability Program (proposed new Section) (Economic). The Employers' proposal to adopt County Long Term Disability insurance instead of the Pension Plan non-duty disability benefit for employees hired on or after January 1, 2019 was withdrawn in the parties' discussions that resulted in this Stipulated Award.

14. Section 13.1. Classifications and Rates, and Appendix A (Economic).

- (a) 2018: 2% wage increase retroactive to January 1, 2018.
- (b) 2019: 2.5% wage increase effective December 31, 2018.
- (c) 2020: 2.5% wage increase effective December 30, 2019.
- (d) 2021: 2.5% wage increase effective December 28, 2020.
- (e) If the Agreement is not reopened under Section 16.2, the 2021 salary rates will be increased by 2% for 2022 and an additional 2% for 2023, on the dates determined under Section 13.1.

15. Section 15.27. Alcohol, Drug Testing (Non-economic). Reorganize this Section, revise text in "E" covering alcohol testing, and add new "K" covering reasonable suspicion drug testing.

16. Section 16.1. Termination (Economic). Six-year contract, January 1, 2018 through December 31, 2023. Wage increases as provided in item 14 above, subject to the option of either party under new Section 16.2 to reopen the Agreement in 2021 for negotiation of 2022 and 2023 wages, with either party having the right to petition for Act 312 Arbitration if the reopening negotiations do not result in agreement on 2022 and 2023 wage rates.

17. Appendix B (Economic). New Appendix B, to take effect January 1, 2019.

18. Article III, Union Security and Checkoff (Non-Economic). Agreed language is added regarding *Janus v. AFSCME*, 138 S. Ct. 2448 (June 27, 2018) and 2012 PA 349, at MCL 423.209 and MCL 423.210.

IN THE MATTER OF THE
ARBITRATION BETWEEN:

Kent County & Kent County Sheriff

and

Michigan Fraternal Order of Police Labor Council
Representing:
Kent County Law Enforcement Officers Association

MERC Case No. L 17 J-0985

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COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

Interim Opinion and Award

(Addressing the Issues of Contract Duration and External Comparable Communities)

Arbitration Panel

Arbitrator/Chair:
William E. Long

Employer Delegate:
Attorney Robert Chovanec

Union Delegate:
Attorney Heather Cummings

Appearances

Robert Chovanec, Attorney
Kent County and Kent County Sheriff Office

Heather Cummings
Michigan Fraternal Order of Police Labor Council

Date of Award: June 12, 2018

INTRODUCTION

The Michigan Fraternal Order of Police Labor Council representing the Kent County Law Enforcement Officers Association (referred to as the Union in this Interim Opinion and Award) and Kent County Michigan and the Sheriff of Kent County (referred to as the Employer in this Interim Opinion and Award) entered into negotiations for a Collective Bargaining Agreement (CBA) that would be a successor agreement to an agreement between Police Officers Association of Michigan and the Employer for the period January 1, 2015 through December 31, 2017.

The parties recognize the Michigan Fraternal Order of Police Labor Council Union as the exclusive representative for collective bargaining for all full-time employees in the Sheriff's Department of Kent County in the positions of County patrol sergeant, patrol officer, emergency communications Supervisor I and II, Emergency communication operator I and II and, regular part-time emergency communications operator. The Union and the Employer have been unable to resolve disputed matters leading to a CBA and the Union filed a petition with the Michigan Employment Relations Commission (MERC) for Act 312 Arbitration on April 9, 2018. This impartial Arbitrator was appointed by MERC on April 27, 2018.

A pre-hearing conference was held May 10, 2018. Among the procedures agreed to by the parties at the pre-hearing conference was:

Pre-hearing discussion Re: Comparable Communities

During the pre-hearing conference call the parties discussed their respective positions on Comparable communities. **The parties agreed upon the following comparable communities as acceptable for presentation at the hearing:**

- The Counties Oakland, Macomb, Kalamazoo, Ingham, and Ottawa.

In addition to the above comparable communities the Employer proposes the County of Genesee be included as a comparable community. The Union objects to Genesee County as a comparable community.

In addition to the above comparable communities the Union proposes the City of Grand Rapids be included as a comparable community. The Employer objects to the City of Grand Rapids as a comparable community.

Pre-hearing discussion Re: the duration of the CBA

During the pre-hearing conference the parties discussed their respective positions on the proposed duration of the CBA.

The Employer proposed the CBA be for a five-year period beginning 01/01/18 through 12/31/22 with a provision for wage reopeners for the years 01/01/21 through 12/31/21 and 01/01/22 through 12/31/22.

The Union proposed the CBA be for a three-year period beginning 01/01/18 through 12/31/20.

The parties agreed that the determination of the procedural issues of comparable communities and duration of the CBA should be determined prior to identification and submission of the substantive economic and non-economic issues. **In lieu of a hearing the parties agreed to the following process of resolving the procedural issues of the comparable communities and duration of the CBA:**

On or before June 4, 2018 each party shall submit to the Independent Arbitrator by electronic mail a brief in support of their positions on the procedural issues along with supportive documents they may choose. **Upon receipt of the written arguments and supporting evidence from both parties, the Independent Arbitrator will exchange that information to each party by way of electronic mail.**

On or before June 18, 2018 the Independent Arbitrator will rule on the procedural issues involving the comparable communities and duration of the CBA and provide that ruling to the parties by electronic mail.

The parties have followed the above procedure and this Interim Opinion and Award will address the following two issues:

1. The selection of comparable communities for which a comparison of wages, hours and conditions of employment will be made between employees

involved in this proceeding with other employees performing similar services in public employment pursuant to Section 9(d) (i) of Act 312.

2. The duration of the CBA.

COMPARABLE COMMUNITIES

Section 9(1)(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. Section 9(1)(a) also directs the Panel to include in the factors it must consider in its findings, opinions, and order: the financial ability of the unit of government to pay.

Employer Position

Re: Including Genesee County as a comparable community

In support of including Genesee County as one of the comparable communities the Employer points out that the parties to the last Act 312 proceeding involving Kent County and this bargaining unit (Order issued in 2012) chose the Counties agreed to by the parties in this case plus Genesee County. The Employer says it is merely proposing the same comparable communities in this case. The Employer acknowledges that the members of this bargaining unit are represented by a different labor organization than represented them in the 2012 Act 312 proceeding.

The Employer included a series of exhibits with its brief in support of its position that Genesee County should be included as a comparable community. Those exhibits contained comparisons among the agreed upon counties and Genesee County displaying demographic (E-1a) and fiscal data (E-1b), public safety expenditures (E-1c) and State Equalized Valuation and State Taxable Valuation data (E-1d). The Employer acknowledges in its brief that the public safety expenditure data for public safety police and emergency communications displays Genesee County expenditures substantially

less than those of the agreed to comparable counties. The Employer says this is because Genesee County does not operate a 911 Emergency Communications System. But the Employer argues that in light of Genesee County's other fiscal data, the low reported operations expenditures does not justify excluding Genesee County as a comparable community.

The Employer acknowledges that Exhibit (E-1) is not all inclusive in displaying the fiscal and demographic data for Genesee County and agreed upon comparable communities but it asserts that the data provided is the more important data showing revenue sources which most counties rely on to fund their services. The Employer says Exhibit (E-1) data shows that Genesee County's revenue and demographic characteristics are within the range of the other previously agreed to counties and should be accepted as a comparable community.

Re: Adding the City of Grand Rapids as a comparable community

The Employer's position is that the City of Grand Rapids should not be considered a comparable community for this proceeding. The Employer included exhibits on demographic data (E-2a), fiscal data (E-2b), income and property tax data (E-2c) and public safety expenditures (E-2d) with its brief in support of its position that the City of Grand Rapids should not be included as a comparable community. Exhibit (E-2a) provides demographic data showing a comparison of the agreed upon counties including Genesee County low and high range and average population with the population of the city of Grand Rapids and the average number of persons per square mile served by the Counties compared to the persons served per square mile by the City of Grand Rapids. Exhibit (E-2a) indicates the average number of persons per square mile served by the Counties is 876 and the average number of persons per square mile served by the City of Grand Rapids is 4,424. The Employer argues that this is a significant difference because it requires the counties to deliver law enforcement services over a more sparsely populated geographic area, which results in different service and operational requirements.

Exhibit (E-2b) provides fiscal data comparing the Counties' low and high range general fund and all governmental funds revenue and the average per capita counties' total revenue to the City of Grand Rapids general fund and all governmental funds revenue and average total revenue per capita. Exhibit (E-2b) also compares the seven county averages with the City of Grand Rapids total property tax, revenue, and expenditures per capita.

The Employer notes that the City of Grand Rapids has a much higher General Fund and Other Governmental Funds per capita revenue than the average of the Counties. The Employer says these differences are driven, in part, by another significant difference between Michigan counties and cities: cities are permitted to levy income taxes but counties are not permitted to do so. Exhibit (E-2c) lists the City of Grand Rapids income tax revenues for 2016 was \$88,174,251. The Employer also points out that (E-2b) shows that the City of Grand Rapids has a lower property tax revenue to its General Fund and Other Governmental Funds than the counties, but its per capita property tax revenue to those funds is almost 9% higher than the average of the counties. Exhibit (E-2d) shows that the per capita expenditures for public safety for the City of Grand Rapids is almost three times the highest per capita expenditures of the seven counties. A review of Exhibits (E-1c) and (E-2d) allows a comparison of the Public Safety Expenditures of Kent County compared to the City of Grand Rapids.

It shows that Kent County had \$36,183,597 expenditures and the City of Grand Rapids had \$55,124,025 expenditures. It also shows the Kent County per capita expenditures for public safety was \$56 compared to the City of Grand Rapids per capita expenditure for public safety of \$281.

The Employer's position is that this data, taken as a whole, demonstrates that the City of Grand Rapids demographic and financial data is not comparable to the agreed upon comparable communities and therefore should not be added as a comparable community.

Re: Contract Duration

The Employer proposes the CBA be for a five-year period beginning 01/01/18 through 12/31/22 with a provision for wage reopeners for the years 01/01/21 through 12/31/21 and 01/01/22 through 12/31/22. The Employer notes that it has bargaining agreements with ten labor organizations representing approximately 1300 employees. Prior to this year, all of the CBA's were for a three-year period. The Employer says in negotiations for four CBA's that expired December 31, 2017, the Employer proposed five- year duration agreements allowing either party to reopen the agreement in the third year for negotiation of wages for years four and five. The Employer says this will allow stability in labor relations for a longer period of time but with a reopening option for the key issue of wages.

Four collective bargaining agreements were scheduled to expire December 31, 2017. This case is one of the four. The Employer indicates that agreements have been reached in two out of the three agreements for five years with the provisions for wage reopeners as described above. Agreement was reached for a three-year duration in the other CBA beginning January 1, 2018.

The Employer says so far in 2018, the County has begun negotiations with two other bargaining units and has proposed the same five-year proposal as proposed in this case and intends to make the same proposal in negotiations for the other four agreements that will expire December 31, 2018. The Employer acknowledges that the agreed upon external comparable community County CBA's have three-year duration agreements with the exception of Oakland County which has a two-year duration.

Union Position

Re: Including Genesee County as a comparable community

The Union's position is that Genesee County should not be included in this proceeding as a comparable community. The Union included a series of exhibits with its brief in support of its position. Union exhibit (U-4) compares the current maximum base wages for the Counties the parties have agreed upon and for Genesee County for the positions of Sergeant, Deputy, Dispatcher, and Dispatch Supervisor. The exhibit reveals

that Genesee County wages for the positions of Sergeant and Deputy are the lowest among all counties. There are no wages listed for Genesee County dispatchers because Genesee County has only 6 Dispatchers for Court services. The Union points out that Genesee County wages are not compatible to Kent County or the other counties because Genesee County has not provided wage increases in the last eight years for Sergeants and the last nine years for Dispatchers.

The Union also argues that Genesee County does not share the unique relationship with the County that the City of Grand Rapids does, which the Union says should be considered as a comparable community. The Union acknowledges that a review of some of the exhibits on the financial and demographic comparisons among the agreed upon comparable communities might support inclusion of Genesee County in the comparable communities (U-6), but argues that financial compatibility is only one ingredient for assessing compatibility.

Re: Adding the City of Grand Rapids as a comparable community

The Union's position is that the City of Grand Rapids should be added as a comparable community. The Union says the City of Grand Rapids could not be a more reasonable comparable community. The Union points out that this arbitrator, in a previous Act 312 proceeding, noted that the location of the comparable communities as they relate to the local labor market is among the factors that may be considered when determining comparability.

Union exhibits accompanying its brief included (U-4) which compares the current maximum base wages for the positions of Sergeant, Deputy, Dispatcher and Dispatch Supervisor among the agreed upon comparable communities and Kent County, Genesee County and the City of Grand Rapids. The Union says this comparison demonstrates that the wages between Grand Rapids and Kent County are comparable. The exhibit shows that Kent County wages for Sergeant and Deputy positions are very close to those for similar law enforcement positions in the City of Grand Rapids.

The Union also included Union exhibit (U-5) that is a document sent from Kent County to Labor Attorney Alison Paton in 2015 related to negotiations at that time involving the Kent County CBA with the Kent County Deputy Sheriff's Association. Union (U-5) provides a comparison of wages of Kent County Deputy, Detective and Sergeant positions with the wages of similar positions in the Cities of Grand Rapids, Kentwood, Wyoming and Walker in addition to the Counties that were agreed to by the parties in this proceeding and Genesee County. The Union argues that for the County to now argue that the City of Grand Rapids is not a comparable community is disingenuous since it used the City of Grand Rapids data involving negotiations with this bargaining unit in the recently expired CBA.

Union exhibit (U-6) displays financial and demographic information taken from the 2016 or 2017 Comprehensive Annual Financial Reports (CAFR) for the Counties agreed to as comparable communities and Genesee County and the City of Grand Rapids. The exhibit identifies 16 economic or demographic data depicting a comparison among the listed communities with Kent County. The Union points out that the City of Grand Rapids had the greatest number of factors (9) falling within plus or minus 30% of Kent County factors among the communities agreed to and Genesee County.

The Union refers to current discussions occurring between Kent County and the City of Grand Rapids involving the possible consolidation of City and County dispatch services as an additional reason to include the City of Grand Rapids as a comparable community. Union exhibits (U-1) and (U-2) are March 2018 and May 2018 articles from the Grand Rapids Press reporting on discussions between the two communities as they explore possible consolidation. Union exhibit (U-3) is a memorandum jointly prepared by the City and the County informing dispatch staff of both the County and the City of ongoing discussions involving possible consolidation of services. The Union notes that consolidation of services will require a focus on equalizing wages and benefits and aligned working conditions, which are fundamental principals in promoting labor peace.

The Union says use of the City of Grand Rapids is not only appropriate, but also forward thinking for the future success of a consolidated dispatch service.

Re: Contract Duration

The Union's position is that the CBA should be for three years. It notes that all of the agreed upon external comparable communities' current contracts are for three years or less (U-7) and the current contracts between Kent County and Captains and Lieutenants and Deputy Sheriff Association (U-8) have durations of three years and 2.5 years respectively. Union exhibit (U-9) displays the contract duration for CBA's involving this bargaining unit over the past twenty years and indicates that since March 25, 2010 no contract has been longer than three years. The Union argues that both the internal and external comparable community data support limiting the CBA duration to three years.

Additionally, the Union says shorter duration contracts serve the public interest because they allow flexibility to accommodate future changes. In this case, the Union points out that future changes could include the possible merger of the County and City of Grand Rapids dispatch services, possible State Legislative changes to retiree health care and pensions and possible State Supreme Court decisions on a pending case involving collectively bargained for retiree health care. The Union says being able to address these changes, if necessary, in three years rather than five provides both parties the flexibility to craft future CBA's that can accommodate these changes.

DISCUSSION AND FINDING

Re: Including Genesee County as a comparable community

Discussion

A review of the parties' positions and supporting documents, I believe, supports the Employer's position that Genesee County should be included in the external comparable communities. Employers exhibits (E-1) and (E-2) display various demographic and financial comparisons among the Comparable communities and Kent County. The majority of that data reveals that Genesee County fiscal data falls in the

mid range of Comparable Counties involving General Fund and Property Tax revenue and total expenditures. Union exhibit (U- 6) identifies financial data from recent CAFR's and it also reveals that Genesee County, along with Macomb County, has the highest number of comparisons of financial data with Kent County among the comparable counties.

The Union placed significant emphasis on Genesee County wage disparities, noting that Genesee County has not provided wage increases for Sergeant and Deputy positions in the last eight years. Certainly, that will be a factor to be considered when reviewing wage and benefit proposals in the context of the overall issues involved in this proceeding. It is also clear that Genesee County dispatch functions are not comparable to Kent County or other comparable communities. But it is easy to exclude Genesee County from comparable communities when considering wages and benefits for dispatch staff from comparable communities. The Union argued that Genesee County doesn't share the same relationship with Kent County as the City of Grand Rapids does. But neither do most of the other communities the parties have agreed are comparable communities. I think overall financial and demographic comparisons support inclusion of Genesee County in the Comparable communities.

Findings

After considering the positions of each party on the issue of the inclusion of Genesee County as one of the comparable communities, the Arbitrator finds the Employer's position is the stronger position based on the applicable factors prescribed in section 9 of Act 312. **Therefore, Genesee County will be included as a comparable external community.**

Re: Adding the City of Grand Rapids as a comparable community.

Discussion

Similar to the analysis of the position of the parties and the documentation they provided in the discussion of the inclusion of Genesee County as a comparable community, I have carefully considered the position of the parties and conclude that the

City of Grand Rapids should be included as a comparable community. Similar to the consideration given with Genesee County, I view the fiscal and economic data comparisons favor inclusion of the City of Grand Rapids.

I acknowledge the point the Employer makes that the City of Grand Rapids has a different financial revenue source in the ability to levy an income tax. But Employer exhibit (E-2b) comparing the City of Grand Rapids revenue and expenditure data with that of the comparable county communities reveals that the City of Grand Rapids falls within the range of the high and low Counties range in four of the five categories listed: i.e. 1) General fund and all other Governmental Funds Revenue; 2) Total property tax; 3) Total revenue; 4) Total expenditures. Exhibit (E- 2b) shows the per capita revenue from the residents of the City of Grand Rapids generally greatly exceeds that of the comparable county communities but that just demonstrates the city residents pay more per capita.

The Union, in its' arguments in favor of including the City of Grand Rapids as a comparable community, again focuses on wage comparisons and notes that the County was not unaware of City wage comparisons with other than County governments, including the City of Grand Rapids, in previous negotiations (U-5). Union exhibit (U-6) displaying data for recent CAFR's, including the City of Grand Rapids, also reveals that the City of Grand Rapids falls within the range of most economic factors similar to the other comparable communities.

The Union also sites the discussions currently occurring between Kent County and the City of Grand Rapids involving the possible consolidation of dispatch functions as a reason for including Grand Rapids as a comparable community. Union exhibits (U-1) through (U-3) refer to those discussions. But there is no certainty at this time that consolidation will or will not occur. And if it does occur it is unlikely to do so before the panel is required to make a decision in this proceeding. Therefore, even though discussions may be going on pertaining to possible consolidation of dispatch services,

the parties are encouraged to not let possible scenarios influence their positions or testimony in this case. I note in particular the statement in (U-3):

"Current discussions have centered around the possibility of a single dispatch center being operated by Kent County. Kent County employees would continue employment without interruption or reclassification."
(Emphasis added)

Similar to the conclusion reached related to inclusion of Genesee County. I think overall financial and demographic comparisons support inclusion of the City of Grand Rapids in the Comparable communities.

Findings

After considering the positions of each party on the issue of the inclusion of the City of Grand Rapids as one of the comparable communities, the Arbitrator finds the Union's position is the stronger position based on the applicable factors prescribed in section 9 of Act 312. **Therefore, the City of Grand Rapids will be included as a comparable external community.**

Re: Contract Duration

Discussion

The weight of the evidence presented, i.e. Union exhibits (U-7) through (U-9) favor the Union's position on contract duration of three years. The Employer sites the fact that it has achieved five-year contract duration in negotiations in 2017 for contracts involving the Assistant Prosecuting Attorneys Association and Local 214 Parks personnel, but it also agreed to a three-year contract with the Circuit Court Attorney Referees. None of those agreements involved Act 312 proceedings.

On the other hand, the Union presented supporting documents that reveal that all of the current external comparable community contracts and current contracts for Kent County Captains and Lieutenants and the Deputy Sheriff's Association are for three years or less (U-7) (U-8). Additionally, as pointed out by the Union in its brief, a possible merger of the City of Grand Rapids and Kent County Dispatch functions may occur

sometime in the next 12 to 24 months. If it does, it will be in the best interest of both parties to have a full review of any contract revisions they may be desired as a result of that consolidation sooner rather than later and with the opportunity to consider all matters, not just a wage reopener.

Findings

After considering the positions of each party on the issue of the duration of the CBA, the Arbitrator finds the Union's position is the stronger position based on the applicable factors prescribed in section 9 of Act 312. **Therefore, the Contract that results from this Act 312 proceeding will be for three (3) years beginning 01/01/18 through 12/31/20.**

SUMMARY

This concludes the Interim Opinion and Award of the Panel.

Re: Kent County and Kent County Sheriff Office and Michigan Fraternal Order of Police Labor Council
MERC Case No. L 17 J-0985 (Act 312)

Date: JUNE 12, 2018 
William E. Long
Arbitrator/Panel Chair