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STATE OF MICHIGAN
Department of Consumer & Industry Services
Employment Relations Commission

Arbitration Under Act 312
(Public Act of 1969 as amended)

In the Matter of
FRATERNAL ORDER OF POLICE (FOP)
CAPITAL CITY LODGE #141

And

COUNTY OF INGHAM and the
INGHAM COUNTY SHERIFF

MERC Case No. L 96 A 4009

Award of Panel

Panel Members: John B. Kiefer, Chairman
Denise Barowicz, Union Delegate
Harold Hailey, County Delegate

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STATEMENT OF PROCEEDINGS

The Fraternal Order of Police, Capitol City Lodge #141 (Union) has filed a Petition for Arbitration pursuant to Act 312, Public Acts of 1969, as amended, with the Michigan Consumer & Industry Service Employment Relations Commission requesting the initiation of binding arbitration proceedings regarding terms and conditions of employment to be included in a collective bargaining agreement. On August 9, 1996, John B. Kiefer was appointed to serve as Chairman of a panel of arbitrators. The other members of the arbitration panel selected by the respective parties were Denise Barowicz, the Designant for the Union, and Harold Hailey, the Designant for the County.

Between October 11, 1996 and July of 1997, the arbitrator presided at approximately eight (8) prehearing, evidentiary hearing and post hearing conferences.

During the course of a hearing conducted on December 10, 1996, the Union objected to the County's presentation of a proposal regarding its Issue 6 dealing with health care coverage. It contended that the County had previously never submitted the proposal to collective bargaining, mediation and the Petition for Act 312 proceedings and, thus, according to the Union, the Act 312 Panel had no jurisdictional or equitable basis to consider the issue. At the invitation of the Chairman, the parties, on November 12, 1997, submitted Briefs on the Union's objection. After a thorough review of Briefs, the Chairman ruled on March 27, 1997 that the Union's objection should be denied because there didn't appear to be any definite law on the question and because the County had given the Union enough notice to know, in general terms, the substance of the issue.

The Chairman opined that had the objection been raised at the pretrial or the very beginning of the trial itself, he might have been inclined to remand the matter for further mediation because it did not appear that the subject was thoroughly covered in mediation. Because of the lateness of the objection, the ends of justice did not appear to be served by a remand at this stage of the proceedings. Therefore, the hearings continued until all issues, including the County's health care issue, were considered.

On April 15, 1997, the parties submitted their last offers of settlement which are attached hereto. Both parties agreed that all issues were economic ones. On May 19, 1997, the parties submitted Briefs in support of their respective positions on all of the issues, and this award results therefrom.

Section 8 of Act 312 provides:

"At or before the conclusion of the hearing held pursuant to Section 6, the arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it and shall mail or otherwise deliver a true copy thereof 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."

Consistent with the Supreme Court's directive in Detroit v DPOA, 408 Mich 410 (1980), the panel has, with respect to economic issues, adopted the last offer of settlement which more nearly complies with the applicable Section 9 factors as follows:

"Sec. 9. where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or

amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hour and conditions of employment of other employees performing similar services and with the employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment incomparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public or in private employment."

The Parties stipulated that all tentative agreements reached during contract negotiations would be incorporated in the successor contract and that the balance of the prior labor agreement, not modified by tentative agreement or the proceedings herein, would continue in the successor contract.

There are 17 issues in all and they shall be approached in the following order:

Economic Issues

Demands by Union

1. Union Issue #1 - Holidays - Withdrawn
2. Union Issue #2 - Holiday Compensation - Economic
3. Union Issue #3 - Sick Leave - Withdrawn
4. Union Issue #4 - Sick Leave Payout at Retirement - Economic
5. Union Issue #5 - Life Insurance - Withdrawn
6. Union Issue #6 - Uniforms - Resolved through Agreement
7. Union Issue #7 - Wages - Economic
8. Union Issue #8 - Retirement - Economic
9. Union Issue #9 - Transfer Policy - Withdrawn

Demands by County

1. County Issue #1 - Management Rights - Economic
2. County Issue #2 - Holiday Pay - Economic
3. County Issue #3 - Cost of Living Allowance - Economic
4. County Issue #4 - Leave of Absence - Withdrawn
5. County Issue #5 - Election of Remedies - Economic
6. County Issue #6 - Hospitalization Medical Coverage - Economic
7. County Issue #7 - Waiver Clause - Withdrawn
8. County Issue #8 - Family and Medical Leave Act - Resolved through Agreement

UNION ISSUE #2

Holiday Compensation

Position of the Parties

The Union proposes that Article 14, Holidays, which provides that employees receive regular straight time wages for hours worked on a holiday be supplemented by a new Section 2 which will provide as follows:

"Section 2. Employees scheduled to work any of the above holidays shall be compensated at the rate of one and one-half (1 1/2) times their regular hourly rate of pay for all hours worked in addition to receiving eight (8) hours of holiday pay at their regular rate of pay in accordance with Section 4."

The County's last offer seeks maintenance of the status quo.

Discussion

The Union claims, through an appropriate exhibit, that the vast majority of comparable communities compensate their employees for holidays worked by paying them at the rate of one and one-half times their hourly rate and that most of the internal comparable employees enjoy even greater benefits than the Union here requests. It also claims that meeting the cost of the increase would not be prohibitive to the County and states that \$6,742.08 would cover that cost for each year of the contract.

On the other hand, although the County concedes that the comparable communities pay a premium of one and one-half rate for holiday work, Ingham County is exceptional in that, unlike most of the comparables, it pays a cost of living bonus to all employees; it provides sickness and accident insurance and pays more for employee health insurance.

The exhibits introduced by the Union demonstrate that the vast majority of the comparable communities compensate their employees for holidays worked by paying them the one and one-half hourly rate the Lodge is here advocating. The contention is by the following excerpts of comparable communities relating to Holiday Pay:

- | | | |
|------------------|---|--|
| WASHTENAW COUNTY | - | 2 times regular rate of pay plus 8 hours holiday pay - overtime worked on a holiday is paid at 2 1/2 times regular rate of pay |
| MUSKEGON COUNTY | - | 1 1/2 times regular rate of pay plus holiday pay - overtime worked on a holiday is paid at 2 1/2 times regular rate of pay |
| BERRIEN COUNTY | - | 1 1/2 times regular rate of pay plus 8 hours holiday pay |
| JACKSON COUNTY | - | 1 1/2 times regular rate of pay plus 8 hours holiday pay |

KALAMAZOO COUNTY	-	1 1/2 times regular rate of pay plus holiday pay
MACOMB COUNTY	-	1 1/2 times regular rate of pay plus 8 hours holiday pay
SAGINAW COUNTY	-	1 1/2 times regular rate of pay plus 8 hours holiday pay
INGHAM COUNTY	-	1 times regular rate of pay plus 8 hours holiday pay.

The internal comparable, i.e. the other bargaining units and employees in the county for the most part enjoy even greater benefits than what the Union employees are here requesting with respect to holiday compensation. For the most part, other county employees are receiving double time compensation for the holidays they work. The only exception is the non-supervisory Sheriff Department FOP unit.

The evidence supports the position of the Union that the compensation change for working holidays here being advocated by the Union is a common and well accepted standard for compensating employees for working the designated holidays. The Union has met its burden in demonstrating that the relevant comparables are receiving the type and extent of the holiday compensation here being advocated.

Award

Weighing all the competent, material and substantial evidence and applying the Section 9 factors recited above, particularly those factors contained in (d)(i), the Panel

is persuaded that the Union's proposal on this issue should be adopted and Section 2 should be added to Article 14 of the new contract.

Accept: John B. Kuebler

Accept: Dennis Baumgardner

Reject: Harold Hailberg

UNION ISSUE #4

Sick Leave

Position of the Parties

The Union proposes to increase the current payout of unused accumulated sick time received by its members at retirement from one-half of the current 80 days (640 hours) to one-half of 120 days (960 hours).

The County seeks maintenance of the status quo.

Discussion

The Union argues that this benefit is designed to reward employees for the non-use of their sick leave during their tenure of employment and is conferred on the premise that it discourages employees from utilizing sick time where the benefit is available but, through the discretion of the employee, is not used. By increasing the current benefit from one-half of a maximum of 80 days to 120 days, the employees will receive a more equitable reward for their non-exercise of their right to use sick leave. The Union claims that the maximum cost of the proposal would be approximately \$36,619.00. It also maintains that many comparable communities provide a greater benefit than the one the Union is now requesting.

The Employer, in the meantime, asserts that the comparables cited by the Union do not take into account the Ingham supervisors' ability to cash out up to five days (or 40 hours) of sick leave annually what is not available to any comparables. In addition, Ingham County supervisors rank fourth in sick leave payout in comparison to the other communities and, if granted this proposal, they would advance to second place.

It would seem to the Panel that neither the internal nor external comparables support adoption of the Union's proposal on this issue. Every Ingham County bargaining unit employee can receive up to a 50% payout of 160 days upon death or retirement. Only three comparable communities, Muskegon, Kalamazoo and Macomb Counties, pay a greater amount of sick leave payout than Ingham County. In addition, none of the comparable communities pay an annual sick leave payout. Ingham County supervisors can cash in forty (40) hours of sick leave annually.

It would appear that members of the Union currently have the fourth best sick leave payout provisions of any of the comparable communities. In addition, that ranking does not take into account the ability of the Union members here to cash out up to five (5) days of sick leave annually. As set forth above, that is a benefit enjoyed by none of the comparables.

The Union members here appear not to be behind any of the comparables on this benefit. They currently rank fourth in terms of sick leave payout. However, under the Union's proposal, they would move forward to second among the comparable communities.

Award

Applying the Section 9 factors, especially the relative position of the bargaining unit with the external comparables and weighing all the competent, material and substantial evidence before the Panel, it is persuaded that the Union's proposal on this issue not be adopted.

Accept: John B. Keefer

Accept: Harold Haring

Reject: Denise Barrow

UNION ISSUE #7

Wages

Position of the Parties

The Union seeks to increase the wages in each of the categories of sergeant, lieutenant and captain by 4% per year for each step of each rank beginning July 1 of each year starting July 1, 1996. The County offers a 3% increase for each year. The Union argues that the cost between the two proposals is only \$11,920.00 in 1996; \$13,942.00 in 1997 and \$14,943.00 in 1998. It further argues that the bargaining unit is currently in the mid-range of external comparables, and it should not be required to lose ground.

The County asserts that its proposal, when applied to sergeants, keeps them more than \$3,000.00 annually above the average of comparables for 1996 and 1997 and almost \$6,000.00 in 1998. For lieutenants, the County's proposed wage increase would place them \$500.00 above the average in 1996. For captains, the County's proposed

wages would place them \$1,500.00 above the average in 1996. The County also contends that its wage proposal is consistent with the Consumer Price Index. In addition, it points out that its proposal also includes a COLA roll into base salary.

The County's proposed usage package seems to be supported by the internal comparables as well as the comparable communities.

A review of the comparable communities shows that the County's Last Best Offer for sergeant's wages greatly exceed the average of the comparables for 1996, 1997 and 1998. The County's proposal for Ingham County sergeants keeps them more than \$3,000.00 annually above the average of the comparable communities with sergeants for 1996 and 1997. For 1998, the County's proposal raises the top pay for sergeants to almost \$6,000.00 above the average of the comparable communities.

The County's wage proposals for lieutenants also compare well to the comparable communities. The Employer's proposal would keep Ingham County lieutenant's wages more than \$500.00 above the average of the comparables in July 1996 (the effective date of the Employer's proposed wage increase). The difference in pay above the comparable average for wages, increases substantially beginning in 1997.

As for the current wages for Ingham captains, they are among the highest of the comparables and would remain so under the Employer's Last Best Offer. The Employer's wage proposal for 1996 would result in Ingham captains being paid more than \$1,500.00 above the average wages and nearly \$2,000.00 more than the median wages for captains in comparable communities in July 1996.

Award

Applying the Section 9 factors, in particular subparagraph (d) which deals with comparisons of the Union's wages here with those of the employees performing similar services, and weighing all the competent, material and substantial evidence presented to the Panel, it concludes that the Union's proposal on this issue not be adopted and that the County's Last Best Offer on this issue be awarded.

Accept: John B. Kuefer

Accept: Harold Hinkley

Reject: Denise Borowicz

UNION ISSUE #8

Retirement

The Union proposes that a new Section 9 should be added to Article 35 dealing with retirement. The proposed section shall read as follows:

"Effective January 1, 1997 (or the next earliest first of a quarter), the employees shall be provided with a retirement benefit upgrade of a 3.2% multiplier (retaining the FAC-3 and all prior age waivers F50/25, F55/15, 25 years of service with no age requirement). The employees shall pay 9.16% for the 3.2 multiplier through payroll deduction. All start up and/or administrative costs, if any, shall be paid by the Employer".

Position of the Parties

The Union proposal contemplates that the only cost to the County would be the administrative fees charged by the Municipal Employee's Retirement System and that the employees alone shall pay the 9.16% for the 3.2 multiplier associated with the proposal. The County questions the Union's claim that the costs will be limited to \$6,000.00 for the start up fee and \$2,000.00 annual administrative fee. The County also asserts that the

Union employees already have the best plan that the Municipal Employees Retirement System currently offers and that those employees are the only ones in the comparable communities or in the internal bargaining units which have the "25 and out" benefit. The County also disputes the Union's claim that the County has little to lose by adopting the proposal. It asserts that it has a critical interest in being able to attract and keep good employees and that new hires of high quality may turn away from Ingham County if they are required to pay the increased cost of the multiplier which would amount to nearly 20% of an employee's salary. The County also claims that the 9.16% multiplier is subject to future adjustments which increases would appear to be a burden on the County since the language of the proposal seems to limit the employee's responsibility to 9.16%.

The Panel is influenced by the Union's representations that its proposal will establish a strong retirement program for the benefit of the employees and also to provide a vehicle for the employer to have a young and vibrant police force. In order for both to occur, a good retirement program for the officers should be put in place.

The Union's commitment to this goal is exemplified by its willingness to have the employees pay for this benefit improvement even though they now pay, and with this increase will be paying, more than any other employment group of the county and/or the comparables listed in the Union Exhibits.

Not only will the employer benefit because of the rotation of younger officers into the law enforcement program, but also, the employer will experience a financial savings that will far out distance the administrative fees, the \$6,000.00 start up fee and the \$1,000.00 annual fee, that it will be paying if the panel adopts the Lodge's retirement proposal.

The improved retirement benefit of 80% of the employee's final average compensation will undoubtedly encourage many employees of this bargaining unit, that would not have otherwise retired under the current plan, to now do so. To the extent that persons that did not expect to retire will now do so because of the lure of this improvement in the retirement benefit, the County will save substantial sums of employment costs. This savings is related to the lower cost the employer will endure when those that retire from this unit are replaced by new employees in the non-supervisory unit, as all promotions to the current bargaining unit are made from the non-supervisory unit. These savings are translated from lower earning rates for new hires for vacations and wages. Furthermore, as new persons are promoted into this unit, i.e. promoted to the rank of sergeant, they will replace higher paid retiring incumbents at the beginning rates and it will take several years before they will obtain the same rates earned by the retiree. The same circumstances also occur with regard to promotions to the vacancies in the lieutenant and captain's ranks that will undoubtedly occur, as the positions will be filled by candidates from within the bargaining unit. Until the newly promoted bargaining unit employee proceeds through the steps of the compensation scale for the new rank, a savings will indeed occur, as the retiring employee being replaced will have been at the highest rate within that rank.

The Panel is of the opinion that the County's fears are misplaced and that the administrative costs and the multiplier fees were subject to future upward adjustments which will result in additional costs to it. The Union shall be held bound by its admissions and sworn testimony on the record that, except for the \$6,000.00 start up fee and \$1,000.00 annual administrative fees, the County will be free from any further costs of this

improvement. In addition, the multiplier was calculated by MERS upon which both parties rely for the calculations.

Award

Applying the Section 9 factors, and weighing all the competent, material and substantial evidence admitted on this issue, the Panel concludes that the Union's proposal on this issue be adopted.

Accept: John B. Kiefer

Accept: Denise Barowicz

Reject: Harold Hailer

COUNTY ISSUE #1

Management Rights

Position of the Parties

The County proposed to add a new Section 5 to Article 2 to the contract as follows:

"Section 5. Nothing in this Agreement shall be construed to limit the employer's ability to comply with state or federal civil rights requirements, including compliance with any accommodations requirements under the Michigan Handicapper's Act or the American with Disabilities Act; and/or any state or federal judicial or administrative order directing compliance with an applicable state or federal civil rights law or regulation."

The County proposes that the contract recognize two statutes; the Americans with Disabilities Act and Michigan's Handicapper's Act, which are involved in conventional employment matters.

The Union proposes to adopt the Employer's proposal only if the following language is added:

"However, if there is a conflict between the terms of the applicable law or administrative ruling and the terms of the parties' Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall prevail."

Discussion

The idea behind the County's proposal is to recognize the primacy of the two statutes in question. The Union's proposal would eviscerate this recognition. The Panel concludes that the County's proposal simply articulates what the law itself provides; i.e. that the law gives primacy over private contracts which conflict with its provisions. The Union's proposed addendum would reverse this primacy.

Award

Weighing all the competent, material and substantial evidence and applying the Section 9 factors, the Panel is persuaded that the County's proposal on this issue be adopted and the Union's proposal be rejected.

Accept: John B. Hepler

Accept: Harold Hailey

Reject: Denise Barowig

COUNTY ISSUE #2

Holiday Pay

Position of the Parties

The County proposed adding a new Section 8, Holiday Pay, to Article 14, as follows:

"Holiday Pay shall be paid in the same pay period in which it is earned."

The Union wants to maintain the status quo claiming that the County did not offer any supporting data for its proposed change nor any of the criteria under Public Act 312.

Discussion

The Panel agrees with the Union that the County failed to meet its burden of proof as set forth in Public Act 312. The present contract language has been in place for 20 years or longer and, at worst, provides some slight administrative burden on the County.

Award

The Panel rejects the County's proposal on this Issue.

Accept: John B. Kiefer

Accept: Dennis Barowicz

Reject: Harold Hailley

COUNTY ISSUE #3

Cost of Living Allowance

Position of the Parties

The County proposes to cease paying quarterly cost of living (COLA) payments and rolling the \$1,100.00 COLA into the employee's base salary, arguing that it will alleviate a certain amount of administrative burden and will, in fact, increase the employee's salaries. The Union proposes to maintain the status quo, claiming that the County has shown no justifiable reason for its proposed change.

Discussion

The Panel once again agrees with the Union (as in the County's Issue #3) that the County has failed to meet its burden of proof under Act 312.

Award

The Panel rejects the County's proposal on this issue in applying Section 9 factors.

Accept: John B. Kiefer

Accept: Dennis Barowig

Reject: Harold Hailey

COUNTY ISSUE #4

Election of Remedies

The County has proposed deleting the current language contained in Article 38 and adding the following:

Section 1. When remedies are available for any complaint and/or grievance of an employee through any administrative or statutory scheme or procedure for a veteran's Preference Hearing pursuant to Act 305 of the Public Acts of 1897, et seq, or any federal law pertaining thereto, and/or civil rights matters pursuant to Act 453 of the Public Acts of 1976, or any federal law pertaining thereto, in addition to the grievance procedure provided under this Contract, and the employee elects to utilize the statutory or administrative remedy, the Union and affected employee shall not process the complaint through any grievance procedure provided for in this contract.

Section 2. If an employee elects to use the grievance procedure provided for under this contract and subsequently elects to utilize either of the above-stated statutory remedies, then the grievance shall be deemed to have been withdrawn and the grievance procedure provided for hereunder shall not be applicable and any relief granted shall be forfeited."

The Union proposed to maintain the status quo.

In support of its argument on this issue, the County asserts that at the present time an employee who feels he/she was wrongly disciplined by the Employer may file a grievance under the contract's grievance procedure. The challenge to the discipline may

be processed through the grievance procedure to a circuit court trial and beyond if an appeal is filed.

The disciplined employee also may challenge the discipline in a civil rights charge before the Michigan Department of Civil Rights or the Equal Employment Opportunity Commission (assuming the requisite discriminatory allegations are made). In addition, the employee, if a veteran, may also request that the discipline be litigated at a veteran's preference hearing, another statutory proceeding. The employee also may file a civil lawsuit challenging the same discipline. All of these challenges may be pursued simultaneously while a grievance is proceeding under the parties' contractual grievance procedure. In effect, the employee has unlimited opportunities to challenge the same issue in multiple forums.

The County asserts that the overwhelming majority of Ingham county collective bargaining unit employees work under labor contracts which contain an election of remedies' provision identical to that which is being proposed by the County here. Only two collective bargaining units in Ingham County do not have this provision. Both are FOP units.

On the other hand, the Union agrees that employees may rely upon remedies available in other forums even if they exercise their rights to file a grievance under the terms of the contract grievance procedure. The same language provides, however, that the Union will not provide representation of the employee in more than one forum. The Union also asserts that the proposal of the County will effectively deprive employees of the bargaining unit from having the opportunity to seek enforcement of potential infringements of their rights. The impact of the County's proposed language would, for

example, require an employee who seeks the assistance of the Michigan Civil Rights Commission with respect to an alleged civil rights violation to forfeit the right to utilize the contract grievance procedure with respect to a dispute arising out of the same factual circumstance. The same consequence would occur with regard to situations where an employee might seek relief under the terms of the American Disabilities Act; the Family Medical Leave Act; or the Veteran's Preference Act.

Discussion

The Panel concurs with the Union's position that the County's proposal is likely to create more controversy and would not likely limit disputes between the parties because if the County's language is adopted by the Panel, it is likely that disputes will continue to occur with regard to whether or not an independent claim to a different agency or court under a right conferred by statute directly involves the same subject matter being addressed in a grievance filed by the same employee under the terms of the parties' Collective Bargaining Agreement. For example, an employee may challenge a discipline on the ground that it is excessive and, therefore, violative of the concept of "just cause" and at the same time file a complaint with the Civil Rights Commission alleging that the imposition of the discipline was motivated by, or the direct product of, a discriminatory act or actions on the part of the Employer. The dispute would then entail the argument that the contract grievance is simply challenging the extent and degree of the punishment imposed on a "just cause" basis, while the civil rights claim is addressing whether the motive or motives for disciplining the employee in the first place were legitimate. Thus, the question becomes whether or not the labor contract grievance entails the same issue

as the complaint being addressed by the Civil Rights Court and/or Civil Rights Commission.

The language of the current collective Bargaining Agreement addresses the concern of the County by making it clear that the Union will not provide representation to an employee in more than one forum. Consequently, if an employee seeks redress in the Courts, through the Veteran's Preference Act, the Civil Rights Act, or some other area, the Union will only provide representation to such an employee for the purpose of asserting such claim or claims in one of those forums, usually the contract grievance procedure.

The Panel notes that the County has not submitted in the testimony and evidence presented at the arbitration hearing in this cause one situation or circumstance that would justify the modification of this language that it now asks the Panel to adopt. It has not suggested nor proved that the concern it is purportedly here addressing has ever caused it a problem or been an obstacle to its management activities.

In response to the County's reliance on internal comparisons as to this issue, the Panel notes that the comparisons do not include FOP units.

Award

Accordingly, the Panel rejects the County's proposal on this issue in applying Section 9 factors.

Accept: John B. Keefe

Accept: Denise Barowig

Reject: Harold Hailer

COUNTY ISSUE #5

Hospital Medical Coverage

Position of the Parties

The County proposes to modify the collective bargaining agreement to provide Blue Cross/Blue Shield, Blue Choice Point of Service Health Insurance for bargaining unit members and retirees.

The parties' labor contract currently gives employees and retirees a choice of four different health insurance plans, Physicians Health Plus; Health Central; Blue Cross/Blue Shield PPO; and Blue Cross Traditional. The County argues that only one comparable community pays more for health insurance than Ingham county. In response to escalating costs, the County has proposed a combined single provider plan that is a managed care plan, the Blue Cross/Blue Shield Point of Service. Other Ingham County employees who enjoy this health care plan include UAW members; ICEA members; OPEIU members (county professionals); managers; elected officials and judges.

The County further argues that the proposed health care plan was selected by a health coalition committee, comprised of management and non-management employee alike, both union and non-union. The FOP supervisors had been invited to participate in the health coalition committee but had chosen not to do so.

The Union once again (as it did at the hearing) asserts that the parties did not bargain the specifics of this issue nor was it submitted to mediation. It also asserts that the County did not submit any substantive nor expert evidence to support its claim that the proposed plan includes improved benefits or options available in the present plan.

Discussion

While it is a landable aim for the County to reduce the cost of health insurance for everyone while still maintaining the highest benefit levels, the Panel must agree with the Union's contention that the County did not introduce into evidence at the hearing any in-depth analysis or comparison of the provisions of the existing plan and those of the proposed plan. Moreover, the Union was prevented from obtaining its own expert analysis of the proposed plan because it lacked specifics prior to the hearing. Thus, the Panel was unable to obtain comprehensive and knowledgeable testimony from both sides to base an informed decision on how the proposed changes would effect the members of the Union on this important issue.

As a result, the Panel must determine that the County failed to meet its burden of proof to convince the Panel that a change in health care coverage should be made.

Award

Based on the failure of the County to provide competent, material and substantial evidence on the whole record to the Panel, the County's proposal is accordingly rejected.

Accept: John B. Kiefer

Accept: Denise Barrow

Reject: Harold Hailer

UNION ISSUE #6

Uniforms

and

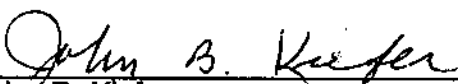
COUNTY ISSUE #6

Medical Leave Act

These issues, having been mutually resolved by the parties, are not here addressed and shall be incorporated into the new contract.

SUMMARY

The Panel commends both parties and their learned and experienced advocates, R. David Wilson, Esq., for the Union, and John R. McGlinchey, Esq., for the County, in the presentation for their proofs and arguments. Without their excellent Briefs, no informed award would be possible in light of the passage of time from the time of Pretrial until the closing of the Proofs and submission of Last Offers. Throughout, the parties and their representatives maintained a high degree of professionalism, in spite of the emotionally charged nature of some of the issues. The Panel sincerely hopes that a new climate will prevail in future bargaining.



John B. Kiefer
Chairperson

**ACT 312
ARBITRATION**

COUNTY OF INGHAM

AND

**CAPITOL CITY LODGE #141
OF THE FRATERNAL ORDER OF POLICE
(FOP)**

SUPERVISORY UNIT

**EMPLOYER'S LAST BEST OFFER
As of April 15, 1997**

Attached is the Employer's Last Best Offer as April 15, 1997. The Last Best Offer contains the Employer's Proposals, the Employer's response to the Union's Proposals, and Joint Proposals. The Employer proposes that all T.A.'s agreed to during Collective Bargaining shall be incorporated in the final contract and stipulated to at the upcoming panel meeting. The balance of the Collective Bargaining Agreement shall remain as it existed in the predecessor Agreement, subject only to appropriate date changes, typographical errors and changes that may be required by the final Act 312 award.

EMPLOYER'S PROPOSALS:

1. Article 2, Management Rights. Add a new Section 5, which reads as follows:

Section 5. Nothing in this Agreement shall be construed to limit the employer's ability to comply with state or federal civil rights requirements, including compliance with any accommodations requirements under the Michigan Handicapper's Act or the American with Disabilities Act, and/or any state or federal judicial or administrative order directing compliance with an applicable state or federal civil rights law or regulation.

2. Article 14, Holidays. The Employer proposes adding a new Section 8, Holiday Pay, which reads as follows:

Section 8. Holiday Pay. Holiday pay shall be paid in the same pay period in which it is earned.

3. Article 22, Cost of Living Allowance. The Employer proposes to delete Article 22, Cost of Living Allowance, and roll COLA into the base salary.

4. Article 26, Leaves of Absence. The proposal concerning leaves of absence has been withdrawn by the Employer.

5. Article 38, Elections of Remedies. The Employer proposes deleting the current language and adding Sections 1 and 2, which read as follows:

Section 1. When remedies are available for any complaint and/or grievance of an employee through any administrative or statutory scheme or procedure for a Veteran's Preference Hearing pursuant to Act 305 of the Public Acts of 1897, et seq, or any federal law pertaining thereto, and/or Civil Rights matters pursuant to Act 453 of the Public Acts of 1976, or any federal law pertaining thereto, in addition to the grievance procedure provided under this contract, and the employee elects to utilize the statutory or administrative

remedy, the Union and affected employee shall not process the complaint through any grievance procedure provided for in this contract.

Section 2. If an employee elects to use the grievance procedure provided for under this contract and subsequently elects to utilize either of the above-stated statutory remedies, then the grievance shall be deemed to have been withdrawn and the grievance procedure provided for hereunder shall not be applicable and any relief granted shall be forfeited.

6. New article, Family and Medical Leave Act. The Employer proposes adding a new Article, Family and Medical Leave Act, which reads as follows:

ARTICLE _____

FAMILY AND MEDICAL LEAVE ACT

Section 1. Family and Medical Leave (FMLA).

- A. An employee who has been employed by the Employer for twelve (12) consecutive months and who had worked at least 1,250 hours during those months may take a leave of absence for up to a total of twelve (12) weeks during each year for the following reasons as defined under the FMLA:

1. His or her own serious health condition;
2. To care for a child, spouse, or parent who has a serious health condition;
3. Birth of a child;
4. The placement of a foster or adoptive child.

A year, for purposes of determining eligibility for family or medical leave, is defined as 365 calendar days prior to the requested date of commencement of an employee's family or medical leave.

- B. The Union and the Employer reserve all their rights under the Federal Family and Medical Leave Act and may exercise same.

7. Waiver Clause. The Employer withdrew its proposal regarding the addition of a Waiver clause.

EMPLOYER'S RESPONSE TO UNION PROPOSALS:

1. Article 14, Holidays. The Employer proposes that the first paragraph of Article 14 be revised to read as follows:

The following holidays shall be recognized by the Employer during the term of this contract:

New Year's Day	Veteran's Day
Martin Luther King Day	Thanksgiving Day
President's Day	Friday after Thanksgiving Day
Memorial Day	Christmas Eve Day
Independence Day	Christmas Day
Labor Day	New Year's Eve Day

2. Article 14, Holidays, Section 5. The Employer proposes maintaining the status quo, which reads:

Section 5. To be eligible for holiday pay, an employee must work the last scheduled day before and the first scheduled day after the holiday (plus the holiday, if scheduled) unless the absence has been previously approved by his/her department head.

3. Article 19, Life Insurance. The Employer proposes maintaining the status quo. the contract reads:

Section 1. The County shall provide life insurance coverage for full-time employees with death benefits of not less than \$30,000.00. Such insurance shall include double indemnity \$60,000.00 for accidental death on a 24-hour coverage basis.

Section 2. Effective January 1, 1992, the County shall provide life insurance coverage for full-time employees with death benefits of not less than \$32,000.00. Such insurance shall include double indemnity \$64,000.00 for accidental death on a 24-hour coverage basis.

Section 3. The life insurance coverage shall be effective the 1st day of the month after the person has been employed by the County.

Section 4. Life insurance and accidental death and dismemberment benefits will follow the schedule below regarding active employees over age sixty-four (64):

Age 65 through 69 - benefit reduced to 65% of coverage
Age 70 through 74 - benefit reduced to 45% of coverage
Age 75 through 79 - benefit reduced to 35% of coverage
Age 80 through 84 - benefit reduced to 30% of coverage
Age 85 and over - benefit reduced to 25% of coverage

4. Article 12, Hours and Rates of Pay, Section 10, Temporary Assignments. This proposal has been withdrawn by the parties.

JOINT PROPOSALS:

1. Article 16, Hospitalization -- Medical Coverage. The Employer proposes Section 1 and 3 be revised to read as follows:

Section 1. The EMPLOYER will offer the following health insurance program for eligible full-time employees and legal dependents.

BCBSM-POS: POS, POS-CR 80/20/1000, BMT, ESRD, FC, GCO, GLE1, HMN, RAPS, SUBRO2, Prescription Drug Preferred Rx Program with \$5.00 co-pay (PCD, PD-CM, MOPDII).

Effective upon the next enrollment period after ratification of this Agreement by both parties, that date being January 23, 1997, the EMPLOYER agrees to pay the full premium for eligible full-time employees for hospitalization coverage outlined in subsection A above, up to the following amounts:

Full Family	\$517.64
2-Person	\$461.20
Single	\$220.27
Retirees	\$233.38

These benchmarks will increase by the same amount as the salary schedule is increased for the years covered by the parties' successor labor contract. Increases in premium costs exceeding the benchmark will be shared 50/50 by the EMPLOYER and the employees with the employees' payment made through payroll deduction under the Section 125 Plan.

* * *

Section 3. An employee who is eligible for medical/hospitalization insurance via another source and who executes an affidavit to that effect may elect not to be covered by the medical insurance provided under this Article. The decision to waive coverage shall be made once per calendar year. A Waiver Agreement drafted by the EMPLOYER shall be executed by the employee. In the event the employee elects to forego medical insurance, the EMPLOYER shall pay an amount based upon the coverage for which the employee is otherwise eligible at the time of election (full family, two persons,

or single subscriber) directly to the employee as taxable compensation. The amounts payable, based on the applicable coverage, shall be as follows:

Full Family	\$166.53
2-Person	\$142.74
Single	\$67.97

Employees losing medical coverage from another source shall notify the County Financial Services Department in time so that the employee and dependents, where appropriate, can be re-enrolled in a health care plan beginning the first day of the month following the loss of alternate coverage.

2. The Employer proposes to revise Article 35, Retirement, as follows:

Section 1. Retirement benefits are provided by the County through the Municipal Employees Retirement System and are incorporated in this contract by reference.

Section 2.

- A. Employees who have retired since January 1, 1971, and are immediately eligible for retirement benefits as provided in the above plan, shall be provided single subscriber health and hospitalization coverage supplementing Medicare.
- B. Employees who retire after May 11, 1993, and are immediately eligible for retirement benefits shall be provided single subscriber health and hospitalization coverage. Retirees shall receive the same health coverage options as active employees, if available, with a benchmark as set forth in Article 17, including the increase in the benchmark as set forth in Article 17. Increases in premium costs which exceed the benchmark will be shared 50/50 by the EMPLOYER and the retiree on a monthly basis. Retirees can pay for their spouse's coverage under the conditions established by the County. If a coverage is no longer available, the retiree must select from what is available and pay the difference in cost, if any.
- C. In the event a retiree wishes to cover his or her spouse he/she may do so by prepaying the County the difference between the applicable two-person rate and the appropriate benchmark amount.

Section 3. Employees who retire during the period of this Agreement and who are immediately eligible for retirement benefits as provided in the above plan, shall be provided with \$2,000.00 life insurance coverage, payable to their beneficiary at the time of their death, and the total cost of this coverage shall be borne by the Employer.

3. Article 27, Wages. The Employer proposes to revise Sections 2, 3, and 4 as follows:

Section 2. Supervisors shall be paid in accordance with the following step scales effective July 1, 1996:

Sergeants

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
45,483.77	45,864.87	46,248.03	46,629.13	47,009.20

Lieutenants

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
47,962.98	48,345.11	48,727.24	49,108.34	49,489.44

Captains

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
50,761.49	51,143.62	51,524.72	51,907.88	52,288.98

Section 3. Supervisors shall be paid in accordance with the following step scales effective July 1, 1997:*

Sergeants

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
47,948.28	48,340.82	48,735.47	49,128.00	49,519.48

Lieutenants

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
50,501.87	50,895.46	51,289.06	51,681.59	52,074.12

Captains

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
53,384.33	53,777.93	54,170.46	54,565.12	54,957.65

*Includes \$1,100 of COLA rolled in to base wages after a 3% increase.

Section 4. Supervisors shall be paid in accordance with the following step scales effective July 1, 1998:

Sergeants

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
49,386.73	49,791.04	50,197.53	50,601.84	51,005.06

Lieutenants

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
52,016.93	52,422.32	52,827.73	53,232.04	53,636.34

Captains

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
54,985.86	55,391.27	55,795.57	56,202.07	56,606.38

4. Article 35, Retirement. The Employer proposes to maintain the status quo which currently reads:

Section 4. Effective July 1, 1993 through December 31, 1994, appropriate employees in this bargaining unit will be covered with the Municipal Employees Retirement System's B-3 Retirement Plan and the 55F waiver with fifteen (15) years of service, and the 50F waiver with twenty five (25) years of service, on a contributory basis as provided below. The County will pay one percent (1%) on behalf of the employees with the employees paying the balance of the 55F waiver through payroll deduction.

Section 5. Effective January 1, 1995, employees shall be provided with twenty-five (25) years of service with no age requirement benefit. The employees shall pay for the full cost of this benefit through payroll deductions. This benefit shall be at no cost to the Employer except the

Employer shall pay for the MERS administrative start up cost and annual administrative fee for this benefit, if any.

Section 6. Effective January 1, 1995, employees shall be provided with the MERS B-4 retirement Plan. The employees shall pay for the full cost of this Plan through payroll deductions. This benefit shall be at no cost to the Employer.

Section 7. Effective January 1, 1995, employees shall be provided with the MERS FAC-3 benefit. The employees shall pay for the cost of this benefit through payroll deductions. The benefit shall be at no cost to the Employer.

Section 8. The Employees' contribution to retirement currently deducted from their wages shall be reduced by 1% effective July 1, 1994 (this shall replace the terms of the Parties' November 19, 1991 Letter of Understanding, i.e., no Employer contribution to the Employees' B-3 retirement plan for the period of July 1, 1993 through June 30, 1994 is to be made).

Section 9. Notwithstanding any contrary provision contained in this Article, starting January 1, 1992, the obligation of the Employer to pay for and provide retiree health insurance shall cease in the event that comparable health insurance is available to the retiree through another Employer or source, such as his/her spouse's Employer. Further, there shall be a requirement to coordinate with other available health insurances, Medicare, Medicaid, Federal insurance or any other health insurance which may be available in part or in total to the retired employee. All questions of eligibility shall be determined by the regulations and rules established by the carrier providing such coverage.

Retirees losing medical coverage from another source shall notify the County Personnel Department in time so that retiree can be re-enrolled the first of the month following their loss of alternate coverage.

The retiree shall apply for medicare, medicaid or similar federal program benefits as soon as he/she is eligible. As of said date all benefits payable by the County shall be reduced by an amount equal to federal benefits pertaining at that time and shall be supplemented to such coverage. In the event the name of any of the Federal coverages/benefits referred to herein shall be changed, this section shall be deemed to apply to any and all similar or replacement programs subsequently designated.

5. Article 23, Uniforms and Equipment. The proposal concerning clothing allowance has been withdrawn by the parties.

STIPULATIONS

6. Article 23, Uniforms and Equipment. The Employer and the Union agreed that the contractual benefit would remain unchanged for plain clothes allowance and that the captains and staff services lieutenant would receive that benefit.
7. Article 30, Loss of Seniority. The Employer and the Union agreed that new Sections 9 and 10 would be added to the Article which now shall read as follows:

An employee shall lose his/her status as an employee, including seniority and service credit, if:

1. He/she resigns or quits.
2. He/she is discharged and is not reinstated.
3. He/she retires.
4. He/she has been on layoff for a period of time equal to his/her seniority or two (2) years, whichever is lesser.
5. He/she is absent from work, including failure to return to work at the expiration of a leave of absence, vacation, or disciplinary layoff, for three (3) consecutive working days without notifying the Sheriff, or the employee's immediate supervisor, except when the failure to notify and work is due to circumstances beyond the control of the employee, which must be satisfactorily verified by the employee. If the above failure to return occurs, then it shall be considered a voluntary quit by the employee.
6. He/she is permanently disabled and unable to perform his/her job for any reason whatsoever, and includes acceptance of a

worker's compensation settlement which alleges in whole or in part inability to perform said employee's job on a permanent basis.

7. Those employees who are hired under the provisions of a State or Federal grant shall lose their seniority upon termination of the grant, only if so indicated in the provisions of the specific grant. If not so stated in the grant, then grant employees shall accrue normal seniority pursuant to this article, and said seniority shall be continued if the employee transfers to a regular County position during the grant period.
8. An employee originally hired into a regular County position and subsequently transferred to a grant funded position shall maintain his/her seniority from the original date of hire and shall be treated in all respects as a regular County employee for purposes of seniority.
9. He/she makes an intentionally false statement on his/her employment application, of on an application for leave of absence, or on any other employment record or form.
10. He/she is convicted or pleads guilty or no contest to a felony.

8. All Tentative Agreements will be incorporated into successor contract.

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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION (MERC)

CAPITOL CITY LODGE NO. 141 OF
THE FRATERNAL ORDER OF POLICE
AND INGHAM COUNTY SHERIFF
DEPARTMENT SUPERVISORY
DIVISION,

MERC Case No.: L96 D-4009
Act 312 Proceeding
Arbitrator John B. Kiefer

Union,

v

INGHAM COUNTY BOARD OF
COMMISSIONERS AND INGHAM
COUNTY SHERIFF DEPARTMENT,

Employer.

R. David Wilson (P22415)
Attorney for Union
209 N. Walnut, Ste. A
Lansing, MI 48933
(517) 372-9936

John McGlinchey (P39178)
Attorney for Employer
601 N. Capitol
Lansing, MI 48933
(517) 372-9000

CAPITOL CITY LODGE NO. 141 OF THE FRATERNAL ORDER OF POLICE,
INGHAM COUNTY SUPERVISORY DIVISION'S
LAST BEST OFFER

NOW COMES Capitol City Lodge No. 141 of the Fraternal Order
of Police, Ingham County Supervisory Division, and hereby submits
the following as its Last Best Offer in this cause:

Lodge Proposals:

1. Holidays - The Lodge withdraws its proposal to amend
the current contract provision to add Christmas Eve and New
Year's Eve to the list of recognized holidays.

2. Holiday Compensation - The Lodge continues with its original proposal to amend the manner by which employees of the bargaining unit are compensated for working holidays.

3. Sick Leave - Annual compensation for unused leave. The Lodge withdraws its proposal to increase the amount of compensation bargaining unit employees were to receive on an annual basis for the use of unused sick leave.

4. Sick Leave Payout at Retirement - The Lodge's proposal to increase the compensation paid to employees at the time of retirement for unused sick leave the employee accumulated during the employee's service with the County remains as proposed.

5. Life Insurance - The Lodge's proposal to increase the amount of life insurance for retirees is withdrawn.

6. Uniforms - This issue was resolved through agreement during the Act 312 proceeding.

7. Wages - The Lodge's Last Best Offer with respect to wages is the proposed increase of four percent (4%) for each year of the contract period.

8. Retirement - The Lodge proposal to improve the retirement benefit by adding the 3.2 multiplier, to be paid for by the employee, with the administrative start up and annual fees to be paid by the employer remains.

9. Transfer Policy - This matter was resolved during the Act 312 proceeding.

County Proposals:

1. Hospitalization - The Lodge's Last Best Offer with

regard to the Employer's proposed change of hospitalization benefits is that the benefits provided for in the current Collective Bargaining Agreement remain as written.

2. Family Medical Leave Act - The Last Best Offer of the Lodge is to adopt the language proposed by the County with the addition of the following sentence: "However, if there is a conflict between the terms of this Act and the terms of the parties' Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall prevail."

3. Election of Remedies - The Lodge's position with regard to the Employer's proposal to change this language is that the language now in the parties' agreement should remain.

4. Holidays - Compensation Date. The Lodge's Last Best Offer with respect to the County's proposed change regarding the manner and dates upon which employees are compensated for holidays pay, i.e. to pay these amounts in the pay period the holiday pay is earned rather in one paycheck at the end of each year, is that the current contract language should prevail and that no change should occur.

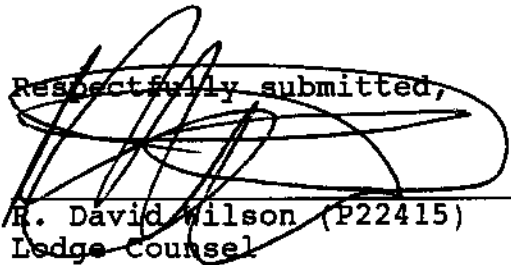
5. Loss of Seniority - This matter was resolved during the Act 312 hearing.

6. Cost of Living - The Lodge's position with regard to the Employer's proposal to eliminate the quarterly payment of cost of living benefits and to fold this benefit into the current salary is that the status quo of quarterly payments should continue.

8. Management Rights - The Last Best Offer of the Lodge regarding this issue is to adopt the language proposed by the County with the addition of the following sentence: "However, if there is a conflict between the terms of the applicable law or administrative ruling and the terms of the parties' Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall prevail."

Dated: April 14, 1997.

Respectfully submitted,



R. David Wilson (P22415)
Lodge Counsel