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MERC

**REVISED  
STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
COMPULSORY ARBITRATION UNDER ACT 312, PA 1969, AS AMENDED**

**In the Matter of the Arbitration between**

**ISABELLA COUNTY BOARD  
OF COMMISSIONERS and the  
ISABELLA COUNTY SHERIFF,**

**Employer**

**-and-**

**MERC Case No. L03 E-3015**

**Before:**

**Donald F. Sugerman, Chair**

**Timothy Dolehanty, Member**

**James DeVries, Member**

**POLICE OFFICERS ASSOCIATION  
OF MICHIGAN,**

**Association**

**APPEARANCES:**

**For the Employers:**

**Craig W. Lange, Esq. of Roumell, Lang & Cholack, Troy, MI**

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**Timothy Dolehanty, Administrator/Controller and Panel  
Delegate**

**For the Association:**

**James DeVries, Advocate/Panel Delegate and John T. Barr,  
Research Analyst ;both of Redford, MI**

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**Joe Chritz, Local President  
Mark Mogg, Local Vice President  
Todd Graham, Local Secretary  
Richard Duynslager, Local Treasurer**

# OPINION

## I INTRODUCTION

The most recent collective bargaining agreement (“CBA”) between the **Isabella County Board of Commissioners** and the **Sheriff of Isabella County** (jointly referred to herein as “Employer, Isabella County” or “County”) and the **Police Officers Association of Michigan** (“Association”) was for the period January 1, 2001 through December 31, 2003. The CBA governed the wages, rates of pay, hours, and other terms and conditions of employment for a bargaining unit consisting of about seventeen full-time deputies (excluding, among others, special deputies, corrections and command officers).

The CBA was timely reopened, and negotiations ensued. A number of tentative agreements were reached. One of these being that the successor CBA would be for three years: From January 1, 2004 through December 31, 2006. However, even with the assistance of a MERC Mediator, the parties were unable to agree on the following issues: 1. - 3. Wages for each year of the new CBA; 4 -6. Insurance: Health coverage; Payment in lieu of health insurance; Retiree health insurance reimbursement.

As a result of the impasse, the Employer petitioned for Compulsory Act 312 Arbitration and, by operation of law, the terms and conditions of the existing CBA continue unchanged pending the issuance of the Opinion and Award in this proceeding.<sup>1</sup>

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<sup>1</sup>A hearing was held in Lansing on March 3, 2005. The parties were afforded the full opportunity to present evidence (through testimony and records) bearing on the issues. Last Offers of Settlement (sometimes “LOS”) were submitted followed by able post-hearing briefs. Two panel meetings were held

## II THE STATUTORY CRITERIA

Section 9 of Act 312 sets forth the criteria that the Panel must consider when deciding the economic issues presented in this case. It provides as follows:

### **423.239 Findings and orders; factors considered.**

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 the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the

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(via telephone conference). Based upon the entire record, including arguments, the Chair has prepared this Opinion and Award. The Panel Member whose principal's LOS has been accepted joins with the Chair, and his counterpart dissents.

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.

Although Act 312 identifies the criteria to be used in reaching a decision, it does not assign the weight to be given to the listed factors, and this is left to the reasonable discretion of the panel. *City of Detroit v. DPOA*, 408 Mich. 410 (1980). The panel has carefully considered each of the criteria and in light thereof it issues this opinion and award.

Before doing so, a few general observations about the criteria are in order. "The lawful authority of the employer" was not raised and is not an issue in this case. "Stipulations of the parties" have been accepted and approved. They include: The term of the new agreement is for three years; that all of the tentative agreements reached during negotiations are to be incorporated into the successor agreement; that the so-called comparable communities were those adopted by an Act 312 Arbitrator in a prior proceeding; that the six issues alluded to above are economic; that this Award may be signed in counterpart and; that retroactivity will not apply to any employee who quit his or her employment prior to the issuance of this decision.

Next, the Employer has put forth a dire financial picture as the basis for tempering the award in this case based upon "The interests and welfare of the public and the financial ability of the unit of government to meet those costs." While the overall economy of the State is bleak, the economic situation in Isabella County is not quite as bad. To be sure, the

Employer has, over the last few years seen its reserves fall by \$500,000 and it has declined below the ideal amount that it should have in place. Nevertheless, the County's circumstances are far from dire, and the amount of State support it will receive is uncertain. One thing is clear, the LOS that have been adopted here can be satisfied by the Employer without harm to its sound financial position or to the welfare of the citizens of the County.

Considerable weight has been given to a "Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally: (i) In public employment in comparable communities."<sup>2</sup> The parties stipulated that an arbitrator's selection of comparable communities in a prior Act 312 proceeding should, for reasons of consistency, be used in this proceeding as well. They are the counties of Clare, Gratiot, Mecosta, Midland, Montcalm, and Osceola each of which abuts and all of which immediately surround Isabella County.<sup>3</sup>

The "average consumer prices for goods and services, commonly known as the cost of living" has been given little weight for two reasons: The CPI has been static and it is

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<sup>2</sup>The statute permits a further comparison: "(ii) In private employment in comparable communities" but this factor has not been considered because, for all intent and purposes, there is no private employment in law enforcement and therefore corresponding data was not forthcoming.

<sup>3</sup>For reasons not revealed in this record, Gladwin touches upon Isabella on the latter's northeast corner, but is similar to how Osceola touches upon Isabella on its northwest corner.

difficult to transpose the numbers to a largely rural community which best describes Isabella County.

“The overall compensation” factor of unit employees *vis-a-vis* their counterparts in the comparable communities has also been carefully evaluated. The panel has also taken into account “Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.” Initially, only three of the comparable communities had settled contracts for the entire term of the subject CBA. However, the other comparable communities resolved their contracts either through negotiations or Act 312 arbitration, and those results have been considered in this matter.

### **III** **WAGES**

#### ***FOR CALENDAR 2004***

For the first year of the CBA, calendar 2004, the last offers of settlement were identical: Each party proposed a three percent (3%) increase. This being the case, the LOS for 2004 must be accepted perforce. Notwithstanding this result, a few brief comments are in order. For 2004, the comparable communities negotiated increases for their deputies as follows: Clare, 3%; Gratiot 3%; Mecosta, 3.2%; Midland, 2%; Montcalm, 2%; Osceola, 0%.

In actual dollars, for 2003, deputies in Isabella County were paid \$40,000, placing them second in ranking, eleven dollars ahead of their counterparts in Montcalm County. This

also placed them about \$1,900 above the average of the six comparable communities. One problem in using averages, however, is that Midland County pays its deputies \$9,000 over the average, while Osceola County is almost \$5,000 below the average.

The three percent for 2004 maintains the position of deputies in Isabella County. Three percent amounts to real earnings of \$41,200, putting the County about \$2,000 above average, and \$400 ahead of their counterparts in Montcalm County. They remain second in overall ranking. Thus, even without the identical LOS, 3% is a number I would have selected were I to have had the authority to unilaterally determine this item. While I recognize that employees always want to significantly improve their lot, real world factors and statutory criteria mandate that the Act 312 panel award what it believes the parties would have negotiated if their bargaining had borne fruit. Stated somewhat differently, the parties cannot expect to obtain through arbitration better terms than they likely would have negotiated themselves. Thus, the increase selected by the parties was right on the mark.

***FOR CALENDAR 2005***

The LOS were: POAM - 4%, Employer - 2%. For 2005, comparable communities negotiated the following increases for their deputies: Clare, 3%; Gratiot 3%; Mecosta, 2.25%; Midland, 2%; Montcalm, 3%; Osceola, 6%. It appears that 3% and less is the norm. Osceola deputies, the lowest paid in the group presumably received a 6% increase because they did not have an increase at all for 2004. Even with the 6%, Osceola still ranks last among all of the counties in the computation. In terms of real dollars, two percent maintains

deputies in Isabella County in essentially the same position among their peers in the other counties. They remain in second position just ahead of deputies in Montcalm County (albeit, still \$7,000 below deputies in Midland County).

The four percent increase cannot be justified on the basis of relative increases by the external comparable or by the increases given and/or negotiated for other Isabella County employees. Implicated also is the fact that the County, like all others, is experiencing large increases in costs, and, to a limited extent, its declining reserve. So, what is then is there that justifies the four percent increase sought by POAM? None of the criteria support such an increase.

The four percent may have simply been part of a wish list by the POAM or unit employees. It may have been selected in expectation of the County submitting an LOS on health care that would provide for a fully paid lesser plan, but allow employees to buy up and the four percent was thought to be a hedge against their paying this increased cost. And it may have been for other reasons I cannot at this time fathom.

Were the first two items the basis for the increase, its rationale would be flawed. An increase in the second year of the contract, because of the possibility of a buy up cost to a higher insurance plan in the third year cannot be justified. Moreover, on the basis of overall compensation, it similarly cannot be embraced. Had the Association proposed a three percent increase, it certainly would have been on more solid footing.



If Osceola County is excluded from the computation as an aberration, the average among the remaining five counties was an increase of 2.65%. This is closer to the figure proposed by the Employer than that proposed by the Association. Accordingly, for all of the reasons above, the LOS of two percent submitted by the Employer for 2005 will be accepted.

***FOR CALENDAR 2006***

The last offer of settlement by POAM was three percent.

The Employer's LOS is as follows:

If the average cost increase of Blue Cross/Blue Shield Community Blue IV Health Care Plan Premium Rates (Single, to-Person and Family), including the prescription drug premiums, for bargaining unit members for 2006 is less than 10% of average 2005 Premium Rates (Single, to-Person and Family), wages shall be increased at a rate of 3.0% over rates in effect December 31, 2005.

If the average cost increase of Blue Cross/Blue Shield Community Blue IV Health Care Plan Premium Rates (Single, to-Person and Family), including the prescription drug premiums, for bargaining unit members for 2006 is between 10% and 15% over that of the average 2005 Premium Rates (Single, to-Person and Family), wages shall be increased at a rate of 2.0% over rates in effect December 31, 2005.

If the average cost increase of Blue Cross/Blue Shield Community Blue IV Health Care Plan Premium Rates (Single, to-Person and Family), including the prescription drug premiums, for bargaining unit members for 2006 is greater than 15% over that of the average 2005 Premium Rates (Single, to-Person and Family), wages shall be increased at a rate of 1.0% over rates in effect December 31, 2005.

While the Employer's proposal is certainly creative, it is not one that can be adopted.

The idea of a contract is to fix the terms and conditions so that everyone concerned will know

what their expenses, costs and income will be for each year. In essence, the Employer seeks what would otherwise be a reopener in the third year of the CBA but with added protection. Act 312 arbitration does not comfortably lend it self to such a concept. Of the comparable communities, five negotiated increases of three percent for their deputies and only Midland – so far ahead of the others in the first place – negotiated less (at two percent).<sup>4</sup>

The three percent in the LOS by the POAM is the norm among the comparables, and will be accepted.

#### IV INSURANCE

##### ***HEALTH INSURANCE.***

Currently, Employees have Blue Cross/Blue Shield PPO Plan I fully paid for by the Employer with a ten dollar co-pay for prescription drugs. POAM proposes to convert from CBI to CBII fully paid for by the Employer with a ten dollar charge for office visits, ten dollar/forty dollars for prescriptions, and with the proviso that an employee may buy up to CBI at his/her expense. The Employer proposed to continue the 100% contribution for Blue Cross/Blue Shield Plan CBIV with twenty dollars for office visits, and the ten dollars/forty dollar prescription plan also permitting employees to buy up at their own expense.

The Employer has imposed the plan it proposes on its non-bargaining unit employees, which comprises about 63% of its workforce. It has also negotiated this same proposal (Blue

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<sup>4</sup>Because of the higher base, a 2% increase in Midland is almost as great in real dollars as higher percentage increases in the other counties.

Cross/Blue Shield CBIV) with other labor organizations whose contracts with the current plan expired or are expiring. The only bargaining unit that the County has not yet changed is that of the Command Officers, whose contract does not expire until the end of 2005. The Employer's position is supported by the health insurance imposed or negotiated as noted above. A review of the external comparable communities also supports the Employer's position, for the most part.

In Clare County, employees are offered a number of plans, but there are co-pays associated with all of them; from \$238 per month for CBI to \$75 per month for CMM PPO 1500. Employees in Isabella County may buy up to CBI for \$148 per month, or to CBII for \$97 per month (compared to \$117.00 per month for their counterparts in Clare).

Mecosta County offers CBIII, but employees with less than 16 years of service must pay 15% for the coverage. It would appear that buying up to CBII would cost employees more than the \$97 per month paid for the same right by Isabella County deputies. Midland County pays 100% of CBIV and 100% of CBVIII (for employees with less seniority), but it does not allow for buy-ups.

Montcalm County has two plans: CBX requires a \$90 per month premium co-pay, plus 10% of cost increases after January 1, 2006. Employees opting for CMM100 must pay even more per month. Montcalm is interesting because it is a community that is most comparable to Isabella County. It does not offer a health care plan fully paid for by the employer. Similarly, Osceola County provides CBII with employees paying ten percent of

the premium, which approximates \$110 per month. It offers no employer fully paid plan. Only Gratiot County offers a better plan than Isabella County: CBI paid 100% by the employer. It is to be noted, however, that deputies in Gratiot County are paid a salary substantially below that of deputies in Isabella County (\$36,241, 37,329, 38,448 versus 41,200, 42,024, and 43,285).

The Section 9 factors support the last offer of settlement by the Employer, and it will be adopted.

#### ***PAYMENT IN LIEU OF HEALTH CARE***

Currently, Employees who waive coverage receive an amount equal to the monthly premium cost of single person coverage. POAM proposes that this practice continue unchanged. The Employer proposes that the amount involved be capped at \$100 per pay, or \$2,600 per year. In addition, if the employees receiving this "benefit" elect dental/optical coverage, the 100/2600 would be reduced by the actual cost of coverage. Of the external comparable communities, Clare, Mecosta, and Midland have caps of \$900, \$2,700, and \$1,800, respectively. However, Gratiot, Montcalm, and Osceola have variable caps. In Gratiot it is \$1,500 for a single, \$3,500 for two persons, and \$4,000 for a family. In Montcalm, it is \$1,200 for a single, and \$2,400 for two persons and a family. In Osceola, it is \$2,400 for a single, \$5,352 for two persons, and \$6,588 for a family. While there may be a trend toward caps, the external comparable communities are inconclusive, and for this

reason, a solid rational ground for changing the current contract cannot be found. Accordingly, the last offer of settlement from the POAM will be accepted.

### ***RETIREE HEALTH COVERAGE***

Currently there is no retiree health care. The Employer proposes that employees who retire with an unreduced pension would have the County's health plan made available, and the County will pay the first \$1,000 annually that a retiree pays for health insurance premiums. There is not a great difference in the proposal made by POAM. Indeed, the only difference is that the \$1,000 may be recovered for either premium payments and/or for out-of-pocket health care expenses. One other item in the proposals warrants mention. The County explained that unreduced meant a normal pension. It wants to be sure that this benefit applies to employees at least 55 years-of-age with twenty years of service.

The Employer's proposal is identical to the provision found in the Command Officers' CBA (Section 17.4).

POAM contends that a retiree will be penalized if his/her spouse has other coverage. The Employer points out that adoption of the POAM proposal would present an administrative nightmare, requiring the County to deal with receipts for prescription drugs, medications, and other health care expenditures. It would potentially be required to verify hundreds of expenditures and, as employees retire, the cost of administration would grow exponentially.

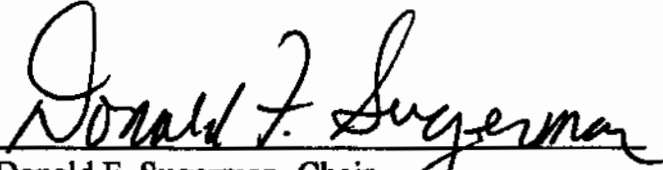
While not entirely clear in the record, it does not appear that the external comparable communities pay the type of benefit sought by the POAM. Indeed, where payment is made, it is to reimburse the retiree for insurance, rather than out-of-pocket expenses. To maintain some consistency with the so-called internal comparable, and because this is a proposal going from no coverage to payment of \$1,000 in reimbursement for premiums charged, the Employer's LOS will be adopted.

  
Donald F. Sugerman, Chair

October 21, 2005

**A W A R D**

The parties having submitted identical last offers of settlement for 2004 of three percent, that amount is awarded effective January 1, 2004.

  
Donald F. Sugerman, Chair

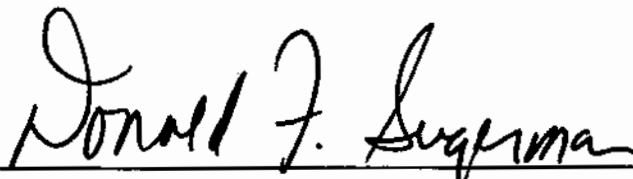
For 2005, the Employer's last offer of settlement of two percent is accepted effective January 1, 2005.

  
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Donald F. Sugerman, Chair

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Timothy Dolehanty, Member

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Jim DeVries, Member, Dissenting

For 2006, the POAM's last offer of settlement of three percent is adopted to become effective on January 1, 2006.

  
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Donald F. Sugerman, Chair

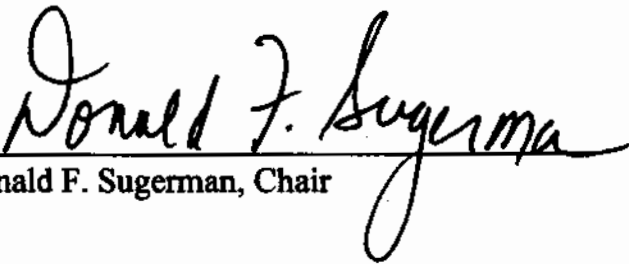
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Jim DeVries, Member

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Timothy Dolehanty, Member, Dissenting

**NOTE:** Pursuant to the Stipulation of the parties, no unit Employee who has quit prior to the execution of this award will receive retroactive increases.

**INSURANCE**

The Employer's last offer of settlement to provide Blue Cross/Blue Shield CBIV at no cost to Employees with their having the option to "buy-up" to other available plans is adopted to become effective January 1, 2006.

  
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Timothy Dolehanty, Member

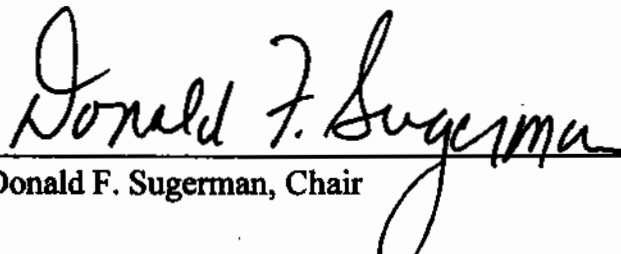
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Jim DeVries, Member, Dissenting

**NOTE:** The parties agree that the prescription drug program is to be \$10/\$40.



**PAYMENT IN LIEU OF INSURANCE.**

The current language is to continue unchanged. The last offer of settlement of the POAM is adopted.

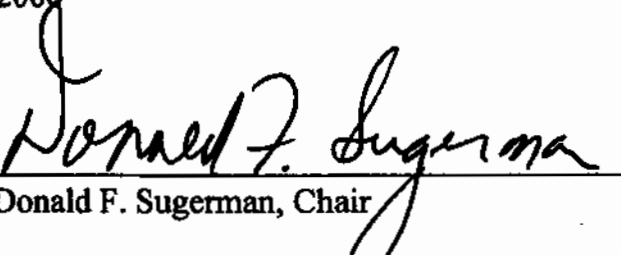
  
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Timothy Dolehanty, Member, Dissenting

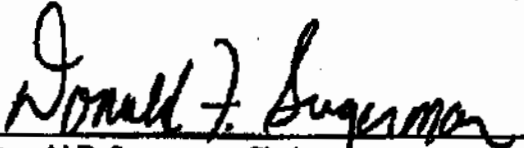
**RETIREE HEALTH CARE INSURANCE REIMBURSEMENT.**

The Employer's last offer of settlement to provide reimbursement of up to \$1,000 of health care premiums paid for coverage under one of the plans sponsored by the Employer is adopted to become effective January 1, 2006

  
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Donald F. Sugerman, Chair

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Timothy Dolehanty, Member

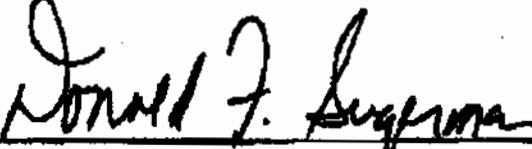
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Jim DeVries, Member, Dissenting

  
Donald F. Sugerman, Chair

  
Timothy Dolehanty, Member

\_\_\_\_\_  
Jim DeVries, Member, Dissenting

For 2006, the POAM's last offer of settlement of three percent is adopted to become effective on January 1, 2006.

  
Donald F. Sugerman, Chair

\_\_\_\_\_  
Jim DeVries, Member  
  
Timothy Dolehanty, Member, Dissenting

**NOTE:** Pursuant to the Stipulation of the parties, no unit Employee who has quit prior to the execution of this award will receive retroactive increases.

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DONALD F. SUGERMAN

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**INSURANCE**

The Employer's last offer of settlement to provide Blue Cross/Blue Shield CBIV at no cost to Employees with their having the option to "buy-up" to other available plans is adopted to become effective January 1, 2006.



Donald F. Sugerman, Chair



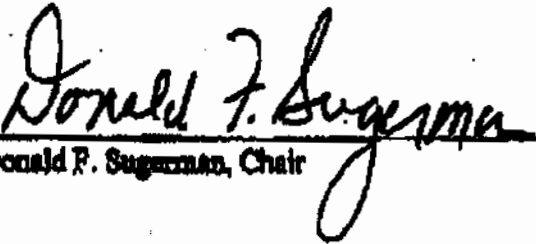
Timothy Dolcharty, Member


Jim DeVries, Member, Dissenting

**NOTE:** The parties agree that the prescription drug program is to be \$10/\$40.

**PAYMENT IN LIEU OF INSURANCE.**

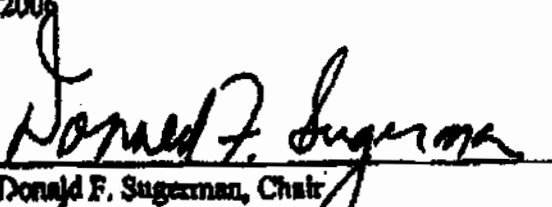
The current language is to continue unchanged. The last offer of settlement of the POAM is adopted.

  
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Jim DeVries, Member  
  
Timothy Dolchanty, Member, Dissenting

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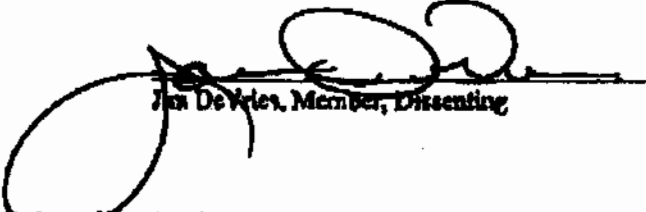
  
Donald F. Sugerman, Chair

  
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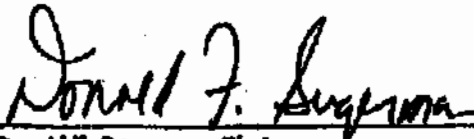
Jim DeVries, Member, Dissenting

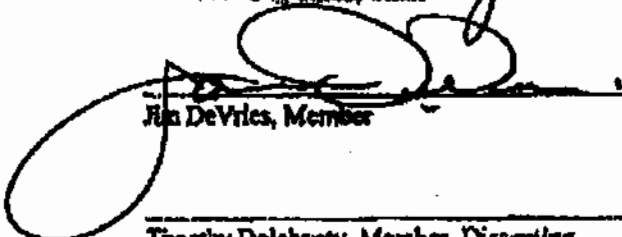
  
 Donald F. Sugerman, Chair

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 Timothy Dolehanty, Member

  
 Jim DeVries, Member, Dissenting

For 2006, the POAM's last offer of settlement of three percent is adopted to become effective on January 1, 2006.

  
 Donald F. Sugerman, Chair

  
 Jim DeVries, Member

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 Timothy Dolehanty, Member, Dissenting

**NOTE:** Pursuant to the Stipulation of the parties, no unit Employee who has quit prior to the execution of this award will receive retroactive increases.

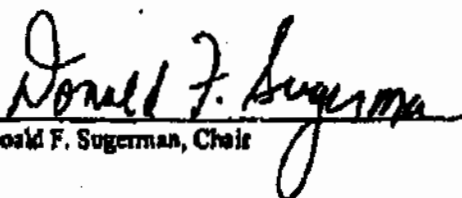
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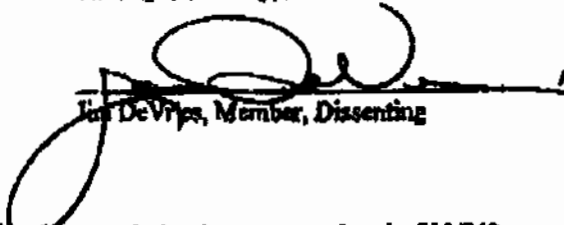
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PAGE 15/17

**INSURANCE**

The Employer's last offer of settlement to provide Blue Cross/Blue Shield CBIV at no cost to Employees with their having the option to "buy-up" to other available plans is adopted to become effective January 1, 2006.

  
Donald F. Sugerman, Chair

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Timothy Dolcharty, Member

  
Jim DeVries, Member, Dissenting

**NOTE:** The parties agree that the prescription drug program is to be \$10/\$40.

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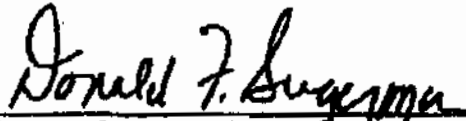
DONALD F. SUGERMAN

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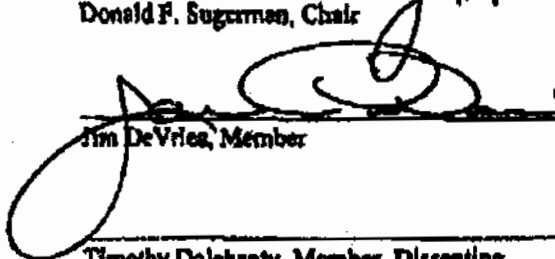
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**PAYMENT IN LIEU OF INSURANCE.**

The current language is to continue unchanged. The last offer of settlement of the POAM is adopted.



Donald F. Sugerman, Chair




Tim DeVries, Member

Timothy Dolchanty, Member, Dissenting

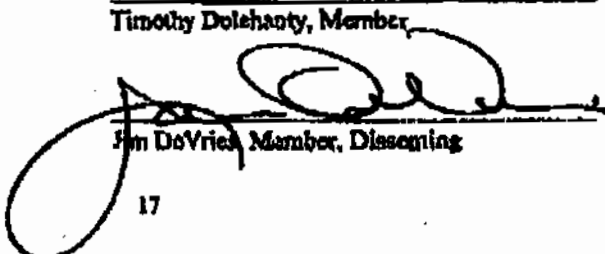
**RETIREE HEALTH CARE INSURANCE REIMBURSEMENT.**

The Employer's last offer of settlement to provide reimbursement of up to \$1,000 of health care premiums paid for coverage under one of the plans sponsored by the Employer is adopted to become effective January 1, 2006



Donald F. Sugerman, Chair

Timothy Dolchanty, Member



Tim DeVries, Member, Dissenting