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STATE OF MICHIGAN

DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT FINDING  
INVOLVING:

FIRST JUDICIAL COURT FOR THE COUNTY OF  
MONROE (Employer) (Court)

-and-

FIRST DISTRICT COURT EMPLOYEES ASSOCIATION  
(UNIT II) (Union)

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MERC Case #D04 I-1279

FACT FINDING REPORT WITH RECOMMENDATIONS

APPEARANCES:

FACT FINDER:	Mario Chiesa
FOR THE UNION:	Thomas Griffin Police Officers Association of Michigan 27056 Joy Road Redford, MI 48239-1949
FOR THE EMPLOYER:	Dykema Gossett PLLC By: James P. Greene 2723 South State Street Suite 400 Ann Arbor, MI 48104

INTRODUCTION

By a notice dated October 28, 2005 I was informed that pursuant to Public Act 176 of 1939, I had been appointed to act as the Fact Finder in the above-mentioned matter. As a result of discussions memorialized in a November 15, 2005 document, a very extensive conference call took place on December 13, 2005. A

hearing was scheduled for February 16, 2006. It was to commence at 9:00 a.m. at the Monroe County Office Building, Human Resources Department. The parties continued to discuss the matter and the February 16, 2006 hearing was adjourned. The hearing was then scheduled for Monday, June 12, 2006. The parties subsequently agreed to adjourn the June 12, 2006 hearing. Both requested that a procedure be utilized wherein they could submit their documentation and positions in writing. I agreed and the last submission is dated October 23, 2006. This analysis and recommendations follow as quickly thereafter as possible consistent with a thorough analysis of the data and information in the record.

#### THE CASE

The Association is comprised of two separate bargaining units. The first represents the Deputy Clerks I and II, Assignment Clerks, Secretaries and Cashier Clerks and is known as Unit I. There are approximately 16 employees in Unit I. Unit II, the unit involved in these proceedings, includes regular full-time Division Supervisors and Chief Account Clerk. There are six employees in the unit.

Up until the year 2000 both Units I and II were in the same bargaining unit. In recognition of the supervisory duties held by the employees in Unit II the units were separated and since 2000 have engaged in collective bargaining as separate bargaining units. However, they have still maintained the same terms and conditions of employment, with the exception of base salary and other minor differences which may be unique to their respective groups.

Both Units I and II began bargaining with the Employer in October of 2004. Four bargaining sessions were held and an agreement was tentatively agreed by both units on August 9, 2005. Unit I ratified the new agreement, but Unit II did not follow Unit I's action and the pattern established by the settlements with other bargained for employees and non-bargained for employees in the County. After rejection of the tentative agreement, Unit II petitioned for fact finding.

Subsequent to the filing of the fact finding petition, the parties again attempted to settle the dispute and resume bargaining. They reached a second tentative agreement which was identical to the first except for one difference which was proposed by the Union. Nevertheless, on January 31, 2002 the Unit II members also rejected the second tentative agreement.

#### AREAS IN DISPUTE

After some fine-tuning it became apparent that there were three areas in need of resolution.

The first concerns health care for retirees. The current provision, that is, the provision in the January 1, 2000 through December 31, 2004 Collective Bargaining Agreement, appears in Article XVII - Retirement and Retiree Health Care. It is an extensive article and is contained in its entirety in Appendix 1 attached hereto.

The Employer is proposing two basic and significant changes in the provision regarding health care for retirees.

First, if adopted, its proposal would eliminate retiree health care benefits for all new hires. Second, current employees who later retire will be provided the same health care coverage and make essentially the same contributions to premiums in retirement that the Employer provides regular full-time employees.

The Employer proposes that retirees, like active employees, will be given the choice of Blue Cross Blue Shield of Michigan Community Blue PPO, Option I, II or III; Blue Care Network of Michigan; and Paramount Health Care of Michigan New Option Plan. The premium for coverage under the Paramount Plan would be fully paid by the Employer. However, retirees under age 65 who select a plan other than the Paramount Plan will be required to pay the difference between the premium of the plan they select and the premium of the Paramount Plan. Retirees 65 or older must enroll at their own expense in Medicare Part B. For retirees on Medicare the Employer proposes to pay an amount equal to the premium cost of complementary coverage under the Paramount Plan. Retirees over the age of 65 will be required to pay any additional amounts required to secure benefits under any other plan.

The Union's position is to create a grandfather clause which would relate only to the six supervisors currently employed which would provide that the Employer be required to pay full health care cost when the supervisors retire. The Union's position only applies to the current six supervisors.

The second issue involves the Union's proposal that employees in Unit II should receive three additional personal days per year

or two compensatory hours per month. The Union suggests either of these alternatives would provide a total of 24 hours per year.

The Employer's position is that no additional pay by way of personal days or compensatory time is appropriate.

The final issue concerns the question of whether wage adjustments should be made retroactive. As anticipated, the Union seeks full retroactivity for all wage increases, while the Employer takes the position that wage adjustments should not be retroactive.

#### COMPARABLE COMMUNITIES

As in a 312 binding arbitration Fact Finding often involves a comparison of wages, hours and conditions of employment existing in the community involved in the fact finding as compared to so-called comparable communities. The reason for the comparison is obvious, but often there are major questions regarding the selection of comparable communities and whether the communities relied upon are truly comparable to, in this case, Monroe County.

The 2004 data suggests that Monroe County had a 2004 population of about 155,552. Taxable evaluation for 2004 is listed at \$5,334,377,371.00. The Employer used a procedure of comparing counties with populations within 30% of Monroe, 40% of Monroe and, finally, 50% of Monroe. The same type of analysis utilizing taxable evaluation was also conducted.

After utilizing the procedure the Employer produced a list, including Allegan, Berrien, Calhoun, Jackson, Lenawee, Livingston, Muskegon, St. Clair, and Saginaw Counties. The nine-county average for 2004 estimated population was 156,814. The average for 2004

taxable evaluation was \$4,382,435,379.00. These communities were used in comparable analysis.

#### ANALYSIS AND RECOMMENDATIONS

##### **RETIREE HEALTH CARE**

Keeping in mind that the prior Collective Bargaining Agreement terminated on December 31, 2004, the actuarial evaluation as of December 31, 2004, presents some interesting and troubling information.

First, the General County, of which this bargaining unit is a member, contribution rate as of 12/04 was 17.66%. This is up from 15.96% on December 2003. Furthermore, it is noted that the unfunded accrued liability as of December 31, 2004 for General County employees was \$31,959,685.00. When the unfunded accrued liability is considered for all bargaining units, including the General County, County Agency, Sheriff's Office and Dispatchers, the combined total of unfunded accrued liability becomes \$50,749,809.00. According to the Employer, this unfunded liability exceeds the County's entire general fund of \$48,805,000.00.

The data also shows that the Employer has secured very similar health care changes from non-bargaining unit personnel, including commissioners, elected officials and senior officials, and has also done so with the three AFSCME units, UAW Assistant Prosecutors, United Steelworkers/Youth Center employees, and the MNA/Unit II. It is continuing to negotiate with other units.

The documentation regarding the availability of retiree health insurance in the comparable communities establishes that in Allegan County retiree health insurance is not provided and is only available through COBRA. Retiree health insurance is provided in Berrien County, assuming that the individual is drawing a pension, but does not cover the individual's spouse, although the retiree may opt to pay for spousal coverage. The liability in Berrien County is limited to 50% of the health insurance premium.

Retiree health insurance is provided in Calhoun County with the requirement being 60 years of age, 20 years of service. The County will pay \$10.00 per month per year of service.

Jackson County does provide retiree health insurance coverage to those with a minimum of eight years of service. Employees hired prior to January 1, 1993 make no contributions, while employees hired after January 1, 1993, make contributions on a sliding scale beginning with 75% with 10 years of service and ending with 5% with 14 years of service. There is no maximum amount paid by the County and spousal coverage is provided, assuming the employee has 15 or more years at the time of retirement.

Lenawee County provides no retiree health insurance coverage. In Livingston County retiree health insurance is not provided for Court employees, although the information suggests that employees can purchase the coverage at 100% of the premium.

Muskegon County does provide retiree health insurance. The minimum requirement is 25 years of service and the County pays 100% of the premium. There is no limit in the maximum amount paid by

the County, and there is no spousal coverage, although the retiree may opt to pay for spousal coverage.

Saginaw County provides retiree health insurance. The minimum qualifications are 55 years of age, 10 years of service. The Employer's percentage of premium cost is calculated on a sliding scale from 25% at 6 years of service to 95% at 20 years of service. Thus, the cap is 95% of the cost of the premium. There is no spousal coverage.

St. Clair County provides retiree health insurance with a minimum length of service being 20 years. It pays the total cost of the premium and does provide spousal coverage.

The Union suggests that its position is supported by the proposition that the six employees in this unit should be rewarded with a grandfather clause which would allow the current supervisors to retire with health care paid for by the Employer. It argues this is a reward for the employees' longevity and dedication.

As I understand the Employer's proposal, retirees, at least currently, could avoid any premium cost if they select the Paramount Plan. Employees would only be required to contribute to the premium if they chose a different plan.

After carefully analyzing the available evidence, I am persuaded that the facts contained in the record establish that the Employer's proposal is reasonable and should be recommended.

#### **PERSONAL DAYS/COMPENSATORY TIME OFF**

The Union has proposed that members of this bargaining unit receive either three additional personal days or two compensatory



hours per month. Either one would provide an additional 24 hours of paid leave per year. This would compensate unit members for work performed when subordinates are absent. The Employer's position is that there is no basis whatsoever for giving employees in the unit additional personal days and/or compensatory time off.

The Union points out that given the change in the contract language involving Unit I, specifically Article XI, Section 2(c), a non-supervisory employee at Step 8 would, under the old language, accumulate a total of \$108.20 worth of compensatory time and pay if they stepped up to a Step 8 supervisory position for 15 days. It maintains that under the new language the non-supervisory employee would receive 10 days at one hour compensatory time for \$147.60, plus a 5% increase per hour for the remaining days, for a total of \$182.40. It maintains that supervisors have four personal days per year and 25.5 vacation days for a total of 29.5 days per each supervisor. Given that there are six supervisors, that would equate to 177 days per year, with non-supervisory employees receiving step-up pay for those 177 days. It also calculates that if a non-supervisor worked all 29.5 days per year, they would receive an average of approximately \$385.72 more per year or about 1.25% increase in their base rate.

The Union goes on to point out that when a non-supervisory employee is on vacation or personal day, the supervisor must pick up the slack and doesn't receive any compensation for what it characterizes as extra work. It must be noted that three of the supervisors have only one non-supervisory employee working for

them; thus, it suggests that supervisors must manage a way to perform their own tasks and keep the subordinate's work up to date. It points out that everything is time sensitive.

The Employer points out that no employee working for the County receives extra personal days or compensatory time for filling in for other absent employees. Further, it points out that not one of the comparable communities provides extra paid time off in such circumstances. It maintains that whether a subordinate is present or not, there is only so much work that can be completed in a given eight-hour period and critical work will be performed while perhaps other less urgent responsibilities will be deferred. It maintains this does not warrant extra paid time off. Further, it points out that step-up pay contemplates a situation where an employee moves up to complete more complex tasks and, thus, is paid a higher rate, but in the circumstances involved in this issue, the supervisor is either performing his/her regular job functions, or as it characterizes, the less complex tasks of a subordinate.

None of the 17 employee groups identified by the Employer as working in Monroe County receive extra personal days or compensatory time off for filling in for absent employees.

Additionally, as suggested by the Employer, the data regarding comparable communities establishes that only Calhoun, Jackson, Lenawee and St. Clair Counties provide what is classically known as step-up pay, that is, when an employee works in a higher classification. There are no provisions for the type of compensation currently sought by the Union in this dispute.

As suggested, there is a difference between step-up pay and the type of extra compensation now sought by the Union. Step-up pay generally involves moving an employee up to a higher position to perform duties and assume responsibilities which generally warrant a higher salary rate. In other words, the employee is doing work which is above the wages bargained for in the employee's regular classification. Many contracts and policy statements recognize that under circumstances specific to the particular case employees may receive additional compensation in the form of step-up pay. However, that's quite different than what is being contemplated in this issue. In this issue the Union is seeking additional compensation for work which was being performed by an absent subordinate which a supervisor may have to perform.

Certainly I understand that supervisors would view this as an additional burden. However, the reasons for step-up pay do not apply. In this situation the supervisor is not performing in a higher classification, but arguably is performing work which was included in a lower classification. I recognize that the Union has pointed out that some of the work is time sensitive, but nonetheless, it is confined to the regular work period the supervisor generally experiences, and if the work goes beyond that time, the Employer has indicated that overtime pay will be available.

The evidence supports the Employer's position. As pointed out above, no comparable community, nor any internal employee group, has the arrangement now sought by the Union.

I recommend that the Employer's position be adopted.

#### **RETROACTIVITY OF WAGE ADJUSTMENT**

The Union points out that other bargaining units that have settled their agreements have received retroactive pay increases. It maintains there were no changes between supervisory and non-supervisory groups. It argues that to deny members of this bargaining unit retroactive pay would be nothing more than a slap in the face. It suggests that since there are only six members in the unit, the unit's impact on any health care increases, or for that matter health care costs, would be minimal.

The Employer argues that it pointed out to the Union that wage increases offered during negotiations were dependent upon Unit II agreeing to immediately implementing the Employer's proposed health care and retiree health care changes. It maintains that the bargaining unit's rejection of the proposals eliminated any possibility of savings the Employer may have realized by changes in health care in 2005 and probably all of 2006. Thus, it maintains that retroactivity is no longer an option. It maintains that the wage adjustments are inextricably linked with health care and retiree health care changes and the wage increases cannot be afforded without the proposed health care and retiree health care changes. It maintains that since they have been delayed, the wage changes must not be made retroactive.

Essentially both parties have argued their reasoning for their positions. However, there is no hard data in the evidence suggesting how much would have been saved and how much may have

been lost because of the delay in implementing the health care and retiree health care changes proposed by the Employer. The Employer's argument that for all intents and purposes these bargaining unit employees have already received the retro pay through the deferral of any mandatory contributions to health care certainly seems reasonable, but there is no data establishing what the actual savings or costs would be.

The evidence does establish that Unit I and other units received wage increases retroactively. Thus, with one caveat I will recommend that the wage increases, which will come about as a result of this Collective Bargaining Agreement, be made retroactive. The one caveat is that my recommendation will only apply if the Union adopts the recommendations and agrees to a Collective Bargaining Agreement containing those terms within 30 days after the issuance of the recommendations in this fact finding.


#### SUMMARY

After carefully considering the evidence and arguments contained in this record, I have made the recommendations noted above. I believe that they should serve as a basis for the resolution of this Collective Bargaining Agreement.

In summary, I recommend:

1. The Employer's proposal regarding retiree health care be adopted.
2. The Employer's proposal regarding additional personal days and/or compensatory time be adopted and, thus, the status quo will continue.

3. The salary increases shall be retroactive assuming that the Union adopts these proposals and agrees to a Collective Bargaining Agreement containing these terms within 30 days from the date these recommendations are issued.

  
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MARIO CHIESA  
Fact Finder

Dated: November 15, 2006

APPENDIX I

be reinstated commencing with the employee's return.

(o) The disability benefits plan herein provided is presently self-insured by the Employer. The Employer reserves the right to change the carrier and/or the manner in which it provides the above coverage, provided that the benefits are equal to or better than the benefits outlined above.

## ARTICLE XVII RETIREMENT AND RETIREE HEALTH CARE

### Section 1. Retirement Plan.

A. General. Subject to the terms and conditions herein provided, the Employer agrees to maintain the Monroe County Employees Retirement System Ordinance now in effect for all employees covered by this Agreement who are present participants in the Plan or who become participants in the Plan during the term of this Agreement.

In accordance with the provisions of said Ordinance, an individual will be eligible for normal retirement upon attaining age 60 or older with 8 or more years of credited service, or age 55 or older with 30 or more years of credited service. The monthly benefit formula applicable to retirement for all employees in the bargaining unit who elect to retire on or after January 1, 2001 shall be two and one-quarter (2.25%) percent of the employee's final average compensation multiplied by his years of credited service. Final average compensation shall be the average of the compensation paid an individual during the period of thirty-six (36) consecutive months of his credited service producing the highest average compensation contained within the period of 120 months of his credited service immediately preceding the date his employment with the County last terminates.

An individual who retires under the normal retirement or disability retirement provisions of the Monroe County Employees Retirement System Ordinance may elect to be paid the individual's accumulated member contributions provided such election is made prior to the date the first payment of the pension is made. The amount of pension paid to an individual making such election shall be reduced as provided in the Ordinance.

### Section 2. Retiree Health Care Plan.

The Employer shall provide those employees who separate for purposes of retirement on or after December 1, 2000, and who receive benefits under the Monroe County Employees Retirement System Ordinance, the following health care coverage. Except as otherwise provided in subparagraph C. below, such coverage shall be provided to the retiree only.

A. Pre-Age 65: Retirees under the age of 65 who were hired prior to December 1, 2000, may select coverage under the Blue Cross/Blue Shield Traditional Plan (PSG-1, hospital, medical, surgical benefits with Master Medical Option - 5 (\$150/\$300; 80/20%), with mammograms, pap-smears, FAE-RC, Hospice, Inc. Case Mgmt., preferred Rx \$10 co-pay generic mandate (mail order drugs at 50% of co-pay), the Blue Cross/Blue Shield of Michigan Community Blue PPO Option-1 Plan with preferred Rx \$10 co-pay generic mandate, the Blue



Care Network of Michigan (BCN-1) Plan or the Paramount Health Care of Michigan (PHC-1) Plan, subject to such terms, conditions, exclusions, limitations, deductibles, co-payments and other provisions of the plans. For those retirees who select the Blue Cross/Blue Shield of Michigan Community Blue PPO Option-1, the Blue Care Network of Michigan (BCN-1), or Paramount Health Care of Michigan (PHC-1), the Employer shall pay 100% of health care costs for the retiree only. Retirees who select the Blue Cross/Blue Shield Traditional Plan shall pay the difference between the illustrated premium cost of said Traditional Plan for the retiree only and the illustrated premium cost of the lowest cost HMO plan for the retiree only.\* The Employer shall pay the balance. (\*Retirees who select the Blue Cross/Blue Traditional Plan shall be subject to periodic increases in the cost of said coverage based upon fluctuations in the illustrated premium costs of the traditional plan and the lowest cost HMO Plan.)

Retirees under the age of 65 who were hired on or after December 1, 2000, may select coverage under the Blue Cross/Blue Shield of Michigan Community Blue PPO Option-1 Plan with preferred Rx \$10.00 co-pay generic mandate, the Blue Care Network of Michigan (BCN-1) Plan or the Paramount Health Care of Michigan (PHC-1) Plan, subject to such terms, conditions, exclusions, limitations, deductibles, co-payments and other provisions of the plans. For those retirees who select the Blue Care Network of Michigan (BCN-1) Plan or the Paramount Health Care of Michigan (PHC-1) the Employer shall pay 100% of the health care costs for the retiree only. Retirees who select the Blue Cross-Blue Shield of Michigan Community Blue PPO Option-1 Plan shall pay the difference between the illustrated premium cost of said PPO plan for the retiree only and the illustrated premium cost of the lowest cost HMO plan for the retiree only.\* The Employer shall pay the balance. (\*Retirees who select the Michigan Community Blue PPO Option-1 Plan shall be subject to periodic increases in the cost of said coverage based upon fluctuations in the illustrated premium costs of the PPO plan and the lowest cost HMO Plan.)

Notwithstanding the provisions hereinabove provided, the Employer agrees to pay 100% of the health care costs for retirees under age 65, who reside 91 days or more outside the service area of either the Blue Cross/Blue Shield of Michigan Community Blue PPO Option-1 Plan, Blue Care Network of Michigan (BCN-1) Plan or the Paramount Health Care of Michigan (PHC-1), and desire coverage under the Blue Cross/Blue Shield Traditional Plan.

B. Age 65 or older: Retiree's age 65 or older must enroll in the part B Medicare program. The Employer will thereafter pay the cost of Blue Cross/Blue Shield of Michigan Complimentary Coverage Option-2 plus 1 plan with prescription co-pay program, or equal or better coverage. The Employer shall pay 100% of the health care costs for the retiree only.

C. Spousal and Dependent Coverage: A participating retiree's current spouse and \*eligible dependents shall also be permitted to participate in any of the above described Retiree Health Care Plans in which the retiree participates; if they are not otherwise eligible for health care benefits through another employer. In such event, the Employer shall pay 50% of the illustrated premium for a participating retiree's spouse and \*eligible dependents and the retiree shall pay the difference; provided, however, the Employer shall pay an additional 2.27% of the retiree spouse's and \*eligible dependents health care illustrated premiums for each year of the retiree's credited service in excess of eight (8) years of credited service, not to exceed a total of thirty (30) years credited service or 100% of the applicable illustrated premium.

The retiree's spouse shall also be allowed to continue to receive health care benefits following the death of the retiree as long as the spouse is covered by the retiree's health care plan at the time of the retiree's death and continues to receive the deceased retiree's retirement allowance. If a deceased retiree's spouse remarries, health care benefits shall not be available to the new spouse.

Dependent children of the retiree are also eligible for continued health care coverage after the retiree's death, provided the dependent children are covered by the retiree's health care plan at the time of the retiree's death and continue as dependents of the surviving spouse of the retiree who is receiving the deceased retiree's retirement allowance.

In the event a dependent child is named, the deceased retiree's beneficiary continues to receive the deceased retiree's retirement allowance and is also enrolled in the retiree's health care plan at the time of the retiree's death, the deceased retiree's dependent child shall continue to receive health care coverage through the end of the year in which the dependent child reaches age 19.

D. The Employer reserves the right to change a carrier(s), plan(s), and/or the manner in which it provides the above benefits, provided that the benefits are equal to or better than the benefits outlined above.

E. To be eligible for health care benefits as provided above, the retiree and spouse must document all coverage available under the spouse's medical plan and cooperate in the coordination of coverage to limit the Employer's expense.

Section 3. Retiree Health Care Fund. The Employer shall begin to immediately pre-fund the Retiree Health Care Plan by establishing a separate fund called the "Retiree Health Care Fund." The Employer shall annually budget sufficient funds to contribute to the Retiree Health Care fund, based upon the actuarially determined amount to be reserved for the future cost of retiree health care premiums.

Employees who were hired on or after September 10, 1996, and required to contribute to the Retiree Health Care Fund under the parties' former Agreement, shall continue to contribute 1.5% of their bi-weekly base pay to this fund. Employees, who are hired by the Employer on or after January 1, 2001, shall contribute 3.0% of their bi-weekly base pay to this fund. Such monies shall be deposited into the "Retiree Health Care Fund" to fund future health care benefits for the retiree, spouse and \*eligible dependents. If the employee quits or leaves County employment for any reason prior to becoming eligible for retirement benefits and/or retiree health care benefits, the employee shall be refunded the amount the employee has contributed to the Retiree Health Care Fund, along with the accumulated interest thereon as determined by the Employer.

Section 4. Retiree Life Insurance. Employees who retire under the Monroe County Employees' Retirement System shall be eligible for \$4,000.00 term life insurance.

Footnote

\*Eligible dependents as referenced herein shall include the retiree's children until the end of the year in which such children reach age 19, or any age if totally or permanently disabled by either a physical or mental condition prior to age 19. Children as used herein include the retiree's children by birth, legal adoption, or legal guardianship (while in the retiree's custody and dependent on the retiree).

ARTICLE XVIII  
HOLIDAYS

Section 1. Full-time employees who meet all of the eligibility requirements set forth below shall be paid their regular straight-time hourly rate for the following holidays:

- New Year's Day
- Martin Luther King's Birthday
- President's Birthday
- Good Friday (1/2 Day)
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Eve
- Christmas Day
- New Year's Eve

To be eligible for holiday pay, full-time employees shall meet all of the following eligibility requirements:

(a) The employee must work the last scheduled work day before and the next scheduled work day after the holiday, or the day of observance of the holiday, unless the employee is absent by reason of pre-approved vacation, pre-approved personal time, funerals, hospitalization, and other reasons specifically approved by the Court Administrator. (Note: Employees on disability leave shall not be eligible for holiday pay.)

(b) The employee must have otherwise been scheduled to work on the day if it had not been observed as a holiday.

Section 2. Whenever one of the designated holidays fall on Sunday and the day of observance is Monday, as required by applicable law, then such Monday shall be considered as the official holiday.

If a designated holiday falls on Saturday, the preceding Friday shall be considered the holiday and employees shall be given the day off with pay.