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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

In the Statutory Arbitration between:

COUNTY OF MACOMB

- and -

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

MERC Act 312 Case No. D04 I-1217
Chairperson: Charles Ammeson
Association Delegate: Gary Pushee
County Delegate: Ted Cwiek
Date Decision Rendered: January 17, 2007

ARBITRATION PANEL FINAL OPINION AND AWARD

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APPEARANCES

Name	Title	County/Association
Wendy Fisher	Human Resources Specialist/Coordinator	County
Cathy Nagy	Senior Consultant	County
Kent Lagerquist	Undersheriff, Macomb Co. Sheriff's Office	County
Stacy O'Brien	Deputy Sheriff, Macomb Co. Sheriff	Association

Marvin Dudzinski	Research Analyst, POAM	Association
Stephen Smigiel	Accounting Manager	County
David Diegel	Finance Director	County
Jean Kenny	Dispatcher	Association
Dennis DuBay, Esq.	Attorney for the County	County
William Birdseye	Attorney for the Association	Association
Peter Gennette	Deputy Sheriff, Macomb Co. Sheriff	Association
Amy Sullivan	Self-employed, hired by cities and counties	County
Ted Cwiek	Director of Human Resources	County
Richard Mielke	Human Resources Coordinator/Specialist	County

LIST OF ISSUES

<u>Issue #</u>	<u>Moving Party</u>	<u>Issue Summary</u>
1.	County	Article 25 – Insurance Benefits, Section B. Hospital-Medical Insurance. Establish HAP as the standard health insurance plan. Employees who select a County-offered health insurance plan option other than HAP shall pay the difference in costs through payroll deductions.
2.	County	Article 25 – Insurance Benefits, Section B. Hospital-Medical Insurance. Revise the BC/BS emergency room co-pay (for non-emergencies) to \$100.
3.	County	Article 25 – Insurance Benefits, Section B. Hospital-Medical Insurance. Health Insurance – Retirees – New hire eligibility requirements for retiree health insurance.
4.	County	Article 12 – Employees – Salaries – Classification Changes. Add a new provision to define a regular full-time employee.
5.	County	Article 12 – Employees – Salaries – Classification Changes. Add a new provision to provide eligibility for fringe benefits.
6.	County	Article 15 – Shift Premium. Revise Shift Premiums.
7.	County	Article 16 – Holiday Benefits. Revise Section B – eligibility for holiday pay.
8.	County	Article 16 – Holiday Benefits. Revise Section D – time of holiday payment.

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| 9. | County | Article 17 – Overtime Pay and Procedure. Add a new provision – overtime hours not to be included in final average compensation; Article 26 – Retirement Benefits. Revise Section B with respect to the calculation of final average compensation to exclude overtime earned during the FAC period. |
| 10. | County | Article 17 – Overtime Pay and Procedure. Revise Sections B and C – providing for the elimination of compensatory time. |
| 11. | Association | Wages – Deputy, Dispatch Leader and Dispatcher. All three classes, all contract years. |
| 12. | Association | Equity Wage Adjustment – Dispatcher |
| 13. | Association | Equity Wage Adjustment – Dispatch Leader |
| 14. | Association | Pension Multiplier – Deputy |
| 15. | Association | Pension Multiplier – Dispatch Leader and Dispatcher |
| 16. | Association | Pension – Maximum/Cap – All Classifications |
| 17. | Association | Hazard Pay |
| 18. | Association | Longevity |
| 19. | Association | Duration |

FINDINGS OF FACT AND OPINION

STATEMENT OF PROCEEDINGS

The parties' last contract was in effect for the period January 1, 2002 through December 31, 2004. (County Exhibit 11). On June 10, 2005, after reaching impasse, the Association filed a Petition for Arbitration with the Michigan Employment Relations Commission pursuant to Act 312, Public Acts of 1969, as amended (County Exhibit 12) ("Act 312"). The County filed an Answer to the Petition on October 18, 2005 (County Exhibit 13). On September 12, 2005, Charles Ammeson was appointed Chairperson of the arbitration panel (County Exhibit 14).

A Pre-Hearing Conference was scheduled for November 8, 2005 (County Exhibit 15). The Chairperson issued a summary of the Pre-Hearing Conference on December 5, 2005

(County Exhibit 16). A Notice of Hearing was issued by the Chairperson on December 12, 2005 (County Exhibit 17). Pursuant stipulations the parties exchanged lists of proposed comparable communities and formal position statements on issues to be presented to the arbitration panel on December 22, 2005. The Association's list of comparables and positions is set forth in County Exhibit 18 and the County's list of comparables and positions is set forth in County Exhibit 19. The County designated Mr. Ted J. Cwiek, Esq. as its panel delegate and the Association designated Mr. Gary Pushee as its panel delegate. Formal hearings were conducted before the panel on seven days between April 13, 2006 and May 23, 2006.

At the close of hearing, the parties formulated the remaining 19 issues, as referenced at the beginning of this opinion, all which were stipulated and determined to be economic. It was agreed among the parties and the panel that post-hearing proceedings would be expedited if issue 19, Duration, was immediately determined no later than June 2, 2006, so that formulation of last best offers and briefing on the remaining issues could be simplified. Thus, the Association and the County made their last best offers as to issue 19 on the record - the Association's offer being for a contract duration of four years, and the County's offer being for a contract duration of three years. The panel issued a Preliminary Award as to duration only on May 31, 2006 - the award being for a contract term of three years, which award is incorporated by reference as if fully set forth herein.

The parties were directed to submit their last best offers and brief remaining issues, 1 through 18, using a three-year contract term, pursuant to a schedule stipulated at the last day of hearing. Last best offers were timely received by June 27, 2006 through blind exchange to the Chairperson. The briefing schedule was extended, and briefs were timely received by October 2, 2006. Prior to the last briefing extension, the panel had agreed to convene on September 6, 2006, at which time it was determined that that the parties' last best offers coincided as to issues 1, 2, 3, 11, 14, 16 and 18, and agreed that these issues were fully resolved.

At such time, the Association panel delegate introduced a question regarding the panel's authority to render a determination regarding issues 9 and 15. The panel determined to reconvene on October 23, 2006, at which time panel members discussed all remaining issues, as well as the jurisdictional issue raised by the Association, which will be addressed hereafter. The County submitted an actuarial valuation to determine the impact of proposed pension benefit changes for Macomb County Sheriff Deputies, Dispatchers and Dispatch Leaders. The actuarial evaluation was accepted by the panel, but not admitted as evidence, the hearing having been closed on May 23, 2006. The panel agreed that the remaining issues for determination were issues 4 & 5, 6, 7, 8, 9 & 15, 10, 12 & 13, and 17. The panel agreed that the Chairperson would author a proposed Opinion and Award, and convene with the panel one last time before rendering same.

Procedurally, the arbitration panel, having received evidence on both Association and County issues, and both parties having had full opportunity to examine and cross-examine the evidence and make their arguments, the following Award is based on the evidence received and record made.

BACKGROUND INFORMATION

Macomb County encompasses a land area of 480.4 mi.² (County Exhibit 49). In 2000, the County had an estimated population of 788,149 (County Exhibit 2). The southern portion of the County is more densely populated, encompassing municipalities such as Warren and Sterling Heights (County Exhibit 2 and 4). The northern portion of the County is more rural and less populated. The County Sheriff's Department provides a typical range of law enforcement services for a county of its size, and staff members are assigned in three main organizational areas - Jail Operation Services, Administrative Services and Uniformed Services (County Exhibit 23). The Jail Operation Services Unit consists of Jail Operations and Jail Investigative/Security (County Exhibit 23). The Administrative Services unit consists of an Administrative Bureau, Detective Bureau and several units such as MATS and a SWAT unit (County Exhibit 23). The Uniformed Services unit consists of Patrol, Traffic Services, Marine Patrol, Dive Team, Court Services and Macomb Township Contract Service Unit (County Exhibit 23).

The Sheriff's Department had 480 budgeted positions in 2004 (County Exhibit 58). Twenty-two personnel were assigned to Administration, 249 personnel to Jail Operation, and 107 personnel to Protective Services, which include 55 personnel and Road Patrol, 30 to Prisoner Transport, 13 to Courtroom Security, 6 to Roving Security Buildings, 2 to the Canine Unit and 32 personnel assigned to Investigate Services (County Exhibit 58). The Bargaining Unit consists of 192 Deputies, 2 Dispatch Leaders and 22 Dispatchers, for a total of 216 personnel (County Exhibit 24).

The arbitration panel is mindful that Road Patrol and a variety of other law-enforcement functions are not statutorily mandated, as is operation of the Jail Facility. The arbitration panel is also cognizant of the trend in larger counties that a number of local units of government within the county contract with and provide funding to the county to provide road patrol services within their municipal jurisdiction. Such is the case in Macomb County, the record demonstrating that Lenox Township, Harrison Township, Mount Clemens Township, Macomb Township and Washington Township all have contracted relationships with the County, requiring approximately 53 Deputies. Likewise, the arbitration panel is alert to the fact that certain municipalities do not have contracts or dedicated police protection at all, other than as provided by the Sheriff or State Police generally.

Additionally, Macomb County provides significant overall dispatch within the County, including the contract patrol townships discussed above, as well as Fire Department dispatch. Macomb County Dispatchers generally do not dispatch for communities within the County with their own police department.

STANDARDS FOR DECISION

Section 9 of Act 312 sets forth the well-known eight factors on which the panel's decision must rest: "...The order of the panel must reflect the applicable factors, and the evidence

establishing those factors must be competent, material and substantial evidence on the whole record." City of Detroit v. Detroit Police Officers Association, 408 Mich 410 (1980). Examining the eight factors in a preliminary fashion, neither party suggested, as to the first two factors, that the issues at hand are not within the lawful authority of the Employer, or that the stipulations made by the parties are contrary to any of the other factors.

This panel is also well aware of the requirement that it must consider the interests and welfare of the public as a whole. That interest requires a proper balance of adequate law enforcement protection as a whole, which is reasonably and comparably affordable for the community.

The County points out at page 14 of its Brief that it has not been reluctant to establish generous staffing levels and high levels of compensation in the past, thus asserting that the County is not presently in a position to offer rich improvement packages. With this in mind, it is apparent to this arbitration panel that the community has become accustomed to adequate and available law enforcement resources, and it is in the best interest of the community to continue same. In this regard, the panel observes that none of the remaining proposals by either party suggest a significant change in either staffing levels or affordability. Nevertheless, the panel also recognizes that there are numerous economic challenges facing local units of government in Michigan.

With these competing concerns in mind, adequate law enforcement and affordability, it is the panel's observation that generally maintaining the *status quo*, with flexibility to adapt to change, will properly serve the public interest and welfare. This was one of the basic premises in the panel's determination in selecting the County's last best offer as to duration: ". . . It is the Chairperson's determination that a contract of shorter duration will serve the public interest, allowing flexibility to accommodate future changes as they occur, and allowing the parties the most flexibility to manage and craft overall compensation packages in periods of change."

The panel also notes that the County presented substantial evidence regarding the economic circumstances of the County. To the County's credit, the County does not claim to be "impoverished", and acknowledges that the County is able to afford compensation improvements each year (County Brief at page 15). Nonetheless, the County focused its concerns regarding ability to pay on managing costly loopholes and unfunded or underfunded pension and retiree health insurance costs. The arbitration panel is mindful of these concerns, and believes it has crafted an award that will not detract from the County's ability to manage these economic challenges.

The next statutorily mandated factor for consideration is comparison of wages, hours and conditions of employment with other employees performing similar services, generally in public employment and private employment in comparable communities. The County took the position that comparables should be limited to other County Employers (see County Brief at page 35). The Association, on the other hand, asserted that the panel should adopt a geographic/labor market type of analysis, limiting comparables to those

that reflect labor costs in Southeast Michigan (see Association Brief at page 3). The Chairperson rejects either singular approach as the solution to comparability, recognizing that the comparables suggested by both parties may meet the bare minimum threshold of "comparable communities," or, "similar or identical localities" within the meaning of the statute. However, as stated by Arbitrator Dobry, in his 1989 Act 312 Opinion, MERC Case No. 87 H-2008 (November 21, 1989), this Chairperson agrees:

"...Such a search for the "one true holy Grail" of comparability ignores the broad remedial purpose of the statute, and the way most arbitrators work. The chairman rejects as inappropriate any attempt to "gerrymander" the comparables, as well as a rather naïve assumption that an artificially created "average" will dictate the result in the particular case. A close reading of some of the prior decisions involving these same parties suggest that in the real world arbitrators do more than look at the selected comparables to come to a figure - one party or the other has prevailed on "comparables," which was then only marginally related to the ultimate result.

Rather, the chairman sees the purpose of the record developed at the 312 hearing as a creation of a limited and useful database, from which meaningful comparisons can be developed, and appropriate analogies made."

Consequently, this Chairperson observes that the parties have a long-standing history and experience with 312 arbitration and establishment of comparability. In all prior arbitrations in which panels selected comparable communities, Genesee, Oakland, St. Clair and Washtenaw Counties were offered by both parties and selected by the panel (Association Exhibit 161). Recruits are drawn from all of these counties as well, as particularly demonstrated by Association Exhibit 164. All of these counties are offered as comparables by the County in the present matter. In addition, Warren, Clinton Township and Sterling Heights were included as comparables by all prior panels, although not offered by the County. Given the goal of creating a limited and useful database, from which meaningful comparisons may be developed, and appropriate analogies made, this Chairperson is comfortable giving greater weight to County Employers than Municipal Employers; limiting comparability to the geographic area from which it has been demonstrated applicants reside; limiting comparability to communities that have historically and traditionally been accepted as comparables in the past; and rejecting the highest and lowest comparables (Genesee and Warren) to avoid skewing. Thus, the Chairperson finds the following list of comparables to be useful and instructive:

Oakland County
Washtenaw County
St. Clair County
Sterling Heights
Clinton Township

Notwithstanding this analysis, the Chairperson separately compared all proposals with the party-offered comparables, and found that use of such comparables would not alter the determinations.

The arbitration panel is also mindful that its Opinion and Award should comport with cost-of-living standards. This factor can be addressed in short order. None of the panel's determinations would cause an extraordinary cost-of-living increase, particularly given the fact that the major economic components were agreed to by the parties.

Moving on, it is observed that one of the most important Section 9 factors is the requirement that the Award consider the impact on overall compensation. Again, this factor can be addressed in short order, inasmuch as the major economic components were agreed to by the parties and fall within cost-of-living expectations. The issues ultimately relegated to determination by the panel are not of such impact to significantly influence overall compensation.

With one exception, noted herein, neither party suggests any particular change in circumstances during the pendency of the arbitration proceedings which would affect the Arbitration Award. The County does comment that economic challenges continue. The Chairperson does not observe this continuation to be a change. These economic challenges have been existent from the outset.

Finally, the statute requires the panel to consider other factors that are traditionally taken into consideration between the parties. The Chairperson has received considerable evidence and spent much time with the parties, and is comfortable that the panel's determinations do account for the rich bargaining history and continued bargaining relationship.

MCLA SECTION 38.1132 AND JURISDICTION

At the panel's first Post-Hearing Conference, the Association questioned, for the first time, the panel's jurisdiction over pension proposals 9 and 15, for the reason that neither party submitted actuarial valuations. The Association claims that the panel does not have jurisdiction over these issues by operation of the Public Employee Retirement System Improvement Act, MCLA Section 38.1132. Specifically, the Association relies on Section 20H (3) of the Act, which provides:

"A system shall provide a supplemental actuarial analysis before adoption of pension benefit changes. The supplemental actuarial analysis shall be provided by the system's actuary and shall include an analysis of the long term costs associated with any proposed pension benefit change. The supplemental actuarial analysis shall be provided to the board of the particular system and to the decision-making body that will approve the proposed pension change at least seven days before the proposed pension benefit change is adopted. For purposes of this subsection, "proposed benefit change" means a proposal to change the amount of pension

benefits received by persons entitled to pension benefits under a system. Proposed benefit changes do not include a proposed change of a health care plan or health benefits.

In rebuttal, the County first suggests the Association waived this claim by not raising it at the outset of the proceedings, citing National Labor Relations Board, 76 LA 450, 456 (Gentile, 1981), in which it was held that: "...Arbitrators are careful not to expand the scope of the hearing absent a strong indication that the issues were within the reasonable contemplation of the parties during the processing of the matter to the grievance procedure."

Next, the County counters that the statute, read in its entirety, was never intended to bear upon the authority of a 312 Arbitration Panel, and is directly at odds with the last best offer practice and procedure of Act 312.

Third, the County suggests that such requirement would not prohibit a change which would obviously decrease pension costs, such as County Issue 9, the obvious intent of the statute to manage increased costs, and not savings.

All in all, the County concludes that Section 20H(3) merely requires an actuarial valuation before a change is adopted by the pension board; and if the panel were to grant either of the proposals, statutory compliance would be complete, inasmuch as the County would obtain the necessary valuations, and perhaps the panel could order same.

The Chairperson observes that the issue raised by the Association is important and should properly be determined at some time for the benefit of public sector labor jurisprudence - that being the requirement of actuarial valuations during the hearing phase of 312 Arbitrations and before last best offers. In the present case, it is an issue that would better have been raised earlier in the proceeding. It certainly is an issue that could have been cured by re-opening proofs, and which the Chairperson would have been fully justified in ordering. However, because of the actual determinations in this matter, it is an issue that is moot. This panel will not be ordering pension changes, and thus Section 20H(3) requirements are not invoked, whether or not they would require an actuarial valuation; whether proofs could have been re-opened; or whether an actuarial valuation could have been ordered by the panel.

At this juncture, the Chairperson is compelled to state in this Opinion that his determination regarding Issues 9 and 15 were not influenced whatsoever by the untimely assertion of the jurisdictional issue. The Chairperson was, and is, fully willing to accept the County's argument that no valuation as to the County's Issue 9 was or is necessary, inasmuch as the proposal is undeniably a cost savings. The Chairperson would, as a matter of precaution, order completion of a valuation, if the panel were to award the County's or Association's last best offers on Issues 9 and 15. Nonetheless, and for the reasons set forth below, the Chairperson is convinced that maintaining the *status quo* as to Issues 9 and 15 is the proper award, separate and apart from the jurisdictional issue raised.

ISSUES AND DISCUSSION

COUNTY ISSUES 4/5: DEFINITION OF REGULAR FULL-TIME EMPLOYEE/ELIGIBILITY FOR FRINGE BENEFITS

Issues 4 and 5 are clearly inter-linked and companion proposals (see County Brief at page 62), as corroborated by the arguments presented to the panel. Issue 4 attempts to define regular full-time employee. Issue 5 then applies the definition to limit the amount of benefits for employees who are not regular full-time employees, as defined. As stated by Mr. Cwiek, the proposal intends to address the issue of the County's obligation to provide benefits for someone who is hired as a full-time employee, but isn't working as a full-time employee (V: 912). The Association's position is to maintain the *status quo*.

Although the Chairperson accepts that fringe benefits are traditionally limited to employees working some set scheduled minimum of hours (for example, "full-time employees" and not "part-time employees"), the proposals are not so limited. Upon cross-examination by the Chairperson, it was acknowledged that all (emphasis added) unit members were full-time employees (V: 910-913). Thus, the proposals, in actual fact, address a limited situation where employees are, in fact, intended to be full-time, but for some reason are unable to maintain full-time hours.

The Chairperson notes that Article 25 of the contract already limits health insurance benefits to regular employees. It does not appear that the contract defines "regular". It is unclear whether the insurance contracts provide such definition. It is also unclear to the Chairperson, based on the evidence, that there is a compelling need for the arbitration panel to address this problem, or that it would be in the best interest of the public or the parties to have the panel address the problem. Because of the vast implications that defining "regular full-time employee" could have on other contract sections, the Chairperson tends to agree with the Association that the proposed language could or may be inartful. It is the Chairperson's opinion that imposing such language, not acknowledged to be understood by the Association, which has a potential myriad of unforeseen implications, would or could be counterproductive. Although the Chairperson accepts the concept of minimal scheduled hours to qualify for fringe benefits, it is the Chairperson's opinion that the *status quo* be preserved, and the parties address such issues on a case-by-case basis when reduced hours per particular employee are anticipated or experienced, through the grievance arbitration procedure, or through insurance eligibility analysis.

From a comparability perspective, internal comparisons do support County Proposal 4 (County Exhibit 259). Externally, however, comparison was limited and did not mandate such proposal. Likewise Proposal 5 was comparably supported internally (County Exhibit 263), but not by way of external comparison. Nevertheless, this brings the panel back to the elemental concern regarding the proposal. It's not that the proposal is without merit. It's simply that such a change merits more precise attention to the ultimate impact. Lacking such broad analysis, the Chairperson endorses maintenance of the *status quo*.

COUNTY ISSUE 6: SHIFT PREMIUM

The County's proposal is to revise Article 15, Shift Premium, Section 8, by stating the premium in dollars and cents rather than a percentage. The County acknowledges that there would be no reduction in the amount of shift premium payments. The Association's position is to leave the contract unchanged. County Exhibits 265 through 270, insofar as those comparables receiving shift premiums, are split as to whether premium payments are stated in dollars and cents or percentages. Again, however, this is not an issue that favors resolution by comparison.

This Chairperson is of the opinion that other collective-bargaining factors, as referenced in Section 9a of Act 312, bear more importance. It is truly a matter of semantics whether a shift premium is set forth in dollars and cents versus percentage language. It is obvious to the Chairperson that stating it in dollars and cents more readily leads to separate negotiation of this issue in future contracts. On the other hand, if the County wants to reduce or limit the shift premium in future negotiations, it is certainly entitled to propose same, regardless of whether dollars and cents or percentage language is utilized. Simply put, the Chairperson observes no compelling advantage or reason to change the *status quo*. The issue can be separately negotiated in future negotiations either way.

COUNTY ISSUE 7: ELIGIBILITY FOR HOLIDAY PAY

The County's proposal is to amend Article 16, Holiday Benefits, Section B, to make clear that for an employee to be eligible for holiday pay, the employee must work the holiday the scheduled day before and the scheduled day after the holiday. The Association urges the *status quo*, pointing out that the proposal establishes a new policy for paid holidays. The Association also asserts a lack of examples how the current language causes major economic losses or is otherwise unreasonable.

The County, on the other hand, asserts that the issue sought to be resolved through the proposal is that certain individuals will work the scheduled day before the holiday and on the scheduled day after the holiday work a portion of the day, take time off and not have time in their banks, expecting to receive full payment for the holiday pay.

The Chairperson observes that the County's proposal effects 3 substantive changes to the current language. First, it requires eligibility analysis of whether the employee worked the scheduled days before and after the holiday, rather than calendar days if scheduled before and after the holiday. Second, it requires that work on such days be for the entire day, unless excused with pay for the entire day. Third, it requires that both the day before and after the holiday be worked, rather than either.

Although the Chairperson notes that comparables, whether the County's comparables (10 to 3) or comparables endorsed by the Chairperson (3 to 1) demonstrate a trend to require at least 2 of the three elements requested to be changed (scheduled days rather than

scheduled calendar days, and both rather than either), and the Association's comparables demonstrate an opposite trend (2 to 5), it remains unclear from the record whether the comparables require the third element - working the entire day without excuse.

Moreover, it is unclear to the Chairperson, from the record (V: 1049-1068), that the narrowly prescribed issue asserted to be addressed is an issue at all. A simple and precise reading of the present contract language would not require an employee to work the scheduled day after the holiday, whether it be the scheduled day or calendar day if scheduled, if the employee worked the day before the holiday (again whether it be the scheduled day or calendar day if scheduled).

Accordingly, and based upon the record as assessed by the panel, the Chairperson concludes that adoption of the proposal solves more problems than identified, and may have more impact than understood. For some reason, not explained in the record, the parties have negotiated a calendar day requirement, as evidenced by a precise reading of the present contract language, to either the day before or the day after. Furthermore, a precise reading of the language does not alone answer the question whether such work is required for the entire day or not.

Consequently, although the Chairperson can understand the several issues the County is trying to address and does not necessarily agree, as stated by the Association in its Brief, that this is a solution looking for a problem, it remains unclear to the Chairperson that the proposal simply solves the issue suggested. Instead, it solves other issues, and as such, may create even more issues. Because of this, the Chairperson concludes that comparability evidence does not compel a determination of this issue, and that it is in the best interest of the public and the bargaining relationship between the parties to maintain the *status quo* and leave resolution of the issue to the grievance/arbitration mechanism or traditional negotiations between the parties. Ultimately, there is no evidence in the record that non-resolution of the issue briefed significantly impacts the financial ability of the County to meet its costs or the overall compensation package. As such, the Chairperson endorses maintenance of the *status quo*.

COUNTY ISSUE 8: TIME OF HOLIDAY PAYMENT

The County's proposal is to amend Article 16, Holiday Benefits, Section D, to reflect that holiday pay payments would be included in the first regular payroll check of December, rather than made on December 15 by way of a separate check as is currently the practice. Again, the Association's position is to maintain the *status quo*. Mr. Mielke, the County's Human Resources Coordinator/Specialist, testified that the County has a number of special wage payments that occur at year end, and this proposal would remove an administrative burden on the finance department (VI. 1070). The Association, on the other hand, suggests that the County offers no logical reason why the holiday payment should be changed and thus the panels should maintain the *status quo*.

The Chairperson observes that the record reflects that 216 or so separate checks are cut each year for the subject payment. While that may not be a major economic loss or

problem to the County, there is no doubt in the Chairperson's mind that such extra checks lend to inefficiency. All in all, the Chairperson accepts that it is in the best interests and welfare of the public to take advantage of this minor inefficiency, particularly when there appears to be little or no detrimental impact. Consequently, the panel is of the opinion that the County's proposal to amend Article 16, Holiday Benefits, Section D, to reflect that holiday payments shall be included in the first regular payroll check of December should be implemented.

Again, this issue is not one that commands determination by comparability. The Chairperson is more convinced that the County's proposal merits implementation because it is in the best interests of the public.

**COUNTY ISSUE 9 AND ASSOCIATION ISSUE 15: OVERTIME HOURS IN
FINAL AVERAGE COMPENSATION/INCREASED PENSION MULTIPLIER
FOR DISPATCH LEADER AND DISPATCHER**

County Issue 9 and Association Issue 15 are addressed as companion issues because they both affect pension benefits. Regarding Issue 9, the County's last best offer is to amend Article 17, Overtime Pay Procedure, Section A, to provide that overtime and/or "cash in" compensatory time eligible for inclusion in employees' 36 consecutive months of final average compensation shall be limited to 300 hours per year. The Association's position is to maintain the *status quo*. Regarding Issue 15, the Association proposes that the pension multiplier for the Dispatch Leader and Dispatcher classifications be increased by ten percent. The County's position is to maintain the *status quo*.

County Issue 9 is asserted to address an issue with employees working excessive overtime offered by the County during their last three years of employment before retirement in order to enhance the employee's pension calculation. The County acknowledges that such opportunities exist because the County allows Deputies to work overtime in the jail, recognizing that only one other county in their list of comparables allows similar overtime opportunity (See County's Brief at pages 69. See also County Exhibits 283 and 287). The County also acknowledges that it could address this problem by denying unit members the privilege of working overtime in the jail, but prefers a more surgically precise solution as set forth in its last best offer (See County Brief at page 68).

The Association accepts the County's right to manage its affairs; determine need for work; and determine the size of the work force necessary to perform that work, including the right to eliminate overtime. See Association Brief at pages 22 and 23. As such, there is no dispute that the County has the ability to address the issue that concerns the County, unilaterally, and that is the basis of this award.

With the above in mind, the Chairperson fully agrees that the issue of extraordinary individual pensions is rightfully a matter of public concern, and the County must address what it suggests is manipulation of the system. Although the County proposal would address the issue to a great extent, it is clear that the proposal is not acceptable to the Association. As such, it is also clear that the Association's position is that it prefers the

County eliminate overtime opportunities in the jail rather than implement a cap system on the overtime for pension calculation purposes.

In all candor, it does occur to the Chairperson that one or both of the parties, for whatever reason, may be bluffing or not wholly genuine as to their position. On one hand, the Chairperson cannot understand why the Association, collectively, would prefer the possibility of elimination of significant overtime opportunities over a reasonable cap as proposed by the County. On the other hand, the Chairperson cannot understand why the County would prefer to continue to carry the extraordinary overtime burden it experiences. For some reason, there appears to be an "elephant in the room" which has not been fully explained (http://en.wikipedia.org/wiki/Elephant_in_the_room).

Although the Chairperson accepts that "caps on overtime" are common among the comparables, the Chairperson determines that it is in the best interests, welfare and financial ability of the County to meet its costs, to allow the County to implement the elimination of overtime or another solution within its stipulated lawful authority.

In this regard, the Chairperson agrees with the Elkouris when they state: "Arbitration ... is a vital force in establishing confidence and minimizing confusion at all levels of the labor-management relationship and is a major constructive force in the collective bargaining process itself. Arbitration should not, however, be expected or totally relied upon to create either good contracts or cooperative human relationships - it is a supplement to, rather than a substitute for, conscientious grievance processing and genuine collective bargaining." Elkouri, HOW ARBITRATION WORKS (BNA 3d ed. 1981). For this reason alone, the Chairperson is of the opinion that it would be a mis-step to utilize the 312 Arbitration process to address an issue that is within the acknowledged sole control of one party to address. The parties must either acknowledge the "elephant" to each other and the public, or usher the "elephant" out of the room on their own. The Chairperson is convinced that the parties, the collective bargaining process and relationship, as well as the public, will be better served if this issue is resolved between the parties by agreement or unilaterally within the acknowledged lawful authority of the County.

Turning to Issue 15, the Chairperson notes that the Association Brief, in short, asserts that the Dispatchers in Macomb County are no less worthy of a 66% pension after 25 years than the Deputies. For similar reasons as set forth in the discussion of Issues 12 and 13, the Chairperson concludes that the Dispatcher and Dispatch Leader classifications compare reasonably with all comparables as far as overall compensation. In this regard, County Comparables set forth in County Exhibits 308 and 309 support the conclusion that Dispatch pension benefits fall within reasonable comparable ranges. Likewise, so do the Association comparables, as set forth in County Exhibits 324, 325, 332 and 333. The Chairperson's endorsed comparables result in a similar conclusion.

Based on the foregoing, and the record evidence, fully mindful of the Section 9 standards for decision, the Chairperson endorses maintenance of the *status quo* as to Issues 9 and 15.

COUNTY ISSUE 10: ELIMINATION OF COMPENSATORY TIME

The County's proposal and final offer of settlement provides that the option of compensatory time would no longer be offered to members of the bargaining unit, as referenced in Article 17, Section 11 of the Collective Bargaining Agreement. The Association's position is to maintain the contract unchanged.

Mr. Smigiel, the County Accounting Manager, testified that County Exhibit 365 indicates the cost of overtime caused by usage of compensatory time (VII: 1184 -- 1185). The Chairperson agrees with Mr. Smigiel that compensatory time can "Snow ball" because of the fact that a deputy is not paid cash for the overtime work, but is allowed to accrue 12 hours of compensatory time, and then uses eight hours of such time in a situation where the department must call in someone else at overtime (VII: 1182 -- 1183).

Comparable analysis shows that comparable counties allow, disallow and limit compensatory overtime. There appears to be no overriding trend. See County Exhibits 359-364. On the other hand, the Association argues that officers are often required to work weekends and holidays. Thus, normal regular days off are not as usual as in private employment. Consequently, the Association suggests that compensatory time helps level off the regular work schedule and creates opportunities for time off.

Just as the Chairperson agrees with the County's observation that compensatory time "snowballs" regular overtime into an extra cost, the Chairperson also agrees with the Association's observation that the department has considerable overtime demands. In fact, the Chairperson observes that the record demonstrates approximately 52,000 hours of overtime per year by law enforcement officers alone. (V: 808) This averages to approximately 270 hours per year per unit member. (V: 808)

Although the Chairperson agrees that the department could enjoy significant economic efficiencies by the elimination of compensatory time, it is the Chairperson's observation that the crux of the problem is more elemental. It is the Chairperson's opinion that the true source of the extraordinary overtime/compensatory time costs incurred by the department is the department's significant reliance on overtime manpower planning.

Given that the County elects to cover a very significant number of manpower hours with overtime, combined with the fact that such overtime further exacerbates the unusual schedule demands of 24-hour coverage employment experienced by many unit members, and in light of the fact that many comparables address such demands by use of a compensatory time system, the Chairperson is of the opinion that Section 9 standards require maintenance of the *status quo*. In this regard, it is noted that the County has lawful authority to address the experienced economic inefficiency through other means, which would protect the interests and welfare of the public and the financial ability of the County to provide law enforcement services. The compensatory time procedure is also found by the Chairperson to be comparable in nature and limitation with other similarly

situated employers and employees. Finally, the Chairperson believes that maintaining the *status quo*, in light of the extraordinary overtime reliance within the department, takes into consideration and complements the bargaining history between the parties. The Chairperson endorses maintenance of the *status quo*.

**ASSOCIATION ISSUES 12 AND 13: EQUITY ADJUSTMENTS FOR
DISPATCHER AND DISPATCH LEADER**

In Association Issues 12 and 13, the Association proposes that employees in the Dispatcher and Dispatch Leader classifications receive an additional \$1,500 per year, effective January 1, 2007. The payment would be rolled into salary and be paid every year thereafter.

It is observed that the County and Association have already agreed to a 2.5% wage adjustment in January 1, 2005, January 1, 2006 and January 1, 2007 for the Deputy, Dispatch Leader and Dispatcher classifications. Thus, the County's last offer of settlement is for no additional adjustment for the Dispatch Leader and Dispatcher classifications.

As observed by the County in its Brief, the record shows that the Dispatch Leader and Dispatcher classifications' overall compensation are not out of line when compared to comparables. This is true whether one considers the County's comparables, the Association's comparables, or the comparables, endorsed by the Chairperson. Although County Exhibit 93 sheds little comparable light, County Exhibit 107 does demonstrate favorable comparability, and County Exhibits 135 and 149 do not demonstrate distorted comparability for overall compensation as far as the proposed Association comparables. Utilizing the Chairperson's endorsed comparables confirms reasonable comparability. All in all, the Chairperson simply cannot conclude that the Section 9 standard of comparability compels equity adjustments.

Nevertheless, the Association focuses its argument, in its Brief and on the record, on the fact that Dispatch Leaders and Dispatchers have been burdened with many new and varied services that they now provide, which have been implemented since the expired contract was negotiated. Although the Chairperson is mindful and respectful of the critical job requirements and personal attributes of dispatch professionals, the Chairperson simply cannot not find a justification within the Section 9 standards to determine an equity adjustment. The standards simply do not allow the panel to segregate wage adjustment based upon individual productivity and expertise, nor inter-job comparison. As such, the Chairperson endorses maintenance of the *status quo*.

ASSOCIATION ISSUE 17: HAZARD PAY

The Association proposes that the lump-sum annual payment entitled Hazard Pay be increased from the current \$420 each year to \$800 each year. The County's position is to maintain the *status quo*.

In essence, the Association is seeking parity with the Command Officer's hazard pay, pointing out that Deputies serve as First Responders and, as such, are much more likely to encounter a hazard situation before a command officer. In sum, the Association argues that fairness demands that First Responders receive the most hazard pay.

The County, on the other hand, asserts that the proposal is not supported in any way by the record.

County Exhibit 71 shows that none of the County's comparables pay a hazard pay payment. With respect to the Association's comparables, the record shows that only two of the Association's proposed comparables pay a hazard pay payment, one being \$548 and the other being \$750. Within the comparables endorsed by the Chairperson, only one provides a hazard pay payment.

Neither County Exhibits 71 nor 113 command adoption of the Association's proposal based upon comparability. Thus, while the Association's argument does not fall on deaf ears (on the surface it seems unfair and unusual that command officers would experience relatively more hazardous conditions than patrol officers), it is not a necessary conclusion that the reconciliation of this singular unfairness requires an increase for the patrol officers, or that such increase might not cause other singular unfair comparisons. Within the unit there are certain to be more hazardous assignments than others, offering an abundance of singular unfairness.

All in all, and particularly given the requirement that the panel apply the Section 9 standard of overall compensation, the Chairperson simply cannot endorse a determination that it would serve the public interest or welfare to place this employer as the considerable leader in hazard pay. The Chairperson endorses maintenance of the *status quo*.

CONCLUSION AND AWARD

For all the foregoing reasons, the Panel awards the following provisions, adopts this statement as its complete Award, and remands this matter to the parties for the drafting of a collective bargaining agreement in accordance with the stipulations of the parties on the record and the determinations set forth herein:

1. Health Insurance
The Panel determines and orders that the pertinent contract language be amended as set forth immediately below:

Position: Amend Article 25 – INSURANCE BENEFITS, Section B.
Hospital-Medical Insurance by amending subsection 1. Active
Employees to provide as follows:

The Employer shall provide fully paid Blue Cross/Blue Shield Hospital-Medical coverage, or its substantial equivalence, to all regular Employees and their eligible families on the following basis and coverage:

- a. Comprehensive Hospital, D45NM, MVF-1, ML, PPNV-1, XF-EF Exact Fill, FC, SD, COB-1, SAT-II, SOT-PE (GLE-1), Prescription Drugs, Master Medical Option I, MMC-PD.

Effective as soon as practicable after the issuance of the Award, the Employer will provide Blue Cross/Blue Shield Community Blue PPO Option 1. Employees currently enrolled in the Blue Cross/Blue Shield Traditional health care program shall be permitted to maintain this coverage, however, the employee will be required to contribute the difference in cost between the Blue Cross/Blue Shield Traditional program and the Blue Cross/Blue Shield Community Blue PPO program Option 1 on a monthly basis, through payroll deduction.

and

- d. The Employer shall offer active Employees the option of selecting a “Preferred Provider Organization” program.
Effective as soon as practicable after the issuance of the Award, the Preferred Provider Organization program Option 1 shall require a \$100 deductible per individual or a \$200 deductible per family annually.

and

- f. Effective November 1, 1996, employees covered by a Blue Cross/Blue Shield health care plan will be enrolled in the Preferred Rx Managed Prescription Drug program and subject to the following terms and conditions:

Co-Pays for Preferred Rx Plan:

- (1) Co-pays for prescriptions received from a Preferred Rx network pharmacy will be \$5.00.
- (2) Co-pays for prescriptions received by mail-order will be \$2.00.

Effective as soon as possible after ratification of this Agreement, employees covered by a Blue Cross/Blue Shield health care plan will be enrolled in the Preferred Rx Managed Prescription Drug program and subject to the following terms and conditions:

Co-Pays for Preferred Rx Plan:

- (1) Co-pays for prescriptions received from a Preferred Rx network pharmacy will be as follows:
 - \$5.00 Co-pay for generic drugs
 - \$10.00 Co-pay for preferred brand drugs
 - \$15.00 Co-pay for non-preferred brand drugs
- (2) Co-pays for prescriptions received by mail-order will be \$2.00.

Effective as soon as practicable after the issuance of the Award, eligible employees covered by a Blue Cross/Blue Shield health care plan will be enrolled in the Preferred Rx Managed Prescription Drug program and subject to the following terms and conditions:

- (1) Co-Pays for Preferred Rx Plan:
 - (a) Co-pays for prescriptions received from a Preferred Rx network pharmacy will be as follows:
 - \$10.00 Co-pay for generic drugs
 - \$20.00 Co-pay for non-generic drugs
 - (b) Co-pays for prescriptions received by mail-order will be \$5.00.
- (2) Mandatory Mail-Order for Maintenance Drugs.

and

Article 25, Insurance Benefits, Section B-2 Retirees as follows:

- c. Preferred Rx Managed Prescription Drug Program: Effective November 1, 1996, an eligible retiree, and the person who is said retiree's spouse at the time of retirement, covered by a Blue Cross/Blue Shield health care plan will be enrolled in the Preferred Rx Managed Prescription Drug Program. Coverage is as follows:
 - (1) The employee leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance.
 - (2) Co-pays for prescriptions received from an approved Blue Cross/Blue Shield Preferred Rx network pharmacy will be \$5.00.
 - (3) Co-pays for maintenance prescriptions, received from an approved Blue Cross/Blue Shield Preferred Rx provider by mail order, will be \$2.00.

Effective as soon as practicable after the issuance of the Award, an eligible retiree, and the person who is said retiree's spouse at the time of retirement, covered by a Blue Cross/Blue Shield health

care plan will be enrolled in the Preferred Rx Managed Prescription Drug Program. Coverage is as follows:

- (1) The employee leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employee's Retirement Ordinance.
- (2) Co-pays for prescriptions received from an approved Blue Cross/Blue Shield Preferred Rx network pharmacy will be \$5.00.
- (3) Co-pays for maintenance prescriptions, received from an approved Blue Cross/Blue Shield Preferred Rx provider by mail order, will be \$5.00.
- (4) Mandatory Mail-Order for Maintenance Drugs.

Effective date: Effective as soon as practicable after the issuance of the Award.

2*. Emergency Room Co-Pay

The Panel determines and orders that the pertinent contract language be amended as set forth immediately below:

Position: Amend Article 25 – INSURANCE BENEFITS, Section B. Hospital-Medical Insurance, by adding the new subsection g to provide as follows:

- g. Effective as soon as practicable after the issuance of the Award, the co-payment for non-emergent use of an emergency room shall increase from \$50.00 to \$100.00 for employees covered by all Blue Cross/Blue Shield insurance products.

Effective date: Effective as soon as practicable after the issuance of the Award.

3*. Future Retiree – Eligibility for Health Care

The Panel determines and orders that the pertinent contract language be amended as set forth immediately below:

Position: Amend Article 25 – INSURANCE BENEFITS, Section B. Hospital-Medical Insurance, subsection 2. Retirees as follows:

2. Retirees:

The Employer will provide fully paid Blue Cross/Blue Shield Hospital-Medical coverage to the Employee and the Employee's spouse for the Employee who leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employee's Retirement Ordinance, based upon the following conditions and provisions:

Effective as soon as practicable after the issuance of the Award, for all employees hired into this unit on or after this date, the Employer will provide fully paid Blue Cross/Blue

Shield Hospital-Medical coverage to the Employee and the Employee's spouse, after fifteen (15) years of actual service with the Employer, for the Employee who leaves employment because of retirement and is eligible for and received benefits under the Macomb County Employees' Retirement Ordinance, based upon the following conditions and provisions:

Effective date: Effective as soon as practicable after the issuance of the Award.

4. **Definition of Full-Time Employee**
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
5. **Eligibility for Fringe Benefits**
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
6. **Shift Premium**
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
7. **Holiday Pay – Eligibility**
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
8. **Holiday Pay – Time of Payment**
The Panel determines and orders that the pertinent contract language be amended as set forth immediately below:
Position: Amend Article 16 – HOLIDAY BENEFITS, Section D to provide as follows:
 D. Holiday pay payments shall be included in the first regular payroll check of December.

Effective date: Effective date of the Award.

9. **Exclude Overtime from Final Average Compensation**
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
10. **Eliminate Compensatory Time**
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.

11. Wages – All Classifications

The Panel determines and orders that the pertinent contract language be amended as set forth immediately below:

	<u>DEPUTY</u>		
	January 1, 2005 (2.5%)	January 1, 2006 (2.5%)	January 1, 2007 (2.5%)
Start	\$43,066.59	\$44,143.25	\$45,246.84
6 Months	\$44,553.00	\$45,666.83	\$46,808.50
12 Months	\$46,039.44	\$47,190.42	\$48,370.19
18 Months	\$47,525.86	\$48,714.01	\$49,931.86
24 Months	\$49,012.29	\$50,237.59	\$51,493.53
30 Months	\$50,498.73	\$51,761.20	\$53,055.23
36 Months	\$51,985.16	\$53,284.78	\$54,616.90
43 Months	\$53,471.56	\$54,808.35	\$56,178.56
48 Months	\$54,963.01	\$56,337.08	\$57,745.51

	<u>DISPATCHER LEADER</u>		
	January 1, 2005 (2.5%)	January 1, 2006 (2.5%)	January 1, 2007 (2.5%)
Start	\$39,048.82	\$40,025.04	\$41,025.66
6 Months	\$40,007.35	\$41,007.54	\$42,032.73
12 Months	\$40,965.89	\$41,990.04	\$43,039.79
18 Months	\$41,924.44	\$42,972.55	\$44,046.87

	<u>DISPATCHER</u>		
	January 1, 2005 (2.5%)	January 1, 2006 (2.5%)	January 1, 2007 (2.5%)
Start	\$36,941.42	\$37,864.95	\$38,811.57
6 Months	\$37,850.48	\$38,796.74	\$39,766.66
12 Months	\$38,759.58	\$39,728.57	\$40,721.78
18 Months	\$39,669.04	\$40,660.77	\$41,677.29

Wages to be effective retroactive to January 1, 2005 for all hours compensated.

12. Equity Wage Adjustment - Dispatcher

The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.

13. Equity Wage Adjustment – Dispatcher Leader

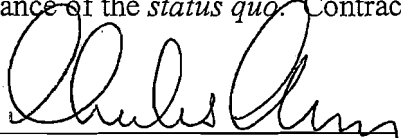
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.

14. Pension Multiplier - Deputy

The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.

- 15. Pension Multiplier – Dispatcher and Dispatchers Leader
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
- 16. Pension Maximum Cap
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
- 17. Hazard Pay
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
- 18. Longevity
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
- 19. Duration
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.

Dated: 1/17, 2007


 Charles Ammeson
 Chairperson
 Saint Joseph, Michigan

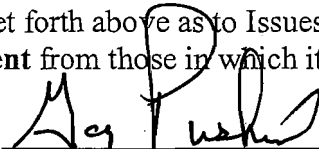
Dated: _____, 2006

I **concur** on those issues and the reasoning set forth above as to Issues 1, 2, 3, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19. I respectfully **dissent** from those in which it did not prevail.

 Ted Cwiek
 County Delegate

Dated: 1/17, 2007

I **concur** on those issues and the reasoning set forth above as to Issues 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 14, 16, and 18. I respectfully **dissent** from those in which it did not prevail.


 Gary Pushee
 Association Delegate

15. Pension Multiplier – Dispatcher and Dispatchers Leader
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
16. Pension Maximum Cap
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
17. Hazard Pay
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
18. Longevity
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.
19. Duration
The Panel determines and orders maintenance of the *status quo*. Contract language shall remain unchanged.

Dated: _____, 2006

Charles Ammeson
Chairperson
Saint Joseph, Michigan

Dated: 1/17, 2007

I **concur** on those issues and the reasoning set forth above as to Issues 1, 2, 3, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19. I respectfully **dissent** from those in which it did not prevail.



Ted Cwiek
County Delegate

Dated: _____, 2006

I **concur** on those issues and the reasoning set forth above as to Issues 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 14, 16, and 18. I respectfully **dissent** from those in which it did not prevail.

Gary Pushee
Association Delegate