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**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION**

**Police Officers Association of Michigan,
Petitioner,
and
County of Iosco, MI,
Respondent**

Case No.: L04 J-3014

**FACT FINDER'S REPORT
AND RECOMMENDATIONS**

APPEARANCES

For Petitioner: Patrick Spidell, Business Agent
POAM
27056 Joy Road
Redford, MI 48239-1949
(313) 937-9000

For Respondent: Dennis Dubay, Esq.
KELLER THOMA, P.C.
440 East Congress, 5th Floor
Detroit, MI 48226
(313) 965-7610

Fact Finder: Steven B. Stratton
Ferris State University
McKessy House
120 Cedar Street
Big Rapids, MI 49307-2202
(231) 591-3894

Date of Report: July 17, 2007

OFFICE OF THE FACT FINDER
STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
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Background

The County of Iosco ("Employer" or "County") and the Police Officers Association of Michigan ("Union" or "POAM") are parties to a collective bargaining agreement dated January 1, 2002 through December 31, 2004. The Union represents all full time Sergeants, Detectives, Deputies, Corrections Officers, Corporals, Clerks, Animal Control Officers and Cooks.

The parties entered negotiations for a successor agreement but were unsuccessful in reaching agreement despite assistance of a state mediator. Two petitions were filed with the State of Michigan, Department of Labor and Economic Growth, Employment Relations Commission. Petition L04 J-3014 was filed on behalf of the bargaining members eligible for Act 312 binding arbitration. That case has been decided and the Arbitration Award is made a part of this record as Exhibit 7. The second petition, also L04 J-3014, dated June 28, 2006, was filed on behalf of the non-Act 312 eligible employees. By letter dated August 31, 2006, the undersigned was assigned to serve as Fact Finder, pursuant to Public Act 176 of 1939.

A pre-hearing teleconference was held on October 10, 2006. An evidentiary hearing was held on April 17, 2007. A total of fifty-seven (57) exhibits were entered into the record, including the transcript of the Act 312 hearing (Exhibit 17). This eliminated the need for protracted testimony at the fact finding evidentiary hearing. The parties are commended for their diligence in keeping the cost of the fact finding to a minimum. Some testimony regarding the financial condition of the County was provided by County Treasurer Elite Shellenbarger. The Union withdrew the issue of administrative leave at the hearing.

Post-hearing briefs were exchanged on or about June 18, 2007. The Fact Finder is empowered to render a non-binding recommendation on all open issues. The recommendations will be applicable to the non-Act 312 eligible employees. Since the record includes the transcript of the Act 312 hearing and the Act 312 Award, the Fact Finder will not spend a great deal of time restating the testimony for purposes of this proceeding.

Statutory Authority

Section 25 of the Labor Mediation Act (LMA) PA 176 of 1939, as amended, provides for fact finding as follows:

When in the course of mediation ..., it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.

Rule 137 of the Administrative Rules of the Employment Relations Commission, R423.137, explains the contents of the fact finder's report as follows:

Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:

(a) The names of the parties.

(b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.

(c) Recommendations with respect to the issues in dispute.

(d) Reasons and basis for the findings, conclusions and recommendations.

(e) The date the report issued.

(f) The signature of the Fact Finder.

Unfortunately, the Rules do not set forth the criteria to be used by the Fact Finder for making the recommendations. Fact Finders have looked to Act 312 for guidance.

Section 9 of Act 312, 1969, states as follows:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(a) The lawful authority of the Employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of 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 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

Your Fact Finder will consider the evidentiary record with the above criteria in mind.

Comparable Communities

By letter dated November 17, 2006, the parties stipulated to the following communities

as comparable, external communities:

Alcona County

Alpena County

Arenac County

Crawford County

Gladwin County

Montmorency County

Ogemaw County

Oscoda County

Roscommon County

Open Issues

The following table represents the open issues, positions of the parties on each issue and the decision of the Act 312 Arbitration Panel.

ISSUE	UNION PROPOSAL	COUNTY PROPOSAL	ACT 312 AWARD
Wages			
1/1/05 – 12/31/05	2% retro to 1/1/05	No increase	No increase
1/1/06 – 12/31/06	2% retro to 1/1/06	No increase	2% on date of Award
1/1/07 – 12/31/07	3% retro to 1/1/07	3% effective the date of the Fact Finder's recommendation	3% on date of Award
Shift Premium			
Afternoon shift	\$0.18 per hour	\$0.10 (status quo)	\$0.17
Midnight shift	\$0.24 per hour	\$0.20 (status quo)	\$0.22
	Retro to 1/1/05		Retro to 1/1/05
Personal Leave Days	Withdrew proposal Status quo	Status quo	Not an issue
Pass Days	New language 2 consecutive days off and 1 weekend per month	Status quo	New language 2 consecutive days off and 1 weekend per month
Uniforms-Footwear	New language and \$60 annually	Status quo	New language and \$60 annually
Administrative Leave	Withdrawn at hearing although briefed	Status quo Did not brief	Status quo
Holidays	Did not brief	Status quo	Not an issue
Standby Time	Did not brief	Did not brief	Status quo
Health Insurance	PPO II \$10/\$40 drugs	PPO III \$10/\$40 drugs	PPO III \$10/\$40 drugs Date of Award
Pension	Status quo	Defined contribution plan for employees hired after 1/1/07 with a 7% Employer contribution	Defined contribution plan for employees hired after 1/1/07 with a 7% Employer contribution

Findings of Fact

The Act 312 criteria have been applied by the arbitration panel in the companion case. In fact, the Employer argues the Fact Finder should reach the same conclusions as the panel and recommend the identical provisions be adopted (Brief p. 3).

To be clear, the Fact Finder is not bound by the 312 Award but there is some merit to the Employer's argument; and, it strikes me that a chaotic bargaining relationship could result if different decisions are rendered by the two different tribunals. However, the Fact Finder would not be fulfilling his responsibility if he were to summarily adopt the 312 Award without first, thoroughly reviewing the decision and rationale of the panel and second, concluding that he reasonably could have come to the same decisions, given the evidentiary record of this instant hearing.

A good starting point is to compare the record of both hearings. The record of both proceedings is virtually identical; same transcript, same exhibits, same parties, same collective bargaining agreement and, for the most part, same issues and proposals.

A review of the collective bargaining agreement reveals that, with the exception of Article 11.3, there are no differentiations between the Act 312 eligible employees and the non-312 eligible employees. In other words, all employees have the same benefits and are equally covered by the language of the Agreement. Article 11.3 describes the payment of overtime and provides a different payment basis for Cooks. Overtime however, is not an issue in this fact finding.

Given the similarity of the record of both proceedings, it is appropriate to examine the decision of the 312 panel to determine if the Fact Finder could reasonably have come to the same decisions. Having conducted that review¹, the decisions and rationale of the panel are within the realm of reason when considering the factors as described in Section 9 and given the deteriorating financial condition of the County. Your Fact Finder can find no compelling reason(s) to make any recommendations that differ from the Act 312 Award except for the date of the wage increases and the implementation of the health insurance changes. It would be unwise to segregate the non-312 eligible employees with some different contractual provisions absent any compelling reasons to do so. The dates for the wage increases are recommended to coincide with the date of the Fact Finder's Report inasmuch as the health insurance changes can not take effect until after the Report issues.

¹ A restating of the arguments and details is not necessary given the full and complete record as it currently exists.

Fact Finder's Recommendations

Wages

1/1/05 – 12/31/05	No increase
1/1/06 – 12/31/06	2% effective July 17, 2007
1/1/07 – 12/31/07	3% effective July 17, 2007

Shift Premium

Afternoon shift	\$0.17 per hour retroactive to January 1, 2005
Midnight shift	\$0.22 per hour retroactive to January 1, 2005

Personal Leave Days Status Quo

Pass Days New language as adopted in Act 312 Award

Uniforms-Footwear New language as adopted in Act 312 Award

Administrative Leave Status Quo

Holidays Status Quo

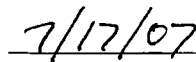
Standby Time Status Quo

Health Insurance PPO III with \$10/\$40 drugs effective July 17, 2007 or as soon as the changes can be implemented thereafter.

Pension Defined contribution plan for employees hired after 1/1/07 with a 7% Employer contribution



Steven B. Stratton, Fact Finder



Date