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STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
ACT 312, PUBLIC ACTS OF 1969 ARBITRATION PANEL

In the Matter of  
Arbitration Between:

LAKE COUNTY

-and-

MERC Act 312 Case No. L05F7009  
Hearing: August 28, 2007

COMMAND OFFICERS ASSOCIATION  
OF MICHIGAN

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ARBITRATION PANEL OPINION AND AWARD

Carl E. Ver Beek, Chairman  
John McGlinchey, Employer Delegate  
Patrick Spidell, Employees' Delegate

APPEARANCES:

FOR COUNTY OF LAKE:

FOR COMMAND OFFICERS  
ASSOCIATION OF MICHIGAN:

John McGlinchey, Attorney

Patrick J. Spidell, Business Agent

Also Present:

Shelly Myers  
Bob Hilts  
Chris Broughan  
Jim Clark

Kevin Loftis  
Dennis Robinson  
Harold Nichols

Background

The Lake County Sheriff's Department has a bargaining unit for dispatchers, corrections, deputies and the command unit so there are a total of four bargaining units in the Department.,

There are also other represented and unrepresented employees of the County. In the Command Unit, which is the unit to which this Opinion and Award applies, there are seven command officers, specifically, a chief deputy sheriff, a lieutenant, two road sergeants and two jail sergeants. The jail sergeants are presumably covered by this award even though they are not technically covered by Act 312 since the parties have previously agreed to have them included in a previous Act 312 Award.

The latest Collective Bargaining agreement for this unit with the COAM expired on December 31, 2005. The parties have agreed that the substance of this decision will be reflected in a new agreement which is to be effective commencing January 1, 2006, and expiring on December 31, 2008. It appears that the new agreement will continue the updated provisions of the old agreement plus all Tentative Agreements reached during negotiations, plus those subject to this Opinion and Award. The parties were unable to reach agreement on several topics in the bargaining relating to the 2006 through 2008 contract. Consequently, a petition for Act 312 arbitration was filed with the Employment Relations Commission on July 6, 2006, by the Employer. It listed three topics for arbitration, specifically, wages, health insurance and seniority.

The Union's response and a subsequent stipulation by the parties resulted in agreement that there are actually thirteen issues to be resolved pursuant to this process. The stipulated list of issues is as follows:

1. Wages.
2. Retirement.
3. Sick Time Payout.
4. Funeral Leave.
5. Personal Days.

6. Vacation.
7. Court time.
8. Longevity.
9. Shift Premium.
10. Life Insurance.
11. Retiree Health Insurance.
12. Health Care Insurance
13. Loss of Seniority – Workers' Compensation.

The parties have stipulated to the resolution of Item No. 10, Life Insurance, having agreed that effective upon the award the Term Insurance will be increased to \$20,000 for Life and Accidental Death and Dismemberment.

Consequently, this Opinion and Award will address the remaining twelve issues, as well as some issues relating to the timing and implementation of the agreement .

The Act 312 process is not designed to necessarily reflect a "balanced" Opinion and Award, but is to reflect the appropriate result after analyzing the supporting data on each open issue. This Opinion and Award reflects that issue by issue analysis. Unfortunately for the Union, it does not provide a result in which both parties receive an equal number of their proposals. The supporting data does not permit that result in this case..

#### Criteria for Decision

Act 312 of the Public Acts of 1969 provides in Section 9 (MCL 423.239) the following criteria

are to be applied by Arbitration Panels in binding arbitration for police and fire units:

"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."

These criteria can be summarized to include consideration of the financial ability of the Employer to fund the Award, cost of living increase trends, internal comparison with other

employees, both union and non-union, and comparison with other similarly situated public and private employers. The specific county comparables which the parties have agreed upon as external comparables are the Command Officers' employees in Crawford County, Missaukee County, Montmorency County, and Oscoda County.

A hearing was conducted on August 28, 2007, in Baldwin, Michigan, at which the parties were given the opportunity to present pertinent evidence relating to the issues. No information was submitted on comparable private sector employers or the financial ability of the county. As directed during that hearing, the parties submitted last best offers and post hearing briefs, all of which had been considered in the preparation of this Award.

It is unfortunate that, despite what appears to be a professional and respectful relationship by skilled representatives of both parties, an agreement was not reached. Further, the fact that there are so many issues remaining is confusing since some "packaging" of proposals might have reduced the number of open issues. The foregoing list remains to be resolved. At the close of the hearing, the chairman of the panel encouraged the parties to resolve the remaining issues, but that did not occur. On nearly all of the issues, the Union is the moving party, which creates a special problem for the Act 312 procedure. Inevitably, it is incumbent on the moving party to demonstrate a clear mandate to support the proposal under the criteria outlined in Section 9 of the statute applicable to this procedure. Each topic must be judged on its own merits over the three year term of the contract, without the option of taking the proposal on a particular topic from one or two years from one party and the proposal for the other year or years from the other proposal. Also, the process is not intended to reward a party simply for having many unresolved proposals. Since all economic proposals have a positive or negative economic impact, the total impact of the proposals also must be recognized.

This Award also reflects the relative importance of internal equity versus external comparisons with some deference to internal equity where the facts might lead in either direction. It is clear that the individuals covered by this Agreement work in close proximity to their Lake County colleagues and are paid from the same revenue source..

#### Discussion of the Issues

All of the remaining issues have some economic significance even though the issue of continuing seniority during workers' compensation leave was characterized as a non-economic

issue. For both the individual employee and the County, there is some potential economic impact to the resolution of that question since it might results in the eligibility or ineligibility of an employee to continue to accrue seniority and seniority has a direct bearing on some economic benefits.

Based on all the foregoing, pursuant to the authority granted under Act 312, the issues are resolved as follows:

1. Wages. The Union proposed a 3% increase in wages effective January 1, 2006, January 1, 2007, and January 1, 2008. The Employer proposed the 2% increase effective January 1, 2006, 2.5% increase effective January 1, 2007, and 2.5% increase effective January 1, 2008. It is the sergeant's wage which is pertinent , since the wages for the other employees are based on a differential above the Sergeant's rate.

Neither the internal nor external comparables include a 3% increase in all three years under consideration.

Part of the problem is in comparing the sergeants under this contract with the sergeants in other comparable counties since some of the comparable county personnel pay significant amounts into their pension plan and their health plan from their regular pay.

Regarding the internal comparisons, the employer's proposed increase for 2006 is the same as received by all the other employees in the Sheriff's office. The same is true for 2007, while some other Lake County employees are actually received smaller increases that year. For 2008, the 2.5% increase proposed by the Employer equals the amount agreed to by the deputies and the Corrections Command Unit, while the dispatchers actually receiving a smaller amount.

Accordingly, neither an internal nor external comparison supports the Union's proposal for a 3% increase each year. Based on all the relevant criteria, the County's wage proposal is approved.

2. Retirement. The Union proposed that the Contract be amended to change the Employees' Retirement Plan from the MERS B2 Plan to the MERS B3 Plan at the employer's expense. The Employer proposed that the employees decide whether to select that improvement following an actuarial report, but no such report has been received. If an actuarial report is received, the Employer proposed to pay 1.75% of the cost of the improvement, with the employees paying the remaining cost, if any, of the improved benefit. This change in the Retirement Plan would take effect January 1, 2008. The 1.75% proposed to be paid by the Employer would be in addition to the wage increase effective January 1, 2008.

The comparables on this topic are difficult to summarize and resolve. The external comparables show that one of the comparable county's is at the MERS B3 level, and the other three are at the MERS B4 level, while Lake County is at the MERS B2 level. The internal comparables show that all units are currently at the MERS B2 level at Lake County. There was an improvement in the non-union and elected officers' pension plan at Lake County in 2006 but the exact cost or value of that is not clear.

Apparently in recognition of the comparable information, the employer has acknowledged that it may be appropriate to improve the Retirement Plan level in 2008 and has offered to make an increased payment in that regard. However, neither the employer nor the Union knows the actual cost of the MERS B3 Plan for this unit. The Union's proposed to go to the MERS B3 level effective December 31, 2007. The Employer's proposal is to go to that Plan effective January 1, 2008, so the timing is not the issue. The issue is who will pay for the improvement in the Plan. The deputies and the Corrections Command Unit at Lake County have agreed to the employer's proposal. This would cap the Employer's pension improvement contribution to an increase of 1.75% of wages effective in 2008. Thus, the Employer's proposal appears to be a constructive way of improving the benefit while providing internal equity. Consequently, the employer's proposal is approved. This result also eliminates the necessity for a "carve out" of this group from the other employee groups in the MERS Plan at the County.

3. Sick Time Payout. The Employees in this unit are currently entitled to six sick leave days per year. Unused days at the end of the year are paid off at 50% of the earned value.

The Union proposed to increase that to 100%, payable annually.. The Employer has proposed to maintain the status quo at 50% of unused paid time off annually.

The current contract reflects the payoff policy applicable to all the internal comparables.

Three of the four external comparables include provisions which, at some point, permit 100% of the sick days to be paid off, but there is not uniformity as whether that is done at the end of each year, at retirement, or time of separation. Crawford County appears to pay unused days annually at a premium amount. Missaukee County has no payout at any time, but simply allows the accumulation of up to 75 days. Montmorency County does not provide for annual payout, but does provide for 100% payout for up to 25 accumulated days upon separation or retirement. Oscoda provides for annual payout at 50% for up to 12 days. Since there is no compelling uniform pattern externally, and the status quo equals all of the internal comparisons, the Employer's proposal appears to be the more appropriate proposal and it is approved.

4. Funeral Leave. Currently the contract allows an individual to take two paid funeral leave days, plus, if necessary, an additional three days which would be charged as paid sick days. The Union proposes that, when necessary, those three additional days be available as funeral leave, but not charged to the employee's sick time bank.

Internally, all units in the Sheriff's office receive the same benefit as the current contract.

However, the dispatchers and non-union employees at Lake County do receive five funeral leave days without losing paid time off.

The external comparables initially show that three counties have the same three days as Lake but Crawford adds two days for out of state funerals, making five days available. Missaukee has the five days requested by the Union

The internal and external comparables create a very close case supporting the Union's proposal without creating a new benefit level for the County. Consequently, the Union's proposal for up to five days without deduction from sick leave is approved.

5. Personal Days. Individuals in this Bargaining Unit work different daily schedules, with some working eight hours a days, others working ten and some twelve. Currently, all individuals in this unit receive twenty-four hours personal leave annually, regardless of whether they are working eight, ten, or twelve hour shifts.

The Union proposes that three personal days be granted and paid based on the number of normal hours that the person was scheduled to work on the day taken as a personal leave day. Consequently, a ten hour person could receive 30 hours pay and a twelve hour person could receive thirty-six hours pay.

The employer proposed no change in the payment plan.

In Lake County, all of the other employees working in the Sheriff's Office receive three eight-hour days for a total of twenty-four, which is the same as this unit in total. The Dispatchers' Unit receives thirty-six hours but the Employer points out that the dispatcher's yearly vacation plan is significantly less generous than the plan for this unit.

The external comparables are hard to apply in a meaningful comparison. Oscoda County provides no personal leave. Missaukee County provides 16 hours, all of which is deducted from the employee's sick time bank. Crawford and Montmorency provide a paid time off bank of 64 hours which is applicable for both sick and personal time. The Union witness testified at the hearing that even though Crawford County Command Officer work 12 hour shifts, their paid time off is based on an 8 hour days, just as is true in Lake County (Transcript pg. 81).

This information does not reflect convincing support for the Union's proposal to pay personal days based on the number of hours scheduled for work that day. It would increase the pay for some and create a new internal disparity. Consequently, the Employer's proposal for the status quo is approved.

6. Vacation. The Union proposes to amend the vacation paid time off plan by creating a new step at 15 or more years of service with an additional 40 hours of annual paid time off at that step. The Union's proposal would increase the maximum paid time off for vacation from 160 hours to 200 hours per year.

The Employer proposes to maintain the present paid time off plan.

Missaukee and Montmorency Counties contracts for the comparable employees both provide 200 hours of annual vacation time. The Employer's argument is that this fact should be discounted by the fact that the sergeants in those two counties are paid significantly less than their Lake County counterparts. The Employer also points out that Missaukee County Sergeants also pay 2% of salary to their pension plan, which the Lake County Employees do not pay. Oscoda County has 192 vacation hours after 15 years of service. The Employer again argues that they are paid less than their Lake County counterparts so this should not be persuasive. The

Oscoda employees also contribute 3.58% of salary to their pension plan. Crawford County sergeants receive 8 hours more vacation time than the Lake County sergeants but also pay 4% of their salary toward their pension plan.

There are no Lake County employees who receive more vacation time than the employees in this unit so there is no internal support for the Union proposal.

The Union's argument that the total vacation earned by an individual over a 25-year period puts Lake County at the bottom of the comparables is an innovative argument but does not negate the compelling current facts described above in both the internal and external comparables.

Under the foregoing facts, a 25% increase in this paid time off benefit does not appear to be justified. Consequently, the Employer's proposal is approved.

7. Court Time. The current agreement pays for court time at a minimum of 2 hours at time and one-half for each appearance. The Union proposes to increase that to 3 hours at time and one-half for each appearance.

The internal comparables are paid the same amount for court time as this unit received under the old contract.

Montmorency pays 4 hours for court time. Crawford County employees pay at least 3 hours at time and one-half but Missaukee County and Oscoda County both pay the same 2 hours at time and one-half as appeared in the Lake County contract. Thus two counties are the same as Lake and the other two pay more. The Union's argument that some officers live a long way from where they are required to make appearances is not compelling since they obviously have chosen their residence knowing that they may at times be expected to spend both time and the gas to make their appearances in Court. There was no specific evidence of financial losses experienced by the employees under the current contract nor the number of times the person exceeds the two hour minimum.

Based on this evidence, the data supporting the union proposal is not convincing, so the Employer's proposal for status quo is approved.

8. Longevity Pay. Longevity pay, which is paid as an annual bonus, currently applies only to those employees who were hired before January 1, 1990. There is only one person who remains eligible for longevity pay.

Apparently the Employer and the Union agreed at some point to "grandfather" this provision with employees hired thereafter not eligible for this benefit. The Union now proposes to reinstate the payment of a longevity program for all Command Officers hired after January 1, 1990.

The internal comparables show a mixture of practice. The dispatch and non-union employees at Lake County apparently continue to receive longevity pay ranging from \$400 to \$600 per year. The deputies, corrections and command units apply longevity only to those hired before January 1, 1990 as in this unit.

Obviously, there was a negotiated termination of this benefit in return for some other benefit which is reflected in the current agreement for the deputies, corrections and command unit. Precisely what the "trade off" was is not clear, but, presumably, whatever the "trade off" was continues to be reflected in the current agreement. The Union has not proposed to reconsider or remove whatever the "trade off" was but simply proposes to restore this benefit since some of the employees at the County continue to receive it. Union Exhibit 8 was submitted in support of this proposal. It accurately reflects that only employees hired before January 1, 1990, in Lake County receive longevity. It also mentions that in Montmorency County a person hired after January 1, 1996, receives longevity after 4 years of service and someone hired after January 1 of 2000, receives longevity after 9 years of service. It appears that each of the external comparable counties pay some longevity but with a very wide range of differences in the amount paid in each County.

All of the other Bargaining Units at the Sheriff's office have grandfathered longevity pay as proposed by the Employer for this unit.

Although there is some external support for this proposal, the absence of clarity on what the Union obtained by dropping the longevity pay and the internal comparison, particularly in the Sheriff's office, precludes acceptance of the Union's proposal by reinstatement of this benefit with no "quid pro quo". Consequently, the Employer's proposal is approved to maintain the status quo.

9. Shift Premium. The Union proposal to establish a shift premium of 10 cents for afternoon shift hours of work and 15 cents for midnight shift hours of work.

None of the internal comparable employees have shift premiums.

Only two of the comparable counties have a shift premium. Montmorency County provides a 20 cent per hour premium for afternoon shifts and 30 cents per hour for midnight shifts. Oscoda provides a 10 cents per hour premium on afternoon shifts and 15 cents for midnight shifts. Neither Crawford County nor Missaukee County has an hourly shift premium.

The foregoing facts do not justify creating this new benefit, so the Employer's proposal for status quo is approved.

10. Life Insurance. During the course of the hearing on this matter, it became apparent that the parties were in agreement that the Life Insurance and Accidental Death and Dismemberment Benefit should be increased from \$10,000 to \$20,000. That Agreement is approved as a part of this opinion.

11. Retiree Health Insurance. The expired contract contains no health insurance benefit for retired employees. The Union proposed that the Employer pay 100% of the cost of the retirement health policy for the employee only, i.e., not dependents. The Union's proposal would also provide that this coverage would include a disability retirement if the individual retired within two years of a disabling injury with a so-called "pop up, pop down" provision requiring the retiree to take equal or better coverage available from a retiree's spouse's plan. If the spouse's policy were no longer available, then the retiree could again apply to use the County's benefit.

The Employer proposes a new benefit by its proposal to pay 50% of the cost of health insurance for individual coverage for the retired employee with the retiree paying the remaining 50% of the cost. The precise date of the effectiveness of this benefit is not clear in either party's proposals, but would presumably take effect as of the date of this Opinion and Award.

The internal comparable information shows that the County already has effectuated its proposal for other County employees since it already provides a 50% single subscriber health benefit for the other retiree's of the County. The precise age and length of service which is

required for the other Lake County employees varies somewhat, but the County does provide for a 50% payment for each person who retires in the various employment units. The employers proposal for this unit would bring this unit into line with the other Lake County employees.

Three of the four comparable counties have some retiree health benefit, but the details vary considerably. Crawford County provides two person coverage for those hired before January 1988, with single coverage for employees hired after January 1, 1988. However, employees hired after October 2001 do not receive retiree health care. Montmorency County pays 100% of the retiree's health benefit with age and service of 15 years of service and age 55. Oscoda County pays \$200 per month for an employee with 25 years of service until the individual is Medicare eligible. Missaukee has no retiree health benefit.

The Employer's proposal to begin paying for this coverage reflects due consideration of both the internal and external comparables and is approved.

12. Health Care Insurance. Both parties propose to continue the same three health plans, but with different proposals for premium payments. Currently there are three Blue Cross Plans offered with some employee cost sharing under each Plan. The current plans are the PPO 2, PPO 3 and POS (Point of Service) Plans.

The Union proposed that the employee's "cost sharing of the premiums will be as follows:

2006

PPO 2 50% of premium increase not to exceed \$100 /month

PPO 3 \$75.00/month with family continuation at \$15/month

POS 100% of premium increase

2007

PPO 2 50% of premium increase not to exceed \$100/month

PPO 3 50% of premium increase

POS 50% of premium increase

2008

PPO 2 50% of premium increase not to exceed \$100/month

PPO 3 50% of premium increase

POS 100% of premium increase

The amounts are to be deducted twice monthly, 50% from the 1st pay and 50% from the 2nd pay of the month.

Health Care Insurance to be effective upon date of award."

The Employer has also proposed changes in the health insurance premium payment formula for the Employees. The Employer's proposal is as follows:

"2006: PPO 2 – 50% of increase capped at \$100/month  
PPO 3 – \$75/month with family continuation at \$15/month  
POS –100% of premium increase

2007: PPO 2 – 50% of premium sharing capped at \$130/month  
PPO 3 – \$50/month of premium increase  
POS –100% of premium increase

2008: PPO 2 – 50% of premium sharing capped at \$150/month  
PPO 3 – 50% of premium sharing  
POS –100% of premium increase"

The external comparables have a wide variety of health plan so comparison is difficult. Most of the counties provide a basic plan for which the county pays the full cost. Crawford County allows employees to pay 50% per month toward an improved plan. Montmorency and Oscoda pay the full cost of their plans, although the plans are different in the two counties. It is, of course, impossible to compare plan benefits with the information in evidence, so at this point the focus is simply on who pays the premium

The Employer's proposal is the same as that which has been agreed to by the eligible Lake County's deputies and Corrections Command employees. In addition, other bargaining units and the non-employees of Lake County receive exactly what the Employer has proposed. The external comparisons vary greatly. at this point so do not create a compelling mandate. Also, for this type of issue, internal equity is very significant. Consequently, the Employer's proposal is approved.

13. Loss of Seniority/Workers' Compensation. The expired labor contract contained no limitation on the length of time the employee can be off work on workers' compensation

without losing his seniority. The Employer proposed that an employee may be off work on workers' compensation leave for up to two years without losing seniority. The Union rejected that proposal and proposes that the Employee can remain off work indefinitely on a workers' comp leave without loss of seniority.

Crawford County's contract is silent on this topic. Oscoda County allows an employee to be off work for 12 consecutive months without losing seniority. Missaukee and Montmorency allow employees to accrue seniority indefinitely on such a leave as in the expired Lake County agreement..

Some other Union represented employees of Lake County accepted the two-year limitation proposed by the Employer for this Unit including the deputies and the Corrections Command Unit. Nevertheless, this bargaining unit rejected the employer's proposal, proposing instead to maintain the status quo.

While the Employer's argument is reasonable, the Union has not chosen to accept it. That differentiates it from the deputies and the Corrections Unit both of which have negotiated that concept with whatever other provisions they deem to be adequate for their agreement. In the absence of agreement, the Union's proposal to continue no specific limitation on how long a person can be on a worker's compensation leave without losing seniority should remain in effect and is approved.

Retroactivity/Implementation of Award. The Employer proposed that wage increases and health insurance cost sharing be made effective retroactively for all employees who were employed on the date of the Opinion and Award. Although not entirely clear, the Union has apparently proposed that wage increases and employer paid health insurance premium increases be made completely retroactive. It is not clear from the record how many, if any, employees have left since December 31, 2005, but it is appropriate to make the wage and health insurance cost sharing provisions effective only for those persons who are still employed in the unit on the date of this Opinion and Award That is what is expected in the implementation of this Opinion and Award.

The record does not state what health insurance cost increases have occurred since January 1, 2006 or who has paid them, but whatever increases occurred prior to this Opinion and Award, the employer/employee premium payments should be subject to the provisions of this Agreement as if the Agreement had been in effect since January 1, 2006.. The parties agreed on

the continuation of the three identified health plans and apparently the employees have participated in the plan of their choice. Therefore, premium payment is the only implementation issue. This can be calculated to make each party whole on premium payments.

The wage increases specified under part 1 of this Opinion and Award are retroactive to the first pay period beginning on or after January 1, 2006 and the first pay period on or after each subsequent wage increase as provided under APPENDIX A of the expired contract.

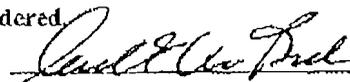
There do not appear to be other retroactivity issues, but to the extent they exist, all provisions of this Opinion and Award are retroactive as if the agreement had been in effect since January 1, 2006.

Conclusion

At the hearing, it was agreed that the arbitration panel process to be followed in this case will be one on which the Chairman and the Delegates from each of the parties participate in the development of this Opinion and Award as a panel, but with the understanding that the initial decision on all issues has been recommended by the Chairperson assuming that the delegate whose proposal was approved concurs and the delegate whose proposal was not approved may dissent from this Opinion and Award. The signatures of each of the panel members appearing below reflects that understanding.

So Ordered.

Dated: November 20, 2007

  
Carl E. Ver Beek, Neutral Chairman

  
John R. McGlinchey, Employer-Delegate

  
Patrick J. Spidell, Union Delegate (P.C.)