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STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DEPARTMENT OF LABOR AND ECONOMIC GROWTH

ACT 312 ARBITRATION

In the Matter of THE Act 312 Arbitration and Fact Finding between:

MACOMB COUNTY SHERIFF DEPARTMENT, Public Employer (Employer),

and

POLICE OFFICERS LABOR COUNCIL, Representing
MACOMB COUNTY COMMAND OFFICERS ASSOCIATION, Labor Organization (Association).

Case No. D06 G-1689

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Chairperson: Charles Ammeson
Association Delegate: John Viviano
Employer Delegate: Eric Herppich

ARBITRATION PANEL FINAL OPINION AND AWARD
&
RECOMMENDATION OF FACT FINDER

Date Decision Rendered: March 24, 2008

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ISSUES

At the close of hearings on August 1, 2007, the parties stipulated that 19 issues remained. Those 19 issues were:

1. Education Allowance – Article 8

2. Longevity – Article 18

3. Scheduling and Hours – Article 26

4. Shift Premium – Article 38

5. Wages – Article 24 – Schedule A

6. Post Assignments – Article 3

7. Overtime Pay and Procedure – Article 20

8. Memorandum of Understanding Regarding Deferred Retirement Option Plan (DROP)

9. Retroactivity

10. Duration – Article 41 A.

11. Full Time Employee – Article 10

12. Eligibility for Holiday Pay – Article 13

13. Time of Holiday Pay – Article 13

14. Retiree Health Insurance – Article 14

15. Time of Longevity Payment – Article 18

16. Overtime in Final Average Compensation FAC – Article 20

17. Compensatory Time – Article 20

18. Overtime Rates – Article 20

19. Calculation of Final Average Compensation FAC – Article 37

See Tr. 08/01/2007, pp. 140-144.

After Final Offers were received it was agreed that issues 1, 3, 7, 10, 12, 13 and 15 were resolved either because they were withdrawn, accepted or determined in the Interim Opinion and Award Regarding Duration as set forth below:

Issue	Resolution
1. Association Issue – Education Allowance – Article * EDUCATION ALLOWANCE, Section E (Economic)	Withdrawn by Association
3. Association Issue – Scheduling and Hours – Article 26 SCHEDULING AND HOURS, Section A (Economic)	Withdrawn by Association
7. Association Issue – Overtime Pay and	Withdrawn by Association

Procedure – Article 20 – OVERTIME PAY AND PROCEDURE, Section B. OVERTIME CALL-IN PROCEDURE, sub-section 3 c. 3 (Economic)	
10. Employer Issue – Duration – Agreement Provision and Article 41 – Termination or Modification (Economic)	Determined by Interim Opinion and Award Regarding Duration
12. Employer Issue – Eligibility for Holiday Pay – Article 13 – HOLIDAY BENEFITS, Section B (Economic)	Association accepts Employer Proposal
13. Employer Issue – Time of Holiday Pay – Article 13 – HOLIDAY BENEFITS, Section D (Economic)	Association accepts Employer Proposal
15. Employer Issue – Time of Longevity Payment – Article 18 – LONGEVITY, Sections F and G (Economic)	Association accepts Employer Proposal

For purposes of addressing the issues in this Opinion and Award, the Panel has grouped the remaining issues by subject area as set forth below.

Group	#	Issue
WAGES	5	Association Issue – Wages – SCHEDULE A (Economic)
WAGES	9	Association Issue – Retroactivity – (Economic)
PREMIUMS	2	Association Issue – Longevity – Article 18 – LONGEVITY, Section C, sub-sections 4-5 (Economic)
PREMIUMS	4	Association Issue – Shift Premium – Article 38 – SHIFT PREMIUM, Section A (Economic)
OVERTIME	17	Employer Issue – Compensatory Time – Article 20 – OVERTIME PAY AND PROCEDURE, Section A, Overtime Call-In Pay, sub-section 7 (Economic)
OVERTIME	18	Employer Issue – Overtime Rate – Article 20 – OVERTIME PAY AND PROCEDURE, Section A Overtime Call-In Pay, new sub-section 9 (Economic)
PENSION	8	Association Issue – Deferred Retirement Option Plan (DROP) – MEMORANDUM OF UNDERSTANDING, Section H (Economic)
PENSION	16	Employer Issue – Overtime in FAC – Article 20 – OVERTIME PAY AND PROCEDURE, Section A, Overtime Call-in Pay
PENSION	19	Employer Issue – Final Average Compensation – Article 37 – RETIREMENT SYSTEM, Section D, new sub-section 3 (Economic)

HEALTH INSURANCE	14	Employer Issue – Health Insurance – Article 14 – INSURANCE BENEFITS, Section B Hospital Medical Insurance (Economic)
DEFINITIONS	11	Employer Issue – Definition of Full-Time Employee – Article 10 – EMPLOYEES – SALARIES – CLASSIFICATION CHANGES – PROMOTIONS, proposed new Sections G and H (Economic)
ASSIGNMENT	6	Association Issue – Assignments – Article 3 – ASSIGNMENTS, Section H (Non-economic)

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FINDINGS OF FACT AND OPINION

STATEMENT OF PROCEEDINGS:

The parties' last contract was in effect from the period January 1, 2004 – December 31, 2006 (Joint Ex. 25). On December 7, 2006, after reaching impasse, the Association filed a 312 Petition for Arbitration with the Michigan Employment Relations Commission (MERC) (Joint Ex. 26). On January 25, 2007, Charles Ammeson was appointed Chairperson of the Arbitration Panel (County Ex. 27).

Preliminary proceedings to the substantive hearings referenced in this FINAL OPINION AND AWARD were completed, and the Chairperson will not restate those proceedings as set forth in the Panel's June 4, 2007, Interim Opinion and Award Regarding Comparables (Interim Award), nor his Interim Opinion and Award Regarding Duration dated October 3, 2007, and incorporates such Statements by reference as if fully set forth herein. Since rendering the Interim Awards, the parties timely submitted final offers and for a variety of reasons the briefing scheduled was extended.

The Panel reconvened on January 30, 2008, to discuss potential briefing references outside the record. A majority of the panel reasoned that it would allow the Employer the

opportunity for a letter response, which ultimately was declined. Panel members convened by telephone and exchanged further correspondence regarding the questioned references, which references the Chairperson has found unnecessary to review in rendering this Opinion and Award. Ultimately, the panel and the parties agreed that the deadline for rendering a Final Opinion and award would be extended until March 28, 2008.

BACKGROUND INFORMATION:

The Chairperson will not restate the proceedings as set forth in his June 4, 2007, Interim Opinion and Award Regarding Comparables (Interim Award), nor his Interim Opinion and Award Regarding Duration dated October 3, 2007, and incorporates such Statements by reference as if fully set forth herein. Evidence at the hearing demonstrated that the Police Officers Labor Council ("Association") representing the Macomb County Command Officers Association, and Macomb County ("Employer") are parties to a collective bargaining agreement for the period of January 1, 2004 through December 31, 2006. (Joint Ex. 1). The County is organized under applicable constitutional and statutory authority and is overseen by an elected Board of Commissioners which is organized into a number of standing committees. (County Ex. 36). The County provides the typical range of County services and staff members are assigned to a wide variety of departments. (County Ex. 78). The largest department in the County is the Sheriff's Department. (County Ex. 78).

The County employs approximately 2,221 full-time employees. (County Ex. 34). There are currently 27 bargaining units and one group of unrepresented employees in the County. (County Ex. 34). In addition to the instant contract with the POLC

(County Ex. 25), the County also has contracts with numerous other collective bargaining units represented by a range of diverse unions reflecting the many functions performed in County government (e.g., Building Trades, Operating Engineers, Michigan Nurses Association, Service Employees International, UAW and Teamsters). (County Ex. 21). Notably, all of the contracts with the above unions have an expiration date of December 31, 2007, with the exception of this bargaining unit, the Corrections Officers and the Captains and Jail Administrator group which are currently in negotiations. (Tr. 07/17/2007, p. 290). As of the hearings, there were no settlements with any of the groups taking their contract beyond January 1, 2008. (Tr. 07/17/2007, p. 290).

County Ex. 37 is the organizational chart for the Sheriff's Department effective January 1, 2007. (Tr. 07/17/2007, p. 91-92). Ms. Karlyn Semlow testified that County Ex. 38 provides a bargaining unit summary of the number of personnel in each classification i.e., Sergeant 1, Sergeant, Lieutenant, Dispatch Supervisor and Corrections Sergeant 1, Corrections Sergeant and corrections Lieutenant. (Tr. 07/17/2007, p. 94-95). Ms. Semlow testified that County Ex. 35 is a summary of the number of Command Officers within the different sections of the Sheriff's Department. (Tr. 07/17/2007, p. 94).

Mr. Herppich testified that County Ex. 39 reflects the seniority of the members of this bargaining unit, broken down by classification and reflects the average seniority, i.e., the Lieutenants classification shows an average seniority of 23.37 years, the Corrections Sergeants who an average of 23.19 years, etc. (Tr.

07/17/2007, p. 92; County Ex. 39).

STANDARD FOR DETERMINATION

Section 9 of Act 312 sets forth eight factors upon which the Panel's decision must rest. As pointed out by the Employer, the Michigan Supreme Court in *City of Detroit v. Detroit Police Officers Association*, 498 Mich 410 (1980) stated:

> [A]ny finding, opinion or order of the panel on any issue must emanate from a consideration of the eight listed Section 9 factors, as applicable.

Section 9 of Act 312 sets forth the eight factors. Again, as pointed out by the Employer, the Michigan Supreme Court in *City of Detroit* stated:

> [A]ny finding, opinion or order of the panel on any issue must emanate from a consideration of the eight listed Section 9 factors, as applicable.

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 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 Employer points out at page 8 of its Brief that it has not been reluctant to establish generous staffing levels[1] and high levels of compensation in the past, thus asserting that the Employer is not presently in a position to offer rich improvement packages,

[1] The Chairperson observes that such statement is somewhat contra-indicated by overtime levels argued and in evidence.

necessarily pointing out that the Employer is currently encountering difficult times and tight budgetary constraints. With this in mind, it is apparent to this Chairperson 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 within the parameters of challenges facing the economy. Thus, the panel bears in mind the numerous economic challenges facing local units of government in Michigan. With these competing concerns in mind, adequate law enforcement and affordability, it is the Chairperson's observation that generally maintaining the status quo, with flexibility to adapt to change and a mind toward creative options, will properly serve the public interest and welfare. Although the Chairperson has commented in the past that contracts of shorter duration may best serve the public interest during times of considerable economic change and uncertainty, 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 Chairperson is compelled to recognize that the Panel has already determined a contract duration of three (3) years as opposed to two (2) years for the reasons set forth in the Interim Opinion Regarding Duration. This determination compels the parties and the Panel to continue to seek flexibility.

The panel also notes that the Employer presented substantial evidence regarding the economic circumstances of the Employer, emphasizing the present revenue/funding uncertainty caused by the interplay of numerous factors including Proposal A, Headlee Amendment, State Revenue Sharing, anticipated Health cost increases for active employees, pension costs, and retiree health insurance costs. The Chairperson understands the interplay

between Proposal A and Headlee that limits increased revenues from Taxable Value; shares the Employer's observations as to the dramatic drop in State Revenue Sharing funds and the uncertainty in this regard for the future; is mindful of the continuing impact of health cost increases; and remains aware of the looming unfunded liability of past retiree health cost obligations which will most certainly require a structural change in the manner by which society provides such health services. The Chairperson is mindful of these concerns, and believes he has determined an overall award from the bi-lateral choices afforded the Panel that will not detract from the Employer's ability to manage these economic challenges, and balances the other factors which the Panel must by law consider.

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. Comparable communities were determined in the Interim Award, and the Chairperson reminds the parties of his observation that the purpose of the record developed at the 312 hearing is the creation of a limited and useful database, from which meaningful comparisons can be developed, and appropriate analogies made. Consequently, the interim determination is a useful tool which may be utilized by the panel and the parties, not in any attempt to gerrymander an artificially created average that becomes a magical talisman, but more as a quantitative and qualitative measuring stick to substantiate, corroborate and confirm or disaffirm the arguments and positions of the parties and determinations of the panel.

The arbitration panel is also mindful that its Opinion and Award should comport with cost-of-living standards. The parties referenced the Consumer Price Index (CIP-U):

U.S. Department Of Labor
Bureau of Labor Statistics
Washington, D.C. 20212
Consumer Price Index
All Urban Consumers - (CPI-U)
U.S. city average
All items
1982-84=100

County Ex. 68-69. *See* also ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt. It is apparent that neither final offer exceeds the cost of living factor, and arguably the Employer final wage offer fails to comport with this factor. Again, however, it is observed by the Chairperson, as pointed out by the Employer in its brief at page 4, that the Panel need not give all factors equal weight, and it is for the Panel to decide their relative importance, which leads to the Chairperson's observation that one of the most important Section 9 factors is the requirement that the Award consider the impact on overall compensation.

Overall compensation mandates this Panel to factor in and cost all economic changes of its award. Not only must the panel include the costs of benefit changes in the overall compensation package, it must adequately compare or address "overall compensation" when undertaking internal and external wage comparisons. The Panel is confident it has met this requirement in determining its overall award, collectively and issue by issue.

The next statutory factor concerns changes in circumstances during the proceedings. Neither party suggested any particular change in circumstances during the pendency of the arbitration proceedings which would affect the Arbitration Award. The Employer 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.

All in all, and as should be seen from the award, the Chairperson considers the 3rd through 6th statutory factors, (interests and welfare of the public and the financial ability of the unit of government to meet costs; comparison of wages, hours and conditions, cost of living and overall compensation) to be the most pertinent at issue.

ASSOCIATION POSITION

WAGES

5. Wages

The Association's proposal provides a wage increase of 3% for all three years of the collective bargaining agreement. The Association suggests this increase is necessary to maintain the Macomb County Command Officers' position among the comparables.

9. Retroactivity

The Association essentially asserts that wage increases and DROP interest (Issue 8) should both be made retroactive to January 1, 2007, reasoning that it is simply inequitable to deny its members these economic benefits simply because of the delay in negotiations and 312 Arbitration proceedings, which retroactive application is easily calculable.

PREMIUMS

2. Longevity

The Association seeks to increase the base number from which longevity pay is calculated. The Association observes that longevity pay has not been modified for the last three contracts and posits the Association's goal to increase longevity pay to conform with the compensation provided by the comparable communities, pointing out that from the fifteen year level to the thirty year level its members begin to lag significantly behind the comparables. (Union Ex. 102, 104).

4. Shift Premium

The Association's proposal seeks to change the method in which shift premiums will be calculated. The Association seeks to not only shift from a set dollar amount to a percentage based payment, but also to increase the dollar amount of the shift premium. The Association observes that the issue mainly involves how that premium should be calculated, and therefore does not lend itself to a comparability analysis. It argues that it is more proper to allow shift premium rates to automatically adjust with the agreed upon level of compensation, maintaining the same level of variance each year, than to maintain a shift premium established over a period of years and re-negotiate same each contract. In essence, the Association argues that such a mechanism avoids unnecessary complications or issues in future negotiations.

OVERTIME

17. Compensatory Time

The Association proposes that Article 30, which provides for compensatory time off, remain as worded under the current collective bargaining agreement instead of being eliminated as proposed by the Employer. The Association suggests that the cost of compensatory time has been overinflated by the Employer. Instead, the Association argues that compensatory time actually benefits the Employer by allowing it to retain the money it owes for a longer time. The Association points out that five of the comparables have some form of compensatory time benefit in place. Ultimately, the Association concludes that compensatory time is a substantial benefit to the command officers without any actual cost to the Employer and no legitimate reason for eliminating it has been given.

18. Overtime Rate

The Employer proposes that contract language be clarified to require that overtime payments be based on the wage rate in effect at the time overtime was worked, because it occasionally happens that an employee works overtime and the employee's rate of pay changes after the overtime is worked but before a payroll check is issued. The Association points out that 13 of the other 22 internal comparable units follow the current contract language, suggesting that the Employer's proposal will have little or no monetary effect justifying a change.

PENSION

8. DROP

The Association proposes the 3.5% per annum interest earned on DROP accounts be credited to all prospective and current DROP participants on a monthly basis effective the date of entrance into the DROP, pointing out that the current language denies interest payments to DROP participants for certain periods, depending on their enrollment and completion dates. The Association suggests that this was an unintended result. The Association suggests that testimony indicated that both sides were incorrect when determining how the interest would be posted to the DROP account, leading to the mutual mistake of the current language. (Tr. 7/18/07, p. 323).

Aside from a drafting error, the Association's suggests its proposal should be adopted out of fairness to the plan participants and to avoid an unintended windfall for the Employer.

16. Overtime in Final Average Compensation FAC
19. Calculation of Final Average Compensation FAC

The Association observes that the subject matter of Issues 16 and 19 lend themselves to joint discussion and addresses them as such. The Association proposes to keep the current language for overtime pay and final average compensation calculations, permitting the inclusion of all actual overtime pay in the FAC calculation.

The Association calls attention to the fact that the Employer has the right to determine the need for work, the size of the work force, and the ability to eliminate overtime altogether. In effect, the Employer is entitled to hire new command officers and create more shifts to ease its overtime problems if it wishes.

The Association argues that the external comparables don't lend much support either way and the internal comparable Patrol Unit has no such cap on overtime. (County Ex. 185, Deputies 312 Award).

The Association also observes that the highest pension in the Department is actually received by a deputy, as are twelve of the top twenty-five. (County Ex. 186). Thus, the Association posits that there really isn't a problem with command officers working extraordinary overtime as retirement nears to increase FAC.

All in all, the Association suggests it is more appropriate to allow the parties to negotiate this issue than to resolve it through 312 proceedings.

HEALTH INSURANCE

14. Insurance Benefits.

The Employer has generally proposed three changes (1-The Plan becomes a PPO; 2-Revision of individual/family deductibles; 3-Revision of Drug co-pay). The Association has accepted the Employer's proposal as stated in the Employer's position statement (Joint Ex. 33) except for any implication that employees promoted into the unit would be disqualified from the grandfathering implementation of the changes, and the second implication that the changes might affect current retirees. In essence, the Association argues, that its counter-proposals as to these limited items will properly protect bargaining unit members who have relied on present provisions for a considerable period of time.

Additionally, the Association asserts that any employee who retired before the effective date of this Award is not a bargaining unit member and the Association therefore lacks a duty or ability to bargain on their behalf, pointing out that Act 312 arbitrations can

only compel agreement on mandatory subjects of bargaining. Thus, the Association asserts, inasmuch as agreement on the issue cannot be compelled, the Panel may not compel agreement for current retirees --- only future retirees.

DEFINITIONS

11. Full Time Employee

The Employer proposes to add a definition of "regular full-time employee" to the collective bargaining agreement. The Association maintains that the proposal does not truly differentiate between full-time and part-time employees, but is intended to address benefit entitlement, pointing out that all of the bargaining unit members are full-time employees. As such, the Association suggests that the proposal only addresses instances where full-time employees are unable to maintain full-time hours. The Association makes several arguments why the proposal is unfair or ineffective.

First, although benefit uniformity within the county system has been important to the Employer, the Employer does not apply the same standard to elected officials to save on their benefits because of limited hours (Tr. 7/18/07, pp. 378-379). This is simply unfair.

Second, the proposal is not supported by comparison since none of the nine external comparables have such a definition in their agreements. Union Ex. 165.

Third, because the language is not limited to benefit eligibility, there is great risk or danger of unintended application and consequences associated with incorporation of a broad definition, particularly in regard to other sections of the collective bargaining agreement.

Finally, the Association suggests that the proposal is merely an attempt to address a problem the Employer admits does not exist, and the parties can address any such potential issues on a case-by-case basis through the grievance procedure.

ASSIGNMENTS

6. Post Assignments

The Association proposes to change the date of sign up for assignments ("wish list") from November of each year to September 1 of each year, and require the notification of assignments to be November 1 of each year. The stated purpose and benefit of the proposal to both the Employer and the officers involved is to provide the Department and officers a smoother transition when assignments are changed and allowing adequate time for the officers to finish current work and prepare for their new assignment, as well as to better prepare for associated consequences in their personal lives.

EMPLOYER POSITION

WAGES

5. Wages

The Employer begins with the factor of overall compensation, which it contends demonstrates that the Employer already exceeds external comparables, as set forth below. The Employer succinctly points out that County Ex. 67 shows that with respect to the Sergeant rank, the Employer already ranks second and $17,257 above the average of the comparables. With respect to the Lieutenant rank, County Ex. 53 shows that the Employer ranks second and $18,499 above the average of the comparables.

Beyond this, the Employer posits that the Association's refusal to agree to health insurance revisions in place with other county units, at the outset, forced the Employer to maintain the more expensive health insurance during the Act 312 proceeding, compelling a conclusion that the Association "... received its 'wage increase' in the form of the higher cost health insurance and therefore 0% is the proper wage adjustment." *See* Employer Brief at p. 43.

Next, the Employer urges the panel to consider the "domino effect" its award will have on all employees in the Sheriff's Department and the other 26 unions/associations on a County-wide basis for the next three years, given the Employer's state of unsettled labor contracts. More specifically, the Employer observes that all Employer bargaining units received a 2.5% increase in 2007 (County Ex. 149) and that elected officials took a pay freeze in 2008. Thus, acknowledging that there are no settlements in place with any other bargaining unit for 2008, the Employer suggests that 2.5% is consistent with internal comparables for 2007 and 0% is consistent with the elected official comparison for 2008.

9. Retroactivity

The Employer concurs that the only retroactivity issue before the Panel is with respect to the DROP plan, and the proposal that changes be implemented retroactively. The employer offers little discussion or comment, other than the DROP proposal should be rejected for the reasons stated above.

PREMIUMS

2. Longevity

The Employer commences with the factor of overall compensation, which it contends demonstrates that the Employer already exceeds external comparables, as set forth above. Thus, granting the Association proposal for longevity will only increase and exacerbate the overall comparable disparity. Moreover, the Employer argues that the Association's own exhibits demonstrate that the Employer is currently at the median of the comparables in longevity pay. Union Ex. 102; Union Ex. 104. As such, the Employer concludes that the Association longevity proposal is not economically or comparably supported.

4. Shift Premium

Again the Employer starts with the factor of overall compensation, which it contends demonstrates that the Employer already exceeds external comparables, as set forth above. Thus, granting the Association proposal for shift premiums will only increase and exacerbate the overall compensation disparity. The Employer points out, comparably, that only two of the nine comparables pay a shift premium based on a percentage of base pay. Internally, 5 of the 7 units which receive a shift premium are paid the premium in a flat rate. As such, the Employer concludes that the Association shift premium proposal is not economically or comparably supported.

OVERTIME

17. Compensatory Time

The Employer's final offer of settlement provides for elimination of compensatory time options. The Employer contends that the pyramiding of pay required by compensatory

time makes it an inadvisably expensive option. By way of example, the Employer points out that if an employee works 8 hours of overtime, he/she receives 12 hours of pay or, may bank the 12 hours. If taken as compensatory time, the 12 hours will be covered by 18 hours of another officer's overtime, which may be taken by compensatory time off. In such case, the 18 hours compensatory time is covered by another officer (perhaps the initial officer), and if taken by compensatory time off will be covered by 27 hours of overtime, again which may be taken by compensatory time off. The Employer points out that the problem can be multiplied many times over and the cost of the first 8-hour block can be magnified many times over. The Employer suggests that the simplest and best solution is to simply pay the first employee cash for overtime work.

Comparably, the Employer observes that 4 of the comparables do not allow any compensatory time. The Employer concludes with the factor of overall compensation, which it contends demonstrates that the Employer already exceeds external comparables, as set forth above.

18. Overtime Rates

The Employer proposes a new provision to address an issue which the contract does not currently address – that overtime shall be paid at the employee's hourly rate at the time the overtime was worked, rather than at the rate when the payroll check is tendered. The Employer does not suggest that its proposal changes practice, and is proposed primarily as a point of clarification. The Employer suggests its proposal is internally consistent, in practice. County Ex. 198; Tr. 07/19/2007, p. 506.

PENSION

8. DROP

The Employer points out that interest on an employee's balance in the DROP plan is credited precisely as provided in the County's Retirement Ordinance, and as it has been since 1946. Because of this, the treatment is consistent with internal comparables. Externally only 2 of the 9 comparables provide a DROP program and therefore whether interest is paid or not still compares favorably with external comparisons. The Employer concludes with the factor of overall compensation, which it contends demonstrates that the Employer already exceeds external comparables, as set forth above. Thus, granting the Association proposal for DROP interest will only increase and exacerbate the overall compensation disparity.

16. Overtime in Final Average Compensation FAC

The Employer reasons that its proposal to limit the number of overtime hours included in the FAC calculation will curb inordinately high pensions. The Employer points out that 5 of the 9 comparables have taken action to control the inclusion of overtime in FAC (County Ex. 185; Tr. 07/19/2007, p. 432) and that its proposal will place it at the median of comparables. The Employer points out that historically, while many of the top unit retirees are not far from the Employer's proposed 450-hours cap, it is clear that the current plan allowed several employees to take escalation to the extreme, and this is precisely what must be addressed. *See* Employer Brief at p. 80. County Ex. 187.

The Employer concludes with the factor of overall compensation, which it contends demonstrates that the Employer already exceeds external comparables, as set forth above.

19. Calculation of Final Average Compensation FAC

The Employer suggests, consistent with its Issue 16 proposal, that Article 37 be amended to coordinate or dovetail both sections to accomplish the capped FAC calculation, for the same reasons it proposes the Issue 16 change.

HEALTH INSURANCE

14. Health Insurance

The Employer notes that most of the other bargaining units changed health insurance on January 1, 2006, and that the Employer proposal is the same and consistent with the other settled Employer comparables. The Employer concurs that the only outstanding issues are whether the new 15-year requirement for new hires should be limited to "new hires by the County;" and, whether the health insurance language proposed effectuates changes for current retirees.

Regarding the "new hires by the County" issue, the Employer suggests there are 3 problems with the Association's counter-proposal: 1) it fails to reference the 8 year minimum service requirement for current employees; 2) it references the date of ratification instead of the date of the Act 312 Award; and 3) the words "new hires by the County" are unclear. The Employer suggests its language is sufficiently clear that employees promoted from the Police Officers Association of Michigan-Deputies/Dispatchers or Macomb County Professional Deputy Sheriff's Association-Corrections Officers bargaining units will be credited with their service in such units for purposes of retiree health insurance eligibility.

Regarding the "current retirees" issue the Employer suggests its proposal addresses the Association's concerns and that its language, without the prefatory language suggested by

the Association is sufficiently clear that the Employer's proposal does not effectuate changes for current retirees.

DEFINITIONS

11. Full Time Employee

The Employer posits that its proposed definition of Regular Full-Time Employee is reasonable and necessary to address situations when employees are not regularly reporting to work on a regular basis to the point where their pay is being docked, acknowledging that such situations are not a problem with the subject bargaining unit at the present time, but could be. *See* Employer Brief at p. 69. The Employer suggests that it simply seeks to have all Employer contracts uniform on this point and the proposal does not work a hardship on unit members.

ASSIGNMENTS

6. Post Assignments

The Employer asserts that the Association proposal that preferred assignments posting be changed from November to September1 and notice be changed from December to November 1 is not advisable because it varies from the calendar year; because it is preferable to have all units switch on the same date; and would be particularly disruptive if command officers were allowed to bid/switch first, thereby promoting the concept of "boss shopping."

DISCUSSION

INTRODUCTION

As stated recently by Arbitrator Roumell in *In the Matter of the Act 312 Arbitration Between:* COUNTY OF WAYNE and the WAYNE COUNTY SHERIFF, Employer and SEIU LOCAL 502, Union, MERC Case No. D04 A-0110, at page 9 (January 2008):

> Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables as well as with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered.

The economic realities facing the parties are, at best, complex and uncertain. The financial ability of the Employer and the financial realities facing Macomb County, Southeastern Michigan and, for that matter, the State of Michigan, was a dominant focus of the Employer's presentation and is certainly to be considered as is the expected cost of living. But a dominant consideration revealed by the evidence is the comparable realities. When the economic and other criteria are considered along with the comparable realities, the path to the Award becomes relatively clear.

Thus, although one must recognize that the geographic region in which Macomb County is located is in an economic downturn (as is the State of Michigan), and this economic downturn cannot be ignored in addressing a Collective Bargaining Agreement covering the period of such a downturn, the panel is not convinced that there exists a present true inability to pay which, when factored with the interests and welfare of the public for adequate and affordable police protection, mandates a certain result. As noted by the Employer at page 53 of its brief, "The reality is that the same economic pressures on

Macomb County are also being faced by all other public employers." As such, the panel concludes that the evidence demonstrates that the Employer is no more unable to pay compensation increases than any of the comparables.

Moreover, countering these economic challenges facing the Employer is the fact that the risk of inflation is presently increasing, which is a mandated factor for the panel to incorporate into its determinations, and is a true challenge for Association members.

All in all, the one factor evidenced in this matter that weighs considerably in the balance with all the other factors is that Association members are compensated favorably in comparison to the comparables, overall. Although the evidence demonstrates that the Association lags the two municipal comparables (Sterling Heights and Clinton Township) as to wages, the evidence preponderates that the Association leads the Employer suggested comparables. County Ex. 40, 54; Union Ex. 136, 141. When averaged together, Association wages significantly exceed the comparable average. County Ex. 40, 54; Union Ex. 136, 141. More importantly, and because Act 312 specifically requires the panel to account for overall compensation, the evidence indicates that the Association significantly trails only one municipal comparable, namely, Sterling Heights. Union Ex. 138, 139, 143, 144; County Ex. 47, 53, 61, 67.

Thus, although there was no evidence that the Employer was cutting other programs or services, combined with evidence that the Employer had been able to avoid such cuts by reducing reserves and fund balances, the overall economic evidence, not only attributable to the impact of the local, state and national economy, but also attributable structural impacts such as the Headlee Amendment; Proposition A; drop in expected state-shared revenue;

and Governmental Accounting Standards Board (GASB) Statement No. 45, cannot be ignored when assessing the finances of the Employer. Given the totality of these impacts and circumstances, the evidence preponderates that uncertain and difficult economic challenges will face the Employer for the contract duration. These challenges mandate that the Employer, in the best interests of the public, address the fact that the Association's overall compensation compares more favorably than necessary to allow the Employer to remain competitive in the market place.

WAGES

5. Wages

As indicated above, the panel rejects the Association argument that the Association final offer is necessary because of a need to maintain the Association's comparable position. To the contrary, the interest and welfare of the public, along with the evident economic challenges, preponderate that the favorable comparability be addressed. On the other hand, this panel is unwilling to address such matters (being a circumstance that was caused or created by the parties mutually over the years) in a draconian manner, the panel being mindful that the economic circumstances of individual Association members must also be considered. Given the Hobson's choice mandated by Act 312[2], the panel determines that adoption of the Employer final offer, although not what the panel would determine if free to do so, is the preferred proposal. This Employer proposal allows for a 2.5% pay increase retroactive to January 1, 2007; no increase effective January 1, 2008; and a contract reopener

[2] http://en.wikipedia.org/wiki/Hobson%27s_choice.

with respect to wages only at the option of the Association for January 1, 2009. The 2007 2.5% increase addresses Association members immediate needs, and certainly by way of compromise or "the art of the possible,"[3] is within the legal authority and financial ability of the Employer. The 2008 freeze addresses the favorable comparability situation that has arisen over the years, and serves the interest and welfare of the public, particularly in light of the evident economic challenges identified. The re-opener, although never discussed or proposed prior to final offers, serves to address uncertainty and the competing concerns of adequate law enforcement and affordability.[4] As previously commented by the Chairperson, 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, is a reasonable course of action serving the interests and welfare of the public in challenging

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[3] *In the Matter of the Act 312 Arbitration Between:* COUNTY OF WAYNE and the WAYNE COUNTY SHERIFF, Employer and SEIU LOCAL 502, Union, MERC Case No. D04 A-0110, at page 9 (January 2008).

[4] The Chairperson has reviewed the Association's Panel Delegate request to select last best offers as to wages year by year. Such a procedure is not uncommon in Act 312 proceedings when agreed to by the parties. The Chairperson has reviewed the transcript and Pre-Hearing Conference Report, and can find no agreement by the parties, and can find no express or clearly implied agreement in this regard. Accordingly, the Chairperson is simply not comfortable utilizing such procedure when the record does not clearly reflect such understanding by both parties. Beyond this, it is suggested that a wage re-opener may not meet the criteria of a defined 3-year agreement as determined by the Interim Award. While the Chairperson did not anticipate a last best offer including a wage re-opener, the Chairperson observes that such a term is not unusual in collective bargaining agreements. Moreover, the Chairperson is aware that other Act 312 Awards have involved "re-openers." *See* City of Charlotte, Employer and Police Officers Labor Council, Case No.: L06 E-4007 (Hiram S. Gellman, 2007); City of Wyandotte and Police Officers Labor Council, Case No.: D956-1038 (M. Chiela, 1997). Although the Chairperson would be inclined to issue a wage award year by year in order to allow the parties a reprieve from negotiations, the Chairperson determines that so proceeding is neither appropriate, given the record, nor is a re-opener prohibited given the fact that a re-opener is not an unusual or completely unexpected collective bargaining provision, confirmed by the fact that re-openers have been involved in other Act 312 Awards.

economic times.[5] Although this panel is not in a position to offer, and does not offer any comment as to what wage increase, if any, would be appropriate for 2009, it is compelled to observe that the 2008 pay freeze adequately addresses its concerns and goals regarding comparability in a single 3-year contract term, in light of the present economic evidence, and in a fair and non-draconian manner.

Consequently, the panel adopts the Employer's position regarding wages as set forth in its Final Offer.

9. Retroactivity

Given the fact that the Employer's Final Offer specifically provides for retroactivity of the adopted wage increase to January 1, 2007, combined with the fact that there is no wage increase adopted for 2008, the issue of retroactivity for those years is moot. Retroactivity will be given effect. Nevertheless, this leaves open the issue of retroactivity for a 2009 wage increase, if any, and DROP interest. The panel is compelled to observe that it does not intend to take a position or comment on the wisdom of retroactivity for an anticipated or uncertain wage increase.

Regarding DROP interest, the Association requests full retroactivity for all current members at the time of the award. The Chairperson interprets this to be a request for interest to commence at 3.5% effective January 1, 2007, or the date of the individual's enrollment, whichever is later. The panel observes that the record lacks adequate evidence regarding whether or not retroactive application or implementation of DROP interest will

5 In the Statutory Arbitration between: COUNTY OF MACOMB POLICE OFFICERS ASSOCIATION OF MICHIGAN, MERC Act 312 Case No. DO4 1-1217 Chairperson: Charles Ammeson (January 2007).

cause accounting or actuarial difficulties. Without such understanding and evidence, the panel is reluctant to order retroactivity.

Consequently, the panel adopts the Employer's position regarding retroactivity as set forth in its Final Offer, leaving open the issue of retroactivity for a 2009 wage increase, if any, to be determined by the parties or another 312 panel, as the case may be.

PREMIUMS

2. Longevity

The Association offered evidence that the Longevity Premium trails that for comparables. County Ex. 41, 55, 107-111; Union Ex. 102-105. The Union proposal is to increase the base upon which longevity is awarded by $5000, which would result in a $0 to $500 a year increase per Association member, depending on seniority. Benefit by benefit in isolation, comparison would suggest such an award is appropriate. However, the panel is reminded that Section 9 of Act 312 requires comparison of overall compensation. As set forth above, such comparison evidences that Association members compare favorably overall. Consequently, given the statutory mandate and the other provisions of this opinion and award, adopting the Association provision would ignore the overall compensation comparison requirement and run counter to the purpose of the other provisions of this award. For that reason, the panel adopts the Employer proposal to maintain the status quo and continue the current contract language.

4. Shift Premium

The Association's proposal seeks to change the method in which shift premiums will be calculated. The Association seeks to not only shift from a set dollar amount to a percentage based payment, but also a slight increase in the dollar amount of the shift premium. The Employer offered evidence that the Longevity premium leads that for comparables. County Ex. 44, 58,132; Union Ex.127. Again, the panel is reminded that the Section 9 of Act 312 requires comparison of overall compensation. As set forth above, such comparison evidences that Association members compare favorably overall. Consequently, given the statutory mandate and the other provisions of this opinion and award, adopting the Association provision would ignore the overall compensation comparison requirement and run counter to the purpose of the other provisions of this award. Although the Association posits that a percentage formula will simplify future negotiations, it is this panel's observation that perhaps the parties would be well served to revisit items such as shift differential as a method for managing overall comparability. Perhaps, but not necessarily, the parties might agree that shift selection not be monetarily incentivized, but incentivized by other non-monetary reward, leaving members paid equally. Beyond this, it is not clear from the comparables that either percentage versus dollar amount payment prevails. For these reasons, the panel adopts the Employer proposal to maintain the status quo and continue the current contract language.

OVERTIME

17. Compensatory Time

As indicated, the Employer's final offer provides for elimination of compensatory time options. The Employer contends compensatory time causes pyramiding and is a large hidden expense that can be magnified and multiplied several times over. The Association counters that compensatory time is a valued benefit that Association members bargained and deserve, even more important given the stressful nature of the work. Observing comparables, there is no clear prevailing practice to offer or not offer compensatory time.

Although the panel observes that this issue may be an area, similar to shift premiums, that the parties might agree be incentivized in other manners, and an area for mutual gain-saving,[6] this panel is of the opinion that it has significantly addressed the overall compensation comparability issue already. Given those provisions of this award (namely the lack of 2008 pay increases), the panel is of the opinion that it has already adequately addressed such issue and that it would be in the best interest of the parties and the public to allow the parties to negotiate possible mutual gain-saving items such as compensatory time by compromise solutions rather than Hobson's choices.[7] Moreover, the amount of overtime is acknowledged to be within the sole control of the Employer. *See* discussion at pp. 37 - 39 and footnote 10 *supra.* Accordingly, the panel adopts the Associations proposal to maintain the status quo and continue the current contract language.

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[6] The Chairperson has agreed in the past and remains in agreement with the argument that compensatory time may "snowball" overtime costs, as indicated in his opinion in the Statutory Arbitration between: COUNTY OF MACOMB POLICE OFFICERS ASSOCIATION OF MICHIGAN, MERC Act 312 Case No. DO4 1-1217 Chairperson: Charles Ammeson (January 2007).

[7] http://en.wikipedia.org/wiki/Hobson%27s_choice.

18. Overtime Rates

The Employer proposes a new provision to address an issue which the contract does not currently address – that overtime shall be paid at the employee's hourly rate at the time the overtime was worked, rather than at the rate when the payroll check is tendered. The Association points out that 13 of the other 22 internal comparable units follow the current contract language, suggesting that the Employer's proposal will have little or no monetary effect justifying a change. Simply put, the Chairperson observes that it seems eminently expected and fair that overtime be paid at the employee's hourly rate at the time the overtime was worked, rather than at the rate when the payroll check is tendered. Since the parties agree that there will be little or no monetary effect if such language is implemented, the panel chooses the obvious expectation and therefore adopts the Employers final offer language.

PENSION

8. DROP

The DROP plan provides that employees who have met the eligibility requirements in the collective bargaining agreement to retire are allowed to basically defer their actual retirement; set their retirement calculation; and from the DROP period forward continue their employment, and have their monthly retirement allowance paid into an individual DROP account, for as long as they are eligible for the DROP program (a maximum 5-year period). *See* testimony of Eric Herppich at Tr. 07/18/07, pp. 307-308. In short, the issue at hand is the fact that employees electing DROP participation generally do not receive interest

on their account for a year in which they were not actively employed on December 31 (generally the last DROP year).

The Employer correctly points out that the collective bargaining agreement, even though it doesn't specifically spell out how interest on the DROP account is to be calculated, unambiguously provides that it is to be calculated in the same manner as the interest in the employee savings accounts in the Macomb County Employees Retirement System. *See* Joint Ex. 1, Collective Bargaining Agreement, Drop Memorandum, Section H. All evidence demonstrated that interest is being calculated in the same manner as the interest in employee savings accounts in the Macomb County Employees Retirement System.

Thus, the Chairperson determined at the hearings that the issue before the panel is not what was negotiated or understood when the DROP program was established. Tr. 08/01/07, p. 105. Therefore, even though attested by Mr. Viviano that neither the union nor the employer representatives realized that interest generally was not to be paid on the employee's annuity in the last year of employment, the issue before the panel is not what was intended or agreed to then. Tr. 07/18/07, pp. 322-323. Instead, and as commented by the Employer advocate and Chairperson, the issue is simply whether or not to adopt the Association proposal to provide that interest on the Retirant's/Employee's DROP account in his/her last year of employment is to be paid in full upon separation from the Employer (Tr. 07/18/07, p. 104-5).

In this regard, the Chairperson first observes that the Macomb County Employees Retirement System appears, from the evidence, to be adequately and appropriately funded. *See* Joint Ex. 274, p. A-1, A-2. Beyond this, having had the opportunity to hear the

testimony first-hand and review the documentary evidence, and despite the fact that the Employer and the Association agreed to calculate DROP interest in the same manner as the interest in employee savings account, the Chairperson is persuaded that the Association is genuine in stating that it mistakenly agreed to such language, obviously expecting that interest would be paid on employees accounts for the full time period the account was is established. In this regard the Chairperson points to Joint Ex. 1, Collective Bargaining Agreement, Drop Memorandum, Section F which corroborates the understanding that each employee would have an individual DROP account; Section H which also corroborates individual DROP accounts and further provides that DROP benefits, as well as interest on said DROP benefits, shall be accumulated in such accounts; Mr. Viviano's testimony that neither he nor Mr. Cwiek (the Employer's bargaining representative) specifically understood the specifics of the interest calculations when negotiating the DROP program (Tr. 07/18/07 page 322-23); that the DROP monies remain in the Macomb County Employees Retirement System and earn interest (Tr. 08/01/07, p. 14; Tr. 08/01/07, pp. 70-72); that DROP funding is essentially a bookkeeping ledger transfer – a wash – upon which the plan would continue to earn interest (Tr. 08/01/07, p. 50); that the first DROP estimates were mistakenly delivered crediting interest essentially as proposed by the Association (Tr. 08/01/07, pp. 16-19; and that calculating the interest for the Association proposal is administratively feasible (Tr. 07/18/07, p. 353).

Without belaboring the point, fully recognizing that there will be some additional cost to the funded Retirement Plan which will have to be actuarially computed and planned for in the future, and recognizing that this panel has no authority to readjust or revisit the last

collective bargaining agreement that was made, the Chairperson agrees with the Association's argument, particularly given unrebutted testimony of Mr. Viviano, that the Association's proposal is equitable and fair both to the plan participants and the plan. Simply put, it is equitable and fair that the DROP participant's who leave their money in the plan should fully share in the potential of interest and such benefit/risk should not solely benefit the plan for certain periods.[8] It is not unfair or inequitable to require the plan pay interest for the full period the DROP monies remain segregated in the plan.[9] Moreover, if the equities require adjustment in the future, such adjustment may be negotiated.

On the other hand, given the fact that the plan deserves as much actuarial integrity as reasonably possible, the Chairperson is unwilling to retroactively adjust this change, and notes that the panel has adopted the Employer's final offer regarding retroactivity which comports with such determination. As to the issue at hand, the panel therefore adopts the Association's last best offer language, with the express understanding from the record that segregated DROP accounts are simply Ledger Transfers; that actual payments to such accounts are accounted for but not actually paid until distribution; that the proposed/ordered language provides for simple interest and not compound interest; and interest is to be earned and accumulated each and every month for DROP benefits accumulated in the account. Lest there be any confusion, the Chairperson sets forth below

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[8] The Chairperson recognizes that stated interest of 3.5% is an agreed upon number and is not dependent upon the actual plan earnings which may be less than or more than 3.5%. The Chairperson observes this stated return to be a fair and equitable risk/benefit arrangement for the reason that it is expressed in the language, as contrasted to a variable interest.

[9] Just as the Employer proposal regarding issue 18 is an obvious expectation, so is the Association proposal that interest be afforded the segregated account in full.

the intent of the above understandings for a hypothetical DROP Participant entering the DROP Program August 1, 2008 with a monthly DROP issuance of $4,800.00:

DROP Issuance	January 1st	February 1st	March 1st	April 1st	May 1st	June 1st	July 1st	August 1st	September 1st	October 1st	November 1st	December 1st
08 Drop								$4,800.	$4,800	$4,800	$4,800	$4,800
08 Int.									$14	$28	$42	$56
09 Drop	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800
09 Int.	$70	$84	$98	$112	$126	$140	$154	$168	$182	$196	$210	$224
10 Drop	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800
10 Int.	$238	$252	$266	$280	$294	$308	$322	$336	$350	$364	$378	$392
11 Drop	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800
11 Int.	$406	$420	$434	$448	$462	$476	$490	$504	$518	$532	$546	$560
12 Drop	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800
12 Int.	$574	$588	$602	$616	$630	$644	$658	$672	$686	$700	$714	$728
13 Drop	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800	$4,800					
13 Int.	$742	$756	$770	$784	$798	$812	$826	$*				

*Final Interest would be ($288,000) times (.035 divided by 365) times (number of days after July 1, 2013 the $288,000 plus interest is distributed to DROP participant). If distributed on August 1, 2013, the interest amount shall be $840.

16. Overtime in Final Average Compensation FAC
19. Calculation of Final Average Compensation FAC

Employer Issues 16 and 19 are companion issues designed to remedy the effect of concentrated overtime in final years of employment before retirement. The Employer reasons that its proposal to limit the number of overtime hours included in the FAC calculation will serve to curb inordinately high pensions and corresponding obligations. The Association calls attention to the fact that the Employer has the right to determine the need for work, the size of the work force, and the ability to eliminate overtime altogether. *See* Joint Ex. 1, Article 19. Among other things, the Employer is entitled to hire new command

officers and create more positions to ease its overtime problems if it wishes. The Association also observes that the highest pension in the Department is actually received by a deputy, as are twelve of the top twenty-five (County Ex. 186). Thus, the Association posits that there really isn't a problem with command officers working extraordinary overtime as retirement nears to increase FAC.

With the above in mind, the Chairperson agrees that the issue of extraordinary individual pensions is rightfully a matter of public concern, and the Employer should address potential manipulation of the system. Although the Employer proposal would address the issue to a great extent, it is not the only solution. It is clear that the Association prefers the Employer eliminate overtime opportunities rather than implement a cap system. Although the Chairperson accepts that "caps on overtime", grandfathered caps and defined contribution plans are becoming more common among the comparables, 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 these reasons, combined with a certain amount of evident operational indifference as to the impact of overtime on operations and costs[10], the Chairperson remains 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 (by the Association) sole control of the Employer to address. 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 addressed or resolved operationally by the parties, whether through agreement or unilaterally within the acknowledged lawful authority of the Employer. Consequently, the panel adopts the Association last best offer to maintain the status quo and continue the current contract language as to issues 16 and 19.

HEALTH INSURANCE

14. Retiree Health Insurance

The panel reviewed the last best and final offers of the parties and questioned whether there was substantive disagreement, or merely semantic misunderstanding. The panel convened to discuss the situation and discussed the issues at length. After consultation, the panel members assured each other that the Employer's proposed language in its last best offer:

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[10] The Chairperson calls attention to the evidence that the Employer is aware that operations manned by overtime is costly for many reasons (Employer post-hearing brief at p. 82). However, the Employer offered little or no evidence that the Sherriff's Department was effectively exercising its authority to limit overtime despite difficult economic times and tight budgetary constraints (Employer post-hearing brief at p. 8). The Chairperson is readily impressed with many management decisions the Employer is making as a whole through its financial and human resource management, as evidenced by the record. The Employer must demand similar results from its operations management.

1. Is intended to credit Association members promoted from either the Police Officers Association of Michigan-Deputies/Dispatchers or Macomb County Professional Deputy Sheriff's Association-Corrections Officers bargaining units for purpose of Article 14, Section B. 2, retirees' health insurance eligibility.

2. Is not intended to effectuate changes for employees who retired prior to the date of this Act 312 Award.

Accordingly, the panel unanimously adopts the last best offer of the Employer with the express understanding and intention as set forth in paragraphs 1 and 2 immediately above.

DEFINITIONS

11. Full Time Employee

The Employer proposes to add a definition of "regular full-time employee" to the collective bargaining agreement. The Association maintains that the proposal does not truly differentiate between full-time and part-time employees, but is intended to address benefit entitlement, pointing out that all of the bargaining unit members are full-time employees. As such, the Association suggests that the proposal only addresses the instances where full-time employees are unable to maintain full-time hours. The Association makes several arguments why the proposal is unfair or ineffective, as set forth above.

The Chairperson notes that Article 14 of the contract, as well as the Employer's proposed Article 14 already limits health insurance benefits to "all 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 the combined term 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.

In conclusion, the panel observes that the proposal is not 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 and adopts the Association last best offer.

ASSIGNMENTS

6. Post Assignments

The Association proposes to establish a more specific and accelerated procedure for posting assignments ("wish list"), specifically moving the posting date from November of each year to September 1 and requiring notification of assignments to be by November 1 of each year. Although the Association suggests numerous reasons why such change would benefit the officers and the Department, the primary emphasis is a matter of planning and convenience for the personal lives of the officers and their families. The Employer counters that it is preferable to have all units switch on the same date, which particularly serves to

inhibit "boss shopping". The Employer therefore suggests that the present language, which simply requires posting in November of each year, is adequate and provides the Department Command with the necessary flexibility to schedule the myriad complicated matters all within a time frame that allows the Department to have the best and most recent information available.

The Employer's brief suggests that, by practice, preferred assignments are posted on November 1, after which unit members may file a request for preferred assignment (Employer's brief at p. 57). The evidence demonstrates that assignments are announced and posted in December, generally around the second week. Tr. 07/18/07, p. 284. The Chairperson observes that none of this is mandated, other than the initial posting "...in November..." and that assignments become effective "...as near to January 1, as possible ...." *See* Joint Ex. 1, Article 3, H.

It is obvious to the Chairperson that competing considerations come in to play. The Department would like to have the flexibility to make assignments closer to the effective date for the reason that last minute considerations may be accounted for. On the other hand, officers have competing personal obligations that require advance planning and notice as well. These competing objectives both deserve consideration. It is obvious to the Chairperson that they both require a certain amount of flexibility. In this regard the Chairperson notes that the parties stipulated that this issue is deemed to be noneconomic in nature. Thus, the panel is not obligated to receive or choose from last best or final offers. None were presented.

First and foremost, the Chairperson is advised that the subject bargaining unit is one of several in the Department. The Chairperson accepts the benefits of a coordinated procedure among units and personnel. No evidence was received which indicated that the Department was restricted in making or coordinating changes with other units or personnel. The Chairperson observes that a posting date in November is required by contract for this unit, and the Department is capable of committing to November 1. Regarding notification of assignments, the Department, as a practical matter, must provide notification of assignments in December, and generally has no problem doing so by the second week. No evidence was received why notification could not be made by December 1 or earlier.

Consequently, the Chairperson is comfortable, based on the evidence, that a contractual posting date of November 1 and notification date of November 1 is workable for the Department. Although the employees would like notification by November 1, no particular evidence was provided why 60 days notice was necessary, other than it was preferred. As far as the original posting date, no evidence was received why a 60 day period (September 1 to November 1) was necessary, other than it was preferred.

Given the competing considerations and obligations, combined with the obvious ability to accommodate a November posting date and December notification date, the panel determines that the posting date shall be no later than November 1 and the notification date shall be no later than November 1, and that the following language shall be added to Article 3 of the collective bargaining agreement:

ARTICLE 3 – ASSIGMENTS

H. All preferred assignments being considered shall be posted each year no later than November 1. Notification of assignment shall be made

no later than November 15 of each year. The assignment shall then be made effective subject to scheduling as near to January 1, as possible, and said assignment will remain in effect, unless reposted by November 1, until the subsequent January in the year following, at which time the employee will either be kept on the preferred assignment or reassigned to his/her regular duties according to the provisions of this Article, all of which is subject to the officer's ability to perform satisfactorily in the preferred assignment. In the event the employee is reassigned to regular duties, the Sheriff or his/her designated representative will explain to the employee the reasons for his/her reassignment.

If the employer determines it requires more time between posting and notification, the language allows such flexibility by advancing the posting date.

CONCLUSION

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. Education Allowance -- Article 8

Withdrawn by the Association. Contract Language shall remain unchanged.

2. Longevity – Article 18

The Panel adopts the Employer's final offer and orders maintenance of the *status quo.* Contract Language shall remain unchanged.

3. Scheduling and Hours – Article 26

Withdrawn by the Association. Contract Language shall remain unchanged.

4. Shift Premium – Article 38

The Panel adopts the Employer's final offer and orders maintenance of the *status quo.* Contract Language shall remain unchanged.

5. Wages – Article 24 - Schedule A

The Panel adopts the Employer's final offer and orders that the pertinent contract language be amended as set forth immediately below:

SALARY SCHEDULE

The Salary Schedule, Appendix A, is attached to and is part of this Agreement.

SCHEDULE A

SALARY SCHEDULE

2007 & 2008

CLASSIFICATION	MINIMUM	MAXIMUM
Lieutenant	$75,007.70	$79,880.40
Corrections Lieutenant		
Sergeant	$68,188.81	$72,618.54
Corrections Sergeant		
Sergeant I	$61,989.84	$66,016.87
Corrections Sergeant I		
Dispatch Supervisor	$50,489.76	$53,769.71

The Union may, at is option, re-open the contract for negotiations over the wage rates set forth in Wages – Schedule A on and after January 1, 2009 by notifying the County in writing at least 60 days prior to January 1, 2009, of its desire to so re-open the contract.

6. Post Assignments -- Article 3

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

ARTICLE 3 – ASSIGMENTS

H. All preferred assignments being considered shall be posted each year no later than November 1. Notification of assignment shall be made no later than November 15 of each year. The assignment shall then be made effective subject to scheduling as near to January 1, as possible, and said assignment will remain in effect, unless reposted by November 1, until the subsequent January in the year following, at which time the employee will either be kept on the preferred assignment or reassigned to his/her regular duties according to the provisions of this Article, all of which is subject to the officer's ability to perform satisfactorily in the preferred assignment. In the event the employee is reassigned to regular duties, the Sheriff or his/her designated representative will explain to the employee the reasons for his/her reassignment.

7. Overtime Pay and Procedure – Article 20

Withdrawn by the Association. Contract Language shall remain unchanged.

8. Memorandum of Understanding Regarding Deferred Retirement Option Plan (DROP)

The Panel adopts the Association's final offer and orders that the pertinent contract language be amended as set forth immediately below:

H. DROP Accounts: For each employee participating in the DROP, an individual DROP account will be created in which shall be accumulated the DROP benefits, as well as interest on said DROP benefits. All individual DROP accounts shall be maintained for the benefit of each employee participating in the DROP and will be managed by the Retirement System in the same manner as the primary retirement fund. DROP interest for each employee who participates in the DROP shall be at a fixed rate of 3.5% per annum. Interest is earned on the DROP account balance at the end of each month, and shall be paid to the employee's DROP account no later than the last day of the following month. In the event of separation, interest shall be paid in full to the date the DROP account is distributed pursuant to the provisions of Section "J" i.e. *see* schedule at the end of this memorandum.

It is expressly understood by the Chairperson and the Chairperson's intent from the record that segregated DROP accounts are simply Ledger Transfers; that actual payments to such accounts are accounted for but not actually paid until distribution; that the proposed/ordered language provides for simple interest and not compound interest; and interest is to be earned and accumulated each and every month for DROP benefits accumulated in the account.

9. Retroactivity

The Panel adopts the Employer's final offer. Contract language shall remain unchanged.

10. Duration – Article 41 A.

The Panel adopts the Associations last best offer of a duration of three (3) years and orders that the pertinent contract language of Article 41 A. be amended as follows:

A. This Agreement shall be and continue in full force and effect until December 31, 2009.

11. Full Time Employee – Article 10

The Panel adopts the Association's last best offer and orders maintenance of the *status quo*. Contract language shall remain unchanged.

12. Eligibility for Holiday Pay – Article 13

Association accepts Employer Proposal. Pertinent Contract Language shall be amended as set forth immediately below:

ARTICLE 13 HOLIDAY BENEFITS

A. Employees who are scheduled to work the holiday must work the holiday and the scheduled day before and scheduled day after the holiday, unless excused with pay for the entire day, in order to qualify for payment. In order to be excused from work for holiday pay purposes, an employee must secure a medical certificate or written approval by the Sheriff, or designee. The designee referred to shall be the highest ranking officer on each shift. The foregoing excuse provision relating to qualification for holiday pay, shall not apply to employees on sick lever, if such sick leave is in effect prior to the beginning of the current pay period in which the holiday falls, Additionally, the above-enumerated holidays, occurring after one (1) year from date of any incapacitating injury for which Worker's Compensation benefits are paid, shall not be credited to the Employee, or otherwise qualify the incapacitated employee for holiday payment, and such disqualification shall continue so long as the incapacity exists.

13. Time of Holiday Pay – Article 13

Association accepts Employer Proposal. Pertinent contract language shall be amended as set forth immediately below:

ARTICLE 13 HOLIDAY BENEFITS

B. Holiday Pay payments shall be included in the first regular payroll check of December.

14. Retiree Health Insurance – Article 14

The Panel adopts the Employer's last best offer and orders that the pertinent contract language be amended as set forth immediately below, with the specific intent and understanding that such language is intended to credit Association members promoted from either the Police Officers Association of Michigan-Deputies/Dispatchers or Macomb County Professional Deputy Sheriff's Association-Corrections Officers bargaining units with their service in such units for purposes of Article 14, Section B., 2., retirees health insurance eligibility; and that such language is not intended to effectuate changes for employees who retired prior to the date of this Act 312 Award:

ARTICLE 14 INSURANCE BENEFITS

B. Hospital-Medical Insurance

1. Active Employees (DROP Participants): 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. Blue Cross/Blue Shield MVF1 – Master Medical Coverage, ML Rider, OB Rider and PDR (Prescription Drug Rider).

      Effective as soon as practicable after the date of the Act 312 Award, 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 on a monthly basis, through payroll deduction. No employees not currently enrolled in the Blue Cross/Blue Shield Traditional insurance program shall be permitted to enroll in that program.

b. Waiting Period: Employees who are eligible for hospital-medical insurance benefits will be covered on the first day of the month following sixty (60) days of continuous employment.

c. Active employees, who are covered by Blue Cross/Blue Shield Hospital-Medical coverage, shall be required to participate in Health Care savings known as "Predetermination of Elective Admissions."

d. The Employer shall offer Active employees the option of selecting the "Preferred Provider Organization" program.

Effective as soon as practicable after the date of the Act 312 Award, the Preferred Provider Organization program shall require a $100.00 deductible per individual or a $200.00 deductible per family annually.

e. The Employer shall begin a program to coordinate and to eliminate overlapping health care coverage. Each employee who chooses to join no County-sponsored health care plans (Blue Cross/Blue Shield, Health Maintenance Organization or Preferred Provider Organization), and whose spouse or parent has coverage provided by another employer, shall be paid $1,500.00 each year for every year that the spouse or parent has coverage. Payments of $750.00 will be made semi-annually to each employee who has not been on any County-sponsored health care program for six (6) months.

Employees shall be required to show proof annually that a spouse or parent has health care coverage that includes the employee before said employee will be declared eligible to receive the $1,500.00 annual payment.

Employees, whose spouse's or parents' health care plans cease to cover the employee, shall be allow to enroll in a County-sponsored health care plan by showing proof that the spouse's or the parents' coverage has ceased. In such cases, the employee shall be allowed to enroll in a County-sponsored plan at the next billing period.

f. Effective July 1, 2004, 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:

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 date of the Act 312 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.

g. Effective July 1, 2004, the co-payment for non-emergent use of an emergency room shall increase from $50.00 to $100.00 for employees covered by Blue Cross/Blue Shield Traditional and Blue Cross/Blue Shield Preferred Provider Organization.

2. Retirees: The Employer will provide fully paid Blue Cross/Blue Shield Hospital-Medical coverage, or its substantial equivalence, to the employee and the employee's spouse, after eight (8) years of actual service with the Employer, for the employee who leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance, based on the following conditions and provisions:

Effective as soon as practicable after the date of the Act 312 Award, for all employees hired on or after this effective date, the Employer will provide fully paid 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 receives benefits under the Macomb County Employees' Retirement Ordinance, based upon the following conditions and provisions:

a. Coverage shall be limited to the current spouse of the retiree, at the time of retirement. Coverage for the eligible spouse will terminate upon the death of the retiree, unless the retiree elects to exercise a retirement option whereby the eligible current spouse receives applicable retirement benefits following the death of the retiree.

b. Coverage shall be limited to Blue Cross/Blue Shield MVF1 Master Medical with ML Rider.

c. Preferred Rx Managed Prescription Drug Program: An eligible retiree, and the person who is said retiree's spouse at the time of retirement, covered by the traditional Blue Cross/Blue Shield indemnity 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.

d. Retired employees and/or their current spouse, upon reaching 65, shall apply if eligible, and participate in the Medicare Program at their expense as required by the Federal Insurance Contribution Act, a part of the Social Security Program, at which time the Employer's obligation shall be only to provide "over 65 supplemental" hospital-medical benefit coverage. Failure to participate in the aforementioned Medicare Program shall be cause for termination of Employer paid coverage of applicable hospital-medical benefits, as outlined herein for employees who retire and/or their current spouse.

e. Employees who retire under the provisions of the Macomb County Employees' Retirement Ordinance, and/or their current spouse who subsequently are gainfully employed, shall not be eligible for hospital-medical benefits during such period of gainful employment, as hereinafter defined:

Gainful employment is defined as applying to retire and/or spouse of retiree who are employed subsequent to the employee retirement. If such employment provides hospital-medical coverage for both retiree and spouse, the County is not obligated to provide said coverage unless and until the coverage of either person is terminated. If the coverage is not provided to retiree and spouse, the County will provide hospital-medical coverage for the person not covered.

f. Employees who retire under the provision so the Macomb County Employees' Retirement Ordinance and current spouse, shall, if eligible, apply for and participate in ANY National Health Insurance Program offered by the U.S. Government. Failure to participate, if eligible,

shall be cause for termination of Employer paid hospital-medical benefits as outlined.

g. Spouse Retiree Hospital Medical Insurance: Effective January 1, 1983, for employees retiring after January 1, 1982, the County will pay one hundred percent (100%) of the total premium for Blue Cross/Blue Shield Hospital-Medical insurance for current spouse in accordance with the conditions and provisions set forth in Section B.2.

h. Retirees who are covered by Blue Cross/Blue Shield Hospital-Medical coverage shall be required to participate in Health Care savings known as "Predetermination of Elective Admissions."

i. The Employer shall offer retirees the option of selecting the "Preferred Provider Organization" program.

j. The Employer shall begin a program to coordinate and to eliminate overlapping health care coverage. Each retiree who chooses to join no County-sponsored health care plans (Blue Cross/Blue Shield, Health Maintenance Organization or Preferred Provider Organization), and whose spouse has coverage provided by another employer, shall be paid $1,500.00 each year for every year that the spouse has coverage. Payments of $750.00 will be made semi-annually to each retiree who has not been on any County-sponsored health care plan for six (6) months.

Retirees shall be required to show proof annually that a spouse has health care coverage that includes the retiree before said retiree will be declared eligible to receive the $1,500.00 annual payment.

Retirees whose spouse's health care plans cease to cover the retiree shall be allow to enroll in a County-sponsored health care plan by showing proof that the spouse's coverage has ceased. In such cases, the retiree shall be allowed to enroll in a County-sponsored plan at the next billing period.

15. Time of Longevity Payment – Article 18

Association accepts Employer Proposal. Pertinent contract language shall be amended as set forth immediately below:

ARTICLE 18 LONGEVITY

F. Longevity compensation shall be added to the regular payroll check, when due, for eligible employees. This longevity payment shall be considered a part of regular compensation and as such, subject to withholding tax, social security, retirement deductions, and all other deductions required by Federal and State law and the regulations and ordinance of the County of Macomb.

G. Payments to employees eligible as of October 31 of any year shall be included in the first regular payroll check of December. The annual period covered in computation of longevity shall be from November 1 of each year and through and including October 31st of the following year.

16. Overtime in Final Average Compensation FAC – Article 20

The Panel adopts the Association's last best offer and orders maintenance of the *status quo.* Contract language shall remain unchanged.

17. Compensatory Time – Article 20

The Panel adopts the Association's last best offer and orders maintenance of the *status quo.* Contract language shall remain unchanged.

18. Overtime Rates – Article 20

The Panel adopts the Employer's final offer and orders that the pertinent contract language be amended as set forth immediately below:

ARTICLE 20 OVERTIME PAY AND PROCEDURE

A. Overtime Call-In Pay:

9. All overtime shall be paid at the employee's hourly rate at the time the overtime was worked.

19. Calculation of Final Average Compensation FAC – Article 37

The Panel adopts the Association's last best offer and orders maintenance of the *status quo.* Contract language shall remain unchanged.

FACT FINDING

The parties have acknowledged and stipulated that the Corrections Sergeants and Lieutenants within the Police Officers Labor Council Command Officers Association are entitled to fact finding only under Michigan Law. The parties also agree that the issues are identical to those stated for the 312 Arbitration. The arguments, in nearly all respects, are also identical. The Association and the Employer adopted those same arguments for purposes of fact-finding.

Importantly, the Corrections Sergeants and Lieutenants are at the same pay scale as the certified sergeants and lieutenants. This arrangement has been the long standing practice of the County. Such arrangement has allowed movement of members to transfer on an equal basis from corrections positions and certified positions within the Department as long as they are qualified to do the work.

Finally, there were no outstanding issues in the fact-finding procedures other than the

issues listed in the 312 Arbitration Opinion and Award. All in all, the hearing procedure contemplated that a single award document would be issued, as shown on the title page of this document.

Given the rich bargaining history and stipulation of the parties as to the procedure and interplay between the Act 312 Arbitration and Fact Finding set forth herein, it makes over-riding and eminent sense to this Fact-Finder that the Act 312 ineligible Corrections Sergeant I, Corrections Sergeant and Corrections Lieutenant positions should be governed by and afforded the same terms and conditions of employment as the eligible members of the same bargaining-unit. The issues are the same as pertains to these positions. The testimony of the Association and Employer witnesses apply equally in this fact-finding proceeding as the 312 Arbitration. The exhibits of course are different, but are similar in most respects.

Accordingly, the Fact-Finder recommends that the final and last best offers adopted by the panel in the Act 312 proceeding, along with the stipulations made by the parties within the Act 312 proceeding as well as outside the proceeding be made applicable to the Act 312 ineligible Corrections Sergeant I, Corrections Sergeant and Corrections Lieutenant positions to the same extent and in each and every detail, such that all members of the Macomb County Command Officers Association shall be governed by and afforded the same terms and conditions of employment.

Dated: March 31, 2008

Charles Ammeson
Chairperson, assenting as to all issues

Dated: March 31, 2008

Eric Herppich
Employer Delegate, assenting as to issues 1, 2, 3, 4, 5, 7, 9, 12, 13, 14, 15, 18; and dissenting as to issues 6, 8, 10, 11, 16, 17, 19.

Dated: March 31, 2008

John Viviano

Association Delegate, assenting as to issues 1, 3, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19; and dissenting as to issues 2, 4, 5, 9, 18.

Dated: March 31, 2008

Eric Herppich
Employer Delegate, assenting as to issues 1, 2, 3, 4, 5, 7, 9, 12, 13, 14, 15, 18; and dissenting as to issues 6, 8, 10, 11, 16, 17, 19.

Dated: March 31, 2008

John Viviano
Association Delegate, assenting as to issues 1, 3, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19; and dissenting as to issues 2, 4, 5, 9, 18.