

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ACT 312  
ARBITRATION BETWEEN

COUNTY OF JACKSON,  
Public Employer

Arbitrator Donald R. Burkholder  
MERC Case No. L06 H-4005

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN,  
Labor Organization.

ACT 312 ARBITRATION AWARD

Appearances:

For the Employer:

John R. McGlinchey  
601 N. Capitol  
Lansing, MI 48933

For the Union:

James DeVries  
27056 Joy Rd.  
Redford, MI 48239-1949

## STATUTORY AUTHORITY

### MICHIGAN EMPLOYMENT RELATIONS COMMISSION [MERC]

Section 8 of Act 312 requires that, in relation to economic issues, "an arbitration panel shall adopt the last best offer of settlement which... more nearly complies with the applicable factors described in Section 9" of Act 312. Section 9 contains the eight factors the arbitration panel must consider as applicable.

Section 9 of Act 312 provides for the following:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
  - (i) In public employment in comparable communities.
  - (ii) In private employment in comparable communities.
- (e) The average consumer price for goods and services, commonly known as cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 10 of Act 312 provides that the decision of the Arbitration Panel must be supported by "competent, material and substantial evidence on the whole record." This has been supported by the Michigan Supreme Court's decision in *City of Detroit v. Detroit Police Officers*

Association, 408 Mich 410 (1980). The decision notes that the legislature evinced no intention in Act 312 that each factor of Section 9 be accorded equal rate. Rather, they provide a compulsory checklist to insure that arbitrators render an award only after taking into consideration those factors deemed relevant by the legislature and codified in Section 9.

#### UNIT, BACKGROUND, PETITIONS, HEARING, AND CONFERENCE DATES

The bargaining unit consists of 30 deputy sheriffs, excluding Undersheriff, corrections officers, sergeants, lieutenants, captains, and supervisors. The agreement, a two-year contract, had expired on December 31, 2006. The Employer filed a petition for Act 312 arbitration on March 30, 2007, listing a total of 21 issues as follows:

#### EMPLOYER PETITION

1. Discharge and Discipline – Written Statements (Article 6, Section 4)
2. Grievance Procedure – Written Grievances (Article 7, Section 1, Step 2)\*
3. Grievance Procedure – Arbitration\*
4. Work Rules – (Article 9, Section 1)\*
5. Leaves of Absence – Extended Leaves of Absence Without Pay (Article 12, Section 2)
6. Banked Sick Leave (Article 13, Sections 6 and 7)
7. Banked Sick Leave – Records (Article 13, Section 9)
8. Paid Time Off – Accumulation (Article 16, Section 1)
9. Paid Time Off – Accumulation Chart (Article 16, Section 1)
10. Paid Time Off – Request for Paid Time Off (Article 16, Section 3)
11. Paid Time Off – Payment Upon Termination (Article 16, Section 6)
12. Holidays – Recognized Holidays (Article 17, Section 1) \*
13. Hours, Overtime and Work Week – Non-Voluntary Overtime (Article 18, Section 2) \*\*
14. Wages (Article 19)
15. Health Insurance (Article 23)
16. Insurance, Cash in Lieu of Insurance (Article 23, Section 3)
17. Pension (Article 24)
18. Longevity (Article 27, Section 1)
19. Promotional Procedure for Sergeants (Article 30)\*
20. Duration
21. Short Term Disability

The following issues/items from the Employer's Petition for 312 Arbitration were settled or withdrawn during the course of the proceedings.

Item 2, Grievance Procedure, Written Grievances (Article 7, Steps 1 and 2).

Item 3, Grievance Procedure – Arbitration

Item 4, Work Rules (Article 9, Section 1).

Item 7, Banked Sick Leave – Records (Article 13, Section 9)

Item 12, Recognized Holidays (Article 17, Section 1.Holidays) \*

Item 13, Hours, Overtime and Work Week – Non-Voluntary Overtime (Article 18, Section 2).

Item 19, Promotional Procedure for Sergeants (Article 30)\*\*

Item 20, Duration

\*Omitted from consideration per a March 9, 2009 letter from the Employer.  
status quo.

\*\* Agreed at the Hearing. Language attached to this report.

The POAM filed its petition for 312 arbitration on April 2, 2007, listing its issues as Duration and Wages.

MERC appointed this Arbitrator by a letter dated July 12, 2007. The parties were unable to agree on a date, with several dates agreed temporarily, then delayed by the Employer for various reasons. The initial hearing was held February 28, 2008. The second and third hearing dates were October 20, 2008, and February 3, 2009. This Arbitrator referred the case to Mediation for 30 days after the first Hearing in February 2008; the Mediation was not fruitful. Progress had been blocked due to the Union's position that they had not seen or had the opportunity to respond to the details of the

Employer position on its various issues. The three month delay between the second and third Hearings was primarily attributable to the Employer's motion to MERC to remove this Arbitrator.

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**ECONOMIC ISSUES**

The Holiday issue was withdrawn by the Employer. Work Rules, and Promotional Criteria for Sergeants, were also agreed to or withdrawn. The Chair directed the parties to prepare briefs and Last Best Offers (LBOs) of three years Duration. January 1, 2007 to December 31, 2009. Following each economic issue is an abbreviated list of the specific elements or paragraphs of Section 9 of Act 312 upon which the Panel bases its decision.

**Comparables**

The parties had agreed to the following external comparables:

Allegan County, Calhoun County, Eaton County, Muskegon County, Saginaw County.

**Health Insurance (Article 23)**

The Employer proposes the following for Section 3, Medical Insurance (Health Premium Sharing):

|                 |                      |
|-----------------|----------------------|
| Pre-1993 hires  | 5% across the board  |
| Post 1993 hires | 10% across the board |
| Post 2000 hires | 10% across the board |

The expired Collective Bargaining Agreement (CBA) provides that employees hired pre-1993 pay for health insurance based on the level of insurance the select: single, two-person, or family. For 1993, the cost is \$120 per year for single, \$264 per year for two-

person, and \$288 per year for family. For post-1993, the proposed cost would be \$336 per year single, \$744 per year two person, and \$864 per family. For all employees hired post-2000, the cost would be ten percent across the board.

The Union Last Best Offer (LBO) is status quo.

The Employer exhibit "Health Insurance Premium Sharing," both in comparable counties and in Jackson County, supplies percentages at specific points in time. However, it does not specify the dollar amount when the percentages are applied, e.g., ten percent of what amount? The panel has no way of knowing what effect, monetarily, the premium sharing cost is for a deputy in the various comparable units. Costs for health insurance vary from community to community. Identical plans have different costs depending on claims history and the use of the plan, and the demographics of the employees that are covered. Nor does the exhibit show the level of insurance coverage, e.g., deductible, co-insurance, and out of pocket costs, which can change the cost of a health care plan. Employer testimony indicated that the best guess on the cost to a POAM member in the ten percent category would amount to approximately \$500 to \$600 per year. (Tr., Vol. 3, 83-88). If this amount is correct, the Employer would gain less than \$300 from the pre-1993 employee, and lose approximately the same amount from the post-1993 employee.

The panel adopts the Union position, status quo.

Sections (d) Comparison of x x x, (f) The overall compensation received x x x (h) Such other factors x x x traditionally taken into consideration x x x.

#### Pension – Article 24

The Employer initially proposed a Defined Contribution Plan (DCP), or alternatively, a Defined Benefit Plan (DBP) substantially different from the DBP in the

expired agreement. In the course of executive committee conferences, both in person and by telephone, this Arbitrator expressed his lack of enthusiasm for, but not his rejection of, the proposed DCP proposed by the Employer. The Employer LBO included the altered DBP in its LBO but omitted the proposed DCP.

The status quo is justified by both the internal and external comparables, and by lack of compelling or persuasive evidence for adopting the Employer DBP proposal, which would significantly alter the present DBP by means of required increases in years of service. The Union asserts that a prerequisite to any pension benefit change is the legal (and common-sensical) requirement of an actuarial audit providing evidence of the effect of the proposed change. In response to this Arbitrator's request for additional briefing on this issue, the Employer forwarded a "Supplemental Actuarial Report for the Jackson County Employees Retirement System", dated April 25, 2005, prepared by the Rodwan Consulting Group. This report was based on December 31, 2003 data. The time lag, lack of evidence on ability to pay or financial distress, the lack of opportunity for the Union to examine and rebut the evidence at the Hearing or otherwise, and the comparables are significant factors in the panel recommendation for the Union proposal, status quo.

(d). Comparison xxx. conditions of employment x x x.. (h) Such other factors

x x x.

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#### Paid Time Off Accumulation (PTO)

The Employer LBO proposes to change the amount of PTO that can be earned, and reduce the amount of PTO carryover. It also would eliminate the payout of all unused PTO upon termination, death, or retirement. A related non-economic proposal would alter language on the

number of bargaining unit members who could be off on PTO. The testimony and exhibits, as well as scrutiny of the manner in which PTO in the comparables is interpreted and applied, do not provide significant justification of the Employer need to reduce PTO. There is no evidence of an exceptional financial burden for the Employer. The Union position is persuasive, equitable, supported by the comparables, and supported by Act 312.

Sections (d) Comparisons x x x conditions of employment, (h) Other factors normally and traditionally taken into consideration x x x.

Cash in Lieu of Insurance. (Art. 29, Sec.3)

The Employer proposes language that, in view of uncontested testimony, would bring the CBA into conformity with what the County has been doing as a practice. The proposed language makes economic sense, assures the mechanism for, and requires continued coverage for the Employee or Retiree.

Sections (d) Comparisons x x x. (f) The overall compensation x x x insurance x x x all other benefits received. (h) Such other factors x x x,

Longevity - Article 27, Sec. 1, Plan.

The Employer proposed changing the procedure for reporting and paying for longevity. Testimony and exhibits do not indicate significant problems with the status quo. Two internal comparables, Sheriff Command, and Dispatch, use January 1 through November 30 plus projected December hours, the same method specified for Deputes in the expired CBO.



Section 9 (d) Comparison of x x x. (h) Such other factors x x x .

Banked Sick Leave Article 13, Sections 6 and 7

The Employer seeks to reduce the rate of payment of banked sick leave which under the expired agreement is set at the employee's rate of pay. The Employer seeks alter the language to reflect payment at the December 31, 2006 rate of pay. Four of the five comparables use the current rate of pay; the fifth comparable uses the current rate or the five year average, whichever is higher. The Employer notes that sick time was discontinued for this unit on January 1, 2005, in favor of PTO. Nevertheless, Article 13 of the expired contract is titled Banked Sick Leave; Article 16 is Paid Time Off. The differing semantics do not alter the significance and application of both articles. Additionally, the Employer proposal to reduce credit for PTO/Sick Leave would have a major impact on Article 13, Section 6, Payment Upon Termination, Retirement, Death. The record provides no meaningful rationale for change. The panel adopts the Union position, status quo.

Sections (d) Comparison of x x x. (f) The overall compensation x x x (h) Such other factors x x x.

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Short Term Disability (STD) Article 23, Sec. 3

The Employer proposes to move STD from the core insurance plan to an option selected by the employee, under a cafeteria plan, or Individualized Benefit Plan (IBP) presently in effect for other county employees. The comparables, both internal and

external, support the Union position that the suggested change is acceptable if the IBP dollars are increased to \$5,740. The Union position and language is as follows:

Effective year 2009, the members shall not be provided Short Term Disability as a core benefit, as described in Attachment A, but may purchase Short Term Disability Insurance. The Individualized Benefit Plan dollars allowable shall be increased to \$5,740.

The panel adopts the Union position.

Sections (d), Comparison x x x, (f) Overall compensation, (h) Such other factors x x x.

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#### Wages -- Article 19, Wages and Classification

The Employer proposed base pay increases of two (2%) percent for each of the three years, i.e., January 2007, January 2008, and January 2009.

The Union proposed a (2.9%) percent increase for all steps contained in the expired CBO effective January 1, 2007. Effective on January 1, 2007, the addition of an additional steps in the pays scale for those employees who have thirteen (13) years of service, of one and one-half (1.5%) percent above the eight-year step.

For second year wages, the Union LBO was two (2.0%) increase for all steps. The Union LBO for the third year of the CBA is a two (2%) increase for all steps., effective January 1, 2008 The Union LBO for the third year of the CBA was a two (2%) increase for all steps effective January 1, 2009.

The Union LBO also proposed retroactivity to January 1<sup>st</sup> of each of the three years, for employees what were on the payroll at that time.

Base pay in January 2006 was \$49,123 for this unit, \$50,128 for deputies in Allegan County; and \$50,913 for Muskegon County deputies. For deputies in Eaton and Saginaw Counties, the base pay was \$46,291 and \$49,823 respectively. Internal

comparables were two (2%) percent increases for all units in 2006 and 2007, with one (1%) percent increases in January 2008 and January 2009. Both internal and external factors support the Employer position, which is adopted by the Panel.

Sections (d) Comparison x x x, (e) The x x x consumer price index, (f) x x x overall compensation, (h) Such other factors x x x.

#### Duration

In accord with the three-year wage award, the Panel accordingly denotes a three-year duration, January 1, 2007 to December 31, 2009.

#### NON-ECONOMIC ISSUES

##### Discipline and Discharge. Article 6, Section 4, Written Statements

Section 4 of the expired contract sets forth the following:

Before any employee shall be required to make a written statement or written reply to any alleged misconduct on his/her part, the matter may first be discussed between the Employee and the Sheriff. The employee shall have twenty-four (24) hours after such meeting to make the written statement.

The Employer proposes to replace the 24 hour language provision in the expired CBO to provide that "Prior to a written statement being given, the employee shall be given a reasonable time to consult with a Union representative or a Union attorney."

The Sheriff testified that 24 hours is likely to lead to loss of memory and the recollection of facts, and that the more serious the offense, the more reason to have a statement given within 24 hours (Tr., Vol. 3, pp. 60-65). The Union asserts the complete opposite, i.e., employees involved in a shooting, serious traffic accident, or accused of a serious offense should have time to consult with their Union representative or attorney before putting his actions on a written statement. Additionally, the Union states that

adopting the Employer LBO would allow the Employer, and only the Employer, to determine what is 'reasonable'.

The panel adopts the Union proposal in principle but modifies the existing language to add the words "or his designees" following the word 'Sheriff' as included in the Employer language.

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#### Retroactivity

The Employer proposes that any economic proposals adopted by the Panel be made retroactive only for those eligible employees employed on the date of the award. As dealt with above on wages, those employees who were on the payroll January 1<sup>st</sup> of the pertinent year should receive economic the benefits to which they are entitled at that time. There is not testimony or evidence on the record as to whether any employee has left. Nevertheless, there is a possibility that an employee who was on the payroll in 2007 may have retired or become deceased since that time. There is no logical reason that such an employee should not be eligible for the retroactive pay that was due that individual while the contract was expired.

The panel adopts the Union position.

#### Paid Time Off (PTO) – Request for

The Employer LBO proposes to eliminate the minimum of two road patrol members off at one time leaves the minimum amount "subject to the operational needs of the department." The Sheriff testified that he was not sure of the total number of road patrol deputies he had working, but he was rather certain the numbers were dwindling, (Tr., Vol. 3, pp. 22-27). The Sheriff did not cite any past incidents where the language in

the contract caused the department to either have limited coverage, or where the department had to pay overtime to keep the shifts staffed appropriately. According to the Sheriff's testimony, if a deputy and a sergeant requested the same day off, the road patrol sergeant, who decides what level of coverage is appropriate, could grant the day off to himself, even if he had less seniority than the deputy. The Employer proposal would put undue demand on road deputies to utilize their PTO during the period which fit solely the operational needs of the department, which will be determined by a sergeant who has the ultimate authority to grant the request. It is also significant that there is no evidence that the system under the expired CBO causes under overtime or places a financial strain on the Employer. The panel adopts the Union position.

HEALTH INSURANCE  
(Article 23)

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

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Chairman Donald R. Burkholder

*James DeVries*  

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Union Delegate James DeVries

Dissenting:

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Employer Delegate John R. McGlinchey

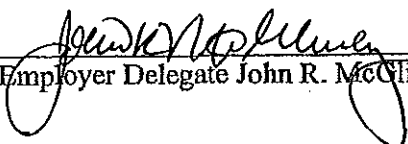
HEALTH INSURANCE  
(Article 23)

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Chairman Donald R. Burkholder


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Union Delegate James DeVries

Dissenting:

  
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Employer Delegate John R. McClinchey

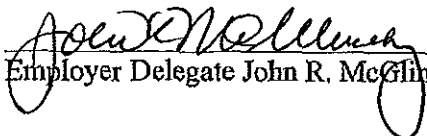
**BANKED SICK LEAVE**  
(Article 13, Secs. 6 and 7)

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

  
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Chairman Donald R. Burkholder

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Union Delegate James DeVries

Dissenting:

  
\_\_\_\_\_  
Employer Delegate John R. McGlinchey



BANKED SICK LEAVE  
(Article 13, Secs. 6 and 7)

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and retain the existing contract language.

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Chairman Donald R. Burkholder

*James DeVries*  

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Union Delegate James DeVries

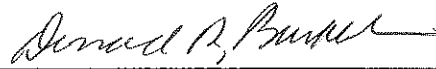
Dissenting:

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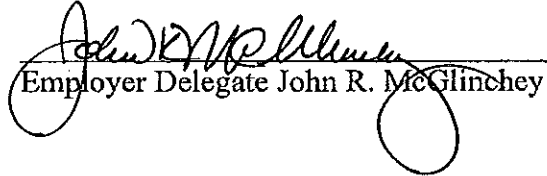
Employer Delegate John R. McGlinchey

CASH IN LIEU OF INSURANCE  
(Article 29, Sec. 3)

The panel majority adopts the Employer proposal offering cash in lieu of insurance and requiring continued coverage for the Employee or Retiree.



Chairman Donald R. Burkholder



Employer Delegate John R. McGlinchey

Dissenting:

Union Delegate James Devries

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(Article 29, Sec. 3)

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Chairman Donald R. Burkholder

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Employer Delegate John R. McGlinchey

Dissenting:

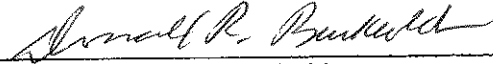
*James P. Devries*  

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Union Delegate James Devries

LONGEVITY  
Article 27

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

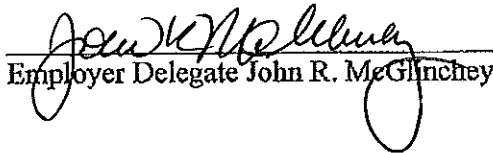


Chairman Donald R. Burkholder

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Union Delegate James DeVries

Dissenting:



Employer Delegate John R. McGlinchey

LONGEVITY  
Article 27

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

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Chairman Donald R. Burkholder

*James DeVries*  

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Union Delegate James DeVries

Dissenting:

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Employer Delegate John R. McGlinchey

PENSION  
Article 24

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

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Chairman Donald R. Burkholder

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Union Delegate James DeVries

Dissenting:

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Employer Delegate John R. McGlinchey

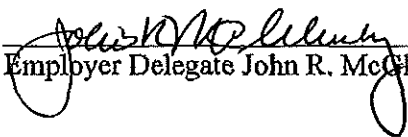
PENSION  
Article 24

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

  
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Chairman Donald R. Burkholder

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Union Delegate James DeVries

Dissenting:

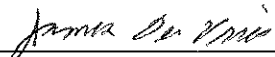
  
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Employer Delegate John R. McPhiney

PAID TIME OFF ACCUMULATION  
(Article 16)

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

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Chairman Donald R. Burkholder

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Union Delegate James DeVries

Dissenting:

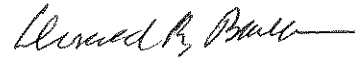
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Employer Delegate John R. McGlinchey



PAID TIME OFF ACCUMULATION  
(Article 16)

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.



Chairman Donald R. Burkholder

Union Delegate James DeVries

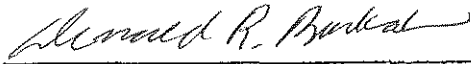
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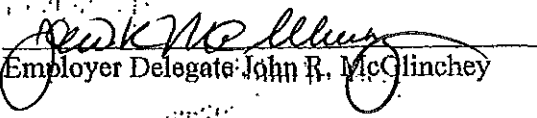


Employer Delegate John R. McGlinchey

WAGES AND CLASSIFICATION  
(Article 19)

The panel majority adopts the Employer proposal for base pay increases of two (2%) for each of the three years, January 2007, January 2008, and January 2009.

  
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Chairman Donald R. Burkholder

  
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Employer Delegate John R. McGlinchey

Dissenting:

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Union Delegate James DeVries

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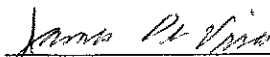
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Chairman Donald R. Burkholder

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Employer Delegate John R. McGlinchey

Dissenting:

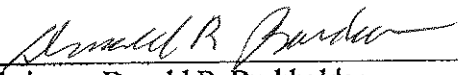
  

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Union Delegate James DeVries

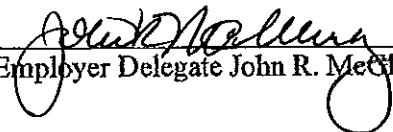
SHORT TERM DISABILITY  
(Article 23. Sec. 3)

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

  
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Chairman Donald R. Burkholder

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Union Delegate James DeVries

Dissenting:

  
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Employer Delegate John R. McElhinney

SHORT TERM DISABILITY  
(Article 23. Sec. 3)

The panel majority adopts the Union's offer to maintain the status quo and  
and retain the existing contract language.

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Chairman Donald R. Burkholder

*James DeVries*  

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Union Delegate James DeVries


Dissenting:

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Employer Delegate John R. McGlinchey

DISCIPLINE AND DISCHARGE [Non-economic]  
(Article 19)

The Union position is adopted but modified to add the words "or his designee" following the word "Sheriff."

  
Chairman Donald R. Burkholder

RETROACTIVITY [Non-economic]

The Union position of status quo is adopted.

  
Chairman Donald R. Burkholder

## AGREEMENTS REACHED AT ACT 312 HEARING

1. Article 30, Promotional Procedures for Sergeants. (Tr I, pp 10-11)

**Section 1. Definition.** The purpose of this Article is to establish a system for promotion for the position of Sergeant.

**Section 2. Program.** This program involves the upward movement of selected personnel from within the Department. Each promoted employee must be a current member of the Department and must meet all the eligibility rules of the promotional procedure. This rule applies to every position from Deputy through Sergeant.

**Section 3. Posting.** Vacancies or newly created Sergeant position notices will be posted for a period of seven (7) calendar days and employees wishing to fill such positions shall apply in writing to the Sheriff during the said seven (7) day period.

**Section 4. Eligibility for Sergeants.** A road division deputy must have four (4) years of continuous experience in the Department and must have performed road patrol duty.

**Section 5. Qualifications.** In the event that those employees interviewed do not qualify, the Employer reserves the right to decrease the eligibility from four (4) years to two (2) years. In the event those persons with two (2) years of experience are unable to be qualified, by virtue of the promotional process, the Employer and the Association agree that if those events occur, then the Employer may go outside the bargaining unit to fill that promoted vacancy.

**Section 6. Testing Cutoff.** An applicant must score a minimum of seventy percent (70%) in order to continue in the promotional procedure. Scoring and notification of eligible participants shall be accomplished as soon as practicable after the testing process is completed. All employees taking and passing the examination with a minimum seventy percent (70%) shall be equal and move on to the next step of the process.

**Section 7. Promotional Procedure.** The Sheriff and his/her designees shall conduct oral interviews with the candidates that have in writing, requested an interview. Consideration may be given to but not limited to the following: oral interview, work ethic, performance appraisals and leadership ability. *The decision of the Sheriff is final and is not subject to further action or challenge.*

**Section 8. Trial Period.** Commencing with the first full pay period following promotion, the promoted employee shall receive the rate of the new rank or



classification which results in an increase if already employed by the Sheriff Department. Promoted employees shall be on a trial period of one hundred eighty (180) work days immediately following promotion. During such trial period, the Sheriff may demote the employee to his/her former rank or the employee may, of his/her own volition within sixty (60) calendar days, request in writing to be relieved of his/her new classification or rank and be returned to his/her former classification or rank. After completion of the trial period, an employee may be demoted for just cause.

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