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

In the Matter of:

OAKLAND COUNTY

-and-

MERC Fact Finding
Case No. D05 A-0055

OAKLAND COUNTY DEPUTY
SHERIFFS ASSOCIATION

**FACT FINDER'S FINDINGS OF FACT,
REPORT AND RECOMMENDATIONS**

APPEARANCES:

FOR OAKLAND COUNTY DEPUTY
SHERIFFS ASSOCIATION:

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FOR COUNTY OF OAKLAND:

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Prologue

The employees of the Oakland County Sheriff's Office covered by this Fact Finding Report have been working under a Collective Bargaining Agreement that expired on September 30, 2003. It is now December 2009. For six years, these employees have not experienced any increase in wages or any other consideration of benefits and working conditions. In September

2003, Michigan was not experiencing an economic downturn. By November 2009, Michigan had experienced more than a recession, probably a depression, had the highest unemployment in the nation and the two automobile companies that went into bankruptcy had major presence in Oakland County. In addition, the financial condition of the State of Michigan and its ability to provide State aid to local governments is on the verge of collapsing.

There is a time where bargaining impasses must come to an end, contracts must be ratified, and agreements must be signed for the benefit of both the employees and the Employer. Now is the time. If the recommendations here are ratified by both parties, retroactive wages can be forthcoming in the near future so that holiday spending can be properly budgeted by employees and holiday bills that come due in the new year can be paid.

The parties should understand this is not an Act 312. Either party could reject this Fact Finding Report. But if the Fact Finder's Report is rejected and there is no ratification, the six year period of a continued expired contract will be unnecessarily extended because, unlike a proceeding under Act 312, which this is not, the parties can reject the Fact Finder's Report and continue negotiating. Such an approach in this situation would be tragic to both parties going six years without a pay increase. Going six years without a pay increase should not be acceptable to any employee in the bargaining unit.

It is necessary for the employees to have a conclusion to this marathon bargaining so as to be able to plan their own personal budgets. Likewise, it is necessary for the County to have a conclusion so that the County can control its finances and avoid the financial disaster that struck one of Oakland County's largest communities – Pontiac – and is now plaguing the State of Michigan.

There are two events that impact on the Fact Finder's Report and Recommendations. One is dramatic change in the financial climate from the time that the previous contract expired and currently. Second is the September 11, 2009 Opinion and Award issued under Act 312 in *Case No. D05 A-0055*, authored by Donald F. Sugerman, Chairman, covering Oakland County Deputy Sheriffs eligible for Act 312.

The Sugerman Panel hearings were conducted on substantive issues in July, August and October 2008 based upon evidence that essentially preceded the current financial atmosphere in Michigan.

The Sugerman Panel resolved major issues between the parties concerning pensions and health care.

There is no reason for this Fact Finder with two exceptions to recommend pension and health care provisions different than those awarded by the majority of the Sugerman Panel because this Fact Finder is now faced with an even more declining financial atmosphere.

In fact, though this Fact Finder will look to the Sugerman Panel majority awards on a number of issues as guidance, he will not necessarily follow same because the financial situation has substantially changed since the hearings before Chairman Sugerman. In addition, the bargaining patterns in the County with other bargaining units will determine this Fact Finder's recommendation as to some of the issues.

In the end, the employees covered by this Fact Finding and the Employer must recognize "the art of the possible" and bring this long negotiation journey to an end and, hopefully, accept the recommendations herein.

Introduction

The Oakland County Deputy Sheriffs Association had represented a bargaining unit consisting of a unit of Road Deputies, Dispatchers, employees in the Corrections and Court Service Divisions, the Circuit Court Investigators, and Forensic Laboratory employees. This bargaining unit had a succession of Collective Bargaining Agreements with the County covering the unit. The last Collective Bargaining Agreement expired on September 30, 2003. Prior to the expiration of that contract, the parties commenced bargaining.

Two events occurred. After almost three years, after the expiration of the previous Collective Bargaining Agreement, the Oakland County Deputy Sheriffs Association (“Association”) filed a Petition for Arbitration under Act 312 of Public Acts of 1969 on August 29, 2006. The County filed a Unit Clarification Petition with the Michigan Employment Relations Commission seeking to sever the bargaining units as between Corrections Officers and Road Deputies, taking the position that the employees in the Corrections and Court Services Divisions, the Circuit Court Investigators and the Forensic Laboratory employees were not subject to Act 312 arbitration.

The Michigan Employment Relations Commission agreed with the County, holding that the employees in the Corrections and Court Services Divisions, the Forensic Laboratory employees and the Circuit Court Investigators were not subject to arbitration under Act 312. The Michigan Employment Relations Commission clarified the bargaining unit by splitting it into two separate bargaining units – one for employees eligible for Act 312 (Law Enforcement Deputies and Dispatchers) and one for non-Act 312 employees (Corrections and Court Services Deputies, Circuit Court Investigators, and Forensic Laboratory employees).

The Oakland County Deputy Sheriff's Association filed an appeal of MERC's decision and order to the Michigan Court of Appeals. On February 3, 2009, the Court of Appeals affirmed MERC's decision and order. The OCDSA sought leave to appeal from the Michigan Supreme Court and it was denied. In the meantime, the Association petitioned for fact finding for the non-eligible Act 312 bargaining unit. The undersigned, George T. Roumell, Jr., was appointed Fact Finder. The Association and the County did proceed with the Act 312 process on behalf of the Act 312 eligible employees. As already noted, Donald F. Sugerman was appointed the Chairman of the Act 312 Panel which on September 11, 2009 issued its opinion and awards.

The parties met with the Fact Finder several times and conducted pre-trial proceedings to eliminate certain issues by agreement. Subsequently, the parties conducted fact finding hearings before the Fact Finder on Wednesday, July 15, 2009 and on Tuesday, October 20, 2009.

The Issues

Following the July 15, 2009 hearing, the Fact Finder conducted further meetings with the bargaining teams exploring the facts. By the time of the final meeting on October 20, 2009, there remained around 22 issues to be resolved as to which this Fact Finder is to make a recommendation concerning same. These issues included duration, wages, wage retroactivity, pension issues, health care insurance issues, representation issues, holiday issues, compensatory time issues, adoption by reference and investigatory and disciplinary procedures. On some of the issues there were sub-issues that accounted for the count of around 22 issues.

The Criteria

In fact finding, the Fact Finder relies on recognized criteria as a guide in making findings of fact and, ultimately, recommendations. The most recognized list of criteria are those adopted

by the Legislature when enacting Act 312 of Public Acts of 1969. MCL 423.239. Section 9 of the Act sets forth the following criteria:

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

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

Section 9(h) is a catch-all, so to speak, in that there are criteria that have been recognized

by fact finders that should be mentioned at this point. Among those is the bargaining history of the parties, both over past collective bargaining agreements and during current negotiations. Such history gives some indication of what the parties might ultimately settle for in their collective bargaining agreement.

There is the bargaining history, namely, what occurred during bargaining between the parties and between other bargaining units in the County. The bargaining history in this case is tied into the internal comparables plus what did happen in the Act 312 proceedings chaired by Donald F. Sugerman. Those proceedings addressed some major issues that impact my recommendations.

There is also the “art of the possible” which is a criteria that recognizes that collective bargaining involves compromise on the part of the parties. Compromise by its nature is really a recognition of the art of the possible in given negotiations.

A key criteria in this situation is comparisons with other Oakland County bargaining units that are not subject to Act 312 as well as giving consideration to the Sugerman Award. But the importance of considering other County units who are not Act 312 eligible is to recognize the bargaining patterns in Oakland County, particularly in these economic difficult times.

The financial ability is an important criteria. This becomes critical in these negotiations because of the change in the financial climate from the time that the contract expired and presently. The fact that Oakland County has managed its financial affairs with prudence cannot be a reason to ignore the financial climate because an irresponsible recommendation could end up to the disadvantage of the employees, perhaps causing unwanted layoffs.

The Fact Finder has emphasized internal comparables including the Sugerman Act 312

award as well as the County's bargaining with other bargaining units in the County. The reason the Fact Finder has emphasized internal comparables is because the Fact Finder is dealing with the economics of Oakland County; that the internal comparables suggest a pattern that has been followed in Oakland County in these difficult economic times. The pattern sets the tone.

And, of course, to repeat, "change in any of the foregoing circumstances during the pendency of the arbitration proceedings" is particularly relevant to these proceedings because of the fiscal crisis facing the nation and in particular the State of Michigan.

As suggested in the Prologue, there is the art of the possible. There is only so much that can be gained in one negotiations, particularly when the negotiations are occurring in depressionary/recessionary times.

Economics – Financial Ability of the County

To understand the economics, *i.e.*, the financial ability of Oakland County as applied to this round of contract negotiations, one must recognize that if the contract had been able to be negotiated in due time and completed within a reasonable proximity of when the previous contract expired in October 2003, this contract would have been settled long before America, and particularly Southeast Michigan, was faced with the current economic crisis. This is particularly so when one realizes that the crisis in the automobile industry did not surface publicly until the last 15 months with its concomitant impact on Southeast Michigan, including Oakland County.

What the parties now find themselves in is asking a Fact Finder to make recommendations in a financially charged crisis atmosphere.

This fact is not lost on the Fact Finder and should not be lost on the parties. This is December 2009. Two of the big three automobile companies have been in bankruptcy (General

Motors and Chrysler), both of which have facilities in Oakland County. General Motors is the largest employer in Oakland County and continues to announce layoffs. The largest Ford plant in Oakland County has now been permanently closed.

Private home foreclosures have dramatically increased in the County. The state equalization value and taxable value of both commercial and residential property in Oakland County have dropped.

The unemployment rate in Southeast Michigan is about 15%, the highest in the nation. The State of Michigan that provides State aid and grants to the County has been and is facing a budget crisis impacting revenues flowing from the State to the County.

Succinctly put, the financial health of Oakland County has been affected by the financial downturn.

What follows are some examples of the impact on the County's ability to raise revenue.

- In the past, Oakland County had received \$60 million a year from the State with \$30 million in direct State grants and \$30 million in matching funds from the State to obtain federal grants. Because of the State budget crisis, Oakland County cannot plan on continuing to receive this money.
- Approximately 60% of the County's revenue comes from property taxes. In 2007, the County received \$259 million in property tax revenue. In 2009, based upon the drop in property values and mortgage foreclosures, the revenue dropped approximately 4%, or by \$7 million. The projection is that there will be another 13% drop in 2010 and another 12% drop in 2011 and a 5% drop in 2012 – meaning that in 2012 the County will receive \$181 million in revenue from

property tax.

- The County receives about 25% of its revenue for services. The demand for such services is decreasing.
- Although the State temporarily shifted State aid by permitting the counties to tax in three years for four years, this money is running out and there is no assurance that the State with its financial situation will restore State shared revenue.

Faced with a deteriorating financial situation with the drop in revenue, the County has taken the following steps to stabilize its financial picture.

- The County has closed certain facilities, including in the Sheriff's Office, namely, the Trustee Camp, the Southfield Facility, and the Boot Camp. The Frank Grennan Facility is scheduled to begin closing in January 2010. Other departments in addition to the Sheriff's Office have been required to make budget reductions.
- The County has had a hiring freeze.
- The County budget for fiscal year 2010 contains a wage reduction of 2.5% for all employees and has already negotiated said reduction with most units.

The County's fiscal year is October 1 to September 30. In order to balance its budget for fiscal year 2009, the County has had to utilize some reserve funds and take from its fund balance because of revenue shortfall.

If the County's current revenues continue to fall and the County must rely on its fund balance to balance its budget as required by law, the County will be faced with a continuing deteriorating financial situation.

There is one other point. One of the witnesses testifying before the Fact Finder was Deputy County Executive Robert Daddow who explained, along with other witnesses, the County's difficult financial situation. On cross-examination, he was asked by the Association Advocate a question which noted that before Chairman Sugerman Mr. Daddow had given a more positive statement about Oakland County's finances. When asked that, Mr. Daddow pointed out that the financial climate had changed since the Sugerman hearing. This Fact Finder agrees, as pointed out above.

The County's financial situation cannot be ignored. The situation is not lost on this Fact Finder. It may be for some years involved in this contract dispute the financial considerations were not as cogent as they are now because, back in 2003, the economic downturn was not generally predicted. But the economic downturn has happened. It has come to Michigan. The circumstances have changed even from the time that the hearings before Chairman Sugerman were completed in October 2008.

The parties cannot ignore the economic realities.

Bargaining History – Internal Comparables

As this Fact Finder views the bargaining history, this history is against a background of the Act 312 opinion and awards of the Sugerman Panel plus the internal comparables and current negotiated contracts with other bargaining units in the County. The 312 opinion and awards answer some of the basic issues concerning health care and pensions. With two exceptions, and these exceptions are controlled by the internal comparables, considering the financial condition of the County there is no reason to change the pattern set by the Act 312 Sugerman Panel. Thus, this Fact Finder, where applicable, has adopted the Sugerman Panel rationale for the

recommendations that follow. And where the Fact Finder is in disagreement, he has been persuaded by the bargaining pattern in the County as impacted by the County's deteriorating financial situation. The Fact Finder believes that this is not the time to deviate from bargaining patterns in the County or the County's history of bargaining. The whole point of this Report is to get a contract and stabilize the County's finances so that a foundation for future fruitful bargaining for both parties can be established.

1. The Association had proposed a defined benefit plan available to all present unit employees and applicable to new unit employees under MERS. The Sugerman award rejected this proposal and awarded no MERS defined benefit plan. In doing so, the Sugerman Panel relied on the history of the move from defined benefit to defined contribution in Oakland County, concluding that with this system there is no basis to revert to a defined benefit plan. All other bargaining units have a defined contribution plan. Since the Sugerman Panel settled this issue and did so based upon the bargaining history in the County, there is no reason on this record not to follow the same approach as the Sugerman Panel. This Fact Finder's recommendation will be that there be no MERS defined benefit plan.

2. In the Act 312 case, both parties agreed to prohibit all new loans from the defined contribution plan through their matching final offers. This Fact Finder agrees and will so recommend such a prohibition.

3. Increase in Employer contribution to defined contribution plan to 10% for employees hired after May 27, 1995 with no retroactivity. This was an Association issue. Chairman Sugerman awarded this issue. However, there is a history. Other bargaining units have an 8% contribution. The Corrections Officers have in the past had 1% more than the other

non-312 bargaining units. The problem here is that with the economic downturn and its impact on the County's finances, the County just cannot afford to treat the Corrections Unit any different than other non-312 units. For this reason, the Fact Finder will recommend the *status quo* as to the Employer's contribution to the defined contribution plan. This is not the time to make changes.

4. There was a controversy between the parties in the fact finding over the proposition that employees hired after the date of the issuance of the Fact Finder's Report shall only be eligible to participate in a health savings account for retiree health care. This was an issue in the Act 312. The Act 312 Panel did not accept the proposal and made no change in retiree health care for new hires.

The problem, however, is that all other bargaining units have what the County has proposed for new employees, namely, the participation in a health savings account for employees hired after the date of the issuance of the Fact Finder's Report for retiree health care with the County contributing \$1,300 per year.

In this way, the County can predict its cost for retiree health care. Arguments were made that this amount was not sufficient. But if this turns out to be the case, then this could be the subject of future bargaining. It is based upon the fact that the \$1,300 retiree health savings account for retiree health care for new employees is prevalent throughout the County that this Fact Finder will recommend that new employees hired after the date of the issuance of this Fact Finder's Report shall only be eligible to participate in a health savings account for retiree health care with the County contributing \$1,300 toward said savings account per year.

5. As to employee prescription co-pays, the Sugerman Panel adopted a \$5/\$10/\$25

co-pay. This means \$5.00 for a generic drug, \$10.00 for brand name and \$25.00 for non-formulary. The Association before this Fact Finder asked for a 40 prescription per year cap at which time the co-pay would revert back to \$5.00. Chairman Sugerman rejected such a proposal. Such a proposal is not prevalent in other Oakland County bargaining units or in bargaining units in general. For this reason, the recommendation would be the \$5/\$10/\$25 co-pay proposal with no cap.

6. Office Co-Pay. In the Act 312 case, both parties agreed to a \$20 co-pay for office visits as well as employee Master Medical deductibles of \$200/\$400 through their matching final offers. There is no reason not to have the same provisions in the Corrections Unit contract. They are reasonable and consistent with the internal comparables and what this Fact Finder has dubbed the bargaining history.

7 The Employer asked the Act 312 Panel to delete all labor contract language policies and benefit plan provisions under which bargaining unit employees are provided cash incentives for selecting CMM, PPO and POS health care plans. The Association agreed to this proposal in its final offer and the Sugerman Panel adopted the proposal. There is no reason why this proposal should not apply to the Corrections Unit. For this reason, this Fact Finder will recommend such a deletion.

8. The County proposed to eliminate HAP as a health care plan choice for employees hired after the issuance of this Report. Such a proposal was made to the Sugerman Panel. This Fact Finder believes that as long as the County has provided an adequate health care plan, which it has, to its employees, there is no reason not to gradually eliminate one particular plan. For this reason, the Fact Finder will recommend that the HAP plan be eliminated for new hires in the

Corrections Unit.

9. The Sugerman Panel awarded as to employee health care contribution that the contribution be at the 2008 contribution rate. Before the Fact Finder, the County is urging a 2009 contribution rate. The Fact Finder believes that for both current and new employees the 2009 contribution rate should be followed because it was followed with other Oakland County employee groups. The Fact Finder will so recommend.

10. The County's longstanding practice has been to treat all retirees, including Deputy retirees, as part of a single retiree group. The County can alter non-core benefits, co-pays and deductibles of the retiree group. The Association sought to change this in the Act 312. The Sugerman Panel agreed to retain the *status quo*. This Fact Finder would agree. There is no basis to make such a change as being asked by the Association.

11. The Association seeks to pay the Association President additional two days per week for union activities and to bank 32 paid hours per month for the grievance committee. This was the same proposal as proposed to the Sugerman Panel. The Sugerman Panel adopted the County's proposal, namely, the *status quo* – no additional time off with pay, no bank for grievance committee. The Fact Finder finds no reason to deviate from the Sugerman approach, even though the two units have been separated. The President is President of both units. It is difficult to determine whether more time is needed. For this reason, this Fact Finder will recommend no change as to the representation issues.

12. Under the expired contract, Christmas Eve and New Year's Eve were treated as holidays on certain days of the week. The Association seeks to add these as holidays regardless of the day of the week on which they fall. The Sugerman Panel adopted the Association's

position. There is really no reason not to follow the Sugerman Panel as the Corrections Officers, like the Deputies, are in a 24/7 operation and for this reason this Fact Finder will recommend that Christmas Eve and New Year's Eve will be holidays regardless of the day of the week on which they fall.

13. The Association has presented a proposal that there be a compensatory time bank, the same proposal as presented in Act 312. The Sugerman Panel rejected such a proposal and awarded no compensatory time bank. There is no reason not to follow this same approach. This Fact Finder recommends that there be no compensatory time bank.

14. The Association sought in Act 312 to eliminate language in the contract incorporating all Board resolutions in effect on the date of the award, which was the County's offer. This language has been in the contract for many years. It is in all of the County's collective bargaining agreements. This proposal was rejected by the Sugerman Panel. There is no reason to adopt this proposal. Therefore, this Fact Finder recommends that the contract incorporate all Board resolutions in effect on the date of this Fact Finder's Report and Recommendations in accordance with the Act 312 Award.

15. Investigative and disciplinary procedures. The Fact Finder understands that the County and the Association are now in the process of negotiating a disciplinary procedure. The Fact Finder makes no recommendation on this issue and defers to the parties' negotiations.

Wages

To understand the wage issue, one must recognize the County's fiscal condition and its concerns in this economic downturn. The County is balancing its budget which is projected on a three year basis, based on relying on a reducing fund balance against a background of reduced

local tax revenue and reduced State aid. This situation was not as prevalent when the record before Chairman Sugerman closed in October 2008, which was before the full impact of the economic crisis faced in Southeast Michigan was realized.

Now, observe what happened in the Act 312 as to wages for each of the years and the positions of the respective parties, and the ultimate awards:

<u>Issue</u>	Act 312 Position of <u>County</u>	Act 312 Position of <u>Union</u>	<u>Award</u>
Wages (Union Issue)			
a. FY 04 (10-01-03 to 9-30-04)	2%	2%	2%
b. FY 05 (10-01-04 to 9-30-05)	3%	3%	3%
c. FY 06 (10-01-05 to 9-30-06)	2%	3%	3%
d. FY 07 (10-01-06 to 9-30-07)	2%	2%	2%
e. FY 08 (10-01-07 to 9-30-08)	0%	2%	2%
f. FY 09 (10-01-08 to 9-30-09)	1%	2%	2%

The awards meant that for the six fiscal years involved the wage increase for the Deputies was 14%. In some years, namely, Fiscal Years 2004, 2005 and 2007, the last best offers of the parties were the same. Before the Fact Finder, the County was willing to offer the awarded amounts for Fiscal Years 2004, 2005 and 2007. For Fiscal Year 2006, the County was insisting on its original 2% position. For Fiscal Year 2008, the County was insisting on zero percent and for Fiscal Year 2009, 1%.

The reason the County is insisting on zero percent for Fiscal Year 2008 is because the other bargaining units have been making contributions to health care, whereas the Corrections Officers have not and the County is seeking to recoup some of the contributions that should have been made.

This would have meant a 10% package for the six fiscal years.

The view of the Fact Finder is that the County, with the exception of Fiscal Year 2006,

was prepared to offer the Corrections Unit through Fiscal Year 2007 the same package awarded by the Sugerman Panel. The County was still insisting that for Fiscal Year 2006 on a 2% increase. This would mean for the four years the difference in wages would be 1% – 10% versus 9%.

Where the differences widen as between the Act 312 award and the County's offer before this Fact Finder, and before the Sugerman Panel, was in Fiscal Years 2008 and 2009 as the state and the nation began to approach financial difficulties. By Fiscal Year 2009, beginning October 1, 2008, the financial difficulties had begun to arrive.

If this Fact Finder accepts the County's proposal of 2% for Fiscal Year 2006, and ups the zero in Fiscal Year 2008 to 1%, and adopts 2% for Fiscal Year 2009, then the wage difference between the Deputies and the Corrections Unit for the six years will be 2% – 14% versus 12%. Yet, within the County, the non-312 employees were not receiving 14% during the six year period. They all received 11%. Add to this the financial situation and the art of the possible. The best this Fact Finder can recommend is a 12% package for six years, namely, as follows:

FY 04 (10-01-03 to 9-30-04)	2%
FY 05 (10-01-04 to 9-30-05)	3%
FY 06 (10-01-05 to 9-30-06)	2%
FY 07 (10-01-06 to 9-30-07)	2%
FY 08 (10-01-07 to 9-30-08)	1%
FY 09 (10-01-08 to 9-30-09)	2%

But, even then, the County announced that it would not agree at this point to a contract unless there was a seventh year, namely, Fiscal Year 2010 (10-01-09 to 9-30-10). The County has pointed out that the following six bargaining units have ratified a 2.5% wage reduction for Fiscal Year 2010, namely:

Children's Village (Government Employees Labor Council)
Prosecutors Investigators
Jail Health Nurses (Teamsters, Local 214)
Board of Commissioners Committee Coordinators (AFSCME Council 25)
Oakland County Employees Union
Family Court Employees Union (AFSCME Local 2437)

During fact finding, the bargaining team for the Association was aware of the County's position for Fiscal Year 2010 and that the County would not enter into a contract unless Fiscal Year 2010 was included. This caused the bargaining unit to suggest three to five furlough days rather than a wage reduction. The Fact Finder considered this but, considering the pattern that the County has already adopted with six bargaining units, this Fact Finder, as part of the contract, will not only recommend the increases for Fiscal Years 2004, 2005, 2006, 2007, 2008 and 2009, but also a 2.5% reduction for Fiscal Year 2010. The Fact Finder reluctantly does this. But these are difficult times.

It turns out that because of the circumstances the members of the Corrections Unit will actually have more take-home pay than they now have because of the retroactivity of their pay increases, even though there will be a 2.5% reduction for 2010. It is a give and take proposition. And if the members wish to obtain the benefit of the wage increase for the fiscal years prior to 2010, then the art of the possible suggests that the contract should be ratified.

The wages shall be retroactive. But the County takes the position that the retroactivity shall not apply to voluntary quits and discharges. The Association agrees that the retroactivity shall not apply to discharges, but should apply to voluntary quits. Chairman Sugerman agreed with the Association on this point. This Fact Finder does not. This Fact Finder believes that in this economic climate all financial assets should be conserved to protect the active employees and not those who left the County's employment voluntarily. Furthermore, the County,

according to the testimony, had never paid retroactive wages to voluntary quits.

Thus, contrary to Chairman Sugerman, this Fact Finder will recommend that the retroactivity would not apply to discharges and voluntary quits. The 2.5% wage reduction shall be effective October 1, 2009, but its effect will be ameliorated by the 12% wage increase over the preceding six years.

Two additional items related to compensation should be noted. First, part of the County's proposal for the 2010 Fiscal Year, which has been accepted by most of the non-Act 312 eligible unions, is the elimination of the \$300.00 match to the deferred compensation program. The Association is opposed to this but, for the same reasons that I have recommended the total compensation I have outlined, I recommend that this deferred compensation match be eliminated.

The second item refers to the possibility that during the remaining contract year one of the non-Act 312 eligible unions negotiates some alternative to the 2.5% wage reduction (or a portion of it), for example, through the use of unpaid furlough time – a concept the County has rejected in this proceeding. In the event such a negotiation results in an alternative to the 2.5% wage reduction, the Association shall be entitled to return to the bargaining table to address whether that alternative may be applied to the Association and its members.

Finally, there have been in the past equity adjustments. There is one equity adjustment that should apply in this situation. There are two Forensic Laboratory Specialist Leaders at this time. Because these positions are a lead position they should receive an additional \$1,500 per year bonus effective October 1, 2009. Said bonus to be paid in their bi-weekly paychecks. The Fact Finder will so recommend.

Duration

The contract being recommended here will be from October 1, 2003 through September 30, 2010 for, unless the contract covers the fiscal year 2010, the parties will not be able to reach an agreement.

Summary

In summary, as the reader will recognize, in many cases this Fact Finder has adopted as his recommendation the award of the Sugerman Panel. But there have been exceptions. One could suggest that the Fact Finder has been inconsistent. The problem is that the County is bargaining with other bargaining units who are not covered by Act 312 and the growing financial crisis. This has tempered the County's willingness to adopt the Sugerman award in total for the Corrections Unit. Thus, there is the art of the possible. And the art of the possible suggests that some compromises are required in order to obtain an agreement, recognizing that this fact finding is not binding on either party and the parties still must negotiate an Agreement.

Epilogue

There is the art of the possible. This fact finding is not like an Act 312. The recommendations here are not binding on either party. But, hopefully, the parties will accept these recommendations and ratify a contract because six years is too long to be without a contract. There are advantages to the employees to ratify the contract at this point for the reasons already stated. Hopefully, both parties will do so.

RECOMMENDATIONS

The Fact Finder recommends that the contract succeeding the contract expiring

September 30, 2003 for the Corrections Unit shall have the provisions:

1. Wages:

FY 04 (10-01-03 to 9-30-04)	2%
FY 05 (10-01-04 to 9-30-05)	3%
FY 06 (10-01-05 to 9-30-06)	2%
FY 07 (10-01-06 to 9-30-07)	2%
FY 08 (10-01-07 to 9-30-08)	1%
FY 09 (10-01-08 to 9-30-09)	2%
FY 10 (10-01-09 to 9-30-10)	2 ½% reduction

2. Wages shall be retroactive except for voluntary quits and discharges.

3. The Forensic Laboratory Specialist Leaders will be paid a \$1,500 per year bonus to be paid in their bi-weekly paychecks beginning October 1, 2009.

4. There will be no MERS defined benefit plan.

5. All new loans from the defined contribution plan are prohibited.

6. Employer contribution to defined contribution plan shall remain at 9%.

7. The employee prescription co-pay shall be \$5/\$10/\$25 with no prescription per year cap.

8. Employee office visit co-pays shall be \$20.00.

9. Employee Master Medical deductible shall be \$200/\$400.

10. All language in the contract, policies and benefit plans under which bargaining unit employees are provided cash incentives for selecting CMM, PPO and POS health plans are deleted.

11. For new hires after the date of this Fact Finding Report, the HAP plan will be eliminated.

12. The employee health care contribution following this fact finding, but not

retroactively, shall be at 2009 contribution rates.

13. The employee health care contribution for employees hired after the date of this Fact Finding Report shall be at the 2009 contribution rate.

14. Health care contributions shall not be retroactive.

15. All new employees hired after the date of this Fact Finding Report shall only be eligible to participate in a health savings account for retiree health care with the employer contributing \$1,300 per year.

16. Employees are to remain part of a single retiree group. The County can alter non-core benefits, co-pays and deductibles.

17. Paid time off for union activities for the grievance committee and the Union President shall remain the same.

18. Christmas Eve and New Year's Eve shall be added as holidays, regardless of the day of the week on which they fall.

19. There shall be no compensatory time.

20. The provisions in the contract incorporating all Board resolutions in effect on the date of this Fact Finding Report shall continue.

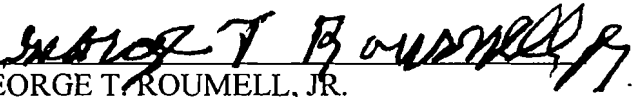
21. The investigative and disciplinary procedures will be negotiated by the parties.

22. The duration of the contract shall run from October 1, 2003 to September 30, 2010.

23. The \$300.00 deferred compensation match shall be eliminated.

24. In the event the County negotiates an alternative to the 2.5% wage reduction in Fiscal Year 2010 or a wage reduction less than 2.5% for Fiscal Year 2010 with a non-Act 312

bargaining unit, the Association shall be entitled to return to the bargaining table to address whether that alternative may be applied to the Association and its members.



GEORGE T. ROUMELL, JR.
Fact Finder

December 2, 2009