

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION**

**WAYNE STATE UNIVERSITY**

**MERC Case No. D13 G-0629**

**-and-**

**POLICE OFFICERS LABOR COUNCIL** /

**FACT FINDER'S REPORT**

The collective bargaining agreement between the parties expired on September 30, 2013. The parties attempted mediation with limited success. The Union filed a petition for Fact Finding on May 16, 2014. The undersigned was appointed Fact Finder by the Michigan Employment Relations Commission on June 12, 2014. A Fact Finding hearing was held at Wayne State University on October 3, 2014. The Union was represented by Thomas Zulch; the Employer was represented by Alvin Rainey. Post-hearing briefs were submitted and the record closed on November 3, 2013.

The issues before the Fact Finder are:

1. Overtime Calculation
2. Special Needs Days Cap
3. Call Back Pay
4. Personal Clothing Allowance
5. Cleaning Allowance
6. Pregnancy Letter of Agreement
7. Wages

**1. Overtime Calculation**

**Employer's Proposal**

The Employer proposes to change Article 12 in the following way (new language in **bold**, ~~strikethrough~~ language to be removed):

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## ARTICLE (12) WORK ASSIGNMENT, SCHEDULING AND OVERTIME

### E. Overtime

All time authorized to be worked in excess of eight (8) regular pay hours a day, or forty (40) regular pay hours a week shall be reported in tenth of an hour (6 min.) units adjusted to the nearest tenth of an hour. The Director, or his/her designee, will be the determining authority on the necessity for all overtime. An Employee within this bargaining unit shall be compensated for any such **worked** overtime at the rate of time and one-half. **Paid sick leave, holidays, vacation, or any other paid leave will not be treated as days worked in computing daily or weekly overtime. However, Article 12, 13 & 41 compensatory time, when utilized, may be counted as time worked when computing weekly overtime.**

**There shall be no pyramiding of overtime: defined as the use of multiple overtime premium multipliers on any single or block of hours. In other words, once an hour is counted as an overtime hour for the purposes of daily overtime, that same hour cannot be counted as an hour worked for the purpose of weekly overtime. Not included in the definition of pyramiding are those cases of shift or salary premiums. These remain subject to the normal overtime multiplier for any overtime hours.**

1. Same.
2. An Employee required to work overtime not continuous with the regular work schedule WITHOUT prior notification shall be paid a minimum of ~~three (3)~~ **four (4)** hours pay at the rate of time and one-half **(time and one-half, provided the Employee has satisfied the 40 hours worked threshold. If not, the straight rate will be paid until 40 hours have been worked).**
3. Overtime not continuous with the regular work schedule but WITH prior notification (i.e., with overtime notification to a Public Safety Officer before the end of the Officer's duty shift, or at least forty-eight (48) hours before time of requested overtime appearance) shall be paid a minimum of ~~three (3)~~ **four (4)** hours pay at the rate of time and one-half **(time and one-half, provided the Employee has satisfied the 40 hours worked threshold. If not, the straight rate will be paid until 40 hours have been worked.**

Court appearance by a regularly assigned "A" Shift Employee immediately following completion of his/her shift shall be compensated at a minimum of three (3) hours: **at a guaranteed rate of time and a half, regardless of how many hours they have worked during the work week.**

### Union's Proposal

The Union proposes the status quo.

### **Fact Finder's Recommendation and Reasoning**

The Fact Finder recognizes that the current calculation of overtime has a long history with this bargaining unit. At the same time, a reduction in compensation for hours not actually worked should be easier to sustain than a reduction in pay for hours on the job. If savings are necessary – and they are – cutbacks in compensation for hours not worked are an obvious place to look. More and more employers are looking to the terms of the FLSA in this regard. The success of this Employer in negotiating FLSA overtime with its other bargaining units is evidence of the growing acceptability of this approach.

I recommend the Employer's proposal.

## **2. Special Needs Days Cap**

### **Employer's Proposal**

The Employer proposes to change Article 27 in the following way:

#### **ARTICLE (27) ILLNESS BANK**

A. An Illness Bank shall be set up and accumulated as follows:

1. Illness days shall accrue at the rate of .85 per pay period provided that an Employee is paid for work during that pay period.
2. The Illness Bank shall accrue to a maximum of 132 days.

B. **Special Needs:** In addition to excused absence for personal illness, the Illness Bank may be used for the special needs listed below. **A total of five (5) days per fiscal year may be used for the special needs listed below #1-6, and charged to the illness bank:**

1. Death of a member of the immediate family\* (excluding those members of the family covered under Article (28), Bereavement Leave) up to five (5) consecutive working days **per incident**.
2. Quarantine required as a result of exposure to a communicable disease.
3. Verified Emergency care of parent, spouse or child under the age of 18 (up to two [2] consecutive working days **per incident**). The need or emergency care may be

subject to verification and may be limited to urgent circumstances that are beyond the employee's control to plan for in advance that relate to the serious health condition(as defined in FMLA regulations) of the covered relation. Situations may arise where the officer responded to a perceived covered relation emergency, which turned out not to meet the serious medical conditions definition of FMLA. It is not the Employer's intent to dock or discipline officers for such instances, where they remain infrequent and are otherwise verified.

4. Attendance at the funeral of a person not in the immediate family (up to one (1) working day per contract year).
5. An emergency medical or dental appointment.
6. **Any Purpose Days:** Employees who have completed nine (9) months of service may use up to two (2) ~~additional~~ days during the fiscal year for any personal reason other than those listed above (e.g. observance of religious holiday, a scheduled medical or dental appointment, etc.). **Such days will be charged to the Employee's Illness Bank. Such days are not to be taken after a request for time off (for the same day) has been denied. Such days are to be taken in full-day increments.**

\* Immediate Family shall be defined as: husband, wife, father, mother, brother, sister, son, daughter, grandmother, grandfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, and son-in-law. Aunts, uncles, nieces, nephews, cousins and grandchildren shall be considered members of the immediate family only if living in the Employee's immediate household. Where a situation exists which is not covered by these relationships, determinations will be made by the **Labor Relations Department in consultation with the Personnel Director designated Human Resources official.**

### **Union's Proposal**

The Union proposes the status quo.

### **Fact Finder's Recommendation and Reasoning**

Here again, the Employer has been able to show that internal comparables suggest this cap is appropriate. Understandably, the bargaining unit is opposed. The principle I have attempted to use in evaluating proposals in this proceeding is that employees are entitled to fair compensation for their work, and the Employer is entitled to work in exchange for the compensation it provides. Given the variety of other forms of leave available to bargaining unit members, this reduction in Special Needs days is appropriate.

I recommend the Employer's proposal.

### **3. Call Back Pay**

#### **Union's Proposal**

The Union proposes changing Article 12. E. 3 in the following way:

#### **Article 12.E.3-Work Assignment, Scheduling and Overtime...Section E-Overtime...**

3. Overtime not continuous with the regular work schedule but WITH prior notification (i.e., with overtime notification to a Public Safety Officer before the end of the Officer's duty shift, or at least forty-eight (48) hours before time of requested overtime appearance) shall be paid a minimum of ~~three (3)~~ **four (4)** hours pay at the rate of time and one-half.

#### **Employer's Proposal**

The Employer opposes this change unless it is included as part of the proposal it made in item 1 above.

#### **Fact Finder's Recommendation and Reasoning**

Having recommended the Employer's proposal in Item 1 above, I have addressed this question. For additional clarification, I add this note from the Employer's brief:

Three hour minimum guarantee raised to 4 hr. minimum @ at 1 ½ rate if Employee has worked 40 hours for the week. If 40 hours have not been worked, the Employee shall be paid 4 hours of pay minimum at the straight rate (until 40 hours have been worked in the work week). To clarify, the Employer is also proposing the following relaxation: "A" Shift Employees' minimum pay rate for Court (immediately following the shift) would now be guaranteed at the 1 ½ rate, no matter how many hours they have worked during the subject work week (no 40 hour requirement).

I recommend the Employer's proposal.

### **4. Personal Clothing Allowance**

#### **Union's Proposal**

Article 17 Personal Clothing Allowance currently reads:

Members of this Bargaining Unit assigned to plainclothes duty for a period of three (3) months or more shall be reimbursed for personal clothing allowance at the rate of \$26.00 per month of plain clothes assignment. To be eligible for a clothing allowance, the Employee must have worked ten (10) days within the month on a plain clothes assignment. Payment shall be made at six (6) month intervals or at the end of the assignment, whichever comes first.

Members assigned to plain clothes duty not necessitating suits, such as CAT type assignment, are not eligible for clothing allowance.

The Union proposes eliminating the 10 day monthly work requirement.

### **Employer's Proposal**

The Employer proposes the following changes:

Members of this Bargaining Unit assigned to plain clothes duty for a period of three (3) months or more shall be reimbursed for personal clothing allowance at the rate of ~~\$26.00~~ **\$36.00** per month of plain clothes assignment. To be eligible for a clothing allowance, the Employee must have worked ten (10) days within the month on a plain clothes assignment. **If during a given month an Employee, who is absented in connection with an approved Workers' Compensation case (in the line of duty), may count up to five (5) of such Workers' Compensation-covered days of absence towards satisfying the ten (10) day minimum requirement. There is no personal clothing allowance paid for any month where an Employee does not meet these minimum requirements.** Payment shall be made at six (6) month intervals or at the end of the assignment, whichever comes first.

Members assigned to plain clothes duty not necessitating suits, such as CAT type assignment, are not eligible for clothing allowance.

### **Fact Finder's Recommendation and Reasoning**

I find the 10-day work requirement to be reasonable, and I find the increase from \$26 to \$36 per month and the carve out for Worker's Compensation to be reasonable as well.

I recommend the Employer's proposal.

## 5. Cleaning Allowance

### **Employer's Proposal**

The Employer proposes the following changes to Article 18 – Cleaning Allowance:

#### ARTICLE (18) CLEANING ALLOWANCE

Employees of the Bargaining Unit shall receive a cleaning allowance as follows:

Effective with the signing of the 2006-2009 Agreement:

Uniform Personnel	<del>\$50.00</del> <b>\$60.00</b> per month
All Others	<del>\$33.00</del> <b>\$43.00</b> per month

To be eligible for a cleaning allowance, the Employee must have worked ten (10) days within the month and the amount shall be based upon the assignment on the last day of the month. **If during a given month an Employee, who is absented in connection with an approved Workers' Compensation case (in the line of duty), may count up to five (5) of such Workers' Compensation-covered days of absence towards satisfying the ten (10) day minimum requirement. There is no uniform cleaning allowance paid for any month where an Employee does not meet these minimum requirements.** A uniform cleaning allowance shall not be paid in any month in which personal clothing allowance is paid.

Payment shall be made semi-annually.

Members assigned to the Recruit Training Academy and required to wear khaki cotton clothing shall not be considered as uniform personnel for purposes of the cleaning allowance contained in this Article.

### **Union's Proposal**

The Union proposes eliminating the 10-day work requirement and giving all officers regardless of assignment a stipend of \$85 per month.

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### **Fact Finder's Recommendation and Reasoning**

I find the Employer's proposal reasonable under the circumstances, and I recommend it.

## 6. Pregnancy Letter of Agreement

## **Employer's Proposal**

The Employer proposes to modify the present Letter of Agreement as follows:

**Mr. Duane Smith, Field Representative  
Police Officers Labor Council  
667 E. Big Beaver - Suite #205  
Troy, MI 48083-1413**

### **Re: Light Duty for Pregnant Officers**

**Dear Mr. Smith:**

**In the interest of maintaining the safety of pregnant Officers and their unborn children, the Employer shall afford light duty assignments for pregnant Officers, whenever possible.**

The decision to afford light duty for pregnant Officers shall be at the Department's discretion, but if provided, the duration and scheduling of light duty shall ~~ordinarily~~ be for a **maximum** period ~~not to exceed~~ of ninety (90) days, ~~nor~~ **and** ordinarily **will not** be for more than one Officer at a time. The affording of light duty shall be on a discretionary basis, during the life of the Agreement only, and shall not be precedent setting as to other perceived needs for light duty work.

The decision to end a light duty assignment for pregnant Officers prior to ninety (90) days shall not be grievable, given the discretionary nature of the decision to offer and schedule it.

Any light duty police work provided for pregnant Officers shall be at the Officer's current wage rate. Furthermore, no light duty schedule shall be for less than a full shift, and a weekly schedule shall be developed by the beginning of each work week for that Officer.

The first pregnant Officer to request light duty shall have priority for such work regardless of seniority of Officers who subsequently become pregnant and request such work.

## **Union's Proposal**

The Union proposes to modify the LOA to accommodate the situation in which more than one officer is pregnant.

## **Fact Finder's Recommendation and Reasoning**



I fail to see any justification for modifying the LOA at all. There is no evidence that the present arrangement is inadequate. It seems to me both parties are requesting a solution for which there is no problem.

I recommend the status quo.

## 7. Wages

### **Union's Proposal**

Quoting from the Union's brief:

The Union proposes a 2% increase each year of the five year collective bargaining agreement with no retroactivity. Due to the lengthy negotiations there would be a 4% increase the day of the award and 2% each October 1, 2015, 2016, and 2017.

### **Employer's Proposal**

Quoting from the Employer's brief:

2013-2014\* -- Pay adjustment waived, due to: (1) existing retro-restrictive law, and (2) non-agreement during the run of the 2013-2014 contract year.

2014-2015\* - 1% ATB increase to the base salary of bargaining unit members; steps funded. Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of September 30, 2014. Adjustment is effective the day after ratification of the new contract.

2015-2016\*-- 1% ATB increase to the base salary of bargaining unit members; steps funded. Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of September 30, 2015.

2016-2017-- 1.5% ATB increase to the base salary of bargaining unit members; steps funded. Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of September 30, 2016.

2017-2018-- 1.5% ATB increase to the base salary of bargaining unit members; steps funded. Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of September 30, 2017.

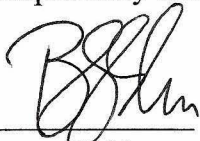
**Fact Finder's Recommendation and Reasoning**

In my view, the Union misreads the statutory "no retroactivity" language. No retroactivity means employers may not look back and award wage increases for time that has already passed.

Also, in my view, if the Employer has a problem with tardiness and absenteeism, it should apply the remedy already built into the CBA, namely the disciplinary system. There is no need to muddle the wage schedule with issues having to do with tardiness and absenteeism. No good can come of that.

My recommendation is for a 2% annual wage increase going forward.

Respectfully submitted,



Barry Goldman  
December 2, 2014