

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

**ACT 312 ARBITRATION**

In the Matter of Arbitration between:

MERC FILE NO: L14 J-1057

Marquette County/Marquette County Sheriff's Department,

Employer,

and

Police Officers Association of Michigan,

Association.

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**Chairperson: Charles Ammeson  
Association Delegate: Emil Kezerle  
County Delegate: James Kent**

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS  
DETROIT OFFICE

**ARBITRATION PANEL FINAL OPINION AND AWARD**

**Date Decision Rendered: February \_\_, 2016**

**APPEARANCES**

**FOR THE COUNTY:**

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**FOR THE ASSOCIATION:**

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**ADDITIONAL APPEARANCES**

**FOR THE COUNTY:**

James Kent  
Scott Erbsch  
Susan Vercoe

**FOR THE ASSOCIATION:**

Emil Kezerle

**REPORTED BY**

Stacey Masters, Regency Court Reporting, 3313 Union Lake Road, Commerce Township, MI 48382.

**EXHIBITS**

Union Exhibit 1 (U1)	Collective Bargaining Agreement between Employer and Union, July 18, 2013-December 31, 2015	Admitted
Union Exhibit 2a (U2a)	2/15 Collective Bargaining Agreement, Barry County	Admitted
Union Exhibit 2b (U2b)	1/15 Collective Bargaining Agreement, Grand Traverse County	Admitted
Union Exhibit 2c (U2c)	1/15 Collective Bargaining Agreement, Ionia County	Admitted
Union Exhibit 2d (U2d)	1/15 Collective Bargaining Agreement, Isabella County	Admitted
Union Exhibit 2e (U2e)	1/13 Collective Bargaining Agreement, Montcalm County	Admitted
Union Exhibit 2f (U2f)	1/12 Collective Bargaining Agreement, Shiawasee County	Admitted
Union Exhibit 2g (U2g)	1/15 Collective Bargaining Agreement, Tuscola County	Admitted
Union Exhibit 2h (U2h)	1/14 Collective Bargaining Agreement, Van Buren County	Admitted
Union Exhibit 2i (U2i)	1/14 Collective Bargaining Agreement, Wexford County	Admitted
Union Exhibit 3 (U3)	Michigan County Map	Admitted
Union Exhibit 4 (U4)	Comparable County Wage Comparison Summary	
Management Exhibit 1 (M1)	September 17, 2015 FY 2016 County Budget Memo	Admitted
Management Exhibit 2 (M2)	October 16, 2015 MERS Experience Study Memo	Admitted
Management Exhibit 3 (M3)	December 8, 2015 2016 Health Insurance Recommendation	Admitted
Management Exhibit 4 (M4)	October 25, 2015 Duluth News Tribune Article	Admitted
Management Exhibit 5 (M5)	Comparable County Wage and Benefit Survey	Admitted
Management Exhibit 6 (M6)	Marquette County Internal Comparable Wage Increase and Health Premium Contribution Comparison	Admitted
Management Exhibit 7 (M7)	September 4, 2013 Marquette County Personnel Policies and Procedures Manual	Admitted
Management Exhibit 8 (M8)	O. William Rye & Co. Job Evaluation Plan	Admitted
Management Exhibit 9 (M9)	Marquette County Health and Pension Summary	Admitted
Management Exhibit 10 (M10)	Marquette County Road Patrol Roster	Admitted

Exhibits were admitted without objection as set forth above.

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## **BACKGROUND**

The parties are signatories to a Collective Bargaining Agreement ("CBA") effective July 18, 2013 through December 31, 2016, Union Exhibit 1. Initial wages are set forth in Appendix A of the CBA, and Article 47 of the CBA provides for a reopening of health insurance and wage rates each year after the first year, and in the event the County increases the employee premium contribution above six percent (6%) of the premium. The Petition in this matter was filed August 21, 2015. The Association identifies open issues as 2015 Wage Reopener; 2016 Wage Reopener; and 2016 Health Insurance Reopener. The Chairperson was appointed September 11, 2015. The County wrote the Department of Licensing and Regulatory Affairs, Bureau of Employment Relations, on September 1, 2015, identifying its position that the 2016 issues should not be subjected to Act 312 Arbitration. The parties held a pre-hearing phone conference on September 25, 2015. The County renewed its objection to the arbitration of the identified 2016 Wage and Health Insurance Reopener issues. The Chairperson determined to set a second pre-hearing phone conference for October 13, 2015, inviting and allowing the parties to submit authority regarding the objection. After issuing an Interim Opinion and entertaining a subsequent Motion for Reconsideration, the panel determined that that the 2016 Reopener Issues are not within the jurisdiction of the appointed panel, for the reason that they were not effectively mediated, a jurisdictional requirement of Act 312 arbitration. Meanwhile, the Chairperson remanded the dispute for further collective bargaining which occurred, but to no avail.

The Chairperson issued Pre-Hearing Conference Reports after conferencing with the parties, setting forth a schedule for exchange of witnesses, exhibits and last best offers, and noticing hearing dates for January 11 and 12, 2016. The exchanges occurred in a cooperative manner and last best offers were received by January 6, 2016. Prior to the hearing, the parties

stipulated to comparable counties as follows: Wexford, Tuscola, Barry, Montcalm, Ionia, Isabella, Shiawassee, Van Buren and Grand Traverse Counties, and to conduct the hearing on January 12, 2016 only.

As such, the hearing was properly re-noticed with a set time allotment for proofs, with the Union proceeding first. The parties further stipulated that the 2015 Health Care issue had been settled at the 13% employee health care contribution rate, and that last best offers, as stated, were intended to be retroactive to January 1, 2015, with the understanding that the employee health care contribution rate would be 13% as well. At the conclusion of the hearing, neither party ordered that the record be transcribed.

#### **ISSUE**

2015 Wages – Per Wage Reopener Provision of Article 47 and Appendix A of the Collective Bargaining Agreement (Union Exhibit 1).

#### **LAST BEST OFFERS**

The Union, as Petitioner, submitted a last best offer of a 4% wage increase for all steps included in the CBA, retroactive to January 1, 2015 for all hours compensated. The Employer submitted a last best offer of a 3% wage increase effective January 1, 2015.

#### **TESTIMONIAL EVIDENCE**

The Union commenced its presentation calling Emil Kezerle (Kezerle), who confirmed his capacity as Business Agent for the Union, having participated in contract negotiations between the Employer and the Union for 14 years. Kezerle explained that historically, road patrol and correction officers for the Employer were a combined unit, but that the unit split along corrections and road patrol lines in 2011. Kezerle testified that prior to the split, corrections and

road patrol positions were paid the same. Kezerle went on to observe his familiarity with the comparable counties, asserting that corrections and road patrol in the comparables are not paid the same, offering that the historical combination of corrections and road patrol has suppressed road patrol wages in comparison to the comparable counties.

Reviewing Union Exhibit 4, Kezerle observed that the Employer and the Union have historically utilized these comparables, and that Union road patrol officers fall more than 10% below the average of all 10 counties, and below each and every comparable county, offering that the subject unit has 19 members.

Kezerle pointed out that the Union has made concessions as to pension plan costs, switching to a defined contribution plan for new members, leaving only 6 members under the former defined benefit plan.

Upon cross-examination, Kezerle conceded that Unit 7 members may remain under the defined benefit plan. Kezerle acknowledged his awareness of a Michigan Municipal League study that indicated that total compensation for the unit compared favorably, pointing out that he also understands a new study was conducted as of the summer of 2015. Kezerle also acknowledged that the economic condition of the Employer has declined over the past year, and conceded that he was not personally involved in the comparable collective bargaining negotiations. Kezerle agreed that it is a difficult undertaking to compare fringe benefits precisely as to the comparable counties, and offered that he did not undertake to do so because the only issue was the wage reopener.

Concluding his testimony, Kezerle allowed that, during the 2015 reopener negotiations, options were explored to increase wages offset by benefit decreases, as well as adding a step increase, after which the Union rested its presentation.

The Employer proceeded by calling Susan Vercoe (Vercoe), Finance Manager for the Employer, responsible for overseeing budget and payroll. Vercoe offered that she is mainly involved in collective bargaining negotiations from a budget perspective only. Vercoe testified that a 3% wage increase was offered a year ago, and that budget matters have only deteriorated since. Reviewing Management Exhibit 1 as the budget recommendation for fiscal year 2016, Vercoe pointed out that the main areas of deterioration are decreases in property taxable value, tourism tax and the loss of other funding for a judicial position, significant enough to cause the closure of the long-standing youth home. Vercoe explained the impact and potential future impact of “dark store” property valuation arguments by major retailers, which essentially would effectuate large reductions in taxable value if the retailer properties are assessed in comparison with stores that are empty (have gone dark), and not assessed based on value by which the retailers build or improve the property.

Vercoe also reviewed the taxable value stresses regarding the Eagle Mine, and the fact that the expense of the youth home could not be justified, having to be closed as not sustainable, eliminating 26 positions that served a limited youth population. Reviewing Management Exhibits 3 and 2 (M3 and M2), Vercoe shared that the Employer’s health insurance carrier ceased underwriting such coverage, which required the Employer to move to a new carrier with an estimated financial impact of \$400,000.00 for 2016, explaining that the shortfall is being met through a one-time transfer from an existing health insurance reserve fund; and that pension contributions are actuarially expected to increase significantly for an extended period, concluding her testimony that increases for fringe benefits in place, county-wide, are fully expected to be a significant budgetary challenge for the Employer for years to come and will require concessions county-wide.

Upon cross-examination, Vercoe acknowledged that the youth home funding issue and the county subsidization of same has been recognized for years, concluding her testimony that the county has an operating budget for 2016 at almost 26 million dollars, largely made up of mandates or otherwise obligated expenditures.

The Employer continued with James Kent (Kent), Human Resources and Risk Manager for the Employer. Kent reviewed Management Exhibit 5 (M5), acknowledging that the Employer does pay lower hourly wages than the comparable counties, offering however that it is difficult to conclude (given overall compensation) that the Employer does not compensate comparably as a total compensation package. In this regard, Kent points at that there are only 2 other comparable counties in which comparable employees contribute less to health insurance; that retiree health insurance with the Employer is better than other counties; and that there were complaints arising from the Michigan Municipal League study that some employees were more highly compensated than in other comparable counties.

Referencing Management Exhibits 7-10 (M7-10), Kent generally explained that the Employer makes extensive efforts to evaluate various Employer positions so that overall compensation and benefits fairly compensate employees internally in regard to the overall difficulty and demands of the position.

Upon cross-examination, Kent acknowledged that the unit has been changing health care and pension benefits in an effort to reduce costs.

The Employer concluded its case calling Scott Erbisch (Erbisch), Marquette County Administrator. After review of his extensive public safety and municipal management experience, Erbisch detailed the “dark store” controversy and its potential impact on the Employer, given the number of large retailers in constituent municipalities, also expressing

concern that even though “dark store” legislation is being proposed and provides some promise, it is anything but certain. Erbisich generally revisited and reviewed the legacy costs confronting the Employer (including the efforts to address them), offering that changes are being made, but that such costs are not under control. Erbisich concluded his testimony with a reminder regarding the uncertainty of the mining industry and its contribution to the Employer’s tax base, observing that health insurance costs and tax revenues are the most challenging and uncertain issues confronting the Employer. Erbisich concluded his testimony, even though acknowledging the Employer’s hourly wage rates appear to be lower than comparable counties, by sharing his opinion that the overall compensation package is not.

Upon examination by the advocates, at the request of the Chairperson, Erbisich shared that the Employer has no more ability to leverage millage proposals, commenting that past road patrol millages have failed, and acknowledging that road patrol services are not mandated.

### **UNION POSITION**

The Union posits that there can be no dispute that, based on comparables, a wage increase that begins to make up for the fact that the Employer pays a lower wage than comparable counties is reasonably necessary to maintain competitive consideration. Regarding the Employer’s assertion that other afforded fringe benefits offset the lower wage differential, the Union asserts that there is no evidence upon which to base such a conclusion, no party making such a detailed evaluation, and the parties essentially agreeing that such an evaluation is too difficult to undertake.

The Union suggests it is important to note that the source of the comparable deficiency arises from the fact that the Union and Employer historically combined corrections and road



patrol pay, unfairly and incomparably suppressing road patrol pay, albeit perhaps by oversight, but suppressed nonetheless.

Acknowledging that the Employer may well be confronted with funding challenges, the Union posits that the Employer's challenges are not dissimilar to those confronting municipalities generally; and that there are other methods to address those challenges other than paying lower wages, including reduction of services and modification of benefits. Given those alternatives, some which have been and are being undertaken, along with the miniscule impact of a 1% wage differential for a limited number of employees being comparably underpaid, the evidence far from mandates a conclusion that the Employer is unable to pay the 1% differential wage increase.

Finally, the Union posits that the concession to increase health insurance premiums by 10 percentage basis points significantly enhances the Employer's ability to pay.

### **EMPLOYER POSITION**

The Employer commences with the observation that Public Act 116, effective July 20, 2011, added a significant provision which requires the panel to give financial ability to pay the most significance in resolving Act 312 matters. As such, the Employer posits not only that the county offer of 3% in relation to other employees and overall economic conditions is internally comparable and fair, but if one were to consider total package compensation, it is externally comparable as well. Regardless, however, the Employer posits that economic expectations were grim as the parties approached 2015, and with the benefit of hindsight, matters in fact deteriorated as expected, with a few additional negative surprises. As such, the Employer posits that the Employer does not have the financial ability to award a 4% wage increase instead of a 3% wage increase, considering all sub-factors of MCL 423.239(1) (a), including the interest and

welfare of the public, all liabilities of the Employer and the financial impact of the award itself. As such, the Employer posits that even if it did have the minimum ability to pay, a 4% increase is not justified in terms of competitive considerations, economic/budgetary prudence and the welfare of the public.

## **DISCUSSION**

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.

This Arbitrator is fully mindful that since the above observation by the Court, the Legislature has clarified that the panel shall give the financial ability of the Employer the most significance. See MCL 423.239(2). As such, the Chairperson will save the first and most significant factor for last.

Examining the other factors in a preliminary fashion, neither party suggested (as to the second 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 interest 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. Neither party at the hearing suggested that the road patrol was either under or over-staffed. With this in mind, it seems 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 reasonably continue same within the parameters of economic challenges presented. 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's interest and welfare.

Neither party presented evidence regarding the impact of Cost of Living, and the fact that the last best offers range from 3% to 4% leads the Chairperson to observe that the concessions regarding health care premium contributions cause both proposals to fall in or near the range of living data for 2013 and 2014, the period since the CBA was negotiated. Given either last best offer of 3% or 4%, combined with the premium expense reflected in the CBA (U1) and M9, and the associated health care premium contribution increase, it appears from the evidence that either last best offer reasonably comports with Cost of Living expectations

Regarding overall compensation, the record was essentially limited to conclusory opposing lay opinions that overall fringe compensation made up for the wage differential on the one hand, and that overall fringe compensation was comparable. The Chairperson has perused the comparable Collective Bargaining Agreements (U2a-i) and Management Exhibit 5, and comes to a similar conclusion, based on the evidence presented, that total compensation is difficult to compare, particularly given 2 tier benefits. At best, the Chairperson concludes that the fringe benefits and continuity and stability of employment received by unit members are comparable among the external comparables, as well as internal comparables, even as evidenced by Management Exhibit 5.

Thus, the four factors upon which the parties focused were ability to pay, internal comparables, external comparables and changes during the pendency of proceedings. The

Chairperson will turn to those factors in more detail, as did the parties, it being this Chairperson's experience that the panel need not give all factors equal weight, and is indeed to place greater weight on financial ability. Thus, other than that latter directive, it is for the panel, with the assistance of the parties, to decide their relative importance.

The Employer focused much of its presentation on the statutory factor concerning changes in circumstance during the proceedings, primarily the success of the "dark store" valuation theory before the Michigan Tax Tribunal. If the theory remains viable, it will present economic challenges to municipalities statewide. In fact, the theory gained a certain foothold in neighboring states, at least one of which appears to have undertaken legislation to counter the effect. There is pending legislation in Michigan as well, being Senate Bill 0524 (2015) and House Bill 4909 (2015). Other evidence of change in circumstance included closing of the youth home, which should positively impact the Employer's ability to provide other services. On the other hand, the withdrawal and replacement of health insurance carriers underscores the continuing and increasing concerns regarding health care costs.

All in all, even though continuing and future economic development remain uncertain, despite the fact that the Union observes that these economic challenges have been existent from the outset and are not truly a change in circumstance, and despite the fact that this panel cannot conclude with reasonable certainty that the "dark store" concern will fully play out, overall this factor does weigh in favor of the Employer's last best offer.

The evidence is conflicting regarding comparables. Regarding internal comparables, the evidence does seem to demonstrate that the Employer has significantly focused its efforts on maintaining relative internal comparability by effectuating identical wage and health insurance contribution increases among all its employees as evidenced by Management Exhibit 6. The

Chairperson appreciates the simplicity and benefit of uniform treatment, and its arguable equity. If internal comparability were the most significant factor mandated to be considered, it might be controlling. However, it is clear that external comparables are to be considered as well, and the evidence in that regard is most compelling that unit members are paid a lesser hourly rate than comparable counties.

The undisputed evidence regarding external comparable wage rates (Union Exhibit 4), albeit limited to wages, demonstrates that the average annualized hourly wage rate of a unit road patrol officer, along with the 9 other comparable counties (as of January 1, 2015) is approximately \$50,288.00 per officer. The annualized wage rate for a unit officer is almost 13% below comparable counties, and even per the Employer's analysis, 8.8% to 10.5% below comparable counties, depending on step levels. See Management Exhibit 5. As such, there is simply no doubt that unit wage rates fall significantly below comparable counties, and this factor weighs greatly in favor of the Union's last best offer, not only in light of the statutory factors, but the Employer's announced goal to maintain competitive total compensation for its employees, subject to the county's financial ability (Management Exhibit 7 at page 10).

Finally and most significantly, the panel must turn to and evaluate the Employer's assertion and statutory factor relating to the Employer's financial ability to pay, and all subparts of such factor. See MCL 423.239(1) (a) (i-iv). The panel notes that the Employer presented substantial evidence regarding continuing and developing financial challenges during the pendency of these proceedings, which have already been addressed.

Turning to the economic circumstances of the Employer, the Employer focuses its ability to pay assertions largely upon decreased funding and future funding uncertainty caused by decreasing or potentially challenged property valuations and business closures, and anticipated

and unfunded health cost increases for active employees, pension costs, and retiree health insurance costs. The evidence is primarily documented and summarized in Management Exhibit 1, which reflects a budget recommendation for 2016 of \$25,733,525.00, and also suggests a 2015 budget of \$25,353,226.60. No evidence was presented regarding budgetary trends during the life of the CBA, or before. As such, there was no evidence before the panel of budgetary declines, and limited evidence of revenue declines from 2015 to 2016 in the amount of \$79,000.00 (See Management Exhibit 1 at page 3). Apparently local property taxes increased to \$12,400,000.00, an increase of just under \$250,000.00. The budget also reflects prior excess reserves.

To the Employer's credit, Management Exhibit 1 identifies several cost saving techniques on the expense side ranging from closure of the youth home in light of declining placements; increased employee contributions to health insurance premiums across the board; increased use of defined contribution plans; and decreased part-time employee expenses. The budget also identifies several budgetary expense increases without increase in fees, including increased personnel costs for Human Services, Veterans Affairs, MSU Extension and Aging Services.

Turning to the economics of the Employer's proposal, the Panel roughly estimates the 3% proposal as an increase of \$25,119.33 ( $44,069 \text{ annualized wage} \times 19 \text{ officers} \times .03 \text{ percent} = 25,119.33$ ), and the Union's 4% proposal as an increase of \$33,492.44 ( $44,069 \text{ annualized wage} \times 19 \text{ officers} \times .04 \text{ percent} = 33,492.44$ ). Thus, comparing the two, the financial ability to pay issue can be posited as whether the employer has the financial ability to pay the difference of \$8,373.11, taking into account the sub-factors of financial impact on the community; interest and welfare of the public; liabilities on and off the balance sheet; and lawful limitations.

In some cases it can be argued that even a nominal increase is not within the financial ability of the government because of the psychological or morale impact that any increase would have during a financial crisis, it being contrary to the financial interest and welfare of the public to allow any increase.

In the present situation, applying such factors, there are several observations to be made:

1. \$8,373.11 is slightly more than .03 percent or 3/1000s of the total budget.
2. The county proposes that it has the financial ability to pay .1 percent of the total budget, or 1/100 of the budget.
3. Payment of the Union Proposal would be perhaps the sole departure from all other county employees, and presumably would have a negative morale impact.
4. Overall, the county budget from 2015 to 2016 (during the pendency of these proceedings) increased by 1.5%, representing an increase of approximately \$380,000.00.
5. Overall, local property taxes increased from 2015 to 2016 budget purposes by almost \$250,000.00.
6. Unit members are paid a lower wage rate than comparable counties by approximately 10%.

As stated 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 present parties are, at best, complex and uncertain. The amount at issue between the last best offers is less than 3/1000s of the budget. Given the

evidence, and weighing financial ability as the most significant factor, the best justification that the Chairperson could envision to leave the external comparable discrepancy at 10% would be the impact and difficulty that a 4% increase would have on the morale and relationships with those other employees who received a 3% increase. However, even giving more significant weight to that factor, it is this Chairperson's determination that such concern and impact does not outweigh the statutory and Employer commitment to maintain competitive total compensation to comparable counties (See Management Exhibit 7).

Instead, this Chairperson observes that the interests and welfare of the public (MCL 423.239(1) (a) (ii)) will be best served by addressing the comparability deficiency as requested by the Union. Moreover, given the fact that the Employer is offering an across the board wage increase of 3%, this Chairperson does not conclude that the financial impact of this award will be a significant detriment to the community as a whole.

Given the economic realities facing the present parties, it is not disputed that the Employer has financial challenges ahead. Those challenges are challenges that face innumerable and perhaps the vast majority of municipalities. However, the financial difficulties demonstrated by the evidence do not demonstrate a truly inimical financial crisis, the Employer neither demanding wage freezes or reductions, imposing layoffs or implementing complete hiring freezes or the like.

Granted such a situation may someday arise, and may arise more generally than to just this Employer, such a situation may well need to be addressed by legislative or other structural changes, given the true source of the looming unfunded liabilities. It is proper and fit that the Employer, employees and public be aware of plan for such potential. However, in this Chairperson's opinion, the financial ability of the Employer at this stage is not such that the




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enforcement responsibilities should be properly and comparably funded as committed, in the best interest and welfare of the public.

Finally, MCL 423.239 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.


Dated: February 7, 2016

  
\_\_\_\_\_  
Charles Ammeson  
Chairperson

Dated: February 8, 2016  
Employer Delegate, dissenting

  
\_\_\_\_\_  
James Kent

Dated: February 4<sup>th</sup>, 2016  
Union Delegate, assenting

  
\_\_\_\_\_  
Emil Kezzerle