MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:
POLICE OFFICERS ASSOCIATION OF MICHIGAN

RESPONDING PARTY:
ST. CLAIR COUNTY

MERC CASE NO.: D17 L-1113

FACT FINDER'S REPORT

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939, as amended)
[MCL 423.1 et seq.], and
Public Employment Relations Act (P.A. 336 of 1947, as amended)
MCL 423.201, et seq.]

Fact Finder
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PETTION FILED:	February 27, 2018
FACT FINDER APPOINTED:	March 12, 2028
SCHEDULING CONFERENCE HELD:	March 29, 2018
HEARING HELD:	June 28, 2018
POST-HEARING BRIEFS RECEIVED:	August 1, 2018
REPORT ISSUED:	September 30, 2018

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WITNESSES

A. Tina Bricker, Presently the Assistant Director of Central Dispatch; Formerly the Local Union President and formerly a member of the Union bargaining team during some portion of these contract negotiations.

B. Katie Baska, Currently the Local Union President.

STATUTORY AUTHORITY and CRITERIA

The Michigan Labor Mediation Act (P.A. 176 of 1939, as amended) [MCL 423.1, *et seq*], and the Public Employment Relations Act (P.A. 336 of 1947, as amended) [MCL 423,201, *et seq*] establish the legal basis and the applicable parameters in which this fact-finding case was required to be conducted. The said P.A. 176 also provides the MERC with authority to establish procedural rules for the conduct of fact-finding cases. The MERC has published several pages of rules and the fact finder assured that they were complied with in conducting this proceeding.

INTRODUCTION and BACKGROUND

The parties are St. Clair County (Employer) and St. Clair County Communications Officers who are represented by Police Officers Association of Michigan [P.O.A.M.] (Union or

Bargaining Unit). The parties are engaged in collective bargaining for a successor agreement that would likely run through December 31, 2018 and possibly include a wage reopener that would extend the agreement until December 31, 2019.

The bargaining that has occurred prior to now included two (2) sessions that were conducted in the presence of a State Mediator. Thereafter, in February 2018, the Union submitted a petition to the Michigan Employment Relations Commission (MERC) requesting authorization to engage in a State-supervised fact-finding process. Part of the legally-required response to such a filing is for the Petitioner to provide the MERC a Statement in response to the inquiry: "Why publicizing the facts and recommendations would assist in resolving the disputed issues." The Statement provided by the Union was: "Appointment of a qualified neutral to determine the facts and make appropriate recommendations permits the parties to resolve disparate perceptions, leading to the anticipated resolution of dispute."

STIPULATIONS AND PRELIMINARY RULINGS

The County waived making a formal Opening Statement. But during this Opening, Mr. Fletcher offered to provide some preliminary explanatory procedure-type comments for the benefit of all participants in the Hearing Room. The Union did not voice any Objections.)

ISSUE BEFORE THE FACTFINDER: SICK LEAVE POLICY

Immediately below are four (4) passages identified as #1, #2, #3, and #4. As is obvious, they address the issue of "sick leave usage." Three (3) of them are substantive texts of three of the rules, being #1, #2, and #3. And finally, the description provided as rule #4 is merely a reference to the substantive contents of rule #1 [included in this rundown of the four (4) rules for consistency sake. These rules have been presented in this fashion and this order to reflect what was probably the chronological order in which each one was a focal point during the progress of

the parties' negotiations and case presentations. [NOTE: The numbering order, however, was provided as my way of trying to assist users of this report to follow details that I felt could be confusing. However, this numbering was not a point of relevance or significance nor did the numbers reflect any order of preference.]

The 4 rules are as follows:

#1 The existing current sick leave usage rule *now in the current contract* is:

> Art. 31.5. "An employee who uses two (2) sick days in a thirty (30) calendar day period or four (4) days in a ninety (90) calendar day period, without a statement from their attending physician indicating the nature of their illness shall be on "proof required status." Proof required status shall mean the employee must provide a statement from their attending physician indicating the nature of the illness in order to be eligible for sick day pay. The employee shall be on proof required status for ninety (90) calendar days. The employee who fails to provide appropriate medical verification shall not only be denied sick day compensation, but shall be subject to discipline."

#2 County's *1st proposed new Article 29. Sick Days and Disability:*

> "Employees will be allowed 5 sick occurrences per year an occurrence will be:
> 1. "Sick day taken. Multiple sick days taken consecutively will count as one concurrence.
> 2. "Leaving work early or coming in late for illness or injury (non-work related).
> 3. "Employees on an approved FMLA supplementing with sick time will not be considered an occurrence.
> 4. "Employees on Funeral leave and in accordance with 29.4 will not be charged with an occurrence.
>
> "Once an Employee has reached four occurrences in one calendar year they will receive progressive discipline for each succeeding occurrence during that calendar year. All occurrences for the previous year will be reset to zero on January 1st of the following year. Any discipline issued for abuse of sick time will remain in the employees file according to the standards set in Article XI in this contract.
>
> "Occurrence #4- Employee will receive written notice that they have reached 4 occurrences for the calendar year. This is not considered discipline but only serves as an advisory to the employee.

"Occurrence #5- Written reprimand for abuse of sick time
"Occurrence #6- 3 day suspension for abuse of sick time.
"Occurrence #7- Termination from employment for abuse of sick time. The decision to terminate will be at the discretion of the Director of Central Dispatch."

#3 County's *2nd proposed new Article 29. Sick Days and Disability*

"County says to make proposal more palatable its Final Revised proposal is:

1. "Sick day taken. Multiple sick days taken consecutively will count as one concurrence.
2. "Leaving work early or coming in late for illness or injury (non-work related).
3. "Employees on an approved FMLA supplementing with sick time will not be considered an occurrence.
4. "Employees on Funeral Leave and in accordance wit29.4 will not be charged with an occurrence.

"Once an Employee has reached four occurrences in one calendar year they will receive progressive discipline for each succeeding occurrence during that calendar year. All occurrences for the previous year will be reset to zero on January 1st of the following year. Any discipline issued for abuse of sick time will remain in the employees file according to the standards set in Article XI in this contract.
"Occurrence #4- Employee will receive written notice that they have reached 4 occurrences for the calendar year. This is not considered discipline but only serves as an advisory to the employee.
"Occurrence #5- Written reprimand for abuse of sick time
"Occurrence #6 – 3 day suspension for abuse of sick time.
"Occurrence #7- Termination from employment for abuse of sick time. The decision to terminate will be at the discretion of the Director of Central Dispatch."

#4 Union's concluding *status quo* proposal.

CASE PRESENTATIONS, FACT FINDER'S ANALYSES and DISCUSSIONS

The Union and the County both claim that the bargaining unit members are performing a high stress occupation. The County brief further claims that the occupation involves "critical incidents." There are a huge number of calls to be processed and dispatched, and the Union brief

noted that the latest information it had on the annual number of calls that Central Dispatch received was for 2010 when over 390,000 calls were handled. Neither party claimed the call volume has materially changed since then and neither indicated this impacted the negotiations.

At all relevant times applicable to this fact-finding case there has been a 21-member complement of Communications Officers working in the Central Dispatch Authority. [However, in one apparently unimportant reference to the number of dispatchers, "20" was the number cited.] The Dispatch Authority provides dispatching services to St. Clair County Police and Fire Departments, plus numerous other departments in the County.

The bargaining unit is a 24/7 operation with the employees working 12-hour shifts. The unit is non-Act 312 eligible, and both the Union and the County claim that the bargaining unit members are performing a high stress occupation. The County brief further claims that the occupation involves "dealing with many critical incidents in the County".

The Union brief points out that in 2017, the County conducted a Wage and Reclassification Study[1] of all County job titles and the study concluded that the Communications Officer job was being paid "under market." Subsequently, the bargaining teams mutually agreed to a 4.7% raise to be included in a completed tentative agreement that was offered for ratification by the bargaining unit members. But, the bargaining unit rejected that tentative agreement twice.[2] The Union brief declares that those rejections were due to the Union members not being able to accept what the Union brief described as a new "oppressive sick day policy" that the County proposed for use in the successor labor agreement.

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[1] St. Clair County and C.O.A.M. recently completed an entirely separate Michigan Fact Finding case in which the undersigned was also the Fact Finder. In that case, details of this wage study were fully examined and was highly relevant, however, the decision in that case is not influencing any substantive matter in this case.

[2] Pursuant to knowledge I gained from my involvement in that Fact-Finding case cited above in *Footnote #1,* I am aware that the amount of the raise that was rejected was also more than the "standard" 2% across-the-board raise that was offered to most bargaining unit members that were not offered a *wage-study-enhanced* raise.

The County brief points out that the current sick leave language says that if a member provides a physician statement that sick day occurrence is not counted toward the days for being put on "proof required status" but the County's proposed language provides that even if a member provides a physician statement, that occurrence is still counted toward the steps to discipline and/or terminating the Communications Officer.

The Union brief claims that Exhibits #2 and #3 "clearly" show that the County's proposed sick day policy is far more restrictive and punitive than the sick day policy in place for any other bargaining unit or the non-union employees of the County. And although I do not find that such an assertion has been adequately supported by proofs found in the record, I believe it is now one of the principal points needing to be addressed and I find that County adequately met that need in the following passage copied from page 6 of the County's brief:

> "The Union appeared to be arguing that because no internal comparable had this type of an occurrence system one is not appropriate for the Central Dispatch unit. The problem with that argument is for it to apply the Union would have to show that other units in the County had similar attendance problems and operational difficulties caused by the attendance problems but were not required to take the same system. No proof of this was offered."

I find this to be a valid argument and thus the fact that that there has not even been a claim, let alone any persuasive proofs, that other operations of St. Clair County government have the same or similar type of absence record issues and resulting operational difficulties that need to or should be addressed, or which a reasonable observer concludes management ought to be trying to address, explains why it is virtually irrelevant that the sick leave rules applicable to Central Dispatch are noticeably different than are such rules applied to the other County operations. So even though the Union has written the following in its brief: "(t)here is not a single internal

bargaining unit which has language anywhere near as restrictive as the language proposed for this bargaining unit." I believe that is understandable and be disregarded from further attention

Also, Ms. Bricker and Ms. Baska want different rules to apply to Central Dispatch than may apply to most other work units in the County. And that does not automatically signal that the County's proposed rule cannot be considered for use because it would not apply all across the County. After all, management has the duty and the right to try to have the rules applicable to operation of Central Dispatch that will succeed for Central Dispatch as it should also seek rules that may succeed for another unit that needs it even though it is not going to work for Central Dispatch.

The County brief says that at the beginning of negotiations Ms. Bricker testified that the employer's team raised the issue of there being a problem with the type and amount of sick time used by Central Dispatch employees. Further, the Union brief says that Ms. Bricker testified that the Union's team agreed there was a problem with sick leave usage. Ms. Baska also admitted that the Union agreed there was a problem but was careful to point out that she did not remember the specifics about usage and that it was a small number of people who were taking excessive amounts of time off and that it was not the group as a whole.

Ms. Baska, who the Union asserts is in a position to understand and appreciate the stresses of the dispatchers' jobs, explained that it is not uncommon for Communications Officers to be forced to work overtime after their 12-hour shift and on their scheduled day off. Thus, due to their heavy workloads at those times there is no "down time" where the officers can relax if they are not feeling well.

The County's bottom line position was that Ms. Baska's testimony was similar to Ms. Bickers' about the impact of time taken off by bargaining unit members because absences would

require another dispatcher to either be held over four (4) hours, called in 4 hours early, or required to work on their off day. The testimony asserted that adding these special increases to the staff member's work hours also increased the fatigue and stress of an already stressful job.

Ms. Bricker testified that the purpose of the County's proposal was to address the "random usage of 12-hour work days off" each month or every other month. She said these were referred to as *onesie, twosie, earn and burn, Monday Friday* and that have been used before and after holidays. [Apparently these are familiar short-hand terms by Central Dispatch personnel for the benefit of being le to get particular patterns of time off from work, but I never learned what they were.]

The County entered Exhibit #6 for 2017 which illustrated the staff's time used for 2017, showing their time-used patterns by each month, the year's total use, and each dispatcher's bank balances at the end of the year. The County said that the exhibit confirmed the two women's general testimony about time-taken off and Ms. Baska's observation that the instances of large amounts of use is attributable to just a handful of the staff.

Before leaving Exhibit #6, observe that *Employee P* used 123.25 hours in *a-day-or-two-at-a-time* pattern and none of it being for serious illness. Plus, this employee had a 1997 seniority date but only a balance of 58.7 sick time hours (about 5 days) even though having earned a day for every month employed. Also, *Employee O* was cited for comparison and showed 17 years seniority in Dispatch, had only used 17.5 off days in 2017 and retained a balance of 294.5 hours in his bank at the end of that year.) [NOTE: Obviously for partial privacy reasons my reference to a specific employee's reported sick record was deliberately "masked" a bit. Finally, I acknowledge that the chart showed sick leave usage numbers that were noticeably higher for some individuals which is again consistent with Ms. Baska's testimony.

The County brief also contained a chart in which the County had tracked what would have been the actual result for all 21 dispatchers under its proposed number-of-occurrences system if that system been in place for 2017. What it showed is that only two (2) dispatchers would have been terminated for excessive use of time off and three (3) other employees would have received 3-day suspensions. Again, FMLA usage was excluded from those records of sick leave time that had been taken off.

The County brief pointed out that its number-of-occurrences system creates "a mechanism" where employees stay notified of when they were getting close to reaching another level of sick leave usage that would lead to more trouble for the employee. The brief observed that "hopefully" it would cause such employees to use their days more carefully.

The County said the number-of-occurrences system is not punitive but is designed to get the employee's attention and to slow down usage. The brief reported how a lot of questions and arguing about intermittent FMLA usage occurred during bargaining and led the County to distribute an official Federal publication that described the parameters and goals of the FMLA. [A copy of that publication was also handed to me during the hearing. I perused it and it essentially became an unnumbered in the record, and without any objection from the Union.]

Another Exhibit #6 type of display of what the first six (6) months of 2018 sick time usage would have shown under the County's proposed number-of-occurrences rule was made a part of page 5 of the County's brief. The brief said its result apparently led Ms. Bricker to opine that she believes the employees' concern that the system was going to be put into use starting in January 2018 had made a difference in employees' behaviors "at least to some extent". [Again, that is conjecture and speculation since no proofs had been entered about a named person affirming that such a fear had motivated him or her to change their sick leave usage habit(s).]

Continuing in its speculation about the benefits resulting from any attention that was paid to the number-of-occurrence system during bargaining, the County seemed to show it was confident that it had made a positive difference, and again the County brief pointed at *Employee P* and said it was their belief that his attendance record had notably improved. [I personally also observed noticeable improvements for two (2) other employees' records also, but of course, there again was no explanation why the change is sick leave usage occurred.]

Regarding Ms. Bricker's concern that the attendance rules need changing, neither party offered proof in this record of employees being regularly suspended or terminated due to abuses of sick leave. Ms. Baska even testified that no employees had been terminated for such offenses in her 5-year tenure she had worked in Dispatch. [This seems to be at odds with some of the case record.]

The Union had previously pointed out that under the current sick leave usage language, if a member provides a physician statement, that sick day occurrence is not counted toward the days for "proof required status" of the Art. 31-5 current sick leave usage rule. Whereas, under Ms. Bricker's proposed number-of-occurrences system, even if a member provides a physician statement, that occurrence is still counted toward the steps to discipline and/or termination.

The Union brief also asserts that the current sick time policy is more restrictive than sick time usage provisions in most other external public employment agreements. But there are no proof entered into the record identifying those other external public employment agreements that were examined and what the terms of those agreements provided.

The Union brief said that testimony from both the Employer and Union witnesses [Ms. Bricker and Ms. Baska] that not one bargaining unit member has been disciplined for abusing sick time. [NOTE: I observe that in other parts of the record there seemed to be

acknowledgement that some discipline had occurred but that it was obvious that it had not been sufficient to lead to a notable number of suspensions or terminations.]

Ms. Bricker agreed that the role of a Communications Officer is difficult, stressful, and physically and emotionally draining and she further admitted that it has been very difficult to maintain proper staffing levels at the Dispatch Authority, saying that the Authority just recently received full staffing for the first time in several years.

One of the witnesses [either Ms. Bricker or Ms. Baska] pointed out that in those instances when a dispatcher is forced to work the 4 extra hours to cover for an absent fellow dispatcher, the replacement dispatcher still needs time to take care of some normal life activities and that wears people out and disrupts their family life.

Ms. Bricker agreed her policy requires a physician's note indicating the nature of the illness if the member's illness extends beyond one (1) day. The current rule is two days.

But the Union observed that there are several basically common, often mild, and usually short-term illnesses, e.g., colds, flus, migraine headaches, and minor aches, etc., many adults expecting to recover from in a short period of time and that in the past did not always get formal attention from a doctor. But if they were now going to be required to always get a physician's statement for each first day of illness occurrence bills for the doctor's office, an urgent care center visit, or emergency room care that could drive up the employee's costs considerably.

At the top of page 8 of the Union's brief, where there is a short focus on the nature of the illness and the following paragraph is provided:

> "Ms. Bricker was questioned regarding the changes she desires for her proposed sick day language. (Employer Exhibit 5). She agrees that her policy requires a physician's note indicating the nature of the illness shall be required if a member's illness extends beyond one (1) day. The current policy is two (2) days. She agreed that many illnesses would not require a visit to a physician (cold, flu, migraine headaches, minor aches and pains, sleep deprivation, etc.) She was

> asked if the County would be responsible for the charges incurred or an office visit, co-pays, lab work, etc., due to the County now proposing that a physician's note is required after one day of illness. She stated that all of the costs would be the responsibility of the member."

And the balance of the paragraph proceeds to provide a narrative on this line of inquiry and response. It said "(t)he member's costs would greatly increase if the member was ill after hours, on a weekend or Holiday," then that member "would be required to use either Urgent Care or the Emergency Room to comply with Ms. Bricker's proposed language." Further, that if "(t)he member was unable to obtain a physician statement, they would be disciplined." She said, in answer to another inquiry, that the employee would not receive any compensation even though the County was requiring the employee to take that action on their sick day time off. And this lengthy description concluded with her agreeing that she was a non-union employee and is not subject to the requirements of her proposed policy, plus "(s)he is unaware of any other County employees who must adhere to her proposed policy. No objection to or denial of the accuracy of these claims were lodged by the County.

COMPARABLE

Ms. Brinker testified that as a "template" for her proposed new language she used a labor agreement from another jurisdiction, namely the labor contract titled: Muskegon Central Dispatch 9-1-1 -and- Governmental Employees Labor Council (Telecommunicators), effective January 1, 2016 through December 31, 2020. That Muskegon rule is "Article 26, Attendance Rule." and provides:

> "After four (4) occurrences of sick time have been used in a calendar year notice will be given to the employee and said documentation from a physician's statement . . .will be required for any additional sick time used during the remainder of the calendar year."

CONCLUSIONS

The Union's final settlement proposal is to maintain the *status quo*; the Union's is "Rule #3" set forth in full on page 9 of this record. Both are simple straight forward goals. It is time for me to decide which should be recommended for use to assist the parties in resolving the one dispute before us.

After carefully studying the record I am somewhat surprised by what the record shows me about the sick leave usage record made by the complement of Communications Officers working in Central Dispatch throughout 2017 and the first half of 2018. This is because despite the significant amount of testimony and argumentation that was entered into this record in the various ways and various spots I was expecting to find that the sick leave usage record the dispatchers was uniformly poor over time. But instead, instead the sick leave usage record of that work unit during the recent past 18 months that the County brief led the focus on. As a manager of city workers for more than 30 years of experience in Southeast Michigan my judgment is that 18-month record has that has yield a record I would rate as rate as being **"in the satisfactory to good range."**

This was a surprise to me. But consider the testimony and the discussion about sick leave usage in our record. Both witnesses whose first part of their testimony focused on "background", as is customary in most fact-finding cases. They both described how "high" and abusive the history of sick leave usage was. But later when the testimony had moved to focusing more on present day goings-on, also what customarily happens in most fact-finding cases, the recent record of noticeable improvement in the staff's attendance was revealed and focus on that then became a bigger part of the fact-finding record. The point is I believe the two realities of high abuse of sick leave use (abuse) and lower use was somehow tied to what method of

managing that aspect of operating the organization it changed the sick le and that when that changed it changed the sick leave usage to a lower result is possibly explained. [Yes this is speculation not unlike as the fact-finding report did with Ms. Baska's notion about her "threatened use" of the number-of occurrences managing of sick leave use.]

The bottom line is that recent 18 months' collective attendance record with so little discipline being required should be recognized as **either "satisfactory" or "trending toward good"** sick leave management practice and it is obviously very desirable and should be pursued.

So, regardless of how this improvement developed, including if it may have happened for the very reason Ms. Bricker speculated which is somewhat related to what I have speculated also, a major change to the basic theory for managing sick leave should not be tried. It could harm things in Central Dispatch and there is no reason that sticking with the *status quo* would likely threaten any new harm to the County's operations

The County only *believes* its newly proposed rule that has never been operating in the County will lead to a better attendance result for Central Dispatch. Under the totality of the recent circumstances there simply is no acceptable basis for me, as a MERC fact finder, to recommend that the parties use a new Count proposed "untested" number-of-occurrences rule. I observe, however, if the recent improvement of the *status quo* dissipates because it appears to have been just a classic blip or bubble then I suspect that the Union and the County may again have to face future collective bargaining on this issue of sick leave usage, among other ideas seeking to find a solution to long term improvement.

Finally, I found that **each** party put forth an impressive amount of details and skillful argumentation into the wide range of issues and concerns they entered into the record. Each advocate and case presentation team should be congratulated for the representation they provided

their client. Remember that the quality of representation in a case such as this often cannot be effectively determined by merely concluding that the case was considered either "won" or "lost" because a party did or did not achieve the publicly declared result it sought, and in closing, I wish both parties the best and thank you for the cooperation provided throughout this process.

THE FACT FINDER'S RECOMMENDATION

Adopt the Union's *status quo* position which will cause the Art. 31.5 sick leave rule in the parties' current labor agreement to continue being the sick leave rule in the successor labor agreement.

/s/Roger N. Cheek, Fact Finder ***Date: September 30, 2018***

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