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Law Enforcement JOURNAL

Pre-Convention Issue



Spring 2010

Tampering with Compulsory Arbitration

When a Public Employer and Police/Fire labor union are unable to arrive at a negotiated collective bargaining agreement, their dispute is subject to resolution through the statutory Compulsory Arbitration process. Since its creation in 1969, the Compulsory Arbitration Act, commonly referred to as “Act 312,” has maintained a level playing field in labor-management relations. History has conclusively shown that both unions and employers have benefitted in resolution of disputes by resorting to Act 312 arbitration. The public purpose of the Act states:

It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure of the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

Unlike private sector employees who have the right to strike in response to economic conditions in bargaining or the commission of unfair labor practices by an employer, public sector employees have no such recourse—in fact, it is illegal. The Compulsory Arbitration Act bridges that gap by establishing an alternate dispute resolution mechanism to resolve disputes.

So, one might ask, what is the problem with a law that benefits both an employer and a union to resolve disputes in a peaceful manner? The answer should be that there is no “genuine” problem. The only “problems” which exist are those that are contrived through the “collective wisdom” of a few municipal politicians across the state and the “municipal lobbyist league” from Lansing with who they conspire. It is amazing how ignorance gravitates toward ignorance. Like a band of misfits who engage in mutual admiration of their own collective stupidity, this group of “lets tamper with Act 312” proponents, could not find their proverbial rear end with both hands if they tried.

The “band of misfits” have long sought to change and thereby tamper with Act 312, including restricting of who is eligible to participate in compulsory arbitration, restricting the issues which can be presented, slanting the standard of proof in favor of the employer and prohibiting retroactive recovery of wages and benefits. If they had their way, there would not be much of a law left to resolve disputes.

In 2006, broad revisions to the Act were proposed by the band of misfits. POAM vehemently opposed the proposed changes. At the time, the State was on the cusp of the economic downturn in which it still finds itself in 2010. The claim at the time was that changes to the Act were necessary because the process took too long, municipalities did not have control over their financial destiny and arbitration panels were not giving sufficient credence to the ability of government to pay for proposals sought by unions. Each claim was disingenuous given that often it is the employer who has engaged in dilatory practices, as well as the obvious fact that the statute, as written and applied, contained numerous safeguards for employers in the evaluation of evidence, including ability to pay. The changes which were

proposed, by not only the band of misfits but also their new cohorts, certain self-serving representatives of various law enforcement and fire fighter unions, were opposed by POAM, because they constituted nothing more than sophomoric, knee-jerk reactions by individuals who had no clue to what the law meant, what it had accomplished or how it could be constructively changed for the true benefit of the public—which, hold your breath, meant both labor and management!

If the question was legitimately asked in 2006 whether the Act could be changed in a meaningful manner to benefit labor and management and therefore the public, the answer would have been, “yes.”

POAM asked and answered that question and was at the forefront of recommending meaningful change. While there was never any legitimate evidence to substantiate the claimed reasons of the band of misfits for tampering with the Act, POAM took the initiative to draft responsible and meaningful modifications to streamline the Act, procedurally and substantively. Among the changes that I drafted in 2006 on behalf of POAM, included:

- adding a requirement that parties submit their final last best offer of settlement during the pre-arbitration mediation process, thereby prohibiting the dilatory practice of changing issues in dispute during a compulsory arbitration proceeding. This proposed change also would have served the benefit of forcing the parties into more meaningful collective bargaining prior to filing for compulsory arbitration;

- removing the State from any financial cost sharing responsibility for the hearing;
- requiring a compulsory arbitration panel to select, without modification, the total package final offer as submitted by the parties at the end of mediation; once again enhancing meaningful collective bargaining prior to the inception of arbitration;
- reducing time delays and legal costs to the parties by prohibiting post-hearing briefs, thereby requiring the parties to submit closing oral arguments; and
- avoiding litigation in court during a proceeding, which merely delays the process, by utilizing the Michigan Employment Relations Commission, on an expedited emergency basis, to decide status quo violation disputes.

Every proposed change would have strengthened the Act for both unions and management. So now you ask what happened when our seemingly logical changes were proposed? Well you would have thought that the band of misfits and their new cohorts, the self-serving representatives of other fire fighting and law enforcement unions, were being asked to undergo forced enemas. None of them wanted to make real changes that made sense—so they all did what they do best, they balked, whined and bickered to the point that a stalemate occurred resulting in no action being taken. So chalk one up for the POAM in beating everyone else into submission resulting in the



**By Frank
Guido,
General
Counsel**

Continued on page 18

Signed and Sealed

Agreements gain vital benefits for POAM members

Summaries and highlights of recently completed local contract negotiations and 312 arbitrations

Negotiated

St. Clair County Corrections

Duration: 07/01/2006 – 06/30/2011

Wage Increases:

2006 – 2.00%
2007 – 2.00%
2008 – 2.00%
2009 – 0.00%
2010 – 0.00%

- Health care is BC/BS Community Blue PPO 2 with employee premium share of \$42 per pay for family coverage.
- Employees will pay 0.5% of base pay to help fund retiree health care benefit.

Bargaining team consisted of Kevin Stover and Bill Farrer who were assisted by POAM Business Agent Jim Tignanelli.

More Signed and Sealed on page 31.



Negotiated

Imlay City POA

Duration: 07/01/2009 – 06/30/2011

Wage Increases:

2009 – 2.00%
2010 – 1.00% lump sum

- Health care is BC/BS Community Flex Blue 4 with \$3000/\$5950 deductible with HRA fully funded by Employer.
- Employer to pay full cost of pension improvement to MERS B-4.
- Two (2) additional vacation days after 25 years of service.

Bargaining team was Rob Evoy who was assisted by POAM Business Agent Jim Tignanelli.

Negotiated

Grosse Pointe Park PSOA

Duration: 07/01/2009 – 12/31/2011

Wage Increases:

2009 – 2010 - 1% plus a signing bonus of \$250 and COLA payment of \$125.

2010 – 2011 - signing bonus of \$250.

- Implemented high deductible (\$2000/\$4000)
- BC/BS Flex Blue 3 paired with a HSA.
- Employer pays 75% of deductible each year of the contract.
- Prescription co-pay is \$10/\$40 for active and retired employees. Retirees will have a \$500 deductible.
- NO LAYOFFS language included in contract.

Bargaining team consisted of Mike Narduzzi and Nick Neamonitis who were assisted by POAM Business Agent Jerry Radovic.

Negotiated

Midland POA

Duration: 07/01/2009 – 06/30/2010

Wage Increases:

\$1,600 lump sum paid in lieu of raise.

- High deductible health care (\$1,500/\$3,000) eliminates premium sharing by employees.
- Compensatory banks paid down to 42 hours each January.

Bargaining team consisted of John DuBois and Marc Goulette who were assisted by POAM Business Agent Jim Tignanelli.



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POAM REPRESENTS YOU

- MCOLES- Michigan Commission on Law Enforcement Standards
- Mid-States Coalition of Police Officers

ED JACQUES – Law Enforcement Journal Editor
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Negotiated

Blackman Township Command

Duration: 05/01/2009 – 09/30/2013

Wage Increases:

2009 – 2.50%
2010 – 2.50%
2011 – 2.50%
2012 – 2.50%

- Health care changed from BC/BS Plan 4 to Community Blue PPO 12 with co-pay reduced from 10% to 0%.
- Changes in overtime staffing language.

Bargaining team consisted of Richard White, Steven Stowe, Ralph VanHeyningen and Michael Rand who were assisted by POAM Business Agent Tim Lewis.



From the President's Desk

by Jim Tignanelli

Website is Member-Driven

Good day to our members and friends. I'd like to share some headlines with you. Some may be short on details but I am hopeful you will use our communications system (either e-mail or phone) to acquire details as you see necessary.

Welcome to our new members from Lapeer County. Both the corrections and road patrol units joined recently and we are thrilled to have them on board. Early meetings have produced positive results and we look forward to serving them.

We recently welcomed new board representatives from the Ann Arbor POA and Saginaw County Corrections units to our office for a day of training. We had prepared work manuals for them and spent several hours with representatives from our legal department, our research and negotiations specialists, and office staff. I truly believe that seeing the place, and the resources that are available to you helps dramatically when you are in need of service. If you haven't visited us recently, please contact your business agent and make a date to stop in. There is no substitute for good local leaders. Please take advantage of us!

Our website has become a very valuable tool to our members statewide. It is reviewed almost daily and I welcome your input. It is service driven/member driven. Let me know what you think of it. Is it easy to traverse? Can you find what you need? Are there things you need that we have neglected to cover? Email Ed Jacques at ejacques@poam.net as we encourage your comments whether critical or complimentary.

While on the topic of the website, we have recently initiated a "podcast" that we are very proud of. New ones will be posted approximately twice a month and will cover a variety of topics. As usual, I encourage you to let us know what topics would be helpful to you. We will put it to good use at this year's convention and am looking forward to producing

some from Police Week in Washington, DC as well. Thanks to our friends at Trademark Productions for getting this "on the air." Be sure to check the POAM.net often for updates and registration information on this year's convention and seminar.

Can't mention "Police Week" without reminding you that POAM will have a presence there the 13th and 14th of May. We are planning a political reception that will be something to be proud of. Generally, we find all or most all of the Michigan delegation present as well as members of the "Law Enforcement Caucus" from the Congress. These are legislators that have served in law enforcement at some level that are always interested in what POAM members have to say. I expect the Metro Detroit Police and Fire Pipe and Drum Corp to put on their usual show as well as honor guards from throughout Michigan. We enjoy showing off our professionals. Please join us. Watch the website for details or call Ed Jacques at the POAM office. It will take place on Thursday the 13th. We will have it in the afternoon

While still in Washington, on May 14th, we will be hosting our friends at the Tune Inn. This has become an annual tradition. It started about seven years ago when we realized that many of our uniformed friends needed a place to relax with some food and a beverage. Often they are expected to stand vigil at the Memorial or attend other events in the capital. Often there is some discomfort in doing so while in uniform. All of our law enforcement friends (POAM or soon to be POAM members!) are encouraged to join us at the Tune Inn, 331 1/2 Pennsylvania Avenue, S.E. We will have a van (marked with POAM) moving people from the fire station near the Memorial to the Tune Inn continuously from about noon on the 14th until midnight. Please join us. □

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Vice-President's Viewpoint

by Dan Kuhn

All Points Bulletin

It has become evident that the police and correction officers in Michigan now need to not only be on guard against gang members, violent prisoners, drunks, felons and radical militia members, but also for attacks by our own state legislature.

My first All Points Bulletin: Any senator or house rep, who wants us to take a 5% pay reduction, and pay 20% of our health care premiums, yet refuses to relinquish their lifetime health care. I believe the currently proposed legislation is an insult to all of us who wear body armor and a gun belt to work everyday. The idea of a Michigan legislator publicly asking the men and woman in the law enforcement community to "step up to the plate to be a part of the solution" is just plain offensive. The police officers in this state step up to the plate everyday when we leave our homes and families to go to work. True, some of us may enter into more violent and dysfunctional towns than others, but that does not mean at any moment those officers are any less likely to become targets than others.

I am tired of witnessing politicians tout how they support law enforcement when it conveniently benefits them politically, and then show absolutely zero evidence of it when it comes time to balance budgets and reduce work forces. Anyone, who votes to eliminate a state law that requires binding arbitration for the resolution of contract disputes between employers and police, can no longer claim to be pro-law enforcement.

When and if they have their wish, it will leave the cops in Michigan virtually crippled at the bargaining table. The interference in the collective bargaining process has made local unions hesitant to

make cost saving adjustments beneficial to employers, because we now have to wonder what the state may implement in the future.

The truth is, that is already being done through negotiations between the parties. For anyone to sabotage the process is a threat to all of our livelihoods, because if they succeed, cops may never appreciate an enhancement in our wages or benefits again. Unless, anyone actually believes that annual police wages will increase enough to cover the state imposed 20% non-negotiable health care premium share.

No other career choice can lead to the unannounced abrupt end of life, reduced life expectancy, rampant suicide rate, and troubling divorce rate than the law enforcement profession. That is why I won't ever apologize for attempting to make officers' working conditions better, and I do not apologize for putting out APB's when I identify threats to the law enforcement community. Cops need to support, endorse and elect representatives that respect what we do, and show evidence of it when needed. And, if they don't, hold them accountable.

Stay safe. RIP SPD Badge #204. ☐

"I am tired of witnessing politicians tout how they support law enforcement when it conveniently benefits them politically, and then show absolutely zero evidence of it when it comes time to balance budgets.."



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The Treasurer's Ledger

by William Birdseye

New Application to POAM Website Will Benefit Members

Have you logged on to poam.net and heard the most recent improvements to the site? That's right, audio applications are now taking the nation's leading police union website into new and powerful territory via something called podcasts.

Although I have embraced and directed POAM staff to lead the charge in the communication revolution, I am still amazed at new technological advancements and how they can improve our productivity and communication. POAM podcasts are just the next step in an ongoing process to link members to information and educate them on issues.

POAM podcasts are recorded interviews with prominent police leaders, politicians and other individuals that have a significant impact on our profession. Access the home page of poam.net and click on the microphone in the top right hand corner. We will be keeping a chronological list of our subjects and speaking guests for immediate access in the future. The topics will be on the mark and a must hear for all union members.

As I write this article, we have produced two podcasts and by the time you read it we will likely have four subjects in the library. Our first podcast was an immediate reaction by our Legislative Director Kenneth E. Grabowski to new legislation articles on 312

arbitration for police officers and mandated cuts to pay and benefit levels for all public employees. POAM members were instantly notified of our response and directed to a plan of action.

In today's unavoidable world of multitasking, the ability to listen to subject material is an undeniable asset. I have been told that the POAM podcasts are also available through I-tunes, your MP3 player or I-pod. I think that the quality of the podcasts rival that of many radio broadcasts.

POAM will be producing a podcast from Washington, D.C. during Police Week and at our Annual Convention in Grand Rapids. We will be having conversations with your members in the U.S. Congress during our legislation reception and hopefully interviewing the two leading candidates in the Michigan Governor's race.

But that's just the beginning!

Do you want to know more about what POAM has planned? Keep your ears on. □



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ST. CLAIR COUNTY SUPERVISORS

PREVIOUS AFFILIATION: TEAMSTERS

SOUTH HAVEN PUBLIC EMPLOYEES

PREVIOUS AFFILIATION: AFSCME

MONROE COUNTY PUBLIC EMPLOYEES

HARPER WOODS PUBLIC EMPLOYEES

PREVIOUS AFFILIATION: NONE

BENTON POTTERVILLE FIREFIGHTERS

THORNAPPLE TOWNSHIP FIREFIGHTERS

WELCOME TO POAM!



The Legislative Director's Chair

by Kenneth E. Grabowski

Legislation Will Interfere With Local Negotiations

On February 24, 2010 the POAM Executive Board held a legislative reception in downtown Lansing at Troppo restaurant. Turnout of legislators was impressive. All legislators and representatives of their staffs took time to listen with POAM representatives and communicate issues of mutual concern. High on the list of conversation was the possible reform of PA 312 and instituting similar coverage for correction officers. POAM is supporting the current 312 reform package as sponsored by Senator Richardville. Additionally POAM has provided numerous ideas of improvement that would save both time and money for employers and unions.

With the economic crisis facing this state, some employers are taking advantage of the situation to blame all problems on public employees, while ignoring their own responsibility to manage their communities. Some use this as an opportunity to decrease police officers' ability to negotiate contracts. Keep your eyes and ears open to defend the misinformation being promoted. The legislators in attendance were not buying into the misinformation.

Additionally, another topic addressed was the unprepared and ill-thought out proposal coming from senate Republicans to mandate a 5% pay cut and 20% co-pay on health insurance. These mandates would be required without any justification or concerns on the effect to local units of government. These Senate proposals are now making any contract negotiations more difficult, both parties are unsure how to address changes in wages and health care as a result of the state sticking its nose where it doesn't belong. It is important for YOU to contact your State Senator and express your concerns. The irony of this is even if passed, it saves the

state "0" money and in fact would cost the state revenue.

These are difficult times, and everyone has to make difficult decisions, but some things are just stupid.

And speaking of BAD IDEAS, the Governor's proposal to take funding from secondary road monies and fund additional State Troopers was thoroughly discussed. In fact, many legislators believe it is now time to address the duplication of services provided by the State Police. The idea of getting the State Police out of general law enforcement and begin to provide more specialty services is taking hold. Some legislators believe the State Police road monies should go to local communities to provide law enforcement services at a better cost.

On March 31, 2010, I attended the House Judiciary Committee on HB5287, Banning Ticket Quotas. This bill introduced by Representative Richard LeBlanc (D-Westland) with a joint bill in Senate introduced by Senator Glen Anderson (D-Westland) would stop the use of predetermined specified number of tickets and could not require a number of tickets be used for a road officer's performance evaluation. POAM and DSAM were the only law enforcement associations to support said bill. I would like to thank Westland POA President Norm Brooks for his help. The bill was passed by the committee under supervision of Chairman Mark Meadows (D-East Lansing) and sent to the full House for a vote. The goal is to stop some communities from using road officers as tax collectors.

Please check our website for information and updates on this and other matters. Refer to the next page for members and their staff in attendance. □



Speaker of the House Andy Dillon and Kim Meltzer.



Rep. Robert Dean (left) and Kenneth E. Grabowski.



Rep. Joel Sheltroun (right).



Sen. Jim Barcia (left) and POAM VP Dan Kuhn.



Rep. Jim Marleau (center), POAM President Jim Tignanelli (left) and POAM Research Analyst John Barr.



Rep. John Walsh (center), POAM Secretary Thomas Funke and Kenneth E. Grabowski.



Wayne County DSA Ist Vice Brian Earle (left) and Sen. Glenn Anderson.

Legislative Reception

STATE REPRESENTATIVES IN ATTENDANCE

Speaker Andy Dillon

David Agema

Kathy Angerer

Joan Bauer

Darwin Booher

Ed Clemente

Marc Corriveau

Robert Dean

Kevin Elsenheimer

Bob Genetski

Vincent Gregory

Jennifer Haase

Gail Haines

Richard Hammel

Geoff Hansen

Harold Haugh

Joseph Haveman

Bert Johnson

Robert Jones

Andrew Kandrevas

Eileen Kowell

Michael Lahti

Richard LeBlanc

Gabe Leland

Steven Lindberg

Peter Lund

Jim Marleau

Gary McDowell

Arlan Meekhof

Kim Meltzer

Chuck Moss

Judy Nerat

Andy Newman

Phil Pavlov

Tom Pearce

John Proos, IV

Sarah Roberts

Tory Rocca

Roy Schmidt

Tonya Schuitmaker

Kate Segal

Joel Sheltroun

Dian Slavens

Jim Stamas

Sharon Tyler

John Walsh

STATE SENATORS IN ATTENDANCE

Glenn S. Anderson

Raymond Basham

Liz Brater

Valde Garcia

John J. Gleason

Bill Hardiman

Wayne Kuipers

Michael Prusi

Alan Sanborn

Tony Stamas

Michael Switalski

Gerald VanWoerkom

LEGISLATORS STAFF IN ATTENDANCE

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Rep. Deb Kennedy

Rep. Mike Huckleberry

Rep. Ellen Lipton

Rep. Rick Jones

Rep. Woodrow Stanley

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- Provide a one-year breakage warranty

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- Detroit (W. Warren) 313-240-7551
- Flint (Lapeer Rd.) 810-742-6733
- Flint (S. Linden Rd.) 810-230-9300
- Fraser 586-293-4198
- Garden City 734-458-5181
- G. Rapids (Northland Dr.) 616-364-4099
- G. Rapids (28th St.) 616-245-6300
- Imlay City 810-721-9411
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Across Wayne Co., Shortened Jail Stays Frustrate Cops, Communitites

By Kathleen Gray

Some cash-strapped communities across Wayne County are refusing to scrimp on punishing those guilty of misdemeanors, even as they cut services and lay off employees.

At least 19 communities are spending thousands of dollars - some hundreds of thousands - to send people who have been sentenced for crimes like drunken driving, malicious destruction of property or domestic violence to jails in northern Michigan.

They would prefer to use the Wayne County Jail, but many of the offenders would be released by jail officials before serving their full sentences because of overcrowding.

"We send them to Wayne County Jail and they're back on the street again in a day," said Livonia Police Chief Robert Stevenson. "It's a real problem."

County officials are considering a plan that would worsen the situation, further reducing the number of beds for misdemeanor offenders and giving the jail administrator discretion to release even more prisoners on tether before their full sentences are served.

In 2009, Westland spent nearly \$600,000 to send hundreds of misdemeanor offenders to the Isabella County Jail in mid-Michigan.

It's not only the money that has made Police Chief James Ridener angry. It's the reason why he and other officials in Westland feel they have to send the prisoners north: If he sent the inmates to the Wayne County Jail, they'd end up back on the street in days, rather than the weeks or months the judge sentenced them to serve.

"As soon as a judge sentences somebody to 60 days, we would never ship them to Wayne County," Ridener said. "Because there's the good chance of an early release, and then we have to deal with them again."

Wayne County is in a unique position in the state. Under a judicial consent decree signed in 1991, the director of jails has the authority to release inmates when faced with overcrowding, a virtual daily occurrence at the Wayne County Jail, said Jeriel Heard, the county's jail director.

"When we do an early release, we go through a very rigorous process," he said. "We look at the current charge and the person's criminal history. We'll only release when the offense is non-assaultive and nonviolent."

IGNORING SET-ASIDES

The county has more than 500 inmates out on tether and also uses residential treatment placement for inmates with mental health or substance abuse problems.

But the county is supposed to reserve 180 beds for misdemeanor inmates from communities outside of Detroit and 180 beds for people sentenced for misdemeanor crimes out of 36th District Court in Detroit.

The overcrowding allows Heard to ignore those set-asides. Currently, about 120-140 beds a day are filled by misdemeanor offenders, Heard said. The rest of the 1,700 beds in the county's three jail facilities are filled with people charged or sentenced on felony crimes.

The county has an additional 1,200 jail beds that have been closed because of budget constraints. The jail operations are partially funded with a 0.94-mill tax levied on all Wayne County property owners that brings in about \$40 million a year. It also charges \$35 per day to communities that send their inmates to the jail.

FEES AND CHARGES

Neither Oakland nor Macomb counties charge their communities a

daily rate for the jail and neither releases inmates early without an order from a judge. Two years ago, Oakland County ended its \$2-million-a-year practice of using other county jails to ease overcrowding. Macomb County has never sent its inmates to other counties.

The Wayne County fees and charges have police chiefs steamed. "We have a jail partially funded by Livonia residents, at well over \$1 million a year," said Livonia Police Chief Robert Stevenson. "And we really have no jail that we can use if we want anyone to spend some time in jail."

Livonia spends about \$400,000 a year to send offenders to Isabella County, which has been accepting Wayne County inmates for nearly 20 years. It helps pay for the operations of the jail, which has undergone three expansions in the last few decades and now has room for 196 prisoners, said Lt. Tom Recker, administrator of the Isabella County Jail.

The average length of stay in Isabella County is 21 days.

"That \$400,000 is four police officers for us," Stevenson said. "But that's the choice that we make so the message is out there that if you come to Livonia and do a crime, you're going to do the time."

STATE TRANSPORT

Seventeen Wayne County communities contract with Statewide Security Transport, a Livonia company that picks up and drives misdemeanor offenders to county jails outside of Wayne County at a rate of \$43 a day.

"When we have sentenced misdemeanors that we want them to do the full sentence, we send them there," said Taylor Police Chief Dale Tamsen, who spends \$400,000 a year for the service.

Many district judges are using alternatives to incarceration, such as tethers, drug courts and substance-abuse treatment programs, but when they want someone to spend some time in the slammer, Wayne County is not the alternative.

"At the end of the day, there are some people whose criminal behavior can only be addressed with jail time," said District Judge Geno Salomone of the 23rd District in Taylor.

"I don't care where they go," added 17th District Judge Mark McConnell in Redford Township. "But when we send them to Isabella, they're more likely to do their full amount of time, which gives some legitimacy to our sentences."

POSSIBLE CHANGE

Wayne County wanted to expand the authority of the jail director and presented a proposal to county commissioners last month that would have allowed more inmates to be let out on tether even if the jail wasn't overcrowded, raised the daily rate to \$43 and eliminated the set-asides for misdemeanor offenders.

"Long ago, detention was thought of as four walls and bars," said Wayne County corporation counsel William Wolfson. "But not anymore."

The objection from police chiefs and commissioners, however, caused the county administration to put the proposal on the back burner. □

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Editor's Note:

This situation infuriates members of the Wayne County Deputy Sheriff's Association who continue to have members on lay-off even in the midst of over 100 recent retirements from the sheriff's department.

Public Safety State of the State

Fewer Police; More Prisoners Released

The Safety of Michigan Families is at risk

By Bill Shuette

This winter, Governor Granholm delivered her eighth and final State of the State. But as in the past, only one paragraph was devoted to public safety. Most of her speech was devoted to economics. But just as there is an Index of Economic Indicators, so too, there should also be an Index of Public Safety Indicators. Let's examine the facts:

- According to Forbes magazine, Detroit is America's most dangerous city, reporting a rate of 1,220 violent crimes committed per 100,000 people.
- CQ Press reports that Detroit had the highest rate among America's 33 biggest cities, according to the FBI crime rate rankings calculated using six crime categories -- murder, rape, robbery, aggravated assault, burglary and motor vehicle theft.
- The Detroit News reported that in 2008, the Detroit Police Dept recorded a homicide closure rate of less than 35%. Put another way, two-thirds of homicides in the City of Detroit went unsolved.

In a comparison of Great Lakes states:

- Michigan has the highest rate of violent crime;
- Michigan has the highest rate of unsolved violent crime;
- Michigan has the fewest number of police officers per capita; and,
- Michigan sends the fewest felons to prison per capita.
- And Michigan's State Police crime labs have a backlog of nearly 18,000 cases. Another 10,000 rape kits also remain unprocessed from the closed Detroit police crime lab. A State Police captain reports that if one technician had nothing else to do, it would take him or her 58 years to complete the testing of the kits.

Furthermore, since 9/11, Michigan has lost more than 1,900 law enforcement officers. At the same time, Lansing's leaders have closed eight prisons and prison camps, and more than 3,000 prisoners are being released earlier than normal.

If safeguarding the public is the very first obligation of government, then the leaders in Lansing are failing in their fundamental task. Michigan citizens are less safe than they were a decade ago. The simple fact is that our state's economic recovery and realignment will forever be at risk if Lansing continues to pursue policies that endanger the safety and security of Michigan's families.

Michigan needs more cops on the street. Funding could come from reforms to the Department of Corrections (DOC). For example, Saginaw County Jail food service costs are 50% of the food service costs of the DOC. Or, all prisoners, both at the state and county jail level, could have their health coverages pooled to save funds that could be re-invested in police. Prisons and jails could also partner with medical schools across the state to lower doctor and nursing costs.

There are many reforms Lansing can undertake, but one thing is clear: Michigan deserves better. It's time to put safety first. □



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Important Arbitration

By Ed Jacques, *LEJ* Editor

Discipline Stemming From Ticket Quota Overturned

In July 2008, Ypsilanti Police Chief Matthew Harshberger issued an order mandating that all police officers appear in Court on all traffic citations as part of a pilot program established by the District Court. By September 2008 the number of tickets officers issued decreased enough to where the Chief became concerned.

About the same time the Chief learned of a program used in an a nearby municipality that required an officer write 30 tickets per month, and whether the officer wrote the 30 tickets as part of the Officers Performance Evaluation (OPE). The Chief testified in front of Arbitrator Donald F. Sugarman that he wanted to revamp the department OPE process and use the 30-ticket criteria as part of that revamped performance review.

Chief Harshberger said that he wanted the Ypsilanti Police Officers Association on board with the plan and discussed the matter with their President. However, Harshberger also testified that he did not recall if his discussions with the Association were before the rule was implemented.

The Chief informed his sergeants about the new Rule-30, and at subsequent roll calls the policy was announced. POA President Detective Jill Kulhanek immediately requested a meeting with the Chief. Harshberger said the Association never informed him of any disagreement with the policy and never asked to bargain over its affects. Kulhanek testified the Association did not agree with Rule-30 and she, as president, had never agreed to it. She stated that it was a hot topic and arguments about the rule were heated. Regardless, the rule was issued and became part of the officers operating criteria and the department began counting how many tickets each officer issued.

In March 2009, an officer worked the full month but did not write the required 30 tickets. The department began an investigation which resulted in the officer receiving a written reprimand. The department charged her with misconduct, insubordination, neglect of duty and unsatisfactory performance. The Association timely grieved the officer's discipline.

The City argued that the grievance was not timely, that Rule-30 was legal (Management Rights), and if it was illegal that the Arbitrator did not have the authority to determine the Rule's legality. POAM Assistant General Counsel Martha M. Champine argued that the City did not have just cause to discipline Grievant. Michigan has a statute which prohibits police departments from establishing ticket quotas. However the employer attempted to frame or name its new policy, it was clearly illegal and against public policy. As regard to the timeliness of the grievance, Champine effectively stated that this was the Association's first opportunity to challenge the employer's policy. The Association never agreed to the policy. Until an officer was disciplined, the policy had not had a negative affect on the Association or its members. Although Rule-30 was to be part of a new performance evaluation plan, no such plan existed.

POAM and YPOA relied on the Michigan statute which reads:

"A police officer shall not be required to issue a certain number of citations for violations of this act or of local ordinances substantially corresponding to provisions of this act, including parking or standing violations, unless the issuance of citations is a part of a police officer's performance evaluation system and the issuance of citations is not given any greater consideration than any other factor in the evaluation of a police officer's performance. In the absence of a police officer's performance evaluation system, the issuance of citations shall not be given any greater consideration than any other factor in the evaluation of a police officer's performance. Section 901 does not apply to a violation of this subsection."

Champine further argued that Rule-30 does not fit into the statute because it is not used in the context of an OPE. The City never adopted a new evaluation system or instituted a different OPE. The City failed to produce documents into evidence proving they had established a new policy. That was significant to Arbitrator Sugarman. Sugarman emphasized that in the absence of a police officers evaluation system the issuance of citations cannot be given any greater consideration than any other factor in the evaluation. Sugarman also stated that the factors that are to be used in the evaluation process must be disclosed so that employees fully understand the process and to eliminate the possibility of arbitrary or capricious actions.

Sugarman rejected the City's position on his authority. Citing San Francisco (California) Unified School District, 114 LA 140 (Riker 2007), Sugarman stated that arbitrators have long found that when a general phrase is used to management all rights not expressly given to the Union, management must exercise those rights in a reasonable manner.

On the issue of "just cause" the City argued that the only circumstance under which an Arbitrator can set aside a discipline is where discrimination, unfairness or arbitrary and capricious action has been proved. Arbitrator Sugarman quoted Arbitrator Platt in an article he authored in which he wrote:

"In many disciplinary cases, the reasonableness of the penalty imposed on an employee rather than the existence of proper cause for disciplining him is the question the Arbitrator must decide. In disciplinary cases generally, therefore, most Arbitrators exercise the right to change or modify a penalty if it is found to be improper or too severe, under all the circumstances of the situation. This right is deemed to be inherent in the Arbitrator's power to review discipline and his authority to finally settle and adjust the dispute before him."

The grievant testified that she knew of the policy and intended to fulfill the requirement on the last of the month but that she also had an evidence report to finish and she experienced computer problems that deleted much of her previous work. Instead of writing the tickets she used her time to find and complete the report. She did not purposely fail to write violations.

Sugarman now had to decide if the punishment fit the crime. Although the Grievant had previously been issued a performance warning (which is not a formal part of progressive discipline), a written warning is the first step in progressive discipline. Arbitrator Sugarman stated that "absent other considerations, I would find that the punishment did not violate the just cause provision of the CBA." But, as is not uncommon, there were other considerations. Sugarman viewed the litany of violations that the grievant was charged with as falling under the category of "piling on." Having found most of the charges to be without merit, it is likely the department should have once again counseled the Grievant.

In his award Arbitrator Sugarman issued an order that the discipline was to be removed from Grievant's personnel record and held for naught. Sugarman also stated that if Rule-30 was to be enforced, there must either be a OPE "system" or, if no formal evaluation process is implemented the City must inform officers of the factors to be used in a OPE.

President Kulhanek was pleased with the decision and especially appreciative that POAM would challenge Ypsilanti's ticket quota with an exceptional advocate such as attorney Martha Champine. "Management and its union need to work together on these type of issues," said Kulhanek. "This caused a great deal of anxiety amongst our membership that could have been avoided." □

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A Decade after the Millennium

By Barry Sherman

Who would have guessed that this state and country would be in the condition they are in today -- only ten years after the turn of the century?

Let's go to back to Dec. 31st 1999. As the Midnight Shift Lieutenant at Livonia P.D., I had a station full of brass and city officials all standing by waiting for the big y2k crash that was supposed to disable everything from computers to street lights. We even stockpiled pallets loaded with bottled water in the vehicle maintenance garage to supply those who needed it when the water system shut down.

Well, as you are aware, nothing of any significance occurred. The months of meetings to plan our response leading up to this national catastrophe were little more than a waste of time. All the brass went home and we handled the typical runs related to New Year's Eve. I retired the following month and began my new position at Madonna University.

The issues facing the country at that time (aside from y2k) were really non-issues. The national unemployment rate was at 4.0%. The NASDAQ was at an all time high of over 5,000 and we were all excited about the money our deferred compensation and 401k accounts were earning. Property values continued to rise and our homes seemed like good investments for the future. Because the economy was doing so well and businesses and industry in Michigan were still flourishing, income to local communities in the form of taxes continued strong. Michigan's prison population was rising as support for the "get tough on crime" philosophy was running high in this state. Additional correction officers were being hired to meet this increase. Municipalities were recruiting new police officers to replace retiring ones. Manpower levels in many police agencies were at their peak. Salaries for officers continued to increase and fringe benefits for public employees were not tinkered with. Many departments continued to encourage their officers to obtain higher education and offered tuition reimbursement plans.

Then the unthinkable occurred: the terrorist attacks of September 11th, 2001. There are those who feel that this event was the pivotal point in the downslide of our economy. The World Trade Center attacks, along with other events throughout the decade, including the mismanagement of our largest banks, the Wall Street scandals, and the mortgage mess, brought us to our near economic collapse last year.

Now let us compare 2010 to 2000. The once almighty NASDAQ struggles to stay over 2,000. Our once flourishing 457 and 401k accounts have been decimated or severely impacted. The unemployment rate in this state exceeds 15%. Michigan started its recession long before the nation did. Many businesses have closed up and the auto industry and related manufacturing have drastically reduced their workforce. This has led to many home foreclosures. Property values have plummeted and the resulting tax dollars that state and local governments were receiving have been reduced dramatically. These tax dollars are the main revenues that support police budgets. It is astounding to think that 500,000 homes in Michigan are worth less than what is owed.

The impact on law enforcement and criminal justice in this state has been devastating. Many departments are working with severe manpower shortages as they can no longer replace those who are retiring. This will affect the ability to effectively police their communities, not to mention the related officer safety issues. Some departments are offering buyout packages to expedite this retirement exodus. An area district court judge recently told me his traffic case load has been seriously reduced due to the decrease in officers in his community, resulting in fewer citations being issued. Think how this will impact traffic safety in communities such as his. Car crashes resulting in injuries and fatalities are sure to follow. Fringe benefits are always a target in times like this. Health care deductibles and co-pays usually fall victim. Modern day professional policing has always been characterized by educated officers. Tuition reimbursement has been suspended or reduced by some departments. Our Corrections Department continues to be negatively impacted by the executive branch of this state. The governor

has declared open house in our prison system, with many offenders being released early in a misguided and dangerous effort to reduce the state budget. The reported high of 51,000 inmates will be brought down to 46,000. Her most recent proposal of awarding "good time" would release thousands of additional felons. This will no doubt result in higher crime rates and additional work for law enforcement and the courts.

I will end this commentary with the sentence I began with. Who would have guessed that this state and country would be in the condition they are in today. □



Barry Sherman retired from the Livonia Police Department as a Lieutenant after 28 years of service. He was a member of the POAM and is a past president of the Livonia Lieutenants and Sergeants Association. He earned his B.A. Degree from Madonna University and his M.A. in Criminal Justice from the University Of Detroit. Barry taught part time at area colleges and universities while employed with Livonia. Upon his retirement he accepted a full time position with Madonna University where he is an Associate Professor and Chairperson of the Criminal Justice Department. He is member of the

Criminal Justice Advisory Boards for Livonia Public Schools and Henry Ford Community College and North Central Michigan College. Barry is on the Board of Trustees for Highland Twp. You can reach him at 734-432-5546 or bsherman@madonna.edu.

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GRS INSIGHT

By Norm Jones and Paul Zorn

Preserving Financially Sound Defined Benefit Pensions in Challenging Market Environments

In 2008, the severe decline in the financial markets and subsequent downturn in the global economy resulted in investment declines for public pension plans averaging 25%. This, in turn, affected the funded status of many public plans and produced substantial increases in contribution rates, which will likely continue over the next 3 to 5 years, at least. This puts additional budgetary pressures on state and local governments at a time when they face fiscal stress from declining revenues.

As a result, state and local governments are examining ways to mitigate the impact of the market decline on plan funded levels and contribution requirements. This article discusses the advantages and disadvantages of several approaches for defined benefit plans; however, it does not recommend any specific approach. The decision to make changes should only be made after careful analysis in light of the plan's circumstances and the related long-term impacts on the plan. □

Table 1: Responding to Market Declines			
These responses are presented for the purpose of discussion and are not intended as GRS recommendations.			
Changes to Contributions			
Response	Advantages	Disadvantages	Examples
Increase employer contributions	<ul style="list-style-type: none"> Helps ensure future benefits will be paid May make it easier for employer to attract and retain qualified employees 	<ul style="list-style-type: none"> Employer may not have the necessary funds Contributions may be set by statute 	<ul style="list-style-type: none"> Increase employer contributions to full ARC
Increase employee contributions	<ul style="list-style-type: none"> Offsets employer contribution increases (degree depends on extent employee contributions are increased) 	<ul style="list-style-type: none"> Employees may not be able to afford increased contributions Employee contributions may be set by statute or collective bargaining agreements May make it difficult for the employer to attract and retain qualified employees 	<ul style="list-style-type: none"> Increase employee contributions from 5% to 6% of pay Employer no longer "picks-up" employee contributions
Set thresholds on increases in employer contributions	<ul style="list-style-type: none"> Impact of sudden changes does not cause large increase in contribution rate 	<ul style="list-style-type: none"> The full ARC may not be contributed for many years, resulting in additional interest costs and NPO 	<ul style="list-style-type: none"> Limit employer contribution increases to 1% of pay each year until reaching full ARC
Changes to Benefits			
Response	Advantages	Disadvantages	Examples
Delay or reduce ad hoc COLAs	<ul style="list-style-type: none"> Lowers employer contributions 	<ul style="list-style-type: none"> Retirement benefits may not keep pace with inflation 	<ul style="list-style-type: none"> Postpone providing ad hoc COLA
Change benefits for new hires	<ul style="list-style-type: none"> Lowers employer contribution rate (degree depends on extent benefits are reduced for new hires) 	<ul style="list-style-type: none"> Reduced employer contributions may take years to materialize Lower benefits may make it difficult for the employer to attract and retain qualified employees 	<ul style="list-style-type: none"> Lower multiplier, extend normal retirement age, increase average earnings period
Establish hybrid plan for new hires	<ul style="list-style-type: none"> Lowers employer contribution rate (degree depends on extent benefits are reduced for new hires) Shifts some of the investment risk to members via the DC component 	<ul style="list-style-type: none"> Reduced employer contributions may take years to materialize Lower benefits and added employee investment risk may make it difficult for the employer to attract and retain qualified employees 	<ul style="list-style-type: none"> Establish a new tier for new hires with lower benefit multiplier combined with 401(a) DC plan
Add incentives to delay retirement	<ul style="list-style-type: none"> Lowers ARC by postponing retirement age (degree depends on how many members postpone retirement and for how long) 	<ul style="list-style-type: none"> Delayed retirement may conflict with employer efforts to reduce workforce in difficult economic times 	<ul style="list-style-type: none"> Provide a higher multiplier for 30+ years of service
Change benefits for current employees	<ul style="list-style-type: none"> Immediate reduction in liabilities and contributions (degree depends on specific plan changes) 	<ul style="list-style-type: none"> May be subject to legal challenge May conflict with state constitution or statutes 	<ul style="list-style-type: none"> Reduce interest on employee contribution refunds Lower future service multiplier from 2.0% to 1.5%
Changes to Actuarial Assumptions and Methods			
Response	Advantages	Disadvantages	Examples
Lower wage inflation assumption	<ul style="list-style-type: none"> Offsets impact of lower investment return Consistent with many economic forecasts over the foreseeable future 	<ul style="list-style-type: none"> With the economic stimulus, some think we are moving into an inflationary period 	<ul style="list-style-type: none"> Lower wage inflation from 4.5% to 4%
Lengthen amortization period	<ul style="list-style-type: none"> Lowers employer contribution rate (degree depends on how long amortization period is lengthened) 	<ul style="list-style-type: none"> Lengthens period needed to fund the plan Results in NPO if period is over 30 years 	<ul style="list-style-type: none"> Increase amortization period from 25 years to 30 years
Lengthen asset smoothing period	<ul style="list-style-type: none"> Lowers employer contribution rate (degree depends on how long smoothing period is extended) Increases extent to which investment gains and losses are smoothed into the ARC 	<ul style="list-style-type: none"> Lengthens period needed to fund the plan Could result in misaligned smoothed and market asset values Higher ultimate contribution rates 	<ul style="list-style-type: none"> Increase asset smoothing period from 3 years to 5 years
Widen asset value corridor	<ul style="list-style-type: none"> Lowers employer contribution rate (at least temporarily) 	<ul style="list-style-type: none"> Lengthens period needed to fund the plan Contributions could increase suddenly when new corridor is reached Higher ultimate contribution rates 	<ul style="list-style-type: none"> Widen asset value corridor from 90%-110% to 80%-120%

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Take Home Vehicles Determined to be a Past Practice in Garden City

By Ed Jacques, *LEJ* Editor

For approximately 30 years in Garden City, the position of deputy chief, lieutenant, special investigations, and lieutenants supervising all support and professional services included entitlement to a take home vehicle, including responsible personal use of the vehicles. Past collective bargaining agreements, including the current one, were renegotiated without any provision regarding take home vehicles referenced, however, the entitlement to take home vehicles had been clearly defined both orally and in writing in Department General Orders, and a Take Home User Agreement, thus establishing a well recognized past practice.

Effective May 26, 2008 a complete elimination of personal use of the vehicles for any purpose was imposed. Police Chief Kim Scott advised the Command Officers that per City Manager Dave Harvey, all related General Orders and Take Home User Agreements were invalid and would be rewritten to eliminate any personal use of the vehicle. The Chief stated that no replacement for the reduction of benefits would be offered to the affected Garden City Command Officers Association (GCCOA) members. The Union immediately demanded to bargain the issue citing a unilateral change in conditions of employment. The City Manager decided to "suspend my original order of the elimination of the take home vehicles until both the City and GCCOA negotiate the issue." Later without bargaining the issue the City went ahead and eliminated the take home vehicles for all the officers except the deputy chief.

GCCOA members were represented by POAM Assistant General Counsel Douglas Gutscher who contended that this was a case of a long standing past practice since 1985 which has been incorporated in the collective bargaining agreement. Officers had given up stand-by pay in lieu of the personal use of take home cars as part of employee compensation. The use of take home cars was taken from the unit without negotiations which constitutes a breach of contract.

The City's position was that it has the Management Right to remove Command Officers from stand-by duty and exercise that right for the purpose of confronting mounting budget deficits. They argued that any alleged past practice was dissolved by the city's growing operational deficit.

The Union filed a grievance which was heard by Arbitrator Jerry Hetrick. In his Award, the arbitrator cited the well known definition of past practice by Arbitrator Richard Mittenthal. Arbitrator Mittenthal has held that a course of conduct, to be a past practice, must satisfy the following criteria:

- Clarity and consistency
- Longevity and repetition
- Acceptability
- Underlying circumstances which give a practice its true dimensions
- Mutuality

In this particular Award, Arbitrator Hetrick stated that, "there can be no serious question about the existence of a past practice of providing take home vehicles for some twenty-eight years or that it arose out of a mutual understanding that Command Officers would forgo stand-by pay in exchange. No reason existed for the union to propose that a take home vehicle provision be inserted into the agreement. It continued under several collective bargaining agreements."

When determined a past practice exist, arbitrators often look at whether the practice arose out of the exercise of a management function. Where arising out of a management function relating to methods of operation and efficiency the Arbitrator may also consider the rationale for its elimination.

Arbitrator Hetrick determined that this was not a case of pure managerial right to adopt or eliminate a method of operation or the service to the public. The decision to cancel take home vehicles flowed from budgetary restraints and the Mayor's decision to reduce costs. In similar circumstan-

es, arbitrators have ruled the practice of providing take home vehicles has become a binding practice that could not be eliminated unilaterally without bargaining with the Union. A past practice, if proven, is part of the collective bargaining agreement. Hetrick noted that the employees lost the use of take home vehicles and the stand-by pay provision will no longer apply.

Arbitrator Hetrick determined that the changed circumstances relied upon by the Employer were not operational or a core managerial function, they were simply economic. The Employer originally asked the Union to give up stand-by pay in exchange for the take home vehicle. The practice was supported by mutual agreement and may be subject to change only by

"..the changed circumstances relied upon by the Employer were not operational or a core managerial function, they were simply economic."

mutual agreement. This is particularly the case where it involves a working condition, benefit or compensation and not a core managerial function. The elimination of an economic past practice to scrutinize cost may be a legitimate business decision but it does not override the obligation to negotiate with the Union over its elimination.

Arbitrator Hetrick directed Garden City to reinstate the use of take home vehicles to the affected employees and ordered the City to reimburse those employees at the City's established mileage rate for such mileage to and from the place of employment and residence. □



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Guns on Campus: Police Perspectives

By Donna Selman, Ph.D.



In April 2007, a gunman opened fire on Virginia Tech's campus, taking the lives of 32 people including five faculty members and twenty-seven students, injuring an additional seventeen innocent people before killing himself. Then, not even a year later a similar instance occurred in 2008, at Northern Illinois University, where five lives were lost, and an additional fifteen were injured before the gunman took his own life. These two terrifying tragedies served as a spark for a national debate on the right for those who have permits to carry concealed

weapons on college campuses, which have predominantly remained gun free throughout history.

Organized groups of students and faculty have developed on both sides of this debate, and legislation to change laws has been introduced in many states across the country. Considering the number of public colleges (38) and universities (15) in the state of Michigan, this debate is of particular importance. The recent introduction of Senate Bill 747 to the Michigan Senate and House Bill 5474 highlights the urgency of input from the Michigan law enforcement community. Michigan officers who serve these campuses as well as those officers whose jurisdictions border and/or encompass these locations have the largest investments in the outcome of this legislation. As of today, the voices of Michigan law enforcement have not been a part of the formal discussion.

Guns on Campus: The Debate

On one side of the debate, there are those who believe that the ability to carry guns on campus provides certain benefits. One of the main arguments includes the deterrence of crimes that are committed on campus. The school shooting tragedies that have occurred in recent years are often used to build support for this stance. Supporters of guns on campuses say that these situations could have had less bloodshed if students and faculty were allowed to carry concealed weapons that they have permits to carry elsewhere. It is also argued by supported that other crimes could be deterred and students and faculty alike would be able to protect themselves from these dangers and feel safe.

The opposition believes that the legal carrying of a concealed weapon on a college campus can potentially create a very dangerous situation. Those who adhere to this belief are concerned that the presence of weapons on campus will detract from the learning environment of college campuses by adding an additional safety concern. There is also concern regarding the lack of training of the persons carrying the weapon. For example, those who have a permit to carry concealed weapons are only required to attend minimal training with their firearm; unlike the extensive training law enforcement officers undergo. Having weapons on college campuses in inexperienced hands, trying to deter crime or stop a gunman can add an element of additional danger and the potential of injury to bystanders. Of additional concern is the volatile climate inherent on college campuses; ie. population density, parties, high levels of stress and alcohol. The addition of guns to this unique environment could be deadly.

Research on Crime College Campuses

Contrary to popular belief, college and university campuses are generally safe environments. According to a Bureau of Justice Statistics report (2005), college students are less likely to be the victims of violent crimes

than their non-student counter parts. Additional research explains that university campuses experience a significantly lower crime rate than the communities that surround them (Stormer & Senarath 1992). Considering the research regarding crimes on campus, the image of a dangerous college campus is greatly inaccurate and skewed by the incredibly rare media frenzied tragedies that occasionally happen on college campuses. This does not mean that college campuses do not have crime; research has shown that the largest crime problems on campuses are theft and larceny (Fisher, Sloan, Cullen, & Lu 1997).

The research that exists on the prevalence of guns and other weapons on college campuses is minimal. This research estimates that about 7-11% of male students and 1.5-4% of female students have weapons on campus (Meilman & Cashin 1997; Miller, Hemmenway, & Wechsler 1999). The most important part of this finding, regarding the nature of the current study is the characteristics of those students who reported carrying a weapon. The students who reported having a weapon with them at college also reported having higher involvement in many other high-risk behaviors. These high-risk behaviors were mainly surrounding the consumption of alcohol including fights, and arrests for driving under the influence, as well as the use of illicit drugs (Meilman & Cashin 1997; Miller, Hemmenway, & Wechsler 1999). An important facet of information that is missing from the existing data on weapons possession is a breakdown of what those weapons are, and if the students carrying them are legally permitted to do so.

One of the difficulties with the existing literature is the absence of police officers opinions and concerns on this topic. There has been little to no research done on the opinions of police officers on the carrying of concealed weapons. With the increasing presence of police officers on college campuses their voices should be included in this debate. Campus police and the officers of the cities surrounding campuses are ultimately the people who will be confronted with these dangerous situations. Due to the impact that proposed legislation will have on the day to day activities of police officers, their opinions and insights are vital to the discussion and should inform any policy regarding carrying concealed weapons laws on college and university campuses.

Michigan Law

The current law in Michigan prohibits even a permitted person from carrying a concealed weapon on specific areas of college and university campuses. According to Michigan Compiled Laws Chapter 28, Act 327 of 1927, section 28.425o. Amended, "Premises on which carrying a concealed weapon is prohibited include... (h) A dormitory or classroom of a community college, college, or university." The implementation of further ordinances regarding the areas of campuses where concealed weapons are allowed comes from the colleges or universities themselves. The current legislation, Senate Bill 747 introduced to the Michigan Senate in August of 2009 aims to change this. Senator Richardville (R), from the 17th district representing the counties of Monroe, Washtenaw, and Jackson, along with other senators, introduced the bill. This bill would amend the handgun licensure law to eliminate the prohibition of licensed individuals to carry their concealed weapons on college and university campuses, including classrooms and dormitories. The other legislation is House Bill 5474, which would prohibit local units of government from imposing certain restrictions on firearm ownership and possession. The House Bill has been amended so college and university campuses will no longer be able to ban concealed weapons from the entire campus, but will still be able to prohibit them in buildings if they choose to do so. So far these bills have only been introduced to the Senate and House, and has not been passed at any level. Despite this they have managed to create a discussion and debate on campuses across the state. It is because of the introduced bills' popularity and controversy, that the opin-

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ions of police officers that have the most insight into college campuses and their culture should be a vital part of the conversation.

Goals

The main goal of this research is to discover the opinion of campus police officers and those of surrounding communities on the issue of allowing permitted persons to carrying concealed weapons on a college campus. In addition to their opinions on the matter, uncovering the concerns and experiences that support their opinions is a secondary goal of this research. Their opinions, concerns, and experiences are of the utmost importance considering that they will be the people responsible for responding to the dangerous campus situations and crimes that could arise.

Methodology

Due to the exploratory nature of this research a mixed methods approach will be used to obtain the most detailed information possible. To conduct the quantitative portion of the research a short online survey will be distributed. Officers will be asked questions regarding their proximity to a college campus, and their views and concerns regarding the current and future policies regarding the carrying of concealed weapons on college campuses. This survey will be sent to all college campus police departments as well as other police/sheriffs departments surrounding campuses. To obtain the qualitative research to enhance the quantitative data, informal interviews will be conducted. These interviews will be onsite with officers from different regions of the state, and are expected to commence at the Police Officer's Association of Michigan annual meeting, May 26-28 in Grand Rapids, Michigan.

Look for the short survey to appear in your e-mail or look for the link on the POAM website. Your research team, Donna Selman PhD, Anne Lee, and Kaitlyn Robison, appreciate your willingness to participate and look forward to your insights. If you have suggestions for future research please contact the POAM research team at dcritcrim@gmail.com. □

Cover story, cont.

Continued from page 1

status quo of the Act being preserved.

Fast forward this saga to 2009. Now the State is mired in somewhat self-induced economic problems. Call it lack of leadership, lack of insight, whatever; but the State, who cannot seem to get its house in order, proclaimed that it was going to somehow resolve its problems, in part, by helping local government through various actions, including, proposals for changing, i.e., tampering with the Compulsory Arbitration Act. Enter, once again, POAM. I dusted off my 2006 proposals and through hard work with our lobbyist, Tim Ward, our concerns and objections were made known to the powers that be, which resulted in a taming of the legislative proposals.

The result is that the modifications which remain pending before the legislature in the revised bill will purportedly shorten the length of time it takes to complete the process with movement of the last best offer to an earlier stage in the process. The changes proposed are just that, change for the sake of change, with no real, substantive value existing. The interesting twist in this story is how the "shoe is now on the other foot." Because of the economic market, public employers are filing for compulsory arbitration to seek changes to wages and benefits that they could not achieve at the bargaining table. So, guess who was not so interested in changing the law this time around? You guessed right! The band of misfits hid under a rock and were content on not pushing to change much of the Act. You have got to love their sincerity and the credibility of their arguments over the years.

So, members of POAM rest assured that we will be ever vigilant in monitoring the conduct of those individuals who attempt to tamper with the Compulsory Arbitration Act. If change is in the wind, we will continue to launch our platform of meaningful change for your protection.

That's my column for this edition of the *LEJ*, generally speaking. □



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HOW DOES GOVERNMENTAL IMMUNITY APPLY TO THE ACTS OF POLICE OFFICERS?

By Arthur A. Borella

As a police officer, it is a good idea to know when you may be vulnerable to a civil lawsuit based on personal injuries caused by you on the job. For instance, a police officer may be sued if he or she causes an innocent bystander to be injured while the officer is making an arrest. One of the first questions to ask in such a case is whether a police officer is protected from tort liability under the governmental immunity statute, MCL 691.1407.

The governmental immunity statute generally provides that a police officer, as an employee of a governmental agency, is immune from tort liability for injuries to persons or property damage caused by the officer while in the course of employment. MCL 691.1407(2). However, the immunity applies only if all of the following conditions are met:

- (a) **The police officer is acting or reasonably believes he or she is acting with the scope of his or her authority.**
- (b) **The governmental agency is engaged in the exercise or discharge of a governmental function.**
- (c) **The police officer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. [MCL 691.1407(2).]**

If all of these conditions are not present, a police officer is not protected by governmental immunity. In other words, a police officer may be liable for injuries or damage if the officer was acting outside the scope of employment or the governmental agency was not engaged in a governmental function at the time of the injury-occurring event. Also, a police officer may be found liable if the officer's conduct is grossly negligent.

The term "gross negligence" has been defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Other than this definition, there is no clear-cut line as to what conduct arises to the level of gross negligence. The courts usually take a case-by-case approach.

For instance, in *Cebreco v Music Hall Center For The Performing Arts, Inc*, 219 Mich App 353 (1996), the Court of Appeals held that the police officers could not be found to have acted with gross negligence when a concert patron was allegedly injured while the officers tried to move the patron and her motorized personal vehicle from a non-handicapped seating area in a theater, after the patron had refused to move to the handicapped seating area.

In two consolidated cases, *Robinson v City of Detroit and Cooper v Wade*, 462 Mich 439 (2000), the Michigan Supreme Court held that the police owed a duty to innocent passengers in a vehicle, who were injured during a high-speed chase, but owed no duty to passengers who are themselves wrongdoers, whether they bring about the pursuit or encourage flight.

In *Robinson*, the plaintiff was the estate of a deceased 15-year-old boy who was given a ride by a friend to his summer job. City of Detroit police officers noticed that the car was weaving from lane to lane. When the officers tried to pull the car over, the driver fled instead. The officers gave chase and the pursuit ended when the fleeing car collided with another vehicle, killing the passenger.

In *Cooper*, the officers continued pursuing a car with a couple fourteen year old passengers, that the officers believed was stolen and was being driven recklessly through a residential neighborhood by an underage driver. Eventually the driver crashed the vehicle into a house, killing the driver

and seriously injuring the two passengers.

Even though the Court held there was a duty, the Court was not able to determine on the record developed in these cases if the passengers were innocent as a matter of law. Furthermore, the Court held that the City of Detroit was nevertheless entitled to a judgment in their favor as a matter of

law. They held that the above mentioned duty would only impose liability on the City, under the motor vehicle exception to governmental immunity, MCL 691.1405, if there was negligent operation of the police vehicle and the police vehicle hit the fleeing vehicle, physically caused another vehicle or object to hit the vehicle that was being chased, or physically forced the vehicle off the road or into another vehicle or object.

Finally, the Court held the individual police officers were immune from liability under the governmental immunity statute, MCL 691.1407(2), because their actions were not the proximate cause of the plaintiffs' injuries. The court defined the proximate cause as the one most immediate, efficient, and direct cause, of the plaintiffs' injuries.

The issue concerning whether a governmental agency was engaged in a governmental function came up in *Pardon v Finkel*, 213 Mich App 643 (1995). In *Pardon*, the plaintiffs sued deputy sheriffs who were working at the Pine Knob entertainment center. Pine Knob had entered into a contract with Oakland County to hire deputy sheriffs to provide security. The plaintiffs were going to a concert at Pine Knob. One of the plaintiffs was an off-duty police officer and she had been carrying a pistol in her purse. The off-duty officer had informed an attendant who then notified the sergeant responsible for supervising the deputies at Pine Knob.

The sergeant confronted the off-duty officer who then produced her identification and a badge. An argument ensued between the deputies and the plaintiffs which ended in the arrests of the plaintiffs. The three plaintiffs were charged with assault and battery, aggravated assault, and disturbing the peace. All three were found not guilty on all charges. The plaintiffs sued several parties, including the county and the deputies, alleging in part false arrest, false imprisonment, malicious prosecution, assault and battery, and intentional infliction of emotional distress.

The county and deputies argued that the claims against them should be dismissed because they were protected by governmental immunity. The Court of Appeals disagreed. First, the Court of Appeals determined that the county was not engaged in a governmental function at the time of the tort. The Court stated:

To determine whether a governmental agency is engaged in a governmental function, the focus must be on the general activity, not the specific conduct involved at the time of the tort. In this instance, the general activity focused upon was not law enforcement but crowd control. Such an arrangement is characteristic of a private agreement between two entities as opposed to a law enforcement governmental function. In addition, either party had the ability to opt out of the contract or even decline to enter into or perform the contract. The county would not have such options if its service were mandated by constitution, statute, or local ordinance. The county was not at Pine Knob under any public duty doctrine, but was there only pursuant to contract. [Id., p 649 (Emphasis added; citation omitted).]

Next, the *Pardon* Court ruled that the deputies also were not protected by governmental immunity because one of the subsections of MCL 691.1407(2) had not been met, i.e the county was not engaged in a governmental func-

".. it is a good idea to know when you may be vulnerable to a civil lawsuit based on personal injuries caused by you on the job. "

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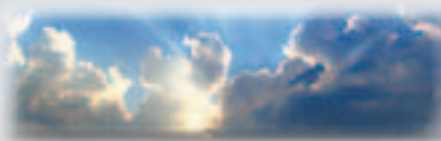


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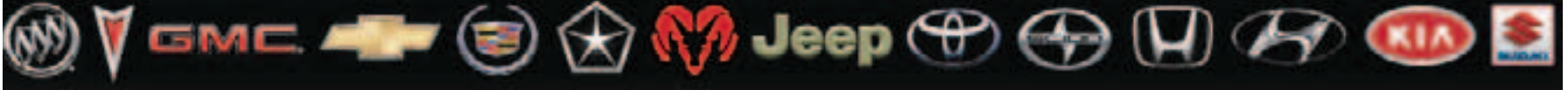
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By Jim DeVries, MCOLES Board Member

Equal Opportunity Recession

State government is gradually contracting and changing in adjustment to steadily decreasing revenue. If the state's fiscal problems were confined to the state, this would be of limited consequence for local units of government. Unfortunately, the reverse is true. The condition of state government has enormous impact on municipalities, counties, villages, townships and municipalities.

This issue has a direct bearing on local law enforcement. Revenue sharing dollars from the state have shrunk while local revenue streams are drying up as well. There is little doubt that our declining population of law enforcement officers is a direct outgrowth of this problem.

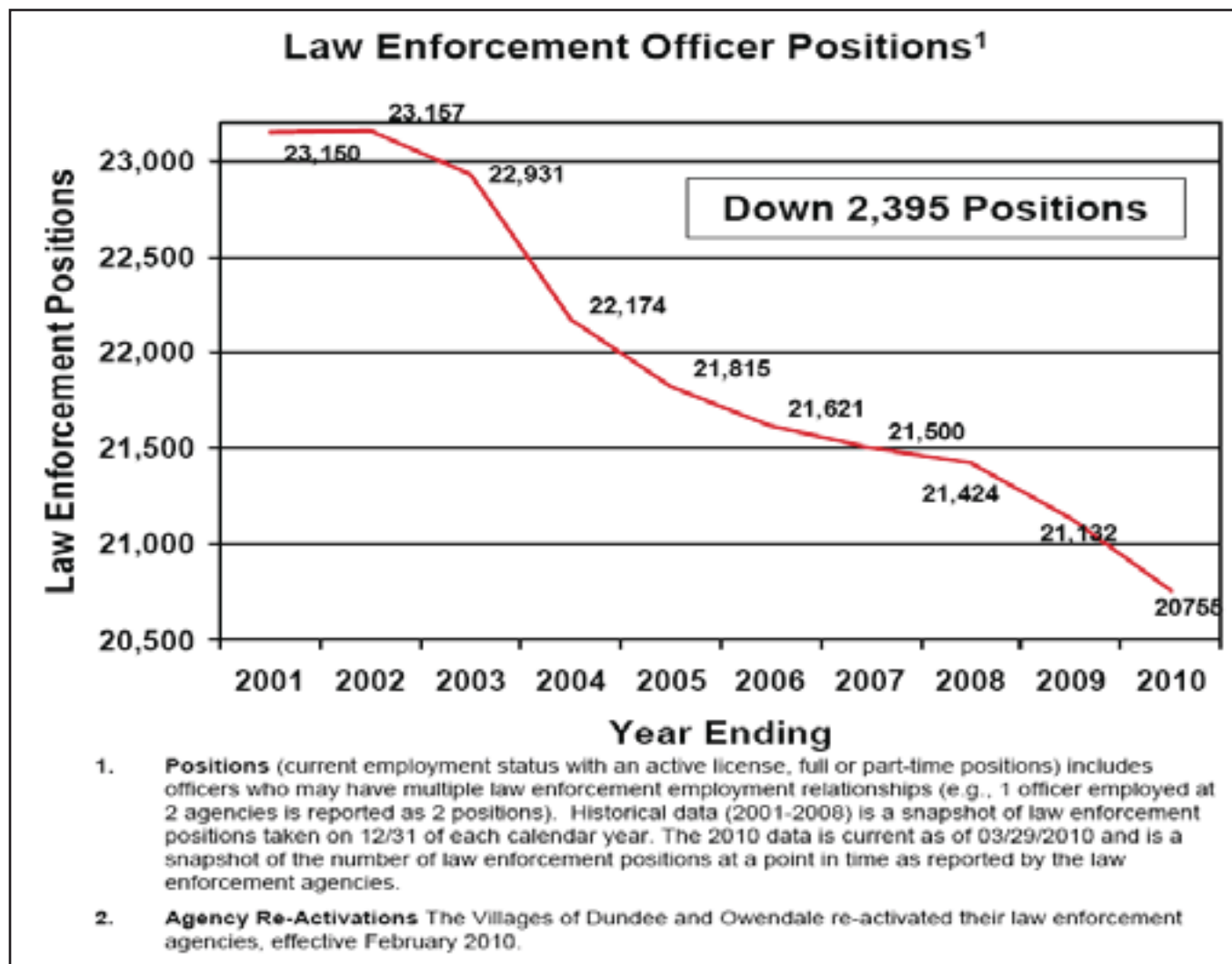
MCOLES has just finished its annual registration. Through this process, law enforcement agencies report on where Michigan's licensed law enforcement officers are practicing their profession. This is a statutory requirement that came to MCOLES at the end of the last decade. The preliminary indications from this year's data indicate an increasing decline in the number of law enforcement officers in this state. Since September 11, 2001, over 2,000 law enforcement positions have been lost in Michigan. We are now below the 21,000 mark.

Not included in the information portrayed above are 46 layoffs that we've just learned about in the City of

Flint. When we look for areas that have been impacted, we quickly discover that there are no communities that have been spared. The numbers are greatest in the large population centers however rural areas have proportionately suffered similar declines. Moreover, there is no form of law enforcement agency that has remained unscathed. This is an equal opportunity recession.

Despite these gloomy numbers, we do note that investment accounts seem to have recovered somewhat, as have some portions of big business, excluding the auto industry. We know from prior experience that government recovery always lags behind that of business. This observation would suggest that, from the standpoint of government, we are amid the worst of it.

In this atmosphere, the value of law enforcement service must be underscored at every opportunity. Remember, public safety is the first obligation of good government! □



POAM Vice-President Dan Kuhn Appointed to State of Michigan 9-1-1 Committee

By Ed Jacques, LEJ Editor

Speaker of the House Andy Dillon, appointed Saginaw police officer Daniel Kuhn to the State of Michigan 9-1-1 Committee as the representative for the Police Officers Association of Michigan (POAM). The appointment was made pursuant to Public Act 379 of 2008. Kuhn serves as the Vice-President of the 14,000 member association and is also its Business Agent assigned to represent 25 law enforcement agencies for the organization, most of them located in central Michigan. Kuhn is also a 19 year veteran of the Saginaw Police Department.

"I appreciate the opportunity to participate in the decision making process that affects public safety, especially the hard working dispatchers and police officers right here in mid-Michigan," said Kuhn. "Our goal is to constantly improve the protection and representation of POAM members and having my ears, and more importantly, a voice on the 911 Committee provides us the ability to do just that." □

Unfair Labor

By Ed Jacques, *LEJ* Editor

Decision Re-Affirms PERA as Dominant Law

In September 2008, negotiators for the City of Belleville and POAM on behalf of the Belleville Police Officers Association reached a tentative agreement on a new collective bargaining agreement to replace the prior contract which had expired. Details of the tentative agreement were set forth in a one-page document dated September 24, 2008. Among the changes were a series of wage increases, including a \$300 signing bonus, retroactive pay, a health care re-opener in 2009, and the addition of Good Friday as a holiday for unit members. The written agreement did not specify that there would be any change with respect to promotions for bargaining unit members.

Members of the bargaining unit ratified the tentative agreement as on September 29, 2008. POAM Business Agent, Thomas Funke, notified the City of the results of the ratification vote by letter dated October 7, 2008. In that letter, Funke indicated that the POAM would prepare a draft of the contract and provided a copy to the City for its approval followed by a signed copy of the agreement.

On October 6, 2008, the Belleville City Council unanimously approved the written tentative agreement with the stipulation that such approval was pending the review of its City Attorney. The Union was not notified that the City Council's approval was in any way conditional. On October 21, 2008, bargaining unit members received checks for retroactive pay and the \$300 signing bonus as specified in the tentative agreement.

On November 7, 2008, the Union provided the City with a draft copy of the agreement with no changes in respect to the issue of promotions. In January of 2009, the City Attorney informed the Union that the promotional language was not acceptable because it allegedly conflicted with the City Charter. The parties met several times to address those concerns but, in February 2009, the City informed the POAM that it would not execute the contract. The City refused to provide additional benefits owed to bargaining unit members under the terms of the agreement, including a wage increase due members beginning on July 1, 2009. POAM, on behalf of the BPOA, filed an unfair labor practice charge. The City, in response also filed a charge against the Union.

Attorney David E. Kempner represented the Employer and Assistant General Counsel Douglas M. Gutscher argued for the Union in front of Administrative Law Judge David M. Peltz.

Gutscher pointed out that one of the requirements of good faith collective bargaining under the Public Employees Relations Act (PERA) is the expeditious and decisive acceptance or rejection of a tentative agreement. The Michigan Employment Relations Commission (MERC) has recognized that collective bargaining envisions an obligation on the part of those involved in the negotiation process to affirmatively support a contract to which they have tentatively agreed, and that a failure to do so may constitute an unfair labor practice. Where a contract provision in dispute is unambiguous and there is no evidence of fraud or bad faith, a party cannot later repudiate that provision by claiming that it did not intend to agree to the provision and/or that it failed to read the agreement carefully before ratifying it.

Attorney Kempner claimed that the City's ratification was made conditional at a public meeting, even though it is clear as a matter of law, that mere notice to the public at a meeting or perhaps publication in a newspaper does not constitute notice to the Union. Attorney Kempner was also aware that any contradictory provision in the City Charter would not nullify the agreement that had been reached and ratified, because PERA, as the Michigan Supreme Court has consistently recognized, is the dominant law regarding public employee labor relations.

The Court has consistently held that the bargaining obligation under PERA prevails over conflicting legislation, charters, ordinances or resolutions. Notwithstanding other compelling evidence Gutscher cited the City's financial distribution of retroactive pay and the \$300 signing bonus as more proof of the contracts de facto execution.

In support of his decision for POAM/BPOA, Judge Peltz cited City of Northville, (20 MPER 50) 2007. The case held that a bargain cannot be dissolved because of a claim, after the fact, that it will have a negative effect on a Union, its members, a public employer or governmental entity.

In his decision, Peltz admonished Kempner and the City for its behavior and ordered the City to abide by the collective bargaining agreement ratified in September 2008. Judge Peltz also stated that if it was not for poor case law in *Goolsby v City of Detroit*, 211 Mich App 214 (1995), he would award attorney fees and costs to the Union as compensatory damages.

POAM Business Agent Thomas Funke was confident of victory when POAM Assistant General Council Doug Gutscher took on the case, but was still relieved when it came to its appropriate conclusion. "It took three years and three City Managers to get a deal done that the City of Belleville would not honor" said Funke. "The group is pleased that we hammered out a five-year deal and I am especially happy that I do not have to begin new negotiations right away." □

"..a bargain cannot be dissolved because of a claim, after the fact, that it will have a negative effect on a Union, its members, a public employer or governmental entity."

"The City refused to provide additional benefits owed to bargaining unit members .."



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or Practices

Union Activities Protected by POAM Charge

For a number of years, the City of Saginaw has allowed its employees to use its e-mail system to send correspondences that are not directly work related. The City also allowed the unions representing its employees, including the Saginaw Police Officers Association (SPOA) to use the system to send e-mails to their members.

On July 4, 2008, Saginaw Police Officer Daniel Kuhn sent an e-mail to members of the bargaining unit concerning certain actions of the City Pension Board. On July 15, 2008, Saginaw Police Chief Gerald Cliff unilaterally implemented a new written internet and e-mail policy by means of Police Department General Order. The Union requested to bargain the new policy, but the City refused to address the request. The new policy included the statement that all e-mails sent through the City's system were the property of the City and employees were not allowed to criticize any City official.

In 2008, contract negotiations between the City and the SPOA had collapsed and a petition for interest arbitration under Public Act 312 had been filed. At the time, Saginaw's City Manager also served as the President of a professional organization, the International City and County Managers Association (ICMA).

In addition to their defined benefit pension, SPOA members are eligible to participate in a City sponsored 457 Deferred Compensation Plan. In 2008 employees could choose between two vendor/administrators, the Hartford Group and ICMA. In the fall of 2008, several members of the bargaining unit suggested that the City bring in a third vendor. The two parties engaged in informal discussions on the topic.

Dan Kuhn was asked why he had subsequently stopped making new contributions to his ICMA account and directed all new contributions to his Hartford account. On October 16, 2008, Kuhn sent the following group e-mail using the City of Saginaw's e-mail system.

"I left ICMA because of principle mainly. To have a nickel of my fees paid to lobbyists who campaign against employee's interest, and pay people who train the likes of their new president, bothers me."

On January 7, 2009, Kuhn was served with a notice of a one-day suspension with the threat of further discipline up to and including discharge. The City claimed that the sending of Kuhn's e-mail was in direct violation of the Saginaw Police Department General Order because his e-mail disparaged the City Manager.

POAM filed both a contractual grievance and an unfair labor practice (ULP). The grievance alleged that Kuhn's discipline was without just cause and violated Article 6.1 of their contract. The ULP alleged a violation of Officer Kuhn's rights under the Public Employees Relations Act (PERA), Section 9 as it relates to the right to engage in lawful, concerted activities for the purpose of collective bargaining.

It is well-stated law that public statements made by a single union representative concerning a labor management dispute constitute concerted activity protected by Section 9, as long as those statement do not involve the disclosure of confidential information. Rude, insulting, even threatening remarks for which an employee would normally be subject to discipline may be protected if made in the course of protected conduct. Protection by the Act can only be severed if an employee's misconduct is severe.

In Administrative Law Judge Julia C. Stern's written opinion, she states, "respondent's argument that Kuhn's e-mail disparaged the City Manager strikes me as disingenuous. Kuhn's e-mail contains nothing that could be

interpreted as a personal attack. Kuhn's criticism of Early is actually a complaint about respondent's conduct at the bargaining table."

POAM Assistant General Counsel Douglas Gutscher agreed that employees do not have an absolute right under Section 9 of PERA to use an employer's e-mail for union or other communications protected by PERA, but once a practice is established the employer cannot unilaterally alter the terms of use. Further, the National Labor Relations Board (NLRB) has consistently held that the employer cannot lawfully apply its rules against the use of its equipment in a discriminatory fashion to prohibit protected, concerted conduct.

Judge Stern agreed and in her recommended order instructed the employer to remove the discipline issued and make Officer Kuhn whole for any monetary losses suffered as a result of the discipline including interest on the amount owed at the rate of 6% per annum, computed quarterly.

In typical fashion, Kuhn responded by saying "I wish I would have got 30 days, I haven't been able to make that kind of interest in a long time." □

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Former Police Detective, Union President

TOM GRIFFIN RETIRES

By Ed Jacques, *LEJ* Editor

Over 40 years of experience in the police and labor profession were sorely missed by POAM and hundreds of its members when Business Agent Tom Griffin retired in April, 2010.

Griffin was the complete package, serving as a Dearborn police officer from 1968 to 1998. Tom served his membership as their local secretary for four years, vice-president for 12 years and four years as president. Griffin was named to the POAM Executive Board and began serving local bargaining groups in 1998. Tom became a full-time Business Agent at POAM one day after his retirement from the Dearborn Police Department. At the time of his retirement, Griffin represented 30 units from a wide range of communities in lower Michigan.

Although Tom represents many police department employees, he has been a significant force in the growth of the public employee union, Technical, Professional and Officeworkers Association of Michigan (TPOAM). Over the last decade, when public employers wanted significant changes in benefit levels, they would start their campaign against the often-time under represented public employees. At the request of some of our POAM units, Griffin stemmed that tide with his commitment and expertise to those deserving groups. POAM and TPOAM members are glad that Tom Griffin has built a unified front in many municipalities.

For the last six years Tom and his wife, Christine have enjoyed Florida's climate at their vacation condo. They plan on purchasing a home in the Fort Meyers area and be full-time residents by this summer. Griffin will be attending the POAM convention in May and visiting relatives in Michigan in the upcoming summer.

Tom Griffin will also be remembered as a business agent who was extremely effective using his laid back, professional and respectful style of negotiating. He has developed excellent working relationships with previously tough employers, laying a solid foundation for any POAM business agent that takes over his responsibilities.

"I'm proud of the work I've done and the amount of time I have dedicated to the profession," said Griffin. "Christine and I will miss the camaraderie and friendships we have with clients and the POAM staff, but we can't wait to get to the warmer weather."

Thanks Tom. You've earned it! □



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7TH ANNUAL POAM POLICE APPRECIATION PARTY ON TAP AT THE TUNE INN



By **Ed Jacques, LEJ Editor**

POAM President Jim Tignanelli has announced that our organization will once again host an informal gathering at the Tune Inn for police officers attending Police Week activities in Washington, D.C. The reception will be held on Friday, May 14, 2010.

The tradition started when POAM Executive Board members attended ceremonies in D.C. and noticed that many Honor Guard teams, in between standing vigil, were changing uniforms in public restrooms and waiting in line to get a bite to eat. As former and current police officers, they concluded that all attendees needed a place to relax, eat, and drink with their families and friends, and at an establishment where uniforms were welcome.

For the fifth consecutive year, the event will be held at the Tune Inn, which is located at 331 ½ Pennsylvania Ave., S.E. The bar/restaurant is located across from the Capitol and is convenient to all the landmarks and events during Police Week. Even though it's a short walk, POAM will have a van with its insignias on each side, making runs from the Capitol to the Tune Inn all afternoon.

Last year's event was a smashing success with the Detroit Police and Fire Pipe and Drum Corps providing inspired entertainment and police officers from all over the country swapping stories and well wishes. POAM Executive Board members will be there to greet you and make you feel at home. □



The Tune Inn is the place to be!



Scholarship Winners



Dear Mr. Tignanelli,

I just wanted to thank you for the POAM contribution you sent to me. It will help ease some of the debt that college life is sure to accumulate. I understand that economic difficulties affect all walks of life, and I appreciate that the POAM is still able to help me out considering this fact.

The contribution you sent me will help pay for my education at Michigan State's James Madison College, where I plan to double major in International Relations and Criminal Justice. I plan on entering into the field of law enforcement after my graduation from college, and I certainly thank the Police Officers' Association of Michigan for assisting me in my endeavors.

Sincerely,

Mack George



Dear Mr. Tignanelli:

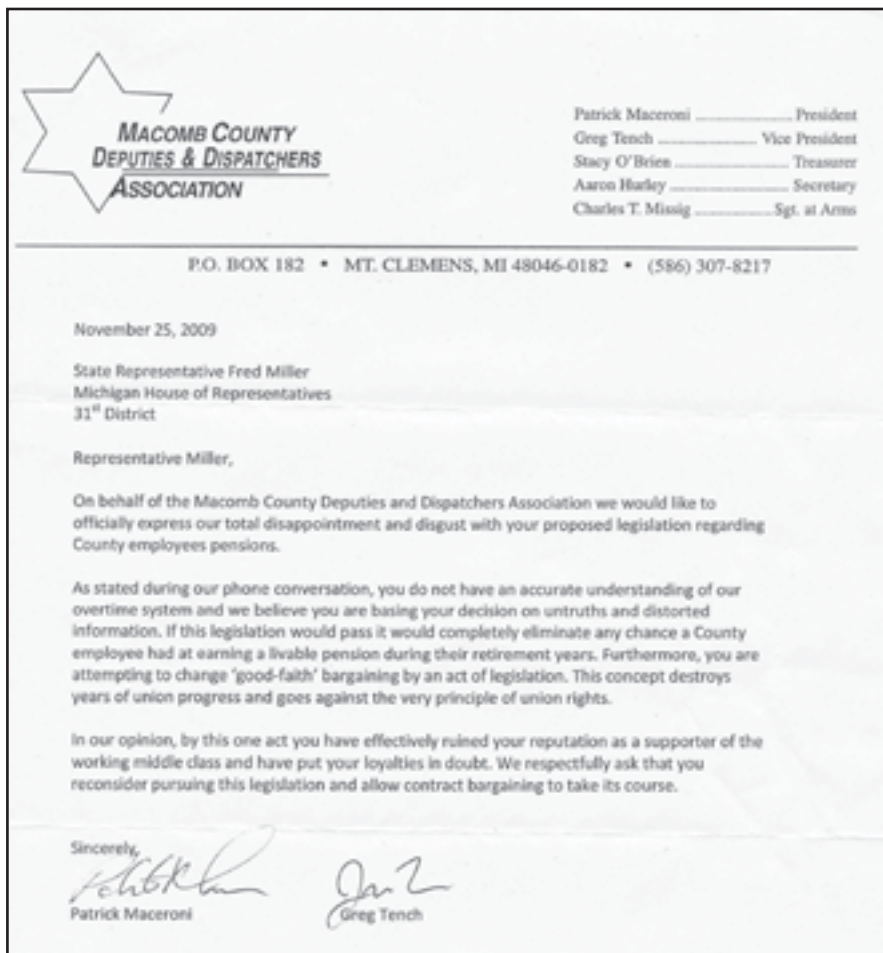
I appreciate your generous gift of money towards my education, and would like to thank you and the Police Officers Association of Michigan. I will be attending Eastern Michigan University in the fall for elementary education and I know that your contribution will help toward my expenses.

You have my sincere gratitude.

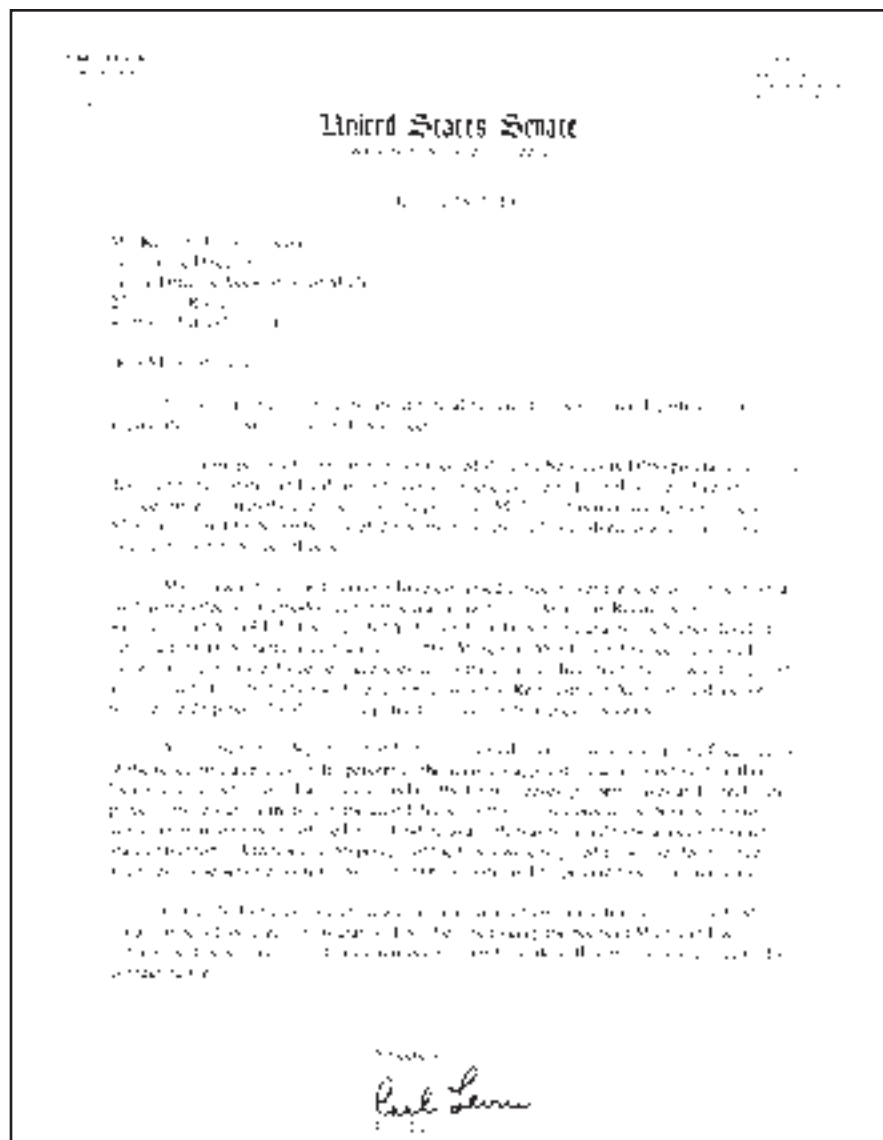
Thanks again,

Amy Sexsmith

Macomb Letter



Levin Letter



The Federal Perspective

By Dennis McGrann, POAM Lobbyist, Washington, D.C.

Congress Passes Health Care Reform and Legislation to Create Jobs

On March 26, the U.S. Congress left town after passing historic health care legislation, and will return after a two-week recess to a hefty “to do” list. For the past several months, Congress has been intensely focused on health care to the exclusion of almost all other issues — except legislation to create jobs. Both the House and Senate will now be able to focus on other areas. Upon their return, Congressional Leadership will start drafting their annual budget resolution, which usually is considered before the spring recess but was pushed back because of health care. Assembling a budget that can gain a majority will be extremely difficult, with heightened public concern over government spending and growing budget deficits. If Congressional Leaders can’t reach agreement on a budget, they’ll likely end up separately adopting a top-line discretionary spending level for the year so the annual appropriations process can proceed.

After the Easter recess, legislation to help create more jobs will once again become a top priority, as Leadership pushes for enactment of more elements of their “jobs agenda” in the hope that job growth in the nation resumes well before the elections. Two job creation bills are currently pending— a \$16.8 billion package of tax incentives for small businesses and state and local governments introduced by Congressman Sander Levin (D-MI-12) that passed the House March 24th (HR 4849) and the Disaster Relief and Summer Jobs Act of 2010 (HR 4899) introduced by Congressman David Obey (D-WI) also passed in the House on March 24th.

HEALTH CARE REFORM:

The new health care overhaul law (PL 111-148) as modified by the reconciliation bill (HR 4872) cleared on March 25th and will be bringing sweeping changes to the U.S. health care system. Below are some major changes that are to come:

EXPANSION OF COVERAGE: Extends health insurance coverage by 2019 to about 32 million people who currently lack it, leading to coverage of about 94 percent of Americans. Assists states in creating exchanges, or marketplaces, where uninsured individuals can buy health care coverage. Federal subsidies will be available for individuals who earn from 133 percent to 400 percent of the federal poverty level (currently up to \$88,200 for a family of four). Expands Medicaid eligibility to all individuals with incomes of up to 133 percent of the federal poverty level, including parents and childless adults. The federal government will cover 100 percent of the cost of coverage to newly eligible people from 2014 through 2016, declining to 90 percent by 2020 and afterward. Provides a one-time, \$250 rebate in 2010 for Medicare Part D prescription drug beneficiaries who fall into the coverage gap known as the “doughnut hole.” The gap would be phased out over 10 years. Starting in 2011, those in the doughnut hole will get a 50 percent discount on brand-name drugs, increasing to 75 percent by 2020, with the government paying the rest.

REGULATORY CHANGES: Imposes new regulations on health insurance companies. Beginning six months after enactment, uninsured dependent children under age 26 can be covered under parents’ plan. Beginning in 2010, insurance companies cannot set lifetime limits on the dollar value of health care coverage. Starting in 2014, they cannot deny coverage for pre-

existing conditions. Requires most individuals to obtain health insurance, with hardship exemptions. A flat penalty tax of \$695 per individual, per year, will be phased in by 2016, with a maximum of 2.5 percent of household income. Penalizes employers with more than 50 workers that have employees who get subsidized coverage through the exchanges. Companies that offer health plans will pay the lesser of \$3,000 for each employee (full-time or part-time) getting a subsidy or \$750 per full-time employee beyond the first 30 workers. Employers that do not offer coverage will pay \$2,000 per subsidized employee.

REVENUE PROVISIONS: Imposes an excise tax on high-cost health care plans, beginning in 2018. The tax will apply to plans costing \$10,200 or more for individual coverage and \$27,500 or more for family coverage— \$11,850 and \$30,950 for retirees and employees in high risk professions (e.g., law enforcement officers, emergency medical first responders, or longshoremen). Increases the Medicare payroll tax for individuals making more than \$200,000 and couples making more than \$250,000, and imposes an additional 3.8 percent surtax on investment income. Creates a 2.3 percent tax on the sale of taxable medical devices, excluding devices that are normally purchased in retail settings, beginning in 2013. The tax will not apply to eyeglasses, contact lenses or hearing aids. Imposes new fees on health insurers. In 2014, a flat fee of \$8 billion will

be levied on the industry, rising to \$11.3 billion in 2015 and 2016, \$13.9 billion in 2017, and \$14.3 billion in 2018. In 2019, the fees would be adjusted by the same rate as the growth in health insurance premiums. Levies annual industry-wide fees on brand-name drugs of \$2.5 billion in 2011, \$2.8 billion in 2012 and 2013, \$3 billion in 2014 through 2016, \$4.1 billion in 2017, \$4.2 billion in 2018, and \$2.8 billion in 2019 and beyond. Reduces Medicare payments to hospitals that serve a disproportionate share of low-income individuals, by a total of \$3 billion in fiscal 2014 through fiscal 2019.

JOBS LEGISLATION:

On March 17th, the Senate passed the final jobs bill and the President signed it the next day (PL 111-147). The \$17.6 billion measure, Hiring Incentives to Restore Employment-HIRE (HR 2847), was cleared by a vote of 68-29. The bill had moved back and forth between the House and Senate in recent months as lawmakers cut the dollar amount and added provisions to offset its costs. The final version includes a payroll tax break for businesses that hire unemployed people along with a \$1,000 tax credit if they keep those workers on the job for at least a year.

The House has since passed its tax incentives bill (HR 4849), the second element of the jobs agenda to be passed by the chamber this month. The centerpiece of the bill is an estimated \$13.2 billion for bond programs used largely by state and local governments for infrastructure development. Among the bond provisions is an extension of the Build America Bonds program through June 2013, which provides financial support to state and local governments through federal tax exemptions for interest on municipal bonds. The bill passed on a 246 to 178 vote. The House also passed the Disaster Relief and Summer Jobs Act of 2010 (HR 4899) making emergency supplemental appropriations for disaster relief and summer jobs for the fis-



Dennis McGrann

Continued on next page

Federal Perspective, cont.

Continued from previous page

cal year ending Sept. 30, 2010.

An additional bill, which is still pending, the "Local Jobs for America Act" (LJAA) (HR 4812) was authored by U.S. Rep. George Miller (D-CA) on March 10th. Provides funds to States, units of general local government, and community-based organizations to save and create local jobs through the retention, restoration, or expansion of services needed by local communities.

The bill includes \$24 billion, (similar to the bill the House approved in December) to help states support 250,000 education jobs, put 5,500 law enforcement officers on the beat, and retain, rehire, and hire firefighters. Specifically, \$1.18 billion to put 5,500 law enforcement officers on the beat. The following Michigan Members have signed onto the bill as co-sponsors to-date: Congressman John Conyers (D-MI-14), Congressman John Dingell (D-MI-15), Congressman Dale Kildee (D-MI-05), Congresswoman Carolyn Kilpatrick (D-MI-13) and Congressman Sander Levin (D-MI-12).

Save the Date:

Save the date for this year's annual National Police Week, which is rapidly approaching. National Police Week will be held May 9-15, 2010 (events in Washington, D.C. will be held May 13-16th), and will be featuring many important events, including the Michigan Police Night Reception to be held on Thursday, May 13th in the Rayburn House Office building, room B354 from 5-7pm.

As always, the Washington, DC office of POAM will be closely following legislation pertinent to the police and peace officers of Michigan. If you have any questions or need additional information regarding legislation or the Michigan Police night Reception, please do not hesitate to contact us at (202) 544-9840. □

Immunity, cont.

Continued from page 19

tion. To be protected under MCL 691.1407(2), all the subsections must be met. Because their employer was not engaged in a governmental function at the time of the tort, the deputies could not be protected by governmental immunity even if they were acting within the scope of their employment. This meant that the deputies could be found liable for ordinary negligence which is easier to prove than gross negligence.

Overall, the governmental immunity statute provides a lot of protection to police officers against tort liability for personal injuries they may cause on the job. However, there are limits to this protection and it never hurts to know your limits. If you act with gross negligence or you act beyond the scope of your authority, governmental immunity will not cover you. Also, you will have no governmental immunity if your employer is not engaged in a governmental function like when a governmental agency contracts to provide crowd control for a private company. □

Any suggestions concerning future topics to be discussed in this column can be mailed to Arthur Borella at 40400 E. Ann Arbor Road, Suite 201, Plymouth, MI 48170. In addition, Arthur Borella can be reached by e-mail at aaborell@yahoo.com, or by phone at 1-800-553-3024.

ABOUT THE AUTHORS

The Law Offices of **Borella & Amsbaugh, PC** has over 30 years experience in representing individuals in Worker's Compensation, Social Security Disability, Auto Accident, No-Fault, Construction Injury and many other areas of the law which provide compensation to those who are disabled or injured due to the negligence of others. No attorney fees unless we recover benefits or a settlement.

Arthur A. Borella Specializing in Worker's Compensation, disability law and related Medicare issues for individuals injured or disabled as a result of their employment.

Richard M. Amsbaugh Specializing in Social Security Disability, Short and Long Term Disability, and Disability Pension Claims, together with Auto, No-Fault and 11 other negligence claims.

WHAT YOU SHOULD KNOW

ABOUT POAM'S EXTENDED LEGAL REPRESENTATION PROGRAM

(NOTE: The answers provided below are for informational purposes only. Reference should be made to the agreement for the detailed terms of coverage.)

1. WHAT IS IT?

The program provides extended legal representation for association members in the event of criminal charges. This coverage begins where basic labor coverage ends.

2. WHAT IS THE SCOPE OF LEGAL SERVICES PROVIDED UNDER THE PLAN?

The legal services provided will include representation by an attorney selected by the POAM for all post-indictment and post-complaint/warrant stages of prosecution, including, but not limited to: investigatory interviews, arraignment, pre-trial, preliminary examination, bond hearings, pre-trial evidentiary proceedings, pre-trial motions, trial (bench or jury), and sentencing, excluding all other post-trial proceedings and appellate matters.

3. DOES THE PROGRAM COVER CRIMINAL CHARGES RESULTING FROM OFF-DUTY AS WELL AS ON-DUTY CONDUCT?

Yes (applicable only to PERA-regulated members paying the \$5 per month membership fee).

4. HOW ARE CLAIMS FOR COVERAGE UNDER THE PROGRAM MADE?

By notifying the POAM within the time limits of the agreement, by use of forms that are available at the POAM office.

5. IS THERE A LIMITATION ON THE NUMBER OF CLAIMS THAT A MEMBER MAY FILE UNDER THE PROGRAM?

No, an unlimited number of claims may be filed by a member of the program during the year of coverage.

6. WHO IS ELIGIBLE TO PARTICIPATE IN THE PROGRAM?

The program is available to all member associations regulated by PERA.

7. WHAT IS THE COST OF MEMBERSHIP IN THE PROGRAM?

The cost of membership in the POAM's Legal Representation Program is \$5 per month per member. This amounts to approximately one-third the cost of any other comparable program, and can be paid in a number of ways, i.e. dues deduction, through a local fundraiser or as an employer-paid benefit through negotiation.

8. MAY A PARTIAL GROUP OF OFFICERS BECOME MEMBERS OF THE PROGRAM IN THE EVENT THAT THE ENTIRE ELIGIBLE GROUP DOES NOT ELECT TO PARTICIPATE?

Yes, partial groups are also eligible for coverage under the program. Those officers in membership should contact the POAM office for enrollment information.

9. WHY SHOULD AN OFFICER BECOME A MEMBER OF THE PROGRAM?

In recent years the number of criminal charges issued against police officers have soared. Whenever this occurs, the officer faces the necessity of providing for his or her own legal defense, at a cost that can easily run into thousands of dollars, and at a time when he or she may already have been suspended without pay or even fired. Even if the officer prevails in court, these economic consequences can be, and often are, devastating.

The POAM's program protects the law enforcement professional from this grave and ever-present possibility, by providing extended legal representation whenever criminal charges are issued.

Signed and Sealed

Agreements gain vital benefits for POAM members

Summaries and highlights of recently completed local contract negotiations and 312 arbitrations



Negotiated Pittsfield Township POA

Duration: 01/01/2010 – 12/31/2014

Wage Increases:

2010 – 0.00%
2011 – 0.00%
2012 – wage re-opener
2013 – wage re-opener
2014 – wage re-opener

- Wage re-opener coincides with millage renewal.
- No health care changes.
- Longevity increased from flat rate to a tiered percentage of base pay.
- Additional vacation day for top two tiers.
- Call in pay increased from 2 to 3 hours at time and a half.
- Vision re-imburement increased from \$125 to \$300.
- Definition of sick time use to now include spouse, parents and children.

Bargaining team consisted of Gary Hanselman, Kristen Beard, Mike McVicker, Jamie Grigal and Matt Hornbeck who were assisted by POAM Business Agent Scott Atkinson.

*More
Signed and Sealed
on inside cover.*



Negotiated Grand Valley State University POA

Duration: 07/01/2009 – 06/30/2012

Wage Increases:

2009 – 3.00%
2010 – 2.50%
2011 – 2.25%

- Medical benefits now extended to family members.
- Defined Benefit Pension contribution by employees reduced by 2.5% during contract years.

Bargaining team consisted of Scott Dusendang, Nate Dornbos, Bill O'Donnell and Gwen DeGraaf who were assisted by POAM Business Agent Tim Lewis.

Negotiated Clare County Corrections

Duration: 01/01/2009 – 12/31/2011

Wage Increases:

2009 – 2.00%
2010 – 2.00%
2011 – 2.00%

- Employees now pay \$0 towards health care thanks to County Administrator Bill Newkirk and the Commissioners working with Cadillac Insurance Center and giving the savings back to employees.
- Added 12 hours of personal time.

Bargaining team consisted of Shawn Sellen, Joe White and Aaron Houle who were assisted by POAM Business Agent Dan Kuhn.

Negotiated Franklin POA

Duration: 01/01/2010 to 12/31/2012

Wage Increases:

2010 – 2.00%
2011 – 1.00%
2012 – 0.00%

- Top wage for a patrol officer is \$64,145.
- Implemented 12-hour shifts.
- BC/BS deductible increased to \$250 for singles and \$500 for families. Prescription co-pay goes from \$10/\$40 to \$15/\$50.
- Employer pays 100% of health care premium.
- New hires do not get E-2 (COLA) additional pension enhancement.
- Negotiated DROP program.

Bargaining team consisted of Jim Gardner and Brian Crane who were assisted by POAM Business Agent Gary Pusheé.

Act 312 Stipulated Award Kent County Law Enforcement Assoc.

Duration: 01/01/2010 – 12/31/2011

Wage Increases:

2010 – 2.25%
2011 – 2.00%

- Health insurance premium co-pay from 10% to 15% with a 5% reduction with an annual physical and/or non-smoking or quit smoking program.
- Life insurance and dental insurance increased.
- Established a Retirement Bonus Bank where any excess of hours over 1,440 can go.
- Employees can purchase a 2% compounding COLA.
- Employee with 15 years of service can sell up to 40 hours of vacation back as long as they use half of their accrued time.
- Overtime for FAC will be averaged over the final 10 years of service.

Bargaining team consisted of the KCLEA Executive Board, Tim Lewis and POAM Business Agent Jim DeVries. Arbitrator was Barry Ott.

Negotiated Northville Township POA

Duration: 07/01/2009 – 06/30/2013

Note - To avoid significant layoffs the collective bargaining unit agreed to re-negotiate the current contract to reflect the following changes:*

Wage Increases:

2009 – 1.00%
2010 – 1.00%
2011 – 1.00%
2012 – 1.00%

- Employees will receive five furlough days in 2010 and 2011.
- Employees will continue to pay 5% to health care premium with no dollar cap.
- Employees pay any pension costs over 25% of payroll. Current contribution for police officer is \$0.

Bargaining team consisted of the entire local Executive Board who were assisted by POAM Business Agent Jerry Radovic.

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