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Law Enforcement JOURNAL

Pre-Convention Issue



Spring 2008

Wayne County Deputies Want POAM

By Ed Jacques, LEJ Editor

According to POAM Business Agent Ken Grabowski and recently retired Research Analyst Marv Dudzinski, Wayne County Deputies have been interested in affiliating with POAM for nearly twenty years. "Beginning about 1990 we began hearing from frustrated members about their union representation," said Grabowski. "And every year since, the number of inquiries about joining POAM has consistently increased."

Although initial recruitment drives stalled,

Local 502 did team up with Grabowski and POAM on legislative and political activities in 1993. As part of that arrangement POAM also offered the limited support of its research and legal department, as well as inviting representatives to attend POAM board meetings, conferences and training seminars. But, over the course of many years and several Executive Board changes, 502's participation disappeared.

In late 2004, shortly before their collective bargaining agreement expired, members became increasingly vocal about the need to join a real police union. Local 502 had been organized by the Service Employees International Union (SEIU) whose membership consisted of various service, hospital and maintenance employees. Decades ago, Wayne County deputies had thought that affiliating with the national AFL-CIO would bring some political clout to their organization and positive results at the negotiating table. Local 502 members still pay an additional \$14.00 a month

for that relationship but receive no on-going labor support for their dues. The local union basically acts as its own independent association, paying for its own expenses and hiring attorneys to handle much of its work load.

As their latest contract neared expiration and an opportunity to change unions occurred, Local 502 attorneys filed for Act 312 (binding arbitration) even though no real negotiations had taken place. The likely reason was because those lawyers knew that filing for Act 312 would block any attempt by local members to petition the Michigan Employment Relations Commission (MERC) to conduct an election to switch unions. Local 502 Executive Board members were told that compulsory arbitration was requested to keep current terms and conditions of their contract in place while they negotiated a subsequent agreement, even though the Public Employment Relations Act (PERA) already guaranteed that protection.

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Generally Speaking

AN OVERVIEW OF JOINT OPERATING AGREEMENTS: FOLLY OR FINANCIAL NECESSITY?



By Frank
Guido,
General
Counsel

Difficult economic times often result in drastic measures being taken to achieve financial stability, whether dealing with personal matters or governmental affairs. We have been flooded at POAM with repeated inquiry as to the legal propriety of political subdivisions entering into joint operating agreements for the performance of services, specifically law enforcement and dispatch functions.

This is not a novel occurrence. In the early 1990's, during another wave of economic pressure, a number of governmental entities contemplated merger of functions in an effort to curb financial shortfall caused by dwindling revenues. For a variety of reasons, usually driven by political scrutiny, most efforts failed to materialize. While on paper an economic analysis may show the financial benefit of merged services, there is the political reality of convincing citizens of a community that they must now share resources, personnel and even facilities with other governmental entities. That

reality rarely yields warm and fuzzy acceptance of a "Socialist" style sharing by those citizens who will be affected by joint operations.

There are many state statutes which overlap, empowering governmental entities to join together to operate facilities and perform services across geo-political boundaries. One of the earliest statutory enactments is the Inter-Governmental Contracts Between Municipal Corporations Act, P.A.

35 of 1951, as amended, MCL 124.1, et seq. That statutory provision authorizes municipal corporations, which includes counties, cities, townships and villages, to join with one another through contractual agreement, to own, operate and perform either jointly or by one or more of the entities, any service which "each would have the power to own, operate or perform separately."

While the statute makes no direct reference to law enforcement services, there are no judicial decisions prohibiting application of the statute in a law enforcement setting. In fact, a 1989 Attorney General's opinion asserted that the statute could be applied to a law enforcement task force amongst various communities. The statute, through amendment, has been geared toward joint operating agreements associated with self-insurance pools and cable television franchising.

The statute makes no reference to rights of public employees and labor organizations pursuant to the Public Employment Relations Act. As a result, pursuant to the longstanding judicial decision in *Local 1383 of International Association of Firefighters v City of Warren*, 411 Mich 642 (1981), the Public Employment Relations Act would be deemed to supersede any conflicting legislation, including the inter-governmental contracts between municipalities statute. Because PERA rights prevail, any public employer contemplating a joint operating agreement pursuant to the statute, must give proper notice to the labor organization of its intent, which creates, at a minimum, the right to bargain the impact of such action and, in the event a municipality is relinquishing its function, the right to bargain the decision in the first instance. The level of bargaining would involve consideration

Continued on page 11

Signed and Sealed

Agreements gain vital benefits for POAM members

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



Negotiated

Saginaw Co. Deputies

Duration: 10/01/2005 - 09/30/2009

Wage Increases:

2005	3.00%
2006	3.00% + lump sum
2007	2.75%
2008	2.75%

- Employer funding a VEBA for new hire retiree health care.
- BC/BS PPO8 at no cost to employees.
- PPO1 or PPO2 available with employee contribution.
- New hires will be enrolled in a defined contribution plan with employees and employer both contributing 6% each.

Bargaining team consisted of Rene Desander, Mike Gomez, Steve Fresorger and Dave Kerns who were assisted by POAM Business Agent Jim Tignanelli.

Negotiated

Zeeland POA

Duration: 07/01/2007 - 06/30/2009

Wage Increases:

2007	3.0%
2008	3.0%
2009	3.0%

Bringing top pay for a police officer to \$49,707.

- Masters degree now pays an additional \$500 per year.
- Employees can purchase 2.5 multiplier during the term of the agreement.
- Leave of absence included while on short term disability.

Bargaining team consisted of Joe Michmerhullen who was assisted by POAM Business Agent Jim DeVries.

Negotiated

Isabella County DSA

Duration: 01/01/2008 - 12/31/2012

Wage Increases:

2008	3.0%
2009	2.0%
2010	2.5%
2011	2.5%
2012	3.0%

Bringing top pay for a deputy to \$48,847.

- Shift differential increased from 25 cents to 35 cents per hour.
- Added a non-formulary drug level, with contraceptives added.
- Dependent health care coverage for one year for employees killed in the line of duty.
- Insurance opt-out increased to \$3,000 annually.
- Retiree health care premium contribution increased from \$100 to \$150 per month.
- Created Health Savings Plan for the new hire retiree health insurance.

Bargaining team consisted of Victor Vandertol and Mark Hall who was assisted by POAM Business Agent Jim DeVries.

Stipulated 312 Award

City of Westland POA

The parties reached a five year contract effective 7-1-06 through 6-30-2011. Across-the-board wage increase for police officers and dispatchers:

Effective	7-1-2006	2%
	7-1-2007	2%
	7-1-2008	3%
	7-1-2009	2%
	7-1-2010	3%

Bringing top pay of a five-year police officer to \$64,529.51.

- Additionally, senior pay is increased from \$3,000 to \$3,500, dispatchers from \$2,190 to \$2,555. Dispatchers shall receive an additional \$400 as a CPR bonus. K-9 officers receive an additional \$500.
- The current association is on 12-hour days. The officers have been receiving the extra hours as additional time off. It will now be paid at the straight hour rate.
- All new hire employees will receive Community Blue PPO I as health care with the current employees having the option to choose same coverage. Additionally, the defined benefit pension plan has been maintained with employees hired after ratification to begin paying 5% into the pension plan.
- Clothing and weapon allowances were increased by \$25 each year of contract.
- The tuition reimbursement was capped at \$5,500 per employee. Additional language items were modified to the benefit of both the union and employer.

Bargaining committee consisted of President Dave Hochstein; Vice President Chris Gazdecki; Treasurer Dan Serrano; Secretary Dave Archambeau; Trustee Roger Borst; assisted by Kenneth E. Grabowski, POAM Business Agent.

More Signed and Sealeds on page 17



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From the President's Desk

by Jim Tignanelli

Police Week and Convention are "Must Attends"

As this edition of the *Law Enforcement Journal* reaches you, Police Week in Washington, D.C. will be quickly approaching. The POAM will be well represented throughout the week with a large number of our local and multi-jurisdictional honor guards standing vigil at the Law Enforcement Memorial. A number of the POAM executive board members will be attending the candlelight vigil on May 13th. This is one of the most respectful and somber moments you will ever spend. If you have the opportunity to attend this, you will never forget it.

On May 14th, the POAM will host a congressional reception at one of the House/Senate office buildings. This is always well-attended by the Congress's Law Enforcement Caucus and it is also a great opportunity for us to mingle with Michigan's congressional representatives. Years past tell us that all of Michigan's representatives and senators are likely to attend. Details of where are still being completed but it will take place at approximately 4 p.m. on May 14th. You are welcome to attend this exceptional event. Call Ed Jacques in our office as the date approaches or check for updates on www.POAM.net.

On May 15th, President Bush is scheduled to address law enforcement from the capitol steps. This annual gathering is breathtaking to watch. A few years ago, we decided that uniformed officers and their friends/family needed some place to get refreshed and to spend some quality time without having to change from their uniforms. We will be returning to the Tune Inn (330 1/2 Pennsylvania Ave. SE) for this year's party. In or out of uniform, please consider stopping by for a cool drink and some nourishment. We will have a full-size van traveling from the Memorial to the Tune Inn from approximately noon on the 15th until late in the evening. It will have the

POAM logo on each side and will make continuous round-trips for your convenience. It generally hovers around the fire hall adjacent to the memorial most of the afternoon.

The annual POAM convention gets bigger and bigger each year. As in the past, we will try to do what we can to make it a beneficial use of your time. Our seminar is scheduled for May 21st at the Amway Grand. This year's program will prove to be of great benefit to each of you. Please try to attend. The poker run has just grown beyond all our expectations and is a very popular hangout on Wednesday night. If you prefer something more formal, sign up for the "cigar smoke" which has expensive smokes and high-end appetizers.

The business meeting on Thursday will provide us an opportunity to give special attention to many of our members for jobs well done in 2007. Some very impressive actions were taken by our friends and they deserve to be recognized. Because this is a national election year, I'm confident some very important people will be asking to attend. Dick Cheney and Rudy Giuliani have been on hand the past few years and there are rumors of others who are likely to appear.

The cocktail party Thursday night is a great opportunity to relax with old and new friends while getting some quality entertainment. This is always well-attended. Your local representatives have received announcements of the entire convention. Please check the website for more information.

Police Week and the POAM convention are incomparable ways of meeting with those who serve from all over our state. The camaraderie is something to behold. If you have attended before, you know what I'm speaking about. If you haven't, make the 2008 event a must attend. □

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Vice-President's Viewpoint

by Dan Kuhn

A Goal We Must Reach

This month's "My View" may not apply to every one of us right now, but I'd have to bet that before we all depart this earth it very well may. The issue is how to establish and maintain retiree health care benefits in the face of escalating costs and a poor economic forecast.

That is the reason why the job of a business agent for the POAM, and that of a local labor representative is going to be so challenging over the next several years at least. We must meet the challenge by establishing Flexible Health Care Spending Accounts, Health Care Reimbursement Accounts, or other types of Health Care Savings Accounts that will provide all of our members the ability to pay for, and appreciate health care upon retirement, and beyond. I recently concluded negotiating a contract in Tuscola County and together, the employer and employees have agreed to establish a MERS retirement health care account with any sick or vacation time overages, as well as contribute a determined portion of their wages into the account. This is a huge benefit considering prior to this contract, they had no retirement health care provisions at all.

Many local union officials probably already realize the challenges we are confronted with at the bargaining table because of retiree health care. In many municipalities the cost to continue retiree health care is much more expensive than a current employee's benefits, therefore making it difficult to negotiate wages or enhancements in our benefits. Again, not a popular subject, but one that will undoubtedly come up again in the future.

My role as a business agent and the Vice President of the POAM is to represent and educate our membership of how critical it is to anticipate the future cost of health care both for yourselves and your families. I take my job very seriously, because I will have failed you as members of the POAM, if in the future we end up representing the 64-year-old cops who cannot afford to retire, and are awaiting Medicare benefits. Whether they have developed a condition like heart disease or diabetes and aren't insurable, or just can't afford the annual premiums, preparation is going to be the key to being able to retire and have a good quality of life. If we fail to prepare, our pension checks will be going to pay for nothing more than our health care premiums.

All of us have benefited from the contracts negotiated decades ago by the auto unions. Let us now learn from their recent experiences what we can do to protect our future. We need to be proactive and flexible in order to make sure that having retiree health care becomes a reality for every law enforcement officer in Michigan. Local union officials can start by examining your current health care benefit, and asking yourself what your benefit will look like in 5, 10, 20 or even 25 years with the goal in mind to strengthen the benefit if possible, but more importantly, making sure there is a plan in place to fund the benefit into the future. Contact me, our preferred vendors, or the POAM for more information on ideas to reach those goals. Hope to see you all at the convention. □

www.sheriffbouldinmustgo.com

POAM's "Horses Ass" Award Increases Arenac County Citizens' Awareness

By Ed Jacques, LEJ Editor

In January, 2008, concerned citizens and voters launched a website encouraging residents of Arenac County to unite and defeat Sheriff Ron Bouldin in his re-election bid later this year. Their battle cry is "the good people of Arenac County deserve better!"

The website has numerous items of interest concerning the current sheriff. The webmaster has reproduced previous articles from the *Law Enforcement Journal* documenting Bouldin's actions that led to his unanimous choice as POAM's "Horse's Ass" for 2007. Details about a lawsuit in federal court charging Bouldin with gender discrimination is reported, as well as a copy of a traffic citation issued to Bouldin and allegedly dismissed at his request. The website also displays pictures of POAM's honorary poster, airplane messages flown over the Arenac County Fair, as well as a sheriff's department vehicle apparently being utilized for Bouldin's personal use.

The administrators of the website have also set up a bulletin board where other folks who have had experiences with Bouldin can anonymously post their thoughts electronically and be assured there will be no retaliation. The site has received numerous e-mails from the state of Washington where former military personnel who served with and under Bouldin claim he was forced to retire from the military for sexual harassment and poor leadership skills. The authors are embarrassed by seeing Bouldin in his dress Naval whites politicking for another four-year term.

It appears that the website is the first step in a well-organized campaign to replace Bouldin, and restore confidence in the Arenac County Sheriff's Department. Reliable sources confirm that two strong candidates, one from each party will be announcing their candidacy for Sheriff and their mutual goal is to replace the "Horse's Ass" with a respectable Sheriff. □





The Treasurer's Ledger

by William Birdseye

POAM Convention is a Dynamic Element of Membership

I recently ran into a former member, old friend and not so recently retired police officer. After discussing the issue of protecting retiree health care (popular subject lately), our discussion inevitably led to the good times we enjoyed, especially at previous POAM conventions. He made the comment that recent delegate meetings can't be as "unrestrained" as in previous generations. Tamer? Yes, a little bit. Less fun? Absolutely not. More Informative? Undoubtedly.

The truth is that our recent keynote speakers, guests and seminar topics have more impact and relevance than some of our best ideas from ten, fifteen, or 20 years ago. We still fish and golf and how about the POAM Poker Run? It's the most popular event ever and continues to grow every year.

All POAM functions are a unique opportunity to spend quality time with friends and colleagues. There are certain groups and members that are staples at the convention, and every year I look forward to renewing those acquaintances. But, I get just as excited when I see the fresh blood from Walled Lake, Walker, Ann Arbor, Beverly Hills and other units making the annual trek to Grand Rapids. But with over seventy law enforcement groups and nearly two thousand members joining POAM

in the last few years, I have to believe that too many new members are missing out on a big part of what POAM offers.

This year's keynote speaker at our seminar is Frank Borelli, a nationally recognized expert in police and military training. Borelli is a dynamic speaker and frequent contributing editor to the *Law Enforcement Journal*. His aggressive philosophies towards defending America from criminals and terrorist may not be politically correct to those who don't understand the imminent threat, but refreshing to those who have to deal with its aftermath. His bio appears on page 15.

We have also invited John Higgins from EMPCO, Inc., Michigan's largest promotional testing company to help you prepare for your exam and just as importantly, advise your group on how to negotiate test criteria into a collective bargaining agreement. Back by popular demand will be a representative from the Social Security Administration to explain the agency's benefits and how to prepare for retirement now.

If you are a recent recruit of POAM, and especially if you serve on your local executive board, you really need to attend the Annual Convention and seminar. Until you do, you have not taken advantage of the total POAM experience. □

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Secretary's Notepad

by Thomas Funke

Act 312: What Will the Future Hold?

Compulsory arbitration for police and fire fighters was implemented in 1969. The Act was adopted by the Michigan Legislature to prevent municipal police and fire departments from striking during their contract negotiations after all other avenues had been exhausted. In the early days of bargaining, the "Blue Flu" was a common negotiation tactic. The Legislature reacted to the legitimate public concern that withholding emergency services would threaten public safety.

Over the years, groups representing the special interests of Michigan's communities have lobbied to repeal Act 312. The Act is not perfect, but has been extraordinarily successful in providing remedies by utilizing a panel of arbitrators (neutral parties) to weigh the merits from both sides of the negotiating table and render an unbiased decision.

The removal of Act 312 would ensure the return of the "Blue Flu" and threaten public safety during a period when crime rates and terror-

ist activities are at an alarming rate. Inevitable poor response times and the lack of proactive policing would cause further erosion of the public's confidence in government and the possibility of vigilante type justice taking root.

POAM Treasurer, William Birdseye, and Legislative Director, Kenneth E. Grabowski, have been actively involved in several discussions and meetings in Lansing with our State Representative and Senators. Their primary goal is to ensure that the heart of the Act is preserved by providing a fair, workable and practical method of maintaining public safety and eliminating the possibility of work stoppages or strikes.

Recently, Wayne Beerbower (Business Agent) and I had the opportunity to appear in front of the Republican Caucus in Lansing, on behalf of POAM to reiterate the viewpoint of all active police officers that Act 312 has a positive impact on policing in the State of Michigan. □



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The Legislative Director's Chair

by Kenneth E. Grabowski

Public Safety Officer Family Health Benefit Act Gains Momentum And Support

HR2391, the federal bill that will provide access to health care benefits for the families of public safety officers that lose their lives in the line of duty is gaining momentum. HR2391 was originally introduced by Congressman Bart Stupak, Democrat from Michigan, and is currently in the House Oversight and Government Reform Committee. In February of this year, Michigan Congressman Joe Knollenberg, Republican, cosponsored HR2391. Congressman Knollenberg met with representatives of the POAM recently at our Redford office and expressed his support of the legislation. Knollenberg stated, "Our local law enforcement officials are on the front lines of stopping crimes in our communities. They provide us protection and are the first to respond to emergencies. With this bill, congress can provide important support to our local law enforcement families." There are seven other cosponsors to this bill. HR2391 would allow an individual who is a family member of a public safety officer killed in the line of duty to enroll in a federal employee health benefit plan for themselves or their family. Participation is not mandatory, but instead, optional depending on each family's unique situation and benefits received under contracts. As hard as this is to believe, there are many employers in Michigan who have refused to negotiate and place this benefit into contracts. HR2391 would correct this deficiency. □



POAM President Jim Tignanelli (left) and Legislative Director Kenneth E. Grabowski (right) are regular visitors of Congressman Joe Knollenberg while in Washington, D.C.



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From the Top

by Attorney General Mike Cox

Michigan Cyber Safety Initiative Very Successful

I've written in this newsletter before about a proactive program my office is currently conducting called the Michigan Cyber Safety Initiative – or Michigan CSI.

The program continues to be very successful. Just to refresh your memory, Michigan CSI is an Internet safety education program with customized presentations for kindergarten through 8th-grade students and a community seminar. More than 1,700 presentations have been given to more than 160,000 students as of March 2008.

For more information or to request a presentation, call **877-765-8388**. You can also go to www.michigan.gov/ag for tips on safe Internet usage for children.

Recent events have once again brought home why it's so important to protect our children from Internet dangers.

In March, our office, in a collaborative effort with the Wayne County Sheriff's Department and the Van Buren Township Department of Public Safety, arrested 27 Internet predators hoping to prey on young children.

But instead of doing harm to our children, these individuals were greeted by law enforcement officials at a specially prepared decoy location. Evidence seized by law enforcement officers from the 27 predators included video cameras, laptop computers, beer, condoms, lotion and video tapes.

Through questioning by my office's special agents, we were able to paint a vivid picture about these individuals.

- One individual rode his bicycle 10 miles in 15 degree weather.
- Another was dropped off by his sister and entered the home exposed.
- Another was so interested in getting to his destination that he knowingly drove on a flat tire until the tire was shredded.

All but one of the 27 defendants arrested are from Michigan, and all are male, including a physician. They range in age from 19 to 57, the average age being 30.

In Phase Two of the sting, an additional round of arrests will follow for those individuals who transmitted sexually explicit material online to agents posing as minors but did not travel to the decoy location. Phase Two is expected to arrest as many as, if not more than, the number of individuals arrested in Phase One, bringing the total number of arrests to more than 50.

Law enforcement has a clear choice in dealing with the danger of Internet Predators -- either react after a child has been subjected to an assault or be proactive and intervene before they can harm a child. For us, this is an easy choice.

I would like to single out the Wayne County Sheriff's Office and the Van Buren Township Department of Public Safety for their work and professionalism in this joint venture. They did an outstanding job.

And that's not unusual in my 13 years as a prosecutor. My experience has been that law enforcement officers constantly do an outstanding job, 24/7, often under intense conditions.

I saw these efforts up close and personal in my job. Too many members of the public don't get to see what a painstaking job officers have on a day-in and day-out basis.

Including the arrests from this joint Internet Child Predator Sting, my office's Child and Public Protection Unit has arrested 185 Internet Sexual predators. Citizens can also report suspected Internet child predators via the Report internet Abuses Against Children link or by calling the Child and Public Protection Unit at **(313) 456-0180**.

We're going after all those who use the dark side of the Internet to target children. And let this be a message to all those who would put children in harm's way – we're watching you. □



IN MEMORY OF
KENZIE WATTS

MAY 22, 1990
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21, 2005

Captain Dave DeForest (POAM member - Cadillac Command)

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Generally Speaking *Continued from page 1*

of whether the employer could undertake the action and the impact on existing employees as to their job retention or transfer, including impact on wages, hours and other terms and conditions of employment.

In 1967, two statutory enactments went into effect. The Urban Cooperation Act of 1967, Public Acts of 1967, Ex. Sess. No. 7, MCL 124.501, et seq.; and the Transfer of Functions and Responsibilities Act, Public Acts of 1967, Ex. Sess. No. 8, MCL 124.531, et seq. The Urban Cooperation Act also authorizes municipalities to exercise joint authority with each other, including "any power, privilege, or authority that the agencies share in common or that each might exercise separately." Procedurally, the governmental entities must enter into a contract to implement the joint authority. The contractual provisions must establish the procedure and funding of the operation, including distinct provisions regarding the manner of employing personnel.

While this statute is also devoid of any express reference to PERA, the statute does make direct reference that to the extent employees are necessary for the operation of the undertaking created by the interlocal agreement, they shall be transferred from the contracting authorities. The statute mandates that they be given seniority credits, including sick leave, vacation insurance and pension credits in accordance with the labor agreements from the acquired systems. Those rights also pertain to pension provisions.

This particular statute focuses on directing the political subdivision (which assumes the primary responsibilities under the interlocal agreement) to absorb the employees and assume obligations with regard to their wages, hours, terms and conditions of employment. The statute mandates that individuals who are transferred shall not, by reason of the transfer, be placed in any worse position with respect to Workers' Compensation, pension, seniority, wages, sick leave, vacation, health and welfare or any other benefits the employee previously enjoyed as an employee of the acquired system.

It is apparent that despite the absence of reference to the Public Employment Relations Act, provisions were established in the statute which parallel rights emanating from PERA. The statute provides that one or more parties to the agreement may, through such agreement, provide all or part of the services. The statute also allows for a separate legal or administrative entity to be created to administer or execute the agreement with the governing body of each public agency being empowered to appoint a member to a commission, board or council constituted pursuant to the agreement. The statute specifically provides, however, that to the extent the statute conflicts with other statutory provisions pertaining to joint or cooperative agreements, that the provisions of the other statute shall control.

The Transfer of Functions and Responsibilities Act, which went into effect on the same day as the Urban Cooperation Act of 1967, was enacted to allow and regulate transfers of functions and responsibilities between governmental entities. This statute allows two or more political subdivisions to enter into a contract with each other to provide for the transfer of functions or responsibilities to one another or any combination thereof, upon the consent of each political subdivision involved. To that end, this particular statute has emphasis on one political subdivision taking over the responsibilities of another political subdivision through an agreement for the performance of functions and responsibilities. The contract entered into, as with the other similar statutes, must provide for the procedure and financing of the undertaking. As with the Urban Cooperation Act of 1967, the statute provides a mechanism for the transferring of employees from the acquired system with protection as to all rights and benefits the employees previously received from the acquired system. Once again, the statute makes no reference to PERA-based rights, despite the parallel in provisions. As a result, assertion of PERA-based rights by the Union on behalf of employees would continue with regard to both the decision and impact of entering into a joint operating agreement.

The most recent of the statutory enactments governing joint operating agreements is the Municipal Emergency Services Act, P.A. 57 of 1988, as amended, MCLA 124.601 et seq. This statutory enactment allows two or more municipalities defined as a county, city, village or township, to incorporate an authority for the purpose of providing emergency services. The authority is created by articles of incorporation as adopted by the legislative body of each incorporating municipality. The statutory enactment recognizes creation of a regional law enforcement authority; with the authority becoming the "body corporate" with powers similar to a municipality's. Laws of the state which apply to a municipality that is part of the authority continue to be applied to the municipality and the authority. The authority has power to enter into contracts with the incorporating municipalities and to provide emergency services to the constituent municipalities. Any pre-existing contract between, for example, a sheriff's department and a municipality, would remain in effect until its expiration.

The authority has the power to hire employees; however, pursuant to section 10 of the Act, a detailed provision exists pertaining to employees and PERA rights. If duties of existing employees are transferred to an authority, the employees must be given comparable positions with the emergency service established by the authority. The employees maintain their seniority status and all benefit rights of the position

they held prior to transfer. If, however, sufficient positions are not available, employees are to be laid off on the basis of least seniority. The layoff list (for recall purposes) does not need to be honored after three years.

The authority is treated as an employer under PERA with the duty to bargain collectively. The authority has to assume a collective bargaining agreement currently in effect for the remainder of its term. In addition, the authority has to recognize the existing labor representative for future bargaining purposes. The law is silent concerning the possibility of several different unions being involved, however, the statute will likely be read consistent with PERA such that an existing union representing a minority number of employees is going to be subject to challenge as an ongoing representative, forcing an election for a new representative for the entire group.

The distinction between the Municipal Emergency Services Act and other legislative enactments providing for joint operating agreements is the emphasis on creation of a separate authority. While the previous legislative enactments, which remain in effect, are geared more toward one contracting municipality taking over the operation for the joint group, or, a mix of functions amongst a joint group of municipalities, the Municipal Emergency Services Act is geared more toward the creation of a separate regional authority.

While there are other statutory provisions providing for joint operating agreements pertaining to a variety of public services (recreation, 911, cable TV, insurance pooling), the interplay of the statutory provisions do not create a reduction in PERA-based rights of employees. To that end, the role of the union on behalf of employees is to ensure that where an intent to enter into a joint operating agreement under one of the many statutes exists, that both the decision and impact of such occurrence are fully bargained with protection to existing employees. This is especially true in the scenario under the Municipal Emergency Services Act, where a separate authority as a body politic is created.

At POAM, we are monitoring the actions of various governmental entities and their sometimes knee jerk reaction to financial difficulties. Our monitoring will include providing direction to the membership as to the proper course of action to protect their wages, hours and terms and conditions of employment. The membership, however, can help itself by becoming politically active in local affairs. Talk to your business agent about what can be done politically at your local level. Also, speak to Ed Jacques at POAM as to the variety of ways in which you can help fund a political action account.

That's my report for this edition ... generally speaking ... □



State Representative

Paul Condino

By Ed Jacques, LEJ Editor



PAUL CONDINO is currently serving his third term in the Michigan House of Representatives representing the 35th House District, which includes the communities of the City of Southfield, Lathrup Village, Royal Oak Township and the southern part of Oak Park. He chairs the Judiciary Committee, serves as Vice Chair of the Oversight and Investigations Committee and the Tax Policy Committee, and serves on the Government Operations and Insurance Committees.

Rep. Condino was born and raised on the eastside of Detroit. His father, Alfred, was a practicing trial attorney for thirty years and his mother, Janet, was a registered nurse for over 40 years. His educational credentials include an undergraduate degree from Wayne State University and a Juris Doctorate from the Detroit College of Law. Representative Condino is a former partner in the law firm of Mooney & Condino, P.C. He focused on the trial/litigation section of the firm, and specialized in criminal law defense, workers compensation, employment law, civil rights and disability cases.

In addition to his private law work, Rep. Condino served as a Special Assistant Attorney General defending the State of Michigan in specially assigned civil cases under former Attorneys General Frank

Kelley and Jennifer M. Granholm. Before serving in the Legislature, Rep. Condino served on the Southfield City Council. He was first elected in 1997, re-elected in 2001, and served as President of the Council while in his final term.

POAM Executive Board Member and Southfield POA President Mark Zacks enjoyed an excellent working relationship with Condino. "As a Councilman, Paul was always attentive to police issues and sought out our opinion on a number of city matters. Even as President of the Council, he was consistently available to the membership."

POAM Legislative Director and Southfield POA Business Agent Kenneth E. Grabowski has gotten to know Paul Condino well. "Representative Condino is currently sponsoring legislation to develop a 'Blue Alert' to assist in the immediate capture of felons who assault police officers. Paul has earned the respect of POAM members on many matters."

Representative Condino is a former Board Member of Dominion Family Services, an organization that provides care to families who are victims of domestic violence. Paul also continues to work with the Michigan Hospice and Palliative Care Organization, providing legal services to hospice and terminally ill patients. □

Representative Condino is currently sponsoring legislation to develop a 'Blue Alert'.

Senator

Gretchen Whitmer

By Ed Jacques, LEJ Editor

State Senator Gretchen Whitmer was first elected to the Michigan State Senate in March 2006, after serving the previous six years as a member of the Michigan House of Representatives.

Prior to her public service she practiced Administrative Law before the Ingham County Circuit Court and The Michigan Public Service Commission.

Gretchen was born in Lansing, Michigan and attended Michigan State University where she earned a BA degree in Communications and ultimately her law degree, Magna Cum Laude.

As a state representative, Whitmer served as the Ranking Democrat on the House Appropriations Committee for four years. In the Senate, she serves on four standing committees: Education, Judiciary (Ranking Democrat on both), Agriculture and Finance.

Senator Whitmer is a strong advocate for protect-

ing our natural resources and has introduced legislation to require the use of safety belts on all school buses. She is the sponsor of SB458 which is part of a legislative package that prevents employers from discriminating against employees for their physical condition and legal conduct outside of the workplace. In other words, if you happen to be overweight and/or smoke in the privacy of your own home, employees are protected against any discrimination arising from those actions.

"Senator Whitmer has a reputation as an aggressive and outspoken legislator", said POAM Lobbyist Tim Ward. "You double that with her intelligence and experience and you have a very effective legislator".

"Senator Whitmer has been very supportive of POAM issues," added Legislative Director, Kenneth E. Grabowski. □

"Senator Whitmer has a reputation as an aggressive and outspoken legislator."



Public Safety Employees Benefit from Pension Protection Act Changes

By Paul Zorn, Director of Governmental Research
Gabriel, Roeder, Smith & Company

Gabriel, Roeder, Smith & Company is a leading actuarial and benefits consulting firm that specializes in services to the public sector. It is headquartered in Southfield, Michigan, and has over 600 clients nationwide.

The author is not an attorney and the information provided is not legal or tax advice. While this article summarizes certain tax provisions, it is not intended to provide a complete description. Taxpayers should seek tax advice based on their individual circumstances from an independent tax advisor.

Recent changes to the Internal Revenue Code (IRC) resulting from the 2006 Pension Protection Act provide public safety employees with new tax advantages, including (1) waiver of the 10% early distribution penalty for public safety employees age 50 and older; and (2) tax-free distributions (up to \$3,000 annually) for health insurance premiums of retired public safety officers. These provisions are described below:

Waiver of the 10% Early Distribution Penalty for Public Safety Employees Age 50 and Older

Section 828 of the Pension Protection Act waives the 10% penalty for early distributions made to “qualified public safety employees” who separate from service after attaining age 50 (instead of age 55, as was the case prior to the Act). This provision applies to distributions made after the Act’s date of enactment (August 17, 2006). As explained in IRS Notice 2007-7:

➤ “Qualified public safety employee” means an employee of a State or political subdivision (e.g., city, county, etc.) whose “principle duties include services requiring specialized training” in the area of police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the State or political subdivision.

➤ To be eligible for the exemption, the qualified public safety employee must have received the distribution from a governmental defined benefit plan after separating from service with the employer maintaining the plan, and the separation from service must have occurred during or after the calendar year in which the qualified public safety employee attained age 50. Consequently, a qualified public safety employee who separates from service on June 30, 2006, and attained age 50 on December 12, 2006, would be eligible for the exception.

➤ The exception applies only to amounts distributed from a governmental defined benefit plan and does not apply to distributions from a defined contribution plan or an individual retirement plan.

➤ In reporting such distributions to the IRS, the entity paying the distribution is permitted to use code 2 (early distribution, exception applies) in Box 7 of Form 1099-R. Alternatively, the entity may use code 1 (early distribution, no known exception), if the entity does not know whether the exception applies.

Tax-Free Distributions for Health Insurance Premiums of Retired Public Safety Officers

Section 845 of the Pension Protection Act allows “eligible retired public safety officers” to elect to exclude up to \$3,000 annually from gross income for certain distributions made from an “eligible government plan” to pay “qualified health insurance premiums.” Eligible government plans include state and local government defined benefit and defined contribution plans qualified under IRC § 401(a), tax-sheltered accounts or annuities under IRC §§ 403(a) and 403(b), and governmental deferred compensation plans under IRC § 457(b). Qualified health insurance premiums include premiums for accident and health insurance or long-term care insurance contracts for the eligible retired public safety officer, his or her spouse, and dependents. The exclusion is limited to the aggregate amount of actual annual premiums paid, up to \$3,000, and the premiums must be paid directly by the retirement plan to the insurance provider. This provision applies to distributions in taxable years beginning after December 31, 2006. Notice 2007-7 explains:

For the purpose of this provision, the definition of “public safety officer” includes a broad range of individuals serving federal, state, local and other public agencies as officially recognized law enforcement officers (e.g., police, corrections, probation, parole, and judicial officers), firefighters (e.g., paid and volunteer), rescue squad members, and ambulance crews, among others. Note, however, that the exclusion is limited to “eligible retired public safety officers” who separate from service due to “disability or attainment of normal retirement age.” Therefore, individuals retiring before normal retirement age would not be eligible.

➤ The favorable tax treatment is available only when an eligible retired safety officer elects to have an amount subtracted from his or her distributions from an eligible government plan and such amount is used to pay qualified health insurance premiums. However, an employer sponsoring the qualified retirement plan is not required to offer such an election.

➤ Although the IRS had originally ruled that the accident or health insurance plan receiving the payments could not be a self-insured plan, it has since agreed to interpret the provision to include self-insured plans. [See IRS Notice 2007-99]

➤ Benefits attributable to service other than as a public safety officer are eligible for favorable tax treatment under this provision, but only if the individual satisfies the definition of eligible retired public safety officer.

➤ Upon the death of the eligible retired public safety officer, the tax-exclusion would not extend to amounts subtracted from distributions for other distributees (i.e., the officer’s spouse and dependents). □

Deputies Want POAM

Continued from page 1

Other labor unions, including the Police Officers Labor Council (POLC) and Michigan Association of Police (MAP) have utilized that tactic to temporarily stop a movement of employees to POAM. Three years and approximately \$150,000 in attorney fees later, the Arbitrator's Award was issued. It was not a favorable one, and resembled what Wayne County initially offered the union.

When Arbitrator George Roumell's decision was published in late December 2007, the POAM office was inundated with calls from deputies insisting that we take an aggressive role in helping save their union. 502 Executive Board Members were notified about the recruitment incentive in the hope that POAM would receive their endorsement, which did not come.

Interest cards were disseminated and mailed to members and within two weeks, a majority of the signed cards were received at POAM, six weeks earlier than expected! In conjunction with their signature, many officers verified that their current system of representation was flawed; placing employees in prominent positions where the employer and supervisors could make promises or threats to achieve their desired result. There was no training on important labor issues like negotiation preparation, grievance arbitration, unfair labor practices, Act 312, Garrity protection, etc. On top of that, fees to SEIU and the attorneys were sucking the local association's treasury dry.

When 502 Executive Board Members realized the overwhelming interest in POAM, some negative backlash occurred. A meeting between

POAM officials and Local 502 officials was arranged for March 3, 2008, to see if there was common ground. The 502 Board informed POAM that they were interested in utilizing our services for 312 Arbitration cases only. They stated that there were working board members and stewards that could handle negotiations, grievances and other labor matters. POAM emphasized that we were a full-service union and our units select us on that basis. Besides, limiting POAM to a 312 Advocate's role would not deliver on our promise to improve the fundamental representation of Wayne County deputies. Instead, POAM insisted on drafting a full service agreement with the Wayne County Deputy Sheriffs Association (a new entity needed to displace SEIU) utilizing some of their current staff and board members. The POAM proposal included every available service and at a monthly rate affordable enough for the local union to keep much of its current identity or rebate the difference in dues back to the membership.

Within two days of the meeting, 502 leaders were disseminating "interest cards" for the Wayne County Deputy Sheriffs Association, but telling members that the "new" association would be similar to the Oakland County Deputy Sheriffs Association (OCDSA). This would end their affiliation with SEIU, allow them to continue to act independently and hire lawyers, and severely limit or eliminate any role that POAM will have in their future union business. Talk about negotiating in bad faith! Needless to say, POAM's pro-

posal was rejected.

But, referencing the OCDSA as a positive example is like asking Navy Seals to sign up for a Kamikaze Squadron. Because of an adversarial board, poor advice and weak representation from their retained labor attorneys, OCDSA is close to six years without a contract. Tens of thousands of dollars per member in retro pay is at risk and the once unified union has split into a corrections vs. road patrol civil war.

POAM is moving forward with its original initiative to provide Wayne County Deputies with 100% full-service under the exclusive name of the Police Officers Association of Michigan.

Meanwhile, Former 502 member and current President of the Monroe County Deputies Association, Dave LaMontaine, scratches his head. "I was listed as a reference in some POAM literature, but only one 502 Board Member called. A lot of deputies did though, and I was glad to tell them that this POAM election was a light at the end of the tunnel for them. I worked at Wayne County for five years and used to feel the same frustration and anger. With the help of POAM, they will start to get the same respect that my members in Monroe County receive."

POAM conducted an informational meeting in April and will file its Petition for Representation with MERC on May 1, 2008. The election should be conducted prior to the contract's expiration in September 2008. POAM will be scheduling more meetings with Wayne County Deputies prior to the official vote. □

POAM website will provide members with fresh news

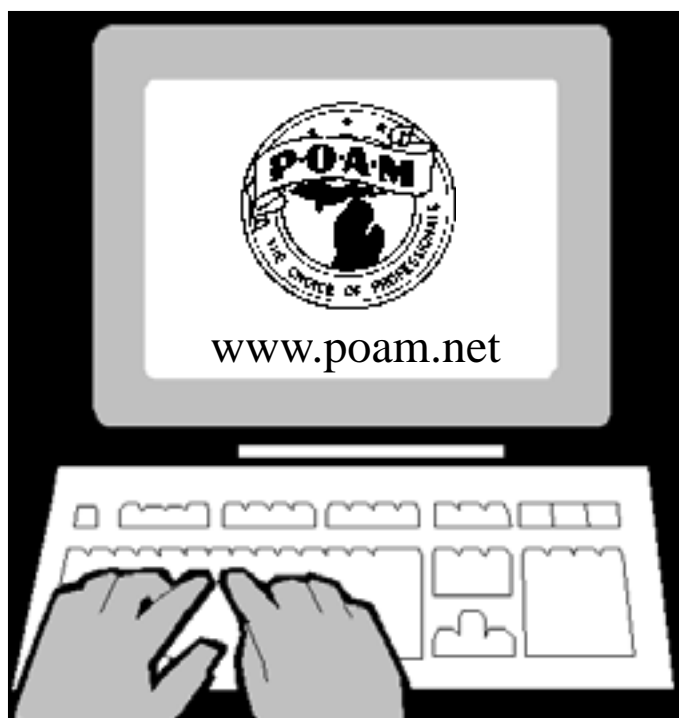
By ED JACQUES
LEJ Editor

The next time you're surfing the internet, check out www.poam.net, the official website of the Police Officers Association of Michigan.

The website, which has existed since 1997, will feature updates on many POAM activities, including law enforcement-related legislation, information on upcoming POAM seminars and training, "Signed & Sealed" articles from across the state, Executive Board member and member profiles and a list of POAM's preferred vendors.

The site also lists all POAM member groups and law enforcement links that would be of interest to POAM members.

"The POAM Executive Board agreed that the POAM website can be a vital instrument in communicating with our members, so we will make a concerted effort in the future to keep the site updated with fresh material and information," explained POAM President Jim Tignanelli. "The site



will contain much of the information that is in the *Law Enforcement Journal*, but with the technology that exists today, it will be available to members on a much more current basis."

POAM members are encouraged to offer suggestions and ideas regarding what they would like to see on the website, and they can contribute photos and articles that focus on POAM member group activities.

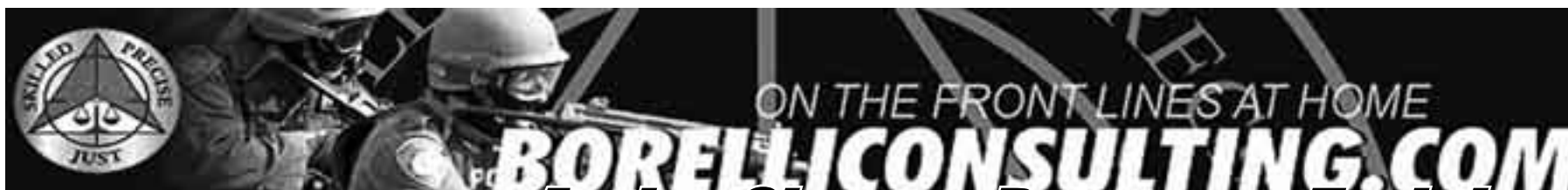
Input can be e-mailed to Tignanelli at jtignanelli@poam.net or he can be reached via telephone at the POAM office at (313) 937-9000.

"It's important that we know what members would like to see on the site because it's a service we're providing with our members' interests in mind," Tignanelli said.

"If there is something of importance you would like to see on the website – maybe an update on a key piece of law enforcement legislation or an article on a fund-raiser

your local union coordinated – let us know and we will get it on the website."

Check out the POAM website at www.poam.net



By Frank Borelli

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Frank Borelli is now Editor-in-Chief of Officer.com

Active Shooter Response Training

Be warned: I'm getting up on my soapbox. As one of the few "outside" officers who responded to the tragedy at Virginia Tech last spring, and as a trainer for Active Shooter/Immediate Response tactics, I try to pay attention to spree shooting events such as the recent one in Illinois. What amazes me still, and prompted me to write this blog entry, was how training with regard to such events seems to be losing focus.

What do I mean? The Active Shooter / Immediate Response (AS/IR) training boom started after the public outcry in reaction to the police response at Columbine. All over the country agencies began training their officers in AS/IR. There were a couple of issues with the level of training delivered, but we all know law enforcement is predominantly reactive in nature. We trained sufficiently to address the public outcry.

Columbine was in 1999. Contemporary response tactics would have been fantastic if they'd been used at Columbine. They WERE used at Virginia Tech and Cho still managed to kill 30 people in Norris Hall. This was in no way the fault of the police response. You don't get a better response than two fully equipped SWAT Teams on scene in approximately two minutes. Still, the VA Tech event demonstrated that we probably need to evolve our outlook and tactics again.

With all that in mind I had to wonder if we're even keeping up on the "standard" AS/IR training. So, I posted the poll question on the Officer.com homepage. The question was, "When did you last have Active Shooter / Immediate Response training?" As I type this, 441 answers / votes have been posted. Here's the breakdown:

- 1% had attended AS/IR training within the past 30 days.
- 9% had attended AS/IR training within the past 90 days.
- 18% had attended AS/IR training within the past six months.
- 22% had attended AS/IR training within the past year.
- 17% had attended AS/IR training within the past three years.
- 10% attended AS/IR training more than three years ago (which means it's been three to eight years)
- 19% have never had AS/IR training at all.

There is some good and bad information in those numbers. I am heartened to see that 10% of the recipients have had AS/IR training in the past 90 days.

It surprises me and makes me proud in my profession to see that a full 50% have had AS/IR training within the past year.

That's all the good news.

The other side of the coin is that 29% of the respondents either haven't ever had AS/IR training or have had it more than three years ago. That's a scary statistic and I'll tell you why: our country suffered more Active Shooter events in the past two years (2006 & 2007) than we did in the previous ten years (1995-2005) combined. The number of Active Shooter events each year seems to be accelerating - while we focus our training on other things.

I encourage you - if you're not in that top 50% who have received AS/IR training in the past year - to seek it out. Read about it. Learn the history of it and use your experience and imagination to develop new response tactics. Discuss those with veteran officers, instructors, tactical officers, etc. Make this a topic of discussion that doesn't go away. Why? Because one day it may be YOUR CHILD's life that you save. Beyond that: we ALL took an oath that involved protecting those who can't protect themselves. We should take that oath seriously. Do you? □



Author Biography Frank Borelli

A native of Cumberland, Maryland, Frank attended DeMatha Catholic High School in Hyattsville, Maryland and immediately thereafter began his law enforcement career as a Military Police Officer in the United States Army.

Having begun his law enforcement career as an MP, and upon receiving his first Honorable Discharge, Frank entered the civilian work force securing work with the Prince George's Community College Campus Police Department.

In 1986 he completed the Prince George's County Police Academy, graduating at the top of his class. In 1988, (then) PFC Borelli was assigned as the training officer for his police agency and became a State of Maryland Certified Police Instructor in 1989. From 1989 to present Frank has developed and delivered training programs encompassing a wide range of topics. Further, he has provided training to officers from Military, Federal, State, County and Local agencies to include the Maryland State Police, Prince George's County Police, Air Force Office of Special Investigations personnel, and police investigators / officers from more than a dozen municipal police agencies. From 1994 to 1999, Officer Borelli was awarded eight Commendations and seven Letters of Appreciation for professionalism and performance in the line of duty. Since the year 2000, Officer Borelli has provided firearms and in-service training, as well as developmental counseling and Homeland Security Coordination services to as many as thirteen municipal agencies each year.

In 1995 Officer Borelli re-entered military service as a member of the Maryland Army National Guard 29th Light Infantry Division, and then the 121st Engineer Battalion gaining experience in infantry and combat engineering tactics. Officer Borelli has received three Honorable Discharges in recognition of his military service.

In addition to his police and military service, Officer Borelli began a writing career in 1999. With several dozen articles published internationally, he has become a recognized expert on police training techniques and technologies with specific focus on special operations in urbanized areas. In addition to the dozens of articles he's had published, he has authored an equal number of specialized training programs now in use by police agencies in the mid-Atlantic region. Lieutenant Borelli is currently a weekly columnist for the Blackwater Tactical Weekly, as well as Editor in Chief for Officer.com, and New American Truth magazine, a monthly publication launched in January '07. Borelli is Editor of the Borelli Consulting Forum News & Intel page and a contributing editor for American Cop magazine, published bi-monthly.

In 2001 Frank Borelli founded Borelli Consulting, Inc. and began working with the Army Test & Transformation Investment Conference (ATTIC), now renamed the Test, Training & Technology Integration (T3I) Office identifying commonalities in civilian law enforcement (CLE) and Army needs for both training and operations. Officer Borelli continues to develop and deliver progressive law enforcement training programs while offering assistance to the Army in identifying technologies mutually beneficial to both communities. Officer Borelli is an adjunct instructor for Strategos International, and is a state certified law enforcement instructor in both Maryland and West Virginia.

Frank Borelli is a member of the National Rifle Association (NRA), the International Tactical Officers Trainers Association (ITOTA), the Mid-Atlantic Tactical Officers Association (MATOA) and the Maryland Association of School Resource Officers (MASRO).



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RICHARD LaROCHE
 Owner



Agreements gain vital benefits for POAM members

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



Negotiated Ionia County Corrections

Duration: 01/01/2008 - 12/31/2010

Wage Increases:

2008 2.0%

2009 2.0%

2010 2.5%

Bringing top pay for a correction officer to \$40,060.

- Effective in 2009, the pension will be the MERS B-3. Employer's contribution capped at 7%.
- Medical/Dental/Vision reimbursement increased to \$800 in 2010.
- Improved language on layoffs and part-time employees.

Bargaining team consisted of John Baar and Lisa Sitzler who were assisted by POAM Business Agent Tim Lewis.

Negotiated Frankfort POA

Duration: 07/01/2007-06/30/2010

Wage Increases:

2007 3%

2008 2%

2009 2%

Bringing top pay for a police officer to \$44,200.

- Shift premium of \$.35 per hour for afternoons and \$.50 per hour for midnights.
- BC/BS PPO wrapped to a PPO I.
- Drug card is \$10/\$40 with \$10 reimbursement.

Bargaining team consisted of Robert Lozowski who was assisted by POAM Business Agent Pat Spidell.

Inaugural Contract Lake Orion POA

Duration: 07-01-2007 - 06-30-2010

Wage Increases:

2007 2.5%

2008 3.0%

2009 2.5%

Bringing top pay for a full-time police officer to \$51,958; dispatcher to \$37,232.

- Vacation benefits accrued one year sooner at all levels.
- Short-term disability increased from \$400 to \$700 weekly.
- Employer pays for gap between Workman's Comp and base pay.
- Comp time bank increased from 40 to 100 hours.
- Part-time employees qualify for overtime beyond their regularly scheduled hours.

Bargaining team consisted of Todd Stanfield, who was assisted by POAM Business Agent Bob Wines.

Inaugural Contract Tuscola County Corrections

Duration: 01/01/2008 - 12/31/2010

Wage Increases:

2008 3.0%

2009 2.5%

2010 2.5%

Bringing top pay for a correction officer to \$36,816.

- Established a Healthcare Savings Account (HSA) through MERS.
- Employees have the ability to roll holiday and sick pay overage into HSA.
- All other benefits remain status quo.

Bargaining team consisted of Jason Fullerton and Barb Thayer who were assisted by POAM Business Agent Dan Kuhn.

Negotiated Pittsfield Twp. POA

Duration: 01/01/2007-12/31/2009

Wage Increases:

2007 3%

2008 2%

2009 2%

Bringing top pay for public safety officer to \$59,231.

- Court officer increased from \$.85 to \$1.00 above normal rate of pay.
- Health care goes from Community Blue PPO 2 to PPO 3. Drug rider is \$10/\$40 with \$20 doctor visits.
- MERS Health Care Savings Program implemented with employer contributing 1% of base pay, employee must match and can contribute up to 10%.
- Unused sick time above 90 days can be cashed in at 50% and can be added to HCSP or taken in cash.
- E-2 Pension improvement paid by employer. Employees pay for improvement from F55-15 to F50-25.

Bargaining team consisted of Derek Neeb, Gary Hanselman, Christen Beard and Mike McVickers who were assisted by POAM Business Agent Tom Griffin.

Act 312 Arbitration Kalkaska County DSA

Duration: 01/01/2006 - 12/31/2008

Wages Increases:

2006 1.5% January and 1.5% July

2007 2.0%

2008 3.0%

Bringing top pay for a deputy to \$38,509 and corrections officer to \$33,860.

- Health care is BC/BS PPO 3 wrapped to BC/BS PPO 2.
- Shift premium negotiated to \$.25 per hour on afternoons and \$.35 per hour on midnights

Arbitrator was Joseph Girolamo and the 312 case was presented by POAM Advocate, Pat Spidell, who was assisted by local President, Mike Buchanan.

More Signed and Sealeds on page 35

JUDICIARY WATCH

WE'RE JUDGING YOU!

By Ed Jacques,
LEJ Editor

Employer Cannot Adversely Affect a Member's Right to Engage in Lawful Concerted Activities

As reported in a previous *LEJ*, POAM will periodically report on judges and decisions issuing from various Michigan and Federal Courts which have a positive or negative impact on Law Enforcement and Public Employee Labor Organizations.

City of Detroit vs. Detroit Police Officers Association (DPOA), involved a Detroit Police Officer's creation and operation of an internet website, www.firejerryo.com, while Jerry Oliver was the Detroit Police Chief. The website was created in October 2002, to provide a forum for police officers to express concerns regarding the police department and as a source of information for the community. It primarily contained articles about the police department authored by its webmaster, but also included some comic relief and criticism of department officials. A "guest book" was added to allow other members to express their thoughts.

In July 2003, Chief Oliver suspended the officer with pay. The Chief ordered the officer to shut down the website or risk suspension without pay. The officer continued to operate the website. In September 2003, Chief Oliver prepared a memorandum recommending charges against the officer for various alleged rule violations. The suspension was then changed to without pay, with the approval of the Detroit Board of Police Commissioners.

In January 2004, the DPOA filed an unfair labor practice charge with the Michigan Employment Relations Commission (MERC). The DPOA charged the City of Detroit with violating MCL 423.210(1)a of the Public Employment Relations Act (PERA) by directing that the officer shut down the website and the subsequent suspension for creating and operating the website. In March 2004, while the MERC charge was pending, the police department began formal disciplinary proceedings against the officer for conduct unbecoming a police officer and neglect of duty relating to his operation of the website.

The administrative law judge found that the police department violated PERA by suspending the officer for engaging in protected activity. He recommended that the department be ordered to cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed by MCL 423.209, restore the officer to his previous assignment, make him whole for any losses, and provide notice of the violation to its employees.

The City of Detroit appealed the MERC decision to the Michigan Court of Appeals. Previous case law is clear that MERC's findings of fact are conclusive if they are supported by competent, material and substantial evidence on the record considered as a whole. MERC's legal determinations may not be disturbed unless they violate a constitutional or statutory provision or they are based on a substantial and material error of law. The City cited *News-Texan, Inc. vs. National Labor Relations Board*, 422 F2d 381, 385(CA5, 1970) stating that employees cannot act in a manner that disregards the employer's right to maintain discipline and efficient operation. The City claimed that the officer's statements undermined public confidence in its police department and

had an adverse impact on its operation.

The Court found that the DPOA established that the officer, although acting alone, operated at least part of the website for a protected purpose, namely, to induce group activity for the mutual aid and protection of fellow police officers. The "guest book" for police officers to log in to and express their concerns supported the administrative law judge's finding that the officer was engaged in protected activity under MCL 423.209. The Court held that the evidence revealed that the website as a whole was not conducted in such an abusive manner as to lose the protection of PERA. The Court stated that a member's protected right to engage in lawful concerted activities was adversely affected by the suspension. The Court further concluded if an employer's action is based on disciplinary rules, the employer must show a legitimate and substantial business justification for instituting and applying the disciplinary rules, citing *Ingham County*, 275 Mich App at 149.

The Court also referred to the recent decision in *Ingham County vs. Capitol City Lodge No. 141*, where the Court of Appeals set forth a three part test for situations where an employer claims to have applied a disciplinary rule to justify its actions:

Under the first prong of the test, we look at whether the employer's action adversely affected the employee's protected right to engage in lawful concerted activities under the PERA. Under the second prong, we look at whether the employer has met its burden to demonstrate a legitimate and substantial business justification for instituting and applying the rule. Finally, under the third prong, we balance the diminution of the employees' rights because of application of the rule against the employer's interests that are protected by the rule.

The Court also stated that employees are not precluded from seeking to improve terms and conditions of employment, or to otherwise improve their lot as employees, through channels outside the employee-employer relationship. The action of a single employee who intends to induce group activity can also constitute concerted activity under the "mutual aid or protection" provision. They also noted that in mixed motive cases, such as this one, the Court has approved the MERC's use of the burden shifting approach in *National Labor Relations Board vs. Wright Line* 662 F2d 899(CA 1, 1981), which requires the charging party to demonstrate that protected conduct under the PERA was a motivated or substantial factor in the employer's action. Once this showing is made, the burden shifts to the Employer to produce evidence that the same action would have taken place in the absence of the protected conduct.

Considering the evidence as a whole, the Court unanimously concluded that the officer was suspended simply because he continued to operate the website and that disciplining him for not shutting down the entire website violated PERA. The Court affirmed MERC's order and granted DPOA's petition to enforce that order.

This decision and Judge's analysis supports existing law enforcement labor organization rights. □

The Value Of A Bright Line Rule When Applying The Fourth Amendment

In the case of *People of the State of Michigan vs. Michael William Mungo*, a prosecutor appealed a circuit court order granting a defendant's motion to suppress evidence and to quash the Information. The Washtenaw Circuit Court had suppressed evidence of a gun found as a result of a search of the defendant's car following a routine traffic stop and arrest of the passenger in the defendant's car. Defendant, who was operating his car when it was stopped by law enforcement, was charged with unlawfully carrying a concealed weapon pursuant to MCL 750.227. The issue presented in the case is whether a police officer may permissibly search a car incident to a passenger's arrest where prior to the search there is no probable cause to believe that the car contained contraband or to believe the driver and owner of the car had engaged in any unlawful activity.

Washtenaw County Sheriff's Deputy Ryan Stuck lawfully initiated a traffic stop of a car driven by Michael Mungo, the defendant. Mark Dixon was the sole passenger in the car. Upon request, the defendant produced the vehicle registration and proof of insurance. Deputy Stuck also requested the occupants' driver's licenses and ran a LEIN check on both Dixon and Mungo. Deputy Stuck found that Dixon had two outstanding warrants issued for failing to appear in court to answer traffic violations. Deputy Stuck arrested Dixon, then requested dispatch to send another officer to assist him, securing Dixon in the back of his squad car. Deputy Stuck also directed the defendant to step out of his car, where Deputy Stuck conducted a pat-down search. Thereafter, Deputy Stuck searched Mungo's car, finding the unloaded gun in a case underneath the driver seat and ammunition in the glove box. Deputy Stuck asked the defendant to produce a permit to carry the concealed weapon. However, Mungo produced only a permit to purchase a firearm. Defendant's LEIN check did not reveal that he was issued a concealed weapon permit. Deputy Stuck arrested Mungo for unlawfully carrying a concealed weapon.

In the circuit court, defendant moved to quash the Information and to suppress evidence of the gun. The prosecutor relied on *New York v Belton*, 453 US 454; 101 S Ct 2860; 69 L Ed 2d 768 (1981), arguing that the arrest of any person in a car justifies a search of the passenger compartment of that car. The prosecutor argued that the search that led to the discovery of the gun was constitutionally permissible because Dixon, a passenger in Mungo's car, was lawfully arrested. Defendant relied on *Missouri v Bradshaw*, 99 SW3d 73 (Mo App, 2003) a case in which a divided panel of the Missouri Court of Appeals distinguished *Belton* and held that police officers cannot lawfully search a driver's vehicle pursuant to the arrest of a passenger, where the passenger was safely arrested and there was no reasonable suspicion that the driver possessed unlawful items.

The Washtenaw Circuit Court followed *Bradshaw*. The Court concluded that the defendant was not under arrest at the time Deputy Stuck searched his car. The Circuit Court further concluded that Mungo had a protected privacy interest in his car. The circuit court also held that there was no probable cause to arrest defendant, therefore, the search of his car was not constitutionally permissible. The appeal followed.

In its analysis of the case the Court of Appeals judges reviewed many cases and points of law. The Court referred the inquiry made by Supreme Court Justice Rehnquist in *People v Robinson*, wherein he questioned the assumption that persons arrested for the offense of driving while their license suspended are less likely to pose a risk to law enforcement than are those arrested for other crimes. His opinion

was:

The danger to the police officer flows from the fact of the arrest and its attendant proximity, stress and uncertainty, and not from the grounds for arrest.

The court stated that interpretation of the Fourth Amendment recognizes an "automobile exception," establishing that one's reasonable expectation of privacy in a car is substantially reduced over the expectation of privacy one has in a dwelling or other personal property. The court agreed that the need for a clear rule, readily understood by police officers and not dependant on different estimates of what items were or were not within reach of a arrestee at any particular moment, is established in *New York v Belton* and *Thornton v United States*.

The Michigan Court of Appeals concluded: "The diminished expectation of privacy in automobiles, considered in conjunction with the need to have a bright line rule that can accurately and easily be implemented by law enforcement in the field and that promotes the safety of law enforcement officials and preserves evidence, lead us to conclude that the Fourth Amendment permits police officers to search the interior of an automobile incident to the lawful arrest of its passenger, regardless of whether officers have reason to believe the automobile contains contraband or the operator of the automobile engaged in illegal activity. We hold that such a search is a constitutionally permissible search incident to a lawful arrest. We reserve and remand for entry of an order denying defendant's motion to suppress the gun and for re-instatement of the charge".

This decision clarifies law enforcements rights. □

Editors Note:

A vehicle search incident to an arrest does not extend to the trunk.

Thumbs up to the Judges in both cases!

Presiding over City of Detroit vs. Detroit Police Officers Association (DPOA) were:

Helene N. White



Brian K. Zahra



Karen M. Fort Hood



Deciding the People of the State of Michigan vs. Michael William Mungo case were:

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RESPONDING TO BLOODBORNE PATHOGENS AND EXPOSURE TO INFECTIOUS DISEASES

By Ed Jacques

Michigan HIV laws define “exposure” as sustaining a percutaneous, mucous membrane, or open wound exposure to the blood or other body fluids of another. The Occupational Safety and Health Administration (OSHA) has implemented the following requirement on employers regarding training, equipment, vaccinations, exposure follow up and record keeping.

- ▶ Annual training of employees on bloodborne pathogens, exposure situations, engineering controls and safeguards.
- ▶ Use and availability of personal protection equipment.
- ▶ Exposure control plan
- ▶ Hepatitis B vaccinations
- ▶ Blood collection and testing for employee and source individual after exposure incident
- ▶ Follow-up care and counseling
- ▶ Training and exposure records.

When researching this topic, I asked POAM Executive Board members if they could recommend a local officer in their department who could lend advice on how such programs should be implemented. I was put in touch with David Ziegler, Exposure Control Officer with the Taylor Police Department.

Ziegler informed me that the city of Taylor was in full compliance with all state and federal laws, and has provided additional resources to further ensure the safety of its first responders. The city consistently sends employees to training and has developed its own protocol for responding to an exposure. The Center for Disease Control (CDC) calls for a maximum of eight hours to provide remedy. Taylor’s safety committee meets regularly with its police and fire administration and has established a plan to treat affected personnel within two hours. “The employer is obligated to vaccinate and blood test any employee reasonably expected to be exposed,” says Dave.

When an exposure occurs, the affected first responder is immediately sent to the hospital. Ziegler is then contacted to work with the officer and the clinic. Dave documents that the proper criteria has been met and insures that all follow-up visits are adhered to. Quick response to the incident increases the odds that a disease will not be converted, especially in a high exposure incident.

The city has provided Ziegler with a laptop computer with ex-

isting health-related information on employees as well as a database program for entering vaccinations, exposure history, TB tests, allergies, and training history. The employer does not have access to the information and federal law states that the employee exposure officer cannot supervise an affected employee. OSHA’s record keeping requirements are strict and comprehensive. Training and exposure records must be kept for the duration of employment plus 30 years!

The department’s personal protection “kit” includes a gown, face mask and eye shield, rubber gloves, alcohol type cleaner and disposal bag. Protective wear must be worn at all reasonable times. Taylor stores the equipment in their jail and in all patrol cars.

Ziegler is immediately notified of any possible exposure and is also responsible to make sure all follow-up care and counseling is performed. According to Dave, “The series of prophylaxis drugs necessary in a high-risk, high-exposure case is hell on earth, and includes a six-month process of drawing blood.”

A large portion of Dave’s expertise involves knowledge of Michigan’s HIV laws and making sure that local hospitals and clinics are cooperating with their consent for treatment forms, the exemptions to informed consent, and a first responder’s request for HIV testing. In a nutshell, health care professionals must post notice of its right to perform HIV tests and inform any person possibly exposed of its results AND honor any first responder’s request to test the emergency patient for HIV and Hepatitis B, in case of exposure.

The city of Taylor has also designated an OSHA Compliance Officer, Fire Captain Herb Protector, who has assisted the administration in implementing its program and training of all first responders. “The city of Taylor and Chief Dale Tamsen’s commitment to implement this all encompassing program shows how much they care about their employees’ welfare,” said Ziegler.

Dave stressed that his fellow employees have responsibilities that have to be met. “They need to attend all training classes, notify the employer when any possible exposure takes place and make all their

follow-up sessions.” Ziegler encourages members to use their PPE kit, know their exposure plan and get the hepatitis vaccination series, if necessary. “Above all,” says Dave, “protect yourself at all times.”

Ziegler hopes that all municipalities are in the process of complying with the federal statute. “OSHA and the Michigan Department of Community Health have websites and all the appropriate information.” If anyone needs some special coaching on this issue, they can call Dave at the Taylor Police Department. □

“When an exposure occurs, the affected first responder is immediately sent to the hospital.”



Left to right: The City of Taylor’s Exposure Control Officer David Ziegler, Osha Compliance Officer Fire Captain Herb Proctor And Police Chief Dale Tamsen.

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By JIM DeVRIES, MCOLES Board Member

New In-service Firearm Standard Will Duplicate Officers' Challenges In Actual Shootings

MCOLES has just instituted a mandatory in-service firearm standard designed to improve officer survival in combat. A prototype of the standard was developed over one year ago. During 2007, the standard was pilot tested at 25 law enforcement agencies and training facilities throughout Michigan. Pilot testing provides an opportunity to collect data for assessment of the standard's potential to fulfill the intent of its design. On February 20, 2008 the Commission adopted the standard.

When MCOLES developers first took on the task of devising an in-service firearm standard, a significant amount of time was spent looking at problems occurring in actual officer-involved shootings. It is significant that this research identified major gaps between what is typically stressed in in-service firearms training and the challenges officers face in actual shootings. The most common problems that were identified were mistakes of fact, use of untenable tactics and inaccurate threat assessment in low light. Improper use of cover, poor communication during combat, and inadequate fear management also caused officers to commit errors that either compromised their safety or exposed them to civil liability.

The new MCOLES standard consists of seven knowledge objectives as well as one combat proficiency objective. It will be introduced to the field

in 2008, with compliance beginning in 2009. Mandatory reporting would occur through the MCOLES Network in 2010.

As a result of the standard going into effect, we will finally begin to witness access to the privileges afforded retirees under the Law enforcement Officers Safety Act (LEOSA). LEOSA provides that active and retired law enforcement officers who are qualified pursuant to the Act may carry firearms on an interstate basis. The Act specifies that retired officers wishing to access this privilege must possess certification from their state of residence indicating that they have met that state's standard for training and qualification of active officers to carry firearms. Also, they must possess identification issued by their former employers. Retired officers in most of the states have been unable to access this privilege for lack of a statewide firearm qualification standard. Also, many former employers have resisted issuance of identification pursuant to LEOSA based on cost and liability concerns.

In order to provide LEOSA certification of retirees under this standard, MCOLES has sought statutory authority to implement LEOSA in Michigan. Without this authority, MCOLES cannot become involved with retirees. HB 4611, authored by former Sheriff Rick Jones, has cleared the state House of Representatives and is in the committee stage in the Senate. If passed as originally proposed by MCOLES, LEOSA identification and the state certification of retirees required under LEOSA would be combined into a single, uniform and easily recognized state credential that would be renewed annually, as required by LEOSA. We will keep you posted on this issue. □



Chiefs Need To Speak The Truth: What recruits really need to know

By WILLIAM L. HARVEY, Management Contributor - Reprinted with permission from Officer.com

Recently, I was sitting with a group of chiefs, listening to them brag about their "welcome aboard" speech to recruits. Most of them spoke of how they reiterated the department's core values and mission statement. Several boasted of how their speeches capture service and their departments' role of community service. I rolled my eyes and listened. I went back to my past two assignments at the police academy and all of those similar "G-rated" graduation speeches. These were reruns and great for the parents and public. But, in my eyes, these are not truly what young recruits need to know. Those who know me feel that I am a little blunt and crass at times. However, I have never been known for not speaking the truth.

Young officers need to know the pitfalls, and I will tell them. I will wait for their graduation from the police academy and give them "the talk." They are "full grown" and need to be spoken to in such a manner. The male officers get the full extent of the guidance. In a politically correct world, a female staff member will offer the female recruits the advice from the female perspective. So, what are my views of what young officers need before entering the real world?

First of all I learned this from an old trainer: take your badge and put it in a glass. Put in a bullet, and pour your favorite adult beverage over it. Stir and what happens? Nothing! When you are a cop, firearms and alcohol do not mix! Anytime you are invited to a party; ensure that you are not armed and there is no gun play. If you are planning on consuming, get a designated driver. The media would love to have a story of a cop charged with DUI.

Second, your badge will get you privileges, but those privileges will get your badge. Be very careful of obtaining "on the arm" privileges. That free meal or movie pass can later haunt you. Additionally, there are some who are enchanted with men and women in uniform. To the male readers: if you have been on the job more than one year, you have a story of a "badge

bunny" that has approached you. Some lady that is "midnight pretty" is not worth it, young lad.

Next, if you have a spouse or significant other, have you actually sat down and told them of the demands of this calling? This is not a "straight eight and I'll be home" job. There will be late calls and such, so they must be prepared for this. Now, if you are planning on post-watch jaunts and you are planning on telling them that it was a late call; there will be a problem. I will not cover for your late night soirées. Sooner or later, they will call and find out you were not on that call, and then you have a problem. Then I remind them of the high rate of divorce in police work.

Then comes the safety talk. I ask them their favorite color, and then I write it down in my notes. This will confuse the best of them. If they are not safe and get killed, I want to know what color the flowers for their funeral should be. This gets their attention. Then I remind them that, when you have to wear ballistic armor to prevent someone who is firing projectiles at you; you have a problem in your life. When you have to wear a firearm and a backup (yes, I support secondary weapons), then you have a real complicated life. There is no need to really complicate it further by not applying all the tactics and officer safety measures that they have been taught. They need to treat each and every day as a learning experience, and the day that they think they know it all, please let me know, for I have not learned it all yet.

Finally in closing, I tell them that this is the best job in the world if they remember one thing: it is not the work, but the people. I do not remember the department, the calls, but I do remember my friends. Welcome, and when I am sitting on the front porch of the old retired policemen's home, I can say, "there goes one of my friends." I shake their hand and send them off to a great career. □

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Important Arbitrations

By Ed Jacques, LEJ Editor

Retroactivity Issues in Expired Contracts Must Be Clarified

On January 24, 2007, the Police Officers Association of Michigan (POAM) filed an unfair labor practice charge against Lake County and its Sheriff. POAM represents the non-supervisory police officers employed by the County and charged that the employer unlawfully repudiated the agreement, in violation of the duty to bargain in good faith under Section 10(1)(e) of PERA, when they refused to arbitrate a grievance.

The party's collective bargaining agreement expired on December 31, 2005. They began negotiating a successor agreement in August of 2005 and reached a tentative agreement on May 23, 2006. On July 19, 2006, POAM Business Agent, Pat Spidell notified the County's attorney, John McGlinchey that the members had ratified the tentative agreement. On August 10, 2006, McGlinchey prepared a draft of the contract that included a clause stating that the agreement would be in full force and effect until December 31, 2008. The cover page stated that the agreement was effective January 1, 2006 through December 31, 2008.

Spidell asked McGlinchey to make certain changes to the draft agreement, correct clerical errors, as well as including a proposed letter of understanding dealing with a retiree health care issue. Spidell signed the second

draft on behalf of his members and returned it to the County on September 19, 2006. On September 15, 2006, the Sheriff terminated a deputy. On September 20th POAM filed a grievance asserting that the deputy's termination was without just cause. The County disagreed and denied the grievance. On September 25th, McGlinchey wrote the following to Spidell,

"The County and Sheriff intend to execute the successor labor contract. However, the employer wishes to make clear that by doing so it does not agree to any retroactive application of the grievance procedure/arbitration to the Grievant".

On October 12th, local union President, Ron Brown, notified Lake County's Board of Commissioners that POAM was appealing the grievance to the third step of the grievance procedure. The notice indicated that in the event the grievance was not satisfactorily resolved, the Union would request arbitration. McGlinchey wrote Spidell another letter emphasizing that the employer would not arbitrate grievances filed after the contract had expired. On October 26, 2006, Lake County Sheriff, Robert Hilts and Board Chairman James Clark, executed the contract and simultaneously reinforced the position to President Brown that the County would not agree to ar-

bitrate the outstanding grievance.

Shortly thereafter, POAM filed an unfair labor practice with the Michigan Employment Relations Commission (MERC) pointing out that all parties executed the contract, and stated that it was effective January 1, 2006, unless otherwise provided by the parties. The contract did not provide for another effective date for the grievance arbitration or just cause provisions.

In her decision and recommended order, Administrative Law Judge Julia C. Stern acknowledged that the County had clearly stated it did not agree to "retroactive" arbitration of the grievance. However, she stated, "Lake County subsequently executed a document which, on its face, appears to provide otherwise. I find that the grievance is arguably arbitrable under the parties 2006/2008 collective bargaining agreement. I conclude, therefore, that the Board of Commissioners violated their duty to bargain in good faith by refusing to submit the grievance to an arbitrator."

POAM Attorney George Mertz was happy with the outcome but reminds members that "the issue of arbitrability of a grievance arising after termination of a contract remains dependent on the history of contract negotiations and interpretation of any subsequently executed agreement". □

SERVING ON TWO FRONTS

By Ed Jacques, LEJ Editor

After serving nearly 19 years as a deputy in Washtenaw County, Army Reservist Jeff Saren answered a second call to duty in 2002.

Saren was Commander of the 303rd Military Police Company stationed out of Jackson, Michigan, and was deployed to Guantanamo Bay, Cuba, until 2003. Although very proud to serve his country in such an important and high profile capacity, Jeff Saren was glad to come home to his family and the Washtenaw County Sheriff's Department.

In 2007, acting as a Major in the Army National Guard, Saren was recalled for duty in Iraq. Major Saren is assigned to the 177th Military Police Battalion, one of the most dangerous assignments in the entire United States Military.

Jeff's wife Melissa is anticipating a May homecoming for her husband. Jeff is father to three boys, ages 17, 13 and 10. "His sons are just as anxious to see their father again as I am," said Melissa. "Our oldest will be a senior next year and both he and his dad deserve the opportunity to share those special moments together." □

Major Jeff Saren [right] met with the Commanding General of the Multi-National Force in Iraq, David Petraeus





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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.



MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN MERS STATEMENT ON MODIFICATIONS OF STANDARD BENEFIT PROGRAMS

(Adopted January 15, 2003; as amended November 9, 2005)

MERS recognizes that terms of public employee retirement plans may be modified through collective bargaining. See e.g., Local 1383, Int'l Ass'n of Fire Fighters, AFL-CIO v City of Warren, 411 Mich 642; 311 NW2d 702 (1981); OAG, 1983-1984, No. 6244. Section 43B of the Plan Document reflects the ability of a collective bargaining agreement to modify MERS standard benefit programs in effect in participating municipalities and courts:

(1) Pursuant to a collective bargaining agreement entered into pursuant to 1947 PA336, being sections 423.201 et seq. of the Michigan Compiled Laws, a participating municipality or participating court may provide for retirement benefits which are modifications of standard retirement benefits otherwise included in the plan.

(2) In the manner provided in Section 43 or Section 43A, the participating municipality or participating court may extend such collectively bargained retirement benefit modifications to other employees of the participating municipality or participating court.

(3) As a condition of the retirement system administering retirement benefit modifications under this Section 43B, the participating municipality or participating court shall agree to compensate the system for all reasonable and necessary additional costs of administering such benefit modifications.

However, the terms of any collective bargaining agreement are based on statute (the Public Employment Relations Act). Public pension and retirement benefits are governed by and subject to Article 9, section 24, of the Michigan Constitution of 1963:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

The constitutional obligations imposed by Article 9, section 24 are further implemented by the Retirement Board's administration of MERS as sole trustee and fiduciary under the Plan Document. In that capacity, the Board adopted Plan Section 43B regulating modification of standard MERS benefit programs.

What Are "Standard Retirement Benefits Otherwise Included in the Plan" That Are Subject to Modification?

The following MERS standard "benefit programs" are subject to modification and within MERS technological capabilities to implement:

- "Compensation" items within "Final Average Compensation" in FAC-3 or FAC-5 (Section 2A).
- "Multipliers" under Benefit Program B-1 (Section 15); Benefit Program B-2 (Section 16); Benefit Program B-3 (Section 16A); and Benefit Program B-4 under Section 16B.
- Increase in maximum 80% of FAC benefit limit under Benefit Programs B-3 and B-4.

- Vesting provisions less than standard 10 years (including V-8 and V-6) (Section 10(1)(b) and 12).
- Retiree COLA ("E" benefits under Section 20).

For each non-standard MERS benefit which may be implemented, the Retirement Board has established a \$6,000 first-year charge for set-up/programming, allocated equally between all affected divisions (Special Annual Expense Charges Procedure, August 12, 1999). Under Plan Section 41(1) and 41A(1), providing the Board "shall establish benefit program coverage classifications, "it is determined that non-standard benefit fees shall not apply at the time of initial participation in MERS (or at the time a new division of an already participating municipality becomes covered under MERS).

What Matters Are Not Subject to Modification and MERS Will Decline to Administer?

MERS is subject to Mich Const Art 9 section 24 and other federal and state laws of general application, the terms of which must control over contrary language. The MERS Plan Document is subject to (and must be administered in conformance with) provisions of the Internal Revenue Code of 1986 that apply to public pension plans, pursuant to the Letter of Favorable Determination issued by Internal Revenue Service, finding MERS to be a tax-qualified trust under section 401 (a) of the Code.

By way of description, and not limitation, the following lists those MERS' matters that are non-modifiable and will not be administered or recognized by MERS:

- MERS' actuarial assumptions, or Plan Document language of general MERS-wide application, as approved by the Retirement Board as trustee and fiduciary.
- Board-approved, MERS-wide provision whose language specifies that MERS will decline to administer or recognize any modification or alteration of terms. For example, Section 2C(3), prior service credit; or governing body/administrative order adoption resolution of general applicability, such as the MERS Uniform Defined Contribution Adoption Resolution.
- Modifications not capable of implementation within MERS' then-current technology.

IN ALL CASES OF PROPOSED NON-STANDARD BENEFITS:

Prior to entering discussions or negotiations for any potential non-standard MERS benefits, including arbitration and Act 312 proceedings, please contact your MERS marketing representative for assistance. All MERS requirements for actuarial valuation (Initial Actuarial Valuation and Supplemental Valuation Procedure) apply to non-standard benefits.

MERS will not submit a valuation request to the Actuary for valuation of any proposed MERS benefits, or their structure, which are not subject to modification or alteration. In such instances, the requestor will be advised in writing of such action, and presented with any feasible alternatives. □



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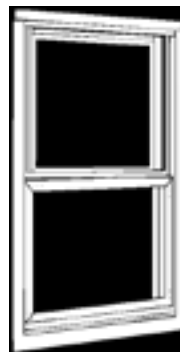


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National Police Week
May 11 - May 17 2008

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2008
National Law Enforcement Officers
Memorial Fund

MAY 11, 2008 (SUNDAY)

13th Annual Law Ride Line up

Begins at 9:00 a.m. in Lot 8 of R.F.K. Stadium in Washington, DC. Procession will leave RFK promptly at 11:00 a.m. and ride to the National Law Enforcement Officers Memorial. Contact: lawride@bellsouth.net www.lawride.com

MAY 12, 2008 (MONDAY)

Police Week Golf Classic

Hosted by the Fairfax County Police Association 7:30 a.m. (registration) - 8:30 a.m. (tee time) Twin Lakes Golf Course Clifton, VA Contact: Anne Nuttall. 703-278-8626, anne.nuttall@thefcrp.org All proceeds from the tournament go to the "Matter of Honor campaign for the National Law Enforcement Museum.

15th Annual TOP COPS

Awards Ceremony

Hosted by the National Association of Police Organizations
7:00 p.m.
Warner Theatre
513 Thirteenth Street, NW
Washington, DC
Contact: Jill Sizelove
(703) 549-0775

MAY 13, 2008 (TUESDAY)

20th Annual Candlelight Vigil

National Law Enforcement Officers Memorial Fund 8:00 p.m. National Law Enforcement Officers Memorial 400 Block of E Street, NW Washington, DC Contact: (202) 737-3400, vigil@nleomf.org It is advised that anyone attending take the Metro Red Line to Judiciary Square.

MAY 14, 2008 (WEDNESDAY)

**Sixth Annual Steve Young
Honor Guard Competition**

Fraternal Order of Police Grand Lodge 8:30 a.m. John Marshall Park, between the Federal Court House and the Canadian Embassy Washington, DC Contact: Ken Roske, honorguard@policeweek.org
www.policeweekhonorguard.com

POAM Federal Legislative Reception

United States Capitol Building
Room HC-5
Time: 5:00 p.m. - 7:00 p.m.

13th Annual Emerald Society & Pipeband

March and Service National Conference of Law Enforcement Emerald Societies, Inc. Assemble at 4:30 p.m. at New Jersey Avenue, &

F Street, NW. Step-off promptly at 6:00 p.m. March will proceed to the National Law Enforcement Officers Memorial. Contact: Mike Roe: (314) 304-1915, Miroe@slmpd.org

MAY 15, 2008 (THURSDAY)

**27th Annual National Peace Officers
Memorial Day Service**

Grand Lodge, Fraternal Order of Police
Grand Lodge, Fraternal Order of Police Auxiliary 12 Noon West Front of the United States Capitol Washington, DC Contact: www.police-week.org/contacts www.policeweek.org

POAM Police Appreciation Party

Tune-Inn Restaurant/Bar
331 1/2 Pennsylvania Ave. S.E.
12 Noon 'til ???

MAY 16, 2008 (FRIDAY)

National Police Challenge

50-Kilometer Relay Race

Coordinated by the U.S. Secret Service
8:00 am -1:00pm
Secret Service Training Center,
Laurel, MD
Contact: Kam Flynn, npc50@verizon.net
www.secretservice.gov/npc50

5TH 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 of police officers attending Police Week activities in Washington, D.C. The reception will be held on Thursday, May 15, 2008 beginning at 12:00 noon.

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 third consecutive year, the event will be held at the Tune Inn, which is located at 331 1/2 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!

MICHIGAN LAW ENFORCEMENT OFFICERS MEMORIAL FUNDING IN DOUBT

By Ed Jacques, LEJ Editor

On October 18, 2006, Michigan took the initial step toward insuring that the service and sacrifice of all fallen officers in Michigan will be honored forever. Governor Jennifer Granholm, U.S. Senator John Kerry and hundreds of others in attendance dedicated the site of the future Memorial that will enshrine every Michigan law enforcement officer who died in the line of duty. The Memorial site is located within the Michigan Capitol Park, at the corner of Allegan Street and Butler Boulevard, and directly south of the Vietnam Memorial, near the State Capitol in Lansing.

The winning design for the Michigan Law Enforcement Officers Memorial Monument was unveiled at a press conference in Lansing on February 8, 2007. Attorney General Mike Cox spoke at the event and took the opportunity to remember some of the police officers that had assisted in his Department investigations whose names will be inscribed. Former State Representative Larry Julian who sponsored the legislation for the Memorial Commission in 2004, said "this Memorial will serve for eternity, the memory of those who gave the ultimate sacrifice for the safety of each of us, our families and our great State."

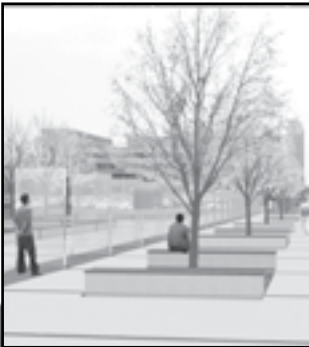
Architect David Milling of Ann Arbor was called upon to present his winning design, called "Sentinel." It is composed of 21 sentinels, each 4'x 8' glass panels engraved with the names of fallen officers standing vigil over the memories of those lost. The

panels march from west to east and will be lit from below. The transparency of the panels provides a sense of strength and stability due to their scale and allow for the security and visibility of the site. Mr. Milling donated his first prize check back to the Memorial Commission.

The Michigan Law Enforcement Officers Memorial Monument Fund Commission was created by Public Act 177 in 2004. The Commission includes survivors of law enforcement officers killed in the line of duty, a police chaplain and representatives from the Attorney General and State Treasurer's Office. The Commission oversees the financing, design and construction of the Memorial Monument.

However, the anticipated goal of a groundbreaking in 2008 is out of the question. In fact, the fundraising campaign is way behind in its expected revenues due in large part to Michigan's poor economy and a lack of large corporate donors. The Commission is considering hiring a professional fundraising consultant to jumpstart the initiative. The estimated cost of the Memorial and Monument is approximately four million dollars.

There are over 530 names waiting to be etched in glass and just as many families eager to see their loved one's sacrifice recognized forever. For more information on the Memorial and how to donate, go to www.mleom.org.



CIVILIAN FRIENDS vs POLICE FRIENDS

CIVILIAN FRIENDS: *Get upset if you're too busy to talk to them for a week.*

POLICE FRIENDS: *Are glad to see you after years, and will happily carry on the same conversation you were having last time you met.*

CIVILIAN FRIENDS: *Never ask for food or alcohol.*

POLICE FRIENDS: *Are the reason you have no food or alcohol.*

CIVILIAN FRIENDS: *Call your parents Mr. and Mrs.*

POLICE FRIENDS: *Call your parents mom and dad.*

CIVILIAN FRIENDS: *Bail you out of jail and tell you what you did was wrong.*

POLICE FRIENDS: *Would be sitting next to you in jail saying, "Damn...we screwed up...but man, that was fun!"*

CIVILIAN FRIENDS: *Have never seen you cry.*

POLICE FRIENDS: *Cry with you.*

CIVILIAN FRIENDS: *Borrow your stuff for a few days then give it back.*

POLICE FRIENDS: *Keep your stuff so long they forget it's yours.*

CIVILIAN FRIENDS: *Know a few things about you.*

POLICE FRIENDS: *Could write a book with direct quotes from you.*

CIVILIAN FRIENDS: *Will leave you behind if that's what the crowd is doing.*

POLICE FRIENDS: *Will kick the whole crowds' ass that left you behind.*

CIVILIAN FRIENDS: *Would knock on your door.*

POLICE FRIENDS: *Walk right in and say, "I'm home!"*

CIVILIAN FRIENDS: *Have shared a few experiences...*

POLICE FRIENDS: *Have shared a lifetime of experience no citizen could ever dream of...*

CIVILIAN FRIENDS: *Will take your drink away when they think you've had enough.*

POLICE FRIENDS: *Will look at you stumbling all over the place and say, "you better drink the rest of that, you know we don't waste... that's alcohol abuse!!" Then carry you home safely and put you to bed...*

CIVILIAN FRIENDS: *Will talk crap to the person who talks crap about you.*

POLICE FRIENDS: *Will knock the hell out of them for using your name in vain.*

CIVILIAN FRIENDS: *Are for a while.*

POLICE FRIENDS: *Are for life.*

The Federal Perspective

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

Congress Budgets Law Enforcement Funding

The 1st Session of the 110th Congress adjourned for the year on December 20th after finalizing and passing a Fiscal Year 2008 omnibus appropriations bill to fund the federal government through September 30th, 2008. The omnibus bill (H.R. 2764), which incorporates the Fiscal 2008 Commerce-Justice-Science (CJS) spending bill (H.R. 3093), was then sent to President Bush who, on December 26th, 2007, signed it into law. The bill includes many special project earmarks, but also cut several domestic spending programs significantly. Although reduced from the House and Senate levels, the Omnibus includes \$1.2 billion more for State and Local Law Enforcement than President Bush initially requested.

The CJS portion of the omnibus provides \$53.7 billion in budget authority for fiscal 2008, which exceeds fiscal 2007 appropriations by 2 percent and President Bush's request by almost as much. It is 3 percent less than the House-passed bill and 6 percent less than the Senate version. The bill includes \$51.8 billion in discretionary spending, about 1 percent more than requested. It also includes \$286 million in emergency funds, identified as going to border and cyber security. Among the key investments included in the bill are State and Local Law Enforcement and Crime Prevention Grants, Community Oriented Policing Services (COPS), FBI Salaries and Expenses, and significant allotments for the Drug Enforcement Agency.

In addition to funding the COPS program, the omnibus bill also finances the Byrne Memorial Justice Assistance Grant Programs (Byrne-JAG) which gives formula grants to states and local law enforcement agencies for law enforcement, crime prevention, prosecution, drug treatment, corrections, and technology improvements. The bill contains \$170 million for the Byrne Memorial Justice Assistance Grants and \$187 million for the Byrne Discretionary Grants. While the Justice Assistance Grants are significantly less than both chambers proposed, the discretionary grants portion represents an increase of \$39 million. Additionally, when compared with President Bush's request, both numbers combined correspond to an increase of \$7 million. As compared to the current funding, the discretionary grants equate to an increase of \$71 million.

On February 6th, 2008, President Bush released his budget for 2009. His proposal included no funding for the Edward Byrne Memorial Justice As-

sistance Grant program nor for the Community Oriented Policing Services (COPS) program. Overall, his budget request for the Justice Department is \$23.7 billion, a 3 percent decrease from fiscal year 2008. His proposed discretionary spending for the department is \$20.3 billion which is 12.3 percent less than fiscal 2008.

While Democrats will likely include some funding for the programs in their fiscal 2009 appropriations bills, they probably will not be able to devote as much as they might like due to the president's position. President Bush did offer some law enforcement grant funding through other programs, including \$178 million for a "violent crime reduction partnership initiative"

with state and local law enforcement. The administration states it is trying to gather more accurate information and target grants to those who need them most.

A piece of legislation that is critical to the law enforcement community is gaining momentum in the House of Representatives. The "Public Safety Officer Family Health Benefits Act," (H.R. 2391) was introduced by Congressman Bart Stupak (MI-1st) in May, 2007. Congressman Joe Knollenberg (MI-9th) recently became a cosponsor of this important legislation as well. This bill would make family members of public safety officers killed in the line of duty eligible for coverage under the Federal employees health benefits program, and the POAM is actively seeking additional cosponsors as well as working towards having a companion bill introduced into the Senate. We will update you on efforts to move this bill through the legislative process.

Make sure to save the date for the annual National Police Week which is rapidly approaching. National Police Week is held May 11-17, 2008 in Washington, D.C. and will featuring many important events including a Michigan Police Night Reception to be held on Wednesday, May 14th in Room HC-5 of the United States Capitol Building. For more information on the event of National Police Week, please contact Dennis McGrann or Emily Gehrman in the Washington, D.C. office of POAM. □

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Agreements gain vital benefits for POAM members

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

Negotiated Antrim County Deputies, Correction & Dispatch

Duration: 1/1/2007-12/31/2010

Wage Increases:

2007	Corrections	3.0%
	Dispatch	4.8%
	Deputies	3.3%
2008	Corrections	2.75%
	Dispatch	3.0%
	Deputies	3.0%
2009	Corrections	2.75%
	Dispatch	2.5%
	Deputies	2.5%
2010	Corrections	2.75%
	Dispatch	2.5%
	Deputies	2.5%

Bringing top pay for a deputy to \$44,681; corrections officer to \$39,333 and dispatcher to \$34,894.

- Increased personal time to 80 hours and funeral leave to five days.
- Vacation time increased to the following:
 - 1 year = 96 hours
 - 5 years = 120 hours
 - 10 years = 160 hours
 - 20 years = 200 hours
- Shift premium of \$.20 per hour for 2:00 p.m. to midnight, \$.30 per hour for 6:00 a.m. to 4:00 p.m. and \$.40 per hour for 10:00 p.m. to 8:00 am.

Deputies/Dispatch bargaining team consisted of Matt Muladore and Travis Chellis. Corrections bargaining team consisted of Jim School and Bonnie Page. Both groups were assisted by POAM Business Agent, Pat Spidell.

Inaugural Contract Fowlerville POA

Duration: 07/01/2007-06/30/2010

Wage Increases:

2007	2.5%
2008	2.5%
2009	2.5%
2010	2.5%

- Implemented overtime pay, seniority provision and shift premium.

Bargaining team consisted of Fred "Stoney" Miller and Eric Sorensen who were assisted by POAM Business Agent Mark Zacks.

Inaugural Contract Highland Park POA

CITY UNDER EMERGENCY
FINANCIAL MANAGEMENT

Duration: 11/1/2006-6/30/2010

All full time patrolmen were promoted to corporals receiving a 3% wage increase over the life of the contract.

All full time corporals were promoted to lieutenant receiving a 12% wage increase over the life of the contract.

Top pay for sergeants is \$46,000.
Top pay for lieutenants is \$55,000.

- Employer no longer pays for life insurance.

Bargaining team consisted of Jim Lant, Joel Smith, Robert Howard and John Bennett who were assisted by POAM Business Agent Kevin Loftis.

Negotiated Farmington Public Safety Officers Association

Duration: 01/01/2007-12/31/2009

Wage Increases:

2007	3%
2008	3%
2009	3%

Bringing top pay for a public safety officer to \$64,408.

- Increase sergeant pay differential by an additional 1% in 2009. Health care opt-out increased from \$50.00 per month to \$200.00 per month.
- Vacation language improved and carry over increased from 5 days to 8 days.
- Dental plan is BC/BS Plan 3
- Vision coverage is BC/BS VSP 12, 12, 12
- Health care choices are BC/BS BCN with a \$5/\$10 drug card at no cost, or PPO 4 wrapped to a PPO I with a \$15/\$30 drug card.
- Employer has agreed to pay annual increases of 5% on the PPO I, with employees paying any overage, if applicable.
- Employer to pay 1% of base pay in 2008 to fund retiree health care.

Bargaining team consisted of Todd Anderson, Jeff Broward and Aaron Malewski, who were assisted by POAM Business Agent Bob Wines.

Act 312 Arbitration Lake Co. Command

Duration: 01/01/2006-12/31/2008

Wages Increases:

2006	2.0%
2007	2.5%
2008	2.5%

- Current pension is MERS B-2 and employer will contribute an additional 1.75% of the cost to a B-3.
- Employer now pays 50% of retiree health case single coverage. (0% previously).
- Life insurance increased to \$20,000.
- Seniority continues under Worker's Compensation with no cap.
- Five (5) days funeral leave not deducted from sick bank.
- Health care choices are BC/BS PPO II (employer pay 100% at premium increase) or BC/BS PPO II (employer pays 50% of increase with a cap of \$150.00 per month).

Arbitrator was Carl Verbeek. 312 Advocate was POAM Business Agent, Pat Spidell, who was assisted by bargaining team members Dennis Robinson and Harold Nichols.

Negotiated Livingston Co. DSA

Duration: 01/01/2007-12/31/2009

Wage Increases:

2007	2.50%
2008	2.75%
2009	2.25%

Bringing top pay for a deputy to \$55,475 and a corrections officer to \$49,848.

- Added one new holiday.
- Life Insurance increased to \$30,000 and footwear allowance increased by an additional \$50 per year.
- CO's to receive a .50 cent per hour increase when carrying a weapon on duty.
- BC/BS changed from PPO1 to PPO6 with a \$10/\$20 drug card. Members can buy previous level.
- Sick payout is now at time of retirement and shall be 75% of unused sick time up to 100 days. Previous payout was spread over seven years.

Bargaining team consisted of Dave Klein and Keith Hutchin who were assisted by POAM Business Agent Tom Griffin.

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