

**MICHIGAN CIVIL SERVICE COMMISSION
EMPLOYMENT RELATIONS BOARD
IMPASSE PANEL**

IP 2013-03

**IMPASSE PANEL
RECOMMENDATION**

for the

SECURITY UNIT

CONTRACT TERM

January 1, 2014, to December 31, 2015

November 27, 2013

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A. INTRODUCTION

Civil Service Commission Rule 6-9.4 provides for resolution of impasses between parties negotiating collective bargaining agreements. In September 2013, requests for impasse panel assistance were made with respect to the Security Unit by the Michigan Corrections Organization (**Union**) and the Office of the State Employer (**OSE**).

In SPDOC 13-07, the state personnel director established a schedule to allow impasse panel assistance and commission review before the current contracts expire. In addition to the economic and other common issues discussed in IP 2013-01, the parties certified impasse on additional provisions. The parties have submitted proposed language, position statements, and exhibits regarding these matters. The parties also have submitted language for the remaining provisions in the collective bargaining agreement (**CBA**) where tentative agreement was reached.

An impasse hearing was held on November 13, 2013. Both parties had the opportunity to present arguments on the provisions at impasse. The panel has considered all testimony and evidence presented in making the following recommendation.

B. IMPASSE ISSUES

In addition to the consolidated provisions at impasse, as discussed in IP 2013-01, the parties have certified that the following provisions are at impasse:

- Article 16 and LOU 9 – Meal Periods
- Article 16 and New LOU – Alternative Work Schedules
- Article 17 – Comp Time and Leave Formula
- Article 22 – Cleaning Allowance

C. IMPASSE PANEL CRITERIA

Civil Service Rule 6-9.4(b) establishes the following potential criteria for the impasse panel to consider in making its recommendation:

- (1) Stipulations and agreements.
- (2) The interests and welfare of the public.
- (3) The financial condition and ability of the state.
- (4) Comparison of the rates of compensation and other conditions of employment of classified employees with other governmental and private sector employees.
- (5) Appropriate economic indicators and forecasts.
- (6) Total compensation, including fringe benefits, presently received by employees.
- (7) Such other factors that are normally taken into consideration in determining rates of compensation and other conditions of employment.

In IP 2000-05, the impasse panel further clarified that:

At impasse, when one party requests a significant change to current language to which the other party objects, the proponent of change should present concrete evidence of the need for the change, such as inefficiencies in operations, inequitable treatment, hardships, or other convincing justifications for the change.

D. DISCUSSION AND RECOMMENDATIONS

1. ARTICLE 16 AND LOU 9 – MEAL PERIODS

The Union proposes to change current contractual language on meal periods by guaranteeing a paid meal period. The Union would also extend for two years an LOU currently providing that the employer would not assert or exercise its right to relieve employees from custody responsibilities during a meal period through December 31, 2013.

A. POSITION OF OSE

The OSE argues that the Union proposal would turn a paid lunch into an entitlement. The employer should retain discretion to determine if unit members can be relieved from custody responsibilities during a meal period. Particularly since the Security Unit is more than half of the Department of Corrections' workforce, flexibility is needed to reduce costs in case of a budget shortfall. The Union's proposal would reduce options and hinder sharing of sacrifice across all departmental employees. In the past Corrections Officers might not have been able to be relieved for meals, but it may now be operationally feasible. Due to the stresses of the job, employees should be able to leave the facility for a mid-shift break.

The current LOU agreeing not to exercise a managerial prerogative had a specific expiration date, which the OSE no longer wishes to extend. Had the parties intended the LOU to be permanent, it would have been drafted without an expiration date. The

employer wishes to allow the LOU to expire to maintain the flexibility to schedule operations at each prison in the most efficient manner possible.

B. POSITION OF THE UNION

Since 2004, the OSE has sought to remove the paid meal period from the agreement as a cost saving measure that would reduce biweekly hours worked by five hours. This benefit is available to all emergency service workers as they operate in the free world, but prisons are atypical. Staff must be ready to respond immediately. Corrections Officers can choose to eat the prisoners' meal or bring their own meal to a break room. They cannot leave the facility and must remain ready to report. This is not a typical meal period. If staff is not paid, the employer would need to relieve employees of their custody responsibilities, which would create a serious security risk as inmates would quickly learn that security staff was reduced by half on a regular schedule. The Union's proposal effectively continues the status quo by memorializing this longstanding practice.

C. IMPASSE PANEL EVALUATION AND RECOMMENDATION

For several bargaining cycles, the parties have agreed to postpone the potential issue of the employer asserting its right to relieve employees of custody duties during meal periods by a letter of understanding with a sunset date. The OSE now seeks to let that LOU lapse. Including a sunset date is strong evidence of intended temporary duration barring voluntary extension. This, in effect, shifts to the Union the burden of unilateral continuation despite the sunset provision.

The Union has described the unique security requirements and security risks of a correctional environment and how they make the assertion of the managerial right problematic. If employees were to be relieved for an unpaid lunch, the Union asserts that standard security protocols would eliminate the majority of a 30-minute unpaid break as equipment was returned and security cleared upon exit and entry to the facility. Further, the decreased staffing levels could become readily apparent to prisoners and escalate danger.

The wisdom of the exercise of this managerial prerogative is normally a matter for the employer to determine. While this exercise has been temporarily limited by the LOU, it has been done so with a specific sunset date. The panel believes the meal period and 12-hour shift issue present cases where additional time and discussions by the parties may result in mutually beneficial solutions. Rather than letting both initiatives expire, the panel believes the extension of the status quo for two years will result in more efficient operations for the benefit of the state and employees.

Accordingly, the impasse panel **recommends** that the commission extend the sunset date for LOU #9 for two years as requested by the Union while maintaining current language for Article 16, § I.

2. ARTICLE 16 AND NEW LOU– ALTERNATIVE WORK SCHEDULES

The OSE seeks to amend current language to facilitate alternative work schedules and to adopt a new letter of understanding granting it authority to expand 12-hour shifts at up to six facilities each year, with additional facilities available subject to a vote by employees at the facilities. Such schedules were adopted at a few facilities as pilot programs during the current contract period.

A. POSITION OF OSE

The OSE would grant the state flexibility in creating alternative work schedules. Current language requires the schedules to be voluntary, which has led to grievances. Due to budget pressures, the state needs the option to make scheduling changes that are cost-effective, which its proposal would allow.

The OSE would also enter a new LOU allowing it to change to 12-hour shifts at six facilities per year. Additional facilities could also be changed if approved by a majority vote of unit members at the facility. Under the current pilot process, employees at a facility must petition for the change and there have been reports of intimidation. The OSE argues that the changes have been popular with employees where adopted, but the Union has remained opposed. The proposed LOU contains a commitment to expedite voluntary transfers for employees between 12- and 8-hour shift facilities. Current language in Article 15 allows employees to select preferred shifts and schedules. The LOU allows better scheduling options for less-senior employees.

The OSE's proposals also clarify that overtime pay will begin after 84 hours worked in a pay period for employees on 12-hour shifts.

B. POSITION OF THE UNION

The Union seeks to maintain the status quo, which has been the result of voluntary agreements. Working 12-hour shifts is dangerous for Corrections Officers. The current voluntary program has been successful and should be continued. No reasons have been offered for these changes other than saving the state money. No flaws in the current system were offered. Given the state's improving financial condition, this cost-shifting of economic burdens at the expense of lower pay for Corrections Officers should be rejected. The adoption of the OSE's proposal would allow the employer to permanently move almost all facilities to 12-hour shifts without the opportunity to further bargain. There has been no intimidation over the votes for schedule change.

C. IMPASSE PANEL EVALUATION AND RECOMMENDATION

The OSE seeks to expand and memorialize a pilot program to allow conversion of facilities to 12-hour shifts. The panel acknowledges the fiscal pressures that the Department of Corrections faces through the appropriations process and its concern to control costs. The department feels that the 12-hour scheduling is one way to reduce costs while addressing the preferences of some employee to have more days off. The current voluntary pilot represents an equitable balancing of the parties' interests. The panel believes that additional opportunities should be given to determine cost savings, employee interest, and operational impacts. While the panel does not grant the OSE's request to unilaterally implement 12-hour shifts during the term of this contract, the

panel encourages the parties to examine the approval process to make it easier for the interests of employees to be determined. This would include examining the petitioning process, which may be unduly burdensome given the ultimate voting process available for affected employees, and the possibility of facilitating pilot programs at single facilities in multi-facility complexes.

Accordingly, the impasse panel **recommends** that the commission (1) adopt the proposed LOU drafted by the panel as contained in Appendix 1 covering an extension of the pilot program and extending the previously approved pilot programs at facilities and (2) continue current language for Article 16, § L.

3. ARTICLE 17 – COMP TIME AND LEAVE FORMULA

The Union has requested to add compensatory-time hours so that they are included in the annual-leave accrual formula.

A. POSITION OF OSE

The OSE argues that the Union's proposal would cost between \$9 to \$12 million dollars. The Security Unit has guaranteed vacation slots every shift. An eight-hour overtime shift would become 12 hours of compensatory time, which could then generate 18 hours more of compensatory time when used, and so on. Under current language, an employee need not even work overtime to earn compensatory time. Avoiding sick or annual leave use during a pay period with a holiday will generate overtime pay that can be converted to compensatory time. The prior system, which was ended by voluntary agreement in 2011, allowed spiraling overtime costs. Rejection of the Union's proposal would not affect employees' ability to earn or use compensatory time. The Union has not offered any compelling explanation of why the formula should be changed.

B. POSITION OF THE UNION

In the last round of bargaining, the Union accepted a concession where compensatory time hours were removed from the calculation of annual-leave accrual rates. This was done during a time of great economic pressures, but given improving financial conditions, the Union requests that the benefit be restored. Employees accrue annual leave at a higher rate when they accrue more service hours. The Union argues that since the employees have already worked the unpaid compensatory hours, it is equitable for the time to count toward the higher accrual rates as soon as the hours are worked. The Union also references the uniquely stressful conditions that its unit members face. Should the impasse panel agree with the OSE that employees would be compensated for 1.5 hours when they worked only 1 hour, it should consider calculating annual leave accrual on a one-for-one hour basis.

C. IMPASSE PANEL EVALUATION AND RECOMMENDATION

The parties voluntarily agreed to the elimination of this formula treatment during prior bargaining. While the Union's desire to regain this treatment is understandable, the panel is unconvinced that the Union has demonstrated concrete evidence of the need for

the change. Accordingly, the impasse panel **recommends** that the commission retain current language for Article 17, § C.

4. ARTICLE 22 – CLEANING ALLOWANCE

The current contract language provides for a clothing allowance of \$575 annually for employees required to wear a uniform “to cover dry cleaning, laundering, and tailoring expenses of the uniform.” The contract also grants reimbursements to Corrections Security Representatives, Corrections Resident Representatives, and Forensic Security Assistants. The OSE proposes eliminating the language granting the allowance to specific classes and reducing the allowance for employees required to wear a uniform to \$125 annually.

A. POSITION OF OSE

The OSE argues that the allowance was raised in 2005 to \$575 for all bargaining-unit employees in the Department of Corrections, regardless of whether they wore a uniform. These amounts exceed allowances in other units. The OSE’s proposal would bring the amount into line with that received in the Institutional Unit and Technical Unit. The OSE notes that all uniforms are provided by the state and that soiled or damaged uniforms are laundered or replaced by the state. The uniforms provided today are machine washable and require no dry cleaning or other special handling. The Union provides no rationale why non-uniformed employees should receive an allowance when most employees statewide bear the expense of buying and washing their own clothes. The bargaining unit has a more expensive compensation package relative to their base wages than any other bargaining unit at impasse. The OSE’s proposal would save the state over \$3 million.

B. POSITION OF THE UNION

The Union complains that the specific amount of the allowance reduction sought was never presented during bargaining. The Union contends that the OSE proposed eliminating the allowances altogether, but apparently out of cost-cutting desires rather than any specific goal of bringing it in line with other units. The Union notes that the MSPTA contract provides for a \$572 allowance. Before 2005, the allowance had been \$250 for six years. Given the concessions faced by employees and inflation during this period, the reduction to half that level is frivolous and unsupported. The Union was not asked during negotiations why a uniform allowance was needed for non-uniformed employees. Some non-uniformed employees wrestle with hostile patients or have feces thrown on them. The working conditions of unit members are suboptimal and unsanitary, which should be recognized. The Union notes that employees’ uniforms are only replaced and laundered by the employer in the most extreme cases, like when one’s clothing is saturated by blood or other bodily fluids.

C. IMPASSE PANEL EVALUATION AND RECOMMENDATION

The parties have voluntarily agreed to these allowances for several years. While the OSE’s desire to limit these expenses is understandable—particularly given changes in the actual laundering needs for the uniforms—the panel is unconvinced that the OSE

has demonstrated evidence of the need for the change. Accordingly, the impasse panel **recommends** that the commission retain current language in Article 22, § I.

E. OTHER PROVISIONS OF THE PROPOSED COLLECTIVE BARGAINING AGREEMENT

As part of their impasse submissions, the parties provided proposed text for portions of the collective bargaining agreement that were not at impasse. Civil service staff has reviewed the tentative agreements for provisions that would violate civil service rules on prohibited subjects of bargaining and found no such provisions. The impasse panel concurs and **recommends** that the Civil Service Commission approve those provisions where tentative agreement was reached by the parties.

The impasse panel has also made its recommendations on several issues that affected multiple bargaining units in a separate document, IP 2013-01. The discussion and findings of IP 2013-01 are adopted by reference in this recommendation.

F. SUMMARY

The panel's recommended text for the CBA appears at Appendix 1. This text reflects the impasse panel's recommendations on the unique issues to this bargaining unit, as outlined above, its recommendations on the issues consolidated for consideration in IP 2013-01, and the tentative agreements submitted by the parties on articles not at impasse. The impasse panel **recommends** that the Commission adopt the text in Appendix 1 as the CBA for the Security Unit.