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APR 18 1983

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BY APPOINTMENT
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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

STATUTORY ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

COUNTY OF ALPENA SHERIFF'S DEPARTMENT,

Employer,

-and-

FRATERNAL ORDER OF POLICE, STATE
LODGE OF MICHIGAN LABOR COUNCIL

Case No. 182 C-249

PANEL'S OPINION AND AWARD

This Panel is created under the authority of the Michigan Employment Relations Commission, (hereafter MERC), pursuant to the authority of Act 312 of the Public Acts of 1969, as amended. That agency maintains a panel for the resolution of contractual impasses in the collective bargaining process between municipalities and police or fire personnel. The chairman of this panel was appointed to this dispute by letter dated July 16, 1982.

Robert French, a recently retired member of the Alpena County Board of Commissioners was appointed as the County's delegate. Mr. French was a participant in the negotiations, and provided real assistance in comprehending the county budget.

The Union appointed William R. Bannister as its delegate. A former police officer and Union representative, he was intimately involved in the negotiations. Mr. Bannister brought to bear his considerable experience and well-reasoned analysis to enlighten the Arbitrator on the basis for the Union's position.

A pretrial conference was held in the Alpena Courthouse on

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DEPT. OF LABOR & INDUSTRY

Alpena County of

August 30, 1982. Its results and determinations were summarized by my letter dated September 7th to the Commission.

Hearings were scheduled for October 7, 8 and 9.

The hearing commenced on October 7.

Present for the Lodge:

Green, Renner, Weisse, Rettig
& Clark

by: Nino E. Green

Attorney

Present for the County:

Gillard, Bauer & Mazrum

by: James L. Mazrum

Attorney

22 exhibits were received. 5 witnesses testified under oath. A stenographic record was kept and a full transcript produced. In preparing this Opinion, all of the record has been carefully reviewed.

I. INTRODUCTION

A. Purpose and Procedure

The purpose of an Act 312 Arbitration is the peaceful resolution of labor disputes in the public sector. To this end, the Act provides for "compulsory arbitration of labor disputes in municipal police and fire departments." The general statement of statutory policy is enlightening. Found at Michigan Compiled Laws Annotated (MCLA) 423.231, and Michigan Statutes Annotated (MSA) 17.455(31), it states:

Sec. 1. It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the

resolution of disputes, and to that end the provision of this act, providing for compulsory arbitration, shall be liberally construed."

The law further defines policemen and firefighters [MCLA 423.232; MSA 17.455(32)]; establishes methods and times of initiating the proceedings [MCLA 423.233; MSA 17.455(33)]; provides for the selection of delegates [MCLA 423.234; MSA 17.455(34)]; and establishes the method for selection of the Arbitrator [MCLA 423.235; MSA 17.455(35)].

It also sets up procedural timetables;¹ has a provision for the acceptance of evidence;² and allows that the panel may issue subpoenas and administer oaths. [MCLA 423.237; MSA 17.455(37)]. The dispute can be remanded for further collective bargaining. [MCLA 423.237a; MSA 17.455(37a)]³ [MCLA 423.239; MSA 17.455(3a)]. Finally, the law provides for enforcement, judicial review, maintenance of conditions during the pendency of the proceedings. [MCLA 423.240-247; MSA 17.455(47)].

Finally, at or before the conclusion of the hearing, the panel is required to identify each issue as "economic" or "noneconomic." The Classification is critical. The panel may adopt its own (not a party's) position on a noneconomic issue. However, on an economic one, the "arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies" with the factors set forth in the statute. [MCLA 423.238; MSA 17.455(38)]; (emphasis added). In other words, the panel cannot make its own proposal on economic issues. It is limited to choosing the more reasonable of the two offers.

On contested issues, the panel must base its findings on the statutory criteria. There are ten.⁴ MCLA 423.239; MSA 17.455(39)

states in relevant part:

...the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.⁵
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

II. Preliminary Statement

The parties' labor agreement expired on December 31, 1981. (Appendix A). It is stipulated that during the negotiations that followed the expiration of the parties' agreement, but before initiating proceedings under Act 312, the parties' agreed to the following contractual provisions:

ARTICLE XXI

SECTION 21.1: FIREARMS TRAINING. County will provide firearms training twice per year for deputies and detectives. Employees shall be paid for such training at straight time and hours spent on such training shall not

be considered time worked for purposes of overtime, time between shifts and other premium pay situations.

ARTICLE XXII

SECTION 22.2: SHIELDS IN PATROL CARS. The County will provide full shields in all patrol cars.

ARTICLE XVIII

SECTION 18.2: SAFETY VESTS. The Sheriff shall provide, at County expense, safety vests of the Sheriff's choice for all deputies and detectives. The vest shall be replaced at six (6) year intervals unless technological change will allow longer replacement periods. If an employee wishes to purchase a different type of vest than furnished by the County, such employee may purchase such vest and the employee shall be required to pay the difference between the bid cost of vests furnished by the County and the vest selected by the employee.

ARTICLE III

SECTION 3.5: LOCKER SEARCHES: Employees' locker may be searched in the discretion of the Sheriff, but only under one or more of the following conditions:

- a. The employee is present during the search.
- b. The employee has consented to the search in writing.
- c. The Sheriff is in possession of a valid search warrant.

The parties agree that if an employee is present, he cannot refuse to consent to the search.

By stipulation entered into on or about October 11, 1982, following the close of proofs in arbitration, the parties also agreed as follows:

1. That Article 19, "Wages and Shift Premium", and, more specifically, Section 19.1, shall be amended as follows:

SECTION 19.1: SHIFT PREMIUM. Shift premium shall be paid according to the following schedule:

8:00 a.m. - 4:00 p.m.	no premium
4:00 p.m. - 12:00 midnight	\$.20 per hour
12:00 midnight - 8:00 a.m.	\$.30 per hour

In all cases shift premium shall be paid on the basis of actual hours worked in each of the above periods; provided that, if an employee performs continuous work during more than one of the above periods, they shall receive shift premium for their total hours of continuous work based upon the shift premium applicable to the period in which the majority of such hours fall. (In case the hours of work fall equally within two (2) periods, the higher premium shall be paid for all hours worked.) It is understood and agreed that employees in the classification of Detective will not receive shift premium payments.

2. That the foregoing amendment affecting shift premium, and any wage improvement awarded in arbitration, shall be made effective and paid retroactive to January 1, 1982;

3. That the Union's demand for dental insurance coverage be, and the same is hereby withdrawn; and

4. That the Union's demand for additional, paid holidays be, and the same is hereby withdrawn, the parties having agreed that the contract to be settled in arbitration shall provide for those holidays specified in their prior, expired agreement.

At the October 7 hearing, the parties stipulated that their prior agreement, Exhibit D, would be incorporated as their awarded agreement, except as modified by the foregoing stipulations, and except for changes or modifications awarded in arbitration in relation to unsettled issues. Although it was stipulated "that the duration of the contract...shall be for a period of two years, commencing July 1, 1982 and terminating December 31, 1983," it is clear from other stipulations that the two-year term was intended to commence January 1, 1982. The statement recorded in the transcript was a misstatement or an error in transcription.

The parties expressly stipulated that the shift premium to which they agreed and wages to be awarded "will be implemented and effective retroactive to January 1, 1982" and any change awarded in relation to longevity benefits or sick leave "will be made effective January 1, 1983."

By stipulation, the parties agreed that all issues submitted to the arbitration panel are economic with the sole exception of Employer's proposed Article VI, Section 6.6. Further, each issue would be awarded separately. Each side would advance their position within their initial briefs. Reply briefs would be postmarked within 30 days of the mailing date of the initial briefs. Responsive briefs could be submitted within 7 days of the date of mailing reply briefs at the option of the parties. At the request of the Union's counsel, the November 15, 1982 deadline for mailing initial briefs was postponed until November 24, 1982. Finally, the Employer's reply brief could be submitted late. It was received on December 30, 1982.

On January 3, 1983, the panel met in Saginaw for an executive session. The consultation helped clarify some of the Chairman's questions.

PART ONE: ECONOMIC ISSUES

III. FINAL OFFERS

The Union and the Employer submitted their final offers on October 11 and 14, respectively. There were four unresolved issues:

a. WAGES

Union Offer

That Appendix A, "Wages", be amended to reflect a 7% increase in salary for all classifications, effective January 1, 1982, and a 7% increase in salary for all classifications, effective January 1, 1983.

The specific wage schedule is attached as Exhibit A.

Employer Offer

That a wage increase of 5.1%, effective January 1, 1982, be granted, and 5.1% increase effective January 1, 1983, for all classifications.

The Employer's specific wage schedule is Exhibit B.

b. LONGEVITY PLAN

Union Offer

ARTICLE XI

SECTION 11.1 LONGEVITY: Employees covered by this agreement will receive longevity pay in accordance with the following rules:

- a. 2½% of base pay upon completion of 5 years of service
- b. 3½% of base pay upon completion of 10 years of service
- c. 4½% of base pay upon completion of 15 years of service
- d. 6% of base pay upon completion of 20 years of service.

Employer Offer

The Employer proposed that the present longevity plan be continued. The contract language is:

SECTION 11.1 LONGEVITY: Employees covered by this Agreement will receive longevity pay with the following rules:

- a. Two (2%) percent base pay on completion of eight (8) years service.
- b. An additional two (2%) percent of base pay on completion of fifteen (15) years of service.
- c. An additional two (2%) percent of base pay on completion of twenty (20) years of service.

c. SICK LEAVE

Union Offer

Increase sick leave accrual by one quarter day per month.

The specific language to be:

ARTICLE X

SECTION 10.0: Sick leave shall accumulate at the rate of one and one-quarter (1 $\frac{1}{4}$) day per month. After one (1) year of service, fifteen (15) days, after two (2) years of service, thirty (30) days, after three (3) years of service, forty-five (45) days, etc., up to a maximum accumulation of one hundred eighty (180) days.

Employer Offer

The current sick leave accrual continue unchanged. The provision says:

SECTION 10.0: Sick leave shall accumulate at the rate of one (1) day per month. After one (1) year of service, 12 days, after two (2) years of service, 24 days, after three (3) years of service, 36 days, etc., up to a maximum accumulation of one hundred eighty (180) days.

IV. Position of the Parties--Economic Issues

Position of the Union

On the issue of wages, the Union contends the parties have historically compared the wages of Sheriff's deputies to Alpena City patrolmen. This is based on their similarity of work, type of employee, level of skill, experience and geography. Such a close similarity of working conditions and employee qualifications is a rational and compelling basis for similar treatment. In fact, the parties themselves have recognized this. During the last nine years, deputies have been granted wage increases comparable to those received by city patrolmen.

During the four year period between July 1, 1974 and July 1, 1978, the base hourly rate of city patrolmen increased \$2.27 (48.5%). During the comparable period of January 1, 1975 through January 1,

1979, the base rate of county deputies rose by \$1.96, or 43%, an almost identical rate.

In 1979 and 1980, city patrolmen received base hourly rates totaling \$1.16, or a 16.7% increase. During the same period, county deputies received raises totaling \$1.10. This represents a nearly identical 16.9% increase.

Further, the Union's position simply reflects a continuation of this wage parity. As of July 1, 1982, city patrolmen began receiving a base hourly rate of \$8.94. This is an increase of \$4.26 per hour, or 91% over the July 1, 1973 rate. The Union's last best offer would establish a base hourly rate of \$8.72. This is an increase of \$4.16 per hour or 91% over the January 1, 1974 figure.

Finally, the January 1, 1974 pay differential between deputies and city patrolmen was \$.12 per hour. This is a difference of 2.6%. If the Union's last best offer is awarded, the January 1, 1983 difference will be \$.22, for a difference of 2.5%. However, if the Employer's offer is accepted, deputies will only be paid \$8.41 per hour. This is a substantial \$.53 per hour less than the rate paid to city patrolmen. In effect, deputies will be paid 6.3% less for doing the same work.

County of Alpena general employees have historically been treated differently than deputies for the simple reason that their work and job skills are very different. The general employees are represented by a different Union, the United Steelworkers of America. Their bargaining unit includes the prosecutor's secretary, the assistant maintenance superintendent, fairgrounds employees, deputies to county officials, the assistant tax director

and the tax appraiser. It excludes employees of the Sheriff's Department, Circuit Court, District Court, Probate Court, the Road Commission, and seasonal, supervisory and executive employees. In making the following comparisons between deputies and general county employees, three county deputy officials and the prosecutor's legal secretary were selected. Their January 1, 1974 hourly rate was identical to the rate paid to county deputies. The following wage patterns underscores the parties' different treatment of the two units.

As noted earlier, deputies base pay increased \$1.96 (43%) per hour between January 1, 1975 through January 1, 1979. During the comparable period, the pay of the selected employees was only increased by \$1.40, or 30.7%.

In 1979 and 1980, deputies received raises totaling \$1.10, a 16.9% increase. The selected general employees received raises totaling \$.80 per hour. This 13% underscores the parties' recognition that general employees work is very different than deputies.

The Union's last best offer continues this historical pattern. If accepted, deputies will earn \$8.72 base rate on January 1, 1983. This represents an increase of \$4.16 or 91% per hour over the 1974 rate. On the other hand, deputy county officials and the prosecutor's legal secretary will be paid \$7.42 base rate. This is \$2.86 more per hour (63%) above their January 1, 1974 wage.

It is the position of the Union that the previous comparisons illustrate the parties' historical wage patterns. The parties have a clearly defined recognition that the Employee worth of the Sheriff's deputy is very equal to that of the city patrolman. Similarly, there has been a recognition that the worth of deputies and general

county employees is very different. Because the Union's last best offer maintains this historical recognition, it should be awarded.

Concerning longevity and sick leave accrual, the Union asserts it should have parity with the patrolmen and general county employees. Currently, there is a great discrepancy in such benefits.

Members of the general employees bargaining unit enjoy fifteen paid holidays per year. The Sheriff's Department has ten.

Members of the Alpena City Police Department receive sixteen paid vacation days after one year of service. Sheriffs have thirteen days after one year. After five years, the police have twenty days; the Sheriffs have eighteen after six years. With ten years of service, the city police have twenty-four vacation days; the Sheriffs receive twenty-three days after twelve years. After fifteen and twenty years, the police have twenty-eight and thirty-two days, respectively. The Sheriff's Department receives twenty-seven days after twenty years.

The same discrepancy exists with retirement plans. Members of the Alpena City Police Department and general employees have greater benefits with less personal contribution. For example, the county makes all contributions for the general employee unit. Sheriffs make all contributions in excess of \$4,200 per year.

Concerning insurance, members of the Alpena City Police Department are provided with dental insurance. Additionally, retirees receive a \$2,000 life insurance policy and 50% of the cost of continued health insurance. Sheriff deputies do not enjoy these substantial benefits.

Finally, Alpena City Police are entitled to periodic cost of living adjustments. The Sheriffs have no cost of living provision.

The Sheriff's Department and general employees are fellow employees. The County pays their benefits, they should at least be equal. The city police and deputies perform similar duties. Their benefits should at least be similar. Because of the Union's last best offer reflects this fairness, it should be awarded.

Concerning the Employer's ability to pay, there is no real question that the county has sufficient means.

As of August 31, 1982, the county general fund has a balance of \$701,016. This consisted of a \$111,186 carry over surplus from 1981. The remaining \$589,830 is the amount by which 1982 revenues exceeded expenses.

The balance will grow larger. The county's 1982 budget calls for expenditures of \$2,926,530. Collections for the first eight months of 1982 totaled \$2,511,359. Thus, to balance its budget, the county has four months to collect less than \$500,000 or 20% of its current collections. This figure will be easily reached because the balance sheet ignores several revenue sources, including: current real property taxes, current personal property taxes, delinquent real property taxes, and payment in lieu of taxes.

Furthermore, the county treasurer projected a 1982 revenue shortfall of \$107,816. The basis for this projection is incorrect for two reasons.

First, she should have subtracted actual collections from anticipated estimated collection, and projected the difference to the end of 1982. The second error is the use of selected source of revenue without considering the county's total revenue picture. Assuming that revenues were collected for the rest of the year at the same rate as the first eight months, the annual revenue should

be in the amount of \$3.8 million dollars. Since the county's budget calls for spending \$2,926,530 for 1982, there should be a surplus of almost \$900,000.

Moreover, anticipated expenditures are \$60,000 less than the amount budgeted.

A review of all the figures leads to one conclusion: Absent some catastrophic occurrence, the surplus that Alpena will carry into 1983 will approximate, and may well exceed one million dollars. Therefore, there is no question but that Alpena County has an ability to pay and can easily afford to pay for the benefit improvements set by the Union in this arbitration.

Position of the Employer

The Union relies on a comparison with Alpena City policemen to support its wage demand. It urges there is no correlation with general county employees.

The Union further urges a comparison with other county employees to justify its wage demand. It urges there is no correlation with the Alpena City Police Department.

The Employer denies these assertions. Comparability with the Alpena City Police Department is minimal. It urges the comparison should be made with other county employees who recently agreed to a total package providing for 5.1% increase.

Concerning wages, other county employees accepted a 5.1% increase for both 1982 and 1983. In support of its claim for higher wages, the Union argued parity with the city police. This reliance is simply misplaced. Parity requires comparability. Comparability requires significant similarities between units. Here there are

significant differences.

First, the deputies and city police have different funding sources and perform different services. The Sheriff's unit included a significant number of non-law enforcement employees (35%). The city unit has no such employees. Deputies perform many tasks not performed by city policemen, including serving civil process, acting as bailiffs, and jail duties. This requires 33% of their time.

Second, the deputies' more appropriate comparison is with the county unit. They share the same funding source: the County of Alpena. Their contracts expire on the same date. With one exception, they have the same bargaining committee. Prior to 1980, both units were represented by the Steelworkers Union. The same representative negotiated their contracts.

Furthermore, the Union's assertion of a wage increase parallel is misleading for several reasons.

First, since 1975, deputies have been given annual raises which exceeded the raises given to the non-law enforcement personnel in their unit. The net effect of this is to seriously overstate increases for the unit as a whole.

Second, the figures relied on by the Union reflect increases granted to the first deputy in the county sheriff's union. That classification is the highest paid within the unit. The effect of this is to substantially understate the percentage increase given to that unit.

There is further evidence that the deputies and city police have not been "recognized" as equal. The city police have enjoyed

a cost of living escalation clause in their contract since 1977. The Sheriff's Department has never had such a clause. Thus, the actual increases paid to city patrolmen is substantially more than the chart indicates.

Finally, two further considerations must be made. (a) The wage increase sought by the Union is not restricted to deputies, but would apply to the entire unit. The cost to the county is therefore much higher.

(b) These demands for higher wages must be considered in light of general economic conditions in Alpena County. Currently, there is a general economic malaise. Employees of three major employers are suffering heavy, extended layoffs. The largest employer is threatening to close indefinitely. Unemployment is 19.5%. The bottom line to this is employed people pay the taxes that support government.

Conversely, unemployed workers are a drain on county coffers. This results in higher expenses charged against diminishing revenues. The county simply can't afford increased expenses to pay for imaginary comparability.

Concerning sick leave accrual, longevity, and other benefits, the difference is explained in part by tradeoffs in the bargaining process. In 1980 and 1981 county employees bargained for additional longevity, an additional personal day, and increased sick leave. Sheriff's employees bargained for a larger wage increase, an additional vacation day, and an increased shift differential.

In comparing these benefits, it is clear that the net effect is equivalency. An extra vacation day is equal to an additional

personal day. The Sheriff's traded the sick leave and longevity increase retained by county employees for more money and increases in shift differentials.

Furthermore, the Union's demand for longevity combines the best of the county Union's plan and the city police benefit. The result is a benefit that greatly exceeds comparability with either. The granting of this benefit and accepting the Employer's final offer on wages would boost the cost of the total settlement well in excess of the county unit's settlement.

A decision on the county's ability to pay begins with an analysis of its budget.

There are two considerations in every budget: Estimated revenues; estimated expenses.

The county starts with a projection of revenues. Departmental expenditure requests are received, then reduced until the whole is within estimated receipts. Unanticipated or unknown expenses, including wage increases from contractual renegotiations, are handled by a limited provision for contingencies. When the contingency funds are exhausted, cutbacks must be made. If some departments have budget surpluses or there are large expenditures or purchases which are cancelable or deferrable, then this process is easy. If not, the process tends inevitably toward personnel reductions as the only way to significantly cut expenditures.

Typically, because of conservative projections of income, actual income will exceed projections and expenditure reductions are not necessary. In fact, excess expenditures over budget can be maintained. In any event, the county as a whole must live with the budget.

The County's Revenue Report shows that anticipated total revenue for 1982 are \$2,959,230.12. Because of poor economic conditions within the County, anticipated revenues have been reduced by \$20,000.00. The net effect is: If every department spent exactly its budget and if revenues were exactly as predicted, the County would overspend its budget by some \$20,000.00. But these two "ifs" are mere hope.

First, revenues are actually proving to be less than anticipated. The Revenue Report shows that \$427,870.23 remains to be collected from anticipated revenues in the remaining four months of the year. The treasurer has already reported to the Board that the County will not collect \$107,000. This amount is composed of miscellaneous County revenues lost, because of economic conditions. The largest item is the State's payment of the County's share of State Income Tax. It will not be paid.

Because 1982 anticipated revenues must be reduced by \$107,000, the expenditure budgets must be reduced the same amount, if the County will end the year in a solvent position.

Furthermore, the collection of an additional \$99,000 in anticipated revenue was doubtful. That amount represents the December state income tax payment and collections from County services.

The bottom line: Unless expenditures are reduced, the County will expend at least \$107,000 and probably \$206,000 more than it takes in during 1982.

Furthermore, the Union would have the Panel estimate total revenues by extrapolating the current rate of collections over the remaining four months of 1982. This simply does not reflect past experience or real probabilities. The bulk of the County's income

is received early in the year. Therefore, the Union's projected surplus is wrong.

In analyzing expenditures, the Union also urges that disbursements are level throughout the year. But this is contradicted by the record. In fact, planned expenditures and past history dictate that outlays are above average in the final months. As an example, longevity payments are due December 1.

Additionally, the budgeted expenditures do not anticipate salary increases in 1982. Provision for these increases were made by reservation of funds in two places: the contingency fund and the cash control fund. The testimony indicated that the budget has been amended to reflect the allocations and distribution of these items to the various departments.

This money is gone. The testimony from Mr. French and Mrs. Werner were unequivocal that there is no further funds available in the budget to pay for an increase in wages for the Sheriff's Union. Thus, any such increase will have to be paid for by removing allocated, but unspent, funds from some other department or accommodated within the Sheriff's budget.

Furthermore, the budgetary crisis has been examined in light of 1982. 1983 will be worse.

Mrs. Werner estimates revenues for 1983 at less than what are anticipated for 1982. She estimates expenditure requests will be in excess of the 1982 budget. Therefore, it is clear we are not dealing with an isolated problem. The County's budgetary straits are serious and getting worse.

From the facts, the County could well argue that no increase is justified for the Sheriff's employees. However, the County

offered a 5.1% increase out of fairness. The same increase was approved by other County employees. Under the circumstances, it is a fair offer. This is a decision that was made by the elected representatives of the people and they will have to deal with the consequences. Those consequences are likely to be layoffs in the Sheriff's Department as well as in other departments of the County. It represents a sincere effort to be fair to the employees. A larger increase will force additional layoffs and cutbacks in service. This injures County employees and the citizenry at large. The Panel should not give the Sheriff's employees an increase larger than other County employees in reliance upon a dubious comparison of benefits or wages with other bargaining units.

V. Discussion--Economic Issues

A. Introduction

If the purpose of an Act 312 Arbitration is to force the parties to negotiate, pressure to compromise is its very life blood. Both parties know the Arbitration Panel must accept the one offer that is the more reasonable under the circumstances. Therefore, it may be said that most cases are not won, they are lost because of unreasonable demands. Fortunately, that is not the case here.

As noted at the very beginning of this Opinion, the parties were able to agree on many issues before resorting to binding arbitration. In fact, their offers are close on the few issues they could not resolve. As an example, the County's offer of a 5.1% increase is not far from the Union's 7.0% request. In a very real sense, it may be stated that the process did work. Although the parties did not reach total agreement, the area of their disagree-

ment has been narrowed substantially.

The significance of this is worth developing. No labor neutral, no matter what skills, education, experience or background he or she possesses, knows as much about the parties' needs as they do. Because neither party wants to lose by asking for too much, their last best offers reflect what they feel they can live with. As such, they provide the panel with a real standard for decision.

There is more to consider. It is not enough that the parties have made offers they are, in a sense, willing to live and die by. The offers must be tempered by the economic realities of the Employer and the employees. It follows that the Panel's decision must necessarily begin with an analysis of their relative positions; including the County's ability to pay and the comparability of the deputies to the other units. Ability to pay affects each issue. Thus, it will be the first consideration.

B. Ability To Pay

The Association argues that the County's financial position is very good. In fact, it is so good that 1982 will end with a \$1,000,000 surplus.

The County argues that its financial condition is critical. It will end the year with a \$200,000 deficit and layoffs. Collections year to date totaled \$2,511,359.89. Uncollected but anticipated revenues added up to \$427,870.23. In short, to balance its 1982 budget, the County must collect \$427,870 in the last four months of the year.

Concerning Revenues, Employer's Exhibit 17, is the County's August Revenue Report. It contains the revised estimates of 1982

revenues. The report shows that anticipated revenues for 1982 total \$2,939,230.12.

It is the Chairman's opinion that the County has a marginal ability to pay. The following considerations support that conclusion.

First, the county treasurer reports that miscellaneous County revenues totalling \$107,816.31 will not be collected. This figure is based on two criteria: the poor economic conditions in Alpena County has led to less spending and user fees by county residents. Additionally, the state will not be able to pay its Revenue Sharing payment. That totals \$45,000. This \$107,000 shortfall is uncontested by the Union.

Second, the treasurer reported that an additional \$99,000 is doubtful of collection. That figure is based on lower anticipated revenues from county services, and the insecurity surrounding the state's December income tax payment. Again, these figures are uncontested.

Considering anticipated expenditures, Employer Exhibit 15 analyzes expenses for 1982. It is uncontroverted that 65.3% of the budgeted expenditures were made through August. The Union asserts that by projecting this below budget figure for the remaining four months, expenditures will total \$60,360 less than budgeted.

However, there are greater expenditures in the later months; for example, December's longevity payments are substantial.

The money for salary increases is spent. Budgeted expenditures for 1982 do not include any provision for salary increases in 1982. The provision for them was in the contingency and cash control funds. They've been exhausted.

Additionally, both Mr. French and Mrs. Werner confirmed no further funds were available.

Furthermore, both French and Sheriff Male said the Sheriff's Budget will be spent without including any wage increase.

Finally, the County entered 1982 with a carryover surplus of \$111,186.12. Adding this to the projected shortfall, the bottom line to the 1982 budget looks like this:

Revised Anticipated Revenues	\$2,939,230.12
Less Uncollectables	107,816.31
Less Doubtful Collectables	99,000.00
Estimated Collectable Revenues	<u>\$2,732,413.70</u>
Estimated Expenditures	\$2,866,169.00 (Union estimate)
Shortfall	(\$ 113,755.30)
1981 Surplus	\$ 111,186.12
Deficit	<u>\$ 22,569.18</u>

Conclusion as to Ability to Pay:

First, the Chairman feels the testimony of Mary Ann Werner was very credible. Testifying under oath, she brought five years of hands on experience to the arbitration. As the county treasurer, she has sworn to perform her job to the best of her abilities. It is the Chairman's opinion that she has done so. She is very capable, credible, and provided real assistance in understanding the state of the County's budget.

Second, this conclusion is supported by the glaring absence of a rebuttal by the Union to her figures and testimony. Although the Union did attack individual line item figures, it did not seriously question the reduction in revenues or the bottom line to the budget. It simply gave projections that past history shows to be unjustifiably optimistic. In the absence of concrete figures to the contrary,

the Employer's budget analysis must be accepted as the basis for a decision.

Finally, after considering all the evidence, the Chairman concludes the County will end 1982 with a deficit. Because the 1982 budget does not make a consideration for a wage increase, the deficit will grow larger. Furthermore, the shortfall will be carried over into 1983, a year most witnesses felt would produce fewer revenues.

Therefore, it is the Chairman's opinion that the County only has a marginal ability to pay.

C. Comparability

The other consideration in this Act 312 proceeding is comparability with other units, employed by the same or other employers. Essentially, this is a study of how similarly situated employees have been treated. By definition, the jobs should be similar.

As an initial consideration, not even the Union urges that the Sheriffs should be paid the exact same rate as city patrolmen. It has, however, urged parity. How close should they be? Factors to consider are comparability in job content, historical wage patterns, and recent settlements with other units.

Job Content

The Union urges its work is most similar to that of the Alpena City Police. Both units are engaged in law enforcement.

The Employer counters that a significant amount of deputy work is not "law enforcement" as traditionally defined.

The Chairman finds merit in both arguments. What we have is a hybrid unit composed of police and civilians. It must be noted that the county deputies perform a substantial amount of non-patrol work.

The Panel recognizes there are some obvious differences between city police and the county sheriffs.

First, the composition of their respective staffs are dissimilar. The City of Alpena's police force is comprised of five corporals and nine patrolmen. Seven of those are road patrolmen, one is a meter patrolman, and one is a records patrolman. There are no safety officers. Almost the entire staff is geared to actively patrolling, observing, and investigating.

The deputies staff is much different. There is one jailor, one record and report deputy, ten regular deputies, three dispatchers, one full time cook, one part time cook, one dog warden, and one deputy clerk. A number of those employees are not truly law officers, and are more comparable to the general county employee unit.

Second, there is a difference in duties. The city police spend most of their time involved with criminal law enforcement. The county deputies have a number of other duties. They run the jail, serve civil process, attachments, conduct mortgage sales, perform court officer functions, enforce boating laws and perform many duties in connection with prisoners. Some of these tasks include supervising inmate visits, exercising, transporting inmates to various Michigan prisons. Additionally, they transport mental patients to various institutions and do snowmobile patrol and enforcement.

The obvious problem for the Panel is determining the net effect of those differences. Are the duties of deputies more comparable to the city police or general county employees? The answer lies in purpose and functions of the departments.

The city police and deputies are charged with law enforcement. Their singular duty is to protect the public.

Conversely, the general employees serve the public. The county's August 1982 balance sheet reflects expenditures for services in the following areas: social welfare, child care, county parks, mental health, airport, Michigan veterans and library. These areas relate more to quality of life services.

In conclusion, the deputies more closely resemble the police, but the analogy is not perfect. Their work is not as much in the nature of patrol work. The non-deputy employees of the sheriff are more like the general unit, but they are part of a law enforcement unit. In short, the sheriff's unit is more closely allied to the city police unit, but this is not a perfect comparison.

Wage Patterns

Historical wage patterns are an important factor. The existence of a pattern may reflect the parties implicit recognition of a relationship or simply the de facto existence of a correlation. Absent a significant change in circumstances, there is little reason for the panel to upset this historical understanding.

The Union claims salary increases for the deputies have closely paralleled those of the city police. The Union uses a comparison of the top three base hourly rates in the three classifications to urge a historical parallel to the city police. Placed on a chart, those comparisons look like this:

HISTORICAL COMPARISON OF WAGES AND WAGE INCREASES

*Alpena City Patrolment
 **Alpena County Deputy Sheriff
 **Alpena County First Deputy Clerk, Treasurer
 Register of Deeds & Prosecutor's Legal Secretary

	*7-1-73 **1-1-74	7-1-74 1-1-75	7-1-75 1-1-76	7-1-76 1-1-77	7-1-77 1-1-78	7-1-78 1-1-79	7-1-79 1-1-80	7-1-80 1-1-81	7-1-81 1-1-82	7-1-82 1-1-83
CITY		8.54	8.85	9.04	7.62	7.08	13.95	2.39	2.95	7.05
COUNTY		8.55	8.28	7.46	6.94	5.84	8.43	7.77	(7.00)	(7.00)
SHERIFF		6.14	4.95	6.88	3.68	5.86	6.71	6.28	4.73	4.80

The Employer uses a comparison based on entire units to show there is a wage pattern paralleling that of the general county employees. A chart of the Employer's comparison best illustrates that argument:

	PERCENTAGE INCREASES							
	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
CITY	9.5	8.9	9.0	7.6	7.1	14.0	2.4	7.06
SHERIFF	7.7	8.1	7.3	6.8	5.9	8.1	7.6	
COUNTY	7.1	8.1	7.9	4.2	6.6	7.5	7.0	5.2

The Employer correctly argued that wage comparisons should be made on a total unit basis. Although there is some merit to individual comparisons, they do not accurately reflect the whole historical picture of increases. We are not just determining the first deputy's wage.

Furthermore, wage increases within the Sheriff's Department are not evenly distributed. Since 1975, deputies' raises have exceeded increases given to non-law enforcement personnel. By comparing the increases given to the top personnel in the Sheriff's

Department to those of all personnel in the city police, the Union has effectively exaggerated past increases for the entire Sheriff's Department. In short, the Union is using its top wage earners comparison of averages to justify its demands for the entire unit which includes non-law enforcement personnel.

Second, units should be compared on an average cost per employee hour. Averaging wages illustrates the relative cost of raises for the unit. Because general county employee increases have always been in terms of cents per hour, the concentration on the highest paid employees understates past raises for the whole unit.

Recent Settlements

The county employees unit recently settled for two raises amounting to 5.1% annual increases. Additionally, the city police recently settled for a similar percentage increase, 5.0% increase for patrolmen in the first year, 3.9% for the second year. Both of these figures are well below the 7% raise the Union urges the Panel to accept.

CONCLUSION AS TO COMPARABILITY

Based upon a consideration of job content, wage patterns and recent wage settlements, the chairman makes the following conclusions.

First, the work performed by the deputies is most similar to that performed by the city police. However, it must be noted that a significant portion of their work is dissimilar. Almost 33% of it involves non-law enforcement personnel and activities not performed by the city police.

Second, historical wage patterns are ambiguous at best. What evidence there is supports the Employer's argument that the sheriff's unit's wages more closely parallel those of the general county employees.

Third, both the city police and general employees recently settled for 5.1% raises or less. The Union's 7% demand exceeds this considerably.

Therefore, after considering job content, ambiguous wage patterns, recent settlements, and the county's marginal ability to pay, the chairman concludes the county's offer is the more reasonable and should be accepted.

D. Benefits

The city police, general county employees and county deputies enjoy different benefits. Each unit has more or less in specific areas when comparisons are made, although it appears the sum total of their benefits is comparable.

Longevity

The Union urges a longevity pay increase to equal the general county employees. The Employer contends this is unjustified and varies from their historical bargaining patterns.

The following table considers the status quo and contains the Union demand:

<u>Alpena City Police</u>	<u>Alpena County Employees</u>	<u>Alpena Sheriff Dept.</u>	<u>Union's Demand</u>
2% of base after 8 yrs	2½% of base after 5 yrs	2% of base after 8 yrs	2½% of base after 5 yrs
4% of base after 15 yrs	3½% of base after 10 yrs	4% of base after 15 yrs	3½% of base after 10 yrs
6% of base after 20 yrs	4½% of base after 15 yrs	6% of base after 20 yrs	4½% of base after 15 yrs
	5½% of base after 20 yrs		6% of base after 20 yrs

Granting the Union offer would bring the deputies department into line with other county employees. Denying the offer would leave the department equal to the city police.

Concerning longevity, it is the belief of the chairman that in the absence of compelling circumstances, the county should treat its employees equally. There is no rational relationship in treating the deputies unit different than the county employees. Both are paid from the same source, enjoy the same employer, and work just as long and hard.

Furthermore, the additional cost is minimal. The Employer's own figures disclose the Union's offer would cost an additional 10.4¢ per hour in 1983, or \$4,128.00.

The Employer urges a historical parallel to city police benefits. The chairman recognizes there is some similarity, but that is not determinative of the issue. The real issue is which offer is more reasonable.

CONCLUSION AS TO LONGEVITY

Employee fringe benefits should be as nearly equal as possible. The only possible compelling circumstance dictating a different result would be excessive cost.

Although the county will have a deficit, it cannot be said the cost is too great to pay. According to the Employer, the total cost for the unit is \$4,128.00. Broken down per man, this is \$217.26 per year, or 60¢ per day.

This rate is almost identical to the scale recently negotiated with the county employees unit. It is neither unreasonable nor too expensive.

Therefore, it is the decision of the chairman that the Union's offer on this issue be accepted. A table illustrating the costs and practical effect of this resolution is Exhibit C.

Sick Leave Accrual

The Union proposes to increase sick leave accrual from 1 day per month to 1 1/4 days per month.

The Employer urges maintenance of the status quo, arguing that the Union's proposal is unwarranted and too costly. Specifically, acceptance of the Union's proposal would cost an additional 5.8 cents per hour, while the Employer has not received a comparable trade off.

The following table illustrates the sick leave accrual and the Union's proposal:

City	1 day per month	no maximum	½ paid at retirement
County	1¼ days per month	180 day maximum	paid in full at retirement
Sheriff	1 day per month	180 day maximum	paid in full at retirement
Union	1¼ days per month	180 day maximum	paid in full at retirement

It is the chairman's opinion that sick time should be allocated equally among all departments. Sickness strikes employees alike without regard to job classification or rate of pay. Like death and taxes, illness is inevitable. There is no rational reason to presume that employees will be healthier in one department than in another.

Additionally, the Employer made no allegation of abuse of sick leave benefits by employees in the Sheriff's Department. Moreover, there is no reason to suspect abuse. Should the problem arise however, there is every reason to believe the sheriff is capable and legally

entitled to stifle such abuse.

It is significant that the Employer in the 1980 county negotiations attributed no cost to the increase it awarded the county unit in sick leave.

Further, the Employer's argument that an increase in sick leave accrual is unwarranted and too costly is without merit. The Employer urges that a county employee who calls in sick does not have to be replaced, while a sheriff must be called in on overtime. This seems to be a tacit admission of overstaffing in the county unit.

In any event, the net effect of this is to deny a significant benefit to one unit in order to pay for excesses in another. That is the bottom line to the Employer's argument.

CONCLUSION AS TO SICK LEAVE ACCRUAL

The chairman believes that sick leave accrual should be awarded equally among all employees. Deputies are presumably no healthier or ill than other employees. The county can afford to pay regular employees for 1½ sick days per month, it certainly can accord deputies the same benefit.

Therefore, it is the conclusion of the Panel that the Union's last best offer should be accepted.

PART TWO: NONECONOMIC ISSUE

VI. INTRODUCTION--NON ECONOMIC ISSUE

The sole noneconomic issue before the panel concerns a newly created supervisory position of lieutenant. There is one position within the classification. Both parties agree it is outside the bargaining unit. They disagree as to the retention and award of

seniority rights by the bargaining unit member placed in the position.

VII. POSITIONS OF THE PARTIES: NON ECONOMIC ISSUE

Position of the Employer

The Employer submitted the following last best offer on this issue:

An individual who is promoted to the position of Undersheriff or Lieutenant shall not lose his seniority thereby, and if he shall be demoted back into the bargaining unit, he shall be given seniority credit for the time spent in either position. It is understood and agreed that the Undersheriff or Lieutenant may transfer back into the bargaining unit as a deputy and replace the lowest man in that classification, if necessary.

This language is essentially the same as that adopted in the parties' first contract. New or changed language is underlined. During the first contract, the only non-bargaining unit jobs in the Sheriff's Department were the Sheriff and Undersheriff positions. The language was negotiated to allow the Undersheriff to continue to accrue seniority while working within the department but outside the bargaining unit.

The existing agreement discloses the parties' agreement that the Undersheriff should retain his bargaining unit seniority. Both parties stand to gain by extending this protection to the Lieutenant.

It is in the parties' mutual interest that supervisors be promoted from the bargaining unit. Deputies are provided further promotional opportunities and career advancement. The Employer gains supervisors who "have come up through the ranks;" they are familiar with the problems and procedures peculiar to the Alpena Sheriff's Department.

By requiring a prospective Lieutenant to give up job security in order to accept a promotion, the Union discourages applications by bargaining unit members. Not only does this thwart deputies' advancement, it forces the Employer to look outside the department and hire complete strangers. Absent a compelling reason, this is wasteful and illogical.

Finally, the Undersheriff has this protection. There is no reason to protect that position and deny protection to the Lieutenant. Similar circumstances warrant similar treatment.

Position of the Union

The Union strongly opposes the Employer's proposal, arguing that Lieutenants should not be allowed to retain and accumulate seniority.

First, the positions of the Undersheriff and Lieutenant are distinguishable. Dissimilar conditions warrants dissimilar treatment.

The position of Undersheriff is both supervisory and political in nature. It is occupied on the basis of patronage, political expedience and the shifting loyalties of a public electorate. The rationale to allow one who becomes Undersheriff to retain bargaining unit seniority derives from the insecurity inherent in appointment to this position, which at best promises a term of four years.

There is no evidence tending to show that one who accepts appointment as Lieutenant is similarly situated. Promotion to Lieutenant is based upon merit. A Lieutenant is a command officer selected for his experience and leadership capability. He need not be the Sheriff's confidant or political ally, nor is his job security dependent upon the fickle choices of an electorate. The record makes no

showing that the Lieutenant is dischargable without cause.

Moreover, non-bargaining unit employees accruing seniority do so at the expense of bargaining unit employees. Their job security is diminished, particularly when the Employer has proposed unlimited accrual.

The Employer's argument that a refusal to include seniority will discourage applications is without merit. The individual who accepted this promotion did so without the benefit of such a provision. Its absence did not constitute an impediment to his recruitment.

Finally, the Employer's proposal is an unpermissible intrusion into the affairs of the Union. The proposal deals with interests that are the prerogative and concern of the Union. Granting seniority is not a legitimate managerial interest of the Employer. It is a feature of job security. As such, it is a limitation upon traditional management rights. The decision to bargain this right for nonbargaining unit members is the Union's. It is inappropriate for the Employer to intrude uninvited. It is similarly inappropriate for this decision to be forced on the recognized representative of the bargaining unit.

VIII. DISCUSSION-- NONECONOMIC ISSUE

Seniority is a limitation upon management's rights to select, fire, layoff and transfer its workforce. In a word, job seniority is job security. And job security is the single greatest benefit of Union representation. As such, that benefit is vitally important to the bargaining unit.

There are other concerns involved here. Promotion from within is a legitimate Employer concern. It is mutually advantageous; the Sheriff gains experienced supervisors familiar with the personnel and procedures of the department, deputies have a chance to enhance and improve their careers.

As a further consideration, a bargaining unit member offered the Lieutenant's position will have to make a tough choice: Accept the title with its higher pay and forfeit seniority, or give up a chance for advancement. The difficulty of this choice is further aggravated by the fact that there is no evidence suggesting the Lieutenant is protected by an employment contract or the collective bargaining agreement. Thus, the Employee is asked to give up the safety and job security of the Union for a position that is insecure. For high seniority employees, this would be impossible since the compensating benefits are not there.

Finally, the Employer is asking the Union to subsidize the Lieutenant's position. The Lieutenant will receive the benefits and protection of Union membership without the commensurate costs. In short, he will be a Union member without having to pay Union dues.

IX. CONCLUSION--NONECONOMIC ISSUE

The competing values and interests found here should be balanced. Because this is a noneconomic issue, the Panel is not limited to accepting the most reasonable offer. We will make and accept our own.

It is undisputed that the Lieutenant accepted this position without the protection of such a provision. Nevertheless, the Panel unanimously believes it is contrary to the public interest and

general notions of fairness, for him to have to forfeit all of his accrued seniority rights. Further, he ought to be permitted to accrue seniority for a reasonable period of time during which he is undergoing a trial period as Lieutenant.

Therefore, the Panel unanimously determines that the contract, Article VI, Section 6.6, shall be amended to read:

SECTION 6.6: UNDERSHERIFF'S AND LIEUTENANT'S SENIORITY RIGHTS:

- a. An individual who is promoted to the position of Undersheriff shall not lose his seniority thereby and if he shall be demoted back into the bargaining unit he shall be given credit for time spent in the position of Undersheriff.
- b. An individual who is promoted to the position of Lieutenant shall not lose his seniority thereby, and if he shall be demoted back into the bargaining unit, he shall be given credit for time spent in the position of Lieutenant, provided however, that such credit shall not exceed the period of one year.
- c. It is understood and agreed that the Undersheriff and the Lieutenant have the right to transfer back into the bargaining unit as a deputy, and displace the lowest man in the classification if necessary.

PART THREE: GENERAL SUMMARY
AND CONCLUSION

Act 312 arbitrations serve several purposes. It is a mechanism, instead of a strike, for compelling intractable parties to agree. In the absence of agreement, it is a method for resolving those disputes based on reason. The latter function is a learning and teaching for everyone involved. The lessons follow.

The County's economic nightmare is real. It squeezes the Employer, the Employees, the Union and the public. County and State revenues are falling while costs inevitably rise.

In a shrinking county budget, increases in salaries will be increasingly paid for by layoffs and decreased county services. This breeds public ill will, tax revolts, and only serves to further aggravate the problem. It is a question of balance; it is a mutual problem.

If the single greatest benefit to Union membership is job security, the second greatest benefit must be higher pay. In bountiful economic times, these are compatible goals. In severe economic years, these are competing goals. Today the Union is faced with a tough decision: live with a small raise and retain jobs; or ask for a high raise and lose membership. It is a tough choice, but it is also very real. This Chairman is convinced the County simply doesn't have enough money for everything. The Union's problem is deciding who to represent: more senior, higher paid members who would benefit from a raise; or all the members, including the lowest seniority and lowest paid, whose layoffs would pay for the raise.

The Employer has a responsibility to inform, educate and convince the electorate of the seriousness of its plight. Simply laying off employees to balance a budget is not the answer. Taxes may have to

be raised so that fair wages can be maintained.

The chairman was not selected to save the parties from their past mistakes. However, part of his job inherently makes a suggestion as to patterns for future negotiations.

Both the County and the Union should realize the inevitability of a leveling of benefits among County Employees. As an illustration, all Employees want similar fringe benefits; absent compelling reasons to the contrary, benefits should be equal. They are all in the same boat.

The mistake the parties have repeatedly made is to "whipsaw" benefits: The Employer gives one unit more sick pay, the second higher wages, and the third greater longevity. When their contracts are renegotiated, each group wants what the others have, and supports this by "historical parallels." That has worked in the past, but the County simply can't afford that luxury now. The "hidden costs" are simply too great. Every increase in wages is compounded by an increase in fringe benefits. As an example, longevity is paid as a percentage of base pay. Increase pay by 5% and longevity is automatically increased by 5%.

Moreover, wages are retroactive. Fringe benefits are not. The difference appears small, but the costs are great. The reason the Employer won on the wage issue, and why the Union won on fringe benefits is simple: cost and parity. The Sheriff's Department is made comparable in pay and benefits to the other unit at a cost the Employer can afford.

This is how the situation should stay. The fact that one unit "catches up" should not be grounds for further raises in the other units. As an illustration, the grant of longevity increases to the

Sheriff's units was made with the expectation that sooner or later the general county unit would seek and obtain that benefit. The Chairman does not believe that subsequent eventuality should constitute a new ground for any further increase in benefits or wages to the Sheriff's unit.

The parties' last best offers sought to repeat this mistake. The Union asked to be paid city police wages and receive county employee benefits. The Employer offered city police benefits and county pay. These costly historical patterns can no longer be afforded.

There is one encouraging development. Both of the offers break with the historical pattern in this respect: They treat the Sheriff's Department civilian personnel equally, at least on a percentage basis, to the deputies. This is a significant but justified deviation. The ravages of inflation hurt everyone, regardless of their income. And it is a recognition by both parties that employees deserve some measure of equity.

Finally, the most important lesson. The parties' problem is mutual. It requires a change in bargaining and final offers. Above all else, it requires new thinking.

Deputies have to accept the fact they have significant differences with the city police. There is no reasonable prospect they will catch up. The unit contains a substantial number of civilians. It is paid by the County, which has a smaller taxing power than the City. In short, the Sheriff's Union should reorient its comparisons to accent its commonality with the County Employees unit.

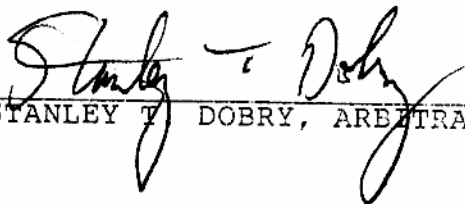
PART FOUR: AWARD

The Panel unanimously adopts as its own award the stipulations and agreements of the parties, as set forth above. Further, except as modified by them or by the determinations on the contested issues, the prior agreement is made a part of this award.

Concerning the economic issues, by a two-to-one margin, the Panel determines:

- a. The City's last best offer on wages (Set forth in Exhibit B) retroactive to January 1, 1982 , is hereby determined to be the more reasonable of the two offers;
- b. The Union's offer on longevity, retroactive to January 1, 1983, is hereby adopted;
- c. The Union's offer on sick leave is also adopted retroactive to January 1, 1983.

Concerning the non-economic issue, Lieutenant's seniority , the Panel unanimously rejects the language offered by both parties, and adopts the language set forth at page 37, above, The Arbitration Panel retains no further jurisdiction.


STANLEY T. DOBRY, ARBITRATOR

Dated: February 18, 1983

FOOTNOTES

¹ The Arbitrator is supposed to "call a hearing to begin within 15 days" of his appointment. The deadline seems virtually impossible, or at least severely impracticable, to meet. Fortunately, these parties had the good sense to waive that time limit.

² "Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired." A verbatim record is required. The panel works by majority rules. (MCLA 423.236; MSA

³ Here the parties continued bargaining, at least through the hearing date. In fact, some discussions were going on as late as the last day of 1982, according to the panel members. However, the parties did agree at the pre-trial that further efforts by a mediator would not materially assist in getting a settlement. The Commission was so informed by letter after the pretrial.

⁴ The existence of these criteria is critical to the constitutionality of this entire statutory scheme.

There are at least six identifiable arguments that have been made against the legality of compulsory public sector arbitration. They are: it interferes with constitutional and home rule power; it constitutes an illegal delegation of legislative authority to a non-public person; the statutes lack sufficient standards, so that there is an illegal delegation; it is a delegation of the power to tax to the arbitration panel, and therefore violates the equal protection clause's mandated principle of one-man one-vote; the hearings do not comport with minimum due process standards; and there is a constitutional violation because there was no appropriate copie of judicial review. See "Constitutionality of Compulsory Public Sector Interest Arbitration Legislation: a 1976 Perspective," Labor Relations Law in the Public Sector, Andrea Knapp, Ed., ABA Section of Labor Relations Law.

The standards set forth in this law pass constitutional muster. The Michigan Supreme Court recently stated:

"It is generally acknowledged that the instant and similar statutory schemes are directed toward the resolution of complex contractual problems which are as disparate as the towns and cities comprising the locations for these critical-service labor disputes. The Legislature, through Act 312, has sought to address this complicated subject through the promulgation of express and detailed standards to guide the decisional operations."

"We must conclude that the eight factors listed in Section 9 of the act provide standards at least as, if not more than as, 'reasonably precise as the subject matter requires or permits' in effectuating the act's stated purpose 'to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes.'" City of Detroit vs Detroit Police Officers Association, 408 Mich 410, 461, 294 NW2d 68 (1980).

Footnotes, continued

5

It is less than clear how a panel can properly take into account such changes after the hearing has ended. On the one hand changes must be taken into account; on the other, the Panel is only permitted to proceed on the basis of the record, so that the Panel's decision may be reviewed relative to the evidence presented at the hearing. It is respectfully submitted that there is, at the very least, a superficial conflict.

ACT 312 ARBITRATION
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

ALPENA COUNTY


-and-

Case No. 182 C-249

FRATERNAL ORDER OF POLICE

_____ /

As the Employer's delegate, I concur with the
Impartial Chairman's decision on Wages and the
Lieutenant's Seniority. I respectfully dissent
from the result on the Sick Leave Accrual and
Longevity Payment issues.



ROBERT W. FRENCH
County Delegate

Dated: February 6, 1983

ACT 312 ARBITRATION
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

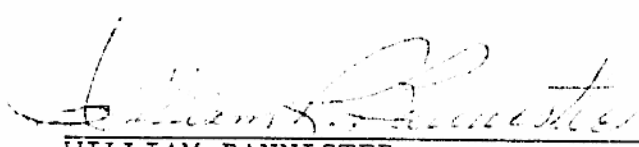
ALPENA COUNTY

-and-

Case No. 182 C-249

FRATERNAL ORDER OF POLICE
_____ /

As the Union's delegate, I concur with the
Impartial Chairman's decision on Sick Leave Accrual,
Longevity Payments, and the Lieutenant's Seniority.
I respectfully dissent from the result on the Wage
issue.


WILLIAM BANNISTER
Union Delegate

Dated: February 5th 1983

EXHIBIT A

UNION'S FINAL OFFER ON WAGES

Effective January 1, 1982

<u>Classification</u>	<u>Start</u>	<u>After 1 Year</u>	<u>After 2 Years</u>
Detective	\$17,250/yr		
Jailer	8.20/hr		
Records & Report Dpty	8.15/hr		
Deputy Sheriff	7.93/hr	7.94/hr	8.15/hr
Dispatcher	6.47/hr		
Cook	5.30/hr		
Dog Warden	6.81/hr	7.03/hr	
Deputy Clerk	6.61/hr	6.83/hr	

Effective January 1, 1983

<u>Classification</u>	<u>Start</u>	<u>After 1 Year</u>	<u>After 2 Years</u>
Detective	\$18,993/yr		
Jailer	8.78/hr		
Records & Report Dpty	8.72/hr		
Deputy Sheriff	8.48/hr	8.50/hr	8.72/hr
Dispatcher	6.93/hr		
Cook	5.67/hr		
Dog Warden	7.28/hr	7.52/hr	
Deputy Clerk	7.08/hr	7.31/hr	

EXHIBIT B

EMPLOYER'S FINAL OFFER ON WAGES

FIRST YEAR

First year increase effective January 1, 1982:

Detective	\$846 per year
Jailer	39¢ per hour
R & R Deputy	39¢ per hour
Deputy	39¢ per hour
Dispatcher	30¢ per hour
Dog Warden	33¢ per hour
Deputy Clerk	32¢ per hour

SECOND YEAR

Second year effective January 1, 1983:

Detective	\$885 per year
Jailer	40¢ per hour
R & R Deputy	40¢ per hour
Deputy	40¢ per hour
Dispatcher	32¢ per hour
Cook	26¢ per hour
Dog Warden	34¢ per hour
Deputy Clerk	33¢ per hour

EXHIBIT C

COST OF LONGEVITY BENEFIT

<u>Employee</u>	<u>Seniority Date</u>	<u>1983 Rate County Pro.</u>	<u>1983 Cost</u>		<u>Change</u>
			<u>Existing</u>	<u>Proposed</u>	
Smolinski	4/1/57	8.47 (\$17,617)	6%	6%	-
Hibner	4/1/65	7.26 (\$15,100)	4%	4-1/2%	\$ 75
Genschaw	11/14/66	8.42 (\$17,617)	4%	4-1/2%	\$ 85
Webster	6/16/68	5.47 (\$11,377)	4%	4-1/2%	\$ 57
Spragg	4/29/69	7.06 (\$14,684)	2%	3-1/2%	\$220
Marquardt	5/12/69	8.42 (\$17,617)	2%	3-1/2%	\$264
Trugeon	1/1/72	5.47 (\$11,377)	2%	3-1/2%	\$171
Seguin	1/1/75	8.42 (\$17,617)	2%	2-1/2%	\$ 88
Dorr	11/12/75	8.42 (\$17,617)	2%	2-1/2%	\$ 88
McRoberts	12/6/76	8.42 (\$17,617)	-	2-1/2%	\$440
Soldensky	1/3/77	8.42 (\$17,617)	-	2-1/2%	\$440
Stoppa	4/28/77	8.42 (\$17,617)	-	2-1/2%	\$440
Emerson	7/5/77	8.42 (\$17,617)	-	2-1/2%	\$440
Fredlund	5/30/78	8.42 (\$17,617)	-	2-1/2%	\$440
Lockwood	5/30/78	8.42 (\$17,617)	-	2-1/2%	\$440
Sobczak	6/1/78	8.42 (\$17,617)	-	2-1/2%	\$440
Olsen	3/16/79	6.68 (\$13,894)	-	-	
Kotwicki	3/17/79	6.68 (\$13,894)	-	-	
Slamenski	3/18/79	6.68 (\$13,894)	-	-	
					<hr/> \$4,128.00

6.66 = average hourly wage (12/31/81)

6.66 x 2080 = \$13,853 average annual earnings

19 x 2080 = 39,520 hours per year

\$13,853 x 19 = \$263,203 straight time wages total

\$4,128 ÷ \$263,203 = 1.6%

\$4,128 ÷ 39,520 = 10.4¢ per hour