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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Act
312 Arbitration Between:

Case No. L00 E-3003

Donald R. Burkholder, Chairperson

MISSAUKEE COUNTY

-and-

POLICE OFFICERS
ASSOCIATION OF MICHIGAN

ACT 312 AWARD

The Police Officers Association of Michigan (hereinafter the "Union") is the exclusive bargaining representative of employees who work in the Missaukee County Sheriff Department (the "County"). The County and the Union are signatories to a Collective Bargaining Agreement that was effective through December 31, 1999.

Bargaining subsequent to the expiration of this Collective Bargaining Agreement did not result in a successor agreement, and the Union filed a petition to initiate this Act 312 arbitration proceeding to resolve the outstanding issues. The Michigan Employment Relations Commission appointed Mr. Donald R. Burkholder as the chairperson of the arbitration panel. The parties waived the Act 312 timelines, and a hearing on the merits was held on June 18, 2002. Final offers of settlement were subsequently submitted and the parties filed written briefs.

Act 312, Section 9 provides:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, 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 price for goods and services, commonly known as 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 hearing.
- (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.

CHAIRPERSON'S OPINION

This Act 312 arbitration is the result of the failure of seven negotiating sessions, including mediation, over approximately two years. The Petition for Arbitration was filed on November 9, 2000, approximately two years ago. It involves the Missaukee County Deputies and Dispatchers/Corrections Officers, represented by the Police Officers Association of Michigan, and Missaukee County. The

bargaining unit is composed of 21 employees, i.e., 10 Deputy Sheriffs, 10 Corrections Officers/Dispatchers, and one cook.¹ The County is operating under especially constricted funding, not only because of the reduced tax base due to the fact that much of county's geography is taken up by lakes and/or state-owned property. Continuing legal matters and consequent financial obligations add to the precarious nature of the County's financial position.

The Arbitrator issued an "Interim Award on Comparability" on February 20, 2002, at the request of the parties and following several conference calls. The labor market model was used to determine the comparables, which were determined to be the following counties: Crawford, Kalkaska, Clare, Osceola, Wexford, Grand Traverse, and Roscommon. The interim award emphasized the Arbitrator's understanding that although Grand Traverse County must be included under the labor market concept, it has exceptional characteristics. Furthermore, comparability is only one of eight factors which the statute requires be taken into consideration.

The Hearing took place in Lake City, Michigan on June 18, 2002, followed by executive committee meetings on August 15 and October 30, 2002. All issues were deemed economic in nature, including the Term of Agreement.

1. Term of Agreement

The Union proposed to have a collective bargaining agreement that terminates on December 31, 2002. The County proposed an agreement ending at the end of 2003. The Union proposal is accepted.

¹ The cook is not eligible for Act 312 and the Award is not applicable to that position.

Requests by both the County and the Union for significant changes in pay and benefit levels were at the forefront of discussions at the Arbitration Hearing on June 18, 2002, and of subsequent negotiations between the parties. These changes accordingly are dealt with here and have major consequences, thus providing a new base from which to bargain. Limiting the duration of the Agreement to two years allows the parties to bargain for 2003 from a significantly different point of departure. It also clarifies changed positions or perspectives, i.e., it should be less troublesome to consider changes that have taken place over time. This should include not only the changes brought about by this Arbitration. It also permits the timely review of the relative positions, perspectives, and economic status of the parties, with special reference to changes that have taken place over the years of the Agreement awarded here, 2001 and 2002. It is noteworthy that the parties had agreed to and implemented a three per cent wage increase for 2000.

The following abbreviated and/or paraphrased subsections/paragraphs of Act 312, 1969, Section 9 apply to a significant degree to this decision:

- (c) Interest and welfare of the public, and ability of the unit of government to pay.
- (f) The overall compensation currently received by the employees...
- (g) Changes in (any of) the foregoing circumstances.
- (h) Such other factors which are normally or traditionally taken into consideration, etc.

Paragraphs (a), (b), (d), (e) do not apply.

2. Payment of Health Insurance Premiums

The County last offer calls for a new health insurance program which would provide relief from the persistent experience of ten percent-plus premium increases over a period of three years. The Employer proposes to pay up to \$700.00 per month in premiums for eligible full-time employees who elect to participate in the group health insurance plan, as well as the single subscriber cost for health insurance on behalf of regular part-time employees, with the Employer's premium cost limited to \$700.00.

The Union last offer proposes no changes in the current language, which would include no limitation on the Employer's responsibility for all premium costs.

Consistently increasing premium costs under the existing Agreement and during the period of negotiations and Arbitration; a comparison of health insurance premiums generally in the comparable counties; and the other awards in this Arbitration, taken as a whole, persuade the panel to grant the County last offer. Agreements on health insurance premiums in Osceola and Clare Counties have some similarity to the level of Employee cost sharing entailed in this award. With special reference to the other awards in this Arbitration, or to the 'forest rather than the trees', this award is based on Article 312, Section 9, paragraph (c), the public interest and the ability of the County to pay; (di) comparison of ...conditions of employment; (e) cost of living; (f) overall compensation; (g) and (h), changes in circumstances during the pendency of the hearing, and other factors normally or

traditionally taken into consideration, with special reference to (h). Paragraphs (a) and (b) not apply.

3. County reimbursement of deductible amounts

The Union last offer requests no change in the existing agreement's language on reimbursement of deductible amounts. The existing agreement provides for the County to reimburse Employees for certain expenses not paid solely due to the deductible/co-pay provisions of the health care plan, up to a maximum of \$1,000 per single or per family coverage. The County last offer would reimburse employees on a quarterly basis for a portion of their expenses, the first \$100 being the responsibility of the employee and the next \$400 the responsibility of the Employer, with all amounts over \$500 the responsibility of the Employee.

The panel adopts the County last offer, based on the same Section 9 factors noted in the discussion above on payment of health insurance premiums, with special reference to (h) not only as demonstrated by dramatically increasing health care costs, but as it applies to the totality of this award. This is not simply a matter of the extent to which each discrete internal item relates to the comparables.

4. Health Insurance Plan

The Union last offer requests no change in the existing agreement regarding the health insurance plan, which is Blue Cross/Blue Shield Community Blue PPO with a \$10.00 prescription drug rider. The County proposes to modify an Appendix [b] to the present plan by changing health care to Community Blue 2 (\$100 deductible, 90-10 co-pay, \$250 preventative services, \$15 generic/\$30 brand name

prescription. The County also proposes to offer Community Blue 1 and Community Blue 6, which would provide some alternative advantages to Community Blue 2, provided that the minimum number of employees sign up for any of the alternative programs to meet the Blue Cross/Blue Shield requirements to offer the alternative program.

The County asserts that its proposed change, although not eliminating increased costs that have been incurred in 2000, 2001, and 2002, would result in a cost reduction of approximately \$19,000 per year for the first year, based on cost analysis of the last three years.

The County position is awarded. It is persuasive inasmuch as the factors of ability to pay, comparables' health plans and reimbursement arrangements are applicable, especially in view of the totality of the package awarded in this Arbitration, and considering the financial circumstances of the Employer. This award is based on the same 312 factors noted in award items 1, 2, and 3 above.

5. Pension Multiplier

The Agreement provides that all current and future employees be enrolled in the Michigan Employees Retirement System (MERS), the Plan level to include a B-2 benefit, vesting at 10 years and a normal age and service for retirement of age 60 with 10 years service. The County proposes to change the Plan to B-3 effective December 31, 2002 and to impose an employee contribution of 1.54%, or 100% of the cost of the 'new' benefit. The Union proposes to change the Plan to B-3 effective upon issuance of this award, and that the County pay 100% of the costs. The County

asserts that there are two separate costs of changing from B-2 to B-3, the normal increase of .71% and the unfunded liability, which increases by \$90,136.

The average contribution for the comparables averaged 9.76%. Missaukee's contribution at the B-3 level is 9.25%. Excluding Grand Traverse County from comparison, the average contribution is 7.7%, which approximates the current Missaukee B-2 contribution of 7.86%. Recognizing Grand Traverse's 22.22% employer contribution along with employee contributions which draw on larger salaries, the comparison of Missaukee to its comparables other than Grand Traverse is rational. It is also well justified when one considers the award of the Union position in relation to the overall decisions in this Arbitration.

The panel awards the Union position, based in significant part on the comparables, the County's ability to pay, and overall compensation received by the employees. Recognizing the County's concerns of financial distress, the decision to improve pensions at Employer expense was not taken lightly. Nevertheless, the costs are predictable, unlike health care-related obligations, and therefore are manageable. The matter of overall compensation of the unit members is troubling, and was a major factor in persuading the Arbitrator that a significant, Employer-funded pension package should be awarded. This portion of the award adds significantly to the overall compensation base, the point of departure for future bargaining, and a 'big picture' item in the totality of the award in this Arbitration.

Paragraphs (c), (d), (e), (f), (g) and (h) apply, specifically the ability to pay, comparisons with other employees, the cost of living, overall compensation, changes

during the pendency of the hearing, and other factors normally taken into consideration in these proceedings. The 'other factors' include but are not limited to the extent to which Missaukee County Deputies and Dispatchers/Corrections Officers are falling further behind the comparables in wages and other compensation during the course of the lengthy negotiations and this Arbitration. It is noteworthy that this continuing, dramatic loss is apparent even when excluding the Grand Traverse comparable, which in base salary is some \$2,000 higher than its closest comparable.

Paragraphs (a) and (b) do not apply.

6. Pension Temporary Window

The agreement contains language as follows: "Should a bargaining unit member reach age 50 with 25 years of service, the Employer agrees to a window period twice (2) times within a five-year period by which the individual may retire without penalty for early retirement." The County proposed to delete this language and add the F55 (25) Rider with the cost split between the County and the Employees, while the Union proposed to retain the current language but clarify that it was at the Employer's cost. County concerns dealt with the Employer obligation to provide a window twice within a five-year period, with the County asserting that its understanding was that the requirement for an open window twice in five years ended at the end of the current contract.

The panel adopts the Union position. The current language remains in place, as noted above, with the addition of language that the Employer shall pay all of the costs "for any open window periods."

Paragraphs (c), (d), (f), (g), and (h) apply; (a), (b), (e) do not apply.

7. Retiree Health Insurance (Further Retirees)

The Union proposed Employer-paid health care coverage for retirees. The Agreement current provides no such coverage. The panel adopts the County position that there should not be any retiree health insurance.

Clare, Crawford, and Kalkaska Counties provide varying degrees of support for retiree health insurance, while Grand Traverse provides a fully paid supplemental coverage from age 62 on. Osceola and Wexford to not provide any retiree health care coverage.

The County's financial position is somewhat tenuous. The County asserts that over the period of 15 years, from age 50 through 65, a retired employee would receive a benefit of \$57,234 in 2002 dollars.

Paragraphs (c), (d), (f), (g) and (h) apply. Although some of the comparables have some form of retiree health insurance, with one exception, they are not totally funded by their respective employers. Improvements elsewhere to the total package of overall compensation add to the value of the award, and are in areas where the Employer is more likely to be able to manage the costs.

Paragraphs (a), (b) and (e) are not applicable.

8. Shift Premium

The Union proposed a \$.25/.35 per hour shift premium for the afternoon and overnight shifts. The County proposed that a shift premium should not be accepted. The agreement currently provides for no shift premium.

The panel adopts the County position, based on the additional cost burden, albeit slight, and the more costly portions of this award. Shift premiums are not the rule among the comparables, although some are in place. County costs estimates are that, with two deputies and two correctional officers on duty each afternoon and evening shift, the annual additional cost would be \$4,088.

Paragraphs which apply are (c), ability to pay; (d) comparables; (e) cost-of-living; (f) overall compensation; (g) and (h) changes and other factors. Paragraphs (a) and (b) do not apply.

9. Dental

The agreement provides for a maximum payment of \$800 per year on a 50/50/50 basis. The Union sought to improve the package by raising the maximum payment to \$1,000 per year, while increasing Class I Benefits from 50% to 100%.

The Employer's financial status, comparison with the comparables, and overall compensation in this Arbitration award in its totality are persuasive. The panel adopts the County position.

Applicable paragraphs are (c), ability to pay; (d), comparables; (f), overall compensation; (g) and (h), changes and other factors. Paragraphs (a), (b) and (e) do not apply.

10. Wages

Analysis of the comparables clearly indicates that Missaukee County Deputies and Corrections Officers/Dispatchers are substantially below the median, even --- and especially notably --- when Grand Traverse County is excluded. The Employer was dismayed when the Arbitrator decided that the labor market approach to comparables would be applied, with geographic proximity the major determinant in identifying comparables. The parties need to appreciate that comparability is but one of the factors in Act 312, Section 9, which must be considered in its entirety.

The Union last offer of 4 per cent for 2001 and 2002 is well justified if the only variables are the wage comparables, whether Grand Traverse County wage levels are included or not. The panel awards the Union last offer of 4 per cent for 2001, and the County last offer of 2.5 per cent for 2002, in consideration of ability to pay, cost of living, overall compensation, changes during the term of the negotiations and this Arbitration hearing, and other factors. Although the cost of living increases have been relatively low, i.e., in the 2.5% range, a historic low wage factor for Missaukee Deputies and Corrections Officers/Dispatchers justifies increasing the base during the first year by a substantial amount. The 2.5% increase awarded in the second year takes some of financial pressure from the

significant cost to the County of increased pension costs, provides a program which should tend to lead to more employment stability and provides a new base from which to bargain for the following year, 2003.

Paragraphs (c), (d), (e), (f), (g), and (h) apply. Paragraphs (a) and (b) do not apply.

SUMMARY AND ANALYSIS

The bargaining unit in their last offers insisted on the ultimate level for each of the items. The major demands were for a four per cent wage increase for each of two years; retention of a high-quality health insurance program with high-cost premiums, low co-pays, and generous deductibles; a retiree health insurance program funded primarily by the Employer; improvement in pension with the Employer paying full cost of the upgrade, and "for any open window periods." The Union's last offers also included establishment of a shift premium and substantially improved dental insurance.

In essence, the Union last offers taken as a whole were unrealistic. The panel is forced to deal with the economic and statutory reality. The requirements of Act 312, Section 9 made for difficult forced choices. Under the circumstances, a major wage increase in the first year under Arbitration, 2001, and a lesser increase for the second year, 2002, are rational inasmuch as the wage base is boosted significantly by the first year increase. Although a second year increase of four per cent would be warranted if wage comparables were considered in isolation from other factors, even excluding Grand Traverse County, that is not possible under the circumstances. A

major increase in the Employer pension contribution would appear to be of more value to the employee in the long run than an 'average' wage increase. It also would tend to enhance the attractiveness of the deputy or corrections officer/dispatcher position, leading to a more stable workforce, therefore having some value for the Employer.



Donald R. Burkholder, Ph.D.
312 Chair and Arbitrator

Date

ACT 312 Award

The panel has reviewed the evidence submitted at the hearing together with the statutory criteria forth in Section 9 of Act 312, MCL 423.239. After assigning such weight to each statutory criteria as the panel deemed appropriate, as fully explained in the Chairperson's opinion, the following is the panel's award.

1. Term of Agreement.

The collective bargaining agreement expired on December 31, 1999. The **Union Proposal** to have a collective bargaining agreement that terminates on December 31, 2002 is accepted.

2. Payment of Health Insurance Premiums

The **County Proposal** to modify Section 14.2. Payment of Insurance Premiums is accepted. This language shall be changed to read:

14.2: Payment of Health Insurance Premiums. The Employer agrees to pay up to \$700.00 per month for eligible full-time employees who elect to participate in the group health insurance plan. The Employer agrees to pay the single subscriber cost for health care insurance on behalf of regular part-time employees. All premium costs for sponsored dependent and/or family continuation coverage and all premium costs in excess of these stated amounts shall be paid by the employee electing to have the insurance coverage. The Employer's obligation shall be limited to these amounts.

In addition, add the following Letter of Understanding:

The provisions of Section 14.2: Payment of Health Insurance Premiums sets the maximum payment that the Employer will be required to pay for health insurance premiums at \$700.00 per month, which is the same level authorized for County elected officials (Sheriff, Treasurer, Clerk-Register). During the period of this agreement, the Employer agrees to increase this \$700 payment level to include any increases that are authorized in the maximum health insurance premium that will be paid for the health insurance of County elected officials.

3. County reimbursement of deductible amounts

The collective bargaining agreement currently provides:

14.3: Payment of Deductible Amounts. In the event that an employee or their dependents incur medical expenses that are not paid by the insurance carrier solely due to the deductible/co-pay provision of the BC/BS PPO Plan, the Employer agrees to pay for only those expenses, (\$10.00 office visit, \$10.00 drug prescription, and \$50.00 emergency room) up to a maximum of \$1,000 per single or per family coverage.

In addition, APPENDIX B INSURANCE COVERAGE provides in Paragraph 2:

2. In the event that an employee or their dependents incur medical expenses that are not paid by the insurance carrier solely due to the deductible/co-pay provision of the BC/BS PPO Plan, the Employer agrees to pay for only those expenses, (\$10.00 office visit, \$10.00 drug prescription, and \$50.00 emergency room) up to a maximum of \$1,000 per single or per family coverage.

The County Proposal to modify this language to read as follows is accepted:

14.3: Payment of Deductibles and In-Network Co-Pays. Amounts. In the event that an employee or their dependents incur medical expenses that are not paid by the insurance carrier solely due to the deductible/in network co-pay provisions of the BC/BS PPO Plan, the Employer agrees to reimburse the employee on a quarterly basis for a portion of those expenses, (\$10.00 office visit, \$50.00 emergency room, \$100/\$200 deductible, and in network co-pays) as follows: The first \$100 will be the responsibility of the employee and the next \$400 will be the responsibility of the Employer. All amounts over \$500 will be the responsibility of the employee.

[This changed reimbursement amount will be effective for the year beginning January 1, 2003]

4. Health Care Plan

The collective bargaining agreement currently provides that the health insurance plan is BS/BS Community Blue PPO with a \$10.00 prescription drug rider.

The County Proposal is accepted, and Appendix B will be modified by changing the health care plan to Community Blue 2 (\$100.00 deductible, 90-10 co-pay, \$250.00 Preventative Services, \$10.00 Office Visit Rider, \$15.00 Generic/\$30.00 Brand Name RX. In addition, it will offer Community Blue 1 (\$10.00 Office Visit Rider, \$10.00 Drug Co-pay) and Community Blue 6 (\$250/500 deductible, 90-10 co-pay, \$250.00 Preventative Services, \$10.00 Office Visit Rider, \$15.00/\$30.00/\$60/00

Drug co-pay) provided that the minimum number of employees sign up for any of the alternative programs to meet the BC/BS requirements to offer the alternative program.

5. Pension Multiplier

Union Proposal is accepted, which will change the Plan to B-3 effective upon the issuance of the Award and to have the County pay 100% of the costs for this program.

6. Pension Temporary Window

The collective bargaining agreement currently provides:

15.1: Pensions. Effective as soon as possible after the signing of the contract the Employer shall enroll all current and future employees in the MERS retirement system. The plan level shall include the B-2 benefit, vesting at 10 years and a normal age and service for retirement of age 60 with 10 years. The Employer shall pay the full costs for all past and future service. Should a bargaining unit member reach age 50 with 25 years of service, the Employer agrees to a window period twice (2) times within a five year period by which the individual; may retire without penalty for early retirement. All requests must be in writing and presented to the employer.

The **Union Proposal** to maintain the current language, but add language that the Employer shall pay all of the costs "for any open window periods." is accepted

7. Retiree Health Insurance (Future Retirees)

The collective bargaining agreement currently provides no health care coverage for retirees:

The **County Proposal** that there should not be any retiree health care insurance is accepted.

8. Shift Premium

The collective bargaining agreement currently provides no shift premium for employees.

The **County Proposal** that a shift premium should not be added is accepted.

9. **Dental**

The collective bargaining agreement currently provides for a maximum payment of \$800 per year on a 50/50/50 basis.

The **County Proposal** that there be no change to this provision is accepted.

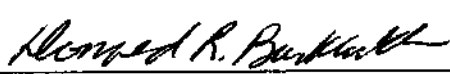
10. **Wages**

The parties have agreed to a 3.00% wage increase for 2000 and implemented that increase.

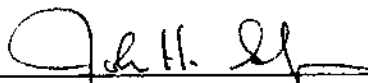
The **Union's Proposal** of a 4.00% increase 1-1-2001 is accepted.

The **County's Proposal** of a 2.50% increase 1-1-2002 is accepted.

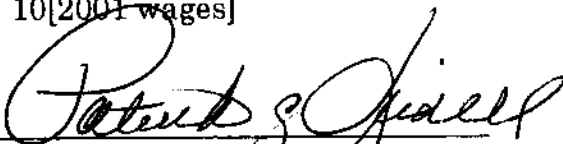
Dated: November __, 2002

 2/3/03
Donald R. Burkholder, Chairperson

Dated: November 11, 2002


John H. Gretzinger, City Delegate
(Dissenting as to Issues 1, 5, 6 and 10[2001 wages])

Dated: November 11, 2002


Patrick J. Spidell, Union Delegate
(Dissenting as to Issues 2, 3, 4, 7, 8, 9, and 10[2002 wage])

Missaukee Co.-and-POAM;
MERC 312 Arbitration Case LOO E-30

STATE OF MICHIGAN
COMPULSORY ARBITRATION

The Compulsory Arbitration Between

County of Missaukee

Arising Pursuant to
Act 312, Public Acts
of 1969, as amended

-and-

Police Officers Association of Michigan

Case No. LOO E-3003

INTERIM AWARD ON COMPARABILITY

312 Chairman and Arbitrator: Donald R. Burkholder, Ph.D,

Employer Advocate: John H. Gretzinger, Esq.

Union Advocate: William Birdseye

The definition, identification, and selection of comparable organizations, individuals, items, or ideas is a complex, value-laden process in the best of circumstances and regardless of its environment. Whether comparing mousetraps, interest rates, or potential life mates, unpredictable, perplexing variables are likely to eventually become apparent, and the original comparable units will be re-weighted on the basis of the new variables, or sub-comparables. This process is especially perplexing in interest arbitration. Michigan's Public Act 312, Public Acts of 1969, as amended, requires comparisons of wages, hours, and conditions of employment with similar workers in "comparable" communities, and it provides for consideration of such other factors as are normally considered in labor disputes. The latitude thus permitted the parties is considerable, as becomes obvious when the specific wording of relevant portions of the statute are examined in detail, as set forth in Section 9 of the Act.

"Section 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services with other employees generally:

-
- (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
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(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 public service or private employment.

The emphasis in this Interim Report is on subsection (d), comparability; Subsection (c) is included because it lists the primary issues, i.e., the public interest and welfare and the ability of the unit of government to meet the costs, against which the comparables ultimately selected are to be evaluated in reaching a decision.

The Union asserted that the concepts of community and/or locality apply in the determination of comparables to a realistic definition of the labor market for the employees involved.

Black's Law Dictionary, Abridged Sixth Edition, 1991, defines "community" as follows:

Neighborhood, vicinity, synonymous with locality. People who reside in a locality in more or less proximity. A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges, and interests, It connotes a congeries of common interests arising from associations - social, business, religious, governmental, scholastic, recreational.

Webster's New World Dictionary defines community similarly, as

follows:

Any group living in the same area or having interests, work, etc., in common; such an area; the general public; a sharing in common. The definition or concept of "locality" is worthy of special attention. Black's Law Dictionary defines locality as "a definite region in any part of space; geographical position. Place, vicinity, neighborhood; community.

The parties to the present case agreed during telephone conferences to dispense with a formal hearing on the matter of comparables, submitting to their respective lists by mail. The Chairman's identification of appropriate comparables was presented and discussed in a February 11th conference call, with the understanding that an Interim Award on the matter would be forthcoming. A date for the 312 hearing is then to be scheduled.

The Union submitted counties immediately contiguous to, adjacent to, surrounding, abutting, touching Missaukee County, asserting that these units were the most comparable to Missaukee, and therefore represented the real labor market. The Employer submission of nine proposed comparables included two counties proposed by the Union along with outlying counties which the Employer asserted were comparable to Missaukee on such measures as State Equalized Value (SEV), tax, median income, poverty, number of sworn officers, and civilian employees. The Employer group is composed of those counties that are not one third larger or smaller in population than Missaukee, as follows:

Alcona
Arenac
Benzie
Crawford
Kalkaska
Lake
Montmorency
Oscoda
Preque Isle

The Union's proposed list consisted of the following counties:

Crawford
Kalkaska
Clare
Osceola
Wexford
Grand Traverse
Roscommon

The Employer also proposed submission of information regarding the following counties for purposes of Section 9 (h), noting that they were not "true comparables" under Section 9 (d):

Alpena
Clare
Gladwin
Manistee
Oceana
Ogemaw
Osceola
Wexford

The Employer in its submission on comparables noted some limited areas of agreement between the parties:

...the parties are in agreement that Crawford and Kalkaska are comparable communities for purposes of Section 9 (d). The parties are both proposing that Clare, Osceola and Wexford be considered by the panel, but are in dispute whether they should be considered a comparable under Section 9 (d) or a form of second tier comparable under Section 9 (h). Missaukee County is willing to have information regarding Alpena, Gladwin, Manistee, Oceana, and Ogemaw also submitted as a form of second tier comparable under Section 9 (h) but is not willing to submit information on Grand Traverse or Roscommon under any basis.

A number of authorities, including experienced labor arbitrators, the U. S. Department of Labor, and Elkouri and Elkouri, support the local labor market approach. Elkouri and Elkouri in HOW ARBITRATION WORKS (5TH ed.), pp. 1109 ff. point out that "...it is not unusual for the parties to disagree on the list of communities to be considered..."

Selection of the "appropriate comparability group" from among 25 counties offered by the parties for the purpose of resolving percentage wage increase and medical insurance contribution issues has been made on the basis of three standards of comparability. They include close geographic proximity, population and its density, and union representation.

The 1999 Supplement to the fifth edition of Elkouri and Elkouri, Ch 18, Standards in Arbitration of Interest Disputes, includes a discussion of prevailing practice, in part as follows:

... ideally comparable communities ought to be located in the same labor market... be of similar territorial size and population density, draw upon similar resources and tax bases, have a similar mix of commercial, industrial and residential properties with similar need for police protection, and maintain similar Police Departments.

Unfortunately, developing a list of comparable communities which meets all of these criteria is seldom possible, and the selection process is further complicated because information relevant to disputed issues may not necessarily be available from community which does meet the criteria.

Geographic proximity, in accord with the local labor market approach, has been heavily weighted and has been the deciding factor in a number of previous 312 cases. Where geographic proximity was not an option in a case involving a public safety unit, Arbitrator Paul Jacobs has noted the following:

Employers...are vying for the services of a discrete group of workers, and an equilibrium is reached within a geographical area insofar as wages and benefits are concerned. It is sensible to assume that this market is best defined by a circle drawn around the area under discussion, striking the arc of a distance that can be driven within a reasonable period of time. (Allegan County Sheriff and Board of Commissioners-and-Police Officers Association of Michigan, MERC Case No. G87 C-243).

Arbitrator Mark J. Glazer utilized the "...other factors" spelled out in Article 9 (h). (City of East Grand Rapids and Police Officers' Labor Council, MERC Case No., G93 B-4008). Arbitrator Anthony Vernava dealt in some detail with the inclusion or exclusion of certain comparables, noting that factors such as 9 (c)," the interests and welfare of the public and the financial ability of the unit of government to meet those costs" , and 9 (h), other factors normally or traditionally taken into consideration provide differing bases for panel examination of economic data.. (Commissioners of Wexford County and Sheriff of Wexford County and Police Officers Association of Michigan, MERC Case No. G85 L-1079). Arbitrator S. Olof Karlstrom summarized his views on the issue of comparability as follows:

This arbitrator does not wish to belabor the issue of comparability, since all of the "communities" placed before the panel offer examples of how other "communities" deal with their Police forces in regard to wages, hours, and terms of employment. Furthermore, there is no rigid test for determining comparability nor is there a mandate that it carries more weight than any other statutory criteria. Subparagraph (d) of Section 9 of the Act refers to "wages, hours and conditions of employment of employees performing similar services and with other employees generally (by implication we are not limited merely to County Sheriff Departments) in public employment (in private employment) in comparable communities.

These considerations, considered together, clearly limit the 'automatic' or strictly statistical application of averages to reach a conclusion on such matters as wages and benefits, regardless of how the appropriate comparables are selected. Arbitrator Stanley Dobry examined and commented upon the comparison of population figures or other numeric measures between counties resulting in the assertion that comparability could thereby be "proved".

It may very well be that the comparables suggested by both parties meet the bare threshold of "comparable communities", or "similar or identical localities" within the meaning of the statute. But the fact that they could be validly compared does not establish the weight to be given to any comparison.

He rejected as "...inappropriate any attempt to 'gerrymander' the comparables, as well as the rather naïve assumption that an artificially created "average" will dictate the result in a particular case." Referring to the parties in the case he was analyzing at the time, he noted that close reading of prior decisions in their cases "...suggests that in the real world arbitrators do more than look at the selected comparables to come to a figure – one party or the other has prevailed on "comparables", which was then only marginally related to the ultimate result.

...The traditional approach -- using State Equalized Values ("SEV"), crime rates, population levels, general taxes revenues, governments; and number of motor vehicles -- to establish "comparability" is a very small window upon the world. Unquestionably, those are factors which can properly be considered, but they are not necessarily the best method to arrive at a result.

The quest for a single array of "true comparables" and the need to establish a valid basis of comparison through an excruciating comparison of factors with no demonstrated connection to wages, had much to recommend it at the dawn of public sector collective bargaining and interest arbitration. By definition, there were no (or few) freely and collectively bargained established relationships. This can hardly be said to be the case now. This is not the first contract for these employees and this employer.

Arbitrator Dobry accepted the proposition espoused by Labor Economist Ann Maurer that the local labor market may be defined as a geographic area in which a concentration of workers can live, work, and change jobs without changing residences. He noted that agencies such as the Michigan Employment Security Commission and the U. S. Department of Labor define it similarly. (County of Livingston and Dennis R. Deburton, Livingston County Sheriff, and Police Officers Association of Michigan, MERC Case No. 87 H-2068),

The labor market approach was challenged the Employer Brief on Comparability, the Employer having asserted that "...while there are no statutory criteria for determining comparability, certain standard procedures have evolved.

As explained by Mario Chiesa in St. Clair County and POAM, MERC Case No. D97 J-1470, "Synonyms for 'comparable' include similar, alike, resembling, equivalent, matching, etc. Comparable generally means that other communities must be capable of being compared or equaled or are worthy of comparison." The factors that he considered included population, rural/urban percentage, per capita income, taxable value, and department size. Those counties that were similar to St. Clair on all factors were considered to be comparable, those with some similarity were considered to be second tier comparables, and those with little similarity were rejected as comparable.

The Employer brief on comparables included examples of variations on the three tier approach based on a prior Missaukee 312 arbitration in which Arbitrator David L. Poindexter, if I may summarize with some degree of interpretive latitude, appears to have used an expanded local labor market approach combined with aspects of the three-tier approach. It is noteworthy that the Employer dissented from his conclusion, arguing that Clare, Roscommon and Wexford were not comparable to Missaukee. The Employer submitted Clare and Wexford as "second tier" or 9 (h) comparables in the present arbitration.

Additional cases were cited in the Employer Brief on Comparables to buttress Support for its preferred comparable counties, and for consideration of State Equalized Value (SEV), Tax Revenue, Median Income, Poverty Level, Number of Employees (in this case, sworn officers in the sheriff's department and civilian employees), and Per Capita Income. There is abundant evidence on the record from reliable sources such as Elkouri and Ekouri, as well as distinguished arbitrators such as Stanley Dobry, Mark Glazer, Anthony Vernava, Paul Jacobs, David Poindexter and others that the mechanistic, statistical averaging of "comparable" units of government pre-selected through some pre-determined, supposedly objective, semi-automatic formula is not credible. Clearly, the weighting of each comparable will vary as the Chairman and the Delegates exercise their discretion, rationality, and intelligence in applying the respective categories of figures for each unit of government, especially given the probability that differences between governmental units, which upon first examination appear to be similar, may and not infrequently are greater than a cursory examination would indicate.

I acknowledge the Employer's strenuous objection to the inclusion of Roscommon and Grand Traverse Counties in the comparables. They are included under the theory/assumption set forth above, i.e., that the weight given to measures derived from them should be considered in light of the fact that they are, or are alleged to be, much wealthier than, other surrounding counties. I use the term "alleged" because such data or measures have not been made available for consideration in their entirety.

The Employer's proposed data base is logical; therefore, data should be gathered on SEV, Tax Revenue, Median Income, Poverty Level, Number of Employees, and Per Capita Income, for the County units ultimately selected as comparable. If the executive committee should agree on additional measures, they would of course be included. The data ultimately gathered must be put in perspective as relates to the weight given for each respective county as it relates to Missaukee. As noted above, I am convinced that the local labor market approach is appropriate for this set of circumstances. The disputed matters listed on the Petition for Arbitration include wages, pension, health insurance for future retirees, dental insurance, and shift premium, all of which are competitive, significant factors in a labor market. Therefore the Union proposal for use of the following counties is adopted:

Crawford
Kalkaska
Clare
Osceola
Wexford
Grand Traverse
Roscommon

The Employer has proposed adoption of so-called second tier counties, suggesting that information from the Counties of Alpena, Clare, Gladwin, Manistee, Oceana, Ogemaw, Osceola, and Wexford could appropriately be considered under 9 (h). Clare, Osceola, and Wexford Counties, listed above, will be considered under 9 (d), which does not preclude the application of 9 (h) factors if the panel deems it appropriate. There appears to be no utility in identifying 9 (h) counties which might be considered at the hearing. As testimony and exhibits progress, the deliberations may well lead to consideration of counties proposed by the Employer, their perhaps related issues, as well as other issues which the panel might be deem appropriate for consideration under 9 (h).

INTERIM AWARD

The Union's comparables are awarded.