

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY ARBITRATION TRIBUNAL

IN THE MATTER OF THE ARBITRATION BETWEEN:

WASHTENAW COUNTY and RONALD J. SCHEBIL,
WASHTENAW COUNTY SHERIFF,

Employers,

and

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN,

Union.

Act 312 of 1989
Merc Case No. D89 A-122
Arbitration Panel:
Henry J. Seftovic,
William Birdseye, and
Michael Johnson

ACT 312 ARBITRATION PANEL'S OPINION AND AWARD

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INDEX

	Page
Index of Cases and Authorities Cited	3
I. Introduction	4
II. Comparable Communities	7
A. Background	7
B. Proposed Wage Comparable Communities	9
1. County to County Model	9
2. The County's Labor Market Model	9
(All Police Agencies in Washtenaw County)	
3. Union Labor Market Model	9
C. Discussion	10
D. Decision	20
III. Duration	23
A. Last Offers	23
B. Discussion and Decision	23
IV. Wages	24
A. Last Offers	24
B. Discussion	24
C. Decision	25
V. Pension	29
A. Last Offers	29
B. Comparable Communities and Discussions	31
C. Decision	34
VI. Holiday	35
A. Last Offers	35
B. Discussion	35
C. Decision	35
VII. Shift Preference	37
VIII. Overtime and Hours of Work	38
IX. Promotions	39
A. Last Offers	39
B. Discussions	39
C. Decision	41
X. General Conclusion	42
XI. Union Representative's Concurrence in Part and Dissent in Part	43
XII. Employer's Representative Concurrence in Part and Dissent in Part	44

INDEX TO CASES AND AUTHORITIES CITED

<u>CASES</u>	<u>PAGES</u>
<u>Cleland v Alseme</u> , 425 Mich 204, 388 NW 2d 23 (1986)	4
<u>Capital City Lodge #141, FOP v Meridian Township</u> , 90 Mich App 533 (1979), 1v den	4
<u>City of Detroit v Detroit Police Officers Association</u> , 408 Mich 410, 294, NW 2d 68	21
 <u>STATUTES</u>	
406 Mich 961 (1979)	4
MCLA 423.231	4
MSA 17.455 (31)	4
MCLA 423.236	5
MCLA 423.239	5-21-25-41
 <u>AUTHORITIES</u>	
A Regional Econometric Forecasting System - Major Economic Areas of Michigan	7
Black's Law Dictionary (4th Edition)	10
Webster's Seventh New Collegiate Dictionary	11
Article XXVII Pension System	29
Memorandum In Support of Final Offer of Settlement	33
Arbitrator's Opinion and Award (Washtenaw County v. F.O.P.) Employer's Exhibit No. 14.	40
Article XII, Section 2	41
Article XII, Section 5	41

I.

INTRODUCTION

This matter arises pursuant to a Petition filed with the Michigan Employment Relations Commission pursuant to 1969 P.A. 312, as amended, being MCLA 423.231, et seq; MSA 17.455 (31), et seq. The Petitioner is the Command Officers Association of Michigan (hereafter referred to as the "Union", which represents certain Supervisory Personnel within the Washtenaw County Sheriffs Department. The joint Employers¹ are Washtenaw County and the Washtenaw County Sheriff, Ronald J. Schebil (hereafter referred to as the "Employers" or the "County").

The impartial arbitrator was selected to chair the arbitration panel. The union and Employer delegates are Mr. William Birdseye and Undersheriff Michael C. Johnson, respectively.

At an initial prehearing conference held on September 11, 1989, it was agreed that the following issues were to be arbitrated:

Union Proposals

1. Duration of the contract.
2. Wages
3. Pension (Definition of final average compensation)
4. Pension (Rate of Contribution)
5. Pension (Defined Benefits)

County Proposals

6. Holidays
7. Shift Preference
8. Overtime and Hours of Work
9. Promotions

¹Under Michigan Law, the County Sheriff and the County Board of Commissioners, being the Legislative Body of the County, serve as co-employers for the employees within the Sheriffs Department, including those represented by the COAM herein. Cleland v Afseme, 425 Mich 204, 388 NW2d 23 (1986); Capital City Lodge #141, FOP v Meridian Township, 90 Mich App 533 (1979), lv den, 406 Mich 961 (1979).

The parties stipulated at that prehearing conference that Wages, the three Pension Issues, Overtime and Hours of Work Preference were economic issues, and that the impartial arbitrator was to determine whether the remaining four issues were economic or non-economic issues. In a letter to the parties dated June 7, 1990, the impartial arbitrator determined that the Holiday issue was economic and that the Contract Duration, Shift Preference and Promotion issues were non-economic issues.

The parties also agreed that the most current contract, between the parties had a duration from April 1, 1986 to December 31, 1988.

Besides the prehearing conference, six other days of hearings were held. The dates of these six hearings were: October 23, 1989; November 8, 1989; December 6, 1989; January 29, 1990; March 19, 1990 and May 14, 1990. These other hearings were held in compliance with section six of the act, MCLA 423.236. Each party thereafter submitted its Last Offer to the impartial arbitrator who in turn sent them to the other party on July 17, 1990. In a like manner thereafter each party submitted a brief in support of its Last Offer.

On September 7, 1990, the first conference of the arbitration panel was held. On October 19, 1990, the impartial arbitrator sent out a rough draft of his award and opinion to the other two panel members. A second arbitration panel conference was held on October 31, 1990, at which time the rough draft and award was clarified.

The factors for the Panel's consideration in reaching its decision as to the nine issues before them are set forth in Section 9 of the Act (MCLA 423.239), which reads as follows:

"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 have 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 and 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, holiday 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.
- (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.

COMPARABLE COMMUNITIES

A. BACKGROUND

Washtenaw County consists of over 700 square miles, is centrally located in the Lower Peninsula and has a population per 1988 estimates of 264,748 people. The Twelve Townships of Washtenaw County to the west of Ann Arbor are largely rural and agricultural in nature, and Ann Arbor, Ypsilanti and the eight Townships to the East of Ann Arbor are largely Urban in nature. Located in this eastern portion of the County are the University of Michigan, Eastern Michigan University, State Hospitals in Ypsilanti, State and Federal Prisons, and several large Automotive Manufacturing Facilities. In the book, "A Regional Econometric Forecasting System - Major Economic Areas of Michigan", by Harold T. Shapiro and George A. Fulton (Union Exhibit No. 7) it states that in 1979, 33.07% of the County work force was employed in Manufacturing jobs, 30.5% in Government jobs, and 36.5% in non-manufacturing jobs.

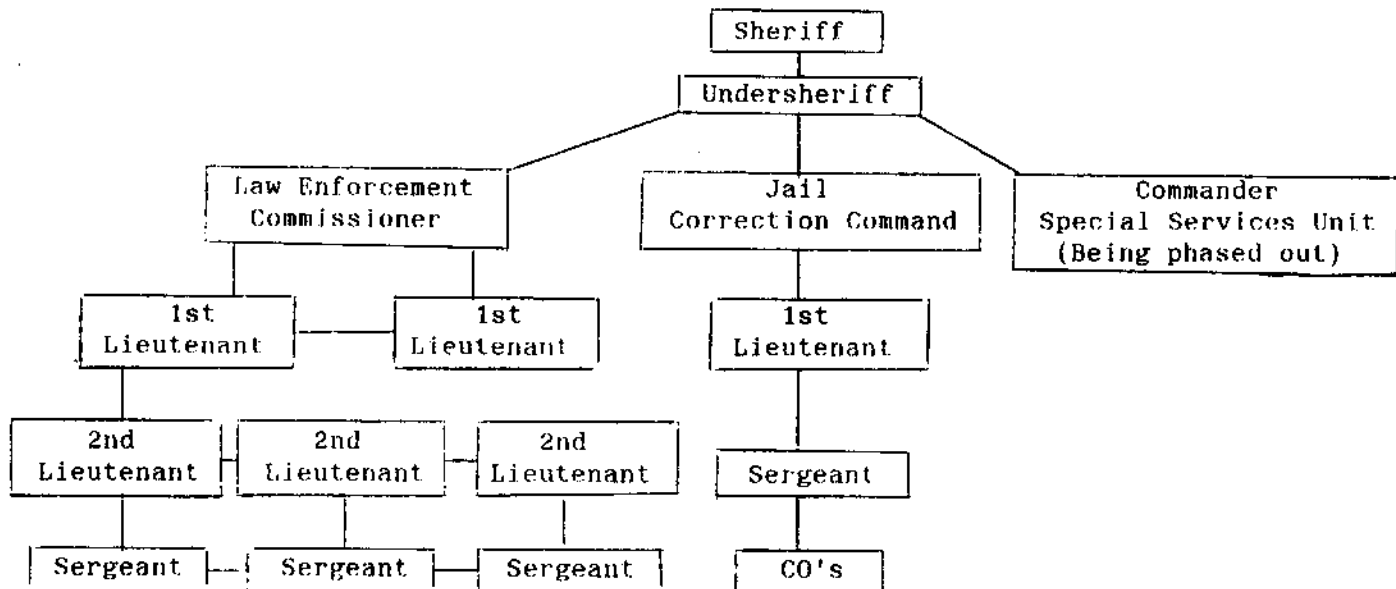
This book on page 56 states, "Ann Arbor (Washtenaw County) ranked fifth in 1978 among the states SMSAS in total personal income (\$2,331.1 million) and second after Detroit in per capita personal income (\$9,160). The county was second only to Oakland County in 1969 median family income (\$12,294). Only two counties had a smaller percentage of families below the poverty line or a greater percentage with incomes in excess of \$15,000 in 1969. The high income levels are largely a consequence of the high concentrations in both high-skilled white-collar employment and the high-wage automobile industry.

"Ann Arbor was first over both decades among the SMSA's in average annual income growth, but when these numbers are adjusted for population increase, Ann Arbor is eighth in the sixties and third in the seventies. Although income grew more rapidly in the seventies, this increase can be accounted for here, as elsewhere, by inflationary trends.

The percentage distribution of earnings by industry is presented in table 3A.2. Ann Arbor has a larger share of total earnings than the state or the nation in two classifications: cyclically sensitive durables, particularly automotive (42.0) percent); and acyclic government (25.2 percent). Government employment in Ann Arbor is concentrated in the two large public universities, the University of Michigan (Ann Arbor) and Eastern Michigan University (Ypsilanti). The high earnings status in the automobile industry relative to other industries is reflected in the much smaller employment share for durables in 1978 (29.3 percent) compared to its income share (42 percent). With these sectors accounting for such large earnings shares, the contribution of the nonmanufacturing sector is the lowest among the major areas of the state. Similar to other automotive economies, Ann Arbor has among the highest hourly earnings and average weekly hours in the state."

The major transportation arteries of the County are U.S. 23 which runs North and South, and I-94 which runs East and West. These two transportation arteries quarter the County. In terms of quality of life, Washtenaw County is considered to be one of the best places in the State in which to live.

The organizational chart of the Sheriff's Department is as follows:



B. PROPOSED COMPARABLE COMMUNITIES

1. County's Labor Market Model

The County has proposed two models, each containing a set of comparable communities. The county's first model is a labor market analysis which contains the following comparable communities which are all located in Washtenaw County:

Ann Arbor police Department;
Eastern Michigan University Public Safety Department;
Michigan State Police;
Michigan Department of Corrections;
Milan Police Department;
Saline Police Department, and
Ypsilanti City Police Department.

2. COUNTY TO COUNTY MODEL

The County's second model is a set of Counties which were selected by the County because of their similarities with Washtenaw County in terms of total population and state equalized value. This second set contains the following counties:

Berrien County;
Genesee County;
Ingham County;
Kalamazoo County;
Monroe County;
Ottawa County;
Saginaw County, and
St. Clair County.

3. THE UNION'S LABOR MARKET MODEL

The Union relies solely on a Labor market Analysis and includes only the following comparable communities:

Ann Arbor, and
Ypsilanti.

C. DISCUSSION

1. THE COUNTY'S COUNTY TO COUNTY MODEL

In this case, Section 9 (d) & (h) of Act 312 of 1969 are an important basis of this opinion and award. In large part, section 9 (d) & (h) provides that the arbitration panel shall base its findings, opinions, and orders upon the following factors ...

(d) A comparison of the wages, hours and conditions of employment of the Command Officers of the Washtenaw County Sheriffs Department with the wages, hours and conditions of employment of other employers performing similar services with other employees generally in public and private employment in comparable communities.

(h) And such other factors 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.

In analyzing which communities appropriately fit the statutory factor, both parties suggest that the statutory criterium itself should be first examined. This criteria calls for the evaluation of "Comparable Communities". No evidence of legislative history was proffered nor is any specific definition utilized within the Act. However, the term "community" is defined in Black's Law Dictionary (4th Edition) Page 350 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 or interests".

The term "comparable" is not defined in Black's. Webster's defines it as "equivalent, similar". Webster's Seventh New Collegiate Dictionary, page 168. In isolation therefore, the statutory specifications requires consideration of "equivalent or similar" "localities".

It is noteworthy, that the words themselves are not limited, to similar units of governments (i.e. other counties), but include "communities". The County's county comparable model contains eight counties: Berrien, Genesee, Ingham, Kalamazoo, Monroe, Ottawa, Saginaw, and St. Clair Counties. This model is based on six counties being within a range of 50% larger or smaller than Washtenaw County in terms of population and SEV. As the Employers stated in their brief, "Genesee and Monroe Counties were added because they are geographically close and also are somewhat similar in population and SEV".

The impartial arbitrator is not impressed with a comparison of SEV without additional information. The SEV alone appears to have little merit in determining what communities are comparable. SEV, tax rates, whether a fixed millage or a millage rate set on an annual basis, together with other factors (usually less important) are all equally important in determining a county's financial position and economic base. The tax rates, fixed or fluxuating rates per the board of review, or other factors were not presented in this case. Therefore, a comparison of SEV's alone shows little and may in fact be misleading.

A second reason why the impartial arbitrator is not impressed with the employers comparison of SEV's is that the SEV of the employers eight counties varies greatly. The six counties that were chosen because they have a SEV close to Washtenaw County's SEV may vary up to 100%. This wide diversity of SEVs is compounded by the other two counties that vary more than 100%.

A comparison of these eight SEV's alone, and that they vary by more than 100% leads the impartial arbitrator to base little reliance on them in determining which communities have similar financial abilities, economic structure, economic size, or how the county based its last offer. The employers SEV comparison also leads the impartial arbitrator to believe that if a County to County Model is to be used more information than SEV and population is needed to determine comparable communities.

The second basis of Washtenaw County's County to County based model was population. Again, six counties were added to this model because they were within 50% population of Washtenaw Counties' population. Monroe and Genesee Counties were also added because of their proximity to Washtenaw County and nearness in terms of SEV and population. There is a very large swing in populations ranging from 134,659 to 450,449. Geographically the eight counties range from shore to shore of the Lower Peninsula.

After reading Section 9(d) of the Act and the definition of "comparable communities", the impartial arbitrator views the following features which distinguished Washtenaw County from the other Counties in the state: (1) Offering its citizens a high quality of life; (2) Offering them a fairly high standard of living; (3) Having a Labor Market driven by the automotive industry wage and benefits package; (4) Not having to offer "Combate pay" for police officers (it is a "good" place to work); (5) Having a location which is culturally and geographically close to Detroit; (6) Population; (7), SEV; and (8) traffic patterns.

Of the list of eight counties, Ottawa and Berrien Counties are very dissimilar from Washtenaw County. They should be eliminated because under the eight features listed above, Ottawa and Berrien score low under features three and five. These two communities can not be considered suburbs of Detroit, nor

do they have an economy in which an average employee compares his or her income and fringe benefits to automobile industry employee.

In this list of eight counties, Saginaw County is the third most dissimilar. Saginaw County is a considerable distance from Detroit. One from Saginaw County does not routinely drive to Detroit to pick up a class or for a night out. In terms of factors number one, four, and eight, Saginaw also ranks low.

St. Clair and Monroe Counties would score low in factors three, six, and seven, but would be high in the other factors. It is important to note that the purpose of reviewing comparable communities is to compare or determine a wage rate for this unit for the years 1989, 1990 and possibility 1991. There was no wage rates proffered for Monroe County for 1989, 1990 or 1991. Therefore, in this analysis of comparable wage communities, a review of Monroe County will not be productive, and it is eliminated.

Ingham County is certainly Washtenaw County's closest twin. It has Michigan State University, a high percentage of Automotive and Government employees, is quartered by two freeways, and would in fact rank high in the other features listed above.

Genesee County is also very comparable to Washtenaw County. It is also quartered by two freeways, has high standards of living which is also driven by the automotive industry, has University of Michigan of Flint and Mott Community College and rate fairly high in features in all of the other features.

Kalamazoo County is an in between County. It has many similarities and a few dissimilarities. It scores low in feature number five, but scores the highest in features one, four, six and seven. If the impartial arbitrator were to develop a model of comparable counties based on Section

9(d) of the Act and the definition from above includes Kalamazoo County.

In conclusion on the discussion of the Employer's County to County Model, the impartial arbitrator believes that:

- (1) Ingham and Genesee Counties are the most equillivent or similar localities;
- (2) Monroe County should also be eliminated since no 1989, 1990, or 1991 wages were supplied;
- (3) Ottawa and Berrion Counties should also be eliminated as being not similar to Washtenaw County, and
- (4) Of the remaining three counties, the Kalamazoo is the most similar of this group of three counties.

2. THE COUNTY'S LABOR MARKET MODEL

In regard to comparable communities, the Union relied solely on a Labor market approach that only included the cities of Ann Arbor and Ypsilanti which are both located in Washtenaw County. After the Union made its presentation on comparable communities, the County built on the Union's Labor Market Model by adding the remainder of the law enforcement agencies in Washtenaw County.

A definition of the Labot Market Model and whether the Arbitration Panel should chose this model over the traditional county to county model can be found in the next section of this opinion which discusses the Union's Labor Market Model.

The Employer's list of comparables communities in this model are:

1. Ann Arbor
2. Ypsilanti
3. Chelsea
4. Eastern Michigan University
5. The Michigan State Police
6. The Michigan Department of Corrections
7. Milan; and
8. Saline.

Since Ann Arbor and Ypsilanti are included in both the Employer's and

the Union's Labor Market Models if the panel opts for a Labor Market approach, they are common to both and therefore will not be discussed.

Like Monroe County, no wage information for 1989 or 1990 and beyond was submitted for Saline. While it may or may not be a comparable community, it will be of no value in determining a wage in this arbitration, and is therefore eliminated for wage discussion purposes.

The Michigan State Police and the Michigan Department of Corrections are State of Michigan Agencies. Eastern Michigan University is a kin to a State or Regional Agency. The utilization of a statewide or a Regional Agency is inappropriate because the jurisdictional basis is drastically broader than that of the County Sheriffs Department, nor are they within the meaning of "community" in the Act. The Employer suggests, in favor of these three entities, that employees of the County and of the other entities work in the same general geographic area. The Union argues that the "community" and "jurisdictional basis" and work performed are not similar to that of the unit's work. The impartial arbitrator believes that there are other criteria that are of greater importance in determining comparability than simply working in the same particular land mass. This does not denigrate the concept, but in view of the other criteria, it is not so compelling as to outweigh these other criteria and therefore, these three state agencies should not be included as comparable communities.

The resulting difference between the two Labor Market Models is the Chelsea and the Milan Police Departments. The County argues for their including in this Model since they are Command Officers in Law Enforcement Agencies in Washtenaw County. The Union argues that they are different jobs. Quoting page seven of the Union Brief "The Elkouris would certainly criticize such an approach". (Union Exhibit 6, p. 811). They caution that

"The selection of [comparables] must, in wage cases, be followed by an analysis of jobs for comparability. Mere job titles are often not reliable and are by no means conclusive...It is incumbent upon the parties to supply reliable job descriptions in order to establish a basis for comparison".

The Union's arguments that these jobs are not comparable is persuasive by these factors: (a) a wide gap in wages; (b) what this author calls the stepping stone effect; and (c) the lack of job descriptions.

Generally Employers pay similar salaries for similar jobs. The difference between the other proposed salaries in the other comparable communities are close, but the difference between Washtenaw County, Chelsea and Saline salaries is nearly \$10,000 per year.

It appears that most of the Washtenaw County deputies come from smaller forces in the county and the surrounding counties. Some deputies become Command Officers and Command Officers go into private employers in the area. Lastly, the record is scant as to the similarities of the jobs of the Washtenaw County's Sheriffs Command and the Command in the Miland and Chelsea Police Departments.

In conclusion, the Arbitration Panel rejects the County's Labor Market Model for the reasons stated above.

3. THE UNION'S LABOR MARKET MODEL

A "Local Labor Market" may be defined as a geographic area in which a concentration in which workers can live, work and change jobs without changing residences. The theory of this Model is that by comparing the wages, benefits and conditions of employment of the set of similar employers in the same Labor Market will provide the fairest comparisons.

Section one of the Act provides as follows:

"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 provisions of this act, providing for compulsory arbitration, shall be liberally construed.

This conviction is shown in Elkouris and Elkouri in How Arbitration Works (Union Exhibit 6, page 808).

"In many cases strong reasons exist for using the prevailing practice of the same class of Employers within the locality or area for the comparison. Employees are sure to compare their lot with that of other employees doing similar work in the area; it is important that no sense of grievance be thereby created".

The County makes six very strong adoptions and convincing arguments against this Panel's adoption of the Union's Labor Market Model. The first is that:

"City Police departments and county sheriff's departments have responsibility for significantly different functions. A major responsibility of the County Sheriff's Department is operating the county jail. Several of the employees covered by the disputed contract are employed in the Corrections Division of the Sheriff's Department. The reference cities do not have a comparable operation or job classifications. In addition, the Sheriff's Department is statutorily required to provide court security".

In essence, the County is saying that the jobs are not similar. The impartial arbitrator does not believe this is the case for three reasons. Number one, while it is true that the jobs of deputies are somewhat different than that of police officers these two jobs are in general more similar than different; two, the Arbitration Panel is not comparing deputies to police officers, but is asked to compare Command Officers

of deputies to Command Officers of police officers.
thirdly, extensive testimony was taken about the chain of commands and job descriptions of Ann Arbor, Ypsilanti, and Washtenaw County Command. It is the opinion of the impartial arbitrator that only a few comparisons can be One Hundred Percent. A comparison of the command of the Washtenaw County Sheriff's Department and the command of Ypsilanti and Ann Arbor Police Departments, while not perfect, is the best offered.

The County's second argument is:

"The method in which cities are financed is different from that of counties. The millage rate is frequently higher in cities than in counties. Cities receive a significant share of sales tax collected by the state. Cities also receive a large share of state income tax. The cities also have the potential to impose an income tax, an alternative that is not available to counties. Under MCLA 423.239(c), the interests and welfare of the public and the financial ability of the unit of government to meet those costs are factors to be used by the arbitrator in his findings".

In essence, the county is saying that counties are financed differently than cities. The impartial arbitrator has three responses. The first is the record is void of any evidence as to any employers budget or their ability to pay. Two, the probable method of funding any major increase in the level of Law Enforcement service outside of the five or so cities in the State which have an income tax would be in the guess of the impartial arbitrator with a special millage election. Thirdly, this arbitration only involves a potential increase for approximately thirty command officers which is a minisqual portion of the county's total budget.

The County's third argument is:

The services required of the county are different from that of cities. The County has responsibility for operating the Circuit, Probate and Juvenile Courts, the Public Health Department, the Mental Health Department,

the Register of Deeds, the Drain Commissioner, and many other functions that cities are obviously not required to finance.

This argument is in essence to the same as argument number one from above and is rejected for the same reasons.

The County's fourth argument is:

"There are substantial differences in the land mass, and the characteristics of the land, in all of Washtenaw County versus that of either Ann Arbor or Ypsilanti. Washtenaw County includes over seven hundred square miles, while Ann Arbor has twenty-eight and Ypsilanti, four square miles. Washtenaw County includes areas that are largely rural and distinctly different from the cities. The geographic differences place different demands on the organization and organizational structure.

While this is true an examination of the record, reveals that the majority of Washtenaw County's Population, SEV, Command Officers work takes place in Ann Arbor, Ypsilanti and the County's Eastern Urbanized side; the comparable job descriptions are very similar, and that the Command from the three departs on occasion back each other up. So here again it is the opinion of the Arbitration Panel that while there may be some dissimilarities there are more similarities.

The County's fifth argument is:

Washtenaw County, as is the case with most other counties, compares with other counties when doing salary surveys and analysis for county jobs. It is important for any organization to have internal pay relationships that "make sense," and it would be poor compensation policy for the County to have pay levels for one group of jobs within the County to be set based on comparisons with entirely different selections of employers.

While this is, true section 9 (d) of the Act does not contemplate or limit comparisons of cities or even private employers to counties. A review of the last 312 Arbitration Opinion between the deputies and

the County indicates that the Washtenaw County Sheriffs Department historically compared itself to the Ann Arbor and Ypsilanti Police Departments. This is the typical comparison among deputies and officers in many counties in which there is one about equally sized police department in it.

The sixth argument of the county is its most compelling. This argument is in essence that if a local Labor Market "is a geographic area in which a concentration in which workers can live, work and change jobs without changing their residences", and if one examines where deputies come from to join the Washtenaw County Sheriffs Department and where the Command Officers now live, then the local Labor Market of the Employer is all the communities within a one hour drive of Washtenaw County (not just Ann Arbor and Ypsilanti).

The impartial arbitrator agrees with that. The geographic area in which a law enforcement office would be willing to drive from his or her residence to take a command position in the Washtenaw County Sheriffs Department is certainly larger than Washtenaw County.

D. DECISION AS TO COMPARABLE COMMUNITIES

The arbitration panel is left to choose between the two models: The Union's Local Labor Market Model consisting Ann Arbor and Ypsilanti and the Employer's County to County Model.

The principal drawback of the Union's Model is that the impartial arbitrator feels that the Local Labor Market for Washtenaw County Sheriffs Deputies is larger than Washtenaw County. The principal drawbacks of the County Model are: One, in theory, a Local Labor Market approach is closer to the ideal that the statute looks at in this Command Officers

case. The differences between deputies and police officers jobs do not exist in large part in command officers.

The second drawback of the Employer's County to County Model is that the comparisons are not strong in some cases. Ottawa and Berien Counties are not comparable to Washtenaw County. A Command Officer in those two counties is not going to compare his income to a Mid-Level Executive in the automobile industry, nor to a Command Law Enforcement Officer in an Agency in Detroit. The comparison to the other six counties are not that strong either.

The third drawback to the County to County Model is History. The last 312 Arbitrator adopted Ann Arbor and Ypsilanti as the comparable communities. That Arbitrator did so because that was the history of the parties at that time. This is a very compelling argument to the impartial arbitrator. One of the reasons for having a writing a grievance or Act 312 opinion is to help solve future problems. The historical interrelationship of the wages of the three departments, and that this opinion and the one before it both found Ann Arbor and Ypsilanti as the comparable communities would give considerable guidance to the parties when they negotiate further further wage packages.

The fourth drawback to the County to county approach is that this panel is bound by the record. The decision on the list of "Comparable Communities" must be based upon the competent material and substantive evidence introduced in the arbitration proceedings. MCLA 423.239 Section 9 (d)(i). City of Detroit v Detroit Police Officers Association, 408 Mich. 410, 294, NW 2d 68. This fourth drawback is another way of saying that if in the record were the wages and other data of the surrounding counties, and the wages and other data of the counties from

which Applicants for the Washtenaw County Sheriffs Department came from and the wages and other data of the counties where the COAM Employees live, then this panel could possibly construct a better County to County or Labor Market set of comparable communities. Fortunately or unfortunately, that data is not on the record. The Panel has to chose between what was presented.

For all the reasons stated above, the Arbitration Panel adopts the model as presented by Ann Maurer. The impartial arbitrator makes three additional comments. One, comparable communities are not identical to the Employer and therefore are only meant and will be used as one of the several factors listed in Section Nine of the Act. Two, if the record would have supported an explanation of the geographic area of a labor market model beyond Washtenaw County it probably would have been adopted and three, the fact that this is a Command Officers case made the comparability of jobs between a Sheriffs Department and City Police Departments easier.

III.

DURATION

A. Last Best Offers

The Union has proposed a two (2) year collective bargaining argument, being for 1989 and 1990, whereas the employer has proposed an Agreement for three (3) years, through 1991.

B. Discussion and Decision

As a result of the protracted collective bargaining and arbitration process, the proposed third year for the contract, 1991, is far less speculative than it may have been if the hearing had been held prior to the commencement of this agreement. It is the Panel's belief that to force the immediate return to the negotiating tables through the issuance of only a two (2) year contract could be counter productive. The Panel, therefore, adopts the Employers' Last Best Offer with regard to duration that being a three (3) year collective bargaining agreement running from January 1, 1989 through December 31, 1991.

IV.

WAGES

A. Last Offers

The Employer's Last Best Offer is a proposed pay increases for the Command Officers of 4% for 1989; 3.5% for 1990; and 3% for 1991.

The Union's Final Offer of Settlement for Wages is as follows:

	1/1/89		1/1/90		1/1/91	
	<u>Start</u>	<u>Top</u>	<u>Start</u>	<u>Top</u>	<u>Start</u>	<u>Top</u>
Sergeant	\$33,889	36,808	\$36,550	39,698	\$38,378	41,683
Communications Supervisor	33,889	36,808	36,550	39,698	38,378	41,683
Records Supervisor		29,441		31,741		33,328
2nd Lieutenant		38,228		40,827		42,868
1st Lieutenant		40,485		43,668		45,851

The Union requests wage adjustments which will bring its members up to the average scale with their counterparts in the Ann Arbor and Ypsilanti Police Departments in two (2) one year step increases. The Union also seeks a five (5) percent across - the - board cost of living increase for the third year. The Employer offers across - the - board increases of 4%, 3.5% and 3% respectively for each calendar year of the three year contract period.

B. Discussion

It is the charge of this Arbitration Panel to select one Last Offer or the other, based upon the applicable factors under Section 9 of the Act, MCLA 423.239. Section 9 (c) provides that the Panel review "The interests and small welfare of the public's and the financial ability of the unit of government to meet those costs".

Section One of the Act states that one of the purposes of the Act is to insure the high morale of these employees and for the efficient operation of this department. The record and the Union's last offer itself that these officers compare themselves to the two large cities in the county. In these days when the government is not held by the public in the high esteem as it should be, and when a Michigan Sheriff just resigned because of poor management by himself and the Undersheriff, it is the public's best interest and welfare that those who are in charge of the day to day operations of a Sheriff's Department maintain a high level of morale, training and experience. One way to insure this is to pay them what their counterparts make in the same Labor Market.

Section 9 (d) of the Act requires this Panel to compare the wages of the comparable communities. The selection of the comparable communities is not a science, but as much a process where this Panel developed a "feel" based on the record. As discussed above, Ann Arbor and Ypsilanti were selected because the County's County to County set of counties were based on only two factors that varied over 100% and that were not particularly illuminating. The other police agencies in Washtenaw County were not considered because: a) some were State or a regional agency which are not a community as defined in the Act and have their wage scales based on too large of a jurisdiction; b) one, agency had no 1989, 1990, and 1991 wages proffered.

and c) some agencies were so small that the job demands and responsibilities of commands between the county and these small agencies did not match. The Wages of Ann Arbor and Ypsilanti were presented, and the Union's Last Offer for was an average of the two comparable and then uses two (2) one year steps to bring this Union to that level. The Union's 1991 is a cost of living across - the - board increase.

Section 9 (e) of the Act requires this panel to consider, "The average consumer prices for goods and services, commonly known as the cost of living". The Consumer's Price Index (C.P.I.) or no hard the cost of living evidence was presented. The Union calls its 1991 wage offer a "Cost of Living" across - the - board increase and the employers last wage offer was percentage increases that were based in part on the cost of living. Courts and Attorneys use what is called, "Taking judicial notice" of very limited and universally accepted information. Some examples of this process in this opinion are that Washtenaw County is near the center of the Lower Peninsula, Berien and Ottawa Counties are on the Western side of the State and St. Clair is on the eastern side of the State. Among the parties to this Arbitration including the impartial arbitrator that the C.P.I. for 1989 and 1990 so far is approximately 4 to 5% per year, and 1991 is more unpredictable, but probably will be more than 5%.

It is impossible for the panel to separate the Parties Last Offers for the years 1989 and 1990 years if the panel choses to bring this group up to the level of the Ann Arbor and Ypsilanti average, but the two Last Offers for the year 1991 are both percentages and both in part based on the cost of living increases. It is for this reason that the 1991 Last Offers are severable and will be treated separately.

The Employer's wage Last Offer (7.5%) for 1989 and 1990 is below the cost of living and the Union's 1989 and 1990 Last Offer (14.5%) for wages is above the cost of living. The Employer's Last Offer of 3% for 1991 wages increase is below what might be expected to be the cost of living, and the Union's Offer of 5% also will probably be below the expected C.P.I.

Section 9 (f) of the Act requires this panel to consider, "The over-all 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". The Employer agreed that this panel should look at the pension benefits that were agreed upon and received by this unit in the last two contracts. In essence the Employer is saying then Union asked for and was given pension increase in lieu of wage increase in the past, and therefore are now below their historical comparables, and now the Union is in this arbitration asking to be brought to an equal to the same comparables they voluntarily departed from. In the opinion of the impartial arbitrator, the Employer's strongest two arguments were "the Labor Market for Washtenaw County is larger than Washtenaw County" and this argument. Remembering that inability to pay was never raised by the County, if the Employer's Last Offer on wages met or was close to the cost of living, the impartial arbitrator would have approved such an award using Ann Arbor and Ypsilanti as comparable communities and basing the difference between the Union's Last Offer for wages on the 9 (f) of the Union voluntarily departed from their historical comparables to get pension increases. In a like manner, Section 9 (f) of the Act and the impartial arbitrator can not condone reducing this unit wage compared to its historical comparable through less than the cost of living increases.

Section 9 (h) of the Act requires this panel to consider, "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.

In this regard, this author would like to make two statements. First, it is not uncommon to give wage increases above the cost of living. These days, 4% to 6 1/2% per year wage increases are not unusual. Second, this author spent a day researching and thinking through the possibility of reopening the arbitrations to ask for new Last Offers since he felt, "Put in a box" by and Employer's total Last Offer of 10.5% and a Union's total Last Offer of 30.5% when the cost of living from 1-1-89 to 12-31-89 will probably be in the neighborhood of 15 or 16%.

The ultimate decision as to whether to reopen the arbitration was the belief that the parties could better settle this contract themselves versus the belief that the parties got an impartial arbitrator to make a decision and that is what he or she should do. To reopen the arbitration would do harm to the negotiation process, mediation process, and the final last offer methodology of the 312 arbitration.

C. Decision

The Final Last Offer for wages for 1989 and 1990 of the Union is accepted, and the Final Last Offer for wages for 1991 of the Employer is accepted.

V.

PENSIONS

A. Last Offers

The Employer's Last Offer in regard to pension is that the current pension system remains unchanged. The Union's Last Offer includes three changes.

1. Final Average

The first proposal of the Union which seeks to amend point four of Article XXVII of the pension system for these officer to: "27.4: Final Average Compensation is the average of the compensation paid the employee by the Employer during the period of three (3) consecutive years of service which produces the highest average. The three (3) consecutive years must be within the employee's last ten (10) years of credited services".

The current language is identical to the Union's proposal except it has "five (5)" every place that the proposal has "three (3)". The Employer's proposal is to keep the current language that has final average compensation as five (5) years. The parties stipulated that the cost of this change will be 4.21%.

2. Rate of Contribution

The Union's second proposal seeks to amend Point Fourteen of Article XXVII of these officers pension system. The current language is: "Pension 27.14 effective January 1, 1988, employee's contribution to the pension plan will be ten (10%) percent of payroll".

The Union's Final Offer in regard to 27.14 is: "Pension 27.14 Effective July 1, 1991, employee's contribution to the pension plan will be five (5) percent of Payroll".

The cost to the Employer of this proposal would be 4.97% of these employees wages.

3. Defined Benefits

The Union's third proposal seeks to amend point Twelve of Article XXVII of these officers pension system. The current language is:

"27.12 Effective 1-1-88, benefits are based on salary and length of service, being equal to two and one-half (2-1/2%) percent of final average compensation times number of years of service upon retirement, with a maximum of seventy-five (75%) percent of final average compensation as set forth in the Retirement By-Laws. The result of this computation is the amount of annual retirement benefits. The two and one-half (2-1/2%) percent factor will remain in effect until the social security eligibility date (age 62) at which time the factor will be reduced to two (2%) percent".

The Union's Final Offer of Settlement in regard to 27.12 is:

Pension 27.12: Effective January 1, 1988, benefits are based on salary and length of service, being equal to two and one-half (2-1/2%) percent of final average compensation times number of years of service upon retirement, with a maximum of seventy-five (75%) percent of final average compensation as set forth in the Retirement By-Laws. The result of this computation is the amount of annual retirement benefits. The two and one-half (2-1/2%) percent factor will remain in effect until the age at which the employee becomes eligible for full social security benefits, at which time the factor will be reduced to two (2%) percent".

The Union's Final Offer in regard to 27.12 of the pension system is: "27.12:

Effective January 1, 1988, benefits are based on salary and length of service, being equal to two and one-half (2-1/2%) percent of final average compensation times number of years of service upon retirement, with a maximum of seventy-five (75%) percent of final average compensation as set forth in the Retirement By-Laws. The result of this computation is the amount of annual retirement benefits. The two and one-half (2-1/2%) percent factor will remain in effect until the age at which the employee becomes eligible for full social security benefits, at which time the factor will be reduced to two (2%) percent".

The cost to the Employer of this proposal is 1.82% of Payroll.

n. Comparable Communities and Discussion

It is very difficult to compare County Law Enforcement systems to City Law Enforcement Pension Systems. They are based on different statutes. The Law Enforcement Personnel cities typically are not members of the Social Security System while the Sheriff's Department typically are. This results in very different total Pension packages at different costs to both the Employer and the Employees. For that reason, and for the reasons discussed in Wage Comparable Communities Genesee, Ingham, Kalamazoo, Monroe, Saginaw, and St. Clair Counties and the Cities of Ann Arbor and Ypsilanti will be the comparable communities for the three pension issues.

It is noteworthy to mention two unusually characteristics of this retirement system. One, it is a closed system. That is to say that any new Sheriff's Department employees can not be a member of this retirement system. Two, this system while it is county wide, these proposed amendments will only affect this unit.

The County succinctly summarixed the proofs that is presented in relation to the pension issues in it's Post Hearing Brief.

"In it's final best offer, the County proposed that there be no change in the current pension plan that is offered to the COAM bargaining unit. Washtenaw County Sheriff's Department is the only county in the State of Michigan, and also the only law enforcement agency in Washtenaw County other than the City of Ypsilanti with a twenty-and-out provision in the retirement program. The twenty-and-out system was adopted in 1988. In addition, at the same time, the County increased the multiplier from 2% to 2.5% for any years before age 62, and 2% after age 62. There had been another enhancement in 1983. Prior to 1983, the eligibility requirements were 60 years of age with eight years of service. In 1983, they were changed to 25 years of service at age 50. Prior to 1983, the multiplier was 1.2% of the first \$4,200 of compensation and 1.7% of the compensation

over that amount. The 1983 enhancement changed it to a straight 2% multiplier. The present county benefit will replace, at retirement age of 55, approximately 69.2% of the pre-retirement spendable income.

When comparing the Washtenaw County command officers versus the command officers in comparable communities, the following were found:

1. Washtenaw County is the only twenty-and-out county.
2. Washtenaw County has the highest factor (2.5%) used before age 62.
3. Thirteen of the counties compared used all of the dollars to figure the benefit formula. Washtenaw County was one of those.
4. The number of years used to calculate the final average salary was five years in every single one of the counties, including Washtenaw, with the exception of Macomb County, which uses three years to determine the final average salary".

When comparing Washtenaw County to the other law enforcement agencies within Washtenaw County, the following was found:

1. Washtenaw County and the City of Ypsilanti were the only law enforcement agencies that offered twenty-and-out.
2. Only three of the eight law enforcement agencies used a percentage factor equal to or better than Washtenaw County when computing the benefit formula.
3. The majority of all the law enforcement agencies in Washtenaw county use five years to determine the final average salary.

Therefore, Washtenaw County has one of the best retirement systems when compared to other comparable counties in the state. Further, when compared to the law enforcement agencies within Washtenaw County, the Sheriff's Department pension plan, again, is far better than most".

The Union has made three responses which are especially noteworthy. The first may be summarized as while this unit may have a good retirement system these officers pay in 17.65% of their gross income to fund their retirement, while the command in Ann Arbor pay 5% of their gross income, the command officers in Ypsilanti pay 10% of their income, and in most other

comparable communities the percentage of contribution is about 12.65%.

The Union's second response is well stated in it's Memorandum In Support of Final Offer of Settlement.

"Gerald Fisher, the County Finance Director testified that the pension plan has been "over-funded" in recent years and remains 98 to 99 percent funded today (Tr. III, pp. 110 - 111). He also admitted that when the pension plan was last improved and the employee contribution increased by 5% (to present 10%) the actual cost was only 4.17% although employees paid 5% for the improvement. He stated that "This costs less than was forecast at the time the agreement was signed". (Tr. III, p. 115). The Union does not allege that costs were intentionally misstated. The difference which subsequently developed however, is an amount unnecessarily being deducted from employee's earnings. The full 5% is not needed to fund the benefit. Given the advantage of experience and hindsight, the Union now seeks to rectify that situation".

The Union's third response is that they "seek to amend the pension plan to reflect recent changes in Social Security, that is, place the decrease in the Washtenaw County pension benefit at the age that normal, unreduced Social Security Benefits become available, not at the present arbitrary age of 62." That is to say that the Federal Government increased the age of retirement under the Social Security System and this proposal seeks to correct that change.

C. Discussion

The Arbitration Panel agrees with the Employer. When compared to other retirement systems this one is "better than most", and therefore the Union's pension proposal for a change in the number of years in the definition of final average compensation and the change to the pension system in "Defined Benefits". That is related to the Social Security change (i.e. change the multiplier to the normal age of retirement from the current age of 62) is denied.

It also appears that a contribution rate by the employees of 17.65% of gross income is high as compared to the rate from the other comparable communities. Therefore, the Union's pension proposal to reduced effective July 1, 1991, the employees rate of contribution from 10% to 5% is granted.

The Union's Final Offer in regard to contribution rate is:
"Pension 27.14 Effective July 1, 1991, employee's contribution to the pension plan will be five (5) percent of Payroll", and is adopted by a majority of the panel.

VI.

HOLIDAYS

A. Last Offers

The County proposes that, effective 1-1-91, Lincoln's Birthday, which is on February 12 be eliminated and, in its place, substitute the day after Thanksgiving as a holdiai. The employer's proposal does not add or subtract any holidays on a net basis. The Union requests the status quo.

B. Discussion

Presently, the contract includes two February holidays. In addition to Lincoln's Birthday holiday, there is also Washington's Birthday, which is now sometimes called President's Day and is celebrated the third Monday of February.

The rest of County employees over the last couple of years have adopted the day after Thanksgiving holdiai in lieu of Lincoln's Birthday holiday. Consequently, the COAM has a holiday on a day when all public offices, including the courts, are open for normal operations, and is at work on a day when the rest of the County, including the Courts, are closed.

It was also proferred in the record in relation to the shift preference issue that this unit is relatively young, and many of their members have families that require child care. Like Washtenaw County, many schools and comparable communities are closed on the day after Thanksgiving and are open on Lincoln's Birthday.

C. Decision

The majority of the Arbitration Panel agrees with the employer that effective 1-1-91, the holiday of Lincoln's Birthday is eliminated and in its place the day after Thanksgiving is substituted as a holiday. This

is clearly the most cost effective to the citizens, and detracts little from the unit.

VIII.

OVERTIME AND HOURS OF WORK

This issue was initially proposed by the County, and opposed by the Union. The County withdrew this proposal in the Arbitration hearing and the Union did not object. Therefore, no changes will be made in Overtime and Hours of Work section of the contract in this award.

IX.

PROMOTIONS

A. Last Offers

It is proposed by the County that when a Lieutenant's position becomes vacant or when there is a newly created position, that the Sheriff has full discretion to fill this position with the candidate of his choice. The Union favors the existing language which requires the filling of vacancies of Lieutenants with COAM members.

B. Discussion

This like the "duration issue" is a non-economic issue. The County stated that it "proposes the changes in promotion language for affirmative action reasons". "It is the Employer's position that the Sheriff's Department has been consistently under represented by women and minorities, especially in the command ranks". The record indicates numbers, and percentages of underutilization. But the testimony of Annette Myles, the Human Resources Assistant for Affirmative Action and Equal Employment Opportunities for the County was convincing that the percentage of females in command positions and the percentage of minorities in command positions were "Very Low".

The Union argues, from a morale standpoint a good way to encourage talented, hard working employees to seek employment elsewhere is to file senior positions from the outside. It plainly tells these employers "You're not good enough". "You are stuck at your level forever". "And if you want a promotion, you had better start looking outside the agency".

The Union also cautions this panel to be weary when a politician wants to file command positions from outside of the unit because the

Sheriff's motives might be political. Lastly, when Annette Myles was cross examined she stated, "I don't know of any discrimination in the command unit".

Employer's Exhibit number 14, an Arbitrator's Opinion and Award (Washtenaw County v. F.O.P., signed April 14, 1986) is convincing that the Sheriff brings this proposal with the proper motives. In that arbitration in 1986, Sheriff Schebil, the current co-employer, attempted to promote a female and a minority to the rank of sergeant. The F.O.P., the Union that then represented the deputies grieved the attempted promotions. This grievance was upheld by George T. Roumell, Jr., one of Michigan's few white civil rights champions who has tried affirmative actions cases before the United States Supreme Court. In ruling that affirmative action, promotions were in violation of the contract he added, "This Arbitration (George T. Roumell, Jr.) is not acting as an Act 312 Panel Chairman. If he were, then the results may very well be different here because he recognizes, as the Supreme Court did in Weber, the possible necessity for such plans, particularly in a community as Washtenaw County, for the reasons Sheriff Schebil innunciated".

Undersheriff, Michael Johnson explained in his testimony the importance of having a command that reflects the racial and sexual make up of the community. The Arbitration Panel believes that the Undersheriff's statements are true of Government in general and are even more crucial to a law enforcement agency.

Lastly, the working of the proposed language leads this panel to believe the Employer's motives are proper. In essence, the language states that promotions are to be internally filled "unless the Sheriff determines that it is necessary to hire someone from the outside". Necessary is not a whim, but is an important reason such as "very low" affirmative action

underutilization. Whatever the necessity is, this panel is assured that if this provision is used that use will be grievable.

C. Decision

Because of MCLA 423.239 (c) among other reasons the Arbitration Panel adopts the Employer's proposed language in the Employer's Exhibit Number 10, as corrected on the record of page 12 of the transcript of May 14, 1990. That language is: "Article XII, Section 2. When it is determined by the Sheriff that there is a vacancy in a first or a second lieutenants position classification or in a newly created position classification, members of the unit shall be eligible to transfer or to be promoted to said position classification unless the Sheriff determines that it is necessary to hire someone from outside of the bargaining unit".

"Article XII, Section 5: The minimum requirements for the rank of 1st Lieutenant shall be at least four (4) years law enforcement or corrections experience, including one (1) year in a command position".

X.

GENERAL CONCLUSION

Act 312 Arbitration should be considered to be a last resort, not a way of life. This Arbitrator has written an award that is likely to please no one. This is a risk litigants take when they entrust decision making to a stranger. This stranger would like to thank Mr. Birdseye and Mr. Guenzel who did an outstanding job of educating the Impartial Arbitrator, the parties for their hospitality and especially a large thanks to Susan Beale, Certified Court Reporter; Lee Ann Alestra, Mr. Birdseye's secretary, Mary Lou Heidt, of Washtenaw County Corporation Counsel and Maria VanOchten, my Paralegal who arranged and rearranged many calendar dates, parking spots, meeting rooms and produced hundreds of pages of transcripts and exhibits that made this opinion and award possible.

Dated: November 1, 1990

Henry J. Sepcovic
HENRY J. SEPCOVIC, Chairperson

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY ARBITRATION TRIBUNAL

IN THE MATTER OF THE ARBITRATION BETWEEN:

WASHTENAW COUNTY and RONALD J. SCHEBIL,
WASHTENAW COUNTY SHERIFF,

Employers,

vs.

COMMAND OFFICERS ASSOCIATION OF
MICHIGAN,

Union,

Act 312 of 1989
Merc Case No. D89 A-122
Arbitration Panel:
Henry J. Sefcovic;
William Birdseye, and
Michael Johnson

ACT 312 ARBITRATION OPINION AND AWARD

UNION REPRESENTATIVE'S CONCURRENCE
IN PART AND DISSENT IN PART

This Panel member concurs in part and dissents in part in the opinion and award issued by the Chairperson, Henry J. Sefcovic in the above entitled matter.

I concur with the Chairperson on the following specific issues:

1. Comparable Communities;
2. Wages (1989);
3. Wages (1990);
4. Pension (Employee Contribution Rate);
5. Shift Preference, and
6. Overtime and Hours of Work.

I dissent with the Chairperson on following specific issues:

1. Duration;
2. 1991 Wages;
3. Pension (Final Average Compensation);
4. Pension (Defined Benefits);
5. Holiday, and
6. Promotions.

Dated: November 1, 1990



WILLIAM BIRDSEYE,
Union Representative

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ACT 312 ARBITRATION OPINION AND AWARD

EMPLOYER REPRESENTATIVES' CONCURRENCE
IN PART AND DISSENT IN PART

This Panel member concurs in part and dissents in part in the Opinion and award issued by the Chairperson, Henry J. Sefcovic in the above entitled matter.

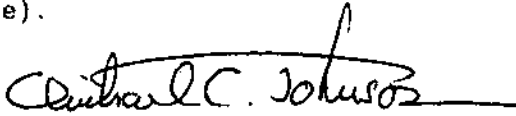
I concur with the Chairperson on the following specific issues:

1. Duration;
2. Wages (1991);
3. Pension (Final Average Compensation);
4. Pension (Defined Benefits);
5. Shift Preference;
6. Overtime and Hours of Work;
7. Holiday, and
8. Promotions.

I dissent with the Chairperson on the following specific issues:

1. Comparable Communities;
2. Wages (1989);
3. Wages (1990) *AND*
4. Pension (employee Contribution Rate).

Dated: November 1, 1990


MICHAEL JOHNSON,
Employer Representative