

1924

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 MANDATORY ARBITRATION

In the Matter of Arbitration between:

Arbitration pursuant to Public Act

COUNTY OF KALAMAZOO AND
SHERIFF OF THE COUNTY OF KALAMAZOO

312, Public Acts of 1969, amended

-and-

MERC CASE NUMBER:

KALAMAZOO COUNTY SHERIFF'S DEPUTIES
ASSOCIATION

G 95 I-3008

OPINION AND AWARD FOR THE ACT 312 ARBITRATION PANEL

Richard E. Allen, Chairman and Impartial Arbitrator

Michael Ward, Delegate for Association

John Manske, Delegate for County of Kalamazoo

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
RECORDS OFFICE

97 OCT 7 PM 1:18

PRELIMINARY STATEMENT

This matter is a mandatory interest arbitration, pursuant to Act 312 of the Public Acts of the State of Michigan, 1969, as amended, MCLA 423.231 et seq., MSA 17.455 (31), known as the Michigan Policemen's and Firemen's Compulsory Arbitration Act. It is the public policy of the State of Michigan that, where the right of policemen and firemen to strike is by law prohibited, such employees are afforded compulsory arbitration, as an alternative and binding procedure for resolution of disputes on wages, hours and working conditions.

The parties to this proceeding are the County of Kalamazoo, Sheriff of the County of Kalamazoo (Employer) and Kalamazoo County Sheriff's Deputies Association (Association). The most recent collective bargaining agreement (Agreement) between the parties became effective January 1, 1994 and terminated on December 31, 1995. The bargaining unit consists of approximately one hundred and forty (140) employees in the following job classifications, as specified in Appendix "A", and attached to the Agreement:

"Cook, Electronic Technician, Dispatcher, Officer I, Chief Cook, Bailiff, Deputy Correction Officer II, Nurse, Sergeant II Technical Sergeant, Sergeant I Detective, Polygraph Examiner, Dispatcher, Clerk Typist I, Clerk Typist II, Account Clerk II, Clerk Steno II"

As the result of unsuccessful bargaining by the parties in this contract dispute, and mediation assistance, the Petition for Arbitration was timely filed with the Michigan Employment Relations Commission on January 2, 1996.

Pursuant to Public Act 312 of 1969, the Michigan Employment Relations Commission appointed Richard E. Allen to serve as the impartial arbitrator and chairperson of the Act 312 Arbitration Panel. The Employer Delegate is John Manske and the Delegate for the Association is Michael Ward.

A Pre-Haring Conference was held on June 26, 1996 at the Administrative Offices of the County of Kalamazoo. The delegates agreed to conduct an Act 312 Hearing on September 17, 18 and 19, 1996. On the morning of September 17, 1996, the delegates informed the chairman of the arbitration panel that the parties had reached a tentative settlement, and proposed such settlement be presented to the members of the Association for ratification. The settlement was rejected by the membership; thereafter, on December 17, 1996, the chairman scheduled an executive session to determine the possibility of reaching a settlement, or reducing the number of unresolved issues. The parties were not successful in reaching a settlement on the unresolved issues; therefore, a Hearing was scheduled for April 22, 23, and 24, 1997.

As a result of three days of discussions, testimony and the presentation of exhibits by the respective parties, the following issues were settled and withdrawn by the parties.

ISSUES PROPOSED BY THE ASSOCIATION AND SETTLED AND WITHDRAWN:

ITEM:

2. Article III, VACATIONS, SECTION 3
4. Article IV, INSURANCE, SECTION 3
5. Article IV, INSURANCE, SECTION 4
7. Article V, SICK LEAVE, SECTION 1
9. Article VIII SHIFT DIFFERENTIAL, SECTION 1
10. Article IX, HOLIDAYS, SECTION 1
12. Article XI, LONGEVITY, SECTION 1
16. Article XVIII, LEAVE OF ABSENCE SECTION 5
18. Article XXII, MISCELLANEOUS, SECTION 9
19. Article XXII, MISCELLANEOUS, SECTION 14
20. Classifications SI AND SII
21. Incorporate Drug and Alcohol Policy in Agreement

ISSUES PROPOSED BY THE EMPLOYER AND SETTLED AND WITHDRAWN:

ITEM:

1. Article IV, INSURANCE, SECTION 1
3. Article VIII, SHIFT DIFFERENTIAL, SECTION 1
9. COMPENSATORY TIME
10. INCORPORATE DRUG AND ALCOHOL POLICY IN AGREEMENT
11. JOB STAGNATION

As a result of three days of discussions, testimony and the presentation of exhibits by the respective parties, the following issues and proposals are to be resolved by the Act 312 Arbitration Panel, based upon the last Best Offer of each of the parties:

ISSUES PROPOSED BY THE ASSOCIATION AND UNRESOLVED: SUBJECT TO ACT 312 ARBITRATION AWARD:

ITEM:

1. Article III, VACATIONS, SECTION 2
3. Article IV, INSURANCE, SECTION 2
6. Article IV, INSURANCE, SECTION 7
7. Article V, SICK LEAVE SECTION 2 (b)
8. Article V, SICK LEAVE SECTION 7
11. Article X WORKERS COMPENSATION SECTION 1(a)
13. Article XVII CLOTHING ALLOWANCE, SECTION 1
14. WORK WEEK SCHEDULE
15. BONUS PAYMENT
17. Article XXII, SECTION 8
22. APPENDIX C AMENDED
23. APPENDIX A AMENDED
24. AGREEMENT DURATION

ISSUES PROPOSED BY THE EMPLOYER AND UNRESOLVED: SUBJECT TO ACT 312
ARBITRATION AWARD:

ITEM:

2. Article V, SECTION 4
4. Article IX, SECTION 3
5. Article X, SECTION 1
6. Article X, SECTION 2
7. Article XIII, SECTION 1 (e)
8. Article XVIII SECTION 5
12. RECALL RIGHTS
13. VACATION TIME
14. APPENDIX A AMENDED
15. APPENDIX B DELETED

The parties submitted exact contract language regarding their respective Last Best Offers on each of their economic and non-economic proposals. At the three days Hearing in April, the parties each submitted exhibits and testimony in support of their positions as to comparables, finances, and copies of other communities recently negotiated collective bargaining agreements. The parties granted the Chairperson the discretion to select which of the comparables would be considered as most relevant and appropriate to the matters in dispute.

APPLICABLE CRITERIA AND RELEVANT CONSIDERATIONS

The pertinent provisions of Act 312 of the Public Acts of 1969, as amended, provides in Section 8 as to each economic issue the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9.

Section 9 of Act 312 provides 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 proposed new, or amended agreement are in dispute, the arbitration panel shall base it's 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) Comparisons of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (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, factfinding, arbitration or otherwise between the parties, in the public service or in private employment."

The arbitration panel may determine which factors contained in Section 9 of Act 312 are the most important under the particular facts presented, and need not afford each fact equal weight. See *City of Detroit*, 408, Mich 410; 294 N.W. 2nd 68, 97, (1980).

The court held in part that:

"The fact that an arbitral majority may not be persuaded by a party's evidence and argument as to certain items does not mean that those arbitrators failed to give the statutory factors that consideration required by law. The Legislature has neither expressly nor implicitly evinced any intention in Act 312 that each factor in Section 9 be accorded equal weight. Instead, the Legislature has made their treatment, where applicable, mandatory on the panel through the use of the word 'shall' in Sections 8 and 9. In effect then, the Section 9 factors provide a compulsory checklist to ensure that the arbitrators render an award only after taking into consideration those factors deemed relevant by the Legislature and codified in Section 9. Since the Section 9 factors are not intrinsically weighted, they cannot of themselves provide the arbitrator with an answer. It is the panel which must make the difficult decision of determining which particular factors are more important in resolving a contested issue under the singular facts of a case, although, of course, all 'applicable' factors must be considered."

In the instant case, I have applied the factors set forth in Section 9, and given varying weight to the criteria, depending upon the nature of the issue, and the impact of each issue upon the total package settlement.

I have also given substantial weight to the economic reality that public sector employers and organized employees, under the confines of Act 312 are precluded from exercising economic pressure via the traditional collective bargaining weapons of a strike or lock-out.

In determining the merits of the parties Last Best Offers, in addition to considering all the factors specified in Section 9 of the Act, I have taken into account the following practical economic realities and traditional collective bargaining tactics.

ARBITRATION AS A SUBSTITUTE FOR ECONOMIC WEAPONS

Act 312 arbitration evolved from the public sector's need to abolish the threat of, or actual work stoppages in such vital community services as police and fire protection. The Act provides for the resolution of an impasse in collective bargaining via final and binding decisions rendered by a neutral. The Act requires the employer to surrender the use of the lock-out, and organized employees must relinquish the right to strike. In essence, arbitration becomes a substitute for the traditional economic weapons of collective bargaining.

The interest arbitrator must determine how the parties would have resolved the issues had they been subjected to economic pressures of a work stoppage. The arbitrator must determine what a reasonable person would have agreed to accept as part of the agreement under such economic pressure. Under such conditions, what would the collective bargaining process have produced as a "Total" economic package?

The arbitrator must protect the fundamental rights of management, just like a management negotiator would do. The arbitrator must protect the vital welfare of the employee, just like an employee representative would do. Finally, the arbitrator must protect the rights and welfare of the public. Any position that is excessive, harsh or uncessasry, will most likely be unacceptable to the parties, and should be rejected by the panel. The party proposing any change in the existing agreement must bear the burden of proving the necessity for the change, with supporting facts and reasons for the requested change. Without substantial supporting facts and reasons as to the necessity for a change, a

neutral must decline to make changes, merely for the sake of making changes, or placating one of the parties. Some collective bargaining proposals are offered as a bargaining "chip", to be traded in order to gain something else. As an arbitrator I must not act as an absolute dictator, but rather I must become an agent of the public and the interest of the community, as well as the agent for employer and an agent for the employees. All three entities must be treated as equals, and with separate interests that must be granted, or denied, depending upon the *proven* necessity.

PREVAILING PRACTICES

A comparison of similarly situated, employers and employees recently negotiated collective bargaining agreements, is a relevant factor to be considered by negotiators, and likewise interest arbitrators vested with the responsibility of determining what constitutes a fair collective bargaining settlement. The prevailing wages and working conditions of other similarly situated employees in like communities has traditionally been a measuring rod, in both private and public sector collective bargaining.

In the instant case, the parties have submitted comparable communities as influencing and controlling in their situation. The Association has submitted a "Comparable Community Analysis" of the Kalamazoo County Sheriff's Association relationship with the City of Kalamazoo, Kalamazoo Township and the City of Portage as comparable communities. The Association urges these communities be considered because of a number of commonly shared situations. They point out the shared labor market, where the Kalamazoo County Sheriff's Deputies work on a day to day basis with officers from these three jurisdictions, and all of them are supported by taxpayers in the same area. All four units of police officers belong to the same local union. The four units have daily work contact in such projects as drug enforcement, training and daily back-up calls for assistance.

As to the three communities offered by the Association, I find the testimony of of Larry F. Bean to be relevant and persuasive, particularly as to the following comments:

"The Association believes these employers are comparable, because they exist in the same labor market as the Kalamazoo County Sheriff's Department. Kalamazoo County Sheriff's deputies work on a day-to-day basis with officers from these three jurisdictions. These three jurisdictions are supported by taxpayers, by the taxpayers that live and work in this area and have agreed to a common law enforcement millage supported--to support police activities in this county. (Tr 35)

Officer Bean also testified: *"Kalamazoo County sheriff's Deputies also patrol the streets and enforce laws within each of these three comparable communities. The four units share financially from the same funding source. Kalamazoo County has a law enforcement millage which is shared by all four communities...The officers of Kalamazoo Sheriff's Department are an integrative part of the greater Kalamazoo County labor market. The Kalamazoo County Sheriff's Department officers share the same work environment, cost of living, crime element and dangers as the officers in the other three agencies, and therefore, should share and be compared to those officers for the purposes of wages and fringe benefits. " (Tr 39-40)*

I find the communities offered by the Association, namely the City of Kalamazoo, Kalamazoo Township, and the City of Portage are comparable to the Kalamazoo County Sheriff's Department and all four communities have similarly situated employees for the purpose of collective bargaining.

As to the Employer's offer of comparable communities, Mr. Kinas, the Human Resources Director, testified wages and benefits are determined by recommendations to the Board of Commissioners on an annual basis as part of the budget process. He explained his function was to survey the market, look at the budget, within its limitations and restrictions, making certain the job classifications accurately describes the jobs relative to their rank in the organization.

He said, generally there is a comparison of Kalamazoo County with other counties by population, using the next two larger counties, and the next two smaller counties in population rank to Kalamazoo. A Comparable Exhibit reveals Kalamazoo County's population is 225,648. The two smaller counties in the comparable population are Ottawa County 197,297 and Saginaw County 212,477. The two larger counties in population are Ingham County 281,798 and Washtenaw County 288,025. These are the four counties utilized in studying comparable job classifications.

The parties stipulated the Chairman had the discretion to determine the composition of the comparables, for the purpose of this Act 312 Arbitration. I find the three comparable communities offered by the Association, namely the City of Kalamazoo, Kalamazoo Township and the City of Portage, are all relevant comparable communities and should be considered in evaluating the Last Best Offers of the respective parties. I find the four counties offered by the Employer, namely Ottawa, Saginaw, Ingham and Washtenaw, are all relevant comparable communities and should be considered in evaluating the Last Best Offers of the respective parties.

THE "TOTAL PACKAGE" IN COLLECTIVE BARGAINING

Negotiated collective bargaining agreements are a final combination of a series of compromises, trade-offs and a practical evaluation by the parties of what they can "live with" for the duration of the agreement. The wages, benefits and contract language are a product of the give and take in collective bargaining. The final agreement is a settlement arrived at after the parties believe they can not risk seeking more without severe economic consequences. The neutral must be careful *not to grant more* than the parties would have been able to gain in the actual bargaining process. The interest arbitrator must sort out from many different proposals, and determine which are vital and necessary to the operation of the organization and the welfare of the employees. Often this results in a settlement composed of a "total package", giving consideration to all the demands of the parties, and incorporating the most necessary demands and changes proposed by each party.

If neither party is completely satisfied with the final settlement, that fact may indicate the settlement is a fair one. If there is no clear winner, then there is no clear loser. The neutral must determine which issues would remain on the bargaining table to the bitter end and are vital to the existence of the parties. Which items fundamentally affect the operation of the organization? Which items are necessary to the welfare of the employees? Each proposal must be examined on the basis of its necessity and the supporting facts and reasons for its adoption.

In the instant case, since there are nearly twenty separate unresolved issues, I believe it best to arrive at a "total package" settlement based upon what would the negotiators have agreed upon if subjected to traditional collective bargaining, including all the accompanying economic pressures. How many of the nearly twenty unresolved issues would have remained on the table, and which issues would have been incorporated into the final agreement?

The central element in many labor contract settlements involves the economic proposals relating to the employer's labor costs; which translates into the amount and extent of wages to be paid to the employees. Wages are the key ingredient to an employee's economic welfare. Wages are the greatest single component of the employers labor costs. Therefore, the wage settlement has a significant impact, and considerable influence, upon any determinations regarding the remaining issues. The amount and extent of the wage settlement greatly influences which, and how many of the remaining items will be incorporated into the final settlement. In arriving at the components of the final settlement, in the instant case, I have applied the "Total Package" concept in determining which of the remaining items would, by necessity and merit, have most likely been incorporated into the final settlement. Obviously, there is no exact formula or science in determining which items should be included in the final settlement; However, in applying a "Total Package" concept, a neutral can first arrive at the amount and extent of the wage settlement, and then from that point evaluate which of the remaining items deserve, and most likely would have been incorporated into the final settlement by the parties themselves. In the instant case, once I have determined the amount and extent of the wages to be granted within the duration of the agreement, I can then evaluate, and make a determination as to which of the remaining issues merit incorporation into the final settlement.

The Association has offered the following comparable data regarding the compensation of Patrol Officers. It should be noted the City of Kalamazoo and Kalamazoo Township *do not have any Cost of Living Adjustments (COLA)*. Portage and the Kalamazoo County Sheriff's Deputies *do have Cost of Living adjustments (COLA)*.

Patrol Officers

| | | |
|--|-------------------|-----------------|
| <i>Salary on:</i> | <i>1-1-96</i> | <i>1-1-97</i> |
| <i>City of Kalamazoo</i> | <i>\$43,576</i> | <i>\$44,892</i> |
| <i>Kalamazoo Township</i> | <i>43,014</i> | <i>44,304</i> |
| <i>City of Portage</i> | <i>43,811</i> | <i>open</i> |
| <i>Average</i> | <i>43,467</i> | <i>open</i> |
| <i>Kalamazoo County Sheriff's Deputies</i> | <i>42,788</i> | <i>open</i> |

The Employer has offered evidence that the Kalamazoo County Sheriff's Deputies salary of \$42,788 on January 1, 1996 has since then been increased via quarterly Cost of Living Adjustments as follows:

| | <i>COLA % increase</i> | <i>total salary</i> |
|-------------------------|------------------------|---------------------|
| <i>January 1996</i> | <i>.47%</i> | <i>\$42,788</i> |
| <i>April 1996</i> | <i>.86%</i> | <i>43,156</i> |
| <i>July 1996</i> | <i>1.18%</i> | <i>43,665</i> |
| <i>October 1996</i> | <i>.32%</i> | <i>43,805</i> |
| | <hr/> | |
| | <i>2.83%</i> | |
| <i>January 1997</i> | <i>.91%</i> | <i>44,204</i> |
| <i>April 1997</i> | <i>.58%</i> | <i>44,460</i> |
| | <hr/> | |
| | <i>1.49%</i> | |

The Association points out the 2.83% increase in 1996 equates to 1.73% increase, since the entire 2.83% was not received all at once, but rather was piecemealed out over the period of twelve months during the year of 1996. However, it should also be noted that from this point forward the employees will fully benefit from the impact of any Cost of Living Adjustment increases on wages, including the 1.49% increase in 1997.

The Parties agreed the collective bargaining agreement shall expire on December 31, 1997. A major area of dispute is the continuance of the Cost of Living clause as set forth in Appendix B of the Agreement.

Historically this clause has been incorporated in the Agreement for more than 20 years. The language of Appendix B provides for quarterly adjustments, on the first day of January, April, July and October of each year, in the wages paid to bargaining unit employees. The adjustment in wages is based upon percentage changes in the revised Consumer Price Index (CPI-W) in the preceding three (3) months. The Cost of Living Adjustments continue *even after the expiration of the Agreement on December 31, 1995*. Therefore, the bargaining unit employees have continued to receive COLA payments since December 31, 1995, hence the 2.83 % and 1.49% increase have been added to the base wages of the unit employees, bring the current compensation to \$44,460 for Patrol Officers at the Kalamazoo County Sheriff's Deputies.

With this as background, the Employer has formulated it's wage proposals based upon the elimination of the COLA adjustments; and the Association has based it's proposal upon the COLA adjustments being continued.

The Arbitration Panel is required to select one of the party's written Last Best Offer on each issue before the Panel.

The core issue, in most collective bargaining negotiations, is wages. This case is no exception, and wages is the fundamental issue between the Petitioner (Kalamazoo County Sheriff's Deputies Association) and the Respondent (Kalamazoo County Sheriff and the County of Kalamazoo).

ISSUE: WAGES.

The Association's Last Best Offer of settlement is stated in two alternative offers and contingent upon whether, or not, the Cost of Living Allowance is eliminated from the existing collective bargaining agreement.

Alternative Last Best Offer I

The last best offer of the Kalamazoo County Sheriff's Deputies Association is that the Cost of Living Allowance contained in Appendix B of the existing contract be maintained. If Cost of Living Allowance is awarded, the Kalamazoo County Sheriff's Deputies Association's last best offer on Wages is that effective January 1, 1996 a two (2%) percent across the board wage increase in the wages in effect on December 31, 1995 shall be awarded to all bargaining unit classifications and the Cost of Living Allowance adjustments will be added to the wage adjustment during contract year 1996.

For the second year of the contract, i.e., 1997, the Kalamazoo County Sheriff's Deputies Association's last best offer is that the Cost of Living Allowance, contained in Appendix B of the existing contract, be maintained. If the Cost of Living Allowance is awarded, the Kalamazoo County Sheriff's Deputies Association's last best offer on Wages is that effective January 1, 1997, a two (2%) percent across the board wage increase in the wages effective on December 31, 1996 shall be added to all bargaining unit classifications and the Cost of Living Allowance will be added to this wage adjustment during contract year 1997.

Alternative Last Best Offer II

If the Cost of Living Allowance, contained in Appendix B, is not awarded, the Kalamazoo County Sheriff's Association's last best offer on Wages is that effective January 1, 1996 a four (4%) percent across the board wage increase shall be applied to all bargaining unit classifications.

For the second year of the contract, i.e., 1997, Kalamazoo County Sheriff's Deputies Association's last best offer on Wages is that effective January 1, 1997 a four (4%) percent across the board increase shall be applied to all bargaining unit classifications.

ISSUE: WAGES.

The Employer's Last Best Offer of settlement is contingent upon whether, or not, the Cost of Living Allowance is eliminated from the existing collective bargaining agreement.

SALARY SCHEDULES

If COLA is eliminated from the contract, the County of Kalamazoo's last offer as to the salary schedules of all bargaining unit members eligible for 312 Arbitration:

1996

The salary schedules have already been adjusted during the 1996 calendar year pursuant to the provisions of Appendix B of the parties' Collective Bargaining Agreement.

1997

1. The bargaining unit employees have already received COLA adjustments to the salary schedules pursuant to Appendix B on January 1, 1997, April 1, 1997 and July 1, 1997.

2. The County proposes an additional salary schedule adjustment of 1.0% be made retroactive to January 1, 1997. This adjustment would be made on the salary schedule as adjusted by COLA on April 1, 1997.

3. The County proposes an additional salary schedule adjustment of .75% to be effective October 1, 1997.

IF COLA is continued in the contract, the County of Kalamazoo's last offer as to the salary schedules of all bargaining unit members eligible for 312 arbitration:

1996

The salary schedules have already been adjusted during the 1996 calendar year pursuant to the provisions of Appendix B of the parties' Collective Bargaining Agreement.

1997

- 1. The bargaining unit employees have already received COLA adjustments to the salary schedules pursuant to Appendix B on January 1, 1997, April 1, 1997 and July 1, 1997.*
- 2. The County proposes an additional salary schedule adjustment of 1.0% be made retroactive to January 1, 1997. This adjustment would be made on the salary schedule as adjusted by COLA on April 1, 1997.*
- 3. The County proposes an additional salary schedule be adjusted by the COLA provisions on October 1, 1997.*

ANALYSIS AND OPINION

ISSUE: WAGES.

There is evidence the Cost of Living Allowance has been incorporated into the parties Collective Bargaining Agreement for more than twenty years. This historical concept and principle should not be lightly disregarded by a neutral. One confronted with the decision to eliminate the Cost of Living Allowance from the Agreement, must recognize that at one time, the parties agreed such a provision was reasonable and necessary. Otherwise, why would the negotiators have agreed to incorporate such a provision in their Agreement? A decision maker must consider what was conceded in exchange for the Cost of Living Allowance.

Arbitrators should not disturb historical wage structures negotiated and incorporated into a collective bargaining agreement, unless there are significant and compelling reasons requiring a change. The elimination of COLA is a significant change in the wage structure. It's elimination is a matter that should be resolved and negotiated through the give and take of negotiations, and not by a neutral's award.

The party seeking to dissolve, and eliminate an established practice, such as COLA, must bear the burden of proving the necessity for the elimination. The burden of persuasion requires the production of substantial evidence that would lead reasonable persons to agree there is no longer any need for the Cost of Living Allowance.

The party seeking a change should be able to show it was unreasonable to resist the proposed change. In this case, the Employer must show it was unreasonable for the Association to resist the elimination of COLA.

Under the circumstances of this case, I conclude the Employer has not offered clear and convincing evidence of the necessity of eliminating the Cost of Living Allowance provision from the existing Collective Bargaining Agreement. Obviously, COLA was incorporated in exchange for other concessions, such as less wages.

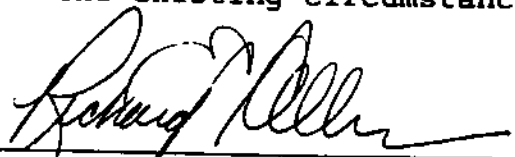
There is no evidence of compelling reasons that require the elimination of the COLA, such as the Employer's inability to pay, or that the Employer is facing a financial hardship that requires a reduction in wages paid to bargaining unit employees. Furthermore, there is no evidence of any change in circumstances, from when the COLA was initially incorporated into the Agreement, more than twenty years ago, that would justify its elimination at this time.

The Employer has not sustained its burden of proof. There are no recent conditions which justify the elimination of COLA from the Agreement. Therefore, the Cost of Living Allowance should continue as an Appendix to the existing Collective Bargaining Agreement.


AWARD

The undersigned Arbitrator and Chairperson, hereby adopts and agrees that the Last Best Offer of the Association (Alternative I) is more reasonable and fair under all the existing circumstances.

Dated: September 12, 1997


Richard E. Allen, Chairman

Dated: September 24, 1997


Michael F. Ward, Association

Dated: _____

John G. Manske, Employer
(Dissent)

ASSOCIATION ISSUES

VACATIONS, ARTICLE III, SECTION 2

The Employer's Last Best Offer is adopted and there will be no change from the existing Collective Bargaining Agreement.

ARTICLE IV, SECTION 2, DENTAL INSURANCE

The Association's Last Best Offer shall be adopted and incorporated into the Collective Bargaining Agreement and Section 2, of Article IV to read as follows:

"Section 2: The employer shall make available the Blue Cross-Blue Shield Dental Plan with benefit level RC/25/50, 1 MBL 1000 OS/50/1000 more specifically described in Exhibit A 11 (d): the Blue Cross/Blue Shield Plan description. The Employer shall pay the full cost of this dental plan."

DISABILITY INSURANCE, ARTICLE IV, SECTION 7

The Employer's Last Best Offer is adopted and there shall be no change from the existing Collective Bargaining Agreement.

ARTICLE V SECTION 2(b) and SECTION 7

The Employer's Last Best Offer is adopted and there shall be no change from the existing Collective Bargaining Agreement.

ARTICLE X, SECTION 1 (a) WORKERS COMPENSATION

The Association's Last Best Offer is adopted and incorporated into the Collective Bargaining Agreement. Section 1 (a) to read as follows:

"Section 1 (a) there shall be no deduction from sick leave credits for a period of thirty-nine (39) weeks, when an employee's absence from work is necessitated because of an injury or illness arising out of or in the course of his/her employment by the Employers. During such thirty-nine (39) week period, the Employers will continue to compensate the employee for his/her regularly scheduled hours provided the employee endorses and returns all workers' compensation disability payments received for said thirty-nine (39) week period, employees who are still unable to return to work may elect to use their unused accumulated sick leave credits or, if participating in the sick bank, sick bank credits to make up the difference between their workers' compensation benefits and their regular pay.

ARTICLE XVII, SECTION 1, CLOTHING ALLOWANCE

The Employer's Last Best Offer is adopted and there shall be no change from the existing Collective Bargaining Agreement.

ARTICLE VI, SECTION 1, (NORMAL WORK DAY)

The Employer's Last Best Offer is adopted and there shall be no change from the existing Collective Bargaining Agreement.

BONUS "30 UNIT" EMPLOYEES

The Association's Last Best Offer shall be adopted and incorporated into the Collective Bargaining Agreement. The new language shall be as follows:

"Employees holding the Deputy classification (F 19) working in the mobile crime lab assignment ("30 unit") shall receive a yearly bonus of five hundred (\$500)

dollars. This assignment bonus shall be paid in a lump sum check on January 1 of each year for the previous year. Deputies that enter or leave the "30 unit" assignment during a given year shall receive a pro rata portion of the yearly bonus."

ARTICLE XXII, SECTION 8, TUITION REIMBURSEMENT:

The Employer's Last Best Offer is adopted and incorporated into the Collective Bargaining Agreement as follows:

"The County shall reimburse seventy-five (75%) percent of the first Five Hundred (\$500) dollars per year of charges incurred by County employees taking improved high school or college courses, as outlined in the more detailed policies statement available from the Personnel Manager. Approved courses shall be those which provide for the systematic improvement of the knowledge or skills required in the performance of the employee's work or courses that , for any other reasons, will be beneficial to the employees and to the County. All courses shall be approved by the Personnel Manager and the Sheriff prior to issuance of the refund. The employee must remain in County service for a period of twelve (12) calendar months following completion of the course or forfeit such tuition payment."

APPENDIX C, PARAGRAPH A

The Employer's Last Best Offer is adopted and Appendix C shall be maintained with the proviso that the date of December 31, 1995, as set forth at the third paragraph of Appendix C be modified to read December 31, 1997.

EMPLOYER'S ISSUES

ARTICLE V, SECTION 4, SICK LEAVE FOR DENTIST OR DOCTOR APPOINTMENTS

The Employer's Last Best offer is adopted and incorporated into the Collective Bargaining Agreement as follows:

"An employee shall not be charged sick leave time for dentist's or doctor's appointments when such appointments cannot be scheduled other than during the employee's normal work hours when the employee's absence from work is two (2) hours or less. Once an employee has had total absences of eight (8) hours for such dentist's or doctor's appointments during a calendar year, all future absences during that year resulting from dentist's or doctor's appointments will be charged to the employee's individual sick leave count."

ARTICLE IX, SECTION 3, HOLIDAY PAY FOR EMPLOYEES REGULARLY SCHEDULED TO WORK MONDAY THROUGH FRIDAY:

The Association's Last Best Offer shall be adopted and the existing Section 3 of Article IX shall continue in the Collective Bargaining Agreement.

ARTICLE X, SECTION 2, "PREFERRED WORK DUTIES"

The Employer's Last Best Offer shall be adopted and the existing Section 2, of Article X will be deleted from the existing Collective Bargaining Agreement.

ARTICLE XIII, SECTION 1 (e)

The Association's Last Best Offer shall be adopted and the existing Section 1 (e) of Article XIII shall continue in the Collective Bargaining Agreement.

ARTICLE XVIII, SECTION 5, PERSONAL JOB LEAVE ALLOTMENT FOR PROBATIONARY EMPLOYEES:

The Association's Last Best Offer shall be adopted and the existing contract language shall continue in the Collective Bargaining Agreement.

ARTICLE XIX, SECTION 4, TERMINATION OF SENIORITY PRIVILEGES

The Employer's Last Best Offer shall be adopted and the existing contract language in Section 4 of Article XIX, shall be modified as follows:

"An employee's seniority shall be terminated if he/she quits, retires or is discharged for just cause. An employee's seniority shall be terminated if he/she has been on layoff for a period of time equal to his/her seniority at the time of his/her layoff or two (2) years, whichever is less."

ARTICLE III, SECTION 4, VACATION ALLOTMENT

The Association's Last Best Offer shall be adopted and the existing Section 4 of Article III shall continue in the Collective Bargaining Agreement.

AWARD

The undersigned Arbitrator and Chairman, hereby adopts and agrees that the Last Best Offer of the Association is more reasonable and fair under all the existing circumstances on the following issues:

Article IV, Section 2 Dental Insurance

Article X, Section 1 (a) Workers Compensation

Bonus "30 Unit" Employees

Article IX, Section 3 Holiday Pay

Article XIII, Section 1 (e)

Article XVIII, Section 5

Article III, Section 4

Appendix B of the existing Agreement is continued and the Association's Alternative I proposal on Wages is hereby adopted and incorporated into the Agreement.

Dated:

September 12, 1997



Richard E. Allen, Chairman

Dated:

September 24 1997



Michael F. Ward, Association

Dated: _____

John G. Manske, Employer
(Dissent)

AWARD

The undersigned Arbitrator and Chairman hereby adopts and agrees that the Last Best Offer of the Employer is more reasonable and fair under all the existing circumstances on the following issues:

Article III, Section 2

Article IV, Section 7

Article V, Section 2 (b) and Section 7

Article XVII, Section 1

Article VI, Section 1

Article XVII, Section 8


Appendix C

Article V, Section 4

Article X, Section 2

Article XIX, Section 4


Dated: September 12, 1997


Richard E. Allen, Chairman

Dated: _____

John G. Manske, Employer

Dated: September 24, 1997


Michael F. Ward, Association
(Dissent)

CONCLUSION

The parties through their Delegates agreed and stipulated that the Collective Bargaining Agreement shall terminate on December 31, 1997. Furthermore, the parties stipulated and agreed during the April 24, 1997 Hearing, that specific issues had been settled and detailed explanations related to such settlements was made a part of the official record, and set forth specifically on pages 15 through 31 of the transcript, volume 3. The parties also stipulated and mutually agreed to withdraw specific issues and the details of such withdrawals was made a part of the official record, and set forth specifically on pages 15 through 31 of the transcript, volume 3.

The parties mutually agreed to incorporate into the Agreement a "Drug and Alcohol Policy", which is attached to this Award and made a part of this Award.

Generally, the Chairman has been careful not to disturb historical concepts incorporated into the Agreement, such as the employee's reliance upon the Cost of Living Allowance and the employer's right to determine the scheduling of hours of work.

After determining there were not sufficient compelling reasons to eliminate the Cost of Living Allowance, the neutral must adopt the last best offer that continues COLA, along with the accompanying wage proposal. In this case, the Association's proposal was more reasonable and fair.

Once the wage issue was resolved, I determined what, if any, other economic and non-economic proposals would have accompanied such a wage settlement. In arriving at such determinations, I have considered the economic reality that public employers are prohibited from a lock-out and public employees are prohibited from striking. What other issues would have been agreed upon had the parties been subjected to the economic pressures of a strike

or a lock-out? In this case what would have been agreed upon if there were the threat, or reality, of economic loss to the employees and chaos caused to the employer by a work stoppage?

In arriving at a final settlement, I have been mindful of the rights of both the employer and the employees in making my determinations. What would a reasonable employer and employee have agreed to under such circumstances? And what is fair and reasonable settlement for the community of taxpayers?

In this case, I have attempted to protect the economic welfare of the employees, for instance by continuing the Cost of Living Allowance. I have attempted to protect the rights of management by not restructuring the "normal" work day or work week. .

In essence, before adopting any significant changes in wages, hours or working conditions, I have required the party seeking a change in the status quo to offer substantial reasons for a change. If the party fails to satisfy it's burden of proof, then I have rejected the proposal, and ruled the the existing practice shall continue for the duration of this Agreement. Certainly, negotiators would reject any proposed change that was not supported by convincing reasons. I have declined to adopt revisions in the Agreement merely for the sake of making a change, or appeasing one of the parties. After more than twenty years of collective bargaining between these parties, any further changes in the existing Agreement must be supported by convincing reasons, and in the absence such proof, I have continued the existing conditions and practices.

Finally, I realize that as a practical matter, certain concessions must be made in collective bargaining process in order to obtain an "agreement". Therefore, some improvements in benefits and some clarifications in language are necessary. As long as the proposal is reasonable and fair, I have included such proposals in developing a final "negotiated" total package.

In determining the merits of a Last Best Offer, I have considered all the relevant factors specified in section 9 of the Act, including sub-section (h), "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..." Such factors for consideration include what would reasonable persons, acting as negotiators, have agreed to if confronted with a possible work stoppage. Obviously, the facts and reasons offered, determine the final merits of any proposed change in the existing conditions.

Sept 12, 1997

Dated:



Richard E. Allen

Chairman of Panel

Appendix A
to CBA

JLH

Attach to
Handbook

KALAMAZOO COUNTY SHERIFF'S DEPARTMENT

DRUG AND ALCOHOL POLICY

Purpose of Policy

The Kalamazoo County Sheriff's Department is committed to the establishment and maintenance of a drug and alcohol free work environment. The Department is charged with the responsibility of enforcing and administering various drug and alcohol laws and regulations and therefore must obtain and retain the respect of the community and at all times maintain and protect the integrity of the Department.

II. Policy Coverage

This policy shall be applicable to all employees of the Kalamazoo County Sheriff's Department.

III. Policy

Employees are strictly prohibited from any statutorily defined illegal use, sale, manufacture or distribution of drugs, whether at work, or not at work, and during the entire course of their employment. On the job drinking, possessing or ingesting alcohol, drugs, or other controlled substances without a current valid prescription, or reporting to work while under the influence of alcohol, drugs, or other controlled substances without a current valid prescription is prohibited on Kalamazoo County Sheriff's Department time, premises, or equipment.

IV. Policy Enforcement

If Kalamazoo County Sheriff's Department has reasonable cause to believe, based upon observation or information, that an employee on duty for the Kalamazoo County Sheriff's Department is being influenced by the use of illegal or controlled drugs or substances or alcohol, the following procedure will be followed:

A. The employee will be immediately placed on administrative leave with pay until notified of any disciplinary suspension or action resulting in cessation of pay, and promptly after placement on administrative leave, the employee will be given a hearing with the following persons present:

1. Employee;
2. Employee's Union representative, if applicable;
3. Employee's supervisor; and,
4. Lieutenant or higher authority.

- B. The facts forming the basis for reasonable cause shall be disclosed to the employee at the commencement of the hearing and the employee shall, at the same time, be given the opportunity to explain his or her behavior or actions.
- C. If it is determined by the lieutenant or higher authority that the reasonable cause to believe is substantiated, the employee will be placed on administrative leave, with pay, pending the results of an appropriate test.
- D. Said employee shall be required to submit to an immediate urine/breathalyzer and/or other appropriate test to determine whether or not the employee is under the influence of alcohol, a controlled substance, or illegal drugs.
- E. Such test shall be given pursuant to the testing procedure as outlined in this policy.
- F. The employee shall submit to such test and release of test results to the Kalamazoo County Sheriff's Department; failure to do so shall be a presumption that the employee has violated the policy. The employee will then be subject to disciplinary action, up to and including discharge.
- G. After the test has been given and the results known, the employee:
 - 1. Will be put back to work with full pay for time lost, should the test results be negative; or,
 - 2. Will be subject to discipline up to and including discharge, should the test results be positive as indicated in paragraph #6 of this policy.

V. Testing Procedures for Illegal or Controlled Drugs or Substances

A. Laboratory Selection

The laboratory selected to conduct the analysis shall be certified by the National Institute on Drug Abuse and any State of Michigan Agency that determines certification for police employment. In addition, the laboratory selected shall use Smith-Kline Laboratories security procedures or equivalent. Any and all costs associated with testing shall be paid by the County.

B. Obtaining Urine Samples

- 1. All sample collection shall occur at the medical clinic, doctor's office, or laboratory designated by the Kalamazoo County Sheriff's Department as its testing facility. When the employee reports to the testing facility, he or she must be identified prior to any sample being given.

2. The room where the sample is obtained must be private and secure with documentation maintained that the area has been searched and is free of any foreign substance. An observer of the appropriate sex shall be present for direct observation to ensure the sample is from the employee and was actually passed at the time noted on the record. Specimen collection will occur in a medical setting and the procedures should not demean, embarrass, or cause physical discomfort to the employee.
3. An interview with the employee prior to the test will serve to establish use of drugs currently taken under medical supervision.
4. Urine samples shall be sealed, labeled and checked against the identity of the employee to ensure the results match the testee. Urine samples shall be stored in a secured and refrigerated atmosphere until tested or delivered to the testing lab representative.

C. Processing Samples

1. The testing or processing phase shall consist of a two-step procedure:
 - a. Initial screening step; and,
 - b. Confirmation step.
2. The sample is first tested using a screening procedure. A specimen testing positive will undergo an additional confirmatory test. An initial positive report should not be considered positive; rather, it should be classified as confirmation pending.
3. Any confirmatory testing shall be done by chromatograph/mass spectrometer. In those cases where the second test confirms the presence of drug(s) in the sample in excess of the confirmation levels listed below, the sample will be retained for six (6) months to allow further testing in case of dispute. After a confirmed positive test, the employee has the right to receive a sample from the specimen by directing the County's designated laboratory (in a signed writing), to send the sample directly to another certified laboratory.
4. If the initial screening test is positive, the confirming test shall be run by a second certified laboratory. Employees who have participated in the drug test program where their test was negative shall receive a letter confirming that fact. If the employee requests such, a copy of the letter will be placed in the employee's personnel file.

D. Chain of Evidence/Storage

1. Where a confirmed positive report is received, urine specimens shall be maintained under secured storage for a period of not less than sixty (60) days; six (6) months in contested cases.
2. Each step in the collecting and processing of urine specimens shall be documented to establish procedural integrity and the chain of evidence/custody.

VI. Drug and Alcohol Cut-Off Levels

- A. The initial and confirmatory drug test "cut-off" levels shall be as follows:

| <u>Drug/Metabolite</u> | <u>Decision Level</u> | <u>GC/MS Confirmation</u> |
|------------------------|-----------------------|---------------------------|
| Amphetamines | 1000 ng/ml | 500 ng/ml |
| Barbiturates | 300 ng/ml | 200 ng/ml |
| Cocaine metabolites | 300 ng/ml | 150 ng/ml |
| Marijuana metabolite | 50 ng/ml | 15 ng/ml |
| Opiates -Codeine | 300 ng/ml | 300 ng/ml |
| -Morphine | 300 ng/ml | 300 ng/ml |
| Phencyclidine (PCP) | 25 ng/ml | 25 ng/ml |

- B. Tests for alcohol levels shall be considered to verify impairment when the blood alcohol level is .04 percent or higher.

VIII Self-Recognized Substance Dependence

Should an employee recognize himself or herself to be substance dependent (including alcohol), and if he or she asks the Sheriff or designee for a leave of absence (the request cannot be made at the time the employee is directed to submit to an appropriate test), he or she will be granted a leave of absence (the employee must first exhaust his or her accrued sick leave, and may use vacation leave as part of the approved leave time) while under the care of a County recognized rehabilitation program (the cost, if not covered by insurance, to be borne by the employee). If the employee fails to successfully complete, withdraws from, and/or otherwise fails to fulfill the conditions of the rehabilitation program, he or she may be subject to discipline, up to and including discharge. Upon successfully completing the rehabilitation program, and upon passing an appropriate drug or alcohol test, the employee will be returned to duty from said leave. After returning to duty, the employee will remain on probation for one (1) year during which time he or she must remain substance free, and will be subject to random unannounced testing at any time in accordance with the testing procedures set forth in Section V of this policy. Should the employee test positive during

the one (1) year probation period he or she may be subject to discipline, up to and including discharge.

VIII. Prescription Drug Use

An employee may possess and use a drug or controlled substance, providing such drug or controlled substance is dispensed to said employee pursuant to a current valid medical prescription in the employee's name.

- A. Should the employee's prescribing physician indicate that the known side effects of the drug makes it dangerous for the employee to safely work, the employee shall notify the employer or supervisor.

IX. Effect of a Confirmed Positive Drug or Alcohol Test

- A. An employee who has a confirmed positive test for illegal or controlled drugs or substances shall be subject to discipline up to and including discharge.
- B. After a test showing a blood alcohol concentration of 0.04 or greater, the employee will be immediately removed from his or her assignment and will not be permitted to return to his or her assignment for at least twenty-four (24) hours (absent available sick or vacation leave, the time will be unpaid), and then only if he or she first undergoes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. After returning to work, the employee is thereafter subject to unannounced follow-up testing for up to twelve (12) months after the employee returns to a covered function. A second positive test within this twelve (12) month period will subject the employee to discipline up to and including discharge.

X. Policy Implementation

This Drug and Alcohol Policy was negotiated with the express intent that the entire Department is committed to the establishment of a drug and alcohol free work place. Therefore, this Policy shall be implemented and become effective only when all employees in all departmental bargaining units are made subject to this Policy.

XI. Special Assignments

Employees who are assigned to and/or are working in an uncover capacity or in a special unit shall be controlled by the drug and alcohol policy of the special unit as to the possession and/or use of controlled substances, alcohol and/or prescribed medication.

APPENDIX "B"

**STATE OF MICHIGAN
Department of Labor
Bureau of Employment Relations**

Arbitration Pursuant to Act 312, Public Acts of 1969, as amended.

**Kalamazoo County Sheriff's Deputies Association
Petitioner**

-and-

Case #G95 I 3008

**Kalamazoo County Sheriff and County of Kalamazoo
Respondent**

**Last Best Offer
of
Kalamazoo County Sheriff's Deputies Association**

**Michael F. Ward, Attorney
Kalamazoo County Sheriff's Deputies Association
P.O. Box 3368
141 E. Michigan Ave, Suite 302
Kalamazoo, MI 49003
616-388-7900**

**STATE OF MICHIGAN
Department of Labor
Bureau of Employment Relations**

Arbitration Pursuant to Act 312, Public Acts of 1969, as amended.

**Kalamazoo County Sheriff's Deputies Association
Petitioner**

-and-

Case #G95 I 3008

**Kalamazoo County Sheriff and County of Kalamazoo
Respondent**

**Last Best Offer
of
Kalamazoo County Sheriff's Deputies Association**

The petitioner, Kalamazoo County Sheriff's Deputies Association, submits the following as its last best offer on the issues arbitrated between the parties.

**I.
Association Issues**

1. The Kalamazoo County Sheriff's Deputies Association's last best offer of settlement on its issue #1, Vacations, is that Section 2 of Article III of the existing contract be changed to read as follows:

Section 2: Employees who have completed five (5) years of currently continuous service shall earn additional annual leave with pay according to length of total classified service as follows:

- (a) For five or more, but less than ten years, three days (twenty-four hours) annually;
- (b) For ten or more, but less than fifteen years, five days (forty hours) annually;
- (c) For fifteen or more, but less than twenty years, seven days (fifty-six hours) annually;
- (d) For twenty or more years, nine days (seventy-two hours) annually;
- (e) For twenty-five or more years, eleven days (eighty-eight hours) annually.

2. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #3, Increased Dental Insurance Coverage, is that Section 2 of Article IV be changed to read:

Section 2: The employers shall make available the Blue Cross-Blue Shield Dental Plan with benefit level RC/25/50,1 MBL1000 OS/50/1000 more specifically described in Exhibit A11(d): the Blue Cross/Blue Shield plan description. The Employers shall pay the full cost of this dental plan.

3. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #6, Disability Insurance, is that Section 7 of Article IV be changed to read:

Section 7: The Long-Term Disability Insurance Plan shall be fully coordinated with the employee's individual sick leave accumulation and the Sick Leave Bank as set forth in this Agreement. Such plan covers a disability after the employee has been disabled for six (6) months and has totally utilized his/her personal sick leave accumulation and his/her sick leave entitlement from the Sick Leave Bank. All benefits of such plan are fully set forth in the insurance contract between the County and the insurance provider. The employers shall provide this long term disability insurance coverage at the benefit level in existence on January 1, 1996 and shall provide this benefit in an insurance contract that has the following definition of disability:

"Disability" and "disabled" mean that because of injury or sickness:

- 1. the insured cannot perform each of the material duties of his/her regular occupation; and
- 2. after benefits have been paid for sixty (60) months, the insured cannot perform each of the material duties of any gainful occupation for which he/she is reasonably fitted by training, education or experience.

4. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #7 and #8, Sick Leave Payoff and Sick Leave Utilization Bonus, is that Section 2(b) and Section 7 of Article V be changed to read:

Section 2(b): After Completion of five (5) years of active service, an employee shall receive compensation for twenty-five (25%) percent of the unused sick leave credits at his/her current rate of pay at the time of termination for any reason not to exceed four hundred (400) hours.

Section 7: Any employee who does not utilize any sick leave time during a three-hundred-sixty-five (365) day period shall be entitled to one additional personal business leave day during the subsequent Three-Hundred-Sixty-Five (365) day period. An employee who does not utilize any sick leave time during a 1,460 day period shall be entitled to two (2) additional personal business leave days with pay during the subsequent three-hundred-sixty-five (365) day period. An employee who does not utilize any sick leave time during a 3,285 day period shall be entitled to three (3) additional business leave days with pay during the subsequent three-hundred-sixty-five (365) day period. When an employee has qualified for these additional business leave days, he/she shall notify his/her Divisional Captain. The Divisional Captain shall check the records and verify the request for additional personal leave in writing. The employee shall present the written verification from the Captain to the Account Clerk II responsible for payroll records. The Account Clerk II shall process the verified request to the County Payroll Department and the day shall be added to the employee's personal leave. Once an employee has earned additional business day(s) in accordance with this section, he/she shall continue to receive the additional business days each 365 day period so long as he/she does not use any sick time.

5. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #11, Workers Compensation Supplement, is to change Section 1(a) of Article X of the existing contract to read as follows:

Section 1(a): There shall be no deduction from sick leave credits for a period of thirty-nine (39) weeks, when an employee's absence from work is necessitated because of an injury or illness arising out of or in the course of his/her employment by the Employers. During such thirty-nine (39) week period, the Employers will continue to compensate the employee for his/her regularly scheduled hours provided the employee endorses and returns all workers' compensation disability payments received for said thirty-nine (39) week period. Following said thirty-nine (39) week period, employees who are still unable to return to work may elect to use their unused accumulated sick leave credits or, if participating in the sick bank, sick bank credits to make up the difference between their workers' compensation benefits and their regular pay.

6. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #13, Cleaning Allowance for Plain Clothes Officers, is to change Section 1 of Article XVII of the existing agreement to read as follows:

Section 1: The clothing allowance for plainclothes officers shall be Eight Hundred (\$800.00) Dollars per year. The Employers shall assume the full responsibility for all cleaning, laundry, and maintenance for uniforms required of uniformed personnel. The Employers shall also assume the full cost and responsibility for cleaning clothing worn by plain clothes personnel. Upon the advancement of an individual to a plain clothes position, the entire amount of clothing allowance for the year will be given at that time.

7. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #14, Hours of Work for Detective Sergeants, is to change Section 1 of Article VII of the existing contract to read as follows and to eliminate Section 3(a), (b), (c), (d), (e), (i), and (ii):

Section 1. The "normal work day" shall be defined as an eight (8) hour day, except for those personnel within the Uniformed Services Section assigned to the "4-10" shift for whom the work day shall be defined as a ten (10) hour day. In addition employees working in the Detective Sergeant and Polygraph Examiner classifications normal work day shall be ten (10) hours from 8:00 a.m. to 6 p.m. with a thirty (30) minute paid lunch period. To insure Monday through Friday coverage, one half of the Detective Sergeants shall work a Monday through Thursday work week and one half of the Detective Sergeants shall work a Tuesday through Friday work week. Detective Sergeants shall select their scheduled work days, i.e., Monday through Thursday or Tuesday through Friday by using their classification seniority to bid the desired schedule once each year. Currently one Detective Sergeant works the afternoon shift on a rotating basis. The night shift Detective Sergeant position shall be filled on a rotating basis as in the past. The one night shift Detective Sergeant shall work an eight (8) hour shift from 3:00 p.m. to 11:00 p.m. Monday through Friday. The "normal work week" shall be defined as forty (40) hours. "Overtime rate" shall be defined as being 1½ times the employee's regular hourly rate. Detective sergeants, who are subpoenaed to court on their scheduled off day and are working the 4-10 schedule, shall adjust their work week so their court day is one of their four days worked the week of the court appearance.

8. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #15, Bonus for 30 Unit Employees, is that a new section shall be added to the existing contract, which shall read:

Employees holding the Deputy classification (F19) working in the mobile crime lab assignment ("30 unit") shall receive a yearly bonus of five hundred (\$500.00) dollars. This assignment bonus shall be paid in a lump sum check on January 1 of each year

for the previous year. Deputies that enter or leave the "30 unit" assignment during a given year shall receive a pro rata portion of the yearly bonus.

9. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #17, Tuition Reimbursement, is that Section 8 of Article XXII be changed to read:

Section 8: The County shall pay a maximum of Five Hundred Forty Dollars (\$500.00) a year for tuition to County employees taking improved high school or college courses, as outlined in the more detailed policies statement available from the Personnel Manager. Approved courses shall be those which provide for the systematic improvement of the knowledge or skills required in the performance of the employee's work or courses that, for any other reasons, will be beneficial to the employees and to the County. All courses shall be approved by the Personnel Manager and the Sheriff prior to issuance of the refund. The employee must remain in County service for a period of twelve (12) calendar months following completion of the course or courses or forfeit such tuition payment.

10. The Kalamazoo County Sheriff's Deputies Association's last best offer on its issue #22, Retiree Health Insurance, is that paragraph A of Appendix C of the existing contract be changed to read:

- A. Currently, bargaining unit members who retire with at least twenty-five (25) years of County service, or who retires at age sixty (60) with at least ten (10) years of County service, shall be eligible for continued hospitalization insurance coverage for the employee and his/her dependents. When the employee and his/her dependents attain the age of sixty-five (65), the County is obligated to provide an insurance supplement that will insure the retiree the same level of benefits. The employers shall pay the full cost of this insurance coverage.

A unit member who retires from County service and has reached the eligibility requirements of either of the above-mentioned standards will continue to be eligible for the above-mentioned insurance program for themselves and their dependents. In the alternative, an employee who has twenty (20) years of service with the County Sheriff's Department may elect to retire from County service and be eligible for the County's continual payment of the employee's health insurance costs and the County's payment of eighty percent (80%) of the insurance costs of the employee's dependents. When the employee electing such alternative reaches age sixty-five (65), the County will provide eighty percent (80%) of the cost of such insurance supplement. An employee electing such alternative would be responsible for the payment of twenty percent (20%) of the cost of the health insurance coverage for any eligible dependent.

11. The Kalamazoo County Sheriff's Deputies Association's last best offer of settlement on its issue #23, Wages, will be stated giving two alternative offers based upon the arbitrator's decision on the County of Kalamazoo's proposal to eliminate the Cost of Living Allowance, contained at

Appendix B of the existing contract.,

Alternative Last Best Offer I.

The last best offer of the Kalamazoo County Sheriff's Deputies Association is that the Cost of Living Allowance contained in Appendix B of the existing contract be maintained. If Cost of Living Allowance is awarded, the Kalamazoo County Sheriff's Deputies Association's last best offer on Wages is that effective January 1, 1996 a two (2%) percent across the board wage increase in the wages in effect on December 31, 1995 shall be awarded to all bargaining unit classifications and the Cost of Living Allowance adjustments will be added to the wage adjustment during contract year 1996.

For the second year of the contract, i.e., 1997, the Kalamazoo County Sheriff's Deputies Association's last best offer is that the Cost of Living Allowance, contained in Appendix B of the existing contract, be maintained. If Cost of Living Allowance is awarded, the Kalamazoo County Sheriff's Deputies Association's last best offer on Wages is that effective January 1, 1997 a two (2%) percent across the board wage increase in the wages effective on December 31, 1996 shall be added to all bargaining unit classifications and the Cost of Living Allowance will be added to this wage adjustment during contract year 1997.

Alternative II.

If the Cost of Living Allowance, contained in Appendix B, is not awarded, the Kalamazoo County Sheriff's Deputies Association's last best offer on Wages is that effective January 1, 1996 a four (4%) percent across the board wage increase shall be applied to all bargaining unit classifications.

For the second year of the contract, i.e., 1997, the Kalamazoo County Sheriff's Deputies Association's last best offer on Wages is that effective January 1, 1997 a four (4%) percent across the board wage increase shall be applied to all bargaining unit classifications.

**Kalamazoo County Sheriff's Deputies Association
Last Best Offer on Proposed Issues
by the
County of Kalamazoo and the Kalamazoo County Sheriff**

1. The Kalamazoo County Sheriff's Deputies Association's last best offer on issue #2, Revise Article V, Section 4, is that the current Section 4 of Article V remain as is in the current contract, which reads as follows:

Section 4: An employee shall not be charged sick leave time for dentist or doctor appointments when such time is of a one (1) or two (2) hour duration.

2. The Kalamazoo County Sheriff's Deputies Association's last best offer on the Employer's issue #4, Delete the word "shift" from Article IX, Section 3, is that the current Section 3 of Article IX remain as in the current contract which reads as follows:

Section 3: Employees who are not scheduled to work and who do not work on a holiday may receive the holiday pay specified in Section 4 of this Article or a floating holiday at straight pay. Employees who are scheduled to work and do work the holiday shall be entitled to holiday pay plus time and one-half (1 1/2) their regular hourly rate for all hours worked during the normal work day as defined in Article VI. Hours worked in excess of the normal work day shall be paid at the rate of two (2) times the employee's regular hourly rate. Employees may elect to receive time and one-half compensatory time off in lieu of premium pay for hours worked during the normal work day. Employees who are called in to work on a holiday shall receive their holiday pay plus two (2) times their regular hourly rate for all hours worked on the holiday.

3. The Kalamazoo County Sheriff's Deputies Association's last best offer on the Employer's issue #5, Article X, Section 1, Workers Compensation Revision, is that the status quo remain and the existing contract language remain unchanged as to Section 1 of Article X and that subsection (a) of Section 1 of Article X be changed to read as stated in the Association's last best offer on its issue #11, which is as follows:

Section 1: All employees shall be eligible for one-the-job injury or illness leaves in accordance with the provisions contained in the State's Workers' Compensation Statute provided the injury arose out of performance of duties and responsibilities directly related to the Sheriff's Department.

(a) There shall be no deduction from sick leave credits for a period of thirty-nine (39) weeks, when an employee's absence from work is necessitated because of an injury or illness arising out of or in the course of his/her employment by the Employers. During such thirty-nine (39) week

period, the Employers will continue to compensate the employee for his/her regularly scheduled hours provided the employee endorses and returns all workers' compensation disability payments received for said thirty-nine (39) week period. Following said thirty-nine (39) week period, employees who are still unable to return to work may elect to use their unused accumulated sick leave credits or, if participating in the sick bank, sick bank credits to make up the difference between their workers' compensation benefits and their regular pay.

4. The Kalamazoo County Sheriff's Deputies Association's last best offer on Employer's issue #6, Deletion of Section 2 of Article X, is that the status quo remain and the existing contract language remain unchanged. Section 2 shall read:

Section 2: The Employers shall maintain "preferred work duties" for employees injured under the Act.

5. The Kalamazoo County Sheriff's Deputies Association's last best offer on the Employer's issue #7, Deletion of Section 1(e) of Article XIII, is that the status quo remain and the existing contract language remain unchanged; i.e., Section 1(e) of Article XIII shall read:

(e): No record of any departmental investigation made as a result of a complaint will be placed in the employee's personnel record unless the complaint is brought to his/her attention within ten (10) days of the complaint.

6. The Kalamazoo County Sheriff's Deputies Association's last best offer on the Employer's issue #8, Article XVIII, Section 5 revision, is that the status quo remain and the existing contract language remain unchanged. Section 5 of Article XVIII shall read:

Section 5: The Employers agree to grant three (3) personal leave days with pay per year. An employee who requests a personal day off at least twenty-four (24) hours in advance of the start of the shift day he/she desires off shall be granted said day(s) off unless on the day(s) requested there are two or more identifiable employees who are already working on an overtime basis on the shift within the division where the requesting employee is scheduled to work or the Department is involved in an emergency declared by the Sheriff where all vacations and personal leave day(s) are canceled.

7. The Kalamazoo County Sheriff's Deputies Association's last best offer on the Employer's issue #12, Limitation of Laid Off Employees Recall Rights, is that the status quo remain and the existing contract language remain unchanged.

Section 4: An employee's seniority shall be terminated if he/she quits, retires or is discharged for just cause.

8. The Kalamazoo County Sheriff's Deputies Association's last best offer on the Employer's issue #13, Limitation on Vacation Time Off, is that the status quo remain and the existing contract language remain unchanged. Section 4 of Article III shall read:

Section 4: The Sheriff shall determine the number of employees who can be assigned for vacation purposes at any time, agreeing that an effort shall be made to schedule vacation leave in accordance with the manpower and workload requirements as determined by the Sheriff. Vacation leave shall be granted giving preference to seniority employees.

A seniority list shall be posted in accordance with Article XIX, Section 2, by the Employer. All employees shall indicate prior to April 15 of each year those dates between April 15 and October 14 that they desire to take as their eligible vacation leave. All employees shall indicate prior to October 15 of each year those dates between October 15 and April 14 that they desire to take as their eligible vacation leave. In the event two (2) or more employees desire the same vacation date, and it is determined by the Sheriff that both employees cannot be assigned for vacation purposes, the employee having the least amount of seniority shall select alternative dates for his/her vacation. A final vacation list shall be prepared by the Sheriff and distributed to all employees, not later than May 1 for the April 15 selections and November for the October 15 selections, indicating those dates agreed upon.

- (a) In the event an employee does not select a vacation period prior to the April 15 or October 15 deadlines, he/she shall be permitted to select a vacation period from the remaining available dates. If two (2) or more employees have failed to make selections by April 15, their selection shall be made on the basis of first come, first served.
- (b) If an employee, because of required court appearances or other emergency situations, is unable to take his/her vacation during the period assigned, every effort shall be made by the Sheriff to reschedule a vacation period convenient and agreeable to the employee and the Sheriff in the calendar year in which his/her vacation period was assigned. However, if the parties are unable to agree to a mutually convenient vacation period, the employee shall be allowed to accumulate and carry over his/her last year's vacation time into the following calendar year or year, provided the accumulation shall not exceed three-hundred-sixty (360) hours.
 - (1) No more than two-hundred-forty (240) hours of vacation may be taken at any one time under this provision.
- (c) No employee shall be permitted to take his/her vacation leave one (1) day at a time without the prior approval of the Sheriff. However, this subsection shall not be used nor construed so as to work a forfeiture of any actual earned vacation leave.

9. The Kalamazoo County Sheriff's Deputies Association's last best offer on the Employer's issue #14, Wages, and issue #15, Cost of Living Allowance, is as stated in the Association's last best offer on Wages and Cost of Living Allowance previously stated, at paragraph #11 of this last best offer on pages 5 and 6, on these issues and said offer is incorporated herein.

APPENDIX "C"

**STATE OF MICHIGAN
BEFORE THE EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION**

**THE COUNTY OF KALAMAZOO
AND THE SHERIFF OF THE
COUNTY OF KALAMAZOO**

AND

MERC CASE NO.: G 95 I-3008

**THE KALAMAZOO COUNTY
SHERIFF'S DEPUTIES
ASSOCIATION.**

**LAST OFFERS OF THE
COUNTY OF KALAMAZOO AND THE
SHERIFF OF THE COUNTY OF KALAMAZOO**

**Miller, Johnson, Snell & Cummiskey, P.L.C.
Attorneys for the Employers
John G. Manske
425 West Michigan Avenue
Kalamazoo, Michigan 49007
Telephone: (616) 226-2950**

On certain issues set forth on the parties' initial submission to the Employment Relations Commission and to the Arbitrator in this matter, the parties did enter into resolution by stipulation. (Pages 15 through 31 of Volume I of the transcript.) In addition, the parties stipulated to a Drug and Alcohol Policy as set forth in Joint Exhibit #8. It is respectfully requested that such stipulations be made part of the Award in this matter.

LAST OFFERS
OF THE COUNTY OF KALAMAZOO AND THE
SHERIFF OF THE COUNTY OF KALAMAZOO

UNION'S ISSUES

Union Issue No. 1

Article III, Section 2, Vacations:

The Union has proposed an increase in allotted vacation time as represented at the hearing as Association Exhibit #5.

The Employers' last offer is that there be no change from current Contract language.

Union Issue No. 3

Article IV, Section 2, Dental Insurance:

In hearing Exhibit 11A, the Union proposed an increase in the current level of dental insurance coverage.

Last offer of the Employers is that the current Blue Cross/Blue Shield dental plan as set forth in Joint Exhibit #4 be maintained.

Union Issue No. 6

Article IV, Section 7:

The Union did propose in hearing Exhibit #7 a significant increase in the current long-term disability insurance plan.

The Employers' last offer is that the current Contract language be maintained in Article IV, Section 7.

Union Issue No. 7

Article V, Section 2(b):

The Union proposed in hearing Exhibit #9 that the last sentence of said subparagraph be deleted from the Collective Bargaining Agreement.

It is the last offer of the Employers that Article 5, Section 2(b), be maintained in the current Collective Bargaining Agreement.

Union Issue No. 8

Article V, Section 7:

The Union did proposed in hearing Exhibit #9 an additional "bonus" personal business leave day resulting from sick leave non-usage.

The Employers' last offer is that the current provisions of Article V, Section 7, remain as written in the current Collective Bargaining Agreement.

Union Issue No. 11

Article X, Section 1(a), Workers' Compensation:

During the hearing, the Union proposed a contract change in the provisions of this Section as evidenced by Union Exhibit #12. The Employers had also submitted a proposal for a change in this Section of the Collective Bargaining Agreement as evidenced by Employers' proposal #5.

It is the last offer of the Employers that the new Collective Bargaining Agreement have as its rewritten Article X, Section 1(a), language the provisions of the Settlement Agreement as set forth on page 1 of Association #14. Those provisions would read as follows:

There shall be no deduction from sick leave credits for a period of twenty-six (26) weeks, when an employee's absence from work is necessitated because of an injury or illness arising out of or in the course of his/her employment by the Employers. During such twenty-six (26) week period, the Employers will continue to compensate the employee for his/her regularly scheduled hours provided the employee endorses and returns all workers' compensation disability payments received for said twenty-six (26)

week period. Following said twenty-six (26) week period, employees who are still unable to return to work may elect to use their unused accumulated sick leave credits, or, if participating in the sick bank, sick bank credits to make up the difference between their workers' compensation benefits and their regular pay.

Union Issue No. 13

Article XVIII, Section 1, Clothing Allowance:

The Association submitted a proposal during the hearing as set forth in Association Exhibit #13. This proposal would result in the Employers being responsible for the cleaning of clothing owned by plainclothes officers who already receive the contractually-maintained clothing allowance.

It is the last offer of the Employers that there be no change in these provisions of the Contract.

Union Issue No. 14

Article VI, Section 1, Detective Work Day:

As to Union Issue No. 14, the Association proposed during hearing in Exhibit 18A, new contractual provisions which would result in a ten (10) hour day for detective/sergeants at the Kalamazoo County Sheriff's Department.

It is the last offer of the Employers that there be no change in current contractual provisions as set forth in Article VI relative to the work day of detective/sergeants.

Union Issue No. 15

As to Issue No. 15, the Association proposed during hearing in Exhibit #21 that new Contract provisions should be added calling for a \$500.00 per year bonus for departmental employees assigned to the "30 Unit."

It is the last offer of the Employers that there be no bonus payment as called for by the Union's proposal.

Union Issue No. 17

Article XXII, Section 8, Tuition Reimbursement:

As evidenced by hearing Union Exhibit #24, the Association has proposed that Section 8 be modified in a manner resulting in a significant increase in available tuition reimbursement monies.

The last offer of the Employers is that Section 8 of Article XXII be modified to read as follows:

The County shall reimburse seventy-five (75%) percent of the first Five Hundred (\$500.00) Dollars per year of charges incurred by County employees taking improved high school or college courses, as outlined in the more detailed policies statement available from the Personnel Manager. Approved courses shall be those which provide for the systematic improvement of the knowledge or skills required in the performance of the employee's work or courses that, for any other reasons, will be beneficial to the employees and to the County. All courses shall be approved by the Personnel Manager and the Sheriff prior to issuance of the refund. The employee must remain in County service for a period of twelve (12) calendar months following completion of the course or course or forfeit such tuition payment.

Union Issue No. 22

Appendix C:

As evidenced by hearing Union Exhibit #26, the Association has proposed a significant modification to the current provisions of Appendix C contained in the current Collective Bargaining Agreement.

It is the last offer of the Employers that Appendix C be maintained with the proviso that the date of December 31, 1995, as set forth at the third paragraph of Appendix C be modified to read December 31, 1997.

Union Issue No. 23

Appendix A:

Issue No. 23 deals with the wage schedules as set forth in Appendix A of the Collective Bargaining Agreement. During the hearing, the Association submitted its proposal as evidenced by Union Exhibit # 25. At the conclusion of the hearing, it was agreed at the suggestion of the Arbitrator that the parties submit alternative last offers relative to Appendix A.

If COLA is eliminated from the contract, the County of Kalamazoo's last offer as to the salary schedules of all bargaining unit members eligible for 312 Arbitration:

1996

The salary schedules have already been adjusted during the 1996 calendar year pursuant to the provisions of Appendix B of the parties' Collective Bargaining Agreement.

1997

1. The bargaining unit employees have already received COLA adjustments to the salary schedules pursuant to Appendix B on January 1, 1997, April 1, 1997, and July 1, 1997.
2. The County proposes an additional salary schedule adjustment of 1.0% be made retroactive to January 1, 1997. This adjustment would be made on the salary schedule as adjusted by COLA on April 1, 1997.
3. The County proposes an additional salary schedule adjustment of .75% to be effective October 1, 1997.

If COLA is continued in the contract, the County of Kalamazoo's last offer as to the salary schedules of all bargaining unit members eligible for 312 arbitration:

1996

The salary schedules have already been adjusted during the 1996 calendar year pursuant to the provisions of Appendix B of the parties' Collective Bargaining Agreement.

1997

1. The bargaining unit employees have already received COLA adjustments to the salary schedules pursuant to Appendix B on January 1, 1997, April 1, 1997 and July 1, 1997.
2. The County proposes an additional salary schedule adjustment of 1.0% be made retroactive to January 1, 1997. This adjustment would be made on the salary schedule as adjusted by COLA on April 1, 1997.
3. The County proposes an additional salary schedule be adjusted by the COLA provisions on October 1, 1997.

EMPLOYERS' ISSUES

Employer Issue No. 2

Article V, Section 4, Sick Leave for Dentist or Doctor Appointments:

The last offer of the Employees is as proposed on Employers' Exhibit #28 as presented during the hearing. The modified contractual provisions would read as follows:

An employee shall not be charged sick leave time for dentist's or doctor's appointments when such appointments cannot be scheduled other than during the employee's normal work hours when the employee's absence from work is two (2) hours or less. Once an employee has had total absences of eight (8) hours for such dentist's or doctor's appointments during a calendar year, all future absences during that year resulting from dentist's or doctor's appointments will be charged to the employee's individual sick leave count.

Employer's Issue #4

Article IX, Section 3, Holiday Pay For Employees Regularly Scheduled To Work Monday Through Friday:

The last offer of the Employers is as set forth in Employers' Exhibit #30. The modified Contract language would read as follows:

Shift employees who are not scheduled to work and who do not work on a holiday may receive the holiday pay specified in Section 4 of this Article or a floating holiday at straight pay. Employees who are scheduled to work and do work the holiday shall be entitled to holiday pay plus time and one-half (1 1/2) their regular hourly rate for all hours worked during the normal work day as defined in Article VI. Hours worked in excess of the normal work day shall be paid at the rate of two (2) times the employee's regular hourly rate. Employees may elect to receive time and one-half compensatory time off in lieu of premium pay for hours worked during the normal work day. Employees who are called in to work on a holiday shall receive their holiday pay plus two (2) times their regular hourly rate for all hours worked on the holiday.

For employees who are regularly scheduled Monday through Friday, when any holiday enumerated above falls on a Sunday, the next

following Monday shall be observed as the holiday. When any holiday enumerated above falls on a Saturday, the preceding Friday shall be observed as a holiday, with the exception of New Year's Day which will be celebrated the following Monday.

Employers' Issue No. 6

Article X, Section 2, "Preferred Work Duties":

The last offer of the Employers is that the current contract language should be deleted from the Contract.

Employers' Issue No. 7

Article XIII, Section 1(e):

The last offer of the Employer is that this provision be modified as follows:

No record of any departmental investigation made as a result of a complaint will be placed in the employee's personnel record unless the complaint is brought to his/her attention within ten (10) days of the complaint. This provision shall not apply when the complaint alleges and/or involves possible criminal conduct on the part of a departmental employee.

Employer's Issue No. 8

Article XVIII, Section 5, Personal Job Leave Allotment for Probationary Employees:

The last offer of the Employers is as set forth in Employers' Exhibit #36. The Contract language would be modified as follows:

Probationary employees shall earn said personal leave days at the rate of one (1) day per every four (4) months of continuous regular employment. Such days will accumulate and be granted as follows:

One (1) day on January 1; one (1) day on May 1; one (1) day on September 1 for a total of three (3) potential personal leave days per calendar year.

Employer's Issue No. 12

Article XIX, Section 4, Termination of Seniority Privileges:

The last offer of the Employers is as set forth in Employers' Exhibit #37. Subparagraph 4 would be modified to read as follows:

An employee's seniority shall be terminated if he/she quits, retires or is discharged for just cause. An employee's seniority shall be terminated if he/she has been on layoff for a period of time equal to his/her seniority at the time of his/her layoff or two (2) years, whichever is less.

Employers' Issue No. 13

Article III, Section 4, Vacation Allotment:

The last offer of the Employers is as set forth in Employers' Exhibit #39. The provisions of Article III, Section 4, would read as follows:

The Sheriff shall determine the number of employees who can be assigned for vacation purposes at any time, agreeing that an effort shall be made to schedule vacation leave in accordance with the manpower and workload requirements as determined by the Sheriff. Vacation leave shall be granted giving preference to seniority employees.

A seniority list shall be posted in accordance with Article XIX, Section 2, by the Employer. All employees shall indicate prior to April 15 of each year those dates between April 15 and October 14 that they desire to take as their eligible vacation leave. All employees shall indicate prior to October 15 of each year those dates between October 15 and April 14 that they desire to take as their eligible vacation leave. In the event two (2) or more employees desire the same vacation date, and it is determined by the Sheriff that both employees cannot be assigned for vacation purposes, the employee having the least amount of seniority shall select alternative dates for his/her vacation. A final vacation list shall be prepared by the Sheriff and distributed to all employees, not later than May 1 for the April 15 selections and November 1 for the October 15 selections, indicating those dates agreed upon.

- (a) During the selection period which ends on April 15, no employee may indicate a desire for more than ten (10) vacation days during the time period from June 1 through August 31.
- (b) In the event an employee does not select a vacation period prior to the April 15 or October 15 deadlines, he/she shall be permitted to select a vacation period from the remaining available dates. If two (2) or more employees have failed to make selections by April 15, their selection shall be made on the basis of first come, first served.
- (c) If an employee, because of required court appearances or other emergency situations, is unable to take his/her vacation during the period assigned, every effort shall be made by the Sheriff to reschedule a vacation period convenient and agreeable to the employee and the Sheriff in the calendar year in which his/her vacation period was assigned. However, if the parties are unable to agree to a mutually convenient vacation period, the employee shall be allowed to accumulate and carry over his/her last year's vacation time into the following calendar year or years, provided the accumulation shall not exceed three hundred sixty (360) hours.
 - (1) No more than two hundred forty (240) hours of vacation may be taken at any one time under this provision.
- (d) No employee shall be permitted to take his/her vacation leave one (1) day at a time without the prior approval of the Sheriff. However, this subsection shall not be used nor construed so as to work a forfeiture of any actual earned vacation leave.

Employers' Issue No. 14

Appendix A:

The last offer of the Employers has already been submitted in this transmittal.


Employers' Issue No. 15

Appendix B, COLA:

At the suggestion of the Arbitrator, the parties have submitted alternative proposals relative to Appendix A based on whether or not the COLA provisions of the old Collective Bargaining Agreement as set forth in Appendix B are maintained by this Arbitrator. The last offer of the Employers is that Appendix B be deleted from the Contract so that all parties to the collective bargaining process will be motivated in future years to settle future contracts in a timely manner.

Respectfully submitted,

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
Attorneys for Employers

By: 
John G. Manske

BUSINESS ADDRESS:
425 West Michigan Avenue
Kalamazoo, Michigan 49007
Telephone: (616) 226-2950

APPENDIX "D" ANALYSIS AND OPINION OF CHAIRMAN

VACATIONS, ARTICLE III, SECTION 2

The current vacation schedule, as set forth in the Agreement, compares favorably with most of the communities cited by the parties. There is not sufficient compelling or persuasive reasons that would justify the increased vacation allotments proposed by the Association. The present vacation allotment shall remain without any change. Therefore, The Employer's Last Best Offer is adopted.

ARTICLE IV, SECTION 2 DENTAL INSURANCE

The Association's requested Dental Plan changes are primarily concerned with the benefits pertaining to preventive procedures, and these benefit improvements appear to be reasonable and should not be an overly burdensome cost to the Employer. In a negotiated "total package" it seems reasonable this improvement in a "fringe" benefit would have been most likely included in a final settlement bargained by the parties. This improved dental coverage is not excessive. Therefore, the Association's Last Best Offer shall be adopted and incorporated into the Agreement.

DISABILITY INSURANCE, ARTICLE IV, SECTION 7

The Association's proposal to change from the current 24 months of disability, to an increased duration of 60 months disability, is not reasonable and not warranted by any compelling situation or hardship, particularly in connection with the availability of the days for personal sick leave accumulation and sick leave entitlement from the sick leave bank. Therefore, the Employer's Last Best Offer is adopted and there will be no change in the Agreement.

ARTICLE V, SECTION 2 (b) and SECTION 7

The Association proposes that if an employee does not utilized their sick leave during a 365 day period, then such employee shall be entitled to an additional personal business leave day during the subsequent 365 day period. Therefore a lack of usage would generate additional business leave days. Specifically, the Association proposed any employee who does not utilize any sick time during a 365 day period shall be entitled to one additional business leave day during the subsequent 365 days period.

There is evidence that the restrictive language which reads. "This benefit will not be available to any bargaining unit member hired subsequent to January 1, 1986" was added to the contract as a trade off by the union for obtaining a long term disability. I conclude there is no need to remove this bargained for restrictive language from the Agreement. Therefore, the Employer's Last Best Offer is more reasonable, and there will be no change in the current language of the Agreement.

ARTICLE X, SECTION 1 (a) WORKERS COMPENSATION

The Association's proposed change to 39 weeks is more reasonable than 26 weeks proposed by the Employer. This decision is based upon what would have been a negotiated settlement if the parties had truly bargained on all issues and arrived at a settlement after considering more than 20 issues that remained on the bargaining table. I conclude the Association's proposal is more fair. Therefore, the Association's Last Best Offer is adopted and incorporated into the Agreement.

ARTICLE XVII, SECTION 1 CLOTHING ALLOWANCE

The Association's proposal would result in the Employer being responsible for the cleaning of clothing owned by plainclothes officers who already receive a clothing allowance of \$800 for the purchase of clothes. I believe the present \$800 clothing allowance is adequate for the plainclothes officers. Therefore, the Employer's Last Best Offer is adopted.

ARTICLE VI, SECTION 1 (NORMAL WORK DAY)

The Association proposes the work week of the detective sergeants, which is currently 8 hours of work, Monday through Friday, starting at 9 a.m. to 5 p.m., be changed to a 10 hour starting at 8 a.m. until 6 p.m., with 30 minutes paid lunch. To ensure Monday through Friday coverage, one-half of the detective sergeants shall work Monday through Thursday and one-half shall select their Tuesday through Friday. There would then be 10 hour coverage for five days a week, instead of 8 hours coverage for five days a week. This allows for extended and continued investigations for a full 10 hours, without overtime involvement. This would involve the 10 currently assigned detectives.

The Employer points out the department would have to operate with a lack of availability of detectives on Mondays and Fridays, in essence the department would be forced to operate at half strength two days out of five. It would be a problem on a day to day basis for operational needs. Some studies indicate productivity suffers because the same amount of work previously performed in 8 hour day is also performed during a 10 hour day. The Employer fears the productivity of the 10 hour day will gradually erode back to the same productivity as performed in the 8 hour day.

The scheduling of the work week and hours of the work day is a fundamental right of management, and arbitration panels should not disturb or alter the fundamental rights of employers, or employees, without clear and convincing proof a change is absolutely necessary. The four day week is such a significant change, that this should be resolved by the parties in negotiations, not by a neutral's award. The Association has not proven the necessity of such a change in the hours of work. The Association has not shown it is unreasonable for the Employer to reject this change in its work schedules Therefore, the Employer's Last Best Offer to not change the Agreement is adopted.

BONUS "30 UNIT" EMPLOYEES

The Association's proposal to grant the "30 Unit" deputies working in the mobile crime lab a \$500 yearly bonus is warranted. This bonus is based upon the specialized function of the crime scene technician and their responsibility to protect a crime scene, locate, identify and collect evidence. These technicians must engage in periodic training. They have a high degree of responsibility in collecting and preserving physical evidence. The Association Last Best Offer is reasonable and merits a bonus being paid.

ARTICLE XXII, SECTION 8, TUITION REIMBURSEMENT

Both parties made proposals and I conclude the Employer's Last Best Offer is more reasonable. The 75 % of the tuition up to a maximum of \$500 does provide a substantial tuition allowance.

APPENDIX C

The Association's proposal for full insurance for retirees after 25 years of service, without any age requirement is not adopted. The current requirement of age, with 25 years of service is more reasonable and equitable. The Employer's offer is adopted.

ARTICLE V, SECTION 4 SICK LEAVE FOR DENTIST/ DOCTOR APPOINTMENTS

I believe the Employer's proposal that an employee shall not be charged sick leave time for doctor/dental appointments be limited to 8 hours per year is fair and reasonable. Once an employee has had 8 hours charged in appointments during a year, all future hours of absences, due to appointments during that year, should be charged to the employee's sick leave count. This should stop future abuse and limit appointments to annual medical check ups and dental check-ups. Any hours in excess of 8 hours can be charged to sick leave. The Employer's offer is adopted and incorporated into the Agreement.

ARTICLE IX, SECTION 3 HOLIDAY PAY FOR EMPLOYEES REGULARLY SCHEDULED TO WORK MONDAY THROUGH FRIDAY

I do not believe there is a necessity to change the Agreement. This matter was the subject of a previous arbitration case and it should be resolved by review of the arbitration decision and further collective bargaining. After further review the parties may adopt language that best conforms to their individual situation. The Association's offer is adopted and the existing language of the Agreement shall not be changed by this panel.

ARTICLE X, SECTION 2 PREFERRED WORK DUTIES

The Employer proposed a deletion of the following language; (The Employer shall maintain "preferred work duties" for employees injured under the Act (Workers Compensation), This is a reasonable request. The evidence indicates when employees are injured in the line of duty, the department makes an effort to provide them with a light duty job, such as dispatch. The current language appears to obligate the employer to maintain an unlimited number of positions for an unlimited number of disabled employees. That is not reasonable and the request to remove this language makes sense. The department has said they would attempt to create light duty positions for injured officers. This is fair. The Employer's request for the removal of this language is granted.

ARTICLE XIII, SECTION 1 (e)

The Employer proposes to delete language from the Agreement which reads: (No record of any departmental investigation made as a result of a complaint will be placed in the employee's personnel record unless the complaint is brought to his/her attention within ten (10) days of the complaint.) The Employer seeks to restrict an employee's due process right; a right incorporated into the Agreement by the parties during previous collective bargaining. This right is akin to management's right to direct the work force and schedule hours of work. Parties negotiated rights should not be altered without strong and compelling reason to do so. The facts indicate a change is not necessary.

The Employer maintained there are certain types of investigations that are not conducive to a successful resolution if the employee under investigation is first notified of an ongoing investigation. The Employer fears if the investigated employee is aware of the investigation, they could change their conduct, and curtail the effect of surveillance and destroy potential evidence.

Also, the Employer is concerned with a situation where there is evidence of wrongdoing, but a criminal prosecution is unsuccessful, due to a technicality. If there is a preponderance of evidence of wrongdoing, then that evidence used in internal discipline would be barred because the employee was not informed of the investigation. Obviously the parties thought it was necessary to provide such a notice to an employee. I am not inclined to reverse that decision.

The Association points out there have not been any incidents to justify this proposal and it is a "prospective" situation, based upon what may happen in the future. The language was placed in the Agreement to protect employees from departmental abuses. Apparently, this proposal has been a part of previous negotiations, and it still remains today. The Employer admits it has lived with this section for years. Absent any cited situations, there is no need for this proposal. Therefore, I must decline to grant the Employer's proposal.

ARTICLE XVIII, SECTION 5 PERSONAL JOB LEAVE ALLOTMENT FOR PROBATIONARY EMPLOYEES

The Employer has failed to produce clear and convincing evidence

of the necessity to change the current terms pertaining to probationary employees. Therefore, the existing language shall remain in Agreement.

ARTICLE XIX, SECTION 4 TERMINATION OF SENIORITY PRIVILEGES

The Employer's proposal that an employee's seniority be terminated after a layoff for a period of time equal to their seniority at the time of their layoff, or 2 years, whichever is less is a reasonable request and such a provision is needed. There should be some limitation placed upon an employee's right to be recalled to their job. When an employee is laid off, the concern is that if they are gone for a long period of time, it is difficult to keep them current in critical skills through ongoing training. They could be gone for years and still have unlimited recall rights. I think at least two years of recall rights is a reasonable period of time. The Employer's proposal is fair and reasonable and is hereby adopted and should be placed in the Agreement.

ARTICLE III, SECTION 4 VACATION ALLOTMENT

The Employer proposes a limitation in the amount of vacation time an employee can utilize during the summer. Basically, during the selection period, which ends on April 15, no employee may indicate a desire for more than 10 vacation days during the time period from June 1 through August 31. This is new language which is a limitation on the amount of vacation that can be utilized by any employee during the months of June, July and August. These are the prime months requested for vacation time off. The Agreement allows for vacation selection by bid, by seniority and the most senior person takes up to 30 vacation days at one time.

This situation, according the Employer creates a situation where the most senior employees take up to 6 weeks, and can take a significant portion of the summer months, so much of the workforce is not

able to schedule any amount of summer vacation. The younger employees with children are prevented from summer vacations.

I do not find any compelling situation that demands a panel resolve the issue of vacation allotment. This is a matter that should be discussed and resolved by the parties at the table, with the give and take that includes consideration of the entire workforce, both the most senior and the junior members of the bargaining unit. It has elements of political consequences that can be resolved by mutual concessions involving the entire workforce. The Employer and Association are in the best positions to determine equitable vacation schedules. If they can not work it out, then it may be appropriate to seek outside advice. At this point I conclude that is not the best approach. The Employer's proposal is denied.

CONCLUSION

As indicated labor contracts are a final statement of a series of compromises, trade-offs and judgments of the parties as to what they can live with for the duration of the Agreement. The Panel should not engage in granting benefits or rights that disturb the traditional rights of either party. Neither party chose to file post hearing arguments in support of their position, therefore I have applied my best judgment in arriving at an equitable settlement based upon how strongly the evidence indicated a need for a change from the existing situation. I have applied a "total package" concept in granting proposals. I have attempted to select the items I found evidence of a necessity or a reasonable factual support.

Once the wage issue was resolved, I reviewed all the other issues in totality, and granted proposals based upon what I determined would have resulted from bargaining process under the real threat of a work stoppage, and the consequences of a strike or lockout.