

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312, PUBLIC ACTS OF 1969 ARBITRATION PANEL

*In the Matter of the
Arbitration Between:*

COUNTY OF LAKE

-and-

MERC Act 312 Case No. L02 H-9004
Hearing: November 8, 2004

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN

ARBITRATION PANEL OPINION AND AWARD

George T. Roumell, Jr., Chairman
John McGlinchey, Employer Delegate
Patrick Spidell, Employees' Delegate

APPEARANCES:

FOR COUNTY OF LAKE:

John McGlinchey, Attorney
Bob A. Hilis, Sheriff
Shelly Myers, Clerk/Register/CFO
William Rye, MOT Consultant

FOR COMMAND OFFICERS
ASSOCIATION OF MICHIGAN:

Patrick Spidell, Business Agent
Marv Dudzinski, Research Analyst
Dennis Robinson, Chief Deputy
Harold Nichols, Sergeant

Background

The Lake County Sheriff's Department has four bargaining units – dispatchers, the corrections unit, the deputies unit, and the command unit. There are ten road deputies in the deputies unit. In the command unit, there are seven command officers, namely, a Chief Deputy Sheriff, a Lieutenant, two road sergeants, and two jail sergeants. It was acknowledged that the two jail sergeants are not covered by Act 312 but the County agreed to have the jail sergeants

included in this Award.

The County and the COAM had a Collective Bargaining Agreement covering the command officers effective January 1, 1999 through December 31, 2002. Before the expiration of the 1999-2002 contract, the parties commenced negotiation. However, after mediation, the parties were unable to reach agreement on a successor contract.

As a result, on January 28, 2004, the County filed a petition to invoke Act 312, with the petition listing the issues separating the parties as:

- Wages
- Health Insurance
- Boots
- Workday

The undersigned was appointed Chairman of the Act 312 Panel. The County appointed John McGlinchey as its delegate. The COAM appointed Patrick Spidell as its advocate. Both of the delegates served as their respective advocates.

A pretrial was conducted. As a result, the COAM listed as its issues:

- Wages
- Health Care
- Longevity
- Boots
- Work Day
- Shift Premium

The County maintained that its issues were wages and health care.

At the time the hearing was commenced on Monday, November 8, 2004, the COAM announced that the issue of Boot Allowance and Hours had been resolved through tentative agreements. The agreement as to Boots is "maximum reimbursement of \$100.00 annually with receipt." The agreement as to Hours is, "include language reflecting working of 8, 10, and 12

hours.”

Thus, the issues remaining are wages, health care, longevity, as well as retroactivity.

The parties have also agreed to waive all time limits.

The Criteria

When the Legislature enacted the provisions for binding arbitration in police and fire disputes, namely Act 312 of Public Acts of 1969, the Legislature provided in Section 9 [MCL 423.239] for the criteria to be applied by arbitration panels:

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the ages, 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, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Essentially, these criteria address the cost of living, the financial ability of the employer to fund the award, and comparables, both internal and with other similarly situated public and private employers in the geographical area involved.

The criteria set forth in Section 9 are just that – guides. Act 312 arbitrators and fact finders utilize this criteria as applied to a particular situation. There is no one criteria that is dominant over another. The application of a particular criteria depends upon the circumstances.

It is noted that in Section 9(h), the statute refers to criteria used by fact finders not otherwise enumerated in Section 9. Among the criteria utilized by fact finders is the bargaining history of the parties, both past and current, as well as the “art of the possible,” namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations. The “art of the possible” in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

As enumerated in Section 9, there is the comparables criteria. This means that both external and internal comparables must be studied, comparing similarly situated employees of similar employers as well as the pattern of negotiations among the employees of the employer. This comparable criteria, coupled with the bargaining history and the art of the possible, leads the

way to a recommendation in the instant situation.

As the statute mandates, all of the criteria are to be considered. However, each situation lends itself to focusing on particular criteria. This follows because a given situation might dictate a certain emphasis the parties have placed on a given criteria in negotiations.

This certainly was the case in the dispute between the Command Officers and Lake County. The issue was not the ability to pay. The County, concerned about the cost of living, seemed to emphasize a wage package consistent with the more modest cost of living prevalent in current times. What seemed to be the emphasis on the part of both parties were the comparables. In the pretrial, the parties agreed to comparable counties, namely Crawford, Missaukee, Montmorency and Oscoda.

There was also the proposition that, within the Sheriff's Department, there are four organized units, namely the deputies, the corrections officers, the command officers, and the dispatchers. The dispatchers are represented by the Police Officers Labor Council (POLC) whereas two units (deputies and correction officers) are represented by the Police Officers of Michigan (POAM). The command is represented by the Command Officers Association of Michigan (COAM). In addition, there are the non-organized County employees.

It also should be noted that POAM has settled the contract with the corrections officers. The contract as to the deputies has been the subject of an Act 312 arbitration hearing wherein the proofs have been submitted and the parties remain in panel discussions. It is to be noted that the last best offers in the deputies unit have been submitted and, as to wages, the offers of the County and the POAM were identical, namely, a three year contract with a 2.5% increase across-the-board for each of three years, with the contract expiring December 31, 2005.

Over the years, the wage differential between command officers and deputies has been as follows:

<u>Lake County</u>	<u>1-1-98</u>	<u>7-1-98</u>	<u>1-1-99</u>	<u>7-1-99</u>	<u>1-1-00</u>	<u>7-1-00</u>	<u>1-1-01</u>	<u>1-1-02</u>	<u>7-1-02</u>
Sergeants	29,205	29,767	30,620	31,202	32,096	32,720	33,656	34,634	35,300
Deputy	27,955	28,517	29,370	29,952	30,846	31,470	32,406	33,384	34,050
% differential	4.28%	4.20%	4.08%	4.01%	3.89%	3.82%	3.71%	3.61%	3.54%

Thus, the County suggests that with this bargaining history and the internal comparables, the differential should be in keeping with the above bargaining history. On the other hand, as to differentials, the Union is relying on the external comparables, which reveal:

<u>Crawford</u>	<u>1-1-98</u>	<u>7-1-98</u>	<u>1-1-99</u>	<u>7-1-99</u>	<u>1-1-00</u>	<u>7-1-00</u>	<u>10-1-00</u>	<u>1-1-01</u>	<u>10-1-01</u>	<u>1-1-02</u>	<u>7-1-02</u>
Sergeant	33,821	33,821	35,173	35,173	37,284	37,284	38,775	38,775	40,327	40,327	40,327
Deputy	31,380	31,380	32,635	32,635	34,590	34,590	35,984	35,984	37,419	37,419	38,419
% differential	7.22%	7.22%	7.22%	7.22%	7.23%	7.23%	7.20%	7.20%	7.21%	7.21%	7.21%

<u>Crawford</u>	<u>10-1-02</u>	<u>1-1-03</u>	<u>10-1-03</u>	<u>1-1-04</u>	<u>7-1-04</u>	<u>10-1-04</u>	<u>1-1-05</u>	<u>7-1-05</u>	<u>10-1-05</u>	<u>1-1-06</u>	<u>7-1-06</u>
Sergeant	41,939	43,181	43,181	43,181	43,181	44,470	44,470	44,470	45,136	45,136	45,136
Deputy	38,917	38,917	40,082	40,082	40,082	41,288	41,288	41,288	41,288	Expires	
% differential	7.21%	7.21%	7.18%	7.18%	7.18%	7.16%	7.16%	7.16%	8.53%		

<u>Crawford</u>	<u>10-1-06</u>	<u>1-1-07</u>
Sergeant	Expires	

<u>Missaukee</u>	<u>1-1-98</u>	<u>7-1-98</u>	<u>1-1-99</u>	<u>7-1-99</u>	<u>1-1-00</u>	<u>7-1-00</u>	<u>10-1-00</u>	<u>1-1-01</u>	<u>10-1-01</u>	<u>1-1-02</u>	<u>7-1-02</u>
Sergeant	31,374	31,374	32,420	32,420	33,348	33,348	33,348	34,622	34,622	35,450	35,450
Deputy	29,874	29,874	30,920	30,920	31,848	31,848	31,848	33,122	33,122	33,950	33,950
% differential	4.78%	4.78%	4.63%	4.63%	4.50%	4.50%	4.50%	4.33%	4.33%	4.23%	4.23%

<u>Missaukee</u>	<u>10-1-02</u>	<u>1-1-03</u>	<u>10-1-03</u>	<u>1-1-04</u>	<u>7-1-04</u>	<u>10-1-04</u>	<u>1-1-05</u>	<u>7-1-05</u>	<u>10-1-05</u>	<u>1-1-06</u>	<u>7-1-06</u>
Sergeant	35,450	37,148	37,148	38,217	38,217	38,217	39,319	39,319	39,319	Expires	
Deputy	33,950	35,648	35,648	36,717	36,717	36,717	37,819	37,819	37,819	Expires	
% differential	4.23%	4.04%	4.04%	3.92%	3.92%	3.92%	3.81%	3.81%	3.81%		

<u>Missaukee</u>	<u>10-1-06</u>	<u>1-1-07</u>
------------------	----------------	---------------

<u>Montmorency</u>	<u>1-1-98</u>	<u>7-1-98</u>	<u>1-1-99</u>	<u>7-1-99</u>	<u>1-1-00</u>	<u>7-1-00</u>	<u>10-1-00</u>	<u>1-1-01</u>	<u>10-1-01</u>	<u>1-1-02</u>	<u>7-1-02</u>
Sergeant	28,751	28,751	29,614	29,614	30,555	30,555	30,555	31,491	31,491	32,436	32,436
Deputy	26,951	26,951	27,760	27,760	28,704	28,704	28,704	29,640	29,640	30,529	30,529
% differential	6.26%	6.26%	6.26%	6.26%	6.06%	6.06%	6.06%	5.88%	5.88%	5.88%	5.88%

<u>Montmorency</u>	<u>10-1-02</u>	<u>1-1-03</u>	<u>10-1-03</u>	<u>1-1-04</u>	<u>7-1-04</u>	<u>10-1-04</u>	<u>1-1-05</u>	<u>7-1-05</u>	<u>10-1-05</u>	<u>1-1-06</u>	<u>7-1-06</u>
Sergeant	32,426	Expired									
Deputy	30,529	Expired									
% differential	5.88%										

<u>Montmorency</u>	<u>10-1-06</u>	<u>1-1-07</u>
--------------------	----------------	---------------

<u>Oscoda County</u>	<u>1-1-98</u>	<u>7-1-98</u>	<u>1-1-99</u>	<u>7-1-99</u>	<u>1-1-00</u>	<u>7-1-00</u>	<u>10-1-00</u>	<u>1-1-01</u>	<u>10-1-01</u>	<u>1-1-02</u>	<u>7-1-02</u>
Sergeant	27,766	27,766	28,599	28,599	20,457	29,457	29,457	30,389	30,389	31,325	31,325
Deputy	26,201	26,201	26,987	26,987	27,797	27,797	27,797	28,275	28,275	29,661	29,661
% differential	5.64%	5.64%	5.64%	5.64%	5.64%	5.64%	5.64%	6.96%	6.96%	5.31%	5.31%
<u>Oscoda County</u>	<u>10-1-02</u>	<u>1-1-03</u>	<u>10-1-03</u>	<u>1-1-04</u>	<u>7-1-04</u>	<u>10-1-04</u>	<u>1-1-05</u>	<u>7-1-05</u>	<u>10-1-05</u>	<u>1-1-06</u>	<u>7-1-06</u>
Sergeant	31,325	32,261	32,261	32,745	33,236	33,236	33,735	33,241	34,241	35,268	35,268
Deputy	29,661	30,597	30,597	31,056	31,522	31,522	31,995	32,475	32,475	33,499	Expires
% differential	5.31%	5.16%	5.16%	5.16%	5.16%	5.16%	5.16%	5.16%	5.16%	5.16%	
<u>Oscoda County</u>	<u>10-1-06</u>	<u>1-1-07</u>									
Sergeant	35,268	Expires									

The internal comparables as to health care reveal that the County has reached the following settlements with at least two other bargaining units as well as its non-organized unit and is making the following proposals as to the deputies (now in Act 312) and the command:

Lake County Health Insurance

<u>Internal Units</u>	<u>Type of Plan</u>	<u>Prescription CoPay</u>	<u>Employee Contribution</u>
Non-union	3 options	\$10/20	\$76-333 per month for family coverage (1)
Corrections	3 options	\$10/20	\$76-333 per month for family coverage (1)
Dispatch	3 options	\$10/20	\$76-333 per month for family coverage (1)
Deputies (proposed)	BCBS Traditional or Point of Service	\$10/20	0
Command (proposed)	BCBS Traditional or Point of Service	\$10/20	0

Notes: (1) In 2005, employees with the PPO plan with pay 50% of the premium increase up to \$100 per month. POS and Traditional plan participants will pay 100% of the premium increase.

The COAM suggests that, in bargaining, the County is seeking premium sharing, noting in its exhibit as to its interpretation of the County's position:

Three (3) Blue Cross/Blue Shield Health Insurance options will be offered as follows:

1. PPO

2003 Premium	2003 Employee Share
Single: \$300.70	\$50.67
Two: \$631.48	\$50.67
Family: \$706.65	\$50.67
F.C. \$150.37	\$10.00

2. POS

Single:	\$315.10	\$49.48
Two:	\$661.73	\$103.81
Family:	\$740.51	\$116.71
F.C.	\$157.55	\$24.73

3. Traditional

Single:	\$318.94	\$54.97
Two:	\$669.73	\$115.28
Family:	\$749.48	\$120.00
F.C.	\$159.31	\$27.23

The amounts are to be deducted twice monthly, 50% from the 1st pay and 50% from the 2nd pay of the month.

In 2004, employees with the PPO plan will pay one half (1/2) of the premium increase up to \$75.67 per month. POS and Traditional plan participants will pay 100% of premium increases.

In 2005, employees with the PPO plan will pay one half (1/2) of the premium increase up to \$100.00 per month. POS and Traditional plan participants will pay 100% of premium increases.

No Coverage/Waiver ***'No Coverage' is permitted only if medical coverage exists elsewhere. Proof of coverage is required.

Single:	\$106.00 credit
Two:	\$222.00 credit
Family:	\$249.00 credit

Thus, the County's position in bargaining was identical to the settlement with at least two other bargaining units.

The Union's position as to health care is set forth at page 8 of its post-hearing brief, and reads in part:

The Union seeks to maintain and preserve health care benefits as proposed in its last best offer. Employees are currently covered under a Blue Cross/Blue Shield traditional plan with no premium costs to the employees. Also contained within the health care program is a \$10/\$20 drug rider and an employee group health deductible fund of \$2,000.00 annually. This fund is used to reimburse deductible and co-pays under the Traditional plan.

The Union is proposing that employees change from the Blue Cross/Blue Shield Traditional plan to a Blue Cross/Blue Shield PPO Plan 2 fully funded by the Employer. The group reimbursement fund would be maintained. Additionally, the Employer would offer as optional programs the Point of Service (POS) and

the Traditional plan, with employees paying 100% of premium increases for both of these programs.

In support of its position, COAM has made the following statement as to the comparables with regard to health care insurance:

Lake County:	Fully paid Blue Cross/Blue Shield Traditional plan with \$10/\$20 drug card. \$2,000.00 group deductible fund.
Crawford County:	Fully paid Blue Cross/Blue Shield Traditional MVF-1 program with master medical I, riders D, F. Drug card \$15 reimbursed to \$3.00.
Missaukee County:	Fully paid Blue Cross/Blue Shield PPO 4 plan. Drug card \$10/\$40. Reimbursement 100% deductible/co-pays up to \$600.00.
Montmorency County:	Fully paid Blue Cross/Blue Shield PPO 3 plan. Drug card \$5/\$10, \$750.00 deductible reimbursed by Employer.
Oscoda County:	Fully paid Blue Cross/Blue Shield PPO Plan 1. \$10/\$40 drug card reimbursed to \$10.

With regard to the comparables, COAM then notes at page 10 of its brief:

All of the comparables have fully paid traditional Blue Cross/Blue Shield PPO plans. All of the plans have reimbursed deductible and co-pays or no deductible and co-pays. The drug cards range from as low as \$5.00 to \$40.00 with the higher ones being reimbursed back down.
[Emphasis in original]

As to longevity, the COAM suggests that the comparables favor longevity whereas the County suggests that the bargaining history favors not awarding longevity.

What the Chairman has done is to explain the interplay between the criteria and the issues the parties have presented to the Panel.

The Issues

General

The three remaining issues plus retroactivity are, by their nature, economic and therefore subject to the provisions of Section 8 of Act 312 [MCL 423.238], namely, the last best offers

with the Panel majority choosing one or the other.

Wages

As already indicated, the issue of wages does not center on the base wage as such. The comparable with the deputies and the last best offers in the Act 312 involving the deputies set the pattern, namely, a 2.5% across-the-board wage increase for each year, 2003, 2004 and 2005.

With this said, the issue of wages centers around the differential, namely, the difference in wages between the command officers and the deputies. What is central to an understanding of the differential issue is the recognition that supervisors have supervisory responsibilities and there must be some incentive for deputies to be willing to serve as supervisors: thus, the need for a reasonable differential.

As to differentials, the external comparables have been as set forth at pages 6-7 of this Opinion.

These comparables suggest that the differential in Lake County is somewhat below the median and average of the compared externals. It is true that the parties negotiated the current differential in their 1999-2002 contract, but in doing so, the parties fell behind the comparables.

As to the last best offers, the County has offered:

1. Wages. The Employer proposes the following wage increases:
 - a. For 2003, Sergeants shall receive \$1250 above top Deputy pay (current contract differential). (Note: Top Deputy pay for 2003 will increase by 2.5% since that is the rate proposed by both the Union and the Employer in the previous Act 312 arbitration.
 - b. For 2004, Sergeants shall receive \$1250 above top Deputy pay (current contract differential). (Note: Top Deputy pay for 2004 will increase by 2.5% since that is the rate proposed by both the Union and the Employer in the previous Act 312 arbitration.)
 - c. For 2005, Sergeants will receive \$1500 above top Deputy pay.

(Note: Top Deputy pay for 2005 will increase by 2.5% since that is the rate proposed by both the Union and the Employer in the previous Act 312 arbitration.)

COAM has advanced the following last best offer as to differentials:

Road patrol and detective sergeants shall be paid \$1,250.00 above the deputy 4-year step. Lieutenants shall be paid \$1,000.00 above the road sergeant's rate. The chief deputy shall be paid \$1,000.00 above the lieutenant's rate of pay. The jail and TRV sergeants rate of pay are contained herein below.

- I The following wage scale shall become effective as of the first pay period beginning on or after July 1, 2003.

Classification

Road Sergeant	Annual \$36,152
Detective Sergeant	Hourly \$17.38
Jail Sergeant	Annual \$31,970
TRV Sergeant	Hourly \$15.37
Lieutenant	Annual \$37,152
	Hourly \$17.86
Chief Deputy	Annual \$38,152
	Hourly \$18.34

- II The following wage scale shall become effective as of the first pay period beginning on or after January 1, 2004.

Classification

Road Sergeant	Annual \$37,026
Detective Sergeant	Hourly \$17.80
Jail Sergeant	Annual \$32,769
TRV Sergeant	Hourly \$15.75
Lieutenant	Annual \$38,026
	Hourly \$18.28
Chief Deputy	Annual \$39,026
	Hourly \$18.76

Road patrol and detective sergeants shall be paid \$1,750.00 above the deputy 4-years step. Lieutenant shall be paid \$1,000.00 above the road sergeants rate. The chief deputy shall be paid \$1,000.00 above the lieutenants rate of pay. The jail and TRV sergeants rate of pay are contained herein below.

- III The following wage scale shall become effective as of the first pay period beginning on or after January 1, 2005.

<u>Classification</u>	
Road Sergeant	Annual \$38,420
Detective Sergeant	Hourly \$18.47
Jail Sergeant	Annual \$33,588
TRV Sergeant	Hourly \$16.15
Lieutenant	Annual \$39,420
	Hourly \$18.95
Chief Deputy	Annual \$40,420
	Hourly \$19.43

Based upon the last best offers presented by both parties in the Deputies' Act 312 the deputies will receive a 2.5% across-the-board increase for 2003, 2004 and 2005 which will also apply because of differentials to the command. On this assumption, the County proposed the following last best offer as to wages:

- A. For 2003, sergeants shall receive \$1250 above top Deputy pay (current contract differential). (Note: Top deputy pay for 2003 will increase by 2.5% since that is the rate proposed by both the Union and the Employer in the previous Act 312 arbitration.)
- B. For 2004, sergeants shall receive \$1250 above top Deputy pay (current contract differential). (Note: Top deputy pay for 2004 will increase by 2.5% since that is the rate proposed by both the Union and the Employer in the previous Act 312 arbitration.)
- C. For 2005, sergeants will receive \$1500 above top Deputy pay. (Note: Top deputy pay for 2005 will increase by 2.5% since that is the rate proposed by both the Union and the Employer in the previous Act 312 arbitration.)

It is noted that for the years 2003 and 2004, the offer of the COAM and the County are identical. As to the year 2005, both the COAM and the County agree that there should be an increase in the differential. The dispute between the parties is the amount of the differential, with the County opting for \$1500 above the top deputy pay and the COAM opting for a \$1,750 differential above the deputy 4th year step. COAM's last best offer is specific as to the differential between the road sergeants and lieutenants, opting for \$1000 differential, as well as being specific as to the differential between the chief deputy and the lieutenant rates of pay,

opting for a \$1000 differential.

As already noted at pages 6-7 of this Opinion, the differential between the sergeants in the comparable counties would suggest that the current differential in Lake County is 3.54% and should be greater. Only Missaukee County has a differential of less than 4%. The other comparables range from 5% to as high as almost 9% in Crawford County in 2005.

The County's position in response to such a claim is set forth at pages 6-7 of its post-hearing brief, reading:

Section 9(f) of the Act (MCL 423.239) sets forth the criteria for calculating total 'compensation:'

(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.

The employer's exhibits regarding additional paid compensation include the same criteria. They also confirm the fact that the County's proposal is more deserving of adoption by this Panel.

The differences between Lake County and the comparable communities are glaring when one reviews retirement benefits. Although retirement is not an issue before the Panel, it nevertheless must be considered in determining which health insurance proposal is more deserving of adoption. This is particularly so because the County's retirement costs increase with every increase in salary since Employer contributions are based on payroll.

Employees in only one other county (Montmorency) pay nothing (as Lake County) towards their pension plan. (Ex. 11) Employees in all the other comparable communities paid at least 2% of their total retirement. In Crawford County, employees pay 4% of their pay for their pension plan and in Oscoda County, employees pay 3.6% toward retirement. (Ex. 11) And, of course, employees in Oscoda receive substantially less in wages than Lake County employees. (Ex. 2) In fact, in 2002, Lake County employees were paid about \$4,000 more than employees in Oscoda County. (Ex. 1)

Lake County provides more paid holidays of all the comparable counties, except Oscoda. (Ex. 6) Further, Lake County employees receive as much or more vacation time through twelve (12) years of service than the rest of the comparable communities except Crawford County, which provides one (1) additional vacation day. (Ex. 4)

Also significant is the fact that Lake County provides disability insurance for its employees at no cost to them. (Ex. 10) Neither Missaukee nor Oscoda Counties

provide this substantial benefit. (Ex. 10)
[Emphasis in original]

After so writing, the County's advocate became more specific as to the County's opposition to the Union's last best offer as to the third year of the contract, when he wrote at pages 7-8:

As we have seen, the parties' last best offers with regard to deputies wages consisted of across the board increases of 2.5% for 2003, 2.5% for 2004, and 2.5% for 2005 for all unit employees that remain employed by the County on the date of the award. Therefore, this wage increase will be added to command staff wages.

Under Appendix A of the parties' labor contract, sergeants are paid \$1,250 above top deputy pay. The employer is proposing here to increase that differential to \$1,500 for the third year of the contract. The union is proposing that the differential be increased from \$1,250 to \$1,750 in the third year of the contract.

b. Discussion

The Employer's proposal to provide a 20% increase in the differential to sergeants in the third year of the contract is huge. And that is on top of the pay increase they already will receive as a result of the 2.5% increase paid to deputies. What is more, the Employer will be paying an additional \$250 annually to lieutenants and chief deputy. This means after the 2.5% 'me, too' increase, the County will pay an additional \$1,750 to members of this seven (7) person unit. No employees among the internal groups nor in the comparable communities have received this level of increase.

Yet, the union has proposed the sergeants receive a (40%) increase in the differential. ... There is absolutely no justification for an increase of this proportion.

We have seen that Lake County sergeants were paid more than every comparable community, except one (Crawford County) in 2002. (Ex. 15) Under the County's proposal, Lake County command staff will continue to be paid second only to Crawford County. The 20% increase in the sergeants differential above top deputy pay is far more reasonable than the 40% increase proposed by the Union.

As to the total compensation argument, it is noted that Crawford County, where employees contribute 4% of their pay toward pensions, the differential by October 1, 2005 is 8.53% which might suggest that an appropriate differential would be around 4.53% after deducting for the pension contribution. However, in Montmorency County where, as in Lake

County, the employees pay nothing toward pensions, although Montmorency is still in bargaining it has had differentials of around 5.8%. One could pick and choose the comparables to make respective arguments as to each position. It would seem that, even considering the total compensation as just pointed out, the 3.54% differential in Lake County is below the comparables, although it could be argued that the differential is very similar to that in Missaukee County.

Nevertheless, when one considers Montmorency County, there is support from the comparables that the differential in Lake County should be increased. Both parties seem to recognize this, except that in the third year the County is opting at the \$1,500 level whereas the COAM is opting for a higher level.

In support of COAM's position its advocate, at page 7 of his post-hearing brief, wrote:

Of the comparables identified in the Union's Exhibit 35, it shows that the proposed increases suggested by the Union would keep the sergeants at or just above the average for all three years. Union Exhibit 36 shows that the sergeant's differential over deputy is currently at 3.5% in Lake County. ... If, in the third year of the contract Lake County sergeants were raised from the current \$1,250.00 over deputy (3.54% differential), to \$1,750.00 over deputy, this would increase the differential to (about 5%) or bring it to the average of the comparables.

The current corrections contract shows a four year corrections/TRV employee at \$27,395 for year 2003, at \$28,079 for year 2004, and \$28,781 for year 2005. As a differential over who the corrections and TRV sergeants supervise, this reflects a 16.7% differential in years 2003, 2004 and 2005. It appears that the corrections sergeants have almost five times as high a supervisory differential as that of road sergeants to deputies.

The Chairman, in his previous discussion, suggested that there is a need to increase the differentials to be more competitive with the comparables, recognizing that in total compensation Lake County command officers has done fairly well, including no contributions toward pensions, but when one considers Montmorency County, it seems that the differential should be at about the 5% range. The COAM's last best offer does this. Though COAM's last best offer does

represent a substantial jump, as pointed out by the County's advocate, the fact is the differential is consistent with Montmorency and would even be consistent with Crawford County, even though Crawford command is paying 4% toward their pensions.

Thus, this comparable criteria does suggest that improvements sought by the Union in its last best offer is consistent with the comparables and is designed to encourage individuals to seek promotion. It is for this reason that the Chairman, along with the COAM delegate, will opt for the COAM's last best offer. The County delegate dissents.

Longevity

The last best offer of the County as to longevity reads:

Longevity Pay. Maintain the status quo (only employees hired before 1-1-1990 receive longevity pay).

The last best offer of the COAM as to longevity reads:

LONGEVITY

17.1: Longevity Pay. All regular full-time employees in the active service of the Employer as of October 1 of any year shall be entitled to receive longevity pay for length of continuous service with the Employer according to the following rules and schedule of payment.

17.2: Longevity Eligibility. To be eligible for longevity payment subsequent to the first (1st) payment, an employee must have completed continuous full-time or part-time service equal to the service required by original eligibility plus a minimum of one (1) additional year of such service for each payment.

17.3: Longevity Payments. Payments to employees who become eligible by October 1 of any year shall be due the subsequent November 1.

17.4: Longevity Pay Schedule. The following is the longevity pay schedule:

<u>Continuous Service</u>	<u>Longevity Pay</u>
5 years and less than 10 years	\$350
10 years and less than 15 years	\$400
15 years and less than 20 years	\$450
20 years and less than 25 years	\$500
25 or more years	\$550

Longevity to become effective January 1, 2005.

The problem with the COAM's offer is that the offer ignores the bargaining history.

Approximately 14 years ago, the County and COAM negotiated out of the contract longevity by grandfathering those employees who had longevity but providing that employees hired after January 1, 1990 would not receive longevity.

This technique is frequently used in negotiations when an attempt is made to change a provision in the contract. Although this created a two-tiered situation, what the parties did was to negotiate a longevity provision. This would suggest that the bargaining history supports maintenance of the *status quo*. The comparables as to longevity reveal:

Longevity After the Following Years of Service

<u>Comparable Counties</u>		<u>5 years</u>	<u>10 years</u>	<u>15 years</u>	<u>20 years</u>	<u>25 years</u>
Crawford		\$180	\$330	\$480	\$630	\$630
Missaukee		\$180	\$205	\$300	\$425	\$425
Montmorency	Hired before 1/1/00	\$250	\$500	\$750	\$1000	\$1000
	Hired after 1/1/00	\$0	\$500	\$750	\$1000	\$1000
Oscoda		\$480	\$600	\$600	\$600	\$600
Lake	Hired before 1/1/90	\$350	\$400	\$450	\$500	\$550
	Hired after 1/1/90	\$0	\$0	\$0	\$0	\$0

One could argue that the comparables dictate that there should be longevity among the command in the Lake County Sheriff's Department. Nevertheless, the fact is that there is a bargaining history where longevity has been bargained out of the contract previously. Thus, the bargaining history criteria is persuasive that, regardless of the comparables, there is no basis to restore the longevity as requested by COAM. Furthermore, the art of the possible would suggest that if the job differential was to be reached and the issue of health care is resolved the parties, left to their own devices, would drop the issue of longevity.

It is based upon this analysis that the Chairman will join with the County delegate and opt to keep the *status quo*. The COAM delegate dissents.

Health Care

Not surprisingly, health care has become an issue between the parties. The County has

experienced a substantial increase in health care premiums, as illustrated by the following exhibit:

Sheriff Department Health Insurance Increases 2002-2004

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>Estimated 2005</u>
Command	\$7,204.56	\$8,746.02	\$10,891.08	\$8,726.40
% Increase	21.605%	20.310%	22.390%	13.080%

Insurance Premium Percentage Increases per Health Plan
for Full Family Coverage

<u>Health Insurance Plan</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Traditional	20.310%	28.00%	11.755%
PPO	22.5%	29.0%	11.00%

It is true that the County predicts that there will be less of a jump in premiums for 2005.

The fact of the matter is that for the last three years for family coverage on the traditional insurance, the increase has been 22%, 29% and 11%. This has motivated the County to seek ways to contain its costs for health care. As already noted the County, with two bargaining units, the dispatchers and the corrections officers, has a premium sharing plan and in return has made three health insurance options available to the employees. The dispatchers and corrections officers have adopted the program, as have the non-union employees. This plan has not been adopted by the deputies or the command officers.

This issue presents certain problems. First, the command officers presently have only two options, a point of service plan and a traditional plan, which are more expensive than the PPO option. Furthermore, based upon the agreement with the dispatchers and the corrections officers, it seems that the County's proposal would have less premium sharing if the employee took the PPO option, namely, one-half of the cost of any premium increases versus 100% of the cost of any premium increases with the point of service and traditional plans.

The Chairman recognizes that there are many factors preventing the parties from reaching

agreement. In 2003, the County offered three insurance choices to the command officers. They did not accept same and the result was this Act 312 proceeding.

The bottom line is that there can be no retroactivity on health care. The question is the future. This particularly becomes of concern since the enrollment period is in December of each year. The County does make a viable argument as to health care costs, and it does have internal comparables that suggest some premium cost sharing.

The problem is that there are two uniformed units subject to Act 312 arbitration in which this issue must be resolved. The deputies' Act 312 was pending at the time of the hearing in this matter. An award as to the deputies may very well have been issued by the time this Award is issued. There is concern on the part of the County that there could be inconsistent awards as to health care. It could be that the command would have one health care program and those whom the command supervise, the deputies, have another program, or vice versa. If this occurred as the result of inconsistent Act 312 awards, it could dampen the collective bargaining relationship.

As to health care, the County's last best offer is:

Health Insurance. Members of this bargaining unit shall receive the same health insurance provisions as awarded in the prior Act 312 arbitration between the non-supervisor POAM unit and the Employer.

The COAM's last best offer is:

14.1: Hospitalization Insurance.

- A. The Employer shall pay 100% of the premium cost for employee's health insurance under the Blue Cross/Blue Shield PPO Plan-2. A \$10/\$20 drug rider shall be included. The Employer shall also make available the point of service (POS) Plan and the traditional plan under the following conditions:

<u>2003 Premium</u>	<u>2003 Employee Share</u>
<u>POS</u>	
Single: \$315.10	\$ 49.48

Two:	\$661.73	\$103.81
Family:	\$740.51	\$116.71
F.C.:	\$157.55	\$ 24.73

<u>Traditional</u>		
Single:	\$318.94	\$ 54.97
Two:	\$669.73	\$115.28
Family:	\$749.48	\$120.00
F.C.:	\$159.31	\$ 27.23

The amounts are to be deducted twice monthly, 50% from the first pay and 50% from the second pay of the month.

In 2004, employees with the POS and Traditional plans will pay 100% of premium increases.

In 2005, employees with the POS and Traditional plans will pay 100% of premium increases.

B. Employer Health Deductible Fund. The Employer will contribute up to \$2,000.00 per year (example: if starts July 1, 1991, \$1,000.00 for the balance of the year), to a fund after the insurance changes in this Section (A) take effect. Such month shall be used to reimburse employees for health insurance deductible payments noted in this Section (B), but excluding the drug rider. The \$2,000.00 fund will be used to pay the cost over \$100.00 for single coverage up to \$275.00 (i.e. \$175.00 maximum payment) or over \$200.00 for two-person coverage or full family hospital DRI deductible up to \$550.00 (i.e. \$350.00 maximum payment). If the total cost exceeds the \$2,000.00 fund, the fund shall be pro rated among the users. The \$2,000.00 maximum for each year and any remaining funds from year to year will not be added to another year. The \$2,000.00 fund is for this bargaining unit. The Employer shall reimburse medical deductibles quarterly with a minimum of \$75.00 per quarter.

C. Waiver of Health Insurance. An employee who is covered as a dependent on a spouse's or parent's hospitalization policy may choose not to be covered by the medical insurance provided by the County. The decision to waive coverage can only be made once per calendar year. A waiver agreement, provided by the Employer, must be signed by the employee.

In the event the employee elects not to be covered by such medical insurance the employee shall be paid \$106.00 per month (single coverage), \$222.00 per month (two-person coverage), or \$249.00 per month (family coverage) as a salary supplement or in a deferred compensation plan administered by the County. This section does not apply to employees covered under section D below.

Employees assume all risks if they want to later re-enroll. Employees assume any potential risks as to not being covered for "pre-existing" illness or injuries by the insurance carrier.

- D. No Double Coverage if Spouse Employed by County. Effective the 1st of the month after the Employer ratifies the contract in 1992 no employee shall be eligible for health insurance coverage, as provided under this contract, if his/her spouse is employed by LAKE COUNTY or any of its departments when that employee could be covered under his/her spouse's policy. Such employee shall receive Thirty and No/100 (\$30.00) Dollars per month.

This Arbitrator has already discussed COAM's position as to the comparables as to health care. COAM further elaborated at pages 10-11 of its advocate's brief and, in particular, addressed the question of the timing of the County's last best offer concerning tying in health care to whatever occurred with the deputies in their Act 312:

Under the Employer's proposal, the employees would be responsible for premium payments retroactive to January 1, 2004. The command unit has been locked into the Traditional plan with no option of the POS and PPO plan. Therefore, employees in year 2004 would be responsible for 100% of the premium increase. We do not know for sure what that cost is, but the employer has identified the cost on a family plan for 2004 as \$333.00 per month. Employer said health care costs rose about the same from 2002 to 2003.

The employee's wage increases would yield the following annual amounts:

Year 2003 @ 2.5% maximum	\$ 851.00
Year 2004 @ 2.5% maximum	\$ 878.00
Year 2005 @ 2.5% + differential maximum	\$1,639.00

The Employer is proposing that employees pay retroactively as much as \$4,000.00 in health care premiums for each year while wages increase \$850.00 each year.

For years 2003 and 2004 employees could see up to about \$1,700.00 in wages while paying back possibly \$4,000.00 in retroactive premiums. Employees could see their income reduced by 10% or higher.

There are no employees either among the comparables or internally who had to give back 10% in income.

In the year 2005 when employees actually have optional choice of plans, employees would still be exposed to \$100.00 per month premium share on the PPO 2 plan. This would result in \$1,200.00 annually.

By the Employer setting the base at 2002 premium rates, the command officers when given the optional plans of the Traditional and POS, in year 2004, will be priced right out of the market. The only plan that the employees could even consider would be the PPO plan 2. If employees were to opt to buy up to the POS or Traditional, it would take their 2.5% wage increase plus another 9% or more of income each year to buy these plans.

The Employer will argue the traditional argument that health care costs are rising faster than normal. What the Employer will leave us to guess about, is that these costs are also rising for the comparable communities as well. However, in fact, the rate of growth was reduced in half from 29% to 11%. (E. Ex. 32)

The Employer may argue that they are just trying to achieve consistency in benefits in the County. However, there hasn't been any consistency for over fifteen years.
[Emphasis in original]

The employer's response was set forth at pages 9-10 of its advocate's post-hearing brief:

a. Last Best Offers.

The employer has proposed adding a third health insurance plan to the two that currently are offered and requiring employees to contribute a percentage toward only the increases in premium costs, depending on which plan they select. Employees who select the new PPO plan will pay 50% of the premium increases capped at \$75.67 per month for 2004 and \$100 per month for 2005. The County proposed that employees who choose to stay in the more costly POS and Traditional Blue Cross plans pay 100% of the premium increases in 2004 and in 2005.

However, in the Employer's last best offer, the employer proposed that members of the instant unit be bound by whatever is awarded in the non-supervisory Act 312 arbitration. Even though there is a strong case to be made for employees of the command unit to adopt the employer's proposed insurance plan, it is more equitable and expedient for both groups to adopt the same plans, terms and conditions. If the arbitrator decides, conversely, to rule on the plans as proposed, the Employer's plan should be adopted.

The Union has rejected any employee contributions to the new PPO health care plans and has proposed requiring employees only to contribute to the Traditional or POS plan.

b. Discussion

It is no exaggeration to say that health insurance costs have reached a crisis level for almost all employers. Lake County is no exception. Obviously, the Employer cannot continue to absorb these increases without relief. Unfortunately, the Union is taking the position that the Employer must continue to pay 100% of health insurance costs for the PPO Plan 2. It is the only County group to take this unreasonable position. In other words, all other County employees (except the POAM group which is awaiting a 312 Arbitration award) is paying the exact amount which is proposed by the Employer here.

Clearly, Lake County cannot continue to pay competitive wages and also absorb the exorbitant health insurance costs. Perhaps realizing this, the Union has delayed the Employer's ability to obtain relief for these increases. The Employer, as a result, has been compelled to pay these unchecked increases until the Employer could compel arbitration, thus preserving the status quo.

We have seen that the plan being proposed by the County will provide the same

level of benefits provided to other County employees and at the same cost. We also have seen that the proposed plans will provide greater control and flexibility to employees in deciding what type of coverage and cost best suits their circumstances. It is not only a fair and reasonable plan, it is a desirable plan and should be adopted.

c. The union's position

The Union largely rejected the Employer's attempt to alleviate the tremendous burden on the Employer for skyrocketing health care costs until the arbitration. Indeed, as a result of the Union's intransigence, the Employer has been compelled to pay the exorbitant increases in health insurance. When one considers that all other employee groups, including the corrections officers, have accepted some cost saving measures, there can be absolutely no justification for the Union's position. Indeed, one can very well argue that as a result of forcing the Employer to pay the higher costs to date, the deputies should not receive the same wage increases given to other employees in exchange for changes to their health care plans. However, the Employer has not gone that route and is still offering the same wage package.

It seems to the Chairman that there is validity to this argument, recognizing a tie-in or differential between the deputies and command officers as to wages, that both groups should have consistent health care programs; that the award here as to health care should be the same award issued as to the deputies. Whatever the deputies obtain should be the same as what is awarded to the command officers. For this reason, the Chairman, along with the County's delegate, will opt for the County's last best offer, namely, that the health care program awarded the deputies shall also apply to the command officers. This seems to be the best way to protect against inconsistent awards.

The COAM delegate dissents.

Retroactivity

The last best offer on retroactivity by the County is:

Retroactivity. The Employer proposes retroactivity for wages to the beginning of the contract for all employees employed as of the date of the arbitration award.

The last best offer of the COAM as to retroactivity is:

Wages to be retroactive to January 1, 2003, for all hours compensated.

The County makes no last best offer as to insurance retroactivity. The COAM proposes:

Health Care to become effective [date of award] with no retroactive impact to either side.

Insurance usually cannot be retroactive and so the Chairman agrees that, as to health care, retroactivity will be effective as of the date of the award. As to wages, the only difference between the two proposals is that the County proposes the retroactivity of wages to the beginning of the contract, but only to be paid to employees who were employed as of the date of the arbitration award. This seems consistent with the art of the possible and for this reason, as to wages, the last best offer of the County will be adopted with the COAM delegate dissenting. And, as indicated, the last best offer of the COAM as to the effective date of the health insurance will be adopted. Presumably, there will be no dissent on this point for the obvious reason that insurance is usually not retroactive.

Conclusion

As the Chairman viewed the matter, a central issue became one of wages in that there was a difference in wages between the deputies and the command, namely, the differential. The Chairman focused on the issue of differentials for reasons set forth in this Opinion. Longevity has in part been negotiated out of the contract and there is no reason to change the longevity. The health care issue has been resolved by a tie-in with the deputies, for the reasons set forth in this Opinion.

In other words, the Chairman believes that this Award focuses on the key issue as to the command officers which is unique to the command officers, namely, the differential.

Signatures


The parties have agreed that the signature of the Chairman will suffice as a binding award with the dissent and concurrence as to each award is noted.

A W A R D

1. Wages: The last best offer of the COAM is adopted. Patrick Spidell, the COAM Delegate has concurred; John McGlinchey, the County Delegate, has dissented.


GEORGE T. ROUMELL, JR.
Chairman

2. Longevity: The last best offer of the County, namely, the *status quo*, i.e., a continuation of the 1999-2002 language, is hereby adopted. John McGlinchey, the County Delegate, has concurred; Patrick Spidell, the COAM Delegate, has dissented.


GEORGE T. ROUMELL, JR.
Chairman

3. Health Care: The health care insurance program effective the date of this Award shall be the same as that awarded to the deputies. John McGlinchey, the County Delegate, has concurred; Patrick Spidell, the COAM Delegate, has dissented.


GEORGE T. ROUMELL, JR.
Chairman

4. Retroactivity:

A. The County's last best offer as to the retroactivity of wages is hereby adopted. John McGlinchey, the County Delegate, has concurred; Patrick Spidell, the COAM Delegate, has

dissented.


GEORGE T. ROUMELL, JR.
Chairman

B. The health care insurance program shall be effective the date of this Award. Both John McGlinchey, the County Delegate, and Patrick Spidell, the COAM Delegate, have concurred.


GEORGE T. ROUMELL, JR.
Chairman

December 30, 2004