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In the Matter of:

CITY OF HARPER WOODS,

Employer

-and-

LIEUTENANTS & SERGEANTS ASSOCIATION,
FRATERNAL ORDER OF POLICE, STATE
LODGE OF MICHIGAN,

Union

MAY 5, 1983

ARBITRATION

AWARD

AND

OPINION

MERC Case No. D80 E-2756

Act 312 Public Acts 1969 as Amended

ARBITRATION PANEL

DAVID S. TANZMAN, Chairing

RONALD DOWELL, Employer
Delegate

CHARLES WITHERS, Union
Delegate

EMPLOYER REPRESENTATION

J. RUSSELL LaBARGE, JR., ESQ.
LaBarge, Dinning & Lyons, P.C.

ROBERT DUNN, ESQ.

ELEANOR CRAMER, City Manager

UNION REPRESENTATION

JOHN A. LYONS, ESQ.
Lippitt, Lyons & Whitefield

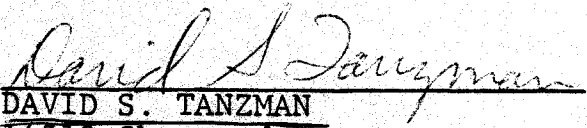
DOUGLAS GARASCIA, Det/Lt.

DENNIS KREZANSKI, Sergeant

Arbitration Hearings:

Dates: June 25, July 23, July 26 and August 16, 1982

Place: Offices of City of Harper Woods, Michigan


DAVID S. TANZMAN
14510 Sherwood
Oak Park, Michigan 48237

Harper Woods, City of

Pursuant to the Arbitration Act 312, Public Acts of 1969, as amended, the Lieutenants and Sergeants Association, Fraternal Order of Police, hereinafter referred to as the "Union", on September 3, 1980 petitioned the Michigan Employment Relations Commission for arbitration of the issues remaining in dispute in its collective bargaining negotiations with the City of Harper Woods, Michigan, hereinafter referred to as the "City" for the contract year of 1980.

The Commission, noting two (2) negotiation sessions took place with an assigned State Mediator present on October 14 and 28, 1980, but an inordinately large number of unresolved issues yet indicated, remanded the matter to the parties for further negotiations.

The second petition for arbitration under Act 312 was filed by the Union October 13, 1981, with the Michigan Employment Relations Commission.

These petitions covered the bargaining unit described as: All Lieutenants and Sergeants of the Harper Woods Police Department. At this point in time, the period included in the bargaining between the parties was from January 1, 1980 through December 31, 1981. The second petition noted a State Mediator was present additionally in a bargaining session September 28, 1981.

The Commission appointed David S. Tanzman on November 18, 1981 to serve as Chairman of a Panel of Arbitrators in the dispute. The City appointed Ronald Dowell as its Panel Delegate, and the Union designated Charles Withers as its Delegate on the Panel.

The Chairman, after taking the appropriate oath, conducted pre-arbitration hearings on December 8 and 14, 1981; then January 18, February 4, March 31, April 21, and May 4, 1982.

During these sessions, the Chairman found the parties amenable to consider a three year contract. Such consideration resulted in the parties agreeing to the following:

1. The contract which expired December 31, 1979 shall be renewed and placed into effect with whatever amendments, deletions, and additions tentatively in agreement, both economic and non-economic including an Appendix A containing:

Wage Differential

The wage differential between Sergeants and Lieutenants, and the base pay for a forty-two (42) month patrolman in the City of Harper Woods shall be as follows:

<u>Classification</u>	<u>Differential</u> <u>1-1-80</u>	<u>Differential</u> <u>1-1-80</u>
Lieutenant	26.8%	26.8%
Uniform Sergeant	14.0%	16.0%
Detective Sergeant	16.5%	18.5%

Cost of Living Allowance

Cost of living formula to remain the same for Sergeants and Lieutenants as agreed upon in the Corporals-Patrolmen's Contract, unless improved through negotiations or arbitration award. Retroactivity for such payment would effect the Lieutenants and Sergeants the same as it would Corporals and Patrolmen.

This was all placed into an agreement covering the contract period of January 1, 1980 through December 31, 1981, and the appropriate wage differentials and cost of living allowances were paid on the proper effective dates, and all other terms

of this agreement were put into effect.

2. All other economic issues remaining in dispute from the first two years of the negotiations would be forwarded to, and be part of, the third year list of demands along with the Union's positions on wages and cost of living for the calendar year 1982.

3. Parties agreed to have the Arbitration Panel proceed immediately to formal arbitration hearings under Act 312 on all remaining issues deemed to be economic which follow:

Issues for 1982:

1. Salary
2. Cost of Living Allowance
3. Dental Insurance
4. Holidays
5. Sick Leave (Pay-Off) Terminal Pay
6. Life Insurance
7. Pension
8. Food Allowance
9. Longevity

The Agreement between the City and Union for the years 1980 and 1981 was submitted as Joint Exhibit #2 in the formal arbitration proceedings. The brief summary of the agreement signed January 18, 1982 is attached hereto (Attachment #1).

The Arbitration Panel conducted formal hearings on the list of issues as well as comparability of cities which was also in dispute. Such hearings took place at the offices of the City June 25, July 23 and July 26, and finally August 16, 1982. The parties were given every opportunity to make a full presentation on every issue; present testimony through witnesses, thirty (30) exhibits - one (1) Joint; fourteen (14) Union; and fifteen (15) City - and Post-Hearing Briefs. Parties availed themselves of verbatim transcripts of the hearings prior to their submission of Post-Hearing Briefs.

A delay in initiating arbitration formal proceedings for the third year of the agreement occurred when the City objected in a letter to the Union May 12, 1982 to the following four issues specified by the Union in its list of eleven (11) demands sent to the City Council May 7, 1982 to be presented before the Arbitration Panel:

Life Insurance
Pensions
Food Allowance
Workmen's Compensation

At the request of the parties, the Arbitrator ruled in a written communication to the parties June 17, 1982 that Workmen's Compensation was not included in the Union's Petition for Arbitration to the Michigan Employment Relations Commission and is therefore to be excluded from the issues before the Panel of Arbitrators. The other three (3) issues were included in the Petition and therefore are proper issues before the Arbitration Panel for the year 1982.

The Union was represented by John A. Lyons, Esquire, of Lippitt, Lyons & Whitefield, Southfield, Michigan.

The Employer was represented by J. Russell LaBarge, Jr., Esquire, of LaBarge, Dinning & Lyons, P.C., Roseville, Michigan.

The following witnesses testified under oath during the proceedings:

For the Union: Douglas Garascia, Detective Lieutenant, Harper Woods Police Department

For the City: Robert Dunn, Attorney

Eleanor Cramer, City Manager

Kenneth J. Kunkel, CPA, Plante Moran

Hon. James Haley, Mayor, Harper Woods

STATUTE

As provided by Michigan Statute Act 312, Public Acts of 1969 as amended, Paragraph 423.239, Section 9, the Arbitration Panel shall base its findings, opinions and order upon the following factors as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings 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.

With this in mind, the Panel of Arbitrators conducted the proceedings, reviewed the record, discussed the issues and reached its conclusions which we present forthwith.

FINANCIAL ABILITY OF THE CITY

The Panel in its careful scrutiny of the record noted although the City projected a developing critical circumstance in its operational budget, at no time did it indicate an inability to negotiate economic gain in the form of salary improvement or benefits for the members of this bargaining unit. The ten (10%) percent increase of labor costs in the 1982 City Budget and the various offers in the City's positions on several issues make the observation self-evident. It is necessary to state this because of those issues which are conditional as related to other employee groups with whom the City negotiates or for whom it declares salary and fringe benefits.

COMPARABILITY

Given the wide disparity between the cities submitted by each party for purposes of comparability, it is the Panel's conclusion that the cities which they used in their previous contract arbitration and which constituted the almost entirely same list of cities used for comparability between the City and Michigan Law Enforcement Union

Local 129 in their Act 312 Arbitration for the contract covering January 1, 1980 through December 31, 1981, satisfy the intent and direction of the statute. They are as follows:

East Detroit	Mt. Clemens
Ferndale	Roseville
Hazel Park	St. Clair Shores
Madison Heights	

ISSUES

1. Salary

The Union's Last Offer Position is to maintain the wage differential over Patrol as it was in 1981, to-wit:

Lieutenant	26.8%
Sergeant	16.0%
Detective/Sergeant	18.5%

The City's Last Best Offer Position is that the wage differential between Sergeants and Lieutenants and the base pay for a forty-two (42) month Patrolman in the City of Harper Woods is eliminated. The Lieutenants, Uniform Sergeants and Detectives shall receive a three (3%) percent increase in their present base salary commencing January 1, 1982.

The Panel's Decision

There has been a traditional relationship maintained by the City which has reflected a salary differential between the Patrolmen and the Command Unit Officers, Lieutenants and Sergeants. This has been preserved either by agreement or by arbitration award. The differential has not always been fixed percentages, but there has always been a differential.

The negotiated salaries in the first two (2) years of this three year contractual period which was covered by agreement were in the form of differentials. The City agreed to increase the Uniform Sergeant salary differential by 2%; likewise for the Detective/Sergeant; and no differential change for the Lieutenant.


The offer of the City, namely a three (3%) percent increase, by its very nature would maintain a differential, whether the same as of December 31, 1981, more, or less, depending on the Patrolmen negotiations.

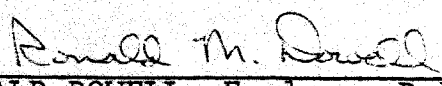
The Union readily recognizes it may get no salary increase, or may get even a reduction if the Patrolmen Unit was to negotiate or receive such a ruling through arbitration. This, in effect, declares the five (5) or six (6) members of this Union condition their salary interests to the more basic unit of Patrolmen, even to the possibility of no increase.

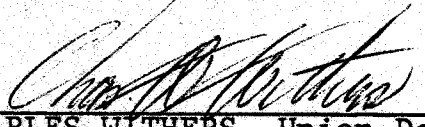
The traditional relationship of the Command Officers of this City to the Patrolmen of this City from whose ranks promotions to Command Officers take place, and whose seniority for certain benefits continue into the Command Officers ranks is more impelling a factor than any comparison with other cities. Even such examination reveals St. Clair Shores, Roseville, East Detroit and Ferndale have differentials in the salary structure between Command Officers and Patrolmen.

The Panel adopts the Union position which retains the current contract differential for each respective classification as related to the forty-two (42) month Patrolman of the City of Harper Woods

effective whenever the Patrolmen negotiation results take effect during the contract year 1982.


DAVID S. TANZMAN, Panel Chairman

DISSENT: 
RONALD DOWELL, Employer Delegate


CHARLES WITHERS, Union Delegate

2. Cost of Living Allowance

The Union's Last Offer Position is that this Command Unit receive the same COLA that the Patrolmen receive.

The City's Last Best Offer Position is to maintain the present benefit.

The present benefit entitled Cost of Living Allowance in the parties' latest contract clauses on page identified as Appendix A reads as follows:

Cost of living formula to remain the same for Sergeants and Lieutenants as agreed upon in the Corporals-Patrolmen's Contract, unless improved through negotiations or in arbitration award. Retroactivity for such payment would affect the Lieutenants and Sergeants the same as it would Corporals and Patrolmen.

The Panel's Decision


The relationship between the Command Officers and Patrolmen is an important element in their performance. It is classic argument that the income of an organizational superior in the same field of professional performance must be appropriately more than the subordinates.


The accident of inappropriate differential through degrees of strength at a bargaining table would tend to disintegrate the orderly function of the Department.

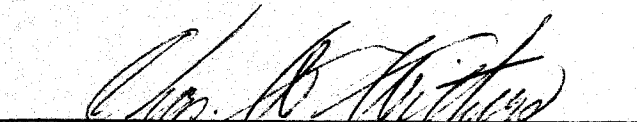
The City in its Brief quoted what it identified as the current language, but the Panel is unable to identify that language in the current contract. However, the City did commit itself to the present

benefit which we have already stated. The Union in turn, by its position, is likewise committed to the present benefit as stated in Appendix A of the current agreement.

The Panel recognizes that the last positions of the parties are in effect the same and adopts the language of the current contract stated in Appendix A as its award.


DAVID S. TANZMAN, Panel Chairman


RONALD DOWELL, Employer Delegate


CHARLES WITHERS, Union Delegate

3. Dental Insurance

The Union's Last Offer Position states it is to receive an improved dental plan based on Union Exhibit #15 (Delta Dental Upgrade).

The City's Last Best Offer is to maintain present benefits.


The Panel's Decision

The Union has understandably requested a major adjustment in the current dental program. It seeks improvements:

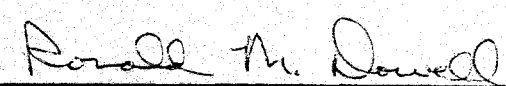
1. 90-10 co-payment formula in Class I, II and III. The present is 50-50 in Class I and II.
2. Class III Orthodontal benefits with a \$1,000 maximum. It is non-existent in current contract.
3. Retirees to receive a 50-50 dental plan.

Had the Union confined its request to the first and second areas of improvement, an opportunity to examine them in a comparable light may have been allowed the Panel. However, the third benefit - 50-50 co-payment for a dental program for retirees is newly identified. The comparable chart (Union Exhibit #6) provides no evidence regarding the matter. Neither does the Union's Final Position make any argument to justify it at this time - couple this with three cities which have no Class III benefits; and three which have \$600.00 maximum per year, and one has \$750.00, the balance is tipped in favor of rejecting the Union's position.

The Panel therefore adopts the City's Last Offer Position to maintain the status quo regarding Dental Insurance.



DAVID S. TANZMAN, Panel Chairman



RONALD DOWELL, Employer Delegate

DISSENT: 

CHARLES WITHERS, Union Delegate

4. Holidays

The Union's Last Offer Position seeks one additional holiday designated as the employee's birthday.

The City's Last Best Offer Position is to maintain the present benefit.

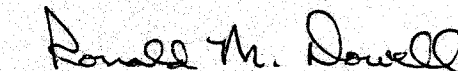
The Panel's Decision

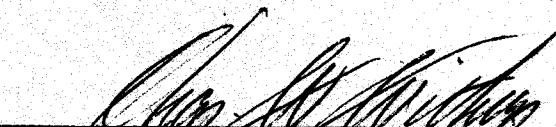
An examination of the comparable cities finds Hazel Park and East Detroit having fourteen (14) holidays; St. Clair Shores and Mt. Clemens having thirteen (13).

The requested holiday being one's birthday, the City has greater opportunity to exercise its managerial discretion of allowing the employee this birthday holiday and not be concerned with the amount paid if requiring him to work.

The Panel perceives the Union position as the appropriate one and grants the Union its request for the Employee's birthday as an additional paid holiday, subject to the contractual terms applied to the already existing twelve (12) paid holidays.


DAVID S. TANZMAN, Panel Chairman


RONALD DOWELL, Employer Delegate


CHARLES WITHERS, Union Delegate

5. Sick Time (Pay-Off) Terminal Pay

The Union's Last Offer Position calls for upon separation from the City, eighty (80%) percent of the maximum accumulation shall be paid to the employee or his legal representative.

The City's Last Best Offer is maintain present benefit.

The Panel's Decision

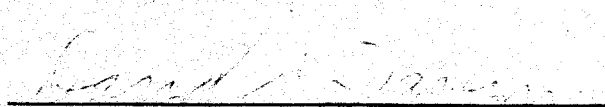
This benefit is split for some of the comparable cities allowing accumulation of unused sick leave days with a percentage of such days granted as terminal pay. A table follows:

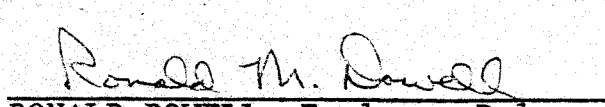
The table indicates that employees in Mt. Clemens, Ferndale and East Detroit have split arrangements respectively July 1, 1980, December 31, 1975 and July 1, 1982. East Detroit supports the Union request; Mt. Clemens does likewise to a lesser degree; and Ferndale supports the City offer. When adding the remaining four (4) comparable cities, St. Clair Shores and Madison Heights give support to the Union request; Roseville and Hazel Park support the City position. Thus, the Union has a balance in its favor, albeit slight.


However, when inserting the weight of the three cities for future employees by the aforementioned respective dates, the balance of weight tilts heavily toward the City position.

The Panel makes note that the Union position is for all bargaining unit members, regardless of their date of entry into

the Unit. It, therefore, must make its judgment on the basis for the request and adopts the City's position of maintaining the present benefit.


DAVID S. TANZMAN, Panel Chairman


RONALD DOWELL, Employer Delegate

DISSENT: 
CHARLES WITHERS, Union Delegate

6. Life Insurance

The Union's Last Offer Position requests the City provide life insurance equal to each employee's annual base salary. Also retirees shall receive a fully paid policy in the amount of Five Thousand (\$5,000.00) Dollars.

The City's Last Best Offer Position is to maintain the present benefit.


The Panel's Decision

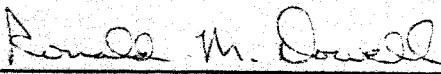
The Panel acknowledges no other City employees enjoying a life insurance benefit more than the present benefits of this Command Unit.


However, the average of the seven (7) comparable cities for the "active" member is \$26,000.00. The City's position is to maintain the \$20,000.00 "active" amount. The Union's position, whether the members of this Unit receive no increase or receive what might be characterized as a generous increase would be closer to the comparable average of \$26,000.00 than the present \$20,000.00 is. The Panel is mindful that the Union proposal has a roll-up effect for future years, and is looking at the effects of the roll-up for the 1982 year only, not the roll-up feature for future years.

As to the retirees, the present benefit is \$3,000.00; the comparable average is \$4,000.00; the Union request is \$5,000.00.

Putting the "active" member and retiree details together, the Panel finds the Union position, although bordering on the excessive, closer to the average and feels compelled to adopt the Union request as its award.


DAVID S. TANZMAN, Panel Chairman

Dissect: 
RONALD DOWELL, Employer Delegate


CHARLES WITHERS, Union Delegate

7. Pension

The Union's Last Offer Position requests the final average compensation shall be based upon the best three (3) consecutive years of the last ten (10) years of service.

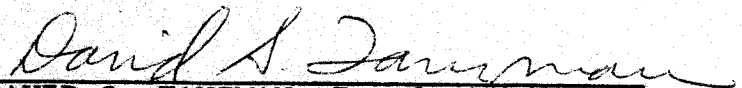
The City's Last Best Offer Position seeks the maintaining of the present benefit.

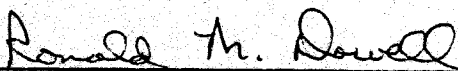
The Panel's Decision

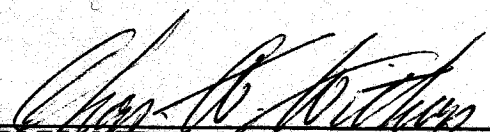
It is the Panel's understanding that the only point in issue is the Union's request for three (3) consecutive versus the City's current contract language of five (5) consecutive years of the last ten (10) years of service in the computation formula.

The comparable cities include four (4) with three (3) out of ten (10); one (1) which has two (2) out of five (5); and three (3) contain contractual five (5) out of ten (10) for the computation.

It is the judgment of the Panel therefore to adopt the Union's Last Offer Position to change present pension contract language from five (5) consecutive years of the last ten (10) years of service to three (3) as the basis for the final average compensation as its award.


DAVID S. TANZMAN, Panel Chairman

DISSENT: 
RONALD DOWELL, Employer Delegate


CHARLES WITHERS, Union Delegate

8. Longevity

The Union's Last Offer Position requested the same longevity pay plan now enjoyed by the Patrolmen:

Four (4) years service	Paid 2.5% of base pay
Nine (9) years service	Paid 4.5% of base pay
Fourteen (14) years service	Paid 5.5% of base pay
Nineteen (19) years service	Paid 6.5% of base pay
Twenty-four (24) years service	Paid 7.5% of base pay

The City's Last Best Offer Position was to maintain status quo.

The Panel's Decision

Again the Panel finds itself looking at the relationship between a group of professional employees - Patrolmen and Corporals in this instance - and this Command Unit. It has reason to seek a longevity benefit on a fixed percentage basis similar to its subordinates.

The fact that the City notes the Patrolmen obtained such benefit as a trade off for a concession to the City does not prevent the City from using what it received in the trade-off to its managerial advantage in negotiations with other bargaining units in the City or with employees not covered by bargaining. Nor will the longevity clause negotiated by the Patrolmen be kept out of comparability charts in negotiations between Patrolmen units and other cities.


As far as comparability is concerned, an examination of the comparable cities reveals that five (5) of the seven (7) cities have a better longevity pay plan even after applying the Union's requested increase to the present plan.

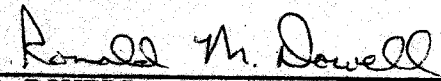
The Panel notes that trade-offs allow themselves to occur in the bargaining sessions. Once the parties commit themselves to the


formal arbitration process under Act 312, they both recognize the last offer characteristic which burdens both. The Arbitrator is likewise bound.

The Panel therefore grants the Union its request to modify its contract with the City, whereby each employee in this Unit will receive longevity based on the following details.

Completion of four (4) years	2.5% of base salary
Completion of nine (9) years	4.5% of base salary
Completion of fourteen (14) years	5.5% of base salary
Completion of nineteen (19) years	6.5% of base salary
Completion of twenty-four (24) years	7.5% of base salary


DAVID S. TANZMAN, Panel Chairman


Dissent: 
RONALD DOWELL, Employer Delegate

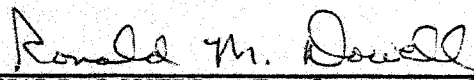

CHARLES WITHERS, Union Delegate

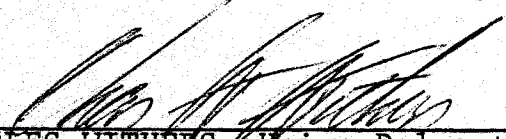
9. Food Allowance

The City submitted a Last Offer Position on this issue which Union, as a matter of record, dropped.

Since the City Position is to maintain the present benefit, the Panel has decided to adopt the City Position as its decision to avoid any question on the matter.


DAVID S. TANZMAN, Panel Chairman


RONALD DOWELL, Employer Delegate

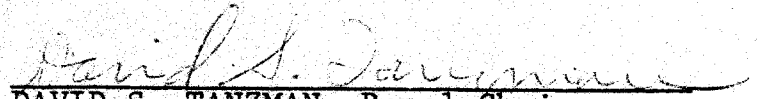

CHARLES WITHERS, Union Delegate

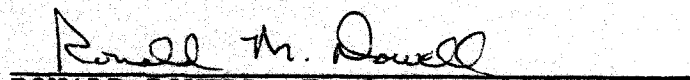
During the proceedings, both parties noted the Union withdrew its vacation demand as an issue before the Arbitration Panel.

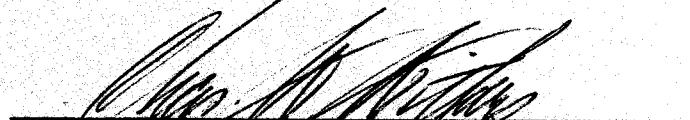
This Award will complete the three (3) year period ending December 31, 1982.

The Panel wishes to acknowledge the cooperation and respect extended to it by the parties. Regrettably, deaths, illness, and other imperatives in the scheduling of the representation involved extended these negotiations much beyond what anyone could have perceived.

Respectfully submitted,


DAVID S. TANZMAN, Panel Chairman


RONALD DOWELL, Employer Delegate


CHARLES WITHERS, Union Delegate

Dated: May 5, 1983

11882

- | | 1980 | 1981 |
|------------|------|------|
| Lt's. | 26.8 | 26.8 |
| Unif. Sgt. | 14.0 | 16.0 |
| Det. Sgt. | 16.5 | 18.5 |

- John F.O.P. 1-18-82

J. R. L.

H. S. Janssen

1960