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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION  
COMPULSORY ARBITRATION

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In the Matter of:

COUNTY OF KALAMAZOO,

Employer,

MERC ACT 312

-and-

Case No.: G95 L-1003

COMMAND OFFICERS ASSOCIATION  
OF MICHIGAN,

Union.  
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GEORGE J. BRANNICK, Chairperson  
JOHN G. MANSKE, Employer Delegate  
JAMES DeVRIES, Union Delegate  
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OPINION AND DECISION

I.

This Arbitration is held pursuant to Act 312 of the Public Acts of the State of Michigan, 1969, as amended, MCL 423.231, et. seq., (hereinafter Act 312) which is better known as the Police and Firemen's Compulsory Arbitration Act.

The parties to this proceeding are KALAMAZOO COUNTY, the Employer, (hereinafter called the Employer) and the COMMAND OFFICERS ASSOCIATION OF MICHIGAN, the Union, (hereinafter called the Union).

The members of the Arbitration Panel are George J. Brannick, Impartial Chairman; John G. Manske, Employer Delegate; and James DeVries, Union Delegate.

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
DETROIT OFFICE

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The Collective Bargaining Agreement, (CBA) expired on March 31, 1993, the Mediator certified the matter to Arbitration on November of 1996, and, because of the schedules of the parties, the Hearing was not held until June 5, 1997.

The parties subsequent thereto held a number of meetings settling all but one outstanding issue with the assistance of the Panel. The remaining unresolved issue was the seniority-promotion issue.

It was subsequently agreed that the seniority-promotion issue would be a non-economic issue, and the parties agreed to submit their Last Best Offer, LBO's, with a Brief no later than Friday, November 21, 1997.

As indicated, the Parties had resolved all unresolved issues with the exception of the seniority-promotion issue. LBO's of the parties were as follows:

The Union's LBO was set forth in its Brief as follows:

*ARTICLE XV - Seniority*

*Section 4: It is agreed that transfers and assignments will be made at the discretion of the Sheriff.*

*Section 5: When it is necessary to fill a new job classification within the bargaining unit, above the rank of Lieutenant, the person selected shall be from the qualified candidates established according to the following procedures. The job or vacancy shall be posted on the appropriate bulletin boards throughout the Sheriff's Department for a period of five (5) calendar days during which time the bargaining unit employees may*

apply for the resulting vacancy.

- A. All such postings shall include a statement of the job title or classification, the nature of the duties, special qualifications, and requirements.
- B. A minimum requirement for an applicant(s) to become a captain is that he/she must have three (3) years of continuous service with the Kalamazoo County Sheriff's Department as a Lieutenant immediately prior to the posting of the position.
- C. A minimum requirement for an applicant(s) to become Chief Deputy is that he/she must have three (3) years of continuous service with the Kalamazoo County Sheriff's Department as either a captain or lieutenant immediately prior to the posting of the position.

If the Sheriff determines that all internal bargaining unit candidates are not qualified, he/she must provide the bargaining unit with clear evidence of the applicant(s):

- (a) Lack of command experience
- (b) Lack of supervisory control in past tenure
- (c) Lack of education and training
- (d) Discipline records, serious enough to disqualify the individual

If the Sheriff uses (a) (b) or (c), he must also provide clear evidence that the individual was provided with regular guidance to correct the deficiencies. Counseling sessions and the failure of the individual to correct the identified deficiencies must be

documented. The lack of education or training cannot be used as the sole reason for disqualification.

This evidence must be provided to the bargaining unit within (5) five working days from the closing of the posting of such position. The bargaining unit shall review such evidence and agree to accept the determination of the Sheriff or grieve the disqualification. If the disqualification is grieved, it will begin at the second step.

If the decision of the Sheriff does not change as a result of the discussion during the grievance procedure, the association may submit the grievance to binding arbitration for resolution. No outside applicants shall be considered until all interested bargaining unit candidates have been offered the position or it has been completely determined that no interested bargaining unit candidates are qualified.

The Employer's LBO was set forth in a letter as follows:

1. Modify Article XV, Section 4 to read as follows:

It has been specifically agreed by the parties that transfers and assignment will be made purely with the discretion of the Sheriff.

2. New Article XV, Section 5:

When the Sheriff determines that there is a vacancy in the rank of Lieutenant, he shall post such need throughout the Department for a period of fifteen (15) calendar days during which time certified employees may request consideration for such vacancy by signing the

posting. An applicant shall have a minimum of five (5) years of continuous service with the Kalamazoo County Sheriff's Department to be considered for promotion to the rank of Lieutenant.

All bargaining unit members who have met the above-cited minimum requirement shall be processed through an assessment center that has been selected by the Sheriff. This outside assessment center will submit to the Sheriff the names of at least five (5) individuals that the assessment process has identified as the best candidates to be considered by the Sheriff, he/she shall select the candidate deemed by the Sheriff as the most qualified candidate.

3. Add to Article XI the following new Section 6:

When the Sheriff determines that there is a vacancy in the rank of Captain, he/she shall notify all Lieutenants and Sergeants currently employed by the Kalamazoo County Sheriff's Department. Such individual shall be given fifteen (15) calendar days to indicate that they are interested in the vacancy in the rank of Captain. It is specifically agreed that the Sheriff may also consider outside applications when making a determination relative to the appointment and promotion of an individual to the rank of Captain. Following interview by the Sheriff, he/she shall select the candidate deemed by the Sheriff as the most qualified candidate.

While the Sheriff may well use the process of an assessment which includes the utilization of an assessment center to render input to the Sheriff when he/she is making a promotion and/or an appointment to the rank of Captain, it is agreed by the parties that such determination lies within the discretion of the Sheriff. If the Sheriff deems that he/she will utilize an assessment center process, at least the top five (5) internal candidates as determined by the assessment center and up to two (2) external candidates as determined by the Sheriff will be submitted to the Sheriff for final interview. Following interview by the Sheriff, he/she shall select the candidate deemed by the Sheriff as the most qualified candidate.

Briefs were to be submitted by no later than November 21, 1997 and the Union was timely in filing its Brief. The Employer did not submit a Brief, but did submit, on December 1st, a letter with LBO's attached which, because of the holidays and the absence of the Arbitrator from the State, has been delayed until this time.

The critical clash is between what the Sheriff perceives as Constitutional right to appoint his Deputies and the Union's position that is a bargainable issue, which the Sheriff is obligated to bargain upon.

At no time during the Hearing was there any indication that the issue of the promotion to Captain was a non-bargainable issue and this Impartial Arbitrator so finds.

The Employer strongly argues and the position of the Sheriff is, "While giving Lieutenants and Sergeants currently in the Department strong consideration for promotion of the rank of Captain, the proposal also allows the Sheriff to go outside the Department when seeking individuals for this important organizational assignment". It argues that there is an occasional need in any organization to bring in new blood and that the most recent opportunity did permit the bringing in of an Afro-American, which was one of the many considerations of the Sheriff for making the appointment.

The Union on the other hand argues, while its position is more detailed and extensive than that of comparable communities, that the issue of promotions is dear to the hearts and careers of the members of the Command Officers Association, and feels very strongly that the result of the Sheriff approving the last Captain's position from outside the employee bargaining unit without first giving fair consideration to any internal employee created a serious morale problem among its members.

#### **OPINION**

This Impartial Arbitrator is impressed by the arguments of both parties and to the attention that they gave in writing their LBO's. However, the parties have permitted the Arbitrator to utilize his own experience and judgment with respect to this issue by making the same non-economic and thereby permitting the Arbitrator to render a Decision that would not be confined to

choosing between one LBO or the other.

Accordingly, this Arbitrator will accept that position and adopt what he considers the best parts of both LBO's submitted by the parties, hoping to resolve this issue.

This Arbitrator has long been involved with and close to law enforcement agencies within his own city and county. I feel most fortunate to have friendships with not only the Sheriff, but the Undersheriff, and many of the Deputies of the Jackson County Sheriff Department, and also the same relationship with the Chief and many of the patrol officers of the City Police Department.

Those relationships have brought to the attention of the undersigned the absolute necessity of local representation in Law enforcement agencies. In the area of public safety, full knowledge of the character of the local constituencies, as well as infrastructure, are critical components of public safety.

Additionally, knowledge of the so-called "under world" is also critical in not only solving criminal activities, but also in preventing the same.

Finally, a current knowledge of the configuration and patterns of the Community is also very critical with respect to emergencies, whether the same be caused by nature, or by other factors; accordingly, this Arbitrator feels that local experience is of great import in leadership in the areas of public safety.

While the introduction of "new blood" may be important, it is this Impartial Arbitrator's opinion that "new blood" is introduced by the election of a Sheriff, who as an elected official must



always be aware of local circumstances and the political position of the electorate.

Accordingly, to achieve the needed balance, the following is the Decision of the Panel.

#### DECISION

Article XV Section 4 will read:

It has been specifically agreed by the parties that transfers and assignments will be made purely with the discretion of the Sheriff.

Article XV, Section 5 will read:

- A. When the Sheriff determines that there is a vacancy in the rank of Lieutenant, he shall post such need throughout the Department for a period of 15 calendar days, during which time certified employees may request consideration for such vacancy by signing the posting. An applicant shall have a minimum of 3 years of continuous service in the Kalamazoo Sheriff's Department to be considered for promotion to the rank of Lieutenant.
- B. All bargaining unit members who have met the above-cited minimum requirements shall be processed through an assessment center that has been selected by the Sheriff. This outside assessment center will submit to the Sheriff the names of at least five (5) individuals that the assessment process has identified as the best candidates to be considered by the Sheriff for the promotion of rank of Lieutenant. Following the interview by the Sheriff, he or she shall select the candidate deemed by the Sheriff as the most qualified candidate.
- C. When it is necessary to fill a new job classification within the bargaining unit, above the rank of Lieutenant, the person selected shall be from the qualified candidates established according to the following procedures. The job or vacancy

shall be posted on the appropriate bulletin boards throughout the Sheriff's Department for a period of five (5) calendar days during which time the bargaining unit employees may apply for the resulting vacancy.

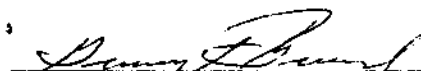
1. All such postings shall include a statement of the job title or classification, the nature of the duties, special qualifications and requirements.
  2. A minimum requirement for an applicant(s) to become a captain is that he/she must have two (2) years of continuous service with the Kalamazoo County Sheriff's Department as a Lieutenant or Sergeant immediately prior to the posting of the position.
- D. If the Sheriff determines that all internal bargaining unit candidates are not qualified, he/she must provide the bargaining unit, upon written request, with evidence of the applicant(s):
- (a) Lack of command experience
  - (b) Lack of supervisory control in past tenure
  - (c) Lack of education and training
  - (d) Discipline records, serious enough to disqualify the individual.
  - (e) If the decision of the Sheriff does not change as a result of the discussion during the grievance procedure, the association may submit the grievance to binding arbitration for resolution. If the disqualification is grieved, it will begin at the second step.

A minimum requirement for applicant(s) to become Chief Deputy is that he/she must have three (3) years of continuous service with the Kalamazoo County Sheriff's Department as a Sergeant, Lieutenant or Captain.

While this Decision may make the filling of a position uncertain for a period of time, it will inure to the benefit of all, because it will tighten the selection process. Thus, it is hoped that in making a selection all of the factors which would need to be proved before an Arbitrator will be considered, and thus the selection should be in the best interest of the constituent public of Kalamazoo County.

**NOTE:** Article XV currently contains a Section 5, which deals with layoffs or reductions in force. Neither the Union nor the Employer made any comment with respect to renumbering that Section although this writer feels that it should remain as part of the new agreement, however, I leave that to the good judgment of the parties.

Respectfully submitted,

  
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GEORGE J. BRANNICK  
Impartial Arbitrator  
Dated: July 14, 1998

CONCURRENCE:

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JOHN G. MANSKE, Employer

NONCONCURRENCE:

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CONCURRENCE:

  
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JAMES DeVRIES, Union

NONCONCURRENCE:

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