462

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between:

COUNTY OF LIVINGSTON and DENNIS R. DeBURTON, LIVINGSTON COUNTY SHERIFF

Case No. 87 H-2068

Employers

and

POLICE OFFICERS ASSOCIATION OF MICHIGAN

Union

ACT 312 PANEL'S OPINION AND AWARD

Appearances:

For the Union:
William Birdseye — Business Agent
Ann Maurer — Labor Economist

For the Employers:
COHL, SALSTROM, STOKER & ASELTYNE, P.C.
by David G. Stoker, Esq. — Attorneys

I

INTRODUCTION

This matter arises pursuant to a Petition filed with the Michigan Employment Relations Commission pursuant to 1969 PA 312, as amended, being MCL 423.231, et seq; MSA 17.455(31), et seq. The Petitioner is the Police Officers Association of Michigan (hereinafter referred to as the "POAM" or "Union"), which represents certain non-supervisory personnel within the Livingston County Sheriff's Department.

The joint Employers[1] are the County of Livingston and the Livingston County Sheriff, Dennis R. DeBurton (hereinafter collectively referred to as the "Employers" or "County").

This impartial arbitrator was selected to chair the arbitration panel. The Union and Employer delegates are Messrs. William Birdseye and David G. Stoker, respectively.

After an initial prehearing to establish procedure was held on September 28, 1988, it became apparent to the parties that there were a substantial number of substantive issues. In lieu of referring the matter back to the State Mediator as authorized by MCL 423.237a, the parties mutually agreed that the chairman would serve as "mediator". Thereafter, additional prehearings/mediations were held on October 27, November 10, and December 8, 1988, and February 13, 1989. Issues were substantially reduced. The issues remaining are:

Union

1. Duration
2. Wages - January 1, 1988 through December 31, 1989
3. Wages - January 1, 1990 through December 31, 1990
4. Detective wage differential
5. Pension - Multiplier and FAC

---

[1]Under Michigan law the County Sheriff and the County Board of Commissioners, being the legislative body of the County, serve as coemployers for the employees within the Sheriff's Department, including those represented by the POAM herein. Cleland v AFSCME, 425 Mich 204, 388 NW2d 231 (1986); Capital City Lodge #141, FOP v Meridian Twp., 90 Mich App 533 (1979), lv den, 406 Mich 961 (1979).

6. Health Insurance for Retirees

Employer

7. Second Surgical Opinion and Predetermination Rider

8. Health Insurance Premiums - Employee Co-Pay

9. Road Patrol (two man cars)

10. Longevity

11. Election of Remedies

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

> "Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall 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 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 or in private employment."

The parties stipulated: (1) all issues are "economic" under the statute; and (2) all tentatively agreed language is effective the date of the arbitration hearing. The hearing concluded February 14, 1989.

II

A. COMPARABLE COMMUNITIES

One statutory factor that must be considered relates to the comparison of wages, hours and conditions of employment for both employees performing "similar services" and "other employees generally", in both public and private employment in "comparable communities" [Section 9(d)].

The parties proposed comparables leave open the issue of "comparable communities" for the Panel's determination. Indeed, this seems to be at the core of this dispute and has dogged the parties relationship in every antecedent Act 312 proceeding.

The County proposed as comparable communities the following Counties: Lapeer, Eaton, Calhoun, Jackson, and Lenawee. The Union proposed as comparables the Counties of Genesee, Ingham, Jackson, Oakland, Shiawassee and Washtenaw. Additionally, the Union proposed the Cities of Brighton and

Howell. Incredibly, the two lists share only one overlapping comparable, Jackson County.

The County submits its list comports with "objectively established criteria uniformly" applied to the counties within the State of Michigan.

The Union states its list includes all counties contiguous to Livingston County plus the cities of Brighton and Howell. Its submission "is based upon location within a common labor market, geographic homogeneity, shared law enforcement duties and consistent comparison by bargaining unit members for a period of nearly 15 years."

In analyzing which communities appropriately fit the statutory factor, the County suggests that the statutory criterium itself should be first examined. This criteria calls for the evaluation of "comparable communities". No evidence of legislative history was proffered, nor is any specific definition is utilized within the Act as to those terms. However, the term "community" is defined in Black's Law Dictionary (4th Edition), p 350, as follows: "neighborhood; vicinity, synonymous with locality." "People who reside in a locality in more or less proximity." "A society or body of people living in the same place, under the same laws and regulations, who have common rights, privileges, or interests".

The term "comparable" is not defined in Black's. Webster's defines it as "equivalent, similar". Webster's Seventh New Collegiate Dictionary, p 168. In isolation,

therefore, the statutory specification requires consideration of "equivalent or similar" "localities".

It is noteworthy, however, that the words themselves are not limited, as the employer argues, to similar units of government, but include "communities".

Indeed, the factors to be considered by the panel are more expansive. Subfactor (h) expressly includes: "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 or in private employment."

It may very well be that the comparables suggested by both parties meet the bare threshold of "comparable communities", or, "similar or identical localities" within the meaning of the statute. But the fact that they could be validly compared does not establish the weight to be given to any comparison.

Moreover, the parties have each struggled to prevail on their one set of "comparable communities." Such a search for the 'one true Holy Grail' of comparability ignores the broad remedial purpose of the statute, and the way most arbitrators work. The Chairman rejects as inappropriate any attempt to 'gerrymander' the comparables, as well as the rather naive assumption that an artificially created "average" will dictate the result in a particular case. A

close reading of some of the prior decisions involving these same parties suggests that in the real world arbitrators do more than look at the selected comparables to come to a figure -- one party or the other has prevailed on "comparables", which was then only marginally related to the ultimate result.

Rather, the chairman sees the purpose of the record developed at a 312 hearing as the creation of a limited and useful data base, from which meaningful comparisons can be developed, and appropriate analogies made.

Moreover, the traditional approach -- using State Equalized Values ("SEV"), crime rates, population levels, general taxes revenues, governments; and number of motor vehicles -- to establish "comparability" is a very small window upon the world. Unquestionably, those are factors which can properly be considered, but they are not necessarily the best method to arrive at a result.

A quest for a single array of "true comparables", and the need to establish a valid basis of comparison through an excruciating comparison of factors with no demonstrated connection to wages, had much to recommend it at the dawn of public sector bargaining and interest arbitration. By definition, there were no (or few) freely and collectively bargained established relationships. This can hardly be said to be the case now. This is not the first contract for these employees and this employer.

It is for this reason that the impartial arbiter has consistently and vocally favored the use of historical data and comparisons. If the data establishes a significant correlation or trend over a long enough period of time, then the information itself suggests both the validity of the comparison, and the weight that should be accorded to it, based on the historical nexus. It provides a guide for decision making, and not a mere justification for a result.

Moreover, an established interconnection has the virtue of implicitly rolling in the parties' own judgments, and prior arbitrators' decisions, as to where this bargaining unit should be relative to others on the economic ladder. This is true, even if the comparisons were not consciously made at the time.

The umpire accepts, as a general proposition, the Union's position, as espoused by labor Economist Ann Maurer, that "local labor market" may be defined a geographic area in which a concentration of workers can live, work and change jobs without changing residences. Agencies such as the Michigan Employment Security Commission and the U.S. Department of Labor define it similarly.[2]

---

[2]The single statutory provision does not call for a labor market analysis of the immediate vicinity. Communities of substantially different size, economic conditions and other varied demographic characteristics may all be included within the same "labor market". However, as discussed on the record, the City of Gross Pointe and the City of Detroit, which are within the same "labor market",
(Footnote Continued)

It is clear that the local labor market concept is supported by the operational history of this bargaining unit and this employer. When the County of Livingston needed workers, they are primarily hired by the Sheriff's Department from the local area. In seeking jobs, these workers tried to avoid changing place of residence, since moving is a substantial cost economically justified only by substantially higher wages. Consequently, the price of wages, governed by this example of supply and demand, is more likely determined within the immediate geographic area, i.e., the local labor market of Livingston County.

In contrast the Employer's proposed group is divorced from Livingston County's local labor market. It does not, in fact, constitute any homogeneous group recognized by any authority for the purpose of comparability in any arbitration case.

The Employer's witness, William Hardwick, stated that his methodology permitted identification of comparable communities. However, Hardwick admitted that he did not begin his analysis by considering all communities

---

(Footnote Continued)
as well as being contiguous, could not, by Ms. Maurer's own admission, be construed as "comparable communities".

In point of fact, however, the statute is not so monolithic or parochially drawn as has been urged. Rather, arbitrators are asked to bring to bear their informed expertise, in light of a full record skillfully advocated.

potentially comparable, but started only with identical governments.[3] Potentially comparable communities which were not counties (e.g., Howell and Brighton, which are in the same county and community) were never evaluated.

Mr. Hardwick's analysis started with prior Livingston County Act 312 arbitrators decisions on the issue of comparability, and then subjected them to an analysis based on S.E.V. and population. The standards he used "to verify if the selected counties remained comparable" seem relatively arbitrary. Mr. Hardwick's initial analysis used these two criteria to narrow the number of Michigan counties, which yielded 8 counties that were within plus or minus 45% of the SEV and population of Livingston County. Even though other arbitrators had used Lapeer County, Mr.

---

[3]The Employer's expert suggested that the type of "communities" or "localities" that would be appropriate for the comparison under Act 312 should be that of similar counties, rather than other forms of government. There are similarities in funding, financial structures and constraints, with revenues essentially from the same sources. Counties share statutorily mandated functions, such as maintenance of a county jail; funding of the county courts; certain welfare services; and maintenance of a county prosecuting attorney's office; sheriff's office; county register of deeds' office; drain commissioner's office; and county clerk's office.

By contrast, other forms of local government vary as to their mandatory funding obligations. Most cities within the State of Michigan are organized under the Michigan Home Rule Act, MCL 117.1, et seq. This statute enables local charters, but leaves considerable discretion as to what functions will be undertaken by such municipalities. For example, major governmental undertakings such as municipal police or fire departments, utilities, are all permissive rather than mandatory charter provisions. Moreover, the taxation authority for cities varies substantially from counties.

Hardwick's inclusion of it violated his own criteria (assuming his standard of "plus or minus 45%" was valid in the first place). This expert witness noted that proximity is important when other factors are also comparable, so he dropped the more distant counties, and suggested utilization of only counties adjacent to metropolitan areas not more than one (1) county removed from Livingston County, that otherwise meet the criteria. This included the Counties of Calhoun, Eaton, Jackson, Lapeer and Lenawee.

It is significant that none of the employer's comparables are contiguous to Livingston with the exception of Jackson County. The balance is separated from Livingston County by a distance equal to the ring of contiguous counties.

A basic inadequacy in the employer's proposed comparables is that the Livingston County Deputies have consistently been the highest paid deputies of any of those departments. A review of the County's proposed comparables, which have been historically adopted by previous Act 312 arbitrators, reflects that the ending 1987 Livingston County top Deputy wages exceed that which existed in any of these comparable counties. From an historical context, the Livingston County wages have also exceeded these comparables in both total dollar increases and percent of increase by a substantial amount. Since 1980, the top Deputy rate reflects that Livingston County has risen from the lower half of the comparable groupings to the highest pay level within

the comparable communities by the end of the 1987 contract year. Thus, from a comparative position, both in a historical context, and as currently exists, the Livingston County wages have exceeded that provided by the employer's comparable communities.

This suggests that the employer's comparables are being selected in a manner that is unrepresentative, and not particularly illuminating. It also suggests that as far as establishing a basic wage rate, Livingston is more different from the employer's comparables than it is similar. A fairer and more realistic sampling would include some bargaining units that are higher paid than this unit. The history suggests, also, that local labor market factors, and the contiguity of Livingston county to larger urban areas, has had a material affect on the wage level.

The Employer has proffered internal comparisons with other employees of Livingston County. The Chairman agrees that internal comparability is important, even if not literally within the statutory criteria of employees performing "similar work", but also "other employees generally" with comparable communities. The plain fact is that the employer must be concerned with maintenance of its internal salary structure, as wage equity has an impact on employee morale.

On the other hand, these employees are not uniformed services. The striking thing about Livingston County employees generally is that there has been little, if any,

correlation between wage increases in the Sheriff's Department and those of the other county employees.

Nevertheless, the Chairman believes consideration should be given to other employees of Livingston County and the Livingston County Courts. Of the internal comparables proposed, the County has four (4) employee groups, three (3) of which are unionized, being the COAM Sergeants unit within the Sheriff's Department, and the AFSCME units for the County Courts and for the Ambulance Department.

The employer opines that city police departments are structurally different than county sheriff's departments. County sheriffs are constitutionally-mandated, and are required to run jails by statute and provide court security. If sheriffs have road patrol (not a mandatory function), then county wide dispatch service is generally maintained. Underwater recovery is also performed by Sheriffs.

Be that as it may, the differences between the Brighton and Howell Police Departments, and the Livingston County Sheriff's Department, are of long standing. Those differences were presumably taken into consideration when prior wage rates were established, and are no reason to disregard Brighton and Howell.

Mr. Hardwick testified that in evaluating comparability, comparisons of one governmental unit with another type of unit (e.g., county sheriffs to city police) is to be avoided.

The chairman disagrees. Plainly, the Howell Police officers work down the street, and at times side-by-side, with members of the Livingston County Sheriff's Department. Comparisons are inevitably made by officers who meet one another in passing. These departments perform police functions only and are clearly comparable to the detective and deputy classifications within the Livingston County Sheriff's Department. Since these are agencies within the same community in which the Sheriff's Department operates, they are comparable within the meaning of the statute. Further, the logic of these comparisons is reinforced -- greatly reinforced -- by an incredible and overwhelming correlation. For a great many years, Howell and Livingston have paralleled each other's benefits and salaries almost in lock step, seesawing one above the other. The striking nature of the pattern was even acknowledged, albeit reluctantly, by the Employer's expert.

Finally, there is the problem of continuing stability in the relationship of the parties. This calls into question the weight, if any, to be given to prior decisions on comparability between these parties.

Arbitrator Arbitrator Richard I. Block rejected the comparables, the Counties of Shiawassee, Ingham, Washtenaw, Genesee and Oakland, submitted by the Union (the Teamsters). He adopted the County's comparables of Eaton, Lapeer, Shiawassee and Lenawee Counties.

Arbitrator Peter D. Jason rejected to use of comparables entirely.

Arbitrator Kenneth P. Frankland exhaustively examined comparables in his opinion regarding comparable communities in 1987. He adopted all the comparables now proposed by the Employer and expressly rejected the Union's proposed comparables, excepting the Counties of Shiawassee and Jackson.

Last year, Arbitrator John B. Swainson, in an arbitration involving the supervisory unit, adopted the Counties of Calhoun, Jackson, Lenawee, Eaton, Lapeer and Shiawassee as comparable communities and rejected the Union's current proposed comparables.

As noted by Mr. Hardwick, the fostering of a uniform set of comparables theoretically can assist in placing both parties within the realm of what could be considered realistic expectations going into the negotiation process, as well as avoid the selecting of comparables on an ad hoc basis by the parties to advance the particular issues which are the subject of any particular arbitration proceeding.

Notwithstanding the employer's position, it is apparent that the the prior solutions imposed by the arbitrators have not slowed down dissension. This was an issue that monopolized copious amounts of time, both in negotiation and arbitration, far beyond its intrinsic worth. Until it is resolved on a fair and mutually satisfactory basis,

problems will remain. It continues to be an issue and an open and festering wound.

Lapeer and Shiawassee Counties are outisde the local labor market, and not very comparable. Their inclusion is merely cumulative.

Genesee County is not cumulative, but is not very useful either. Genesee County has no significant road patrol functions, so that the bargaining units have almost nothing to do with what is going on in other counties.

Therefore, the Chairman determines that for purposes of his analysis, he will consider only the following communities and bargaining units for purposes of comparison: Calhoun County; Eaton County; Ingham County; Jackson County; Lenawee County; Oakland County; Washtenaw County; City of Brighton police; City of Howell Police; the Livingston County Sergeant Unit; and the other internal comparables proffered by the County.

To say that comparisons can be made is not to say that this bargaining unit should be paid at the identical rate as other units. The very idea of comparison assumes differences. It is not the arbitrator's purpose to eliminate the differentiation. Rather, because the parties prepared a full and ample historical record, the relative ranks and positions can be ascertained, so that evolving patterns emerge and become clear, with an eye toward their maintenance in the future, absent change in relative circumstances. The purpose of using "comparables" should not

merely be to establish a static "benchmark" to measure adequacy of wage levels. It is also a motion picture, to show the trend of events. Presumptively, these employees should maintain their relative ranking, neither losing nor gaining position.

In picking comparison communities and bargaining units, the arbitrator had to struggle with competing facts and concepts. Livingston County is unique. It has been a farming community. This County is experiencing phenomenal growth in population and demand for services. It is becoming part of an extended suburban bedroom community, and is sandwiched between urban areas in almost every direction. In short, the situation is truly incomparable and fluid. The requirement, then, is for creative solutions that are multidimensional, not static.

As outlined above, the foregoing list of communities/bargaining units is not strictly limited to those that might be properly considered under Section 9(d) of the Act. Rather, it is an amalgam of concepts and principles that seeks to harmonize a discordant record, while fulfilling the basic purposes of Act 312. It is proffered in the hope that the parties might use it as starting point for future discussions and negotiations.

B. ECONOMIC ISSUES

All of the unresolved issues are economic. 1969 PA 312, as amended, provides direction to the panel with regard to its decisions concerning economic issues. On this, Section 8 of the Act (MCL 423.238) provides, in pertinent part, as follows:

> "Sec. 8. At or before the conclusion of the hearing held pursuant to section 6, the arbitration panel shall identify the economic issues in dispute, and direct each party to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. * * * As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9."

The legislation also goes on to state, in section 10 (MCL 423.240), as follows:

> "Sec. 10. A majority decision of the arbitration panel, if supported by competent material, and substantial evidence on the whole record, shall be final and binding upon the parties, . . ."

1. Duration

a) Last Best Offers

The Union has proposed a two (2) year collective bargaining agreement, being for 1988 and 1989, whereas the Employer has proposed an Agreement for three (3) years, through 1990.

b) Discussion

As a result of the protracted collective bargaining and arbitration process, the proposed third year for the contract, 1990, is far less speculative than may have been if the hearing had been held prior to the commencement of

the subject agreement in 1987. It is the Panel's belief that to force the immediate return to negotiations through the issuance of only a two (2) year contract could be destabilizing to the labor relations between the parties. To the extent that language changes are called for, the parties would not have any opportunity to test the effect prior to entering new negotiations.

It appears that a three (3) year contract would best serve both the parties and the public and is consistent with most of the comparables. The Panel, therefore, adopts the Employers' Last Best Offer with regard to duration, being that of a three (3) year collective bargaining agreement running from January 1, 1988, through December 31, 1990.

2 and 3. Wages

a) Last Best Offers

The Employers' Last Best Offer with regard to wages consisted of a lump sum "bonus payment" for 1988 equal to three percent (3%) of the top deputies' current rate, being $800.00 not applied to the base, to be paid to all unit employees employed on December 31, 1988, that remain employed by the County on the date of the award. The proposal would also provide a three (3%) percent wage increase effective January 1, 1989; seven (7%) percent wage increase effective July 1, 1989; and three (3%) percent effective January 1, 1990.

The Union proposed a five (5%) percent across-the-board increases effective January 1 of each year, being January 1, 1988, 1989, and 1990.

This unit has employees in many different classifications and levels, including deputies, correction officers, detectives and dispatchers.

Nevertheless, a useful comparison of final offers may be made using Deputy at top step, as such rate represents the most populous classification and step.

	Present	1/1/88	1/1/89	7/1/89	1/1/90
Union	$26,625	$27,956	$29,354	$29,354	$30,822
County	$26,625	$26,625 (+800)	$27,424	$29,344	$30,224

b) Discussion

Many exhibits were received pertaining to wage levels and percentages in other jurisdictions both currently and historically. Overshadowing that evidence are the parallels in the parties' final offers as shown above, especially for the period of a two-year contract. There is no disagreement between the parties concerning the proper level of wages as of July 1, 1989 -- only the method of reaching that wage level is disputed.

As indicated above, Livingston County had higher top Deputy wages than any of the employer's proffered comparables. Its wage increases have also surpassed these comparables in both total dollar increases and percent of increase by a substantial amount. From 1980 to the end of

the 1987 contract year, Livingston County rose from the lower half of the to the highest pay level within those comparable communities.

A comparison of Livingston County deputy wages to the Union's comparables shows a move from a 1980 eighth ranking, to sixth by the end of 1987. The County was third highest in the percentage increases received by employees since 1980 behind only the City of Brighton and Genesee County. The County was also third highest in actual dollars received in increased wages during this period.

Internal comparisons to other Livingston County employees deserve consideration. Wage differences between classifications are expected. But an employer needs to treat all of its employees fairly, and to run its shop on a relatively consistent basis. In the 1980's, the Deputy classification received substantially larger increases than other county employees who received comparatively equal wages in 1979.[4] During this time period the Deputy level classification received more than fifteen percent (15%) greater economic increases, with a resulting end wage for 1987 exceeding these other classifications by more than $1,600.00 per year.

---

[4]County employee Level 16 and unionized Court Contract Level 12 include professional classifications, such as Court Probation Officers, Registered Nurses, Sanitarians, etc.

However, the two year increases received by these other County employees is nearly identical to that now proposed by the County for this bargaining unit.

There is little to guide the Panel on the third year, except for the cities of Brighton and Howell. In 1990, Howell officers will receive $30,802 while Brighton officers are already receiving $30,865. Despite the Employer's vehement protest against the possible inclusion of Howell and/or Brighton as comparables, the exhibits document the remarkable historic relationship between City of Howell police officers and Livingston deputies since 1976. The pattern has already been set for 1990 in the high $30,000's. The Employer's offer of $30,224 does not reach the mark.

A three (3) year agreement is both the preferred duration. Based on the totality of the record, in light of all of the statutory factors, the panel makes the following determinations: (1) the employer's offer for years one and two are adopted; and (3) the union's wage offer for the third year of the contract is also adopted.

4. Detective Wages

a) Last Best Offers

The Union proposes that Detectives at top step be paid 7.5% more than top paid deputies. The Employer offers a 5% differential. The current differential is 4.3%.

b) Discussion

Both parties propose a Detective wage rate based on a differential above the Deputy classification rather than through percentage adjustments from the rate established under the prior contract.

A comparison of the results of parties' final offers may be made as follows, assuming that across-the-board wage increases for deputies are awarded consistent with each party's position:

	Present	1-1-88	1-1-89	7-1-89	1-1-90
Union	$27,783	$30,053	$31,556	$31,556	$33,134
County	$27,783	$27,783 (+$800)	$28,795	$30,811	$31,735

Trying to make sense out of the ad hoc practices and policies of various other employers and bargaining units is almost futile. In part, this probably stems from the unique attributes and duties of the "detective job classification" in different locales. It may also be attributable to the fact that these classifications, in smaller units especially, are not so much a generic wage rate, as a specific rate for a limited group of detectives. Thus, rates may be more a function of the value placed on specific employees, and not the job per se.

The different classification schemes offer a clue to the complexity of the problem. Some jurisdictions' detective work is performed by deputy level officers. Others have personnel at the "sergeant" level perform

detective work. Livingston County and others have a separate grade for detectives.

The spread in wages is also divergent. In those departments that have separate detective classifications, the salaries range from being at the same level as the road officers, or close thereto, all the way to the sergeant level. A rough average of the comparable communities, suggests that the Detective classification wages are about midway between the Deputy and Sergeant classification compensation levels. The majority of comparables permit their detectives to enjoy a differential greater than 5% and two comparables enjoy a differential equal to or greater than the Union's final offer of 7.5%.

In Livingston County the Sergeant's compensation level is set at ten percent (10%) above the top Deputy classification for the top Sergeant wage level. The Employers' Last Best Offer places wages at the midpoint between between deputies and sergeants. In contrast, the Union's proposal would place the Detective classification seven and one-half percent (7 1/2%) above the Deputy level or only two and one-half percent (2 1/2%) behind the Sergeant within the Livingston County employment structure.

The current Detective classification differential is only 4.3% above the top Deputy. Either proposal will result in the Detectives receiving a greater economic improvement than other bargaining unit members.

Trying to adjust the relative level of wages is a delicate balancing act. It may well be, as the Union suggests, that ultimately the detective differential ought to be 3/4 of the distance between top deputy and sergeant wages. Be that as it may, bridging that gulf ought to be done incrementally, not all at once.

Therefore, the Employers' proposal is adopted.

5. Retirement

a) Last Best Offers

The Union seeks to increase the pension multiplier from 2.0% times years of service to 2.25% times years of service. The Union also seeks to improve the definition of final average compensation from the average of highest five years (60 consecutive months) of earnings to the average of highest three years (36 consecutive months) of earnings.

The Employer desires to maintain the status quo.

The current benefits include the F-55 with fifteen (15) years of service waiver (permitting full retirement benefits at age 55 with 15 years of service); and benefit program E-2 (being an annual cost of living adjustment in retirement benefits).

b) Discussion

Livingston County command officers lowered the normal retirement age for their group from age 55 to age 50. Non-supervisory employees covered by this arbitration proceeding have not requested the age 50 provision. Command

officers also have a military service credit option which non-supervisors have not requested.

The County's retirement fund is charged by MERS each quarter for the Employer contribution rate applicable to each employee based on that employee's gross earnings, regardless of the fund balance. The union argues that the proposed increases are in effect 'free', because of the advantageous position and returns on the pension funds held by MERS.

The Union's argument is wrong. There are very real and substantial costs associated with its proposal. The source of funds, whether from savings, current income or a loan, does not diminish the costs.

The MERS booklet permits estimation of the cost of the Union's proposals and the benefits already received by the command officers. The F50(25) benefit for command officers cost between 1% and 3% of payroll. The FAC-3 benefit sought by the non-supervisors will cost between 3/4% and 1 1/2%. The B-3 multiplier will cost between 3% and 6% of payroll.

On the other hand, it is also true that the soundness of the investments has reaped very real rewards for the employer. In effect, current contributions have been substantially reduced.

The bottom line on this issue is comparisons to other units.

None of the employer's external or internal comparables have either the B-3 (2.25%) or FAO-3 (three year calculator) in their retirement benefit programs. These benefits were even a rare occurrence in the substantially larger communities proposed as comparables by the Union. Moreover, the County's contribution rate for its retirement program generally exceeds that of the comparables.

As the retirement program as a whole is compatible or exceeds that that exists in the comparable communities and internally within Livingston County, the record established no justification for expenditure of additional funds of from nearly four (4%) to seven and one-half (7 1/2%) percent for these proposed new benefits.

The Employers' Last Best Offer is, therefore, adopted.

6. Health Insurance - Retiree Coverage

a) Last Best Offers

The Employers' Last Best Offer regarding retiree health insurance is:

> "Effective July 1, 1989, employees who retire during the period of this Agreement who are immediately eligible for retirement benefits shall be entitled to continue up two (2) person health and hospitalization coverage under the same group plan offered to active employees, until the employee is eligible for Medicare. Thereafter, such employee may participate in Blue Cross/Blue Shield Medicare Supplement Insurance. In the event that a national catastrophic insurance is established, the retiree health insurance shall be coordinated with such national coverage. The retiree shall not be eligible for this coverage if they or their dependents have available coverage by any other source. At the time a retiree submits application for this coverage and each year thereafter, he/she must certify that such other coverage is not available. This

continued health and hospitalization insurance and the Medicare supplement insurance shall be paid for by the Employer paying 1/2 of the actuarially determined cost, and the employees paying 1/2 of the actuarial determined costs. The insurance cost shall be calculated by the MERS actuaries with the program to be funded on a 20 year basis and the resulting percentage of payroll costs from the actuaries then being funded 1/2 by the Employer and 1/2 through employee payroll deductions. The cost of the actuary will be shared by the Employer and the Union."

The Union's Last Best Offer is:

"Effective [last day of contract which shall be the result of this award] employees who are immediately eligible for retirement benefits shall be entitled to continue up to two (2) person health and hospitalization coverage under the same group plan offered to active employees, until the employee is eligible for Medicare. Thereafter, such an employee may participate in Blue Cross/Blue Shield Medicare Supplement Insurance. This continued health and hospitalization insurance and the Medicare Supplement insurance shall be at the Employer's expense. In the event that a national catastrophic insurance is established, the retiree health insurance shall be coordinated with such national coverage. The retiree shall not be eligible for this coverage if they or their dependent have available coverage by any other source. At the time a retiree submits application for this coverage and each' year thereafter, he/she must certify that such other coverage is not available."

b) Discussion

Under the current collective bargaining agreement, no health insurance is provided for retirees other than the Federal right to continue group coverage pursuant to the COBRA legislation. Both parties in their Last Best Offers, have provided a mechanism for providing such health insurance coverage for retirees.

The Union seeks health insurance for retirees and the Employer offers such coverage by its last offer. The only difference between the proposals is that the Union requests that the County pay the cost, while the Employer

asks its non-supervisory employees to pay half the cost through the actuarial funding of such benefit.

No evidence was submitted by either party as to the cost of the proposed new benefit, either on an actuarial basis or otherwise.

The Panel is well aware of the escalating costs of health insurance. The cost funding of such a program will be significant. The issue is who should bear the costs.

In the last Act 312 decision, the Livingston County Sergeants unit, consisting of seven employees, was awarded fully paid retirement. That is the only bargaining unit within the County that has retiree health insurance.

On this record, retiree health insurance is provided in the overwhelming majority of comparables. Where it is provided, no employer requires any retiree to pay a portion of the premium including the County of Livingston for its command officers.[5]

The employer has repeatedly made the point that there is nothing in the record on the costs of the proposal. That is true, but is not necessarily true that it was solely the union's burden. In any event, the employer admits that it has the wherewithal to pay its own offer.

---

[5]Three employers, Eaton, Jackson and Washtenaw Counties, which provided retiree health insurance, do require employees to contribute to the overall retirement plan through employee contributions to the retirement system. Livingston County has no employee contribution for retirement.

It is recognized that some bargaining unit members will pay for benefits, and will not actually retire from this department. That is the nature of insurance: the risks and benefits of such behavior are actuarially spread to all members.

Based upon a preponderance of the evidence, the Panel elects to adopt the Employer's Last Best Offer on retiree health insurance.

7. Health Insurance - Predetermination and Second Surgical Opinion

a) Last Best Offers

The Employers' Last Best Offer on this issue is:

> "The Employer shall provide full family, except dependents nineteen (19) years of age or older, Blue Cross/Blue Shield MVF-1 and Rider ML and Master Medical - option II (100/200 deductible), and Second Surgical Opinion and Predetermination Riders, and a $2.00 co-pay for prescription drugs, to all employees covered by this Agreement when they become eligible in accordance with the waiting period requirements."

The Union's position - no cost containment riders.

b) Discussion

The County proposes health insurance cost containment measures, including the "Second Surgical Opinion" and the "Predetermination" health insurance riders. While these riders are not currently in broad use in the external comparables, all but one of the Livingston County internal units currently have them in place. The riders themselves have minimal impact on the health care program benefits.

The majority of Livingston County employees now have such riders. The Panel is cognizant of the general increased cost of health insurance within Michigan and elsewhere. Indeed, the record is replete with the increased costs faced by this employer over the last few years. In light of the substantial new health insurance benefit, retiree health insurance, adoption of reasonable cost containment measures, such as these riders, is appropriate.

Second surgical opinion and predetermination rider was recently considered by Arbitrator John Swainson in the command officers' 1988 award. The Arbitrator awarded this issue to the Employer. The Union maintains it was a quid pro quo for the Employer-paid retiree health insurance.

Containment of health costs is an important issue for all responsible employers and unions. This is an important step in the right direction.

The Panel, therefore, adopts the Employers' Last Best offer regarding this issue.

8. Health Insurance - Employee Co-Payments

a) Last Best Offers

The Employers' offer is:

> "In the event that the medical and hospitalization insurance costs increase to exceed the following maximum limits the excess premium above such maximum shall be paid 1/2 by the participating employee through payroll deduction, and 1/2 by the Employer.

Coverage	Maximum
Single Subscriber	$115.00
Two Person	$255.00

Full Family $275.00"

The Union proposes maintaining the status quo.

b) Discussion

As a cost containment measure concerning health insurance, the Employers have proposed that employees share equally with the County for increases in the cost of medical and hospitalization insurance benefits. The rising costs of health insurance are a well-known fact of the employment, both within Michigan and nationally.

Indeed, sharing costs will almost certainly drive home to employees that health care is not free. Consequently, it seems probable that usage will be curtailed and costs more contained.

The Panel sympathizes with Employers' position that having employees participate in the health care costs may encourage more prudent utilization of health insurance benefits and hopefully slow the upward spiral of health insurance costs. There was a lack of significant evidence supporting that supposition, however.

Further, the Chairman, has grave reservations over a 50/50 split of all increases, since some increases are inevitable. One of the problems is that it imposes a disproportionate and onerous burden on lower income employees (in contrast to the employer offer on retiree health insurance). Nor is the offer well designed to encourage savings. It would seem that a better solution would be a system of bonuses or incentives for decreased usage.

Under the statute, on economic issues the panel is forced to choose between one parties offer on an issue and the others. There is no room for compromise on an issue, so despite reservations, the panel chooses to adopt the union's position. Therefore, the Union's Last Best Offer on this issue is hereby adopted.

9. Longevity

a) Last Best Offers

The Employers' Last Best offer on this issue is:

"The longevity bonus payment schedule shall be as follows:

Continuous Service	Annual Bonus
5 years or more, but less than 11 years	$250.00
11 years or more, but less than 16 years	$500.00
16 or more years	$750.00"

The Union's Last Best Offer

"The longevity bonus payment schedule shall be as follows:

Continuous Service	Annual Bonus
5 years or more, but less than 11 years	1% of salary
11 years or more, but less than 16 years	2% of salary
16 or more years	3% of salary"

b) Discussion

The longevity provision which the Employer seeks to modify was awarded to the non-supervisor's group by arbitrator Keidan in 1986.

The Employer now proposes modifying the longevity section to reflect fixed dollar amounts in lieu of the percentages that currently exist within the collective

bargaining agreement. Fixed dollar methods of calculating longevity are used in many of the comparables, and those amounts are compatible with that proposed by the Employer. Internally, the only County group which receives longevity is the Sheriff's Department Sergeant unit, which receives longevity on the same basis as the Employer is currently proposing.

The employer correctly notes that the compounding effect of "roll up" costs, when generalized wage increases are translated into a new base for longevity payments based on percentages of wages.

Notwithstanding the employer's position, this matter was just decided by Arbitrator Keidan, and is not, in the Chairman's opinion, in need of fixing.

The Employer provided no compelling reason on this record why such benefit should be disturbed or diminished. Therefore, the Panel adopts the Union's offer.

10. Road Patrol: Two Person Units

a) Last Best Offers

The Employers' offered:

> "Employees of the bargaining unit assigned to the road patrol shall ride two (2) to a patrol car after the hours of darkness on the second and third shifts. However the Sheriff reserves the right to alter this procedure if necessary, provided that due consideration is given to the reasonable safety and security of the employee so assigned. Notwithstanding the foregoing, the Sheriff may assign single person patrol units after the hours of darkness on the second and third shifts when there are at least two (2) other patrol units on duty within the County during the same hours. An officer may request and consent in writing to work a one-man patrol car provided the Sheriff shall approve of said request."

The Union proposes maintaining the status quo.

b) Discussion

The Employer objects to the arbitrability of this issue, claiming it is not a mandatory subject of collective bargaining. See Sault Ste Marie v FOP, 163 Mich App 350, 356-57 (1987); lv den, 430 Mich 895 (1988), which dealt with a two man cars. That case stated:

> "Act 312, which provides for compulsory arbitration in police and fire disputes, is intended to supplement the public employee relations act (PERA), MCL 423.201 et seq.; MSA 17.455(1) et seq. See MCL 423.244; MSA 17.455(44); Local 1277, Metropolitan Council No 23, AFSCME, AFL-CIO v Center Line, 414 Mich 642, 652; 327 NW2d 822 (1982). Under @ 15 of PERA, to bargain collectively "is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." MCL 423.215; MSA 17.455(15). Those issues that fall into the category of "wages, hours and other terms and conditions of employment" are deemed to be mandatory subjects of bargaining. Detroit Police Officers Ass'n v Detroit, 391 Mich 44, 54-57; 214 NW2d 803 (1974). In contrast, permissive subjects of bargaining are those subjects that fall outside the scope of those designated as mandatory subjects. Center Line, supra, p 652. It is only with respect to mandatory subjects that there is a duty to bargain under @ 15 of PERA. Id. at 653. Moreover, an Act 312 arbitration panel has the authority to compel agreement only as to mandatory subjects. Id. at 654.
>
> As a general rule, the issue of manpower or staffing levels is a managerial decision and therefore a permissive subject of bargaining. See, e.g., Center Line, supra. The issues of employee workload and safety, however, constitute conditions of employment and hence are mandatory subjects of bargaining. Alpena v Alpena Fire Fighters Ass'n, 56 Mich App 568, 575; 224 NW2d 672 (1974), and cases cited therein; Gallenkamp Stores Co v National Labor Relations Bd, 402 F2d 525, 529 n 4 (CA 9, 1968). In this case, the city argues that the evidence before MERC shows that the manning clause operates as a staffing requirement and, as such, is a permissive subject of bargaining outside the scope of Act 312 compulsory arbitration. The union, on the other hand, contends that the manning clause involves employee workload and safety and, accordingly, falls within the scope of negotiation and arbitration.

> The reconciliation of two similar positions was addressed by our Supreme Court in Center Line, supra. There, the Court noted that, while manpower issues are not mandatory subjects of bargaining and therefore cannot be compelled in an arbitration award, there is a duty to bargain over the impact of manpower decisions to the extent that they relate to workload and safety. Citing Fire Fighters Union, Local 1186 v Vallejo, 12 Cal 3d 608; 116 Cal Rptr 507; 526 P2d 971 (1974), Alpena Fire Fighters, supra, and Narragansett v International Ass'n of Fire Fighters, AFL-CIO, Local 1589, 119 RI 506; 380 A2d 521 (1977), the Court in Center Line further indicated that, in order to come within the subject matter and jurisdiction of an Act 319 [sic] arbitration panel, the position that manpower affects safety must be supported by some evidence. 414 Mich 662-663.
>
> In this case, we cannot find support in the record for MERC's conclusion that the disputed minimum manning clause constitutes a workload or safety practice to which the duty to bargain and submit to Act 312 arbitration attaches. The record before us reveals that no evidence was before MERC showing or tending to show that the number of police officers on duty affects the workload of each officer. Further, other than a San Diego study finding that officers assigned to two-man patrols perceive them to be safer than one-man patrols, no evidence was before MERC showing that two-man patrols enhance officer safety. Indeed, the evidence (including the San Diego study, state data on frequency of assault on officers, and local data on injuries sustained by Sault Ste. Marie police officers) strongly suggests that officers assigned to two-man units are in greater danger of suffering an assault while on duty. Because there was a dearth of evidence before MERC which proved, or from which a reasonable inference could be drawn, that staffing levels affect employee workload and safety, we must conclude that the manning clause at issue here does not constitute a mandatory subject of bargaining and therefore is outside the scope of Act 312 arbitration. Accordingly, we reverse the MERC decision.

In contrast, this case's testimony, both union and employer, related almost exclusively to the disputed safety implications of two man cars, as compared to one man cars. There is, at the very least, some evidence from which one could conclude that the demand is safety related. On the other hand, there is the employer's testimony, which at least suggests that two man cars are more dangerous

It is important to note that the status quo is the Union's proposal, and that was established by the decision of Arbitrator Keidan in the 1986 arbitration. No appeal of that decision was ever filed.

The Chairman is not pleased with the fact that this was designated an "economic issue." Be that as it may, the parties mutually made that decision; the arbitrator must choose one party's language as written, or the other's. The party's steadfastly rebuffed all suggestions that they recharacterize the issue.

Lt. Henry Gallup testified that in his opinion single person cars are safer than two man cars. He stated that current unit members have, on a number of occasions, worked single person cars and not experienced any problems. He said that there was not shooting involving any person in a single person unit. The witness added the only officers involved in a shooting in the last ten years included a Deputy Cooper, who at the time was operating a two person unit, and an incident that occurred approximately four years ago where there were fifteen officers present. Further, Lt. Gallup testified that with one exception, all workers' compensation claims involving road patrol officers, except one, stemmed from two man cars.

Of the comparables: (1) Jackson County had a two person patrol unit provision, and that provision is not mandatory in cases where absenteeism, vacations or unexpected occurrences would call for the employer to utilize a

single person unit; (2) Shiawassee County had a mandatory two person unit requirement, in effect from September 9 through May 1 of each year; Washtenaw County limits any two person requirements to situations where "manpower allows" such staffing; and (3) the City of Brighton contract provides that the City would make a reasonable effort to assign two officers to a patrol unit after darkness, but the requirement is "not mandatory". Lt. Gallup testified that neither Howell nor Brighton run two (2) person units after dark.

Lt. Gallup concluded that by not staffing vehicles with two (2) persons per unit, the County will have the ability to place more vehicles on the road and provide more law enforcement visibility, a major crime deterrent.

However, Gallup admitted that the Employer raised this issue at a previous Act 312 arbitration. Arbitrator Keidan rejected the Employer's bid and upheld two-man cars. He also admitted that the situation is identical to that which existed at the time Keidan issued his award, except that there is more crime and no greater number of officers.

Notwithstanding Gallup's testimony, the Chairman believes that the employer, as the proponent of the change, has the 'laboring oar' on the issue. This is a very unpleasant issue. Like many safety related issues, it has the potential for "blowing-up" in an arbitrator's face, if one man cars are reinstituted, even under carefully limited circumstances.

Clearly, the sheriff wants to change the requirements. As an elected official, the Chairman believes his input merits consideration, if not deference.

The record has no evidence that suggests the current system is broken. Indeed, it appears that a number of officers have availed themselves of the opportunity to volunteer for one man cars. The record fails to convince the Chairman that he ought to reverse Keidan's decision.

Therefore, on the merits, the Chair adopts the Union's position requesting the maintenance of the status quo, and rejecting[6] management's proposed changes.

However, the Chairman is an agent of the Michigan Employment Relations Commission. He is sworn to uphold the laws of the State of Michigan. Consequently, he is constrained by the Court of Appeals decision in Sault Ste. Marie, which was left undisturbed by the Supreme Court. Two man cars are not, on this record, a mandatory subject of collective bargaining within the meaning of Act 312. Therefore, the arbitrator concludes he has no power to issue an award restraining the sheriff, notwithstanding his overall interpretation of the merits of the dispute.

---

[6]It should be noted, in passing, that the panel last met to discuss this issue on November 13, 1989. However, due to an apparent misunderstanding by the panel members, drafts of potential decisions were released without the approval of the Chairman. Those documents were only drafts, and do not represent the opinion of the Chair.

11. Election of Remedies

a) Last Best Offers

The Employers' Last Best Offer on this issue is:

> "When remedies are available for any complaint and/or grievance of an employee through any administrative or statutory scheme or procedure, such as, but not limited to, a veteran's preference hearing, civil rights hearing, or Department of Labor hearing, in addition to the grievance procedure provided under this contract and the employee elects to utilize the statutory or administrative remedy, the Association and the affected employee shall not process the complaint through any grievance procedure provided for under this contract. If an employee elects to use the grievance procedure provided for in this contract, and, subsequently elects to utilize the statutory or administrative remedies, then the grievance shall be deemed to have been withdrawn and the grievance procedure provided for hereunder shall not be applicable and any relief granted shall be forfeited. However, it is further agreed that the election of a non-grievance procedure remedy by any employee shall not affect any grievances of other employees, nor, shall any such grievance procedure remedy elected by an employee be binding upon the Union or other bargaining unit members unless the Association represents the employee in the non-grievance procedure forum."

The Union proposes maintaining the status quo.

b) Discussion

The Employers submit its intent is clear, to avoid multiplicity in litigating potential disputes. The proposal is not intended to deny any employee their right to a fair hearing as to any dispute, nor to deny employees access to the collective bargaining grievance procedure. Rather the intent of the provision is merely to assure that the parties will not be required to relitigate the same matter in a number of forums. The employers submit the proposal is sound in principle, and serves to avoid complications caused by inconsistent decisions over the same issue.

The employer further maintains that such contractual limitations are valid and enforceable. See Grand Rapids v FOP, 415 Mich 628 (1982).[7]

Finally, it is said that the requirement for an election of remedies will prohibit employees from forum shopping and eliminate the multiplicity of litigation, thus reducing costs and avoiding the potential of inconsistent decisions. The employer concludes that employee are not required to "give up any statutory rights, but rather the contract grievance procedure will not be utilized and instead such statutory remedies will be the sole forum."

A review of comparables establishes that such a provision is not widely utilized in other jurisdictions. The exception is all of the other organized Livingston County collective bargaining units, other than the Sheriff's Department Sergeants, which have analogous contract clauses.

It should be noted that the Employer's proposal to limit an employee's remedies was rejected by arbitrator

---

[7]Involving a challenge of a grievance arbitration after the filing of a counterclaim in a lawsuit, the Michigan Supreme Court stated, at page 639:

> "While it has become customary to agree upon grievance arbitration as a final step, the convention has not yet become law. * * * The provision at issue exclusively excludes from arbitration 'any matter' taken before a court or administrative forum."

The Court also noted, at page 641:

> "We hold that this provision does what it in term states, and that it precludes the union from pursuing the grievance after Mr. Stevens filed a cross-claim in court on the same issue as the grievance."

Keidan in 1986, arbitrator Frankland in 1986 (command officers) and arbitrator Swainson in 1988 (command officers). In fact, these arbitration awards comprise the only competent, material and relevant evidence on the record concerning this issue, other than the cited labor agreements.

It is true that the Michigan Supreme Court deemed such a provision enforceable. However, that is not the issue here. The issue is whether such a provision should be written into the labor agreement in the first instance.

It is enough to note that employees and the union should not be forced to choose between rights granted them by statute and those granted under the labor agreement. Such rights are not coextensive. Nor are they mutually exclusive. Laws are designed to protect the public; collective bargaining units are specially designed to protect only the bargaining unit and its members.

To include such a provision on the contract would effectively force the union into insisting that all rights conferred by law, whether MIOSHA, Fair Labor Standards Act, Civil Rights Act, or under PERA, must be written into the labor agreement and made enforceable under its terms. This would involve a total remake of the parties' collective bargaining agreement.

In short -- yes, the parties and the panel have the power to write certain classes of disputes out of the

grievance procedure; no, it is not good policy, and will not be imposed here by the panel.

The evidence clearly points to rejection of the Employer's proposal by the Panel.

III

GENERAL CONCLUSION

This process denotes both the problems and the promise of Act 312. By their own admission, we started talks with parties who had never before effectively negotiated with one another. Dozens of issues were culled from the table. Serious issues still divide the parties.

The parties and the panel were blessed to have advocates who understand the process. Mediation drew the offers and the parties together, and gave the Chairman a depth of understanding that could never have been achieved in a formal hearing.

The arbiter has written an award that is likely to please no one. This is a risk litigants take when they entrust decision making to a stranger.

Act 312 should be considered to be a last resort, not a way of life. Next time good faith negotiation should be tried first by both sides, for it is they who have the true edge when it comes to being fair, and representing their respective constituencies.

STANLEY T. DOBRY, Chairman

Dated: November 21, 1989

IN THE MATTER OF
ARBITRATION UNDER ACT 312
PUBLIC ACTS OF 1969
AS AMENDED

BEFORE: STANLEY T. DOBRY, JR., ESQ., IMPARTIAL CHAIRMAN

In the Matter of the Arbitration Between:

COUNTY OF LIVINGSTON

Case No. L88 C-277

and

POLICE OFFICERS ASSOCIATION OF MICHIGAN
(Non-supervisory employees)

UNION DELEGATE'S CONCURRENCE IN PART
AND DISSENT IN PART

This Panel member would concur in part and dissent in part in the opinion and award issued by Impartial Chairman Stanley T. Dobry in the above entitled matter.

As to specific issues:

I dissent with the Chairman on the issue of Duration.

I dissent with the Chairman on the issue of Wages - January 1, 1988 through December 31, 1989.

I concur with the Chairman on the issue of Wages - January 1, 1990 through December 31, 1990.

I dissent with the Chairman on the issue of Detective Wage Differential.

I dissent with the Chairman on the issues of Pension - Multiplier and FAC.

I dissent with the Chairman on the issue of Health Insurance for Retirees.

I dissent with the Chairman on the issue of Health Insurance - Second Surgical Opinion and Predetermination Rider.

I concur with the Chairman on the issue of Health Insurance - Employee Co-payments

I concur with the Chairman on the issue of Longevity.

I concur with the Chairman on the issue of Road Patrol as to the decision on the merits. I dissent with the Chairman on the issue of arbitrability.

I concur with the Chairman on the issue of Election of Remedies.

William Birdseye
Union Delegate

DATE: November 17, 1989

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

STATUTORY ARBITRATION TRIBUNAL

In the Matter of the Arbitration
Between:

Case No. 87H 2068

COUNTY OF LIVINGSTON AND DENNIS R. DEBURTON, LIVINGSTON COUNTY SHERIFF,

Employers,

and

POLICE OFFICERS ASSOCIATION OF MICHIGAN,

Union.

EMPLOYER REPRESENTATIVE'S CONCURRENCE IN PART AND DISSENT IN PART

This Panel member would concur in part and dissent in part in the opinion and award issued by Chairman Stanley T. Dobry in the above matter.

A. Comparable Counties.
A considerable portion of the Chairman's opinion, as well as the hearing process itself, related to the issue of comparable communities under the Act 312 statutory structure as it relates to Livingston County. The County proposed a list of comparable counties which had essentially been accepted by three (3) arbitrators on previous occasions. By contrast, the Union, for the most part, proposed counties and cities that have been expressly rejected by arbitrators in prior arbitrations.

The Chairman's decision essentially adopts as comparable all of the communities from both parties excepting Genesee County which has limited road patrol functions, and Shiawassee and Lapeer Counties which the Chairman deems the outside of the local labor market and merely "cumulative"[1]. While the Employer concurs that Genesee is not a comparable community, these specific exclusions by the Chairman illustrate the arbitrary evaluation of the comparables by the Chairman. The utilization of demographics in establishing comparables is almost uniformly utilized by other arbitrators and by consultants in establishing comparables for Act 312 purposes. The only apparent exception, at least in this particular case, would be this union. While the Chairman questions the use of demographics and establishing

---

[1]How Lapeer County could be construed any more "cumulative" than the numerous counties proposed by the Union seems highly questionable.

comparables, he clearly has failed to annunciate and utilize any rational substitute theory in selecting comparables.
The Union's representatives suggested utilization of a "labor market analysis" as the appropriate criteria, yet it is apparent that the Arbitrator did not utilize that theory in rejecting Lapeer and Shiawassee Counties. Other than Oakland County, which dwarfs Livingston County by size, the only other proposed comparable within the same legally recognized labor market is Lapeer County, as illustrated by the Union's own exhibits. (Union's Exhibits 105 and 106). Additionally, Lapeer County is the only other county within the same labor market (the Detroit SMSA) which is not significantly urbanized. (County Exhibit 27). The Union herein has proposed an apparent theory that "contiguous" counties must constitute the same labor market and are therefore comparable. However, there is no legal support for this type of theory for Act 312 comparables and the Chairman himself in footnote 3, indicates that such a conclusion would be unacceptable. The rejection of Shiawassee County by the Chairman reflects that he did not use this "contiguous" theory in any event. What is lacking however, is what theory, if any, was used by the Chairman.

The Chairman's rationale for not utilizing only the Employer's proposed comparables related to the fact that Livingston County had the highest wage level amongst the counties it found to be "comparable". This, the Chairman concludes, is "the basic inadequacy" of the Employer's proposed list, and, he suggests, indicates that such a list is "unrepresentative". The Chairman notes that "a fair and more realistic sampling would include some bargaining units that are higher paid than this unit". In essence, the Chairman penalizes the Employer herein by insisting that it be included in a group of counties with substantially larger populations, work forces and economic resources, because the County's current compensation levels are favorable compared to county governmental units of its own size. This Panel member can not share in this finding. Further, this finding is particularly inappropriate since this unit's wages were near the middle of the "historical" comparable group and only reached the highest paid level in 1985 due to prior Act 312 Arbitrator Keiden's decision. (Employer's Exhibit 7) Thus, the prior Act 312 opinion would serve, based upon the Chairman's analysis, to catapult the County into a group of comparables which, by any objective measure, would dwarf Livingston County in size. Additionally, the Employer would note that the Union's apparent theory, with the exception of Jackson County, which was proposed by both parties, and Shiawassee, which the Chairman rejected, would include only comparables that have higher wages than Livingston County.

Similarly, the Chairman elected to include the Cities of Brighton and Howell in the comparable group while they have been historically expressly excluded. While the Chairman recognized the substantial difference in structure and operations of the Sheriff's Department versus a city police department, he indicates that such changes are longstanding and are no reason to disregard Brighton and Howell. However, the record also fails to verify that these cities were ever adopted as a comparable community in any previous Act 312 proceeding involving Livingston County. The Chairman concludes, however, that as

these other police departments are "within the same community in which the Sheriff operates, they are comparable within the meaning of the statute". In making this ruling, the Chairman fails to address the Employer's objection that utilization of only these two (2) municipalities' police departments would be inappropriate inasmuch as there are at least two (2) other full service police departments within Livingston County of comparable size which the Union ignored as statutory comparable. It is submitted that it is not without coincidence that the Union proposed the two (2) local police departments that have compensation levels in excess of the Sheriff's Department's and ignored those departments with lower compensation levels in its "analysis" of the local labor market.

This Panel member would suggest that it appears the Chairman had no rational theory for selecting comparables herein, but rather simply elect it to utilize all of the comparables submitted by both parties with some rather arbitrary rejections of a limited number of counties. Such a system, contrary to the Chairman's assertion, would, in this panel members opinion, lead to considerably more instability in future labor negotiations in Livingston County.

The Chairman does note that his selection of "comparables" is not intended to be strictly limited to the context under Section 9(d), of the Act, but is intended to also encompass Section 9(h) under the Act which relates to "other traditional factors". Further, the Chairman essentially indicates that his belief that comparable communities should not be used as "static benchmarks" with regard to appropriateness of wage levels, but should rather be used primarily in a "relative ranking" basis. While utilization of the Chairman's proposed comparable in such a "relative ranking" manner makes the Chairman's findings more acceptable to this Panel member, the reality is that such a utilization is not customary amongst arbitrators and appear not to have been utilized even by this Chairman in his final award. Thus, this Panel member feels that the inclusion of the noted non-county comparable and those counties of substantially larger size as compared to Livingston County are inconsistent with the prior Act 312 decisions, may prove a detriment to future negotiations, and should have been rejected. Therefore, I dissent as to the Chairman's decisions concerning comparable communities as it relates to excluding Lapeer County and including Ingham, Oakland and Washtenaw Counties, and the Cities of Brighton and Howell as comparable.
entitled matter.

B. Duration.
I concur with the Chairman's finding concerning "Duration".

C. Wages.

I concur with the Chairman's finding as to the "1988-1989 Wages" and dissent as to the "1990 Wages". On the latter 1990 issue, I would note, the Chairman's decision appears to be based solely on the 1990 wages paid by the Cities of Brighton and Howell. As previously discussed, these comparables are inappropriate. Moreover, while the Chairman espouses the use of comparables as important from a "relative

ranking" perspective, this theory appears to be overlooked by the Chairman in rendering his decision concerning 1990 wages. The record clearly reflected that Livingston County since 1980, from a relative standpoint, substantially improved its position with regard to both its own and the Union's proposed comparables. However, with regard to 1990, instead of utilizing the "relative" perspective, the Chairman appears to be utilizing the Cities of Howell and Brighton solely as a "static benchmark" to measure the adequacy of the 1990 proposals. Due to the substantial improvements beyond what had been received by most of the accepted external comparables, as well as the internal comparables, the Employer's last best offer is more appropriate and should have been adopted for 1990.

D. Detective Wage Differential.
I concur with the Chairman's award as to "detective wage differential".

E. Pension - Multiplier and FAC.
I concur with the Chairman's award with regard to "pension-multiplier and FAC".

F. Health Insurance for Retirees.
I concur with the Chairman's award with regard to "health insurance for retirees".

G. Health Insurance Predetermination and Second Surgical Opinion.
I concur with the Chairman's award with regard to "health insurance-predetermination and second surgical opinion".

H. Health Insurance - Employee Co-payment.
I dissent with regard to the Chairman's award with regard to "health insurance - employee co-payments".

I. Longevity.
I dissent with regard to the Chairman's award with regard to "longevity".

J. Road Patrol - 2 Person Units.
I concur with the Chairman's ruling on the non-arbitrability of the "road patrol - 2 person units" issue and his determination that the matter is beyond his jurisdiction. I strongly dissent on his dicta on this issue, finding no basis for the same in the record or the law.

K. Election of Remedies.
I dissent with the Chairman's award on the "election of remedies" issue.

Dated: November 20, 1991 BY _____
David G. Stoker (P24959)
Employer's Panel Member