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STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION BETWEEN:

LIVINGSTON COUNTY

-and-

COMMAND OFFICERS ASSOCIATION OF MICHIGAN

Act 312

MERC #L85 D-377

OPINION REGARDING COMPARABLE COMMUNITIES

Appearances

For the County: David G. Stoker
Attorney at Law
515 North Capitol Avenue
Lansing, Michigan 48933

For the Union: Ann Maurer
Labor Economist
28815 West Eight Mile Road
Suite 103
Livonia, Michigan 48152

Chairman of Arbitration Panel: Kenneth P. Frankland

County Delegate: David G. Stoker

Union Delegate: William Birdseye

I. INTRODUCTION

This matter is before a panel of arbitrators appointed pursuant to the terms of Act 312, Public Acts of 1969, as amended, for the purposes of hearing and deciding unresolved issues in the new contract dispute between the parties. The Petition for Arbitration was initiated by Command Officers Association of Michigan on July 29, 1985, by Ann Maurer, its Labor Economist. On October 7, 1985, pursuant to the statute, Kenneth P. Frankland was appointed by the Michigan Employment Relates Commission to serve as Chairman of the arbitration panel. A pre-hearing conference was held on October 30, 1985. By letter dated November 1, 1985, the Chairman issued a summary of the pre-hearing conference. It was agreed that Mr. Birdseye and Mr. Stoker would be both delegates and advocates for the Union and County respectively. It was obvious at the pre-hearing conference that the parties had widely divergent views as to comparable communities. The parties agreed to exchange a proposed list of comparable communities within 30 days. On December 2, 1985, the County proposed its comparable communities; the counties of Allegan, Bay, Calhoun, Eaton, Grand Traverse, Lapeer, Lenawee, Marquette, Midland, Tuscola and Van Buren. By letter dated December 3, 1985, the Union proposed the counties of Washtenaw, Jackson, Eaton, Shiawassee, Genessee and Oakland, plus the cities of Brighton and Howell, the Michigan State Police and the Huron-Clinton Metro Police.

The Chair and the parties mutually agreed that in lieu of an oral hearing on comparable communities, the parties would submit exhibits in support of their suggested comparables, along with any

expert statements by February 7, 1986. The parties would thereafter submit briefs and rebuttal arguments on or before February 14, 1986. This procedure was confirmed in writing on January 24, 1986, by way of a Re-Notice of Hearing.

The County submitted its brief on February 14, 1986. On February 14, 1986, the Chair received a telephone call from Ms. Maurer regarding a possible extension of hearing dates, and that the Union's reply brief would not be submitted on February 14, 1986. There was an apparent misunderstanding amongst the parties as to whether or not there was a consent for adjourned hearing dates, which has been reconciled with hearing dates rescheduled for April 14 and 15, 1986. The Union's brief was received by the Chairman on March 3, 1986, although the postmark indicated it was mailed on February 27, 1986. Given the apparent misunderstanding regarding extension of hearing dates and filing of the Union's brief, the panel will accept the Union brief, notwithstanding verbal objections to the contrary. There has been no showing that the County has been substantially prejudiced in any manner by the delay, and in particular, the Union prepared its brief without reading the County brief, which had been mailed to the Union on February 7, 1986, but subsequently returned unopened.

II. CRITERIA FOR DETERMINING COMPARABLE COMMUNITIES

As has been pointed out by the parties, 1969 PA 312 requires that a panel, in making its determinations on disputed issues, use the factors set forth in Section 9 of the Act. At issue for comparable communities is the standards set forth in Section 9(D) of the Act, mainly "comparison of wages, hours and conditions of employment of employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally: (i) in public employment in comparable communities; (ii) in private employment in comparable communities." Act 312 arbitration is more than an exercise in computer analysis. Comparability is at best a matter of degree and judgment, not a litmus test for dichotomies. It is unfortunate that the parties could not find any comparable communities, but the panel was willing to assume the responsibility of picking and choosing amongst those proposed communities that have been suggested.

The main thrust of the Union presentation is that comparability should be measured by proximity, as all of its suggested communities are geographically proximate and, more importantly, suggests that the proper evaluation should utilize a regional econometric forecasting system with emphasis being placed upon automotive versus non-automotive economic activity. Conversely, the County believes that the principle components should be population, state equalized value, per capita income, size of department and incidents of crime statistics.

In support of its argument, the County suggests that the word "comparable" means similar and that the word "community" denotes neighborhood, vicinity or locality. The Union makes no definition or assertion, but it is fair to say that both parties are talking in terms of similarities, but disagree as to the concept of community.

Thus, the panel needs as a threshhold issue to clarify its understanding of the concept of community or locality.

In support of its argument, the County suggests that only county jurisdictions should be used, whereas the Union proposes two cities plus Michigan State Police and the Huron-Clinton Metropolitan Force. Turning first to the issue of regional or statewide forces, it is the panel's opinion that neither the Michigan State Police nor the Huron-Clinton authority are appropriate comparables in this proceeding. Utilization of a statewide or regional agency is inappropriate because the jurisdictional basis is drastically broader than that of the county sheriff department. Further, the governmental organizational structure does not lend itself to comparison nor does the method of financing suggest that either of those entities is comparable. The Union suggested, in favor of those two entities, that employees of the County and of those entities work in the same general geographic area. However, there are far more criteria that are of greater importance in determining comparability than simply working side by side in a particular land mass. This does not denigrate the concept but in view of the other criteria, it is not so compelling as to outweigh these other criteria.

With respect to utilization of the cities of Howell and Brighton, it is also the panel's considered judgment that the same are not comparable communities within the meaning of Act 312. The argument presented by the County is persuasive as to difference in operational functions of the respective agencies, differing funding sources and, most significantly, the very basic organizational governmental structure. Counties, by constitutional and statutory mandates, perform functions which cities are not called upon to do. For example, counties have agricultural and stabilization entities, welfare agencies and similar activities which are not found in cities. It is also significant that cities have a quite divergent funding mechanism being able to assess more millage than a county in order to raise local revenues. Further, cities have the option to impose income taxes as a source of revenue, which is not available to counties.

Counties are the larger organizational unit performing broader functions for its residents and delivers public safety services to a more diverse density of population as well as larger land mass. These present obvious differences of needs and raise significant questions of funding, resources and the like that mitigate against using cities for comparison.

In determining the appropriate criteria to be applied, the panel is appreciative of the extensive exhibits and argumentive briefs filed by both parties. References to Elkouri and Elkouri are, of course, helpful since they are the recognized authority on arbitration. However, Chapter 18, as presented to the panel, is a general explanation by the authors' of standards to be applied by

arbitrators to determine the prevailing practice on an issue-by-issue basis. Some of the comments of the authors are helpful in the determination of comparability, but the focus is clearly not on a critique of standards for comparability but rather, standards for determining the prevailing practice on a particular issue to be resolved.

The major thrust of the Union's rationale is that contiguous counties irrespective of size and population density should be the predominant factor complied with the automotive-non-automotive econometric model. The County, on the other hand, has asserted the more traditional concepts of population, SEV, per capita income, crime statistics and total personnel. It is this panel's belief that the criteria to be applied in this case are proximity, population, SEV, per capita income, size of departments, entities with road sergeants, land mass, with these criteria being applied without specific weight being given to one or more.

In applying these criteria to the proposed comparable communities, the panel is mindful of certain facts of record, and those which are common knowledge to the parties and to the general public regarding Livingston County. For example, there are only two significant population centers, Howell and Brighton, with the next largest being Fowlerville. All three of these population centers are along Interstate 96, a major east-west artery connecting the Metropolitan Detroit area with the State Capitol in Lansing and then the western part of Michigan. The significance of I-96 is only partly touched by the parties, but it is an obvious facilitator of commuters from Livingston to the Metropolitan area of Detroit, and it is also the connector which has begun the pro-

cess of urban sprawl from the Greater Metropolitan Detroit area. Likewise, U.S. 23, a major north-south artery on the eastern edge of the county, is a major connector between the cities of Flint and Ann Arbor and contributes to the mobility of the Livingston community.

The parties have not given the land mass, size and miles to be patrolled as significant factors to be compared with other communities. It is ironic that the parties have not utilized this information in their analysis since what is patrolled as to area and mileage would seem to be important indicia of comparability.

The Union has steadfastly attempted to link Livingston with the Detroit SMSA undoubtedly because of the higher wage structure throughout the Detroit SMSA. However, it has been pointed out by the County, that Livingston is, in reality, an outlying county within the Detroit SMSA. Utilizing the Bureau of Census, definition of an urbanized area, Livingston has no "urban" area. The Union's heavy emphasis upon the Detroit SMSA in the automotive and non-automotive econometric model could well be a valid argument if in fact the county was a heavy urbanized core. However, here the population density of Livingston versus Wayne, Oakland and Macomb counties in the Detroit SMSA pales by comparison. Only Lapeer, within the Detroit SMSA, is analogous to Livingston.

This panel generally believes that proximity is reasonably important and, counties that fit into the majority of the criteria for comparability and are proximate and/or contiguous, ought to be utilized. That assumes, of course, that the contiguous counties are within a reasonable range using the key factors

of population, SEV, per capita income and the like. Thus, an examination of the Union's proposed counties suggests that Oakland should be excluded because of its population of over 1 million, approximately ten times that of Livingston, as well as its SEV base of $14 billion, well in excess of $1.2 billion in Livingston. It clearly is a high density urbanized community, and although adjoining Livingston, is not comparable. Turning next to Genessee County, it likewise should be excluded because its population is almost four times as large, its SEV approximately three times as large and its per capita income at least $1,500 in excess of Livingston. More importantly, Genessee includes the City of Flint which, by all standards, is a higly urbanized center, and there is no analogous situation in Livingston.

Turning next to Washtenaw, it likewise should be excluded because its population is more than twice that of Livingston, its SEV is one and a half times that of Livingston, and its per capita income is $11,627.00 versus $9,551.00. Washtenaw likewise has a major urbanized center, the City of Ann Arbor, and although many portions of its outcounty areas is analogous to Livingston, its urbanized centers of Ann Arbor and Ypsilanti negated inclusion as a comparable community.

Turning next to Ingham County, its population is 275,000 versus roughly 100,000 and its SEV is 2.595 million versus 1.284 million and its per capita income is 11,321 versus 9,551. Ingham also has Lansing, the State Capitol, and is thought, in the panel's consideration, to be more urbanized and less rural than Livingston and, therefore, is not comparable.

With the remaining two proposed Union counties, the panel believes both should be comparable communities to Livingston for slightly different reasons. Shiawassee County is slightly smaller in population, slightly smaller in SEV, but with a slightly larger per capita income, while Jackson has a slightly larger population base, almost identical SEV base and almost identical per capita income base. Although Jackson County does have one principal city, Jackson, on the basis of statistics alone, it would seem to be closer to Livingston as far as socioeconomic demographics. It likewise has a major east-west interstate, 94, similar to I-96 in Livingston County, but yet it has land masses for agricultural and recreational purposes, which are quite similar to the agricultural and recreational land masses in Livingston County.

Without conceding that Shiawassee might be a comparable county, the County's brief suggested that it does not have compelling reasons to exclude it as a comparable. What argues in its favor, of course, is its proximity, being a neighbor to the north, having a relatively insignificant urbanization with only one principal city, Owosso, general characteristic being rural, agricultural. It likewise has a significant interstate, I-69, connecting Flint with Lansing. Likewise, if you accept the County's arguments regarding Livingston as being an outer edge within the Detroit MSMA, Shiawassee is likewise reasonably analogous in the Flint SMSA. It is in reality to Flint what Livingston is to Detroit as far as the SMSA demographics are concerned. Thus, the panel considers the proposed Union communities of Jackson and Livingston to be comparable with Livingston.

Relative to the County comparables, the panel tends to agree with the Union's argument that the 50%/50% rationale offered by the County is but one of several ways of determining comparability. It is not an end all, of course, and the Union has correctly pointed out that with respect to SEV, population and per capita income, that other candidates could well fit within the arbitrary percentage selected by the County. Be that as it may, it is the method by which the County gleened certain candidates and the Union has not contradicted specific counties for disqualification but only suggesting generally it is an invalid approach. It is just as valid for starting purposes as was the Union choice of its econometric model.

The panel has attempted to apply the same criteria that it used with the Union proposals. There is a reasonably compelling argument that proximity ought to be a key indicator. Thus, although the Union proposed only counties contiguous to Livingston County, the County has proposed places reasonably distant. Even though they may statistically be within a norm, the counties of Allegan and Grand Traverse can be excluded almost because of their distant geographical location and not being reasonably adjacent to a major SMSA.

The panel would accept the balance of the County proposed comparables including Bay, Calhoun, Eaton, Lapeer, Lenawee and Midland. The rationale of the County is set forth in its brief and is compelling for the inclusion of these communities. With respect to population, Eaton, Lapeer, Lenawee and Midland are

slightly below Livingston, whereas Bay and Calhoun are slightly above. As it relates to SEV, Calhoun is almost identical to Livingston, Midland is slightly higher as is Bay, whereas Lenawee, Eaton and Lapeer are below the SEV of Livingston. With respect to the total number of employees in the sheriff departments, although not totally meaningful in and of itself, it is some barometer of their respective departments. Livingston has 81 full time employees and the Shiawassee and Jackson, the Union proposed comparables have 48 and 55 employees respectively, somewhat smaller. Lenawee has 80, almost an equal number, while Calhoun, Lapeer and Midland have less and Eaton has more. At least from a gross numbers perspective, these give the panel a reasonable range below and above Livingston when the issue of full-time employees within the sheriff department is discussed.

As it relates to the issue of sergeants and road sergeants only, the Union suggests only those counties that have exclusviely road sergeants ought to be included. They point out that only six of the eleven proposed counties of the employer, (without identifying them) have exclusive road sergeants comparable to Livingston. It is this panel's considered judgment that to overly emphasize this point to the exclusion of all other factors does not do justice to the issue of comparability. It is admittedly important but is not a prerequisite that all comparable communities have the identical road sergeant component as suggested by the Union. The panel needs to have information regarding sergeants both as to their number and their duties, whether they exclusively ride or performed other supervisory functions when making its final arbi-

trable decisions.

It can be argued that the inclusion of Bay and Calhoun are counties too remote from Livingston. However, to give the panel a reasonable balance, it would seem that Calhoun, although slightly larger, has an almost identical SEV and has a per capita income slightly in excess of Livingston and is bisected by the I-94 expressway, which lends social economic demographics comparable to Livingston. Bay is slightly higher in population and SEV, but $500 per capita greater income. Since some counties selected are smaller, these provide the panel a range on the other side for consideration.

As for Lenawee County, although it is again not immediately proximate to Livingston, it has many of the same general characteristics as Livingston. Its population density is roughly 10,000 less than Livingston. Its per capita income is almost identical, and its SEV per capita is within $150.00 of each other. It likewise is predominantly rural and seems more in character with Livingston as to its agricultural non-urban characteristics. As to law enforcement services, the 1984 crime statistics total offenses are 2579 in Livingston and 2380 in Lenawee. With reasonably striking parallels, it tends to connote or at least raise the inference that law enforcement activities are reasonbly comparable.

Lapeer was included because it is in the Detroit SMSA and appears to have similar characteristics as Livingston within the SMSA. Although smaller, it too is an emerging county affected by urban sprawl which is slowly changing its rural pastoral nature as is happening in Livingston.

In summary, deciding comparable communities is not an exact science. The panel must get a "feel" for the community that is being compared using the various statistical information made available by way of exhibits and strike a reasonable balance. This panel is not pursuaded that the Union's approach relying upon the econometric model is more acceptable than the more traditional criteria espoused by the County. To some extent, the Union brief, Page 7, recognizes this when it states, "the econometric method will probably gain a substantial, if not equal, place with the traditional criteria." Although it is statistically placed within the Detroit SMSA, for the reasons set forth in the County's brief, Livingston County has just not as yet acquired the indicia that one would normally connote with an urbanized community. At least in this panel's mind, communities that have been selected as comparable, have more of a rural flavor, less dominated by urban centers and within a limited range, can be considered comparable. In the final analysis, the exhibits and arguments presented by the County were more persuasive when comparing the individual communities than were the Union's presentation relying more heavily upon metropolitan area components.

Dated: April 2, 1986

Respectfully submitted,

BY: _____
Kenneth P. Frankland
Chairperson

_____
William Birdseye
Union Delegate

Concurs _____ Dissents _____

_____
David G. Stoker
County Delegate

Concurs _____ Dissents _____

COMPOSITE FROM EXHIBITS

	POPULATION 7/1/83 (Est.)	POPULATION 1980	SEV - 1984 (Million)	PER CAPITA INCOME 1982
ALLEGAN(C)	82,581	81,555	$ 929.00	$ 8,447.00
BAY(C)	117,444	119,881	1,387.00	10,001.00
CALHOUN(C)	139,965	141,557	1,200.00	10,667.00
EATON(C)	88,054	88,337	969.00	10,061.00
GRAND TRAVERS(C)	56,663	54,899	877.00	10,621.00
INGHAM(U)	275,341	275,520	2,595.00	11,321.00
JACKSON(U)	148,003	151,495	1,248.00	9,850.00
LAPEER(C)	68,664	70,038	750.00	9,123.00
LENAWEE(C)	88,138	89,948	1,028.00	9,660.00
LIVINGSTON	97,178	100,289	1,284.00	9,551.00
MIDLAND(C)	74,274	73,578	1,522.00	11,113.00
OAKLAND(U)	1,006,273	1,011,793	14,402.00	14,186.00
SHIAWASSEE(U)	68,651	71,141	618.00	10,016.00
WASHTENAW(U)	269,105	275,520	2,595.00	11,627.00

STATE OF MICHIGAN

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EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

LIVINGSTON COUNTY

-and-

COMMAND OFFICERS ASSOCIATION OF MICHIGAN

Act 312

MERC #L85 D-377

PROPOSED OPINION AND AWARD

Appearances

For the County: David G. Stoker
Attorney at Law
515 North Capitol Avenue
Lansing, Michigan 48933

For the Union: William Birdseye
Command Officers Association
of Michigan
28815 West Eight Mile Road
Suite 103
Livonia, Michigan 48152

Chairman of Arbitration Panel: Kenneth P. Frankland

County Delegate: David G. Stocker

Union Delegate: William Birdseye

I. INTRODUCTION

This matter is before a panel of arbitrators appointed pursuant to the terms of Act 312, Public Acts of 1969, as amended, for the purposes of hearing and deciding unresolved issues in the new contract dispute between the parties. The Petition for Arbitration was initiated by Command Officers Association of Michigan on July 29, 1985, by Ann Maurer, its Labor Economist. On October 7, 1985, pursuant to the statute, Kenneth P. Frankland was appointed by the Michigan Employment Relations Commission to serve as Chairman of the arbitration panel. A pre-hearing conference was held on October 30, 1985. By letter dated November 1, 1985, the Chairman issued a summary of the pre-hearing conference. It was agreed that Mr. Birdseye and Mr. Stoker would be both delegates and advocates for the Union and County respectively. It was obvious at the pre-hearing conference that the parties had widely divergent views as to comparable communities. The parties agreed to exchange a proposed list of comparable communities within 30 days. On December 2, 1985, the County proposed its comparable communities: the counties of Allegan, Bay, Calhoun, Eaton, Grand Traverse, Lapeer, Lenawee, Marquette, Midland, Tuscola and Van Buren. By letter dates December 3, 1985, the Union proposed the counties of Washtenaw, Jackson, Eaton, Shiawassee, Genesee and Oakland, plus the cities of Brighton and Howell, the Michigan State Police and the Huron-Clinton Metro Police.

The Chair and the parties mutually agreed that in lieu of an oral hearing on comparable communities, the parties would submit exhibits in support of their suggested comparables, along with any

expert statement by February 7, 1986. The parties would thereafter submit briefs and rebuttal arguments.

A proposed Opinion Regarding Comparable Communities was circulated by the Chair and later adopted by the panel majority on April 15, 1986. That Opinion is incorporated herein as if rendered as a part of this Opinion and Award.

Hearings were held on April 14, April 15 and May 15, 1986. The last offers of the parties were received May 27, 1986. The parties reserved the right to file briefs and the County submitted a brief dated July 18, 1986. The Union did not file a brief on the facts, but did file a memorandum regarding legal issues raised in the County brief.

The panelists were split as to rendering an award prior to the award in the deputies' arbitration. The panel majority concluded that to wait was not in the public interest and that once arbitration commenced, absent mutual agreement to withdraw or delay an award, the panel is obligated to render an award. Thus, the Chair has prepared this Opinion and Award and, when concurred in by a majority, constitutes the award of the panel.

II. STIPULATIONS

At the beginning of the hearing, the parties stipulated and the panel agreed that the time limits under the Act were waived. Further, the contract should be of two years' duration, from January 1, 1985, through December 31, 1986.

Further, certain issues were dismissed and the stipulated provisions of all agreed upon language is attached hereto and is incorporated as part of the contract.

It is also agreed that all provisions not subject to arbitration nor stipulated as to changes are adopted and incorporated in the new contract precisely as stated in the old contract.

The parties further agreed that the remaining issues to be arbitrated are as follows:

Economic

1. Wages
2. Pension - Employer to Pick Up Costs
3. Pension - Normal Retirement Age
4. Health Insurance for Retirees
5. Longevity
6. Bereavement Leave
7. Call-Back and/or Court Time
8. Marine Division and Underwater Recovery Unit
9. Ammunition

Non-Economic

1. Grievance and Arbitration Procedures
2. Discharge and Suspension (Records)
3. Discharge and Discipline (Liability Insurance)

4. Shift Preference

5. Weapons Qualifications

6. Past Practice Clause

7. Election of Remedies

This Opinion will discuss the last offer on an issue-by-issue basis with the panel opinion and majority vote on each issue.

III. ISSUES

1. Wages:

County's Last Offer:

55.1 Sergeants shall be paid in accordance with the following step scales effective from January 1, 1985:

Start	1 Year	2 Years	3 Years	4 Years	5 Years
$17,681	$19,861	$22,058	$23,163	$25,763	$26,181

55.2 Effective from January 1, 1986, the five (5) year level sergeants rate shall be ten percent (10%) above the top level in the "deputy" classification within the law enforcement unit, provided, however, that it shall not exceed $28,111 for 1986. The start through fourth year levels within the sergeants scale shall be increased by a like number of dollars as the fifth year level is increased pursuant to this provision.

55.3 Employees must be employed on the date of ratification by all parties to be eligible to receive retroactive increase.

Union's Last Offer:

55.1 Sergeants:
1-1-85 to 12-31-85

Sergeants shall be paid by 10% differential over the top step in deputy pay scale.

1-1-86 to 12-31-86

Sergeants shall be paid at 10% differential over the top step in deputy pay scale.

The record discloses there are seven segeants in this unit, all of whom are at the top step stated as five years in Section 55.1 of the old contract. Presently, they receive Two Thousand Dollars ($2,000.00) more than the top deputy pay scale and based upon the expired deputy contract, the maximum would be $25,000 ($23,000 plus $2,000). The deputy contract is also in arbitration and an award is yet to be finalized. Although there has been discussion to wait for that award, as noted previously, the panel be-

lieves an award is appropriate in this case. Both parties were aware of the possibility of this case being decided first and took that risk. Since the top deputy pay is critical to analysis of the proper sergeant pay, the parties were willing to roll the dice and even present their proofs, and now their offers without the benefit of a fixed number. Thus, the panel will consider the evidence, apply the criteria of Section 9 of the Act and select the offer that most closely comports to the Section 9 standards.

Originally, the County proposed Three Percent (3%) raises over the top deputy for 1985 and 1986. The Union proposed Thirteen Percent (13%) in 1985 and Fourteen Percent (14%) in 1986 over the top deputy. Now the offers are substantially changed. The Union still uses a percentage differential, Ten Percent (10%) each year, but the County ofers $26,181 for 1985 and Ten Percent (10%) above the top deputy rate for 1986 but with a cap of $28,111. Why the dramatic change? The panel can only surmise that each party was impressed by the evidence and that either offer, if selected, will not create a disparate result. It is also important to note that the panel will use evidence from exhibits on only those comparable communities identified in the prior opinion (U-Ex.3, C-Ex.2 and 3). C-Ex.3 demonstrates that the median top sergeant salary on January 1, 1985, in the comparables was $26,181 and the mean was $26,665. The County witness testified that all comparable communities had sergeants' responsibility that was discribed as "road operation supervision", which is analagous to the seven sergeants in this unit.

The County presented evidence regarding the other Livingston County employees (C-Ex.5); the differential between the top sergeant level and the top deputy since 1974 (C-Ex.7); the wage increases compared to the CPI (C-Ex.6); and U-Ex.4 was offered to bring the CPI information more current.

The County offered testimony regarding comparison of wages in comparable communities for sergeants and also offered evidence and testimony regarding wages for other public employees within Livingston County. Both sides presented testimony with respect to Consumer Price Index and its relation to this case. The County also offered the testimony of Frank Distel, the County Personnel Director, with respect to other collective bargaining agreements within the county for 1985-86. County Exhibits 9 and 10 reflect the comparison of the sergeants versus other county general employees at the County Level 16 and Court Contract Level 12. These exhibits suggest that since 1977, the sergeants have experienced a 65.5% increase in salary and fringes, whereas the other general employees received a 44% increase and AFSCME court contract employees received a 43.8% increase.

Exhibits 11 and 12, offered by the County, analyzed the differences between sergeants, detectives and deputies. Since 1977, the detectives received a 61.7% increase, and the deputies received a 53.3% increase, which is contrasted with the sergeants' 65.5% increase over the same period of time.

It was further testified by Mr. Distel that wage increases have been granted for 1985-86 for the non-union county employees

and the AFSCME unit for 1985, the wage increase was 3% for both units and 6% for each unit in 1986.

Section 9 of the Act requires this panel to review the evidence and to provide an analysis based upon the factors in Section 9. Subsection (c) requires the panel to apply the interest and welfare of the public and the financial ability of the government to meet these costs. Since financial ability has never veen placed in issue, it would appear that whatever this panel recommends will be consistent with the County's ability to pay and in the interest and welfare of the public.

The principal components in this case are analysis of subsection (d) and subsection (e) of the Act.

Subsection (d) requires comparison of the wages, hours and conditions of employment of the employees involved in this proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in comparable communities or in private employment in comparable communities. There is no evidence whatsoever on private employment, but there is substantial evidence with respect to the wages of sergeants in comparable communities as previously defined by this panel as well as evidence with respect to other employees within Livingston County. Additionally, both sides put in evidence with respect to Subsection (e), the consumer prices for goods and services, and how those increases in CPI relate to the wage proposals that they have made.

When we apply these factors to the evidence submitted in the case, the more compelling factors include the actual wages that

are being paid to comparable positions in the other communities and, to a lesser extent, the wages that are being paid to other employees in Livingston County. Although the Union has disagreed with the manner in which the comparable communities were selected, we are using them in these proceedings and their Exhibit 3, along with the County's Exhibit 2 and 3 are the predominant basis for this panel's recommendation.

When all of these factors are applied, it would seem that the County's last offer is more in line with the requirements of Section 9. In particular, looking at 1985 first, by accepting the County's proposal, the Livingston sergeants would receive higher pay than Lapeer, Lenawee, Shiawassee, Eaton and just slightly less than Jackson. Only Bay, Calhoun and Midland would have a higher rate of pay.

It is difficult for this panel to utilize the Union's percentage formula because it is being applied to an unknown base, namely the top deputy salary. If the County's offer is accepted in the deputies case and applying the Union's 10% increase, sergeants would receive $26,059, which is less than that proposed by the County in this case. However, if the Union's position is accepted in the deputies arbitration, then they would receive $27,198, which would be in excess of the median salary in the comparable communities for the year 1985. On balance, it would seem that it is more equitable to go with the certainty of the County's offer in 1985 than with the uncertainty of what might happen in the deputies case.

An analysis of the CPI also lends support for this position because by accepting the County proposal, at least for 1985, it

would appear that the salary increase would be compatible or in line with the CPI increase. It is also consistent with maintaining relative parity with other county employees. Even if the sergeants' rate of increase has been greater than other county employees, the percentage increase, by accepting the County's offer for 1985, would not drastically increase the spread between the sergeants and the other county employees. This panel believes it is important to compare the wages of the other county employees, not for the purpose of establishing any parity, but simply to satisfy itself that the wages being paid to the sergeants have some modicum of relativity with the other county employees.

As it relates to 1986, the panel is also troubled by the complexity of both offers. The County proposal, like the Union's, is a percentage, but it applies a cap, being $28,111. It would seem that the County's cap of $28,111 would not be out of line with what the County suggests would be the sergeants wage level of $28,820, given their best situation under the Union proposal. Also, the $28,111 salary for 1986 would be higher than Jackson, Lapeer and Shiawassee. It would be exceeded only in Bay County, which has a $30,589 salary for 1986. Admittedly, four other counties are unsettled for 1986, being Calhoun, Eaton, Lenawee and Midland and, thus, $28,111 may be exceeded and could well be the median for all comparables.

On balance, considering the wages paid in comparable communities, the wages paid in Livingston County, and utilizing the CPI, the County's last offer provides more certainty for 1985-86 and is clearly supported in the record. It does not create any unfairness

for the sergeants. It is a better proposal than what they would receive if the County prevails at the deputy level but would not be quite as good a proposal if the Union prevails at the deputy arbitration level. It should also be recalled that this is a proposal for 1985 and 1986, and when this award is finalized, the parties will begin negotiations toward a new contract. If there is any inequities in this award, hopefully the collective bargaining process in a new contract will lend the parties an opportunity to assert their respective positions and arrive at acceptable agreements for 1987 and beyond.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

2. Retirement-Pension Benefits

County's Last Offer:

34.3 For all eligible employees, effective Janury 1, 1986, contingent upon acceptance of the same by the Michigan Municipal Employees' Retirement System, the Employer shall pay up to 2.5% of the costs for a 55-F waiver. Any costs exceeding 2.5% shall be paid by the employee through payroll deduction.

OR, ALTERNATIVELY:

34.3 For all eligible employees, effective January 1, 1986, contingent upon acceptance of the same by the Michigan Municipal Employees' Retirement System, the Employer shall pay up to 2.5% for C-2 and E-2. Any cost exceeding 2.5% shall be paid by the employee through payroll deduction.

(All remaining language in Article XXXIV shall remain as is.)

Union's Last Offer:

34.1 Employees covered by this Agreement shall continue to participate in the county-adopted retirement program administered by the Michigan Municipal Employees' Retirement System as provided by Act 135, the Public Acts of 1945, as amended.

34.2 The Employer shall contribute 100% of the cost of the MERS Retirement Program as provided herein which shall include C-2 benefit leve and E-2 escalator.

Pension - Employer to Pick Up Cost to be retroactive to January 1, 1986.

34.3 For all eligible employees, effective (date of award), contingent upon acceptance of same by the Michigan Municipal Employees' Retirement System, the Employer shall pay up to 2.5% for C-2, E-2 and F-50. Any cost exceeding 2.5% shall be paid by the employee through payroll deduction.

Pension - Normal Retirement Age to be effective date of award.

ADD to contract: Effective (date of award), the MERS F-50 provision shall be added to the present pension plan for all bargaining unit members which shall provide unreduced normal retirement usage 50 with 25 years of service.

These two issues are combined because they both effect retirement. They were discussed as Union issues #2 and #3, and County issue #9 during the hearing.

The members of this Union belong to the Michigan Employment Retirement System (MERS). Under the present contract, in Section 34.3, on January 1, 1986, the employees are entitled to C-2 and E-2 increases to the basic plan with the employer paying the cost up to 2.5% of the payroll with the employees paying any costs exceeding that.

The Union is proposing that effective January 1, 1986, the C-2 and E-2 benefits be paid by the County irrespective of cost. In addition, the Union is proposing that a new normal retirement age be added to the contract, which would be 50 with 25 years of service. This is commonly known as the F-50 provision of MERS. Should the F-50 provision be added, the Union is proposing that in-

stead of the County picking up the total cost for C-2 and E-2 escalators, that the County pick up the cost up to 2.5% for the C-2, E-2 and F-50 costs and the employees pay for any costs exceeding 2.5%.

The County is proposing two alternatives. One would retain the current contract provision which extends C-2 and E-2 benefits with employers paying up to 2.5% of the cost and employees paying anything above that or, in the alternative, retaining the C-1 benefit level without an E-2 escalator which is in effect in 1985 and extending to the employees the F-50 waiver which allows an employee to retire at age 55 with 25 years of service, the employer paying the first 2.5% of the cost of such waiver and the employee paying anything above that.

As usual, pension issues are the most difficult to understand by most laymen. One thing is clear on this record. That is, neither proposal changes that which was in existence in 1985. The Union brief says it is unclear that is the case, but is unequivocal as a result of the employee testimony of Ann Maurer, at Page 357. She stated that since the C-2, E-2 is only going to be effective in 1986, they obviously were only discussing those benefits for 1986 and beyond and the cost thereof. There was no proposal for 1985.

By way of background, C-2 is a multiplier used to calculate retiree's benefits. In 1985, the C-1 multiplier reflected 1.5 as the factor. In 1986, the C-2 multiplier reflects a 2.0 factor. E-2 refers to a cost of living allowance, which automatically adjusts pensions to CPI increases. The record does disclose that no other comparable community has the E-2 benefit for 1986 (See U-Ex.7, C-Ex.2).

In its simplest terms for 1986, under the prior contract, the employees were to get C-2 and E-2 benefits. The Union now proposes that cost be picked up by the County. The record discloses that the cost for those benefits is approximately 2.5% of payroll. It is speculated by the panel that the existing contract language anticipated a cost of 2.5% and to provide assurances to the County, their cost was capped. There would be no cost to the employees because of the expectation of costs not to exceed 2.5%, but if they did, the employees would pick it up. If this is the case, then the new contract language proposed by the Union, that the County pick up 100% of C-2, E-2 costs, would seem to be awash. However, our analysis cannot stop there. The issue is compounded because of the introduction of the normal retirement age issue.

There is no current language with respect to what normal retirement age should be. The present MERS benefit for unreduced normal retirement is age 60 with 10 years of service. Parties can collectively bargain for anything and those parties who bargained for retirement age waivers used what was referred to as 47-F, which was the old statutory language. The 47-F benefit is now equated to the F-55 benefit with 25 years of service, pursuant to the 1985 amendments to MERS. The F-50 proposal is also authorized in the Act which means the party could retire at age 50 with 25 years of service. What is really taking place in this arbitration is that in its last offer, the Union has proposed the F-50 with 25 years of service in addition to the C-2 E-2 whereas the County has said if they are going to change the retirement age, we will offer the F-55 waiver with 25 years of service, but will drop the C-2 E-2

and go back to the C-1 benefits. The County is saying you can have one or the other, but not both. You can add C-2 E-2 benefits capped at 2.5% of costs or, in the alternative, you can have the basic program which will pay 100% and the only additional thing that they will pay for is 2.5% of the cost of an F-55 waiver. The Union is, on the other hand, saying that they want to add the F-50 provision and want to keep the C-2 E-2 along with the F-50, but are willing to pay any of the costs in excess of 2.5% of payroll for those three benefits.

Applying the factors in Section 9 of the Act, it is very difficult to come up with an equitable solution to this issue. When one looks at the comparable communities using either the Union or the County exhibits, we are really comparing apples, oranges, grapes and peaches. Livingston County is a MERS C-2 plan as is Shiawassee with Lapeer going to C-2 on 12/87. Eaton County is a MERS C-1 plan. Jackson, Bay and Lenawee have county plans; Midland has an Act 345 plan. Calhoun has its own uniques annuity plan. As was noted earlier, no other plan has an E-2 option. Livingston, for 1986, is the only one.

On the retirement issue, Jackson, Eaton, Shiawassee, Lapeer and Lenawee have 55 age normal retirement with four of the five having 25 year service, and Jackson only requiring 10 years of service. Midland is the only comparable that has the 50 and 25 retirement age. As far as employee contributions are concerned, Shiawassee, Lapeer, Lenawee and Livingston have no contributions. Midland is 5%, Eaton is 1%, Jackson is 5.5%. Thus, there is probably an argument for almost any case based upon one or more

factors contained in the various retirement plans. Conversely, there is an argument against either of the offers based upon the information contained in the exhibits. If we adopt the Union proposal, Livingston would have the only E-2 escalator. It would be one of only two comparables with the age 50 retirement plan. However, that is offset by five other units having age 55 plans, with 25 years of service, the testimony being that the economic difference between the 55 and 25 and the 50 and 25 plans is roughly .8%.

The County basically argues that they believe that they are offering more benefits, but without any employee costs and conversely, the Union is saying we want more benefits but we are willing to pay a portion of the costs. The Jackson County example on page 24 of the County brief suggests an analogous situation to the Union proposal. Although a County plan, with the 2% multiplier at age 55 retirement, under either of the County's plans, it would be about comparable to Jackson. However, the employees contribute 5.5% to participate in increased benefits in the Jackson plan and if the Union plan is adopted herein, the benefits would be slightly greater than the Jackson plan, and the employees would be required to contribute about 4.5%.

In the Midland plan, although it is an Act 345 plan, it has a higher multiplier and an age 50 retirement. Thus, the F-50 proposed by the Union and the 50 year plan in Midland are comparable. The closest MERS C-2 and F-50 plan to Midland's would cost approximately 5.5% and the Midland employees pay about 5%.

Based upon economics alone, the Union proposal, although rich in benefits, is not any more expensive for the County than

that which they agreed to in the prior contract for 1985 benefits and is the same cost as the County would bear if its C-2 E-2 with 2.5% cap were adopted. The base cost is 8.4%, C-2 E-2 is estimated to be 2.5% to 2.8%. The record compels that the prior agreement was entered into because the County thought that the cap would be less than 2.5%. Thus, the County anticipated spending at least 11% in the old contract and is anticipating to spend at least that amount under one of its alternatives. In exchange for additional benefits, the Union employees are saying that they will take up all of the extra costs above the 2.5% base that the County had planned on paying. Thus, it should be revenue neutral for the County. Accordingly, if the employees are willing to assume the cost of the greater benefits, they should be given the opportunity to obtain those benefits.

The County suggests that those costs are not really known and you do not know them until some time later. Although that may be the case, the existing contract was negotiated and signed with the expectation of no more than 2.5% costs for C-2, E-2 and that is the premise in the testimony and exhibits in this case. The County likewise argues that there is no pension moratorium clause and that during the next contract, the cap that was bargained for is being removed by arbitration and what is to prevent the Union from taking the same ploy during the next negotiations and ask the County to pay for more and more accelerated benefits. Quite frankly, if employees want accelerated benefits, they should pay costs for those benefits, which the employer had not already programed into its cost base. By accepting the County's position on salaries and

looking at the total economic package as the County suggests that we do, the County should not be adversely affected. It will pay slightly less wages than was requested by the Union under the optimum plan and yet the total cost for pension benefits should not be greater than it was already committed to do under the existing contract and which one of its alternatives already commit them to do. Thus, for the foregoing reasons, it would be the award of this panel that the last offer of the Union on pension benefits be adopted by the majority.

EMPLOYER: Concurs _____ Dissents 

UNION: Concurs  Dissents _____

3. Ammunition

County's Last Offer:

43.2 The Employer shall supply each officer required to carry a sidearm with one hundred (100) rounds of practice ammunition per month, not to accumulate if not used each month. Employees must return all brass or pay for it. Officers will practice on their own, without pay.

(All remaining language in Article XLIII shall remain as is.)

Union's Last Offer:

43.1 Fresh ammunition shall be furnished annually to all employees carrying sidearms.

43.2 The Employer shall supply each officer required to carry a sidearm with one hundred and fifty (15) rounds of practice ammunition per month, not to accumulate if not used each month. Employees must return all brass or pay for it. Officers will practice on their own time, without pay.

Ammunition to be effective date of award.

This issue is much to do about nothing. Existing contract section 43.2 requires the County to supply each officer required to carry a sidearm with one hundred twenty (120) rounds of practice ammunition per month, not to accumulate if not used each month.

Employees must return all brass or pay for it. The County is asking for a change to reduce the practice rounds from one hundred twenty-five (125) to one hundred (100). At the time of the hearing, the Union proposed no change in the contract, but is now presenting the last offer, requiring one hundred fifty (150) rounds of practice ammunition per month.

The County has suggested the rationale for this change is that no officer has ever drawn the full allotment. In fact, few officers have drawn any ammunition whatsoever. Ostensibly, the requirement was based upon the prior weapons qualification requirement and to allow sufficient ammunition to practice for qualification. Also ammunition is available in 50 round bags. It is easier to split and/or count rounds in multiples of 50. Although labeled as an economic issue, it is pointed out in the record that it has insignificant economic value.

There is very little evidence on this issue and no effort was made to show what comparable communities might be doing.

Based upon the information in the record, it seems unrealistic to increase the current ammunition allotment since the testimony of Lt. Gallup clearly demonstrates that virtually no one in the unit had utilized the current limit. That being the case, and the panel having to pick one of the two offers, the panel will select the County offer, the best of two poor choices, the rationale being, few unit members have ever drawn full allotment and the fact that they can be drawn in packages of 50 is supported by the record.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

4. Retirement-Health Insurance

County's Last Offer:

The Employer proposes current contract language.

Union's Last Offer:

Effective (date of award), the Employer will provide the health insurance identical to that in effect for active employees for all future retirees and spouse subject to conditions as specified below. The Employer will pay the full cost of such health insurance. The Employer shall not be obligated to provide such health insurance at any time that the retiree receives an alternate or substitute health insurance. At age 65, retirees must apply for Medicare. For retirees receiving Medicare, the Employer's obligation is limited to providing only coverage commonly known as "Blue Cross Medicare filler" or its equivalent. Such conditions also apply to spouse of a retiree. Helath Insurance for Retirees to be effective date of award.

In this issue, the Union seeks to add to the contract a provision for health insurance coverage for retirees and their spouses on the same basis that current employees are covered. The County opposes this concept and offers to maintain the current contract language which, therefore, denies health insurance coverage for retirees and their spouses. The record demonstrates that Midland County provides such coverage with the county paying the cost. Mr. Distel testified that the cost of such a program would be 1.2% of the unit's current wages. The record also demonstrates that Bay County provides for the department's retirees only with family coverage available for purchase by the retiree.

There is very little evidence in the record; simply the testimony of Ms. Maurer, the testimony of Mr. Distel and testimony of Mr. Rye. With the burden being on the Union to substantiate the rationale for this new provision, this record does not support inclusion of this particular provision in the new contract. There

is no rationale given other than it would be unfair to these seven members of the unit not to have this kind of coverage. In the absence of a strong compelling factual argument in favor of including a new contract provision in the contract, it is this panel's philosophoical position that new contract terms are properly subject to collective bargaining and although a party has a right to arbitrate such new issues, the arbitration panel ought not to mandate new provisions in the contract absent a strong, compelling, persuasive argument. If new things are to be added, it should be by mutual consent rather than the unilateral mandate of an arbitration panel. Here, the argument of the County that the increased cost ought not to be absorbed without mutual agreement is justifiable and, accordingly, the panel would select the County offer on this issue.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

5. Longevity

County's Last Offer:

The Employer proposes current contract language.

Union's Last Offer:

49.4 The longevity bonus payment schedule shall be as follows:

Continuous Service	Annual Bonus
5 years or more, but less than 11 years	$350.00
11 years or more, but less than 16 years	$425.00
16 years or more years	$500.00

Longevity to be retroactive to January 1, 1985.

At the present time, employees with five years or more, but less than 11 years, receive an annual bonus of $150.00. The Union

proposes to increase that to $350.00. Persons with 11 years or more, but less than 16 years, receive $175.00 presently and it is proposed to up that to $425.00. Persons with 16 years or more receive a $200.00 annual bonus, and it is proposed to increase that to $500.00. This issue was presented via U-Ex.11. U-Ex.12 was offered as a comparison of the longevity agreements in other communities. U-Ex.12 is limited to the analysis of Jackson and Shiawassee counties. Jackson County is based upon 2%, 3% and 4% of base salary. Shiawassee, up to 4 years, was $240.00, after 8 years $360.00, after 12 years $480.00 and after 16 years $600.00. As to cost, the Union indicated that there are six (sic) employees, and apparently each are at the 16 year level so the cost would be six times $300.00 or $1,800.00 per year (T, p.493). This is confusing in relation to Mr. Distel's later testimony.

The County indicated that no other Livingston County employees have longevity except the employees in the Sheriff Department, meaning the sergeants and deputies. Mr. Distel testified 3 people are at 16 years plus, 2 are between 11 and 16, and 2 are between 5 and 11. The total increase would be $1,800.00. This would equate to roughly 1% of the Union payroll. Examination of Ex. E-2 indicates that Eaton County pays slightly better longevity with roughly the same years of service as does Shiawassee and Lenawee.

Consistent with a review of all of the economic issues, given the increase in salary that is being awarded and the employees receiving additional fringe benefits under the proposed award for pension, it does not seem equitable that there should also be an increase in the longevity bonus at this time. Longevity bonuses

are not grossly disproportionate to that which is paid in other communities, and it is compelling that no other employees other than the deputies in the county receives longevity at all. Since this contract will expire at the end of 1986 and the deputies' contract will have one additional year, in the event that the deputies are granted additional longevity in their arbitration process, the parties herein can revisit this item in their next collective bargaining sessions should it be a subject of dispute at that time. There is simply no overwhelming, compelling reason for this additional fringe benefit given the totality of the factors in Section 9, and considering the other economic benefits being awarded in this contract. There is insufficient support for longevity bonus increases at this time. Accordingly, the Employer's last offer is accepted as the award of the panel, that is, status quo.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

6. Underwater Recovery

County's Last Offer:

42.2 Full-time employees covered by this Agreement who act as a dive master, rope handler, or divers that participate in actual recovery operations shall be paid 1.5 times their regular hourly rate while participating in recovery operations. This rate of pay is limited to actual divers, dive masters and rope handlers. Full-time employees covered under this Agreement who act as divers in actual recovery operations shall be paid 2.5 times their regular hourly rate for time actually spent in the water while participating in recovery operations. This section shall be applicable to all underwater recovery operations, including practice and actual recovery operations.

(All remaining language in Article SLII shall remain as is.)

Union's Last Offer:

The Union proposes current contract language.

At the present time, employees of this Union who are involved in diving operations receive 2.5 times their normal rate of pay from the time they leave home on underwater recovery assignments to the time they return from such assignment. The County proposes to pay 2.5 times the regular hourly rate only for time actually spent in the water while participating in recovery operations and paying 1.5 for all other time. The Union opposes this concept and wishes to retain the present 2.5 times the regular hourly rate for all time spent on a dive operation.

The basic theory of the County is that it is unfair to pay people 2.5 times their rate of pay rather than 1.5 for driving to and from an assignment and the preparation and storing of equipment. Two members of this bargaining unit are part of the recovery team and each is a volunteer. There have been few incidents, perhaps 3 to 5, in the last couple of years. The County basically asserts that although there is not much economic savings, it is unfair to pay for travel and preparation and storage of equipment at a higher rate because other persons who are subject to recall in emergencies only get 1.5 times the regular hourly rate. The contracts in Bay and Midland provide two times the normal rate of pay to divers, but while engaged only in diving (Ex. 19). All other comparables have no such provision.

Cross-examination of Lt. Gallup pointed out that this was similar to combat duty pay and that combat duty starts when you are placed in that status, not when you actually get into a shooting match. It was also pointed out that 2/3 of the costs of the sheriff department is reimbursed by the state, so the actual impact is 1/3 of the cost for two divers who might be called 3 to

5 times per year. The County is correct; economics are insignificant; they are arguing for principle on this issue.

Panel is persuaded that the County has not provided sufficient basis to justify a change from a previously negotiated rate of 2.5 for all activities. Admittedly, very few dollars will be saved. The panel is not persuaded that there is a compelling reason, and equally compelling is that the Union has demonstrated on cross-examination that other employees who are called on emergencies in the sheriff department receive their rate of pay from the moment they are called and not just when they are in the middle of the actual operation. admittedly, they get the lower 1.5 whereas divers get paid 2.5, but presumptively, it is because of the risks involved and the significant inconvenience of not knowing when you might be called. Although these persons are volunteers, it is inconceivable that in a real emergency, they would not leave whatever social event that they are at and proceed immediately to a recovery scene. Clearly, having bargained for 2.5 times the rate of pay for such response to duty, it is not appropriate for this panel to modify that rate absent a strong compelling argument. Therefore, the Union offer is accepted. That is, no contract change.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

7. Call Back and/or Court Time

County's Last Offer:

30.3 Notwithstanding the provisions in section 30.1 above, the call back provision shall not be applicable to any

officer who has been suspended from duty and is subsequently subpoenaed to court, and who is not needed for the entire two (2) hour period. They shall only be paid for their actual hours spent in court.

(All remaining language in Article XXX shall remain as is.)

Union's Last Offer:

The Union proposed current contract language.

Under the current agreement, members of the Union are entitled to a minimum of two hours pay for court time, irrespective of actual time, and if called into court, may work an additional two hours for a total of four hours of pay. The County is proposing if a person is suspended, they should be entitled to be paid only for time actually spent in court.

The Union argues for status quo; that is, no change in the contract. The apparent argument of the County is that once suspended an officer has no law enforcement authority. Therefore, he should only get his actual court time because he is required to appear in response to a citation issued previously, but he should not benefit from the minimum of two hours and not the optional four hours because he is not able to perform any law enforcement functions.

On cross-examination, the Union pointed out that a sergeant has never been suspended, and therefore, there has been no economic consequences in the past, and since there is no currently suspended sergeant, there would not be any savings in the immediate future. Even in hypothetical cases posed on cross-examination, minimal dollars would be affected, perhaps $50.00 or $100.00.

It is difficult to understand how the issue has arisen since it has not been a factual problem and/or related to the substantial economic savings. In reality, it is a what-if suggestion, and although there may be some merit to the alleged inequity of the current provision, there is nothing in this record which supports changing that which has been collectively bargained without a compelling rationale. Simply to change because the County would prefer what it perceived to be an equity of the current provision is not a sufficient basis. Accordingly, the offer of the Union is accepted; that is, no change in the current language.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

8. Bereavement Leave-Pallbearers

County's Last Offer:

18.2 An employee may be excused from work for pallbearers service for a maximum of one (1) day, (eight [8] hours), per contract year, which time shall be deducted from the employee's accrued sick leave.

(All remaining language in Article XVIII shall remain as is.)

Union's Last Offer:

The Union proposes current contract language.

The present contract language of Section 18.2 provides pallbearers service (maximum of one day), and the County proposes to maintain the one day bereavement leave, but wants to specify the time will be deducted from the employee's sick leave. The Union proposes to keep the existing Section 18.2.

The County suggests that the proposal is necessary to clarify ambiguous language. Section 18.1 provides three days of leave

for immediate family purposes. Additional leave is deducted from the employee's sick leave, up to a maximum of two days. Under Section 18.4 for other enumerated deaths, employees may use two days from their sick leave to attend a funeral. The County claims this is ambiguous that no one knows where the pallbearer leave time should be charged or whether it is considered a "free day", like Section 18.1 leave for immediate family. The Union prefers the status quo, and the County suggests that the current "free day" should come from sick leave, which they say would be consistent with their past practice.

Cross-examination of Lt. Gallup shows that the bargaining unit members have never exercised the pallbearer provision under this contract. Thus, there has been no economic consequences in the past, and the economic advantages to the County are speculative. The County admits that this is not really an economic issue, but a clarification of ambiguous language. However, it is classified as economic so we have to choose one or the other proposal. Lt. Gallup was the only witness and could not explain why sick leave was chosen, rather than compensory time, vacation time or personal time as alternatives. It was also pointed out that apparently this section is in the deputies contract and has been clarified on arbitration. but this record is silent as to what the clarification might have been.

On this record, there is insufficient support for changing the current language and mandating the docking of sick time in the event of a pallbearer leave. It would be incumbent upon the County to demonstrate either actual negative impacts as a result of prior pallbearer service, or some strong economic incentive to change.

For example, if there was a pattern of sergeants becoming professional pallbearers, then clearly the matter would need to be addressed. Assuming the County wants clarification of supposedly ambiguous language, the bargaining table is the proper place, and without a sufficent record, this panel should not disturb the status quo of the existing contract. Therefore, the panel accepts the Union's last offer of retaining the existing language.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

NON-ECONOMIC ISSUES

Having concluded the economic issues, the panel now turns to the non-economic issues. The findings and opinions on these issues are based upon the applicable factors described in Section 9. The panel is not necessarily limited to adopting the last offer of either party. Although it is the panel's general philosophy to accept one offer or the other on all issues, economic or non-economic, the panel obviously reserves the right to deviate from that position if the facts warrant.

1. Weapons Qualification

County's Last Offer:

44.1 All employees in the bargaining unit who are required to carry sidearms shall qualify with their service revolver t lease annually at a time determined by the Sheriff. The Sheriff shall provide thirty (30) days prior notice of the same. If an Officer fails to qualify, he will be provided with practice ammunition as is necessary in order to practice for qualification. Employees who fail to qualify will be allowed to practice on their own time, without pay, and be allowed to attempt to qualify three

(3) times within one (1) month of failure of three (3) different days. If the employee still fails to qualify after three (3) attempts, the employee may be suspended without pay on a day-to-day basis until such time as qualification is achieved.

(All remaining language in Article XLIV shall remain as is.)

Union's Last Offer:

The Union proposes current contract language.

The current language in Section 44.1 calls for the annual weapons qualification between May and August of each year. The County proposes to allow the sheriff to determine the time, subject to giving thirty (30) days notice. The theory of this proposal is that having qualifications anytime during the year will increase proficiency and maintain their skills year round rather than just concentrating between May and August of each year. Cross-examination by the Union pointed out that the existing language guarantees that when a person's proficiency is tested, it is likely to be done in reasonable weather but it is possible to have a test outdoors in the winter under the new proposal. The County suggests that it is not necessarily the case. In the past, they have shot indoors at the Howell Gun Club and once at an armory, though the armory situation was inadequate. The Union counters by suggesting that the Howell Gun situation may not be available depending upon negotiations with that gun club. The Union also pointed out that existing language does not interfere with the ability to set up new qualifications programs (T p.229). Lt. Gallup admitted that nothing in existing language would impair the Department's ability to perform

any of the programs that they had planned, and that these new indoor facilities at the Howell Gun Club could still be used with the existing May to August language.

It would seem that this new language simply gives the sheriff broader discretion, and in doing so, obviously raises uncertainty in the eyes of the Union. The ostensible reasons for the change are not persuasive since there is no showing that changing the time period will in fact increase proficiency, and conversely, the Union has demonstrated that with the existing language, the Department can still adopt new programs or propose new programs which might enhance proficiency without changing the contract language. As with other issues, absent a compelling argument, this panel ought not to alter the status quo of the existing contract, and leaves this issue to the bargaining table should the parties believe that it is important for future negotiations. The panel adopts the offer of the Union, which is status quo of the existing language.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

2. <u>Shift Preference</u>

County's Last Offer:

27.1 Officers may trade shifts with prior written approval of the Sheriff.

27.2 The Sheriff retains the right, solely and exclusively, to determine, within his discretion, how many officers shall be on each shift.

27.3 The Sheriff shall inform the officers of their shift on or before December 25.

Union's Last Offer:

The Union proposes current contract language.

The current collective bargaining agreement provides for shifts based upon senority. Presently, on December 1, the sheriff posts a seniority list and officers indicate their shift preferences for each of the four quarters in the ensuing year. Sergeants are entitled to shift assignments by seniority. Six of the seven employees work shifts, two each on the day, afternoon and evening shift. The most senior employees take the day shift, the next most senior have the midnight shift, and the least senior have the afternoon shift.

The County proposes to eliminate Section 27.1 and 27.2, which provides for shifts by seniority, and to renumber existing subsections 3, 4 and 5 as new sections 1, 2 and 3. Thus, the sheriff would then have the right to explicitly determine which officers would work on which shifts. The rationale given is that it would increase operational efficiency and provide greater morale. Lt. Gallup stated it would correct a fundamental unfairness because until someone retires, the six members will have the same shift so essentially, they have permanent shifts. It was pointed out that the day shift seems to be the least vigorous with the midnight shift being reasonably busy and the late afternoon shift also being reasonably busy. Lt. Gallup suggested that he would propose shifts of two to three months and not shift every week or so. He further indicated that shift swapping would be permitted, assuming the officers wanted to shift.

Needless to say, seniority is a very sensitive issue with Union members. If there is a basic inequity created by a seniority system, generally the Union members themselves attempt to rectify

it. Having collectively bargained for seniority, the County's proposal to eliminate seniority and allow the sheriff discretion leads to obvious suspicion and distrust and that somehow there must be an ulterior motive. Thus, a very compelling reason would have to be given in order to accept the County's proposal since seniority is such a fundamental premise of collective bargaining.

The record in this case fully demonstrates that there is no protection for the Union members with the greatest seniority by this new language. Having worked days because of seniority, an officer could be rotated irrespective of his personal preference and/or his then existing social living patterns. The Union pointed out that there is nothing in the language to prevent such changes on a daily basis or on a weekly basis. Although Lt. Gallup said that that would not be his practice because of it is disruptive, there is nothing in the language that guarantees that it could not happen. The Union pointed out that frequent rotation generally does not create a healthy environment.

Apparently, one sergeant bumped to midnights after having worked afternoons to accommodate his personal preference as to his social activities. Under this new language, he would not have such an option.

As to morale, the Union should address this amongst its members if it is a problem. Lt. Gallup testified that three of the six apparently are in shifts that they prefer; one apparently inquires when he might be able to change shifts; and the most junior officers work afternoons and really do not have much say.

Seniority is a very fundemental issue in most collective bargaining agreements. To make a change which will eliminate seniority and allow the sheriff to establish shifts in his discretion takes away a very valuable right that has been bargained for. It would not be incumbent upon this panel to accept the County's proposal without an overwhelming argument to do so. This record does not support that there is any such overwhelming reason why seniority should be deleted. Although Lt. Gallup is obviously proposing reasonable rotation suggestions, there is nothing in the language that would guarantee either the time period of rotation and, more importantly, there is nothing that guarantees that future shift rotations would not be catastrophic to morale since at the very least three of the six persons are very happy with their existing assignments. Whatever advantages might be obtained by moving persons around so they become more familiar with other employees under their supervision and amongst each other is questionable. Since perceived operational efficiencies are at best questionable and increased morale is speculative, this record does not support the drastic change that the County is suggesting. Accordingly, this panel will accept the Union's proposal; that is, that the existing Article XXVII be left intact, retaining the seniority system for shift preferences.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

3. Grievance and Arbitration Procedure

County's Last Offer:

8.2 Step 3: If the grievance is not satisfactorily resolved at Step 2, the decision rendered may be appealed to the Sheriff by giving the Sheriff written notice thereof within five (5) days following receipt of the Division Commander's written answer in Step 2. Upon appeal, the matter shall be reconsidered at a meeting scheduled within ten (10) days. The Union shall be represented at this meeting by the Local President and the Business Agent. The Employer shall be represented by the Sheriff and/or other Employer representatives. The Sheriff shall reply to the appeal in writing within ten (10) days following such meeting. The decision of the Sheriff with regard to any grievances involving discipline or discharge shall be final and binding upon all parties.

Step 4: In the event that a grievance that does not involve discipline or discharge, is not satisfactorily resolved at Step 3, the Union may appeal the matter to an arbitrator by giving the Sheriff written notice of intent to arbitrate within ten (10) working days following receipt of the Employer's answer in Step 3.

8.3 If a timely request for arbitration is filed by the Union on a grievance unrelated to discharge or discipline, the parties ahll attmpet to select within ten (10) days following the receipt by the Sheriff of the Union demand for arbitration as stated in Step 4, by mututal agreement, one (1) arbitrator from among the following listed five (5) arbitrators, who shall decide the grievance. If no agreement is reached, an arbitrator shall be selected from among the five (5) listed below by drawing their names "out of a hat", the first name drawn shall be the arbitrator for that grievance. The fees and services of the arbitrator shall be shared equally by the Union and the Employer, but each perty shall bear the costs of its own expenses and witnesses.

Pat McDonald
David Grissom
George Bowles
Elliott Glicksman
Peter Jason

8.4 Arbitrator's Power. The arbitrator's powers shall be limited to the application and interpretation of this Agreement as written. He shall at all times be governed

wholly by the terms of this Agreement. The arbitrator shall have no power or authority to amend, alter, or modify this Agreement either directly or indirectly; or to rule on or otherwise modify any discharge or discipline. If the issue of arbitrability is raised, the arbitrator shall only decide the merits of the grievance, if arbitrability is affirmatively decided. It is the intent of the parties that arbitration shall be used during the life of this Agreement to resolve disputes which arise concerning the express provisions of this Agreement which reflect the only concessions which the Employer has yielded. The arbitration award shall not be retroactive earlier than the date the grievance was first submitted in writing. The arbitration award shall be final and binding on the Employer, Union and employees. However, each party resrves the right to challenge arbitration or awards thereunder if the arbitrator has exceeded his jurisdiction or has arrived at his award fraudulently or by improper means.

(All remaining language in Article VIII shall remain as is.)

Union's Last Offer:

The Union proposes current contract language.

This County proposal to make changes in Section 8.2, 8.3 and 8.4, removes sheriff decisions on grievances involving discipline or discharge from the arbitration process and makes sheriff decisions final. The Union objected to this issue and constantly objected to testimony of Lt. Gallup and Mr. Distel on the basis that they were giving legal conclusions. Testimony was taken to the extent that certain of the answers of the witnesses were fact questions rather than legal conclusions. There is no doubt that the sheriff deputizes employees within his department who then have general law enforcement powers. There is also no question that the sheriff does the hiring and firing pursuant to his constitutional authority, but the County Board of Commissioners are co-employers. The County states that the sheriff constitutionnally need not take

an employee back in the case of a discharge nor in the case of a reinstatement, need he restore such a person to a deputized status if he did not want to. Since that employee would have economic benefits restored and those are the financial responsibility of the County Board of Commissioners, the County wishes to avoid the possibility that a sheriff will not re-employ or reinstate an employee and the County still have to pay him.

The panel perceives this to be a legal issue and has carefully reviewed the legal memorandum submitted by the County as well as the memorandum submitted by general counsel for the Union. This panel does not challenge the statement contained in National Union of Police Officers that the sheriff's constitutional powers are not diminished by PERA. However, it takes a quantum leap to go from that statement to accept the proposed remedy of the County to alleviate financial responsibility of its co-employer. As pointed out by the Union, cases cited by the Employer do not stand for the proposition that the sheriff has uncontrolled discretion, but rather the sheriff cannot be compelled by an arbitrator to reinstate law enforcement powers to an individual who has previously been discharged nor to compel the sheriff in a discipline case less than discharge to require the sheriff to reinstate law enforcement powers. The case law cited by the County does not stand for the proposition that economic restoration of benefits must be held abeyance because of the constitutional powers of the sheriff. This panel does not read the law as requiring such a conclusion. The Union has pointed out in cross-examination of Mr. Distel that the economic dilemma

cannot be avoided by simply taking the sheriff's decision out of arbitration. Assuming that discipline and discharge was not arbitrated, employees would have a right to proceed in a court of law to adjudicate the sheriff's imposition of a sanction. Assuming further that the court were to reverse the sheriff's decision and mandate the duration of economic benefits and/or mandate reinstatement of a discharged employee, the sheriff would make the same argument that he cannot be compelled to deputize that person, and if he did not take him back, the co-employer would still have the obligation to pay the economic benefits ordered by the court. Thus, the perceived economic dilemma that is attempted to be avoided by this proposed language is illusory.

This panel is not persuaded that any other legal authority mandate that the panel adopt the County's proposal. The next question is whether this panel should exercise its discretion ind accept the proposal. The panel believes it ought not to exercise such discretion based upon the authority cited by the Union in Lake County Sheriff, 1981 MERC OP 1. PERA is clearly the dominant law regarding public employee labor relations. Discipline and discharge are subject to negotiation and arbitration. Until the courts definitively rule that in a co-employer situation such as this, the sheriff's constitutional authority would prevail with respect to extinguishing requirements for reinstatement of economic benefits, this panel will not award such a change in the collective bargaining agreement.

For the foregoing reasons, the Union's proposal to maintain the status quo is accepted, while necessitating no changes in the existing Section VIII of the contract.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

4. Discharge and Discipline (Liability Insurance)

County's Last Offer:

10.5 The employer shall continue to provide liability insurance, comparable to what it currently has (in effect January 1, 1985), contingent upon the insurance company not cancelling or modifying same. In the event of cancellation, modification or otherwise discontinuance of the insurance, the Employer will attempt to obtain comparable rates. If the Employer is unable to obtain such comparable coverages at comparable rates, it agrees to negotiate this section with the Union.

Union's Last Offer:

The Union proposes current contract language.

The existing contract requires that the employer provide civil legal counsel for litigation arising out of the good faith performance of the officers' duty. The County presently provides that by participation in the Michigan Municipal Risk Management Authority which, when presented a claim, provides legal counsel as to all claims against both the County and its employees.

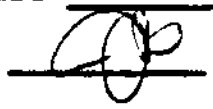
The County proposes that the language be struck and a new section 10.5 be inserted, which would require the employer to continue to provide liability insurance and, in the event of cancellation or discontinuance, the employer will attempt to obtain comparable coverages at comparable rates. The County suggests that this language only manifests the current system which has been used for a number of years.

The Union opposes this language because it removes the requirement that the County specifically provide legal counsel and simply asserts that there will be provided liability insurance. The Union points out that the employer's obligation to provide counsel does not mean that it has to provide insurance, but could provide counsel independent of any insurance program that it has. Conversely, the County says that it provides representation now through the pool arrangement and would like the option to provide coverage through liability insurance rather than the pool. Mr. Distel admitted that it would be a tough question as to what would be comparable coverage if a contract of insurance was cancelled. He assumed the Board would have to make that decision.

This issue seems to confuse the present guarantee for counsel with the cost and availability of insurance. The burden is on the County to demonstrate why its proposal will be better than the status quo. This panel cannot find a suitable rationale to justify a change. They currently have an obligation to provide civil counsel; how they do it is up to them. Under the proposed language, there is not necessarily a guarantee that civil counsel will be provided. The Union suggests that the reason to go to insurance is that the County, as the insured, would have the ability to defend or not defend cases and/or settle or not settle, whereas they seem with a pool arrangement to have little or no control over settlements and/or appointment of counsel. The uncertainty of the availability of insurance, given the present market, and a replacement policy with comparable coverages at comparable rates are so uncertain that it would not be in the public interest to make a substantial shift as proposed by the County.

Accordingly, the panel accepts the Union's proposal to retain the existing language.

EMPLOYER: Concurs _____ Dissents 

UNION: Concurs  Dissents _____

5. Discharge and Suspension (Retention of Disciplinary Records)

County's Last Offer:

10.2 The Sheriff and/or his designate shall not discharge s: or suspend any employee without just cause. Any violation(s) which warrants a suspension shall be in writing. One (1) (s) copy will be given to the employee, one (1) copy will be forwarded to the Union, one (1) copy will be forwarded to the Personnel Director by the Sheriff, and the Sheriff will retain the original. An error in furnishing copies shall not affect the merits of the discipline. Any employee receiving three (3) suspension notices within fifteen (15) calendar months may be discharged without recourse; however, this shall not be construed as requiring a specified number of suspension notices before discharge may be imposed.

Union's Last Offer:

The Union proposes current contract language.

The existing Section 10.2 contains the sentence, "Suspension notices shall remain in effect for a period not to exceed fifteen (15) calendar months from the date of suspension notice." By this proposal, the County wishes to delete that sentence but retain all other language in Section 10.2. The Union proposes to keep the sentence in Section 10.2. The County stated that they wanted to change because counseling memorandum, reprimands or suspensions should stay with the employee for his entire term of employment in the sheriff department to have a complete record. Since sheriffs might come and go, the argument is that the employees' record should be complete for any new sheriff that comes in. Other than

a complete record, the other basis is to show progressive discipline. Lt. Gallup said that he would personally not use discipline that was more than five years old.

Cross-examination pointed out that the 15 calendar month provision has had no affect whatsoever on this unit. The only discipline that could be recalled was one that took place 12 years previously.

The record shows that this has not been a problem in the past. Mr. Distel testified that this issue is also being arbitrated in the deputies' case. The ambulance carriers have a 2 1/2 year provision. The court employees' agreement is silent because it is addressed by state law. Comparable communities are not very helpful on this issue. Bay County permits the sheriff to remove letters of reprimand after 2 years. In Midland, it allows employees to request removal after one year.

As demonstrated by the paucity of argument in the County's brief, there is little to support the change that is proposed by the County in this record. Again, this is a bargained for provision and to remove it unilaterally by arbitration without a compelling past history of some severe inequities is not appropriate. Accordingly, the Union's position of status quo of existing language is accepted.

EMPLOYER: Concurs _____ Dissents 

UNION: Concurs  Dissents _____

6. Discharge and Suspension (records between 1/1/83 and 12/31/84).

County's Last Offer:

The Employer proposes current contract language.

Union's Last Offer:

The Union proposes as its last offer that all record of discipline for any employee disciplained between January 1, 1983, and December 31, 1984, will be removed from the employee's file and destroyed.

Discharge and Suspension to be retroactive to January 1, 1985.

It is unclear from the record where this would be at in the contract, but the Union proposes that all records of discipline between January 1, 1983, and December 31, 1984, be removed from the employee's file. The County does not want this added language. The County is taking the position that this is not an item for 312 arbitration, but an attempt to take an individual employee grievance and purge the employee's file. The Union was afforded an opportunity to present a legal memorandum commenting upon any legal issues presented by the County. They have not provided a memo on this issue. A review of Local 1518 v St Clair Sheriff, 407 Mich 1, 12-13 (1979), suggests that the County's position is correct. Act 312 is not intended to deal with individual grievances and since the record in this case indicates that there has been only one employee grievance between January 1, 1983, and December 31, 1984, and since the language is so specific as to the time period being the last agreement, there can be but little doubt that it was intended to remove the discipline from the file of only that employee. The Union suggests that they are not dealing with a grievance, but simply the product of a grievance. Thus, it would be subject to

arbitration. Apparently, as Sgt. Brown testified, the person was demoted from sergeant to deputy, and that action was not subject to arbitration. Sgt. Brown indicated they wanted to bring this matter to a satisfactory end, and since they could not arbitrate it previously, and arguably, they are dissatisfied with the result, wanted to remove the action from the employees file. Although it was intended as a generic proposal to cover the time frame involved, it was pointed out there was only one employee disciplined during this time frame. Accordingly, it is this panel's observation that the proposed language is an attempt to bring before a 312 panel a matter that has previously been grieved. The legal avenue that may have been available at the time seems to have been the remedy that should have been selected. To now attempt to remove references to this discipline from the employee's file, via this arbitration, is not appropriate. Accordingly, the Union proposal is rejected and the County's last offer to maintain the current language is accepted.

EMPLOYER: Concurs  Dissents _____

UNION: Concurs _____ Dissents 

7. Past Practices

County's Last Offer:

56.1 There shall be no past practices which are binding upon the parties.

Union's Last Offer:

The Union proposes current contract language.

The County proposes to add a new section 56.1, which is one sentence, "There shall be no past practices which are bind-

ing upon the parties." The Union opposes this new provision. The only testimony was two pages and consisted of Mr. Distel stating that the County simply wants to know what they were dealing with if there was a prior activity that might be used in a subsequent arbitration. The County wants to "settle it". This testimony being general and not specific provides little support for a sweeping proposal that there are no past practices binding upon the parties. When ambiguities in contracts and/or grievances go to arbitration, the prior activities of the parties are generally important considerations in determining the appropriate resolve of the issue. To categorically state, no past practice would be binding is to suggest that one should totally forget about history, that one should not use history as it is relevant to the issue to be decided. Without a better record as to why this provision should be added, this panel should not adopt something that has not been thoroughly discussed at the bargaining table.

There is no compelling reason to adopt this language at this time. Accordingly, the Union position is accepted, and the proposed new contract provision of the County is rejected.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

8. Election of Remedies

County's Last Offer:

57.1 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 Union and the affected employee shall not process the complaint through any grievance procedure provided for in 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 hereunder shall not be applicable and any relief granted shall be forfeited.

Union's Last Offer:

The Union proposes current contract language.

The County is proposing a new paragraph which would require a member of the bargaining unit to select either the grievance procedure under the contract or statutory or administrative remedies available to the employee. He must choose one forum and be excluded from all other forums. Mr. Distel argued that the rationale is to avoid multiple proceeding on the same issues and, more importantly, to avoid different results depending upon the forum.

He offered Exhibits 27 and 28 to show that this clause is contained in the ambulance and court employees' contract. The Union had vigorous cross-examination of Mr. Distel on this issue, and the Union asserts that the language could prevent the Union from pursuing a grievance if an individual employee filed a class action lawsuit, for example on discrimination. The County suggests that this only applies to employees and that it did not restrict the Union from grieving something which it would have a right to do on behalf of its collective members. The intent, according to the County, is to require employees, if they have an individual grievance and an individual cause of action, to take either the grievance

route or a statutory or administrative route, but not both.

Apparently, the Union also suggests that this provision is inappropriate legally; the County has cited Grand Rapids v FOP, 415 Mich 628 (1982), for authority that election of remedy provisions are valid. Ms. Maurer testified on behalf of the Union that her examination of Exhibit 26 shows that Bay, Calhoun, Eaton, Jackson, Lapeer, Midland and Shiawassee counties do not have a specific provision regarding election of remedies. Thus, employees would not be limited to electing one remedy or other. Calhoun, Eaton, Jackson, Lapeer, Midland and Shiawassee counties do have separate non-discrimination clauses in their contracts.

Grand Rapids v FOP, supra, has an extensive discussion of this issue. Justice Levin in a footnote beginning at 639 and running through 641, notes that the 312 arbitration showed that both parties clearly understood that it was meant to prevent employees, either by themselves or with the aid of the union, from pursuing dual remedies for their grievances. Here, the language suggests that likewise, it is the employees who are making the choice and if per chance the Union has a collective right to pursue a grievance, for example, it would be this panel's observation that this language would not preclude the Union from grieving what it has rightfully bargained elsewhere in the agreement.

The County's request for this proposal is logical in that it prevents forum shopping and several bites of the litigation apple. The fact that two other county units have such language is significant. However, the other collective bargaining agreements in the comparable communities do not have a provision for election of

remedies. Taking all of these factors into consideration and applying the criteria of Section 9, this is an extremely close call. The theory is good and the fact that two units in other counties have such a clause is significant. However, the other comparable communities do not have such a clause. It is clearly legal to have such a clause, but it is such a significant proposal that there should be a more fundamental showing by the County that it is in fact necessary based upon actual cases. If the County were able to show that it has in fact been injured by specific examples, then perhaps a more persuasive case would be made why election of remedies should be adopted by an arbitration panel. It is persuasive that the comparable communities do not seem to have this provision and Livingston County would probable be a pacesetter in that respect. The fact that there are about seven members in this unit and there has been little grievance activity (only one grievance in the last two years), suggests that the election remedies is a convenient, theoretical provision that the County should strive for but there is no overriding compelling reason to mandate it through this arbitration process at this time. Accordingly, for the foregoing reasons, the employer's proposal is not adopted and, therefore, it will not be included in the current contract language.

EMPLOYER: Concurs _____ Dissents _____

UNION: Concurs _____ Dissents _____

Dated: April 14, 1986

Kenneth P. Frankland
Chairperson

OPINION
CONCURRING IN PART AND DISSENTING IN PART
OF MR. STOKER

This panel member writes separately to concur in part and to dissent in part in this matter to embelish several concerns in the arbitration process herein, as well as in the panel's opinion and award. It must initially be noted that these rather lengthy proceedings were generally handled in an exemplary manner by the impartial neutral arbitrator and the award, as primarily authored by such impartial arbitrator, appears to be extremely thorough, complete and well articulated. However, this panel member feels obliged to raise certain additional items for the record.

Initially, I note that the decision to allow advocates on the Arbitration Panel was made by the impartial arbitrator, with the Union's concurrence and this writer's objection, at the initial pre-hearing. To permit an advocate to serve on the Arbitration Panel is, in essence, permitting the prosecutor to serve as judge. As such, this general procedure is objected to by this writer due to its inherent conflicts, as well as, what appears to be an inconsistency with legislative intent. It would appear that the record herein substantiated the foregoing concerns as the Union's advocate and, then, subsequent Panel member, labelled one of your Employer's issues as "spurious" on the record in advance of any evidence being presented regarding the same. (T-251/252) This writer would note that it is only due to the strong role of the impartial arbitrator in these proceedings that this matter did not become tainted through such a procedure.

This member would also like to explain its dissents with regard to the non-economic issues, as well as those economic issues that were primarily suggested by the Employer to provide either clarity or more equity to the contract's provisions. The Panel's decision with regard to these issues primarily concluded that as such matters were not pressing issues at this time, they would better be left for resolution at the bargaining table in future negotiations rather than through the binding arbitration proceedings. While I agree that the bargaining table is the most desirable way to resolve these, as well as all collective bargaining issues, in the reality of labor relations in the area in which binding arbitration is a possible final resolution, I question such a decision. A Union may refuse to rectify such provisions within a collective bargaining agreement and yet avoid any implementation of the Employer's last best offer after impasse, as such measures must rather go to binding arbitration. If binding arbitration then does not attempt to resolve the issues, the procedure then becomes, in essence, circular. To paraphrase this approach, it suggests attempts to close the gate should be dealt with only after the horse has escaped. Thus, this writer disagrees with the Panel's award in this regard.

ARTICLE LIV

EFFECTIVE DATE AND TERMINATION OF AGREEMENT

54.1: This Agreement shall remain in full force and effect commencing on the 1st day of January, 1985, through the 31st day of December, 1986. Either party mayh serve upon the other a notice no earlier than one hundred twenty (120) days prior to the expiration of this Agreement as noted above, that they wish to enter into collective bargaining sessions to negotiate a new contract. In the event of receipt of such notice, the parties shall determine mutually agreeable times and shall commence negotiations for a new contract.

ARTICLE XXIX

CALL-IN

29.1: Call-in overtime shall be rotated in accordance with prior practices. Call-in overtime is defined as when an officer is not on duty and is required to return to work. The employee missed shall be allowed by the end of the next pay period to work eight (8) additional hours at his/her shift choice at the overtime rate for the overtime opportunity missed.

29.2 & 29.3: (Current Contract Language.)

ARTICLE XXVIII

OVERTIME

28.1: Overtime shall be paid for all authorized hours worked in excess of eight (8) hours in any scheduled shift or in excess of eighty (80) hours worked in any bi-weekly pay period at the rate of time and one-half (1 1/2) the employee's regular straight hourly rate of pay. Overtime shall be paid on the payday for the pay period in which overtime was worked when possible, but no later than on the next scheduled payday following the pay period in which it was worked. If any employee is required to work back-to-back shifts, then they shall be paid overtime. If an employee trades shifts, or, if any employee changes shifts by shift preference, then no overtime shall be paid.

28.2: (Current Contract Language.)

ARTICLE XIX

MILITARY LEAVE

19.1: The employer will abide by all mandatory state and Federal law dealing with military leaves of absence.

19.2: (Current Contract Language.)

ARTICLE XIV

VACATIONS

14.1-14.4: (Current Contract Language).

14.5: (To be deleted from contract).

14.6-14.8: (Renumbered and included as in prior contract language.)

ARTICLE XI

SENIORITY

11.1: Upon completion of an employee's probationary period, he/she shall be granted seniority, and his/her name shall be added to the departmental seniority list. The seniority list shall contain the naems of all seniority employees, their job title and their length of service with the Department. The Employer shall provide its most current seniority list to the Union President upon his/her request.

11.2: Loss of Seniority. An employee shall lose his seniority for the following reasons:

A. By voluntary termination. Note: Voluntary terminations are accepted by written or verbal notice or are assumed if an employee misses three (3) consecutive work days without notifying the Employer or by failure to return to work at the designated time upon the conclusion of a leave of absence, or by failure to reply to a layoff rehire notice within three (3) working days following receipt of a certified rehire notice. Exceptions may be made to "assumed" terminations provided the employee can prove his inability to call in or return as required.

B. By retirement.

C. By layoff which exceeds one (1) year.

D. He/she is discharged and not reinstated.