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IN THE MATTER OF THE ARBITRATION BETWEEN

LIVINGSTON COUNTY SHERIFF DEPARTMENT

-and-

TEAMSTERS LOCAL 214

COMPULSORY ARBITRATION

PURSUANT TO ACT 312, MICHIGAN PUBLIC
ACTS OF 1969, AS AMENDED

OPINION AND AWARD

ARBITRATION PANEL

PETER D. JASON
Arbitrator/Chairman

JACK CLARY
Livingston County Delegate

JOE VALENTI
Teamster Delegate

Dated: April 14, 1977

Livingston
County
Sheriff Dept.

PRELIMINARY MATTERS

At the executive session the panel members pledged to resolve all of the non-economic matters. Where the parties could not agree the chairman cast the deciding vote and the losing party reserved the right to dissent. This procedure resolved all the non-economic issues with the exception of management rights which will be resolved later.

The following issues were resolved in the following manner:

Promotions - County position. Modify Article XIII to read as follows:

A. The Employer recognizes that promotion from within is a good policy and will strive to fill all position openings classified within the bargaining unit from qualified members of the bargaining unit, if available.

B. Promotions from within the unit shall be based upon a written and oral examination to be given by an examining board consisting of the Sheriff, a command officer, and a member of the County Board of Commissioners. The employee with the highest overall grade including a grade for seniority and ability, shall receive the promotion.

C. In the event, in the opinion of the Sheriff, no members of the bargaining unit qualify for the open position, the Sheriff shall exercise his management rights and fill the position from outside the unit. However, the Union reserves the right to grieve if the open position was filled contrary to fair administration and/or grading of examinations.

D. Any employee in the unit who is promoted to a position within or outside of the unit shall serve a six-month probationary period in the new position during which time they may be reverted back to their previous position without loss of seniority if they are unable to perform the duties of the new position or if it is their personal request to be returned to their previous position.

E. If an employee in the bargaining unit is demoted for failure to perform his job assignment or for just cause, or if an employee in the bargaining unit is demoted on an involuntary basis due to medical reasons, he/she shall be scheduled for a job assignment in the lower position at the discretion of the Sheriff.

F. Subsequent openings will be posed immediately, if they are to be filled, in accordance with the contract.

Job Specifications - County position.

Paychecks - Union position.

Add a new clause in the contract as follows:

Paychecks shall be made available every other Thursday at 7:00 AM.

Stewards - County position as modified.

Modify Article IV to read as follows:

Stewards. The Employer agrees to recognize a chief steward appointed by the Union from the bargaining unit and one steward for each regular shift who shall be elected by that shift, except that the chief steward shall also serve as the steward for the shift on which he is

working. All stewards shall function for the purpose of processing grievances in accordance with the grievance procedure established in this Agreement. Upon receiving permission from their immediate supervisor, they may investigate and/or present grievances in accordance with the grievance procedure during their regularly scheduled work hours without loss of pay provided that it is understood such time shall be devoted to the proper processing of grievances and will not be abused by unreasonably interfering with the operations of the department. A steward who abuses such time may be subject to disciplinary action. Alternates may be appointed to serve only in the absence of the duly elected or appointed steward. The Union shall advise the Employer in writing of the names of its stewards or alternates before they shall be recognized.

Grievance Procedure - County position.

Modify Article VIII to read as follows:

Grievance Procedure. A grievance shall be a complaint by an employee or the Union concerning the application or interpretative of this Agreement. All grievances shall be processed in the following manner:

Step One

Verbal Procedure: An employee with a complaint shall bring the matter to the attention of his immediate supervisor within five (5) days following the incident which caused the grievance. The employee and the supervisor shall discuss the matter in an attempt to satisfactorily resolve the complaint. If requested by the employee, he may have his steward present. No settlement shall be final until it has been approved by the Sheriff or his designated representative.

Written Procedure: If the complaint is not satisfactorily resolved by the oral procedure, the matter may be appealed by reducing the complaint to writing on the grievance form by stating the facts and the contract provisions allegedly violated with the aggrieved employee signing his name to the grievance. The written grievance shall be presented to the Sheriff or his designated representative within ten (10) days following the incident which caused the grievance. A copy of the grievance shall be sent to the Personnel Director of the County. Within five (5) days following receipt of the written grievance, the Sheriff shall schedule a meeting with the Chief Steward for the purpose of discussing the grievance. The Sheriff shall place his answer to the grievance on the grievance form and give it to the Chief Steward within ten (10) days following such meeting.

Step Two

If the grievance is not satisfactorily resolved by the written procedure, the decision rendered may be appealed by giving the Sherrif written notice thereof within five (5) days following receipt of his written answer in Step One. Upon appeal, the matter shall be reconsidered at a meeting scheduled within ten (10) days between the Employer and the Union. The Union shall be represented by the Chief Steward and the Business Agent. The Employer shall be represented by the Sheriff and/or other County representatives. The Employer shall reply to the Union's appeal in writing within ten (10) days following such meeting.

Step 4 Grievance Procedure - County position.

Modify Step 4 of the Grievance Procedure to read as follows:

In the event that the grievance is not satisfactorily resolved in Step 3, the Union may appeal the matter to arbitration by giving the Employer notice of intent to arbitrate within ten (10) working days following receipt of the Employer's answer in Step 3.

Selection of Arbitrator - County position.

Add the following section to the Agreement:

Selection of Arbitrator. If a timely request for arbitration is filed by the Union on a grievance, the parties shall promptly select by mutual agreement one arbitrator who shall decide the matter. If no agreement is reached, the arbitrator shall be selected from a panel of arbitrators obtained from the Federal Mediation and Conciliation Service. The arbitrator shall be selected by each party alternately striking a name from the list and the remaining name shall serve as an arbitrator. The fees and services of the arbitrator shall be shared equally by the Union and the Employer, but each party shall bear the cost of its own expenses and witnesses.

Arbitrator's Powers - County position.

Add the following new Section to the Agreement:

Arbitrator's Powers. 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. 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 reserves 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.

No Stike - County position.

Modify Article IX to read as follows:

The Union agrees that during the life of this Agreement, neither the Union, its agents, nor its members will authorize, instigate, aid, condone or engage in a work stoppage, slow-down, stay-a-way, strike, or other converted activity which interferes with the operation of the Sheriff's Department. The Sheriff agrees that during the same period, there will be no lockouts. Individual employees or groups of employees who instigate, aid or engage in a work stoppage, slow-down, stay-a-way or strike may be disciplined or discharged in the sole discretion of the Sheriff.

Extra Contract Agreement - County position.

Modify Article XXIV to read as follows:

The Employer agrees not to enter into any agreement with another labor organization during the life of this

Agreement with respect to the employees covered by this Agreement; or any agreement or contract with the said employees individually or collectively, which in any way conflicts with the terms or provisions of this Agreement.

Waiver - County position as modified.

Add the following Section to the contract:

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement or with respect to any subject or matter nor specifically referred to or covered by this Agreement. It is not the intent of this clause to delete any of the established practices which are uniformly applied in the Department relating to wages, hours and working conditions.

Form of the Contract - County position.

The format of the contract shall be modified by making the sections run consecutively and by section titles which shall be used for identification purposes only.

Safety Clause - County position as modified.

Modify Article XXV to read as follows:

The Employer shall not require any employee to operate any equipment or vehicle which is not in a safe operating condition or is not equipped with the safety appliances as prescribed by law. The Employer shall furnish a suitable form on which an employee shall document all equipment defects and/or appliance shortages; such reports shall be completed in multiple copies and turned in at the end of the employee's regular work shift. No employee shall be required to operate any vehicle declared unsafe by a garage mechanic, and approved by the Sheriff.

Probationary Period - County position as modified.

Add the following section to the Agreement:

Probationary Period. New employees hired in the bargaining unit shall be considered probationary employees for the first six (6) months of their employment. If more than fourteen (14) consecutive days are lost from work, including certification school, an employee's probationary period shall be extended by the number of days that an employee is absent from work during the probationary period. During the probationary period, an employee may be terminated by the Employer without regard and without recourse to the provisions of this Agreement.

Loss of Seniority - clerical change.

The second paragraph of Article XI shall be a separate section with the title "Loss of Seniority".

Union Access - Union position as modified.

Modify Article XXVIII to read as follows:

The Employer and the Sheriff agree that they will allow the proper accredited representative of the local Union access to the administrative offices of the Sheriff Department at any reasonable time for the purpose of policing the terms and conditions of this Agreement, provided however, that such representative shall not interfere with the normal operations of the Sheriff's Department.

The Union shall have the right, upon reasonable notice, to examine time sheets at the Sheriff's office and pay records pertaining to the computation of compensation of any employee whose pay is in dispute.

Layoff and Re-hire - County position as modified.

Modify Article XII to read as follows:

A. In reducing the work force, because of lack of appropriated funds or other legitimate causes, the last employee hired in the affected classification shall be the first employee laid off provided employees with more seniority in the affected classification are qualified to perform the work available. The last employee laid off shall be the first employee re-hired, provided the employee is qualified to fill the open position. The steward-elect shall have top seniority and shall continue to work as long as a job prevails which he/she is qualified to perform. However, should the steward elect to be laid off, he/she shall be re-hired in accordance with his/her position on the seniority list.

B. Upon being laid off from his/her classification, an employee may replace another employee in another classification (excluding secretary/matron) that he/she has the skill and experience to perform if he/she has the greater seniority. The employee shall receive the rate of the classification into which he/she bumped.

C. Employees affected by a permanent reduction in force shall be notified of their pending layoff two (2) calendar weeks in advance. The notice shall state the reason for such action. A copy of the notice will be simultaneously forwarded to the Union.

D. Notice of re-hire may be made by telephone and shall be confirmed by certified mail to the employee's last address of record. An employee shall reply to the certified re-hire notice within three (3) working days following receipt of such notice or the Sheriff may assume that the employee has voluntarily resigned and the Sheriff shall re-hire the next eligible employee from the seniority list qualified to perform the work available. An employee, upon request, may be granted up to ten (10) working days to return to work at the discretion of the Sheriff only.

Payment of Insurance - County position as modified.

Add the following sub-paragraph to Article XVII:

An employee who is laid off or is on a non-paid leave of absence must assume the required premiums for all insurance commencing the first month immediately following such layoff or leave of absence.

Time Computation - County position.

Add the following section to the Agreement:

The time limits established in the grievance procedure shall be followed by the parties. If the time procedure is not followed by an employee or the Union, the grievance shall be considered settled. If the time procedure is not followed by the Employer, the grievance shall remain active and automatically advance to the next step, provided however, that arbitration shall not occur unless the Union submits written notice of its desire to arbitrate. The time limits established herein may be extended by mutual agreement in writing.

In addition to the above, three issues were resolved because the Union's and the County's last best offers were identical. They were:

Steps in the pay plan, which will remain as in the existing Agreement; establishment of a turnkey classification with the rate of pay the same as a deputy; range and ammunition issue to be resolved by retaining the current language in Article XXVIII.

Finally at the arbitration hearing, the parties agreed to the following language which resolved the following issues:

Change Article I, Recognition, to read as follows:

The Employer recognizes and acknowledges that the Union is the exclusive representative in collective bargaining with the Employer/Sheriff for regular full-time employees classified as Sergeants, Detectives, Deputies, Secretary Deputy and Clerk Typist II Matrons as listed in Schedule "A" classifications and wages attached hereto and made a part thereof. Command officers above the rank of Sergeant, all other supervisors, seasonal employees, auxiliary employees, Marine Division employees AND CONFIDENTIAL SECRETARY shall not be subject to the terms of this Agreement.

Modify Article V, Special Conference, to read as follows:

Special conferences to discuss important matters may be arranged between the Union and the Sheriff by written request from either. Attendees shall consist of at least two (2) representatives of the Union and at least two (2) representatives of the Sheriff. The time and the place the conference is to convene shall be mutually agreed to by the Union and the Sheriff. An agenda of the matters to be discussed shall be prepared by the PARTY requesting the conference. Employees required to attend the special conference

shall not lose pay if the conference is held during their regular working hours. However, no employee attending the conference shall be paid overtime pay if the conference is held before or after their regular working hours. The Union and the Sheriff agree that neither the Union nor the Sheriff shall be obligated to bargain collectively to any subject or matter not referred to IN THIS AGREEMENT or not covered in this Agreement.

Add the following new section to the Agreement:

Section _____. Time Computation. In computing days under the grievance and arbitration procedures, Saturday, Sunday and holidays shall be excluded.

The remaining matters went to the chairman for deliberation and decision.

INTRODUCTION

The legislature in its wisdom passed Act 312 in 1969. Section 1 provides:

"It is the public policy of this state that in police and fire departments where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally constructed."

As long as this Act remains the law in Michigan, it seems prudent to believe that the law is serving the purpose that the legislature intended for it.

We, therefore, may postulate that since the parties utilized this Act in resolving their immediately preceding contract it is proper for this panel to assume the previous contract was a fair and just balancing of their equities. It seems logical then to place the burden on the party who is now demanding a change from the status quo. With this established we may proceed to the open issues.

DISCUSSION AND AWARD

The first group of issues to be dealt with are those in which both parties have recognized a need for change. Therefore, the panel will not be deciding whether there is sufficient evidence to change the status quo but rather to decide between two economic alternatives since the parties

agree change is necessary.

The first issue to be resolved is the wage issue.

The union's position on wages is that it is entitled to 2800 over two years beginning January 1, 1976. This 22.4 rate increase is necessary to catch it up with the average of the surrounding counties.

The county position on wages is that it should raise wages by 19% over a three year period which, due to compounding, amounts to a 20.3 rate increase.

The essence of both parties' case on wages and other economic matters is a comparison of "comparables". Even though this method is suggested by the statute that governs these proceedings, it is too imprecise to be of much value. One only needs to look at the experience of these parties to see its defects. After some attempt at bargaining and after the able assistance of a state mediator, these parties approached this process with over forty issues, more than half of which were economic. The parties did not resolve these issues because there is support for both positions in "comparable" communities. To elaborate on the difficulty, it should be noted that the union made a very persuasive argument by pointing out that Livingston

County pays these classifications of employees less than all the surrounding counties pay their law enforcement employees. This argument is persuasive until the county offers the logical explanation that Livingston County has fewer people than its neighbors, is relatively rural in nature and has a smaller tax base.

The chairman has the further problem that the comparisons do not attempt to compare total compensation but rather isolate certain components like wages or holidays or longevity, etc. It is therefore difficult to develop precise conclusion on this imprecise data. If the data would show that one county was clearly out of line with the status in the "industry" it would be valuable but that is not the case here.

Once the parties have an established relationship, it is the opinion of the chairman that the comparison factors provided for in Sec. 9(d) of the statute should be deemphasized and more traditional concepts provided for in Sec. 9(h) like skill, effort, and responsibility should be determinative.

This would have the beneficial effect of turning the parties attention toward their relationship with each other over which they have control and would tend to make them responsive and responsible to the community that pays the bill.

Had the parties done this, the error of their positions would have been apparent.

As chairman of this panel, I reject the Union's two year wage package because it does not take into account the difficult financial problems that beset the county in 1976. Most other county employees had to be satisfied with a 5% increase in 1976 and in that context it would be clearly unfair that these employees be awarded a retroactive \$1400 increase.

Similarly I am constrained to reject the county's three year proposal because while the rate increases 20% over three years the package yields somewhat less so that there is doubt as to whether it will cover the anticipated increase in the cost of living over this period.

To resolve this dilemma, the panel will treat each year of the contract separately and award accordingly. The chairman was informed by both panel members that this approach is not unique when dealing with multi-year contracts.

The term of this contract will be for two years terminating at midnight December 31, 1977.

Wage increases for the first year will be as the county proposed namely 5% effective the first pay period on or after 4-1-76 for all classifications and steps of the existing pay scale.

Wage increases for the second year will be as the union proposed, namely \$700 on the first pay period on or after 1-1-77 and \$700 more on the first pay period on or after 7-1-77 for the deputy, detective and secretary/matron classifications. For the clerk/matron classifications it will be \$600 on the first pay period on or after 1-1-77 and \$600 more on the first pay period on or after 7-1-77. During 1977 the sergeants classification will maintain the current 4% differential above

Overtime for all classifications - Union position.

Union position is to pay at a time and one half rate for all hours over eight in a day or eighty in a pay period to all represented classifications. The county's proposal is similar except there is no provision for payment over 8 hours in a day. Since the parties current contract provides for payment of overtime premiums for over 8 hours in a day, for some employees the Unions position is more reasonable and is awarded.

Payment for work in a higher classification - County position. Union wants pay for work in higher class with no limitations. Granting this demand would require the county to keep records for minimal time worked which would be an unjustified burden. The county's position to pay only after five consecutive days worked is also extreme but on balance it is more reasonable and is awarded.

Shift Premium - County. The purpose of a shift premium, the way the chairman understands it, is twofold. When management has discretion to schedule the work, a premium discourages management from scheduling it at an undesirable time. If management's good faith business interests are such that the work must be scheduled anyway at these inconvenient times, the premium will pay for the employees inconvenience. In the experience of the chairman, police management has little discretion in scheduling because police management cannot control when criminals commit their crimes. Therefore, the inconvenience suffered

by policemen in working odd hours should be considered when setting their rate and not for a reason to pay a premium. The chairman is not aware of any special circumstances in this county to justify a deviation from this theory but apparently the parties are so we award the least costly alternative which is 5¢/hour for employees regularly assigned for afternoon or evening shift.

Hospitalization - County position. The county's position on this was effective 4-1-77 to provide at employer's cost for employee and dependant:

- a) Blue Cross - Blue Shield MVF-1
- b) Master Medical - option II (100/200 deductible)
- c) Prescription drugs, \$2.00 co pay

This is awarded because the unions alternative is too expensive.

The following union demands are denied because in light of the wages and fringes already awarded costs are prohibitive and the evidence presented is not sufficient to warrant a change from the status quo. They are:

Longevity

Vacation

Holidays

Retirement

COLA

Dental Plan

Workmans compensation

Clothing Allowance

Sick leave - accumulative increases

Funeral leave - except to expand the definition of
immediate family to include spouse, child,
parent, brother and sister, mother and
father-in-law as per the county proposal.

The following county demands are denied because
there is insufficient evidence of practical difficulties
with current language to establish a need to change the
status quo. They are:

Sick leave during vacation


Management rights

Criminal Charges

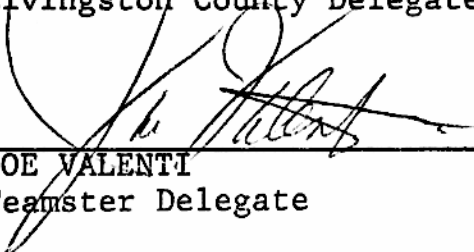
The Chairman wants to publically thank the other
members of the panel for their cooperation in this matter
particularly with regard to extending the time limit for
rendering this award so that personal plans of one of its
members could be accomodated.



PETER D. JASON
Chairman



JACK CLARY
Livingston County Delegate



JOE VALENTI
Teamster Delegate

April 14, 1977