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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION BETWEEN:

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

Employers,

and

POLICE OFFICERS ASSOCIATION OF MICHIGAN,

Union

Case No. L85-A-25

Impartial Arbitrator: HERBERT S. KEIDAN, Esquire

DECISION AND AWARD

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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Livingston County

Pursuant to Public Act 1969 #312, arbitration proceedings were commenced by the Union. Six days of hearings were conducted on the following days:

February 11, 1986
February 12, 1986
February 13, 1986
March 24, 1986
March 27, 1986
March 28, 1986

Testimony was taken from twelve (12) witnesses. The Union introduced twenty (20) exhibits and the Employer ten (10) exhibits. The Union presented eight (8) unresolved issues and the Employer presented five (5) unresolved issues. Several stipulations were entered.

MCLA 423.239 The aforesaid statute sets forth in Section 9 nine (9) prerequisites which demand consideration in the 312 hearing. (Said exhibit "A" is attached hereto and made part hereof)

Based upon the testimony obtained in the six (6) days of hearing and the examination of exhibits, the following last best offers were accepted.

U-1 Duration
Stipulation

DURATION

The parties stipulated on February 24, 1986 to a three year contract effective January 1, 1985 through and including December 31, 1987. Article 57.1 shall therefore be amended to read:

ARTICLE LVII

EFFECTIVE DATE AND TERMINATION OF AGREEMENT

57.1: This Agreement shall remain in full force and effect commencing on the 1st day of January, 1985, through the 31st day of December, 1987. Either party may 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.

U-2 Vacation

15.3: Employees shall accumulate vacation days as provided herein:

1 year service but less than 5 years service	=	10 days
5 years service but less than 10 years service	=	15 days
10 years service and thereafter	=	20 days

All other language in Section 15.3 remain the same. Vacation to be retroactive to January 1, 1986. (Union submitted same offer)

U-3 Wages

58.1: The Employer's amended final offer is accepted as set forth in Exhibit "B" attached hereto and made part hereof. Further the schedule of rates shall be retroactive to 1/1/85 for all hours compensated.

U-4 Pension

35.4 For all eligible employees effective December 31, 1987, the Employer shall contribute 100% of the cost of the F-55 waiver with a required period of service of 15 years which shall permit normal, unreduced retirement at age 55 with 15 years of service.

Pension - Age and Service for Normal Retirement to be effective December 31, 1987.

U-5 Shift Premium

33.1: No change in the shift premium

Employees regularly assigned the afternoon or evening shifts shall receive an additional five (\$.05) cents per hour for hours actually worked on either of those shifts.

U-6 Longevity

52.4: The longevity bonus payment schedule shall be as follows:

<u>Continuous Service</u>	<u>Annual Bonus</u>
5 years or more, but less than 11 years	1% of current base salary
11 years or more, but less than 16 years	2% of current base salary
16 years or more years	3% of current base salary

All other language in Article LII to remain unchanged.

Longevity to be retroactive to January 1, 1986.

U-7 Holidays

16.1: Employees covered by this Agreement shall receive the following paid holidays:

New Years Day	January 1
Washington's Birthday	3rd Monday in February
Good Friday	Friday before Easter
Easter Sunday	
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25
Federal and State Election Days	

****Primary Election days are NOT considered holidays. All other language in Article XVI to remain unchanged. Holiday schedule to be effective 1/1/87.

U-8

REMEDY FOR PSYCHOLOGICAL AND PHYSICAL TEST DISPUTE

The parties stipulated to the following language which shall be added to Article 18, Medical Exams:

The Sheriff's Department may require a physical and/or psychological exam by a doctor, at the EMPLOYER'S expense, to determine the employee's ability to perform his/her regular duties, if deemed appropriate. The employee may obtain a second opinion, at the employee's expense, and in the event there is a dispute between the EMPLOYER'S doctor and the employee's doctor, both of those doctors shall select a third doctor, whose decision shall be final and binding on the parties. The expense for the third doctor's opinion shall be split 50-50 by the EMPLOYER and the employee if not covered by the employee's insurance. The effective date of this Section shall be the date of this award.

Employer presented five (5) unresolved issues

ER2

10.5 The first sentence in Section 10.5 shall be amended to read as follows:

"The Employer shall provide to an employee civil legal counsel, selected by the Employer, necessary to cover any civil litigation arising out of the good faith performance of the officer's duties by any law enforcement officers covered by this Agreement."

The remainder of Section 10.5 would remain unchanged. The effective date of this Section shall be the date of this award.

ER3 Promotions

13.11: The language shall remain unchanged

"The sheriff shall award the promotion to the applicant with the highest total score. In the event of a "tie" score, the most senior employee will be awarded the position."

ER5 Pallbearer

19.2: No change. Pallbearer service (maximum one day)

The remainder of Section 19.2 shall be unchanged

ER6 Divers Premium

43.2: Unchanged Underwater Recovery Operations: Full-time employees covered by this Agreement who act as a dive master, rope handler, or participate in actual recover operations shall be paid 2.5 times their regular hourly rate while participating in recovery operations. This rate of pay is limited to actual divers, dive masters and rope handlers. This section shall be applicable to all underwater recovery operations, including practice and actual recovery operations.

ER10 Detective Cars

47.1: Unchanged. County owned vehicles may not be used for personal business, and only the detective to whom the car is assigned is authorized to operate the car. In the event a detective is on-call, he may use the car for personal reasons (family accompaniment) but only after receiving the express permission of the Sheriff.

ER7 Call-in Overtime Remedy

The parties stipulated on March 28, 1986 to the following language which shall be added to Article 30.1, Call-In:

The employee missed shall be allowed by the end of the next day period to work eight (8) additional hours at his/her shift choice at the overtime rate for the overtime opportunity missed.

DECISIONS

ER1 Suspension

10.2: There is no question as to whether or not a notice of suspension should be reflected in an officer's personnel record. The issue is for what period of time. The language of Section 10.2 includes the following sentence: "suspension notices shall remain in effect for a period not to exceed 15 calendar months from the day of the suspension notice." Under Michigan law, a legal procedure is available which enables a first offender who has committed a felony to expunge his criminal record after the expiration of five (5) years. It would appear to be most inequitable and punitive to deny a police officer the same legal right. Therefore, I find that the said sentence shall be amended to read as follows:

Suspension notice shall remain in effect for a period not to exceed two (2) years from the date of the act resulting in the suspension.

The effective date of this Section shall be the date of this award.

ER9 Weapons

45.1: The first sentence of Section 45.1 shall read as follows: All employees in the bargaining unit who are required to carry side arms shall qualify with their service revolver annually between the months of May and August. The sheriff shall give thirty (30) days written notice to the aforesaid employees to enable said personnel to attend practice sessions prior to the test.

The balance of Section 45.1 shall remain the same.

The effective date of this Section shall be the date of this award.

ER11 Two man cars

49.1: The Employer and the Union introduced testimony indicating that some officers prefer to work alone in patrol cars after the hours of darkness. Other officers wanted the "security" of operating a two-man patrol car. In order to provide the maximum flexibility for the Sheriff and at the same time provide for the reasonable safety and security of the officers involved, the language of Section 49.1 shall be

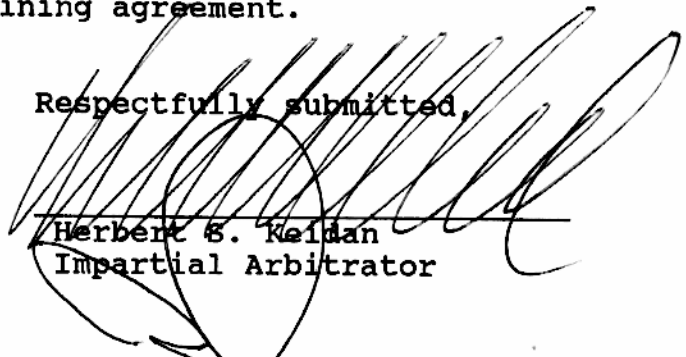
amended to read as follows: Employees of the bargaining unit assigned to the road patrol shall ride two (2) to a patrol car after the hours of darkness on the second and third shifts. However, the sheriff reserves the right to alter this procedure if necessary provided that due consideration is given to the reasonable safety and security of the employee so assigned and further provided that the officer so assigned shall consent to said assignment. An officer may request and consent in writing to work a one-man patrol car provided the sheriff shall approve of said request. The effective date of this Section shall be the date of this award.

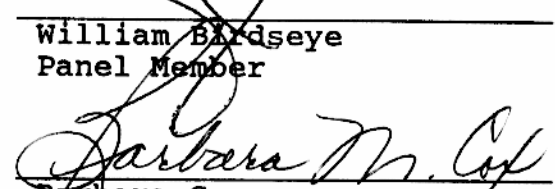
ER13 Election of Remedies

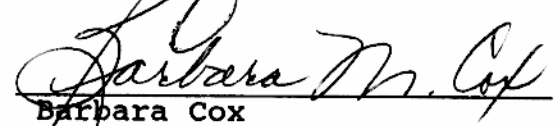
The majority of the Supreme Court in the City of Grand Rapids v. Grand Rapids Lodge #97 Fraternal Order of Police 415 Mich 628 held that a collective bargaining agreement which provides for arbitration as the final step in a grievance procedure may validly provide that grievance proceedings shall terminate where an employee claiming to be aggrieved by the employer's breach submits the subject matter of the grievance to adjudication in a court of law.

However the issue involved in this hearing is whether a provision in a collective bargaining agreement should curtail, modify or violate an individual's rights, be they constitutional, statutory or contractual. The economic savings, if any, do not warrant limitation and/or elimination of the aforesaid rights. Therefore, the proposed additional language regarding "election of remedies" should not be added to the new collective bargaining agreement.

Respectfully submitted,


Herbert S. Keidan
Impartial Arbitrator


William Birdseye
Panel Member


Barbara Cox
Panel Member

Dated: August 22, 1986

423.239 Basis for findings, opinions, and orders

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the 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.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

Exhibit "A"

(1969).

Labor Re.
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Findings 4
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1. Validity
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POLICE AND FIRE DEPARTMENTS 423.239

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

7/25/86

EXHIBIT 'B'

EMPLOYERS AMENDED FINAL OFFER OF SETTLEMENT:

Article LVIII

58.1

<u>Deputies:</u>	1-1-85 5%	1-1-86 5%	1-1-87 5%
Start	\$16,275	\$17,089	\$17,943
1 Year	\$18,564	\$19,492	\$20,467
2 Year	\$20,871	\$21,914	\$23,010
3 Year	\$22,031	\$23,133	\$24,289
4 Year	\$23,711	\$24,897	\$26,141
5 Year	\$24,150	\$25,357	\$26,625

<u>Detectives:</u>	5%	5%	5%
Start	\$16,275	\$17,089	\$17,943
1 Year	\$18,564	\$19,492	\$20,467
2 Year	\$20,871	\$21,914	\$23,010
3 Year	\$22,031	\$23,133	\$24,289
4 Year	\$23,711	\$24,897	\$26,141
5 Year	\$25,200	\$26,460	\$27,783

<u>Dispatchers:</u>	10%	10%	10%
Start	\$11,607	\$12,187	\$13,406
1 Year	\$14,042	\$15,447	\$16,991
2 Year	\$14,653	\$16,118	\$17,730
3 Year	\$15,267	\$16,793	\$18,473
4 Year	\$15,873	\$17,460	\$19,206

Corrections Officers (Hired before 1-1-87) See attached listing

	5%	5%	5%
Start	\$16,275	\$17,089	See below
1 Year	\$18,564	\$19,492	\$20,467
2 Year	\$20,871	\$21,914	\$23,010
3 Year	\$22,031	\$23,133	\$24,289
4 Year	\$23,711	\$24,897	\$26,141
5 Year	\$24,150	\$25,357	\$26,625

EMPLOYERS AMENDED FINAL OFFER OF SETTLEMENT:
Page 2

Corrections Officers identified as:

R. Michaels	N. Deering
L. Erdman	C. Smitielski
J. Wagner	T. Kreager
R. Woodworth	F. Beaupre
G. Grubaugh	E. Frech

Corrections Officer Hired after 1-1-87

	1-1-85	1-1-86	1-1-87
Start	Z	Z	\$15,925
1 Year			\$17,995
2 Year			\$19,794
3 Year			\$21,196
4 Year			\$22,256
5 Year			\$23,369

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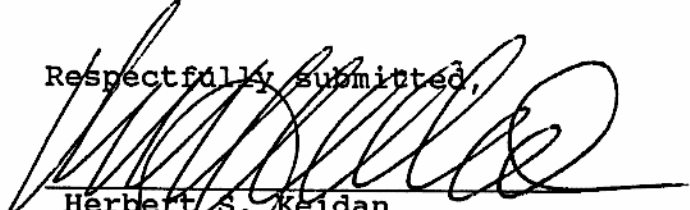
ADDENDUM TO DECISION AND AWARD DATED AUGUST 22, 1986

Inadvertently the non economic issue of shift preference was omitted from the original Decision and Award.

Shift Preference

28-(1) & (2) The last contract provision was based on seniority. The county failed to demonstrate that the proposed change would benefit the department personnel and/or the general public's welfare. Therefore the present language of Sec. 28-(1) and 28-(2) shall remain unchanged.

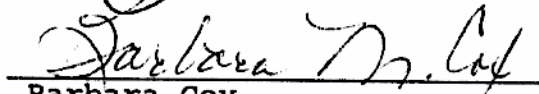
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Panel Member



Barbara Cox
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Dated: August 24, 1986