

478

8/23/91
Ark.

LABOR AND INDUSTRIAL MICHIGAN EMPLOYMENT RELATIONS COMMISSION
RELATIONS COLLECTION
Michigan State University

ACT 312 ARBITRATION

In the Matter Of:

MACOMB COUNTY SHERIFF DEPARTMENT,
Public Employer

-and-

MICHIGAN LABOR COUNCIL,
FRATERNAL ORDER OF POLICE,
Union

MERC CASE NO.
D88 G-1650

Raymond J. Buratto
Panel Chairman

DECISION AND AWARD

ARBITRATION PANEL

Raymond J. Buratto, Impartial Chairman
Michael P. Somero, Union Delegate
William M. Israel, Employer Delegate

APPEARANCES

APPEARING ON BEHALF OF THE EMPLOYER:

Charles E. Keller, Esq.
Keller, Thoma, Schwarze, Schwarze,
DuBay & Katz, P.C.
100 W. Long Lake Road, Suite 122
Bloomfield Hills, Michigan 48304

APPEARING ON BEHALF OF THE LABOR ORGANIZATION:

David K. Sucher, Esq.
John A. Lyons, P.C.
675 East Big Beaver
Suite 105
Troy, Michigan 48083

STATE OF MICHIGAN
BUR. OF EMPLOYMENT RELATIONS
DETROIT OFFICE

91 NOV 22 AM 9:28

RECEIVED

Macomb County

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

BACKGROUND

This case arises pursuant to the provisions of Act 312, of the Michigan Public Acts of 1969, as amended. The collective bargaining agreement between the parties expired on December 31, 1988 and MERC Mediator P. Doris Petross conducted one mediation session on February 28, 1989. The MERC Petition for 312 Arbitration was filed by the labor organization on or about March 29, 1989. This Arbitrator was appointed by letter dated June 15, 1989 and a pre-hearing conference was held on October 19, 1989. Seven formal hearings were held between February 21, 1990 and February 19, 1991. Last best offers were exchanged through the arbitrator after March, 15, 1991, and Briefs were exchanged after May 10, 1991.

At the October 19, 1989 pre-hearing, the labor organization requested leave to amend its petition to add the issue of obtaining an Internal Revenue Service exemption to retain the pre-1986 Tax Reform Act tax-free status upon annuity withdrawals. Based upon the Michigan Court of Appeals' Manistee decision and the reasoning expressed in TR. I, p. 4-5, this Motion was denied during the first formal hearing on February 21, 1990.

By letters dated October 26, 1989 and November 2, 1989, the labor organization and the county, respectively, waived all time limits of the Act and the regulations for the issuance of the award, and consented to the jurisdiction of the panel.

The unit designated in the 312 petition consists of 46 members of a command officer unit of lieutenants, sergeants, corporals and corrections officers supervisors. This award does not apply to the corrections officers, as the Commission is currently deciding whether this group is properly subject to Act 312 arbitration. The parties had agreed to an addendum to the 1984-85 Agreement, which addendum ran from January 1, 1986 through and including December 31, 1988 (Joint Exhibit 1(A) and (B)).

STIPULATIONS

1. COMPARABLE COMMUNITIES

For the purposes of comparing the "wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of other employees performing similar services" the parties stipulated to the following counties as comparable communities:

1. Genesee
2. Kent
3. Oakland
4. Washtenaw
5. St. Clair

Following the submission of briefs by the parties, the panel in an executive session on June 5, 1990 selected the following communities as additional comparables:

6. Ingham County
7. Kalamazoo County
8. Ottawa County
9. Saginaw County
10. City of Warren
11. City of Sterling Heights
12. Clinton Township

Thus, twelve comparable communities were selected to effectuate the purposes of Section 9 of the Act.

2. TREATMENT OF ISSUES.

A. ECONOMIC

The following issues were deemed to be economic:

1. Increase of pension multiplier.
2. Retirement eligibility.
3. Longevity.
4. Shift differential.
5. Wages.
6. Retroactivity of economic benefits.
7. Health care cost containment.

B. NON-ECONOMIC

The following issues were determined to be non-economic:

1. Leave of Absence Article.
2. Accumulated Sick Leave Payoff.
3. Management Rights Article.
4. Workers Compensation Disability Article.
5. Probationary Period Article.
6. Insurance Benefits.
(Changes in format and other issues not related to health care cost containment.)

ECONOMIC ISSUE NO. 1 - INCREASE IN PENSION MULTIPLIERS

LAST BEST OFFERS

Labor Organization:

The union proposes this language:

A County pension which when added to his employee pension will provide a retirement allowance equal to the number of years and fraction of a year, of his credited service multiplied by the sum of 2.5% of his final average compensation, for the first twenty-six (26) years and 1% thereafter. In no case shall his county pension exceed 70% of his final average compensation. Upon an employee receiving social security benefits, the 2.5% of final average compensation will be reduced to 2.25% of final average compensation for the first twenty-six (26) years and 1% thereafter.

County:

County rejects Union demand for this benefit improvement; County wishes to maintain the status quo.

ECONOMIC ISSUE NO. 2 - RETIREMENT ELIGIBILITY

LAST BEST OFFERS

Labor Organization:

The Union proposes this language:¹

An employee in the classification of Lieutenant, Sergeant, and Corporal who has attained twenty-five (25) or more years credited service, or has attained the age of 60 years and has eight (8) or more years of credited service, may retire upon written application filed with the commission setting forth at what time not less than thirty (30) days more [sic] more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired. Upon his retirement he shall receive a retirement allowance provided in Section 24 of the Macomb County Employees Retirement ordinance.

County:

County requests maintenance of the status quo.

¹ It must be noted here that the union's last best offer of settlement differs from its position during the 312 proceedings wherein it argued for a so-called "70" Formula. Inasmuch as that is no longer their position and that it is well-explained in the record and exhibits, I will not clutter this decision with recitation of the "70" Formula.

ECONOMIC ISSUE NO. 3 - LONGEVITY

LAST BEST OFFERS

Labor Organization:

The Union proposes:

Effective January 1, 1989, longevity pay shall be based on the annual maximum base salary for the rank of Corporal paid to such employee as of October 31, provided, such employee qualified as to the length of service as per section 3.

Section 3E to read as follows:

<u>Step</u>	<u>Continuous Years of Service</u>		<u>Percent</u>
	<u>On Or</u> <u>Before October 31 of Each Year</u>		
1	5 to 10		2%
2	10 to 15		4%
3	15 to 20		6%
4	20 to 25		8%
5	25 and thereafter		10%

County:

County rejects Union's demand for this improvement; if improvement on Shift Premium is awarded, County maintains that the Cap on members' pay be reduced to \$20,000, since the current Cap of \$27,500 was previously established as a quid pro quo for not adopting a Shift Premium; if Shift Premium is not awarded, County maintains that the \$27,500 cap on members' pay be retained.

ECONOMIC ISSUE NO. 4 - SHIFT DIFFERENTIAL

LAST BEST OFFERS

Labor Organization:

The union is requesting a new article be added to the Collective Bargaining Agreement to allow officers the following shift premium:

Afternoon shift - 3% of base pay
Midnight shift - 6% of base pay

County:

County rejects Union's demand for the adoption of this new provision.

ECONOMIC ISSUE NO. 5 - WAGES

LAST BEST OFFERS

Labor Organization:

The Union is requesting a three (3) year collective bargaining agreement effective January 1, 1989 through December 31, 1991. In addition, the Union is requesting that the parties maintain the current 10% differential between ranks.

Alternatively, should the panel elect to remove the current 10% differential between ranks from the collective bargaining agreement, the Union is requesting the following wage increases for the appropriate year:

1989 - 5.5%
1990 - 5.5%
1991 - 5.5%

County:

County rejects the Union's demand and the County offers improvements to the members' wages of 4% for 1989, 4% for 1990 and 4% for 1991. County's wage offers are contingent upon the awarding of health care cost containment provisions, as proposed by the County (see infra the county's last offer of settlement regarding Health Care Cost Containment).

ECONOMIC ISSUE NO. 6 - RETROACTIVITY OF ECONOMIC BENEFITS

LAST BEST OFFERS

Labor Organization:

The Union is also requesting that all economic benefits be retroactive to January 1, 1989.

County:

RETIREMENT SYSTEM: IMPROVEMENT TO MULTIPLIER:

If this improvement is awarded, County maintains that it not be provided retroactively.

RETIREMENT SYSTEM: ADOPTION OF "70" FORMULA:

If this new benefit is awarded, County maintains that it not be provided retroactively.

SHIFT PREMIUM: ADOPTION OF PREMIUM FOR AFTERNOON AND MIDNIGHT SHIFTS:

If this new benefit is awarded, County maintains that it not be provided retroactively.

LONGEVITY PAY: REMOVAL OF CAP ON MEMBERS' PAY:

If this improvement is awarded, County maintains that it not be provided retroactively.

SICK PAY: IMPROVEMENTS TO ACCUMULATION AND PAY-OFF:

If this improvement is awarded, County maintains that it not be provided retroactively.

WAGES:

County offers full retroactivity on wages back to January 1, 1989.

ECONOMIC ISSUE NO. 7 - HEALTH CARE COST CONTAINMENT

LAST BEST OFFERS

Labor Organization:

The union proposes that Article XVI remain status quo.

County:

It is the County's understanding that Union has agreed to all provisions of this County-proposed Article, except Health Care Cost Containment. County maintains that union is to accept the health care cost containment provisions and that the County's wage offers for 1989, 1990 and 1991 are contingent upon the Union's acceptance of the health care cost containment provisions. If health care cost containment is not awarded County's wage offers are 1/2% less for 1989, 1990 and 1991.

[NOTE: The non-economic changes in format are represented by County Exhibits 20 (N) through and including (T) and are discussed in the award of non-economic items.]

NON-ECONOMIC ISSUE NO. 1 - LEAVE OF ABSENCE ARTICLE

LAST BEST OFFERS

Labor Organization:

The Union proposes this language:

Section 1. A leave of absence may be requested in writing for any of the following reasons:

- A. Personal illness/injury
(Personal illness includes a woman's actual physical inability to work as a result of pregnancy, childbirth, or related medical condition.
- B. Illness/injury in immediate family
- C. Education
- D. Military Service
- E. Personal Reasons

Section 2. General Provisions:

- A. Leave of absence may be with pay or without pay.
- B. Failure to report for duty upon expiration of a leave of absence shall be considered a resignation. Exceptions may be approved by the Employer in situations that are beyond the control of the employee.
- C. Waiting periods for Leaves of Absence eligibility:
 - 1. Employees must have six (6) months or more of continuous service to be eligible for any of the following Leaves of Absence:
 - Illness/injury in immediate family

- Education
 - Personal reasons
 - Personal illness/injury
2. Employees shall not be required to complete a waiting period in order to be eligible for the following Leaves of Absence:
 - Military service
 - An illness/injury for which an employee is eligible for and receiving Workers Compensation benefits.

D. Duration of Leaves of Absence:

1. An approved leave of absence shall not exceed six (6) months, except that the following types of absence may have extensions of up to six (6) months granted:
 - Personal illness/injury
 - Education
2. All requirements for such requested extensions must be fulfilled. Extensions shall be granted or denied in writing. The aggregate total time of all extensions shall not exceed an additional six (6) months from the expiration of the original leave of absence.

E. The Sheriff and the Director of Personnel-Labor Relations shall approve or disapprove all requests for Leave of Absence, except for Worker's Compensation claims which shall be governed by applicable statutes.

F. An employee who receives a leave of absence without pay shall not accrue benefits during the time which the employee is on said leave of absence without pay.

Section 3. Types of Leaves of Absence

A. Personal Illness/Injury:

1. All requests for this type of leave of absence must be submitted in writing to the Sheriff or designee. In proper circumstances, the Employer may waive the requirement that said request be in writing.

2. The written request for a leave of absence must be accompanied by a physician's statement which includes the following information:
 - a. General nature of personal illness/injury.
 - b. Dates of incapacity.
 - c. Anticipated date of return to work.
 - d. Physician's signature.
 - e. Physician's name, address and telephone number.
3. Request for an extension must be submitted in writing at least five (5) working days prior to the expiration of the original leave of absence. The request for an extension must be accompanied by a physician's statement which includes the information in Section 3, paragraph A.2, of this Article.
4. Prior to returning from a Personal Illness/Injury Leave of Absence, regardless of whether said leave is with pay or without pay, the employee shall submit to the Employer evidence in the form of a medical certificate, or other written medical documentation; said certificate or documentation shall indicate the anticipated date of return and that the employee has the ability to perform normally assigned duties and functions. At the Employer's sole discretion, it may require that a medical examination be conducted; said examination shall be at the Employer's expense.

B. Illness/injury of a member of the employee's immediate family:

1. A leave of absence may be requested because of illness/injury suffered by a member of the employee's immediate family. All requests for this type of leave of absence must be submitted in writing to the Sheriff or designee. In proper circumstances, the Employer may waive the requirement that said request be in writing.
2. In addition to the written request for a leave of absence, a letter from the physician attending the ill/injured member may be requested to evaluate the request.

C. Education:

1. All requests for this type of leave of absence shall be submitted in writing to the Sheriff or designee.

2. All requests for this type of leave of absence must be submitted at least thirty (30) days prior to the effective date of leave.

D. Military:

1. All requests for this type of leave of absence must be submitted in writing to the Sheriff or designee.
2. All requests for this type of leave of absence must be submitted at least thirty (30) days prior to the effective date of leave.
3. An employee while attending, pursuant to governmental orders, the two (2) week National Guard Training, is entitled, under Federal Law, to accumulate both Sick and Annual Leave, to accumulate seniority towards longevity, and to accumulate seniority towards retirement.
4. An employee who goes on active military duty shall have re-employment rights as provided by State and Federal Statutes.
5. A probationary employee who enters the Armed Forces must complete his/her probationary period upon his/her return to County employment, and upon completing said probationary period, will be provided seniority equal to the time spent in the Armed Forces and the time spent in previous County service.

E. Personal Reasons:

1. All requests for this type of leave of absence shall be submitted directly to the Director of Personnel-Labor Relations to convey the need for such leave of absence to the Sheriff who shall also approve or disapprove such request.
2. All requests for this type of leave of absence must normally be submitted at least thirty (30) days prior to the effective date of leave.

County:

LEAVE OF ABSENCE ARTICLE:

The County maintains that County Exhibits 20-H through 20-K be awarded.

NON-ECONOMIC ISSUE NO. 2 - ACCUMULATED SICK LEAVE PAYOFF.

LAST BEST OFFERS

Labor Organization:

The Union has agreed to the language proposed by the Employer. As such, Article XXX will read as follows (County Exhibit 20-U):

- A. Retirement: An employee who leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance, shall be paid for seventy-five percent (75%) of his/her accumulated and unused Sick Leave at employee's then current rate of pay. In case of death, payment upon the same basis shall be made to the deceased employee's designated life insurance beneficiary.
- B. Deferred Retirement: An employee who leaves employment and elects to defer retirement benefits, shall receive payment representing fifty percent (50%) of his/her accumulated unused Sick Leave, computed on the basis of the employee's salary at termination of employment. This payment shall not be made to the employee until the employee begins to receive retirement benefits. In case the former employee dies prior to the time that the retirement benefits are to begin, said accumulated payoff shall be made to the employee's pension beneficiary.
- C. Payoff When There Is No Retirement: An employee leaving county service after ten (10) years of continuous service, who elects not to receive retirement benefits, shall receive payment representing fifty percent (50%) of his/her accumulated and unused Sick Leave, computed on the basis of employee's salary at termination of employment, except as hereinafter provided. Employees hired on or after January 1, 1974, will be ineligible for and will not receive the fifty percent (50%) payment specified in this paragraph.

NON-ECONOMIC ISSUE NO. 3 - MANAGEMENT RIGHTS ARTICLE.

LAST BEST OFFERS

Labor Organization:

Except as otherwise provided in this Agreement, the Employer retains and shall have the sole and exclusive right and authority to manage and operate its affairs, including all of its operations and activities; to decide the number of employees; to establish the overall operation, policies and procedures of the Employer, to assign employees to shifts in order to adequately staff shifts with experienced personnel; to schedule the shifts of all employees, to direct its working force of employees; to determine the type and scope of services to be furnished, and the type of facilities to be operated; to determine the methods, procedures and services to be provided; shall have the right to hire, promote, assign, transfer, discipline for just cause (up to and including discharge), layoff and recall; to establish work rules, and to fix and determine penalties for the violation of such rules; to maintain discipline and efficiency among the employees, provided that such rights shall not be exercised by the Employer in violation of any of the express terms and provisions of this Agreement.

County:

The County maintains that County Exhibit 21 be awarded:

- A. Except as otherwise provided in this Agreement, the Employer retains and shall have the sole and exclusive right and authority to manage and operate its affairs, including all of its operations and activities; to decide the number of employees; to establish the overall operation, policies and procedures of the employer, to assign employees to shifts in order to adequately staff shifts with experienced personnel; to schedule the shifts of all employees, to direct its working force of employees; to determine the type and scope of services to be furnished, and the type of

facilities to be operated, to determine the methods, procedures and services to be provided.

- B. The Employer, in addition to the rights set forth in A. above, shall have the right to hire, promote, assign, transfer, discipline for just cause (up to and including discharge), layoff and recall; to establish work rules, and to fix and determine penalties for the violation of such rules; to maintain discipline and efficiency among the employees, provided that such rights shall not be exercised by the Employer in violation of any of the express terms and provisions of this Agreement.
- C. The Union agrees that its members will not engage in activities during working hours that may detract from their productivity.

NON-ECONOMIC ISSUE NO. 4 - WORKERS COMPENSATION DISABILITY ARTICLE.

LAST BEST OFFERS

Labor Organization:

The Union has agreed to the language as proposed by the Employer.

County:

A County employee who has incurred bodily injury arising out of and in the course of actual performance of duty in the service of the county, which bodily injury totally incapacitates such employee from performing any available County employment shall be entitled to disability compensation upon the following basis and subject to the following provisions:

- A. The employee must be eligible for and receive Worker's Compensation on account of such bodily injury.

- B. The total incapacity, as above set forth, must continue for the duration of the period of compensation.
- C. Any employee suffering an injury within the meaning and definition of this paragraph shall file a report in writing, relating to such injury, with the Sheriff or designee on the day such injury occurs or, if physically unable to do so because of the nature of the injury, then a physician's report in writing relating to such injury shall be filed with the Sheriff or designee within one week from the date of injury. The report shall be made upon the form furnished by the County of Macomb and when received by the Sheriff or designee shall be transmitted forthwith to the office of the Personnel-Labor Relations Director.
- D. The employee shall furnish to the Personnel-Labor Relations Department a written medical certificate which includes a description of the injury and period of incapacity as well as periodic written medical progress reports when requested.
- E. Compensation received by an employee who has incurred bodily injury arising out of and in the course of actual performance of duty, which bodily injury totally incapacitates such employee from performing any available County employment, shall be paid on the following basis:

The compensation received by such employee under the Worker's Compensation Act shall be supplemented by the amount necessary to equal his/her regular salary, such payments to continue for a period of six (6) months from date of incapacitating injury. At the end of said six (6) month period, the Personnel-Labor Relations Department shall review the disability status of the injured employee to determine if up to an additional six (6) month extension shall be granted, dependent upon the physical condition and ability of the employee to perform other available county employment. In no event shall the period for supplementation under this provision exceed one (1) year from the date of incapacitating

injury. If disability exists at the end of the one (1) year period, the employee shall seek to become eligible for coverage under the appropriate disability provision of the Macomb County Employee's Retirement Ordinance. Employees receiving disability compensation hereunder shall continue to accrue sick leave days on the same basis as employees on the active payroll and such disability sick days compensated for under this paragraph shall not be deducted from the employee's sick leave bank.

NON-ECONOMIC ISSUE NO. 5 - PROBATIONARY PERIOD ARTICLE

LAST BEST OFFERS

Labor Organization

PROBATIONARY PERIOD (Article XXIV/Section 2)

Add a section, as follows, to the Article:

Section 2. It is expressly understood that members of the bargaining unit who have been reclassified into a higher paid classification shall be required to serve a six (6) month probationary period in the new classification to determine their ability to perform duties assigned them. In the event that the employee does not satisfactorily complete the aforementioned probationary period he/she may be returned to their former classification for just cause subject to Article XIII, Grievance Procedure.

County:

The County maintains that County Exhibit 20-X be awarded.

Add a section, as follows, to the Article:

Section 2. It is expressly understood that members of the bargaining unit who have been reclassified into a higher paid classification shall be required to serve a twelve (12) month probationary period in the new classification to determine their ability to perform duties assigned them. In the event that the employee does not satisfactorily complete the aforementioned probationary period he/she shall be returned to the former classification.

LAST BEST OFFERS OF SETTLEMENT

In compliance with Section 8 of the Act, (MCLA 423.238) the parties submitted last best offers of settlement within the time limits prescribed by the panel. Said offers are marked as Appendices A and B and are attached herewith.

The statute requires that:

"[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9. The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in section 9."

Thus, with respect to economic issues, the arbitration panel must select from the last offers of settlement the one which "more nearly complies" with the factors enumerated in Section 9, but may fashion an award on the non-economic issues which is based on the factors in Section 9.

MCLA 423.239 (Section 9 of the Act) provides the bases for this Panel decision:

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.
- (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.

NON-ECONOMIC ISSUE NO. 6 - INSURANCE BENEFITS - (Changes in format and other issues not related to health care cost containment.)

LAST BEST OFFERS

Labor Organization;

The Union is requesting that this article remain status quo.

County

The County proposes adoption of those portions of Exhibits 20(N) through and including (T) which relate to changes in format and other issues not related to health care cost containment. [The health care cost containment items are treated as economic].

DISCUSSION AND AWARD

I. STIPULATED AWARDS

The parties have stipulated to the following which are incorporated as part of this award:

- A. All items identified in Joint Exhibits 2(A) through and including (O) which were tentatively agreed to by the parties;
- B. The Workers Compensation Disability Article language represented by County Exhibit 20(W);
- C. The Accumulated Sick Leave Payoff language represented by County Exhibit 20(U).

ECONOMIC ISSUE NO. 1 - INCREASE IN PENSION MULTIPLIER

The most recently expired collective bargaining agreement and addendum provided for a retirement annuity of 2.25% of final average compensation (F.A.C.) for the

first twenty-six (26) years of service and 1% thereafter, not to exceed 65% of final average compensation (Joint Exhibit 1(B), p. 76).

While the County wishes to maintain the status quo, the union proposes to increase the retirement annuity factor to 2.5% for the first 26 years and 1% thereafter, and upon receipt of Social Security benefits, returning to 2.25% of final average compensation for the first 26 years and to 1% thereafter.

Union Exhibit 4(B) is their comparison of the retirement annuities and eligibility requirements in the comparable communities. This exhibit supports the union's contention that Clinton Township, Genesee County, Sterling Heights, Warren and Washtenaw County all have a retirement annuity factor greater than the 2.25% in effect in Macomb County. Three of the five have employee contributions greater than Macomb County, ranging from 1% to 5% more. Sterling Heights, which does not participate in Social Security, requires an employee contribution of 5% and Washtenaw County, although participating in Social Security, has an employee contribution rate of 10%.

The data establishes that seven counties have FAC percentages less than Macomb County, two of which require employee contributions greater than Macomb County.

County Exhibit 45 is a comparison of benefits received by a command officer relative to those received by a general county employee. It shows the command officer's pension multiplier, maximum pension, employer contribution to pension and F.A.C. are all superior to those received by general county employees. County Exhibit 46 is also an internal comparable, establishing that a command officer with just over twenty-seven (27) years of service receives an annual pension 24.2% larger than the average county employee.

County Exhibit 44 is a comparison of the annual pension of a command unit retiree at a sergeant salary to the same individual using an average of the comparables. This exhibit states the average multiplier of the comparables is 2.15%, a full .10% less than the unit involved in this 312 proceeding and is based upon December 31, 1988 data. Union Exhibit 4(B), based on data current through the close of the hearings, establishes the average multiplier to be 2.21%.

The County has also offered Exhibits 39 and 43 regarding the pension multiplier. These exhibits were prepared as of December 31, 1988 and are thus somewhat dated. A combination of the Union and County data is enlightening. County Exhibit 39 and Union Exhibit 4(B) establish that only five of twelve comparables have pension multipliers greater than Macomb County, with Washtenaw and Genesee Counties increasing their multipliers since December 31, 1988.

Inasmuch as the overall retirement formula must be taken into account to determine comparability, the Panel must also consider the averaging factor (F.A.C.) and all income factors included in final average compensation. A review of Union Exhibit 4(C) and County Exhibit 36 show that Macomb County command officers compare quite favorably to their counterparts in the comparable communities, both with respect to F.A.C. and to the income factors included therein.

Of the twelve comparables, only three utilize the highest three of the last ten years, as does Macomb. Eight of the comparables utilize the highest five years of the last ten and only one, Genesee County, utilizes the highest three out of the last five.

Union Exhibit 4(C) and County Exhibits 37 and 38 were used in comparing the income factors included by the comparables in computing F.A.C. Of the five comparables with an annuity percentage greater than Macomb, only Sterling Heights and Warren include more earnings factors as does Macomb County, and Kent and Oakland counties include substantially fewer factors. Washtenaw County, whose annuity percentage and employee contribution rate are both higher than Macomb, includes only four income factors in F.A.C. and utilizes the highest five of the last 10 years.

This Panel is further persuaded by the results of the excerpted Gabriel Roeder actuarial study submitted as Union Exhibit 4(D) and County Exhibit 42. By their submissions the parties agree that the present plan of benefits "will continue to require a county contribution of 16.84 percent of payroll." TR 1-18-91, p. 19. The record testimony of actuary Gerald Sonnenshein was that the increase from 2.25% to 2.5% F.A.C. and the 10% increase in the maximum county paid pension would require an additional employer contribution of 4.63% of payroll, or \$ 79,152 in the first year. TR, 1-18-91, p. 21. It should be noted at this point that the Union's last best offer was for a 5% increase in the maximum county paid pension. County Exhibit 33 indicates that only four comparables have higher contribution rates than Macomb County and that Macomb County is more than three percentage points above the average of the comparables.

This Panel concludes that the Union's demand to increase the pension annuity factor from 2.25% to 2.5% should not be granted, as it does not more nearly comply with the factors set forth in Section 9 of the Act.

AWARD

The Panel awards the County's proposal to maintain the status quo regarding the pension annuity multiplier.

ECONOMIC ISSUE NO. 2 - RETIREMENT ELIGIBILITY.

The Union's last best offer was a modification of its position during the 312 hearings. Its last best offer proposed retirement at any age with twenty-five years of service, or at age sixty (60) with eight years of credited service. Union Exhibit 4(B), and pages 4 and 5 of its post-hearing brief, support its position that five of the comparables have equal or better retirement eligibility years of service than does Macomb. This panel will not consider the Clinton Township settlement referenced in footnote 2 of the Union's brief, as this settlement was submitted following the close of these hearings.

This panel has considered the extensive testimony of Dr. Stanley E. Stanczak, offered by the union to support its contention that police work is "a young man's job" because of which "there ought to be more flexible opportunity for retirement among police officers, that a standard 20, 25 year retirement is really inappropriate for police officers." TR, 10-19-90, p. 73; Union Brief, p. 7. Also considered is Dr. Stanczak's considerable experience as a clinical psychologist.

While Dr. Stanczak's testimony was not rebutted by the Employer (Union Brief, p. 8), he was extensively cross-examined by Counsel for the county, to the

extent that this Panel is persuaded that the answer to stress-related problems is not to be found in the "relaxed" retirement regulations proposed by the union. While their own witness advocated a more flexible retirement for police officers different from the standard 20 or 25 years, the union's proposal falls short of fulfilling this goal. Indeed, the only shortened years of service is proposed for employees sixty years of age or older, clearly not the "younger men" Dr. Stanczak's submits are well-suited for police work.

We are persuaded by the County's argument that stress-related job dysfunction may be best treated by therapy, disability retirement or job reassignment. The record is devoid of statistically significant evidence that members of this bargaining unit have been forced out of positions due to job-related stress. To the contrary, the County introduced Exhibit 59 illustrating that no Workers' Compensation claims filed in the last four years were stress-related. (County's Brief, p. 12)

We further find that the income "replacement ratio", a concept introduced in County Exhibit 58, presents an approach to the retirement questions which most effectively deals with the loss of earnings problem, particularly, where as here, the retiring employee is a recipient of Social Security benefits. While the Union is correct in asserting that a greater annuity ratio coupled with an earlier retirement age through reduced years of service would aid the retiree until Social Security becomes effective, we are convinced that this employer should not be held to provide this increased benefit.

Review of the comparables supports this Panel's unwillingness to change the

retirement eligibility requirements for this bargaining unit. We find that only four of the comparables, Genesee, Kent and Washtenaw Counties, and the City of Warren, have a more liberal retirement eligibility. In that Sterling Heights allows retirement at age 50 with 25 years of service, it is the same as Macomb. Two of the four require greater employee contributions with Washtenaw County's being a full 250% that of the Macomb command officers.

AWARD

This Panel finds the County's last best offer more nearly complies with the factors set forth in Section 9 of the Act. It is therefore awarded.

ECONOMIC ISSUE NO. 3 - LONGEVITY

By agreement of the parties, this issue was removed from the Arbitrator's jurisdiction prior to the issuance of this award.

ECONOMIC ISSUE NO. 4 - SHIFT DIFFERENTIAL

By agreement of the parties, this issue was removed from the Arbitrator's jurisdiction prior to the issuance of this award.

ECONOMIC ISSUE NO. 5 - WAGES

The County has proposed the elimination of the ten percent wage differential as between this command unit and the deputies' unit, coupled with a three and

one-half percent across-the-board wage increase, increased to four percent if the County's Issue C (health care cost containment) is adopted.

The Union is opposed to the elimination of the ten percent differential and in reaction thereto proposed a 5.5% across-the-board wage increase if the County's last best offer is granted. In addition to the record testimony, the parties have offered County Exhibits 27 and 49 and Union Exhibits 9(H) - (M) and 12 (A) - (L) in support of their respective positions.

County Exhibit 49 entitled "Pay Differentials: Chronology and Changes" and Union Exhibit 12(A) - (L) illustrate the pattern of a wage differential between the command unit and the patrol (deputies') unit which has evolved through the bargaining process. According to County Exhibit 49, the differential has been expressed in the Command Officers collective bargaining agreement since 1977. The salary schedules in Joint Exhibit 1(A) and (B), the 1985-88 Addendum and the 1984-85 Agreement, unambiguously state "[t]he ten percent (10%) differential between ranks will continue to be the determining factor in increases reflected in the above salary schedule, granted to employees covered by the Agreement." (Addendum, p. 5, Contract, p. 79). (Emphasis added).

The parties agreed to language making the ten percent (10%) differential the determining factor in increases. We further find the differential is to be maintained as among those classifications contained within this agreement.

This Panel finds the bargaining history of the parties has established a rank differential in salaries between the corporals in this unit and the deputies' unit. Indeed the minimum salary of a corporal has been 10% above the deputies' minimum since at least 1980 (County Exhibit 49). This same exhibit also shows a rank differential of same percentage since 1971. Since 1977 the

differential between command officer ranks has been expressed in the command agreement. The evidence further establishes that the rank differential between deputies and corporals has served as the basis for the command unit salary structure even though it is not expressed in either bargaining agreement.

Union Exhibit 9(I) shows two of the three comparables employing corporals in 1988 paid them slightly more than did Macomb County. Even so, the Macomb County corporals earned nearly \$1,200.00 more than the average. Union Exhibit 9(J) demonstrates the top paid Macomb sergeant fared well above the average of the comparables in 1988, 1989, 1990 and 1991 salaries.

Review of Union Exhibit 9(L) supports the same conclusion regarding the top paid lieutenant. In this classification, Macomb employees trail only Sterling Heights, and earn an average of \$ 2,789.00 more than their counterparts from 1988 through 1991. Retention of the rank differential does not change the number two ranking of the Macomb County lieutenants expressed in Union Exhibit 9(N). Union Exhibits 9(N) and (P) illustrates Macomb County is already well within the top third of total money compensation for sergeants and lietuenants in 1988.

The Union's contention that the County's 3.5% proposal "is certainly unsupported by the evidence" ignores the information contained within its own exhibits, for most of the comparables which were settled at increases greater than 3.5% continue to have salary levels still below those of Macomb, even with a 3.5% increase. Clearly, while there is no basis to support the union's proposed across-the-board increase of 5.5% for 1989, 1990 and 1991, the record supports the union's request to retain the rank differential.

Consideration of all wage data convinces this Panel that the Union's last offer more nearly complies with the elements of Section 9 of the Act.

AWARD

The Union's last best offer of settlement requesting maintenance of the rank differential is hereby awarded.

ECONOMIC ISSUE NO. 6 - RETROACTIVITY

The Union's last best offer requested retroactivity of all economic issues to January 1, 1989. The County's last best offer was for wage retroactivity to January 1, 1989, with any other economic benefits effective prospectively.

Union Exhibit 9(C) establishes that all the comparable communities made all economic benefits retroactive to the beginning of the contract term. This Panel has awarded the Union's last best offer to retain the rank differential. Due to the protracted hearings conducted since late 1989, this Award is made near to the end of the contract term.

AWARD

The parties concur on retroactivity for wages, based on the retention of the rank differential, effective January 1, 1989.

ECONOMIC ISSUE NO. 7 - HEALTH CARE COST CONTAINMENT

The Union is for the most part in accord with the County except for the following items of possible economic impact: (1) the option to select a "preferred provider organization" (PPO) for current employees, County Exhibit 20(O), Section 2(A)(5); (2) the requirement that both actives and retirees submit to a "mandatory second surgical opinion" and "predetermination of elective admissions, County Exhibit 20(N), Section 2(A)(4) and County Exhibit 20(Q), Section 2(B)(8); and (3) the increase in prescription co-pay from \$2.00 to \$5.00 for actives and from \$3.00 to \$5.00 for retirees.

At the outset, we do not agree with the County's attempts to link the health care cost containment program to the award of its wage offer. We reject the concept of linkage in this case as it would result in an award inconsistent with the stated ends of both parties. Having already rejected the County's wage offer, acceptance of the County's position regarding linkage would result in the rejection of the health care cost containment measures. We believe these measures must be considered on their own merit and should not be accepted nor rejected merely because they have been "packaged" with another proposal.

While the Panel recognizes the "economic consequences" inherent in the County's proposal, particularly the direct out-of-pocket expense of a 66% increase for retirees and 150% for actives in prescription co-pay, it is also sufficiently

astute in the collective bargaining process to know that health care cost containment issues currently predominate the field of collective bargaining. Employers and unions must work together to soften the impact of burgeoning health care costs so that this valuable benefit can continue to be provided to employees at reasonable rates. The parties must find equitable means to shift some of the economic burden. This Panel believes the County's entire proposal serves that end. The Union has an obligation to educate and inform its members of the value of these health insurance benefits and of the virtually insignificant burden these slight increases place on the membership, vis-a-vis the overall cost absorbed by the County.

We find that the County's last best offer is well supported by the evidence and that any inconvenience or financial burden placed on the membership by requiring second opinions and predetermination of elective admissions is outweighed by the need for health care cost containment and is moreover reflective of the trend toward shifting the burden of these costs to the user.

AWARD

Therefore, this Panel awards the Employer's last best offer.

NON-ECONOMIC ISSUES

1. Leave Of Absence Article.

The County proposes modification of the leave of absence provision, as evinced by its Exhibit 20(H) - (K). While some of the county's proposal seems to be of a "housekeeping" nature, the provisions requiring a leave of absence after five days absence from work and the submission to a physical examination prior to the leave being approved are substantive, and have been rejected by the Union.

Corporal Brian Westenberg, President of the Command Officers Association, testified:

...the practice is that the Sheriff's Department is that the employee takes the use of his sick time [...] and [a] leave of absence request is not submitted by the employee. [...]

...our current contract language does not require us to submit a leave of absence request to take time off as sick time over an extended period.

[...] nor are we required to submit to the county for a physical exam to be approved for this leave of absence.

TR, 2/19/91, p. 100-101

Further, in its Brief, the Union summarizes its position with respect to both changes presented by the County as "that provision of the County's proposal is in conflict with current practice in the Department, and as such, is rejected" (p. 21).

Westenberg's testimony at page 101 of the February 19, 1991 hearing transcript establishes that the only reason for the Union's objection to the County's proposal is that it is "not in the current language". No other basis is submitted for rejecting the proposal.

The County would justify its position by claiming the new language: (1) standardizes current practice within the county; (2) notifies the county of each individual's employment status and aids in staffing decisions; and (3) the physician's examination helps insure against abuses of the system. Any associated costs would be borne by the County (County's Brief, p. 28).

We find the County's proposal is reasonable in light of the ends it is designed to meet, and further that the Union proposes no compelling reason why the changes should not be implemented.

AWARD

The County's last best offer regarding the leave of absence provision is awarded without modification.

2. Accumulated Sick Leave Payoff.

The parties have agreed upon the Employer's proposal. Therefore a STIPULATED AWARD is hereby issued.

3. Management Rights Article.

The Union contends that its modifications of the management rights clause presented in its last best offer "have absolutely no impact on the substance of the County's proposal" and that they "merely make the proposed contractual language read easier and more concise." However, the Union does acknowledge that rejection of Paragraph C of the County's proposal is a modification of substance, rather than form. (Union's Brief, p. 24).

Both parties' proposals are substantial embellishments of Article XXI, entitled "Management Prerogative", in the expired agreement, by replacing two single-sentence, vaguely worded sections with quite specific details of those rights reserved unto management. Indeed, with the exception of the division into two paragraphs by the County, the punctuation attendant thereto, and the addition of paragraph "C", the proposals are identical.

We do not share the County's notion that the paragraph should be divided into subparagraphs "A", representing the "big picture", and "B", as those rights affecting the individual. Subparagraph B is no more than a continuation of the type of management rights enumerated in subparagraph A. It is specious to argue that the right "to establish work rules and to fix and determine penalties" for their violation is any more directed toward "affect[ing] the individual employee" than is the right to "assign employees to shifts". Preservation of management rights to operate its business by definition impact upon individual employees, albeit as part of the collective unit. Thus, we do not agree either that the paragraphs focus upon two distinct areas or that they should be

separated for these reasons. In our opinion, the purposes of clarity would be adequately served by substituting a period for the semi-colon after the phrase "services to be provided" near the middle of the first paragraph and utilizing the proposed paragraph B as the second sentence.

This Panel is bewildered by the Union's objection to Paragraph C of the County's proposal. This paragraph appears as Section 2 of the most recently expired agreement and is the product of the parties' prior bargaining. While the Union may believe this section has "no basis for being in a Management Rights section of the collective bargaining agreement" (Union's Brief, p. 24) it is there as a result of prior negotiations. No good reason, such as the ambiguity of the language lending itself to proven abuses, was offered in support of the Union's proposal to eliminate the language.

AWARD

This Panel awards the following as the management rights article:

Section 1. Except as otherwise provided in this Agreement, the Employer retains and shall have the sole and exclusive right and authority to manage and operate its affairs, including all of its operations and activities; to decide the number of employees; to establish the overall operation, policies and procedures of the Employer, to assign employees to shifts in order to adequately staff shifts with experienced personnel; to schedule the shifts of all employees, to direct its working force of employees; to determine the type and scope of services to be furnished, and the type of facilities to be operated; and to determine the methods, procedures and services to be provided. In addition, the Employer shall also have the right to hire, promote, assign, transfer, discipline for just cause (up to and including discharge), layoff and recall; to establish work rules, and to fix and determine penalties for the violation of such rules; to maintain discipline and efficiency among the employees, provided that such rights shall not be exercised by the Employer in violation of any of the express terms and provisions of this Agreement.

Section 2. The Union agrees that its members will not engage in activities during their working hours that may detract from their productivity.

4. Workers Compensation Disability Article.

The parties have agreed upon the Employer's proposal. Therefore, a STIPULATED AWARD is hereby issued.

5. Probationary Period Article.

The County proposes the addition of a new section to Article XXIV to address the issue of current employees promoted within the bargaining unit serving a twelve-month probationary period. During this time they shall be returned to their prior position for unsatisfactory performance as determined by the employer. The Union proposes a modification to allow for a six month probationary period and return to prior position only upon a showing of "just cause", subject to arbitration.

Neither party presented any testimony to justify their respective positions nor to explain the current practice with respect to officers promoted within the unit.

This Panel recognizes the value of a probationary period, whether applied to new employees or to those promoted from within. The duration of the probationary period is at issue. Arguing for a twelve month probationary period, the County asserts it "will better ensure that the promoted officers are comfortable and competent in their new positions." (County's Brief, p. 36). The Union argues for a six month period. Each party believes their allotted time frame adequately serves the interests of all interested parties.

We concur with the Union on the issue of the length of the probationary period. The parties have heretofore agreed that six months is an adequate amount of time to assess a new employee, including those possibly with no prior law enforcement experience. Some portion of the six-month probationary period of a new employee is spent in background and past employer checks, none of which is necessary with a promoted officer. We also believe that the interests of the promoted officer are best served by the shorter probationary period, for he will know within a much shorter time period whether he is qualified for the promotion or whether he will be returned to his prior classification.

AWARD

This Panel awards the following probationary period language to be added as Section 2 to Article XXIV:

It is expressly understood that members of the bargaining unit who have been reclassified into a higher paid classification shall be required to serve a six (6) month probationary period in the new classification to determine their ability to perform duties assigned them. In the event that the employee does not satisfactorily complete the aforementioned probationary period he/she shall be returned to the former classification.

6. Insurance Benefits.

The County has proposed changes of format and substance in the expired contract language, supporting its position with Exhibits 20(N) - (T). The Union is for the most part in accord with the County except for the following items of

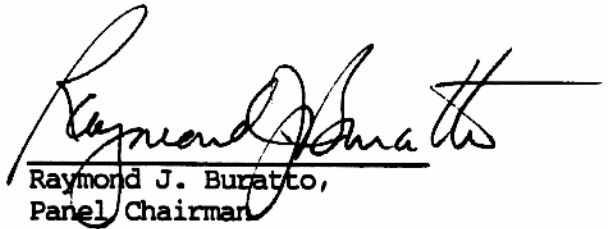
possible economic impact: (1) the option to select a "preferred provider organization" (PPO) for current employees, County Exhibit 20(O), Section 2(A)(5); (2) the requirement that both actives and retirees submit to a "mandatory second surgical opinion" and "predetermination of elective admissions, County Exhibit 20(N), Section 2(A)(4) and County Exhibit 20(Q), Section 2(B)(8); and (3) the increase in prescription co-pay from \$2.00 to \$5.00 for actives and from \$3.00 to \$5.00 for retirees. These items have been treated hereinabove as Economic Issue No. 7. Therefore, this section of the Opinion and Award deals only with the non-economic portions of the proposed insurance benefits changes.

The Union's Brief, pages 22-23, indicates objection only to those insurance benefits changes which have probable economic consequence. The testimony of Brian Westenberg at pages 102-103 of the February 19, 1991 hearing substantiates this conclusion. The County contends that its proposed changes are intended to "make the information easier to understand and locate" (Brief, p. 31), by placing details of the insurance coverages in the collective bargaining agreement, in addition to affording the County the opportunity to shop for "substantially equivalent benefits" from among a variety of carriers.

AWARD

Based upon the positions of the parties evidenced by the testimony and the Briefs, this Panel awards the Employer's last best offer.

This Award, including the Concurrences and Last Best Offers attached hereto, is issued at Rochester Hills, Michigan this 23rd day of August 1991.

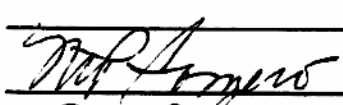
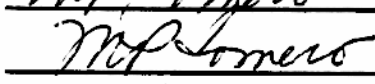

Raymond J. Buratto,
Panel Chairman

UNION
CONCURRENCES

I concur with the Chairman in the following awards:

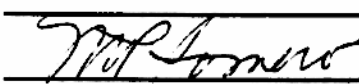
ECONOMIC ISSUES

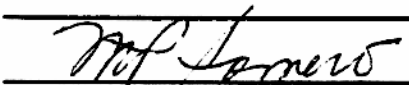
1. Increase in Pension Multiplier
2. Retirement Eligibility
3. Wages
4. Retroactivity of Wages
5. Health Care Cost Containmentment

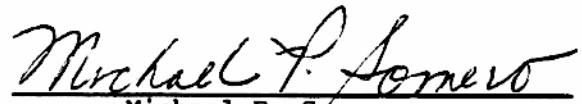



NON-ECONOMIC ISSUES:

1. Leave of Absence
2. Accumulated Sick Leave Payoff (Stipulated)
3. Management Rights Article
4. Workers Compensation Disability (Stipulated)
5. Probationary Period
6. Insurance Benefits
(Changes in format and other issues not
related to health care cost containment)






Michael P. Somero
Employee Delegate

Dated: August 23, 1991

EMPLOYER
CONCURRENCES

I concur with the Chairman in the following awards:

ECONOMIC ISSUES

1. Increase in Pension Multiplier
2. Retirement Eligibility
3. Wages
4. Retroactivity of Wages
5. Health Care Cost Containment

William M. Israel
William M. Israel

William M. Israel
William M. Israel

NON-ECONOMIC ISSUES:

1. Leave of Absence
2. Accumulated Sick Leave Payoff (Stipulated)
3. Management Rights Article
4. Workers Compensation Disability (Stipulated)
5. Probationary Period
6. Insurance Benefits
(Changes in format and other issues not
related to health care cost containment)

William M. Israel
William M. Israel

William M. Israel

William M. Israel

William M. Israel
William M. Israel
Employer Delegate

Dated: August 23, 1991

ACT 312 ARBITRATION PROCEEDING
between
MICHIGAN LABOR COUNCIL,
FRATERNAL ORDER OF POLICE
and
COUNTY OF MACOMB

Arbitrator: Raymond J. Buratto
MERC Act 312 Case No. D88 G-1650

Subject: County of Macomb's Last Offer of Settlement

The following are the County's Last Offers of Settlement on unresolved issues in the above referenced Act 312 proceeding:

I ECONOMIC ISSUES:

RETIREMENT SYSTEM: IMPROVEMENT TO MULTIPLIER FACTOR:

County rejects Union's demand for this benefit improvement; County wishes to maintain the status quo.

RETIREMENT SYSTEM: ADOPTION OF "70" FORMULA:

County rejects Union's demand for this additional benefit.

SHIFT PREMIUM: ADOPTION OF PREMIUM FOR AFTERNOON AND MIDNIGHT SHIFTS:

County rejects Union's demand for the adoption of this new provision.

LONGEVITY PAY: REMOVAL OF CAP ON MEMBERS' PAY:

County rejects Union's demand for this improvement; if improvement on Shift Premium is awarded, County maintains that the Cap on members' pay be reduced to \$20,000, since the current Cap of \$27,500 was previously established as a quid pro quo for not adopting a Shift Premium; if Shift Premium is not awarded, County maintains that the \$27,500 Cap on members' pay be retained.

SICK PAY: IMPROVEMENTS TO ACCUMULATION AND PAY-OFF:

County rejects Union's demand that the Cap on accumulation be removed entirely. However, County offers to increase Cap on accumulation from 125 days to 180 days; County rejects Union's demand that pay-off upon retirement be at 100% of up to 125 days and the County wishes to maintain the status quo of 75% pay-off of up to 125 days.

WAGES: FOR 1989, 1990 AND 1991:

County rejects the Union's demand and the County offers improvements to the members' wages of 4% for 1989, 4% for 1990 and 4% for 1991. County's wage offers are contingent upon the awarding of health care cost containment provisions, as proposed by the County (see below the County's last offer of settlement regarding Insurance Benefits).

INSURANCE BENEFITS ARTICLE: HEALTH CARE COST CONTAINMENT AND COUNTY WAGE OFFER:

It is the County's understanding that Union has agreed to all provisions of this County-proposed Article, except Health Care Cost Containment. County maintains that Union is to accept the health care cost containment provisions and that the County's wage offers for 1989, 1990 and 1991 are contingent upon the Union's acceptance of the health care cost containment provisions. If health care cost containment is not awarded, County's wage offers are 1/2% less for 1989, 1990 and 1991.

RETROACTIVITY: TO BE DECIDED ON AN ISSUE-BY-ISSUE BASIS:

RETIREMENT SYSTEM: IMPROVEMENT TO MULTIPLIER:

If this improvement is awarded, County maintains that it not be provided retroactively.

RETIREMENT SYSTEM: ADOPTION OF "70" FORMULA:

If this new benefit is awarded, County maintains that it not be provided retroactively.

SHIFT PREMIUM: ADOPTION OF PREMIUM FOR AFTERNOON AND MIDNIGHT SHIFTS:

If this new benefit is awarded, County maintains that it not be provided retroactively.

LONGEVITY PAY: REMOVAL OF CAP ON MEMBERS' PAY:

If this improvement is awarded, County maintains that it not be provided retroactively.

SICK PAY: IMPROVEMENTS TO ACCUMULATION AND PAY-OFF:

If this improvement is awarded, County maintains that it not be provided retroactively.

WAGES:

County offers full retroactivity on wages back to January 1, 1989.

II NON-ECONOMIC ISSUES

LEAVE OF ABSENCE ARTICLE:

The County maintains that County Exhibits 20-H through 20-K be awarded.

ACCUMULATED SICK LEAVE PAYOFF ARTICLE:

The County maintains that County Exhibit 20-U be awarded.

MANAGEMENT RIGHTS ARTICLE:

The County maintains that County Exhibit 21 be awarded.

WORKERS COMPENSATION DISABILITY ARTICLE:

The County maintains that County Exhibit 20-W be awarded.

PROBATIONARY PERIOD ARTICLE:

The County maintains that County Exhibit 20-X be awarded.

STATE OF MICHIGAN
COMPULSORY ARBITRATION

In the Matter of:

COUNTY OF MACOMB,

Employer,

-and-

MERC Act 312
Case No: D88 G-1650

MACOMB COUNTY SHERIFF'S DEPARTMENT
COMMAND OFFICERS, LABOR COUNCIL,
MICHIGAN FRATERNAL ORDER OF POLICE,

Labor Organization.

RAYMOND BURATTO, Chairperson
WILLIAM M. ISRAEL, Employer Designee
MICHAEL P. SOMERO, Labor Organization Designee

UNION'S LAST BEST OFFERS

Submitted by:

JOHN A. LYONS, P.C.
DAVID K. SUCHER (P41612)
Attorney for Labor Organization
675 E. Big Beaver, Ste. 105
Troy, MI 48083
(313) 524-0890

RETIREMENT
(Article XXXVIII/Section 3)

Union's Proposed Modifications:

A County pension which when added to his employee pension will provide a retirement allowance equal to the number of years and fraction of a year, of his credited service multiplied by the sum of 2.5% of his final average compensation, for the first twenty-six (26) years and 1% thereafter. In no case shall his county pension exceed 70% of his final average compensation. Upon an employee receiving social security benefits, the 2.5% of final average compensation will be reduced to 2.25% of final average compensation for the first twenty-six (26) years and 1% thereafter.

An employee in the classification of Lieutenant, Sergeant, and Corporal who has attained twenty-five (25) or more years credited service, or has attained the age of 60 years and has eight (8) or more years of credited service, may retire upon written application filed with the commission setting forth at what time not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired. Upon his retirement he shall receive a retirement allowance provided in Section 24 of the Macomb County Employees Retirement Ordinance.

LONGEVITY
(Article XX)

Union's Proposed Modifications:

Effective January 1, 1989, longevity pay shall be based on the annual maximum base salary for the rank of Corporal paid to such employee as of October 31, provided, such employee qualified as to the length of service as per section 3.

Section 3E to read as follows:

<u>Step</u>	<u>Continuous Years of Service on or Before October 31st of Each Year</u>	<u>Percent</u>
1	5 to 10	2%
2	10 to 15	4%
3	15 to 20	6%
4	20 to 25	8%
5	25 and thereafter	10%

SICK PAY
(Article XXX/Sections 1 and 9)

The Union has withdrawn this issue. As such, the current contractual language will remain status quo.

SHIFT DIFFERENTIAL
(New Article)

Union Proposed Modifications:

The Union is requesting a new article be added to the Collective Bargaining Agreement to allow officers the following shift premium:

Afternoon shift - 3% of base pay
Midnight shift - 6% of base pay

HOLIDAY PAY
(Article XV/Section 1)

The Union has withdrawn this issue. As such, the current contractual language will remain status quo.

WAGES
(Schedule A)

Union's Proposed Modifications:

The Union is requesting a three (3) year collective bargaining agreement effective January 1, 1989 through December 31, 1991. In addition, the Union is requesting that the parties maintain the current 10% differential between ranks.

Alternatively, should the Panel elect to remove the current 10% differential between ranks from the collective bargaining agreement, the Union is requesting the following wage increases for the appropriate year:

1989 - 5.5%
1990 - 5.5%
1991 - 5.5%

The Union is also requesting that all economic benefits be retroactive to January 1, 1989.

LEAVE OF ABSENCE
(Article XIX)

Union's Proposed Modifications:

Sec. 1. A leave of absence may be requested in writing for any of the following reasons:

- A. Personal illness/injury
(Personal illness includes a woman's actual physical inability to work as a result of pregnancy, child birth, or related medical condition.)
- B. Illness/injury in immediate family
- C. Education
- D. Military Service
- E. Personal Reason

Sec. 2. General Provisions:

- A. Leave of absence may be with pay or without pay.
- B. Failure to report for duty upon expiration of a leave of absence shall be considered a resignation. Exceptions may be approved by the Employer in situations that are beyond the control of the employee.
- C. Waiting periods for Leaves of Absence eligibility:
 - 1. Employees must have six (6) months or more of continuous service to be eligible for any of the following Leaves of Absence:
 - Illness/injury in immediate family
 - Education
 - Personal reasons
 - Personal illness/injury
 - 2. Employees shall not be required to complete a waiting period in order to be eligible for the following Leaves of Absence:
 - Military service
 - An illness/injury for which an employee is eligible for and receiving Workers Compensation benefits.

D. Duration of Leaves of Absence:

1. An approved leave of absence shall not exceed six (6) months, except that the following types of absence may have extensions of up to six (6) months granted:
 - Personal illness/injury
 - Education
2. All requirements for such requested extensions must be fulfilled. Extensions shall be granted or denied in writing. The aggregate total time of all extensions shall not exceed an additional six (6) months from the expiration of the original leave of absence.

E. The Sheriff and the Director of Personnel-Labor Relations shall approve or disapprove all requests for Leave of Absence, except for Worker's Compensation claims which shall be governed by applicable statutes.

F. An employee who receives a leave of absence without pay shall not accrue benefits during the time which the employee is on said leave of absence without pay.

Sec. 3. Types of Leaves of Absence

A. Personal Illness/Injury:

1. All requests for this type of leave of absence must be submitted in writing to the Sheriff or designee. In proper circumstances, the Employer may waive the requirement that said request be in writing.
2. The written request for a leave of absence must be accompanied by a physician's statement which includes the following information:
 - a. General nature of personal illness/injury.
 - b. Dates of incapacity.
 - c. Anticipated date of return to work.
 - d. Physician's signature.
 - e. Physician's name, address and telephone number.

3. Request for an extension must be submitted in writing at least five (5) working days prior to the expiration of the original leave of absence. The request for an extension must be accompanied by a physician's statement which includes the information in Section 3, paragraph A.2, of this Article.
 4. Prior to returning from a Personal Illness/Injury Leave of Absence, regardless of whether said leave is with pay or without pay, the employee shall submit to the Employer evidence in the form of a medical certificate, or other written medical documentation; said certificate or documentation shall indicate the anticipated date of return and that the employee has the ability to perform normally assigned duties and functions. At the Employer's sole discretion, it may require that a medical examination be conducted; said examination shall be at the Employer's expense.
- B. Illness/injury of a member of the employee's immediate family:
1. A leave of absence may be requested because of illness/injury suffered by a member of the employee's immediate family. All requests for this type of leave of absence must be submitted in writing to the Sheriff or designee. In proper circumstances, the Employer may waive the requirement that said request be in writing.
 2. In addition to the written request for a leave of absence, a letter from the physician attending the ill/injured member may be requested to evaluate the request.
- C. Education:
1. All requests for this type of leave of absence shall be submitted in writing to the Sheriff or designee.
 2. All requests for this type of leave of absence must be submitted at least thirty (30) days prior to the effective date of leave.
- D. Military:
1. All requests for this type of leave of absence must be submitted in writing to the Sheriff or designee.

2. All request for this type of leave of absence must be submitted at least thirty (30) days prior to the effective date of leave.
3. An employee while attending, pursuant to governmental orders, the two (2) week National Guard Training, is entitled, under Federal Law, to accumulate both Sick and Annual Leave, to accumulate seniority towards longevity, and to accumulate seniority towards retirement.
4. An employee who goes on active military duty shall have re-employment rights as provided by State and Federal Statutes.
5. A probationary employee who enters the Armed Forces must complete his/her probationary period upon his/her return to County employment, and upon completing said probationary period, will be provided seniority equal to the time spent in the Armed Forces and the time spent in previous County service.

E. Personal Reasons:

1. All requests for this type of leave of absence shall be submitted directly to the Direction of Personnel-Labor Relations for approval or disapproval. It shall be the responsibility of the Director of Personnel-Labor Relations to convey the need for such leave of absence to the Sheriff who shall also approve or disapprove such request.
2. All requests for this type of leave of absence must normally be submitted at least thirty (30) days prior to the effective date of leave.

SICK LEAVE
(Article XXX)

The Union has agreed to the language as proposed by the Employer. As such, Article XXX will read as follows:

- Sec. 1 Every full-time employee shall be entitled to Sick Leave with full pay of one-half (1/2) day (computed at straight time) for each completed two-week period of service.
- Sec. 2 Unused sick leave may be accumulated to a maximum of 125 work days (1,000 hours).

- Sec. 3 An employee may utilize sick leave allowance for absences:
- A. Due to personal illness or physical incapacity caused by factors over which the employee has no reasonable immediate control. Personal illness includes a woman's actual physical inability to work as a result of pregnancy, child birth, or related medical condition.
 - B. Necessitated by exposure to contagious disease in which the health of others would be endangered by attendance on duty.
 - C. Due to illness of a member of his/her immediate family who requires his/her personal care and attention, not exceeding five (5) sick leave days in any one calendar year. The term "immediate family" as used in this section shall mean current spouse, parents, grandparents, children, brothers, or sisters of the the employee or of the employee's current spouse. It shall also include any person who is normally a member of the employee's household.
 - D. To report to the Veteran's Administration for medical examinations or other purposes relating to eligibility for disability pension or medical treatment.
 - E. Personal Days. An employee may use two (2) days per year for personal business reasons not to be deducted from his/her Sick Leave Bank.
- Sec. 4 Any employee absent for one of the reasons mentioned above shall inform his/her immediate supervisor of such absence as soon as possible and failure to do so within the earliest reasonable time, may be the cause of denial of sick leave with pay for the period of absence.
- Sec. 5 The employee may be required to produce evidence, in the form of a medical certificate, of the adequacy of the reason for absence during the time for which sick leave is granted.
- Sec. 6 Sick leave shall be taken upon a regularly scheduled work week basis. Holidays falling within a period of sick leave shall not be counted as work days, except as provided for in the Holiday Pay provision of this Agreement.
- Sec. 7 Sick leave shall not accrue during a Leave of Absence Without Pay; provided, however, that Sick Leave time

accumulated at the time of commencement of leave of absence shall be restored upon return to active employment by the employee, provided such leave of absence does not exceed the approved length of the leave of absence; otherwise such accumulated Sick Leave time shall be forfeited.

- Sec. 8 A non-probationary employee who is seriously ill for more than five (5) days while on annual leave, may, upon application, have the duration of such illness charged against his/her sick leave reserve rather than against annual leave. Notice of such illness must be given immediately. Proof of such illness in the form of a physician's certificate shall be submitted by the employee.
- Sec. 9 Employees shall not be entitled to use Sick Leave until the completion of six (6) to (2) week periods of continuous full-time service, except in cases of injury incurred in the line of duty.

INSURANCE BENEFITS (Article XVI)

The Union is requesting that this article remain status quo.

ACCUMULATED SICK LEAVE PAYOFF (Article XXX)

The Union has agreed to the language as proposed by the Employer. As such, Article XXX will read as follows:

A. Retirement: An employee who leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance, shall be paid for seventy-five percent (75%) of his/her accumulated and unused Sick Leave at employee's current rate of pay. In case of death, payment upon the same basis shall be made to the deceased employee's designated life insurance beneficiary.

B. Deferred Retirement: An employee who leaves employment and elects to defer retirement benefits, shall receive payment representing fifty percent (50%) of his/her accumulated and unused Sick Leave, computed on the basis of the employee's salary at termination of employment. This payment shall not be made to the employee until the employee begins to receive retirement benefits. In case the former employee dies prior to the time that the retirement benefits are to begin, said accumulated payoff shall be made to the employee's pension beneficiary.

C. Payoff When There is Nor Retirement: An employee leaving County service after ten (10) years of coninuous service, who elects not to receive retirement benefits, shall receive payment representing fifty percent (50%) of his/her accumulated and unused Sick Leave, computed on the basis of employee's salary at termination of employment, except as hereinafter provided. Employees hired on or after January 1, 1974, will be ineligible for and will not receive the fifty percent (50%) payment specified in this paragraph.

MANAGEMENT RIGHTS
(Article XXI)

Union's Proposed Modifications:

Except as otherwise provided in this Agreement, the Employer retains and shall have the sole and exclusive right and authority to manage and operate its affairs, including all of its operations and activities; to decide the number of employees; to establish the overall operation, policies and procedures of the Employer, to assign employees to shifts in order to adequately staff shifts with experienced personnel; to schedule the shifts of all employees, to direct its working force of employees; to determine the type and scope of services to be furnished, and the type of facilities to be operated; to determine the methods, procedures and services to be provided; shall have the right to hire, promote, assign, transfer, discipline for just cause (up to and including discharge), layoff and recall; to establish work rules, and to fix and determine penalties for the violation of such rules; to maintain discipline and efficiency among the employees, provided that such rights shall not be exercised by the Employer in violation of any of the express terms and provisions of this Agreement.

WORKERS COMPENSATION DISABILITY
(Article VIII)

The Union has agreed to the language as proposed by the Employer. As such, Article VIII will read as follows:

A County employee who has incurred bodily injury arising out of and in the course of actual performance of duty in the service of the county, which bodily injury totally incapacitates such employee from performing any available County employment shall be entitled to disability compensation upon the following basis and subject to the following provisions:

- A. The employee must be eligible for and receive Worker's Compensation on account of such bodily injury.

- B. The total incapacity, as above set forth, must continue for the duration of the period of compensation.
- C. Any employee suffering an injury within the meaning and definition of this paragraph shall file a report in writing, relating to such injury, with the Sheriff or designee on the day such injury occurs or, if physically unable to do so because of the nature of the injury, then a physician's report in writing relating to such injury shall be filed with the Sheriff or designee within one week from date of injury. The report shall be made upon the form furnished by the County of Macomb and when received by the Sheriff or designee shall be transmitted forthwith to the office of the Personnel-Labor Relations Director.
- D. The employee shall furnish to the Personnel-Labor Relations Department a written medical certificate which includes a description of the injury and period of incapacity as well as periodic written medical progress reports when requested.
- E. Compensation received by an employee who has incurred bodily injury arising out of and in the course of actual performance of duty, which bodily injury totally incapacitates such employee from performing any available County employment, shall be paid on the following basis:

The compensation received by such employee under the Worker's Compensation Act shall be supplemented by the amount necessary to equal his/her regular salary, such payments to continue for a period of six (6) months from date of incapacitating injury. At the end of said six (6) month period, the Personnel-Labor Relations Department shall review the disability status of the injured employee to determine if up to an additional six (6) month extension shall be granted, dependent upon the physical condition and ability of the employee to perform other available County employment. In no event shall the period for supplementation under this provision exceed one (1) year from the date of incapacitating injury. If disability exists at the end of the one (1) year period, the employee shall seek to become eligible for coverage under the appropriate disability provision of the Macomb County Employees' Retirement Ordinance. Employees receiving disability compensation hereunder shall continue to accrue sick leave days on the same basis as employees on the active payroll and such disability sick days compensated for under this paragraph shall not be deducted from the employee's sick leave bank.

PROBATIONARY PERIOD
(Article XXIV/Section 2)

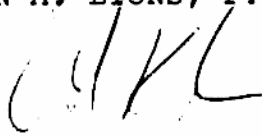
Union's Proposed Modifications:

Add a section, as follows, to the Article:

Sec. 2 It is expressly understood that members of the bargaining unit who have been reclassified into a higher paid classification shall be required to serve a six (6) month probationary period in the new classification to determine their ability to perform duties assigned them. In the event that the employee does not satisfactorily complete the aforementioned probationary period he/she may be returned to their former classification for just cause subject to Article XIII, Grievance Procedure.

Respectfully submitted,

JOHN A. LYONS, P.C.



David K. Sucher (P41612)
Attorney for Labor Organization
675 E. Big Beaver, Ste. 105
Troy, MI 48083
(313) 524-0890