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STATE OF MICHIGAN
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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS

In the matter of Act 312
Arbitration between:

COUNTY OF MACOMB,

Employer,

and

MACOMB COUNTY PROFESSIONAL
DEPUTIES ASSOCIATION,

Labor Organization.

Case No. D88J-2147

Arbitration Panel:

~~James E. Simpson~~
Charles E. Keller, Employer
Delegate
Peter P. Sudnick, Labor
Organization Delegate

Macomb County

Appearances:

For the Employer:

Charles E. Keller
Keller, Thoma, Schwarze,
Schwarze, DuBay & Katz, P.C.
440 E. Congress
Detroit, MI 48226

For the Labor Organization:

Peter P. Sudnick
Finkel, Whitefield &
Selik, P.C.
32300 Northwestern
Farmington Hills, MI 48334

OPINION AND AWARD

I. Introduction

This Act 312 arbitration proceeding involves the County of Macomb (hereinafter "County") and the Macomb County Professional Deputies Association (hereinafter "Association"), representing approximately 249 members employed by the Macomb County Sheriff's Department in the classifications of Deputy (117), Correction Office Leader (6), Correction Officer (108), Matron (8) and Paraprofessional (10).

The last contract between the County and the Association covered the years 1986-1988. The parties initiated bargaining for a new agreement on September 29, 1988. Negotiations continued through the contract expiration date of December 31, 1988, the parties having agreed to extend the collective bargaining agreement through April 30, 1989. The assistance of State Mediator Doris Petross in April, 1989, failed to produce an agreement by the expiration of the contract extension. The Association thereupon filed a Petition for Arbitration under Act 312 of the Public Acts of 1969 (MCL 423.201 et seq).

Jerold Lax was appointed as the impartial chairman of the arbitration panel on July 14, 1989. Charles E. Keller and Peter P. Sudnick were selected by the County and Association, respectively, to serve as panel representatives. The commencement of formal proceedings was delayed at the request of the parties because it appeared that further negotiations might result in a new contract.

At a ratification meeting conducted on August 24, 1989, the employees rejected a tentative settlement, and negotiations continued through the fall of 1989. A pre-hearing conference between the Chairperson and parties was conducted on December 19, 1989. At the conference, the Association submitted its list of Association issues and its position on various procedural matters. The County, at the conference, requested a separate hearing on the issue of comparables, objected to the inclusion of an Association-proposed issue concerning annuity withdrawal, and

objected to the inclusion of Correction Officer Leaders, Correction Officers and Matrons in the 312 Petition. The Association contended that the issue of 312 eligibility was reserved exclusively to the Michigan Employment Relations Commission, and that the arbitration panel had no authority to exclude any classification from the Act 312 proceedings. Shortly after the pre-hearing conference, the County, on December 26, 1989, filed a unit clarification petition with the Employment Relations Commission seeking to bar the participation of Correction Officer Leaders, Correction Officers and Matrons in the 312 arbitration. A hearing on the unit clarification petition was scheduled for March 30, 1990. On February 2, 1990, the parties were notified by the Chairperson that the formal Act 312 hearing would commence on April 10, 1990 at 9:30 a.m. in Mount Clemens, Michigan.

Before the commencement of the formal Act 312 hearing, the parties reached yet another tentative settlement on March 30, 1990, just prior to litigating the 312 eligibility issues. The formal arbitration hearing was then adjourned pending a ratification vote scheduled for April 20, 1990. Subsequently, the settlement was rejected by the employees.

The unit clarification hearings before MERC took place on July 20, August 29 and September 5, 1990. On September 20, 1991, after the formal Act 312 hearings had concluded, MERC rendered its decision that Correction Officer Leaders, Correction

Officers, and Matrons were not subject to the compulsory arbitration procedures of Act 312.

The formal Act 312 arbitration hearings commenced on August 1, 1990. The initial hearing, by agreement of the parties, was devoted principally to the issue of comparables. Each party was given a full opportunity to present testimony and evidence. Before the presentation of proofs, the Chairperson indicated that he would provide a written decision on the issue of whether the annuity withdrawal issue could be included as an issue in the subsequent hearings. Additionally, it was determined that the parties would proceed with respect to all classifications in the bargaining unit pending a decision by MERC on the eligibility of the Correction Officer Leaders, Correction Officers and Matrons. Any arbitration decision impacting on these classifications would be withheld until MERC determined the propriety of their participation in the 312 process. Following the conclusion of the hearing on the issue of comparables and the receipt of the transcript, each party submitted post-hearing briefs.

On December 19, 1990, the Chairperson submitted his conclusions on the question of comparables and on the inclusion of the annuity withdrawal issue. He determined that the issue of annuity withdrawal would be included, and that the comparables which should be considered were those mutually agreed upon by the parties (Genesee County, Kent County, Oakland County, St. Clair County and Washtenaw County), the comparables proposed by the Association (Clinton Township, City of Mt. Clemens, City of St.

Clair Shores, Michigan Department of Corrections Officers, Michigan State Police, Shelby Township, City of Sterling Heights and City of Warren), and also Ingham County and Kalamazoo County, which were two of the seven counties which the County had proposed for inclusion.

A conference call was held on January 3, 1991 to establish dates for the remainder of the hearings. After the parties were given an opportunity to prepare exhibits, further hearings were conducted on April 15, April 23, April 30, May 21, May 29, May 31 and June 18, 1991. During the hearings, each party was given full opportunity to present testimony and evidence, with some 273 exhibits being presented to the panel for its consideration.

The offers of the parties concerning outstanding economic and non-economic issues were exchanged on or about July 9, 1991. Following receipt of the final transcript, it was mutually determined that briefs in support of the positions of the parties were to be submitted on or before August 26, 1991.

The parties have agreed that the duration of the contract should be 3 years. Further, a number of contractual issues have been tentatively resolved through negotiation, and will, by agreement of the parties, be included as part of this arbitration award. The issues of annuity withdrawal and disability bank, concerning which evidence had been presented during the hearings, were subsequently withdrawn by the Association from consideration by the panel. Issues relating only to Corrections Officer Leaders, Corrections Officers, and Matrons do not at present

require resolution as a result of the MERC decision excluding these classifications from the Act 312 proceedings. The disputed issues to be resolved in this award (which are economic, unless otherwise indicated) are the following:

- 1 - Disciplinary procedures (non-economic)
- 2 - Preferred job assignments (non-economic)
- 3 - Maintenance of conditions (non-economic)
- 4 - Overtime
- 5 - Insurance benefits (retiree life insurance)
- 6 - Insurance benefits (cost containment items)
- 7 - Retirement allowance (age of retirement)
- 8 - Retirement allowance (annuity factor/maximum allowance)
- 9 - Retirement allowance (survivor benefits)
- 10 - Longevity
- 11 - Education allowance
- 12 - Salary (1989, 1990, and 1991 contract years)
- 13 - Salary (dispatcher adjustment)
- 14 - Training time
- 15 - Retroactivity

The panel met in executive session on November 13, 1991 to discuss the proposed award, and the following discussion summarizes the conclusions of the panel. All panel members are in agreement that this award shall be regarded as timely under Act 312. In rendering this award, the panel has adhered to the directive of Section 9 of Act 312 that it base its findings, opinion and order upon the following factors, as applicable:

- a. The lawful authority of the employer;
- b. Stipulations of the parties;
- c. The interest 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 sector or in private employment.

Further, with regard to economic issues, the panel has adhered to the directive of Section 8 of the statute that it adopt the best offer of settlement which, in the opinion of the panel, more nearly complies with the applicable factors prescribed in Section 9. The panel notes, however, that with regard to any particular

issue, each Section 9 factor need not be accorded equal weight. City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980).

II. Resolution of disputed issues

(1) Disciplinary procedures

The issue upon which the parties have been unable to agree is the Association's request that specific language be included in the disciplinary article of the contract (Article VIII of the 1986-88 agreement) that discipline may be imposed only for "just cause." The Association contends--and the evidence supports this contention--that the relevant contracts in all comparable communities contain such language, or incorporate statutory provisions containing such language. While the County resists the inclusion of "just cause" language in the disciplinary article, the testimony produced by the County during the arbitration hearings essentially conceded that the County adheres to a just cause standard in imposing discipline. While the County suggests that the inclusion of the phrase "just cause" carries with it "a weight of legal baggage" which might cause problems, it is not apparent that any problems would result from conforming the contract to the practice of the parties. Under these circumstances, a majority of the panel concludes that it is appropriate that the language requested by the Association be included in the contract.

It is the award of the panel that the disciplinary article of the contract provide that discipline may be imposed only for

just cause. (The effective date of this award, as well as of the awards relating to other disputed issues, will be discussed below under the heading "Retroactivity.")

(2) Preferred job assignments

Article XI of the 1986-88 contract provided that the following positions were to be classified as preferred jobs, with the positions being further subdivided into categories for which varying selection procedures were specified:

Marine Division, Jail Information Officer, Traffic Division, Breathalyzer Operator, Crime Prevention, Youth Bureau, Scuba Diver, Identification Bureau, S.W.A.T., Evidence Technician, Circuit Court/Station Three, K-9 Unit, C.O.M.E.T., Special Enforcement Team, Court Cars, Circuit Court Officers, Warrants, Court Paper/Salvage Vehicle, Inmate Funds, WAYMAC.

During the process of attempting to arrive at a new agreement, the County at one point took the position that the preferred jobs article should be eliminated. Subsequently, the parties appear to have reached tentative agreement on a revised version of the article (introduced into evidence as County Exhibit 90) which would have added certain additional positions (Detective Bureau Investigator, Classification Officer, Visiting Officer) and would have increased the Sheriff's discretion in the assignment of certain existing positions (Circuit Court Officer, Warrant Officer, Inmate Funds, Jail Information Officer), eliminating the need to be governed by seniority in the case of Circuit Court Officers and Warrant Officers and allowing assignment outside the bargaining unit in the case of Inmate

Funds and Jail Information Officer. The tentative agreement was later rejected by the Association membership.

It is the Association's contention that the addition of the positions of Detective Bureau Investigator, Classification Officer, and Visiting Officer, as well as the addition of the position of Field Training Officer, to the category of preferred jobs is not in fact a modification of current practice, but rather a recognition of current practice. While the Association does not object to the assignment of Circuit Court Officers and Warrant Officers in accordance with the earlier tentative agreement (on the assumption that the Sheriff's discretion in assigning these positions is restricted to bargaining unit employees), the Association contends that the method by which the tentative agreement deals with assignment of the Inmate Funds position, as well as of Jail Information Officer positions other than one reserved to Corrections Officers, involves unprecedented discretion of the Sheriff to make assignments outside the bargaining unit. Hence, while the Association regards certain provisions of the tentative agreement as acceptable, it would modify that agreement by the addition of the position of Field Training Officer to Group C and by the deletion of Inmate Funds from Group D(3), the deletion of Jail Information Officer from Group D (4), and the inclusion of these two positions in their former location of Group B (2). (Presumably, this would result in Group D(5) being renumbered D(3).)

The County does not appear to disagree that the positions of Detective Bureau Investigator, Classification Officer, Visiting Officer, and Field Training Officer, although not listed in the 1986-88 contract, have in fact been treated as preferred jobs, nor does there appear to be disagreement with the categories in which the Association contends these positions have, in fact, been placed. The County contends, however, that the formal addition of these positions to the contract should be regarded as a gain by the Association and that, further, it is appropriate to grant the Sheriff greater discretion in assigning employees to the Inmate Funds and Jail Information Officer positions since, in the Sheriff's view, these positions are essentially clerical in nature.

While it is the case that few contracts in comparable communities contain preferred job provisions, it is the conclusion of the majority of the panel that, based upon the evidence, the Association's position more accurately represents the situation prevailing between the parties in their present employment relationship, and that no compelling reasons have been advanced which require modification of that relationship.

It is the award of the panel that the provisions of County Exhibit 90, with the modifications proposed by the Association, shall constitute the method of dealing with preferred job assignments. The exercise of discretion under Groups D(1) and D(2) shall, as assumed by the Association, be limited to bargaining unit employees. (The panel notes that Exhibit 90

erroneously refers to the "Special Enforcement Team" as the "Selective Enforcement Team," and that the former designation is the correct one.)

(3) Maintenance of conditions

The Association requests that a provision be included in the contract providing:

Wages, hours, and conditions of employment legally in effect at the execution of this Agreement shall, except as improved herein, be maintained during the term of this Agreement. No employee shall suffer a reduction of such benefits as a consequence of this Agreement.

While conceding that such a provision is absent from a majority of the relevant contracts in comparable communities, the Association contends that such provisions are commonplace in collective bargaining agreements and would be appropriate in the instant situation as a counterbalance to the management rights clause contained in the 1986-88 agreement. The County opposes the inclusion of a maintenance of conditions clause, contending it would, among other things, introduce further confusion and ambiguity into the existing employment relationship.

While the Chairperson is mindful of the existence of such clauses in a variety of collective bargaining agreements, a majority of the panel is of the view that there has been no showing that such a clause would produce any substantial beneficial effect in the instant situation.

It is the award of the panel that the contract contain no maintenance of conditions clause.

(4) Overtime

The 1986-88 contract provided the following relief in the event that an employee was passed over improperly in the assignment of overtime work:

In the event an employee is wrongfully passed over in accordance with Section 3 above for overtime work, said employee will be called in for overtime and be paid time and one-half on a day mutually agreed upon between the employee and Sheriff in an assignment designated within the Sheriff's discretion. The calling in of said employee will not result in the displacement of said employee and/or another employee who would have otherwise been called in for overtime. The calling in of said employee will result in the working of an additional employee rather than a replacement employee.

The County seeks to have the foregoing language replaced with the following remedial provision:

In the event an employee is passed over due to an error, that member will be given the first overtime opportunity that he/she signs up for, regardless of seniority or overtime hours previously recorded. Hours worked as a remedy will be exempt from the overtime hours charged.

The County argues that the existing provision imposes an unjustifiable burden on the employer in requiring that an employee be paid for doing overtime work which may not in fact be required by the employer. The Association contends that in the absence of a provision like the existing provision--or, in the alternative, a provision that an employee deprived of an overtime assignment be paid for the missed assignment--employees would not have the opportunity to obtain the economic benefits of overtime.

While there is some force in the County's argument, the Association is also correct in asserting that it is appropriate to provide some relief in the event that overtime is mistakenly denied. The existing contractual provision does allow the Sheriff discretion in determining an appropriate make-up assignment, and the record indicates that the County only rarely makes the sort of initial mistake in overtime assignment which would require any relief. The record does not demonstrate that the County lacks the financial ability to meet the obligations imposed by the existing provision. Under all these circumstances, a majority of the panel is of the view that no compelling reason exists to modify the present requirement.

It is the award of the panel that the position of the Association be adopted and that the present contractual provision remain unchanged.

(5) Insurance Benefits (retiree life insurance)

The Association requests that the existing \$1,000 life insurance benefit for retirees be increased to \$5,000; the County requests that the amount of the benefit remain unchanged. While it does not appear that the County lacks the financial ability to satisfy the Association's request, an examination of the benefits in comparable communities is supportive of the County's position. Although certain of the comparable communities provide retiree life insurance in an amount higher than that available to employees in the instant bargaining unit, the majority of the comparable communities provide no such benefits.

It is the award of the panel that the position of the County be adopted and that the present contractual provision remain unchanged.

(6) Insurance Benefits (cost containment)

The County had proposed a new format for defining available health insurance benefits, including provisions which would require both active and retired employees to participate in cost-saving programs known as "Mandatory Second Surgical Opinion" and "Predetermination of Elective Admissions" (these programs are referred to in County Exhibit 53, §§B(1)(d) and B(2)(h)). The County contends that adoption of these provisions would result in annual savings in excess of \$300,000. The parties are in apparent agreement concerning aspects of the new format other than the two aforementioned programs, which the County requests be included in the contract and which the Association desires to exclude. The record indicates that the contracts of 19 of the 21 bargaining units in the County contain the disputed provisions, including the agreement relating to command officers in the Sheriff's Department. While the Association is correct in noting that the majority of the relevant contracts in comparable communities do not include these programs, it is nonetheless the case that mandatory second surgical opinion is required in seven of the comparable communities and that predetermination of elective admission is required in five of the communities. Considering these facts, as well as economic benefits resulting from other aspects of this award, a majority of the panel

considers the County's position as the more appropriate manner of resolving this issue.

It is the award of the panel that the position of the County be adopted and that the provisions of County Exhibit 53, including but not limited to "Mandatory Second Surgical Opinion" and "Predetermination of Elective Admissions," be included in the contract.

(7) Retirement allowance (age of retirement)

The Association requests that the minimum retirement age for employees with 25 years of service be reduced from the present requirement of 50 years of age to 48 years of age, while the County requests that the present minimum age requirement remain unchanged. The Association supports its request by noting that only 6 of the 15 comparable communities have a minimum age requirement for retirement after 25 years of service, and that the County's pension fund is adequate to absorb any increased cost resulting from a reduction in the retirement age. The County argues that its position finds support in the 1981 report of the President's Commission on Pension Policy, which recommends that minimum retirement age requirements be increased rather than decreased. Further, the County argues that no County bargaining unit outside the scope of Act 312 permits retirement at an age less than 55, nor do any of the other County units subject to Act 312 permit retirement at an age less than 50.

The Chairperson is of the view that the report of the Presidential commission does not fit easily into any of the

decision factors contained in Section 9 of Act 312 and is therefore entitled to no particular weight in arriving at a decision concerning this issue. Nonetheless, considering such factors as the conditions prevailing with regard to other County bargaining units, including those subject to Act 312, the presence of a minimum age requirement of at least 50 in an appreciable number or comparable communities, and the economic benefits resulting from other aspects of this award, a majority concludes that the County's position on this issue should prevail.

It is the award of the panel that the position of the County be adopted and that the minimum retirement age of 50 for employees with 25 years of service remain unchanged.

(8) Retirement allowance (annuity factor/
maximum allowance

The Association requests that the multiplier used to determine pension benefits be increased from the present 2.25% to 2.40%, and that the maximum County-financed pension benefit be increased from 65% of final average compensation to 75% of final average compensation, while the County requests that the status quo be maintained. The Association notes that relevant contracts in 8 of the 15 comparable communities use multipliers in excess of 2.25%, and that relevant contracts in 10 of the comparable communities provide pensions equal to 75% of final average compensation. As with the issue of retirement age, the Association argues that the pension fund is capable of absorbing any increased cost of the Association's proposal. The County

observes that the present pension formula for deputies is superior to that for other County bargaining units not subject to Act 312 both with regard to multiplier and maximum benefit. Moreover, command officers in the County Sheriff's Department are governed by a pension formula equivalent to that of the present formula for the deputies, and the County argues that it would be inappropriate to award deputies a superior formula. With regard to the pension benefits in comparable communities, the County notes that only 3 of the communities using higher multipliers provide social security benefits for the employees in question, as does Macomb County, and that Macomb County utilizes a definition of final average compensation more inclusive than that used in most of the comparable communities.

A majority of the panel concludes that, in light of the conditions prevailing with regard to other County units, including the command officers, and in the context of the economic benefits resulting from other aspects of this award, the status quo should be maintained with regard to this issue.

It is the award of the panel that the position of the County be adopted and that the multiplier of 2.25% for the first 26 years and 1% for each year thereafter, with a maximum benefit of 65% of final average compensation, remain unchanged.

(9) Retirement allowance (survivor benefits)

It is currently possible for the surviving spouse of a deputy who has died after ten years of service to receive a survivor benefit upon the spouse attaining the age of 50. The

Association requests that the survivor benefit be payable to the surviving spouse immediately upon the death of the employee, while the County requests either that the status quo be maintained or, in the alternative, that the employees' pension contribution be increased from 3% to 3.5% if earlier payment of the survivor benefit is awarded.

The Association's principal argument in support of its request is the fact that the County has provided the desired benefit for all its non-union personnel without any corresponding increase in pension contribution. A majority of the panel is of the view that the Association's reliance on this internal comparison is appropriate, particularly in light of the County's reliance on such comparisons in other instances, and that the benefit in question is consistent both with the welfare of the public and the County's ability to pay.

It is the award of the panel that the position of the Association be adopted, and that survivor benefits be immediately available upon the death of employees who have completed ten years of service.

(10) Longevity

At present, deputies and paraprofessionals (dispatchers) receive a longevity bonus of 2% for 5-10 years of service, 4% for 10-15 years of service, 6% for 15-20 years of service, 8% for 20-25 years of service, and 10% for service in excess of 25 years; this bonus is calculated as a percentage of base salary, but the base for such calculation is presently

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limited to \$20,000 for deputies and \$15,000 for paraprofessionals. The Association requests that this base be raised to \$25,000 for both classifications, while the County requests that the base be restricted to its present level.

A comparison of longevity benefits available in comparable communities lends support to the County's contention that there is some recent tendency to limit these benefits (e.g. Oakland County employees hired after March 15, 1984 are not eligible for longevity benefits); however, such a comparison also suggests that Macomb County longevity benefits for deputies are presently below the average at all levels other than the 5-year level, and that Macomb County longevity benefits for dispatchers are presently below the average at all levels. While the Association's proposal would increase longevity benefits to above the average at most levels, the proposal would in no instance produce benefits at the highest level among the comparables. It should further be noted that the longevity base for Command Officers in the Macomb County Sheriff's Department has been increased to \$27,500, and while there was testimony that this increase was in exchange for not adopting shift premiums for Command Officers, the testimony did not indicate the magnitude of the benefit which was allegedly sacrificed for the increase in longevity base pay. The County's reluctance to lower retirement age lends additional weight to the conclusion that adequate recognition of longevity is appropriate. A majority of the panel

concludes that the Association's position most closely comports with the analysis required by Section 9.

It is the award of the panel that the position of the Association be adopted and that the base for calculation of longevity pay be increased to \$25,000 for both deputies and paraprofessionals.

(11) Educational allowance

The 1986-88 agreement provides an educational allowance to employees in several classifications in the unit, including deputy medical correction officer, correction officer, and matron; it also appears that the parties have reached agreement on the addition of the position of correction officer leader to the list of those for whom an educational allowance is available. The Association further requests that paraprofessionals be awarded an allowance of \$150 for attaining a Certificate and \$250 for attaining an Associate Degree, these amounts being identical to the amounts available to employees in other classifications for attaining these levels. The County objects to the addition of paraprofessionals to the list of eligible employees.

The testimony supports the conclusion that the public is likely to benefit from providing this educational incentive to paraprofessionals, and that such an educational allowance is well within the County's financial capability.

It is the award of the panel that the position of the Association be adopted and that paraprofessionals receive a \$150

allowance for attaining a Certificate and a \$250 allowance for attaining an Associate Degree.

(12) Salary (1989, 1990, and 1991 contract years)

The County proposes a salary increase for deputies and paraprofessionals of 4% for each of the years 1989, 1990, and 1991, while the Association requests an increase of 5% for each of the years in question.

The County does not argue inability to pay as a justification for its proposal, nor, based on the evidence, could it persuasively do so. Rather, the County relies on the fact that the percentage increases sought by the Association exceed both the average increases granted in comparable communities for the years in question as well as the increases granted in the majority of those communities. The Association, while conceding that its proposed increases exceed average increases and may also place the average salaries of deputies and paraprofessionals somewhat above the relevant averages, argues that the County's proposed increases are not only below average increases in comparable communities in some years, but are below the average increases for most of the County's own union and non-union employee groups during 1989, 1990, and 1991 when respective increases of 4.5%, 4.5% and 4.19% were typically granted. Moreover, the Association emphasizes that the cost of living increased 4.8% in 1989, 5.4% in 1990, and 4.9% in 1991, each of these increases exceeding the salary increases proposed by the County for the years in questions.

Act 312 dictates that the panel adopt the offer which most nearly complies with the applicable Section 9 factors. Since separate offers have been advanced by the parties for each of the contract years at issue, it is not inappropriate to consider the award in a particular year as at least one of the relevant factors in determining a wage level in other years. Hence, if a majority of the panel views the Association proposal as most consistent with the requirements of the statute in an initial year, even if somewhat more generous than the panel might adopt if given complete flexibility, the panel may take this factor into account in fashioning other portions of its award. The panel concludes, in this case, that the Association's offers should be adopted for the years 1989 and 1990, and that the County's offer should be adopted for 1991.

It is the award of the panel that the following salary increases be granted: 1989--5%, 1990--5%, 1991--4%.

(13) Salary (dispatcher adjustment)

The parties are in agreement that to correct earlier inequities, dispatchers should be awarded a salary adjustment effective January 1, 1989, prior to any other salary adjustment for that year. The County, however, proposes an adjustment of \$2,000, while the Association proposes an adjustment which, when combined with any other awarded salary adjustments, will produce a dispatcher salary of \$26,000 on January 1, 1991. The Association's proposed adjustment would be somewhat in excess of the \$2,000 offered by the County. The majority of the panel is

of the view that the \$2,000 adjustment proposed by the County, taking into account other economic benefits resulting from other aspects of the award in this case, is the most reasonable method of dealing with the inequity which both parties have recognized.

It is the award of the panel that the position of the County be adopted, and that a \$2,000 salary increase be granted to dispatchers prior to any further salary adjustments.

(14) Training time

The Association requests that Article XLIV of the 1986-88 contract, which provides for compensation of training time "at straight time," be amended to provide that training time be compensated as overtime if required by the Fair Labor Standards Act. The County requests that Article XLIV be eliminated from the contract for a variety of reasons: the Sheriff is attempting to reduce all overtime work; the Fair Labor Standards Act does not apply; if the act applies, there is no need for the contract to state this fact.

While there may arguably be some question as to the applicability of the overtime provisions of the Fair Labor Standards Act to a requirement by the Sheriff that a deputy participate in a training program, it is not unreasonable to conclude that it would be in the interest of the employees and the public to specify in the contract that federal law will govern if provisions of the contract run afoul of such law.

It is the award of the panel that the following sentence be added to Article LXIV: "Nothing herein shall be deemed to

relieve the Employer of the obligation to pay overtime if required by the Fair Labor Standards Act and applicable federal regulations."

(15) Retroactivity

With regard to the foregoing salary award (Issue 12), the County requests that adjustments take effect no earlier than April 25, 1990, the date the Association membership most recently rejected a tentative settlement between the parties. The Association seeks full retroactivity for the salary award. Both parties have also sought a specific decision from the panel as to the effective date of other economic and non-economic awards resulting from the arbitration, since at least some of the awards may raise unique scheduling issues.

The majority of the panel is of the view that it would be inappropriate to treat the salary award as anything but fully retroactive. To adopt the County's position on this question would imply that the Association alone bears responsibility for the protracted nature of these proceedings. Particularly in light of the fact that the Association has been awarded salary increases for 1989 and 1990 in amounts greater than those offered by the County, it cannot fairly be concluded that any viable reason exists for withholding payment of those benefits.

The panel makes the following determinations as to the effective dates of the foregoing awards:

Disciplinary procedures -- December 31, 1991

Preferred job assignments -- December 31, 1991

Insurance (cost containment) -- December 31, 1991

Retirement allowance (survivor benefits) -- December 31, 1991

Longevity -- To be awarded for the November 1, 1990 - October 31, 1991 eligibility period and thereafter

Educational allowance -- December 31, 1991

1989 Salary -- January 1, 1989

1990 Salary -- January 1, 1990

1991 Salary -- January 1, 1991

Dispatcher adjustment -- January 1, 1989 (prior to calculating further salary increases)

Training Time -- December 31, 1991

Economic benefits effective prior to December 31, 1991 shall be available to employees employed during the effective period and retiring or voluntarily leaving employment prior to said date, and shall be taken into account in the calculation of retirement benefits for said employees.

III. Tentative Agreements

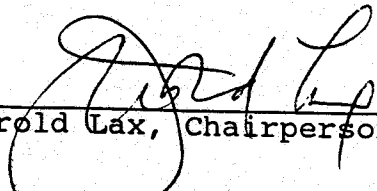
By agreement of the parties, the following T/A's are awarded as part of the new contract:

<u>ARTICLE</u>	<u>DATE T/A'd</u>
Introduction	12/28/88
Purpose and Intent	12/28/88
Article 1 Recognition	12/28/88
Article 2 Dues/Service Fee Collection	1/24/89
Article 3 Agency Shop	1/24/89
Article 4 Representation	7/28/89
Article 5 Grievance Procedure	2/15/89
Article 6 Employee's Bill of Rights	7/28/89
Article 7 Disciplinary Proceedings, except Paragraph B, which is part of this Act 312 Award	7/28/89
Article 8 Probationary Period	1/24/89

Article 9	Seniority	1/31/89
Article 11	Shift Preference	2/23/89
Article 12	Employee Salaries-Class Changes	2/23/89
Article 13	Working Out of Classification	2/23/89
Article 14	Scheduling and Hours	7/28/89
Article 15	Shift Premium, except Paragraphs B. and B.1, which are not to be part of these proceedings	7/28/89
Article 16	Holiday Benefits	2/23/89
Article 17	Overtime Pay and Procedure, except Paragraph B.5, which is part of this Act 312 Award	7/28/89
Article 18	Court Time	3/31/89
Article 19	Annual Leave (Vacation)	7/28/89
Article 20	Sick Leave	7/28/89
Article 21	Accumulated Sick Leave Pay-off	7/28/89
Article 22	Funeral Leave	3/31/89
Article 23	Workers Compensation	7/28/89
Article 24	Leave of Absence	7/28/89
Article 27	Longevity, except Paragraphs C.3 and C.4, which are part of this Act 312 Award	7/28/89
Article 28	Management Rights	7/28/89
Article 29	Jury Duty	7/28/89
Article 30	Special Conferences	2/23/89
Article 31	Hazard Pay	7/28/89
Article 32	Union Bulletin Boards	2/23/89
Article 33	Education Allowance, except Paragraphs B. & E. which are part of this Act 312 Award	7/28/92
Article 34	Air-Conditioned Vehicles	7/28/89
Article 35	Uniform Allowance	7/28/89
Article 36	Cleaning and Laundry	7/28/89
Article 39	Drug and Alcohol Testing	8/1/89
Article 40	Wages, except Paragraph B. which is part of this Act 312 Award	7/28/89
Article 41	Layoff/Recall	2/23/89
Article 42	Promotions	7/28/89
Article 43	Savings Clause	2/23/89
Article 44	Statutory Rights & Responsibilities	2/23/89
Article 46	Termination and/or Modification	7/28/89
Appendix B	Weapons	7/28/89
Appendix C	Alcohol and Drug Rehabilitation	8/01/89
"Paraprofessional" to be titled "Dispatcher"		7/28/89

IV. Conclusion

The foregoing award is issued on February 21, 1992.


Jerold Lax, Chairperson

CONCURRENCES

<u>Issue</u>	<u>County</u>	<u>Association</u>
(1) Disciplinary procedures	_____	<u>Peter P. Sudnick</u>
(2) Preferred job assignments	_____	<u>Peter P. Sudnick</u>
(3) Maintenance of conditions	<u>C. E. Keller</u>	_____
(4) Overtime	_____	<u>Peter P. Sudnick</u>
(5) Insurance benefits (retiree life insurance)	<u>C. E. Keller</u>	_____
(6) Insurance benefits (cost containment)	<u>C. E. Keller</u>	_____
(7) Retirement allowance (age of retirement)	<u>C. E. Keller</u>	_____
(8) Retirement allowance (annuity factor/maximum allowance)	<u>C. E. Keller</u>	_____
(9) Retirement allowance (survivor benefits)	_____	<u>Peter P. Sudnick</u>
(10) Longevity	_____	<u>Peter P. Sudnick</u>
(11) Educational allowance	_____	<u>Peter P. Sudnick</u>
(12) 1989 Salary	_____	<u>Peter P. Sudnick</u>
1990 Salary	_____	<u>Peter P. Sudnick</u>
1991 Salary	<u>C. E. Keller</u>	_____
(13) Dispatcher adjustment	<u>C. E. Keller</u>	_____
(14) Training time	_____	<u>Peter P. Sudnick</u>

(15) Retroactivity

--Disciplinary procedures	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>
--Preferred job assignments	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>
--Insurance	<u>C. E. Keller</u>	
--Retirement allowance	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>
--Longevity	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>
--Educational allowance	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>
--1989 salary		<u>Peter P. Gudrich</u>
--1990 salary		<u>Peter P. Gudrich</u>
--1991 salary		<u>Peter P. Gudrich</u>
--Dispatcher adjustment	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>
--Training time	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>
Tentative agreements	<u>C. E. Keller</u>	<u>Peter P. Gudrich</u>