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**Michigan Employment Relations Commission**

ACT 312 ARBITRATION )  
 )  
BETWEEN )  
 )  
BENZIE COUNTY & )  
BENZIE COUNTY SHERIFF )  
 )  
AND )  
 )  
POLICE OFFICERS ASSOCIATION )  
OF MICHIGAN (POAM) )  
 )  
 )

MERC CASE #G92 B-0023  
  
ARBITRATION DECISION AND AWARD  
  
OCTOBER 18, 1993  
  
ARBITRATION PANEL  
  
Alvin N. Zachrich - Impartial Arbitrator  
Patrick Spidell - for the Union  
David G. Stoker - for the Employer

**APPEARANCES**

**For the Union**

William Birdseye, Advocate - POAM  
Ann Maurer, Economist - POAM  
Tom Kelley, President - BCDSA  
Ted Rineer, Secretary - BCDSA  
Judy LeBailey, Treasurer - BCDSA  
Kathy C. Reed, Member - BCDSA

*Rec'd at MERC  
11-12-93  
ms*

**For the Employer**

John R. McGlinchey, Attorney  
Alex Knox, Benzie County Commissioner  
David C. Mead, Benzie County Commissioner  
Marvin H. Henderson, CPA  
Paul Stiles, Benzie County Sheriff  
Jean Bowers, Benzie County Clerk  
Amy L. Stump, Paralegal, Cohl, Stoker and Toskey

**JURISDICTION**

On or about March 1, 1993 Alvin N. Zachrich of Good Hart, Michigan was notified by MERC that he had been appointed, pursuant to Public Act 312 of 1969, to be the impartial arbitrator in the matter captioned above.

A two day hearing, June 30 and July 1, 1993 was held at the Sail Inn, Benzonia, Michigan. The hearing was transcribed by Rochelle Puvalowski, C.S.R. of Tremblay Associates, Grand Rapids, Michigan. At the hearing both parties (Benzie County & Benzie County Sheriff collectively hereinafter "Employer" and POAM hereinafter "Union") had the full opportunity to make its case

via witnesses, exhibits, argument and rebuttal. The parties waived all time lines at Sections 6 and 8 of the statute.

The parties filed written briefs with the impartial arbitrator. The Brief of the Employer was received on September 20, 1993 and the Union Brief was received on September 27, 1993. The Briefs were exchanged to the parties. The hearing was closed on September 27, 1993.

## **ACT 312 ARBITRATION PANEL REQUIREMENTS**

### **423.238 Section 8 -**

"As 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.

### **423.239 Section 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.



Issue #3	Shift Differential -	Article XIV
Issue #4	Overtime -	Article XIV
Issue #5	Layoff -	Article XI
Issue #6	Supervisor's Work -	Article XIV
Issue #7	Health Insurance -	Article XVIII

### LAST BEST OFFERS

Since 12/31/91, the parties have operated under a prior labor agreement dated 1/1/89 to 12/31/91 (JX-1). Each of the Last Best offers of the Union and the Employer will be compared to appropriate sections and articles from the prior agreement. These comparisons are set out in the following pages.

#### ISSUE #1 DURATION - ARTICLE XXX

PRIOR AGREEMENT - 3 years - January 1, 1989 to December 31, 1991

UNION - 2 years - A two year contract retroactive to January 1, 1992 through and including December 31, 1993

EMPLOYER - 3 years - 30.1: Termination. This Agreement shall be deemed to have become effective the 1<sup>st</sup> day of January, 1992, and shall remain in force and effect up to and including December 31, 1994.

#### ISSUE #2 WAGES - ARTICLE XXVI

PRIOR AGREEMENT - 26.1: Wage Scale. The annual wage rates below are effective the first pay period on or after the dates indicated: Figure in parenthesis () is hourly rate.

##### Effective January 1, 1991

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	
Deputy Wage Rates:	\$20,528 (9.87)	\$22,026 (10.59)	\$22,804 (10.96)	\$24,080 (11.58)	
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>
Corrections:	\$17,705	\$18,963	\$19,634	\$21,082	\$21,580
Officer Wage Rates:	(8.51)	(9.12)	(9.44)	(10.14)	(10.38)

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>
Communications Clerk Wage Rates:	\$10,985 (5.28)	\$11,640 (5.60)	\$11,990 (5.76)	\$12,361 (5.94)

UNION - Wages - Article XXVI

26.1: Wage Scale. The annual wage rates based on 2080 hours below are effective the first pay period on or after the dates indicated: Figures in parenthesis ( ) are hourly rates.

Effective January 1, 1992

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	
Deputy [2.0%]	\$20,946 (10.07)	\$22,464 (10.80)	\$23,254 (11.18)	\$24,564 (11.81)	
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>
Corrections Officer [2.0%]	\$18,054 (8.68)	\$19,344 (9.30)	\$20,030 (9.63)	\$21,507 (10.34)	\$22,027 (10.59)
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	
Communications Clerk [2.0%]	\$11,211 (5.39)	\$11,877 (5.71)	\$12,230 (5.88)	\$12,605 (6.06)	

Effective January 1, 1993

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	
Deputy [3.1%]	\$21,590 (10.38)	\$23,150 (11.13)	\$23,982 (11.53)	\$25,334 (12.18)	
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>
Corrections Officer [3.1%]	\$18,616 (8.95)	\$19,947 (9.59)	\$20,654 (9.93)	\$22,173 (10.66)	\$22,714 (10.92)
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	
Communications Clerk [3.1%]	\$11,565 (5.56)	\$12,251 (5.89)	\$12,605 (6.06)	\$13,000 (6.25)	

wages to be retroactive to January 1, 1992

EMPLOYER - Wages - Article XXVI

Section 26.1: Wage Scale. The Employer proposes a \$2.00 per hour increase for the

Communications Clerk effective 7/1/93, and a 4% increase for all classifications effective 1/1/94:

26.1: Wage Scale. The annual wage rates below are effective the first pay period on or after the dates indicated: Figure in parenthesis ( ) is hourly rate.

The Employer's proposed language is to read as follows:

Effective January 1, 1992

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	
Deputy Wage Rates:	\$20,528 (9.87)	\$22,026 (10.59)	\$22,804 (10.96)	\$24,080 (11.58)	
Communications Clerk Wage Rates:	\$10,985 (5.28)	\$11,640 (5.60)	\$11,990 (5.76)	\$12,361 (5.94)	
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>
Corrections Officer Wage Rates:	\$17,705 (8.51)	\$18,963 (9.12)	\$19,634 (9.44)	\$21,082 (10.14)	\$21,580 (10.38)

Effective January 1, 1993

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	
Deputy Wage Rates:	\$20,528 (9.87)	\$22,026 (10.59)	\$22,804 (10.96)	\$24,080 (11.58)	
Communications Clerk Wage Rates:	\$10,985 (5.28)	\$11,640 (5.60)	\$11,990 (5.76)	\$12,361 (5.94)	
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>
Corrections Officer Wage Rates:	\$17,705 (8.51)	\$18,963 (9.12)	\$19,634 (9.44)	\$21,082 (10.14)	\$21,580 (10.38)

Effective July 1, 1993

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>
Communications Clerk Wage Rates:	\$15,142 (7.28)	\$15,808 (7.60)	\$16,141 (7.76)	\$16,515 (7.94)

Effective January 1, 1994

	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>
Deputy Wage Rates:	\$21,349 (10.26)	\$22,907 (11.01)	\$23,716 (11.40)	\$25,043 (12.04)

Communications Clerk	\$15,746	\$16,432	\$16,786	\$17,160	
Wage Rates:	(7.57)	(7.90)	(8.07)	(8.25)	
	<u>Start</u>	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>4 Years</u>
Corrections Officer	\$18,413	\$19,722	\$20,419	\$21,925	\$22,443
Wage Rates:	(8.85)	(9.48)	(9.82)	(10.54)	(10.79)

#### ISSUE #3 SHIFT DIFFERENTIAL S. 14.8 - ARTICLE XIV

**PRIOR AGREEMENT** - 14.8: Shift Differential. Effective January 1, 1987, employees will be paid a differential of ten cents (10¢) per hour for all hours worked between 4:00 p.m. and midnight and a differential of twenty cents (20¢) per hour for all hours worked between midnight and 8:00 a.m. For purposes of computing overtime pay the shift premium is not part of the base rate of pay.

**UNION** - 14.8: Shift Differential. Effective (date of award) employees will be paid a differential of twelve and one-half cents (12.5¢) per hour for all hours worked between 4:00 p.m. and midnight and a differential of twenty-five cents (25¢) per hour for all hours worked between midnight and 8:00 a.m. For purposes of computing overtime pay the shift premium is not part of the base rate of pay.

**EMPLOYER** - 14.8: Shift Differential. Maintain the status quo and proposes no change to the contract language.

#### ISSUE #4 OVERTIME S. 14.3 - ARTICLE XIV

**PRIOR AGREEMENT** - 14.3: Overtime. All hours worked in excess of eight (8) hours in a day or forty (40) hours in a week shall be paid at the rate of time and one-half (1½)

**UNION** - 14.3: Overtime. Maintain status quo and proposes no change to contract language or practice.

**EMPLOYER** - 14.3: Overtime. The Employer agrees to provide overtime premium to bargaining unit members to the extent required and in a manner consistent with the applicable provisions of the Federal Fair Labor Standards Act, being 29 USC 201 et seq.

#### ISSUE #5 LAYOFF AND RECALL - ARTICLE XI

**PRIOR AGREEMENT** - 11.1: Layoff. In the event it becomes necessary to reduce the working force, layoff will occur with temporary employees being laid off first. Thereafter, the employees with the least seniority shall be laid off, unless an employee with more seniority volunteers, etc., provided the employees retained have the qualifications and the certifications to perform the required work. If the laid off employee does not have the required certification at the time of layoff, he may, at his own expense and on his own time, acquire such certification. Upon attainment of the certification, he may exercise his seniority rights to return to employment in the lower paying classification. If, as a result of a layoff, an employee is assigned to a lower paying classification, the employee shall receive the pay of the classification to which originally assigned, for the first six (6) months after which time the employee shall revert to the rate of the lower paying classification. An employee electing a voluntary layoff shall not have the right at a later date to rescind the election and return to work. His sole right to return to work shall be pursuant to the recall provisions of paragraph 11.2 of this article.

**UNION - 11.1: Layoff.** In the event it becomes necessary to reduce the working force, layoff will occur with temporary employees being laid off first. Thereafter, the employees with the least seniority shall be laid off, unless an employee with more seniority volunteers. If, as a result of a layoff, an employee shall receive pay of the classification to which originally assigned, for the first six (6) months after which time the employee shall revert to the rate of pay of the lower paying classification. An employee electing a voluntary layoff shall not have the right at a later date to rescind the election and return to work. His sole right to return to work shall be pursuant to the recall provisions of paragraph 11.2 of this article.

Layoff to be effective date of award.

**EMPLOYER - 11.1 Layoff.** In the event of any reduction of personnel is made, as determined by the Employer, Layoff shall be by classification within the Department, with temporary employees being laid off first. Thereafter, employees with the least seniority in that classification shall be laid off, provided that the remaining employees with more seniority in the classification are qualified to perform the work.

**11.2: Bumping.** Upon being laid off from his/her classification, an employee may bump lower seniority employees within the bargaining unit under the following conditions:

- A. The bumping employee cannot move into a position of a higher salary grade.
- B. The bumping employee must have more departmental seniority than the employee in the position who is being bumped.
- C. The bumping employee must possess the necessary skill, experience and certifications which will qualify the employee to perform the work. The necessary "Skill, experience and certification" shall be determined by the required qualifications as listed in the job description. If a laid off employee does not have the required certification at the time of layoff, he/she may, at his/her own expense and on his/her own time, acquire such certification. Upon attainment of the required certification, he/she may exercise his/her seniority rights and return to employment in the lower paying classification.
- D. The bumping shall not apply in temporary cases of layoff which do not exceed ten (10) working days.

An employee wishing to exercise their bumping rights must inform the Sheriff of his/her decision to bump within three (3) days from the date of receipt of the layoff notification. Employees who exercise their bumping rights shall then receive the rate of pay of the classification into which he/she has bumped.

The bumped employee shall have the same bumping rights as the laid off employee, seniority permitting.



11.3: Recall. The last employee laid off in a classification shall be the first employee recalled, provided the employee is qualified to fill the open position. Notification of recall may be made by telephone and shall be followed by certified mail delivered to the employee's last known address. An employee shall respond to the certified notice of recall within forty-eight (48) hours of the receipt thereof. If an employee fails to respond to a notice of recall within forty-eight (48) hours of receipt thereof, the Employer shall assume that the employee has voluntarily quit.

11.4: Return to Unit by Layoff. In the event of layoffs by classification, members of the Command Officers Association of Michigan (COAM) unit who are laid off shall be allowed to return to POAM unit and to exercise their bumping rights, provided they have enough Departmental seniority to displace another employee, provided the POAM unit has agreed to such bumping rights.

11.5: Benefits. Employees who are laid off shall not be entitled to any benefits extended pursuant to this Agreement, nor shall seniority accrue during such layoff period. However, employees on layoff status may continue their health insurance to the extent permitted by Federal law, provided the employee pays the premium for such insurance in advance, and, provided continued coverage is permitted by the insurance carrier.

11.6: Vacation Use. In the event of layoff, an employee may use accumulated vacation leave prior to receipt of unemployment compensation, provided the employee is entitled to the same.

11.7: Layoff Alternatives.

- A. Voluntary Layoffs. When faced with a layoff, the Employer may, at its sole option prior to enactment of the above layoff provisions, solicit voluntary layoffs from members in the bargaining unit. An employee electing a voluntary layoff shall not have the right, at a later date, to rescind the election and return to work. His/her sole right to return to work shall be pursuant to the recall provisions in section 11.3 of this article.

#### ISSUE #6 SUPERVISOR'S WORK S. 14.10 - ARTICLE XIV

PRIOR AGREEMENT - 14.10: Supervisors. Supervisors shall not be assigned to or perform unit work, except in the case of emergency, nor shall supervisors be used to reduce overtime for unit members. If a dispatcher goes on vacation, holiday or personal leave day, the lead dispatcher or permanent part-time dispatcher will replace the dispatcher and work the shift the dispatcher was regularly scheduled to work.

UNION - 14.10: Supervisors. Maintain the status quo and proposes no change to contract language or practice.

EMPLOYER - 14.10: Supervisors. Due to the nature of law enforcement work, supervisors may be assigned to otherwise perform work normally performed by bargaining unit members.

#### ISSUE #7 HOSPITALIZATION INSURANCE S. 18.1 - ARTICLE XVIII

PRIOR AGREEMENT - 18.1: Hospitalization Insurance. The Employer agrees to provide Blue

Cross/Blue Shield's hospitalization and medical coverage for full-time employees and their dependents with semi-private room with Rider D; Michigan Variable Fee I with Riders FC, SD, COBO 3, D45NM, PPNVI, FAE-RC, VST, Master Medical II, over 65 options 2-1; and prescription drugs \$2.00 co-pay. Effective January 1, 1990, the coverage will include prescription drugs \$3.00 co-pay; predetermination rider; second surgical opinion rider; DRI-275/550 rider; and A-80 vision rider. Should Blue Cross/Blue Shield make a \$5.00 co-pay prescription drug rider available to the Employer during the life of this Agreement, the Employer may replace the \$3.00 co-pay with the \$5.00 co-pay.

- A. The parties agree that after December 31, 1981, the County may provide hospitalization insurance equivalent to Blue Cross/Blue Shield.
- B. The County will provide the employees with a dental plan for which the County will bear the entire cost, as follows:

50/50	-	Class I
50/50	-	Class II
50/50	-	Class III maximum \$800.00

(the coverage is listed separately on an attached sheet from Michigan Blue Cross/Blue Shield)

- C. The Employer agrees to reimburse employees for co-pays as a result of the DRI-275/550 rider upon receipt of the employee's bills verifying the expense.

**UNION - 18.1: Hospitalization Insurance.** Maintain status quo and proposes no change in contract language.

**EMPLOYER - 18.1: Hospitalization Insurance.** The Employer agrees to provide Blue Cross/Blue Shield's hospitalization and medical coverage for full-time employees and their dependents with semi-private room with Rider D; Michigan Variable Fee I with Riders FC, SD, COBO 3, D45NM, PPNVI, FAE-RC, VST, Master Medical II, Over 65 options 2-1; prescription drugs \$5.00 co-pay; predetermination rider; second surgical opinion rider; DRI-275/550 rider; A-80 vision rider.

- A. The parties agree that the County may provide hospitalization insurance equivalent to Blue Cross/Blue Shield.
- B. The County will provide the employees with a dental plan for which the County will bear the entire cost, as follows:

50/50	-	Class I
50/50	-	Class II
50/50	-	Class III maximum \$800.00

(the coverage is listed separately on an attached sheet from Michigan Blue Cross/Blue Shield)

- C. The Employer agrees to reimburse employees for co-

pays paid by the employees as a result of the DRI-275/550 rider upon receipt of the employees' bills verifying the expense and the payment.

- D. The Employer agrees to pay the full premium for eligible full time employees for hospitalization, dental and vision care coverage as outlined in this Article at the rates in effect December 31, 1993. In the event that there are any increases in the premium costs for any such coverages, the Employer shall continue to pay the full premium up to the 1993 rate. The Employer shall pay 50% of the cost increases above such 1993 rate with the employee paying the remaining premium cost increases through payroll deduction. In the event there is such a co-pay, the Employer agrees to meet with the Union at the Union's request to explore the reduction of coverage in an effort to lessen or limit any such employee co-pay amounts.

## FINDINGS OF FACT

1. Revenue sources of Benzie County funds are derived from 3 sources: (1) property tax revenues, (2) fees received for services, (3) State and Federal funding for specific projects. Funds or revenues available for Benzie County Sheriff's Department are revenues typically available from the above 3 sources.

2. From 1989 - 1992 expenditures have increased at a larger rate than revenues. During this period of time, fund transfers in, have exceeded fund transfers out. This has provided positive general fund balances, (Ex-3).

3. In 1992 General Fund Expenditures were \$3,622,685 General Fund Revenues were \$3,018,822 (Ex-4).

4. From 1988 through 1992 transfers into the General Fund each year have exceeded transfers out of the General Fund (Ex-7).

5. The County Delinquent tax funds available and transferable from individual DTR funds for 1990 through 1992 are set out below (Ex-8):

Year	1992	1991	1990
Cash Balance	\$33,741	\$21,432	\$123,417
Total Transfers Out	(\$158,383)	(\$127,990)	(\$9,945)

6. The County has a twenty year 2 mil levy for Criminal Justice that was levied beginning in 1990. The purpose of this millage is threefold. (a) Debt Service for Jail Bond, (b) Capital needs of the project, (c) any residual can be spent for operations.

7. Activity in the Jail Millage Fund is set out below (Ex-9):

	<u>1992</u>	<u>1991</u>
Cash Balance	\$1,018	\$74,563
Transfer out	(\$748,666)	(\$544,697)
Fund Balance	\$251,018	\$381,700

### Jail Bond Payments

Cash Balance	\$28,990	\$275,052
Debt Service	\$328,030	\$338,462
Fund Balance	\$28,990	\$275,052

8. Comparative data from the General Fund is set out below (Ex-13):

	<u>1992</u>	<u>1991</u>	<u>1990</u>	<u>1989</u>	<u>1988</u>
Fund Balance	\$59,114	\$6,617	\$22,915	\$105,131	\$154,468
Total Expenditures	\$3,732,685	\$3,262,182	\$2,963,858	\$2,525,534	\$2,398,739
Percentage	1.58%	0.20%	0.77%	4.16%	6.44%

9. Public Safety comparative Expenditure data is set out below (Ex-14):

	<u>1992</u>	<u>1991</u>	<u>1990</u>	<u>1989</u>	<u>1988</u>
Total Expenditures	\$1,269,055	\$987,193	\$927,840	\$797,446	\$776,170
Total General Fund	\$3,732,685	\$3,262,182	\$2,963,858	\$2,525,534	\$2,398,739
Percentage of Public Safety Expenditures to General Fund	34.00%	30.26%	31.31%	31.58%	32.36%

10. Total Tax Rates (in millions) of the comparable counties is set out below (Ex-15):

<u>County</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Alcona	9.2	9.9	10.6
Arenac	9.1	10.0	10.8
Kalkaska	12.1	12.5	13.5
Mackinac	9.1	10.2	12.0
Missaukee	8.5	9.2	10.0
Presque Isle	<u>9.5</u>	<u>10.1</u>	<u>10.9</u>
Average	9.6	10.3	11.3
Benzie	10.8	11.7	12.7

11. Between 1988 and 1992 revenue sources available to finance the general governmental activities fund went from 2.5 million to 3.7 million. During this same period, transfers to the fund from other sources increased from \$372,254 to \$766,000 (Ex-5).

12. Two millage proposals to increase the Sheriff Department revenue were defeated in 1984 and again in 1987 (Ex-17 & 18).

13. AFSCME, POAM and COAM all have had 3 years collective bargaining agreements with the County since 1983 (Ex-20).

14. In the comparable counties the Union representing the counties has a 1 year contract in Alcona. There are two who have 2 year contracts, Mackinac and Presque Isle (POAM). Four of the

counties have three year contracts, Arenac, Kalkaska, Missaukee and Presque Isle, FOP (Ex-21).

15. The Union proposes a 2 year Agreement for 1992 and 1993. It seeks a 2% wage increase in 1992 and an additional 3.1% wage increase in 1993. The wages to be retroactive to January 1, 1992.

16. The County proposes a 3 year agreement for 1992, 1993 and 1994. It proposes no wage increases for 1992. The Employer proposes a \$2.00 per hour wage increase for the Communication Clerk classification effective 7/1/93 and a 4% wage increase for all classifications effective 1/1/94.

17. The RSQE forecast for 1993-94 establishes a Detroit, Michigan CPI for 1992 at 2.0% and a CPI for 1993 at 3.1% (UX-2).

18. The 1992 wages of Benzie County Deputies, Corrections Officers, Communications Clerks and the average salary of the six comparable counties is set out below:

DEPUTY (Ex-23)

	<u>Starting Salary</u>	<u>4th Year - Top Step</u>
Benzie	20,528	24,080
Average	19,267	23,314

CORRECTIONS OFFICER (Ex-27)

	<u>Starting Salary</u>	<u>4th Year - Top Step</u>
Benzie	17,705	21,580
Average	16,262	19,457

COMMUNICATIONS CLERK (Ex-37)

	<u>Starting Salary</u>	<u>4th Year - Top Step</u>
Benzie	10,985	12,361
Average	15,413	18,328

19. The 1993 Wages of Benzie County Deputies, Corrections Officers, Communications Clerks and the 1993 average salary of the six other comparable counties similar employees is set out below:

DEPUTY (Ex-24)

<u>Starting Salary</u>	<u>4th Year - Top Step</u>
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Benzie	20,528	24,080
Average	20,002	24,169

#### CORRECTIONS OFFICER (Ex-28)

	<u>Starting Salary</u>	<u>4th Year - Top Step</u>
Benzie	17,705	21,580
Average	17,127	20,985

#### COMMUNICATIONS CLERK (Ex-32)

	<u>Starting Salary</u>		<u>4th Year - Top Step</u>
Benzie	15,145	(Includes \$2.00 hr. increase)	16,521
Average	16,865		20,427

20. The 1992 total Direct Compensation and the maximum levels of Indirect Compensation (In Hours) of Benzie County Deputies, Corrections Officers and Communications Clerks and the average 1992 Direct Compensation and maximum levels of Indirect Compensation of the six other comparable counties is set out below:

#### DEPUTY (Ex-40)

	<u>Direct Compensation</u>	<u>Indirect Compensation</u>
Benzie	33,095	19.15
Average	31,993	18.56

#### CORRECTIONS OFFICER (Ex-44)

	<u>Direct Compensation</u>	<u>Indirect Compensation</u>
Benzie	30,256	17.51
Average	27,686	16.17

#### COMMUNICATIONS CLERKS (Ex-48)

	<u>Direct Compensation</u>	<u>Indirect Compensation</u>
Benzie	19,807	11.46
Average	26,476	15.48

21. The 1993 total Direct Compensation and the maximum levels of Indirect Compensation (In Hours) of Benzie County Deputies, Corrections Officers and Communications Clerks. And the

average 1993 Direct Compensation and maximum levels of Indirect Compensation of the six other comparable counties is set out below:

#### DEPUTY (Ex-42)

	<u>Direct Compensation</u>	<u>Indirect Compensation</u>
Benzie	33,221	19.23
Average	33,243	19.28

#### CORRECTIONS OFFICER (Ex-46)

	<u>Direct Compensation</u>	<u>Indirect Compensation</u>
Benzie	30,388	17.59
Average	30,027	17.61

#### COMMUNICATIONS CLERKS (Ex-50)

	<u>Direct Compensation</u>	<u>Indirect Compensation</u>
Benzie	24,654	14.27
Average	29,417	17.26

#### 22. Find below data regarding Shift Differential in the comparable units (Ex-54):

<u>County</u>	
Alcona	Afternoon shift - 10¢/hour
(K p. 14)	Midnight shift - 15¢/hour
Presque Isle	No premium
Arenac	No premium
Missaukee	No premium
Kalkaska	4:00 p.m. - 12:00 midnight - 10¢/hour
(K p. 12)	12:00 midnight - 8:00 a.m. - 15¢/hour
Mackinac	Afternoon shift - 35¢/hour
	Midnight shift - 40¢/hour

#### 23. Find below overtime costs for 1992 and January to June 12, 1993 (Ex-55)

	<u>Overtime hours</u>	<u>Overtime earnings</u>	<u>Wage earnings</u>
1992 (FOR THE ENTIRE YEAR)			
Sheriff Dept. (Total)	2,120	\$35,839.31	\$370,858.31
Jail (Total)	2,412	\$28,625.45	\$387,094.58
Deputy	1,724	\$28,625.69	\$198,985.41
Corrections Officer	1,249	\$16,869.74	\$207,685.78
Communication Clerk	754	\$6,157.08	\$51,406.16

#### 1992 (JAN. - JUNE 30)



Sheriff Dept. (Total)	1,042	\$17,648.16	\$180,588.84
Jail (Total)	1,157	\$13,495.67	\$179,447.33
Deputy	736	\$12,209.55	\$97,659.39
Corrections Officer	522	\$6,853.54	\$97,862.16
Communication Clerk	415	\$3,314.20	\$24,840.40

1993 (JAN. - JUNE 12)

Sheriff Dept. (Total)	527	\$9,113.69	\$170,910.01
Jail (Total)	972	\$13,011.90	\$180,282.43
Deputy	515	\$8,792.44	\$92,976.21
Corrections Officer	710	\$10,035.82	\$104,441.29
Communication Clerk	72	\$618.00	\$24,084.20

24. Find below data concerning layoffs in the other contracts in Benzie County units, AFSCME, COAM and non-union as well as the parties proposals on layoffs (Ex-56):

Internal Unit	Does the contract provide that employees who bump into lower classification receive the higher classification pay?	Is layoff by bargaining unit seniority or classification seniority	Does the labor contract provide for retraining of persons unqualified to bump?
AFSCME (K p. 9)	no	Classification Seniority	no
Non-Union (K p. 3)	no	Classification Seniority	no
COAM (K p. 19)	yes (6 months)	Bargaining Unit Seniority	no
Benzie: Employer proposal	no	Classification Seniority	no
Union proposal	yes (6 months)	Bargaining Unit Seniority	yes

25. Find below data concerning layoffs in comparable units together with the parties proposals on layoffs (Ex-57):

Counties	Does the contract provide that employees who bump into lower classification receive the higher classification pay?	Is layoff by bargaining unit seniority or classification seniority	Does the labor contract provide for retraining of persons unqualified to bump?
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Alcona (K p. 8)	no	Bargaining Unit Seniority	no
Arenac (K p. 16-17)	yes (6 months)	Classification Seniority	no [1]
Kalkaska (K p. 4-5)	no	Classification Seniority	no
Mackinac (K p. 9)	no	Classification Seniority	no
Missaukee (K p. 14-15)	no	Classification Seniority	no [2]
Presque Isle FOP (K p. 14)	no	Classification Seniority	no
POAM (K p. 13)	no	Classification Seniority	no
Benzie: Employer proposal	no	Classification Seniority	no
Union proposal	yes (6 months)	Bargaining Unit Seniority	yes

**Layoffben (cont.)**

1. The bumping employee must possess the necessary skills, experience, and certifications which will qualify the employees to perform the work adequately with minimal instructions, as determined by the employer.
2. The employee is allowed up to 6 months to acquire certifications at the employees expense.

26. The Agreements for all of the Comparable Counties are in the record as Joint Exhibit III (the relevant part here is the Layoff language in each of these Agreements. They have been maintained in the Impartial Arbitrator's Michigan Office).

27. The labor contracts of AFSCME, COAM and the non-union unit does not restrict supervisors from performing bargaining work (Ex-58).

28. None of the Comparable Counties' labor contracts restrict supervisors from performing

bargaining unit work (Ex-59).

29. Find below comparisons of Hospitalization Insurance in the Comparable Counties (Ex-60):

<u>County</u>	Does the Employer pay towards premium for eligible f/t employees for:			Does the contract provide a bench- mark (cap) for these costs?	Does the contract include language dealing with increases in coverage premium costs?
	<u>Hospitalization</u>	<u>Dental</u>	<u>Vision</u>		
Alcona	yes	yes	yes	no	no
Arenac	yes	yes	yes	yes	yes
Kalkaska	yes	50/50	no	no	yes (for dental insurance)
Mackinac	yes	yes	yes	no	no
Missaukee	yes	yes	no	yes	yes
Presque Isle (FOP & POAM)	yes	yes	no	yes	yes

30. If the Employer prevailed on the Issue of Hospitalization Insurance, the Union would be the only group in Benzie County that is subject to any kind of a cap. (TR-262)

31. Percentage increases in monthly Medical Insurance costs are set out below (Ex-61):

<u>HMO</u>	<u>5/1/92 - 5/1/93</u>	<u>5/1/93 - 5/1/94</u>
Single Contract	5.5%	16.5%
Double Contract	6.0%	17.0%
Family Contract	5.5%	16.5%
<u>Blue Cross/Blues Shield</u>	<u>5/20/90 - 11/92</u>	<u>11/92 - 2/93</u>
Single Contract	14.0%	3.0%
Double Contract	10.0%	3.0%
Family Contract	15.5%	2.5%

ABILITY TO PAY - Arguments of the Parties

EMPLOYER ARGUMENT - Ability to pay

The uncontradicted evidence from the county audit report through Henderson's testimony underscored the inability of the Employer to make increases in wages and benefits beyond those it has proposed without reducing already lean staffing and/or services. It is impossible for the county to continue to provide its current level of services if expenditures are increased.

While the Union may suggest that the County's financial plight could be cured by increasing

taxes, its property taxes are already higher than comparable counties. Additionally, the Employer notes that two millage propositions to increase the Sheriff Department revenue were defeated in 1984 and again in 1987. The County's economic dilemma was essentially unrefuted on the record.

The Union through its Brief suggests that because all of the County proposed increases will now effectively be paid in 1994, the poor economic conditions reflected in the record are now irrelevant. In essence, the Union appears to assert that the County's economic position that is now acknowledged as unsatisfactory in 1992 and 1993, will correct itself to such a degree in 1994 that the County could essentially afford to pay the best of the Union's last best offer, as well as the Employers last best offer, being in excess of a 10% increase in costs. Such a ruling would not only be inconsistent with the last best offers submitted, but it is also simply unrealistic. There is no indication in the record that there will be a drastic economic improvement in Benzie County in 1994. While the SEV freeze in 1991 and 1992 was removed in 1993, the actual tax increase is limited to the cost of living increase from 1992 to 1993 by the Michigan Constitutional Headlee Tax Limitation provisions. (Michigan Constitution of 1963, Article 9, Section 31) Thus, the taxes could not be anticipated, based on the Union's figures, to increase more than 3.1%. It could therefore be argued that the Employer's 1994 proposed increase itself may be somewhat ambitious, though generally realistic as compared to those proposed by the Union.

#### UNION ARGUMENT - Ability to pay

The Union notes the County earnestly informed the Panel that financial woes plagued the County in 1992 and 1993. The Employer claims there is no money in its 1992 and 1993 budgets. This is likely true. However, the Award in this dispute will undoubtedly be paid in the 1994 fiscal year. The Employer may take steps to pay employees yet balance the budget in 1994 by layoff, cut back, or reprioritization of expenditures.

The Union believes that its final offer represents the most equitable choice for the Panel and urges its adoption. Should the Panel decide that a third year should be included in the award, the

Panel need only to affirm the parties' desire for 4% for all employees in addition to the \$2.00 per hour increase for dispatchers. The Employer does have the ability to pay both the 2% and 3.1% of the Union proposal as well as the 4% of the Employer for the third year.

DISCUSSION - Ability to pay

The Union deems it likely true that there is no money to fund the retroactive Union wage proposal in 1992 and 1993. However, according to the Union, the award in this dispute will undoubtedly be paid in the 1994 fiscal year. According to the Union, this could be done in 1994 including layoff, cut back or reprioritization of expenditures. As viewed by a majority of the Panel, it is not realistic to consider that the Employer could absorb in 1994 an increase including the 5.3% increase for two years of the Union proposal and the 4% proposal of the Employer. Additionally, this Union argument goes to applicable factor (c) at Section 9 where these layoffs and cut backs might well impair the "interests and welfare of the public".

In the Employer's ability to pay argument it notes that evidence from the County Audit Report and the testimony of Marvin Henderson underscored the inability of the Employer to make increases in wages and benefits beyond those it has proposed without reducing already lean staffing and/or services. As to the evidence from the Audit Report, the facts generally show, as the Employer argues that the County has been in difficult financial conditions now and in the immediate past years. The facts show that the General Fund has increased from \$2.5 million in 1988 to \$3.7 million in 1992. During this time period, transfers to the fund from other sources increased from \$372,254 to \$766,000. In every year since 1988 funds have been transferred into the General Fund, yet expenditure still exceeded revenues. As of December 31, 1992, the General Fund had a deficit cash balance of more than \$48,000 (TR94). The evidence from the Audit Report as viewed by a majority of the Panel does not establish in and by itself a bonafide ability to pay argument. Mr. Henderson's testimony does not quite go to the Employer's argument either. On cross examination Henderson was asked the question: "Based upon your audit and your review of the County's financial situation,

would it be financially sound for the County to increase wages as proposed by the Union?". Mr. Henderson answered, "I would say if they want to provide the same level of service they've provided, keep the same number of people working, then they wouldn't have the ability to do that." (TR-101)

The majority of the Panel conclude that the Employer has a valid ability to pay argument - factor (c) but limited to "wages" as stated in the question addressed to Henderson. It does not necessarily include other economic items at issue in this dispute.

#### DURATION AND WAGES - Arguments of the Parties

The Panel determined in its discussion at its September 30, 1993 meeting that the duration issue is tied to the wage issue and therefore will be resolved together.

#### EMPLOYER ARGUMENT - Duration and Wages

The Employer's brief points out that both internal and external comparables, as well as the past practice of the parties with this unit all support a three (3) year agreement. Moreover, based on the fact that the contract would expire almost simultaneously with the implementation of this award, it is nonsensical to suggest an award extending only through 1993 as proposed by the Union. Such an award would clearly be disruptive to labor stability within the Employer and would place an additional burden upon the Employer's scarce resources. Moreover, the Union presented no credible evidence to support its two (2) year proposal. Finally, it is noteworthy that the Union, in its brief, has essentially abandoned its two (2) year proposal, rather suggesting a three (3) year agreement would be appropriate.

It must also be noted that the duration issue is essentially tie-barred to the wage proposals. The parties submitted package wage proposals, with the Union proposing a two (2) year wage package and the Employer proposing a three (3) year wage package. Both at the hearing, and the prehearing, the parties clearly indicated that such wage proposals were to be construed as a "package", and not to be dissected by year or by classification as the Union now suggests in its brief. Moreover, the Act expressly provides that while the Panel has authority to pick between the last best

offers of each party on each issue, it is without authority to rewrite the proposals.

Despite the Parties' agreement, the Union claims that this Panel should ignore the stipulated comparables when considering its wage proposals. As the record confirms, the parties expressly stipulated to comparables at both the prehearing and at the beginning of the arbitration hearing itself. Consideration of the compensation must be made pursuant to the statutory criteria, which would include the comparables expressly stipulated to herein by the parties.

Essentially, the Employer's proposal is derived from its distressed economic circumstances. This economic plight is acknowledged by the Union in its brief, though the Union suggests that, as most of the costs would be paid in 1994, the County's financial dilemma should not be an issue. It is not realistic to expect that a county that cannot afford pay increases for 1992 and 1993, could absorb in 1994 an increase in excess of 10% as the union proposes (by adopting its first two years of the wage proposal, as well as the dispatcher increase, and the 4% proposed in 1994 by the Employer). While most of the Sheriff's Department employees may have enjoyed being amongst the highest paid employees in their classifications within counties of the size and resources of Benzie in better economic times, it is unrealistic to suggest that the County continue such practice when the economic resources have been exhausted. The County's wage proposal would, by contrast, maintain the unit within a reasonable relationship to the average pay levels within the accepted comparables. Moreover, the other County employees have not received wage increases for the first two years at issue. Granting a wage increase to this unit's employees while other County employees for the same time period have been required to assist in the financial crisis by accepting a wage freeze, is inequitable.

A different argument could be raised, however, as to employees who are substantially underpaid compared to the stipulated counties. However, an exception exists with regard to the Communication Clerks. This position is experiencing high turnover and substantial training costs due to the current below average compensation level. The increase proposed by the Employer is also

more equitable as to this position as well.

#### UNION ARGUMENT - Duration and Wages

The Union requested a two year contract (1/1/92 - 12/31/93) and the Employer asks for a three year contract which would carry through 12/31/94.

The parties did not have the advantage of knowing each other's positions regarding wages when formulating their last duration offers. With the disclosure and reflection which occurred since the hearing, the aspect of duration may now have resolved itself. A three year contract is available and would satisfy both parties.

As to wages, the difficult task of the Panel is to fashion an equitable three year contract especially for the first two years. A multiple choice is available for the first two years with a firm 4% established for the third year; i.e. the Employer final offer. The Union believes however that a blend of both parties final offers is best. That is 2.0% the first year, 3.1% and \$2.00 for dispatchers and 4% the third year.

The Union contends with the blend of final offers above the top step for Deputy is consistent with the percentage increases enjoyed by the Alcona-Presque Isle group of comparables (2.2%, 3.7%) and the contiguous group of comparables (3.5%) to adopt the Employer's demand for a wage freeze in 1992 and 1993 would be contradictory to the evidence presented. Adoption of the Union's final offer will preserve the voluntarily negotiated differentials.

The County claims there is no money in the 1992-1993 budgets. This is likely true. However, the Award in this arbitration case will be paid in the 1994 fiscal year where monies are available as evidenced by the Employer's 4% final offer for 1994. The Union believes that its final offer of settlement represents the most equitable choice and urges its adoption. Should the Panel decide a third year be included, it need only affirm the parties desire for 4% for all employees in the third year.

#### DISCUSSION - Duration and Wages



Comparisons in the record clearly dictate a duration of the new agreement for three years.

(1) The first is past bargaining history (h). The facts show that this unit as well as AFSCME and POAM have had three year collective bargaining agreements with the County since 1983. (2) The facts also show that four of the six comparable counties currently have three year contracts. (3) There is no compelling evidence in the record to support a two year agreement.

As to wages the Employer is proposing via its last best offer a wage freeze for 1992 and 1993, with the exception of a \$2.00 per hour increase on 7/1/93 for communication clerks the same as per other county units. The Employer proposes, effective 1/1/94, a 4% wage increase for all classifications.

The Union suggests by its argument that the Panel can fashion a three year contract with a 2.0% increase the first year, 3.1% increase the second year and the 4% Employer proposal for 1994. As noted in the ability to pay section, Mr. Henderson, the County tax accountant, testified the Employer did not have the ability to meet the two year, 2% plus 3.1% Union's final offer. Hence the majority of the Panel concludes that the three year Union proposal is far beyond the revenues available to the County.

The majority of the Panel concludes the three year duration and proposed wage package of the Employer is the more logical and most reasonable based on the facts and evidence in the record.

A review of the facts show that Benzie County's Last Best Offer for Deputy at \$20,528 and Corrections Officer wage at \$17,705 exceeds the average comparables at the starting wage and at the top wage step in 1992. Again in 1993 the Benzie County Deputy at \$20,528 and Correction Officer at \$17,705 starting wage rate exceeds the average of the comparables. In 1993 the Deputy wage at the top step at \$24,080 is right at the average. The Correction Officer wage at \$21,580 again exceeds the average.

The facts show how poorly the Communication Clerks were paid in 1992 and 1993. These low wages establish very clearly why the Employer moved to propose the unusually high \$2.00 per

hour wage increase for Communication Clerks effective July 1, 1993. According to the Employer this is a 33.7% - 37.9% increase depending on the step levels. This is \$3,000 more than the Union's 3.1% proposed increase. Fact Number 19 shows how dramatically the wages for Communications Clerks increase from 1992 to 1993 when the Employer's \$2.00 per hour is calculated in the new wage. A total increase at the start and top step of \$4,160. As noted by the Employer these increased wages will decrease the turnover rate, save money and improve quality.

There are too few 1994 wage settlements in the record to establish a meaningful average. The Employer's final offer for 1994 is \$25,043 for Deputy, \$22,443 for Corrections Officer and \$17,182 for Communications Clerks. (Ex-25, 29 and 33)

#### Direct Compensation for Deputies and Corrections Officers

The facts show that in 1992 the Direct Compensation of Benzie Deputies was higher at \$33,095 than the average of the comparable deputies. This \$33,095 direct compensation is the second highest of all deputies of the six comparable units. The indirect compensation at \$19.15 is higher than the average and is the highest of all the six comparable units.

In 1992 the Benzie Corrections Officers have the highest direct compensation amount at \$30,256. These employees in 1992 also have the highest indirect compensation at \$17.51.

The direct compensation of Benzie Communications Officers at \$19,807 is the second lowest of the comparables in 1992. The same is true of the indirect compensation at \$11.46.

The facts show that in 1993 the total direct compensation of Benzie Deputies at \$33,221 is right at the average of the comparable units. This is true also of the indirect costs at \$19.23. The Corrections Officers rates are somewhat better as their direct compensation is above the average at \$30,388. The indirect compensation is right at the average at \$17.59. The direct compensation and the indirect compensation of the Communications Clerks make a big improvement over 1992. In 1993 the clerks total direct compensation is \$24,654. This is \$1,900 closer to the average of comparable Communications Clerks. This improvement reflects the high \$2.00 per hour wage increase proposed for 7/1/93.

The facts show that the Union's proposed wage increase is based solely on the Detroit CPI. Stepping over the issue of whether or not the Detroit CPI is relevant to the Benzie area the Union's CPI argument is the only basis for its wage proposal. This is only one of the eight factors set out in the act. Contrarily, the Employer's duration and wage proposal encompasses five of the factors including (b), (c), (d), (f) and (h).


**AWARD - Duration and Wages**

The Panel awards the last offer of settlement of the Employer for duration and wages as it more nearly complies with the applicable factors at Section 9 at "(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) comparisons of the wages, hours and conditions of employees involved in arbitration. . . (i) in public employment in comparable communities", "(f) the overall compensation presently received by the employees. . . insurance. . . and all other benefits received". Past bargaining history, which encompasses "(h) such other factors. . . which are normally taken into consideration in the determination of wages, hours and conditions of employment. . . in public service. . .", than that of the Union which includes only the Detroit CPI "(e) . . . known as the cost of living."

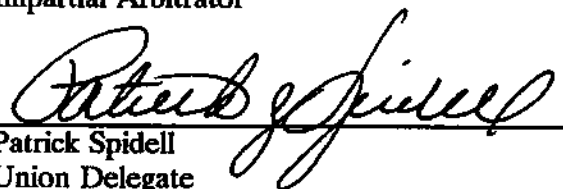
The new Agreement will be for three years duration as established by the last best offer of the Employer. The wages for the new Agreement will be established by the last best offer of the Employer.

Affirm

Dissent

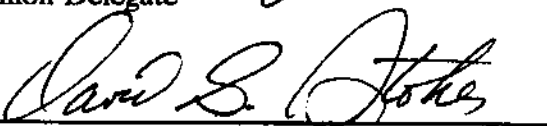
  
Alvin N. Zachrich  
Impartial Arbitrator

X

  
Patrick Spidell  
Union Delegate

—

X

  
David G. Stoker  
Employer Delegate

X

—

## SHIFT DIFFERENTIAL - Arguments of the Parties

### EMPLOYER ARGUMENT - Shift Differential

The evidence reflects that the status quo exceeds most of the comparables and internal employees as to shift differentials. The Union essentially requests a 25% increase in this differential amount which already exceeds all but one of the stipulated counties. While the increase cost may not be as substantial in this benefit as in many of the other economic proposals, in light of the County's economic position, it similarly is not justified. Moreover, this unit works under a contractually mandated rotating shift schedule (Section 14.1 of Joint Exhibit 1). Therefore, an increase in shift differential essentially will be equalized throughout the year and is neither more than an across the board compensation increase for the unit. In light of the County's economic position, the Employer's position is more supportable.

### UNION ARGUMENT - Shift Differential

The last time the employees had any change in the amount of levels of their shift differential was in 1987. Effective 1987, employees went to 10 cents per hour for afternoons and 20 cents per hour for midnights.

Now, the shift differential is a form of pay. It is pay for working undesirable hours, but is a form of pay. Where the shift differential does not increase over the years, the shift differential loses some of its value, some of its income value in terms of keeping up with inflation.

The Union calculated the rate of inflation from 1987 through 1993 to be 25%. It therefore seeks a 25% increase in shift differential to keep up with inflation.

### DISCUSSION - Shift Differential

The Union essentially requests a 25% increase in the differential amount which already exceeds all but one of the stipulated counties. Three of the six have no shift differential. Two counties, Alcona and Kalkaska have differentials at a lesser amount than Benzie. What the Union seeks is well above Alcona and Kalkaska. Mackinac's differential exceeds Benzie. From a comparison aspect the shift differential is well above the comparables and no comparative reason to meet the demand of the Union.


Additionally, as the Employer argues this Unit works under a contractually mandated rotating shift schedule. Therefore, an increase in shift differential essentially would be equalized throughout the year and is nothing more than an across the board compensation increase for this Unit.

**AWARD - Shift Differential**

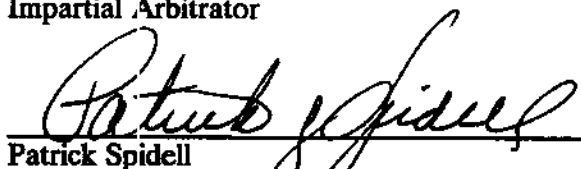
The Panel awards the last best offer of the Employer on Shift Differential as it most nearly complies with the applicable factors; i.e. "(d) comparisons of the wages, hours and condition of employment. . .of other employees performing similar services. . .(i) in public employment" than the last best offer of the Union. The new Agreement will remain as is at Article XIV, Section 14.8 - Shift Differential.

Affirm

Dissent


  
Alvin N. Zachrich  
Impartial Arbitrator

X

  
Patrick Spidell  
Union Delegate

\_\_\_\_\_

X

  
David G. Stoker  
Employer Delegate

X

\_\_\_\_\_

**OVERTIME - Argument of the Parties**

**EMPLOYER ARGUMENT - Overtime**

The Employer has proposed that overtime for bargaining unit employees be calculated pursuant to the Federal Fair Labor Standards Act, being 29 USC 201 et seq., effective from the date of the award. The Union proposes maintaining the time and one-half compensation for all hours worked over 8 in a day or 40 in a week.

According to the Employer, the 1992 costs for unit employees totaled \$51,652.51. While the exact amount of savings to the county under the Federal Fair Labor Standards Act cannot be determined, any savings would assist in rehabilitating the County's financial plight.

The union in its brief suggests that the Employer is seeking to limit overtime costs through a "loophole" and implies that scheduling will be manipulated to avoid overtime costs. The Employer did not disguise the fact that its desire to use the federal standard was to lower its overtime costs. However, the suggestion that the federal law is a "loophole" is a gross mischaracterization. Moreover, overtime for law enforcement officers is generally driven by such items as unanticipated emergencies and court time, both of which are beyond the County's control. To compensate employees at a more generous rate that required by the law would simply be unjustified based on the County's economic status. The Employer's proposal to calculate overtime consistent with the law is more supportable.

#### UNION ARGUMENT - Overtime

Employees presently receive overtime at time and one half for hours in excess of eight per day or forty per week. The Employer seeks to eliminate that provision and replace it with an arrangement that would prevent overtime being paid until eighty hours have been worked in a two-week pay period. The Union seeks to retain the status quo.

The Employer appeared to make much of the Fair Labor Standards Act and its applicability. The existence of both federal and state wage and hour statutes is not denied. There is nothing in any statute which would force parties to involuntarily nullify such a long-standing, accepted practice. The Employer's attorney appears to have discovered a "loophole" which could deny law enforcement employees overtime until they work more than 80 hours in a two-week pay period.

The Employer's final offer is seriously deficient in that it carries no effective date. Surprisingly, Witness Bowers was unable to tell the Panel how much money, if any, would be saved.

#### DISCUSSION - Overtime

The Employer did not dispute the Union argument that overtime within this Unit is ". . . a long-standing, accepted practice". The majority of the Panel therefore concludes that the current language concerning overtime at Article XIV is long-standing and was negotiated by the parties.

The facts show that in excess of \$51,000 was expended for overtime in 1992. It is understandable that the Employer would seek to reduce this amount. However, the Employer does not know how much overtime will be saved should the Panel award the drastic change in the

application of overtime. Public Sector neutrals are reluctant to change a long-standing practice or contract language unless the party seeking the change can justify fully the change it seeks. Here the Employer seeks to make a drastic change in long-standing contract language without knowing what the result may be. The Employer indicates "any savings" would be justified. The majority of the Panel considers the change could result in no savings. In any event the majority of the Panel will not tamper with the current language under facts and circumstances of this issue.


**AWARD - Overtime**

The Panel awards the last offer of settlement of the Union as it more nearly complies with the applicable factors, at Section 9 past bargaining history which is an other factor "(h) such other factors. . .which are normally or traditionally taken into consideration. . ." than the Employer.

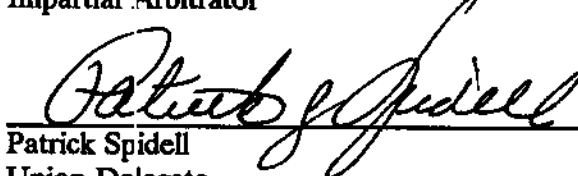
The new Agreement will remain as is at Article XIV, Section 14.3 overtime.

Affirm


Dissent

  
Alvin N. Zachrich  
Impartial Arbitrator

X

  
Patrick Spidell  
Union Delegate

X

  
David G. Stoker  
Employer Delegate

X

**LAYOFF - Argument of the Parties**

**EMPLOYER ARGUMENT - Layoff**

All of the Employer's proposals on layoff are supported by a majority of the internal comparables. Likewise, the comparable communities also support the Employer's offer. Of the six (6) comparable counties, five (5) pay employees the salary of the classification into which they bump. Again, five of the six comparables conduct layoffs by classification seniority. None of the comparable counties retrain persons unqualified to bump at the Employer's expense.

Layoffs by classification rather than Departmental seniority allows the Employer to layoff where the work has either been eliminated or slowed down. This is as it should be. It precludes forcing the Department to layoff employees who may possess unique certification and who cannot be replaced by existing staff. It also precludes forcing the Employer to pay wildly disparate rates of pay for the same work being performed and to pay for skills not being utilized.

Benzie County's POAM unit has three classifications. If layoffs are made strictly on the basis of seniority a road patrol officer could be laid off before employees in the other two classifications, even though no other certified officer may be available to perform the duties of the now vacant law enforcement position. Communications clerks or Corrections officers can only function as a road patrol officer if they are certified. At the time of the hearing, there was only one certified law enforcement officer working in corrections and none working in communications.

The Union failed to submit any exhibits regarding its layoff proposals, and its testimony was unsupportive. As we have seen the Union proposed that if an employee cannot bump because he/she needs additional training to bump, the Employer must pay for those costs.

#### UNION ARGUMENT

Each of the parties desires to change the contract language concerning layoffs. The Union requests that during layoffs, if a higher-seniority employee could otherwise bump another employee but for lack of some required certification, the Employer would send the higher-seniority employee for such training. Union witness Business Agent Patrick Spidell explained the Union is not proposing that employees be trained by the Employer which would allow them to be bumped into a higher classification.

The Employer's layoff language proposes that layoffs first be made by classification rather than by seniority. Employer witness Sheriff Paul E. Stiles explained that the intent of the Employer is to "lay off where the work has either been eliminated or slowed down. And the retraining part of it will come into play somewhat, but again, as I understand it, they'll be able to bump if they are qualified."

Both of the parties recognize that layoffs have been made in the past and no prohibition



against layoffs exists for the future. The Union's proposal, however, offers greater protection to employees while allowing the Employer its right to lay off.

The Panel Delegates are familiar with the components of and effects of the language proposed by each side. The Executive panel meeting will give each an opportunity to review the evidence which has been offered concerning this issue.

#### DISCUSSION - Layoff

Layoffs by classification rather than Departmental seniority allows the Employer to layoff where the work has either been eliminated or slowed down. The majority of the Panel considers this is as it should be. It precludes forcing the departments to layoff employees who may possess unique certification and who cannot be replaced by existing staff. It also precludes forcing the Employer to pay wildly disparate rate of pay for the same work being performed and to pay for skills not being utilized. The Employer's last best offer prevents a road patrol officer being laid off before the other two classifications.

The majority of the Panel considers the Employer layoff proposal to be the most reasonable of the two in evidence. Additionally, all of the comparables both direct the majority of the Panel to the Employer position. The facts show that two of the three internal units in Benzie County do not provide that employees who bump into a lower classification receive the higher classification pay. None of the internal units provide retraining of person unqualified to bump.

Five of the comparable counties pay employees the salary of the classification into which they bump. Five of the comparable counties conduct layoffs by classification seniority.

#### AWARD - Layoff

The Panel awards the last offer of settlement of the Employer as it most nearly complies with the applicable factors; i.e. "(d) Comparison of the wages, hours, and conditions of employment. . . (i) in public employment. . ." (emphasis added) than the last best offer of the Union. The Employer's last best offer will be incorporated into the new agreement at Article XI - Layoff and Recall.

Affirm

Dissent

Alvin N. Zachrich  
Alvin N. Zachrich  
Impartial Arbitrator

X

Patrick Spidell  
Patrick Spidell  
Union Delegate

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X

David G. Stoker  
David G. Stoker  
Employer Delegate

X

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SUPERVISORS WORK - Argument of the Parties

EMPLOYER ARGUMENT - Supervisors Work

The record supports the Employer proposal. None of the County's other two labor contracts restrict supervisors from performing bargaining unit work. Neither do the comparable counties contract restrict supervisors from performing bargaining unit work and with good reason. It is illogical to force a small department to incur overtime and response delays because it must recall a deputy to work overtime.

The Benzie Sheriff's Department is small and does not have an employee surplus. Therefore, when the need arises, the Department should be able to respond immediately and in the most economical way possible. It is cost effective to allow supervisors to perform some non-supervisory duties.

UNION ARGUMENT - Supervisors Work

The Employer devoted less than one page in the transcript to this issue. Sheriff Stiles merely stated that he would like to use supervisors to perform bargaining unit work. He stated that one reason was "an economic-type thing", otherwise not elaborated upon. The Union supposes that the "thing" could be either higher or lower costs for the County. The record carries no explanation. His second reason was that at night, it can be an hour before a bargaining unit member called from sleep might arrive at a location 15 or 20 miles away. The record seems to imply that supervisors either

drive faster or sleep faster?? Again, another issue of limited scrutiny, and lacking enough information to permit the Panel to base its award on competent, material, and relevant evidence on the record as a whole. The Union urges the Panel to maintain the status quo.

#### DISCUSSION - Supervisor Work

The comparisons in the record show that the internal units and all of the comparable counties do not restrict supervisors from performing bargaining unit work. However, in its argument the Employer notes ". . . where the need arises, the department should be able to respond immediately and in the most economical way." (Emphasis added) The majority of the Panel considers that economics should not be a factor in "when the need arises". When the need arises could well be an emergency which needs immediate attention. The current language at Article XIV Section 14.10 provides that "supervisors shall not be assigned to or perform unit work except in the case of emergency. . ." (Emphasis added). The parties negotiated this current language and made it possible for supervisors to do bargaining unit work but only in an emergency.

Again, Public Sector neutrals are reluctant to change a long-standing practice or contract language unless the party seeking the change can fully justify the change it seeks as viewed by the majority of the Panel. The Employer has not done so here.

#### AWARD - Supervisors Work

The Panel awards the last best offer of the Union as it most nearly complies with the applicable factors; i.e., "past bargaining history" contained in factor (g) such "other factors. . . which are normally or traditionally taken into consideration in the determination of. . . conditions of employment throughout. . . arbitration. . . in public service. . ." than the last best offer of the Employer. The new Agreement will remain as is in the current Agreement at Article XIV, Section 14. Supervisors.

Affirm

Dissent

Alvin N. Zachrich

Alvin N. Zachrich  
Impartial Arbitrator

X

Patrick Spidell

Patrick Spidell  
Union Delegate

X

David G. Stoker

David G. Stoker  
Employer Delegate

X

HEALTH INSURANCE - Argument of the Parties

EMPLOYER ARGUMENT - Health Insurance

It is no secret that health care is a national crisis. Skyrocketing health care costs continue to drain the U. S. economy. And no one has felt the impact of this crisis more than small employers who, in many cases, have been forced to discontinue health care coverage. The Union has refused to acknowledge this problem and the County's financial woes.

The unrebutted evidence presented by the Employer shows that its proposal is very reasonable. As we have seen, the comparable counties predominately support a benchmark on the insurance costs. Four out of the six comparables already have co-payments or limits on their insurance costs. (Ex 60) In fact, the majority of the comparables depicts a distinctive trend for establishing benchmarks for insurance premium costs. Only two counties, both of which have contracts expiring on December 31, 1993, are without some sort of cap on the County-paid premium insurance costs. The fact that half of the comparables do not even offer any vision coverage has a compounding effect on the need to cap the more extensive/expensive plans, like Benzie, which offer hospitalization, dental and vision.

Obviously, the County is proposing to cap health insurance rates due to its financial condition. (TR 261). Even otherwise financially "sound" employers in both the private and public sectors have been compelled to obtain employee contributions in order to continue health care coverage. Here,

in 1993, it will cost Benzie County \$103,618.20 for the POAM employees' insurance alone. (Ex 61)

It also is predictable that the cost of insurance will soon increase further. The County cannot continue to absorb the skyrocketing costs alone. Based on the current financial condition of the County, the escalating cost of insurance, and with a majority of counties containing benchmarks on their insurance costs, it is only reasonable that the Employer be allowed to establish a benchmark on its insurance costs.

#### UNION ARGUMENT - Health Insurance

The Employer requests that any rate increase in health insurance after December 31, 1993 be shared 50/50 by employee payroll deduction. The Union desires to maintain the status quo, that is, all rate increases paid by the Employer.

This issue may indeed be premature in light of the pending changes in health insurance for our nation. Ford Motor entered UAW negotiations this fall with the same objective as the County of Benzie. The issue is likely to be visited by the County for all its employees in the near future, as will certainly occur for all counties in the state and nation.

Employer witness Jean Bower admitted that Benzie County presently pays all health insurance premiums for all employees. No other employee group shares payments in the manner sought in this arbitration by this Employer.

This is an issue which should be more thoroughly explored by the parties themselves before asking a Panel to unilaterally impose conditions without much scrutiny and study. The Employer's final offer reveals its willingness to probe the issue more deeply: ". . .the Employer agrees to meet with the Union. . .in an effort to lessen [costs]". No testimony was provided to persuade the Panel that all cost-saving efforts had been identified and implemented prior to the relief requested in the Employer's final offer. In fact, the record is devoid of any indication that the Employer considered anything more to lower its cost of employee health care than signaling out the POAM group for a unilaterally imposed reduction in take-home pay. The record did establish that the County provides full health care for elected officials, persons who are not even regular employees of the County. The record did not reveal any County-wide efforts involving health benefit consultants with a goal of

reducing costs had ever been undertaken. The Union asks that the status quo be maintained. The Employer has not provided convincing evidence that a pay reduction targeted solely at the POAM group represents a reasonable, legitimate and equitable solution to a far-reaching problem soon to be directly influenced by national legislation.

#### DISCUSSION - Health Insurance

The argument of the Employer makes it clear from the record that four of the six comparable counties have co-payments or limits on their insurance costs. Unlike the Employer arguments, regarding the wage freeze, there is no mention of the other county employees and elected officials status with regard to Health Insurance. With the wage argument all other County employees, including the elected officials, received a wage freeze or no increase. Here there is no Employer argument as to these same employees. The record does show that if the Employer were to prevail on Health Insurance this unit would be the only group that would be subject to a cap on Health Insurance (see testimony of Jean Bowers, TR-262).

As viewed by the Panel the other employee groups within Benzie County (Internal Comparables) are given strong weight especially in the resolution of the wage and Health Insurance issues. This comparable group cannot be used two ways. Therefore, the fact that no other internal employee or County official currently has a cap on Health Insurance turns the resolution of this issue to the Union's last best offer. (The panel does speculate that other County Units may or may not have co-pay in 1994 as the Employer argues it will seek such a contribution from its other employees.)

Additionally, as discussed by the Panel this is not a high cost item and it binds the parties for only one year. Equally important is the factor (j) "overall compensation" with all of this Unit's employees. The wage freeze has caused a deterioration of overall compensation. An award in favor of the Union would not reduce the overall compensation even further.

#### AWARD - Health Insurance

The Panel awards the last best offer of the Union on Health Insurance as it most nearly complies with the applicable factors; i.e. Internal Comparisons, "(b) stipulations of the parties", "(d)

...comparison of the wages, hours and conditions of the employees in the arbitration proceeding. . .(i) in public employment. . ." and (j) the overall compensation received by the employees, including. . insurance. . ." than does the last best offer of the Employer. The new Agreement will remain as is at Article XVIII - Insurance.

Affirm

Dissent

Alvin N. Zachrich  
Alvin N. Zachrich  
Impartial Arbitrator

X

Patrick Spidell  
Patrick Spidell  
Union Delegate

X

David G. Stoker  
David G. Stoker  
Employer Delegate

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X

This Award dated this 18th day of October 1993, Good Hart, Michigan

Alvin N. Zachrich  
Alvin N. Zachrich  
Impartial Arbitrator

Patrick Spidell  
Patrick Spidell  
Union Delegate

David G. Stoker  
David G. Stoker  
Employer Delegate