

7/16/96

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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of:

BERRIEN COUNTY,

Employer,

MERC ACT 312

-and-

Case No.: G95 F-4002

POLICE OFFICERS LABOR COUNCIL,

Union.

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GEORGE J. BRANNICK, Chairperson  
THOMAS FETTE, Employer Delegate  
JAMES QUINN, Union Delegate  
-----/

*Berrien County*

OPINION AND AWARD

George J. Brannick  
Arbitrator

Dated: July 16, 1996

This is an Arbitration held pursuant to Act 312 of the Public Acts of the State of Michigan, 1969, as amended, MCL 423.231 et. seq., (hereinafter Act 312) which is better known as the Police and Firemen's Compulsory Arbitration Act.

The Parties to this proceeding are **BERRIEN COUNTY**, the Employer, (hereinafter called the Employer) and the **POLICE OFFICERS LABOR COUNCIL**, the Union, (hereinafter called the Union).

The members of the Arbitration Panel are George J. Brannick, Impartial Chairman; Thomas Fette, Employer Delegate; and James Quinn, Union Delegate.

The Collective Bargaining Agreement, (CBA) which is the subject of this Arbitration, expired on December 31, 1995, and was admitted as Union Exhibit 4.

At the opening of the Hearing the parties stipulated that the issues were properly before the Panel, and that all other issues had been resolved. Further, the parties stipulated that there were no jurisdictional or threshold issues for determination.

#### **ISSUES**

There are two issues in dispute, to wit;

- I. THE WORK PERIOD, I.E., SHIFT BIDDING.**
- II. CAPPING OF VACATION ACCRUAL.**

As to I., the Union proposes changes, and the Employer proposes status quo; and, as to II., the Union proposes status quo and the Employer proposes changes. The parties have identified I. as a non-economic issue, and II. as an economic issue.

## **STANDARDS FOR DECISION**

Section 8 of Act 312 requires the Arbitration Panel to identify the Economic issues in dispute at or before the conclusion of the Hearing, and we are satisfied that the above identification of Economic issues comports with that mandate. We acknowledge receipt of the parties' Last Best Offers with respect to all issues.

Section 9 of Act 312 sets forth certain criteria that the Panel must take into consideration in arriving at its decision and award. Those criteria will be examined below.

We are, therefore, constrained by the statute to resolve the economic issue by choice of the Last Best Offers measured against the foregoing Standards.

As to the non-economic issue we are required to base our finding, opinion and order on the applicable factors prescribed in Section 9., but are not required to chose between the Last Best Offers.

## **ISSUE I**

### **THE WORK SCHEDULE**

The evidence adduced relative to the history of the issues was basically undisputed. The CBA has historically provided that the Sheriff had the right, ". . . to schedule hour and shifts of work, including overtime.", (Art.4) and shifts were rotated on a 28-day basis.

In July, 1991 the then Sheriff, Forest Jewell, implemented a Shift Bid Policy, as an experiment, but in which he retained

". . . . all management rights as written in Art. 4 . . ." of the CBA. He further stated that the bid procedures are not permanent and may be suspended at any time.

In October of 1992, Robert Kimberly became Sheriff. During the initial years of his tenure the issue of shift bidding and shift rotation was the subject of considerable study and discussion, culminating in a Policy change which was effectuated on January 27, 1995 for implementation on July 2, 1995, which Policy provided for shift rotation on a 56-day rotation period.

In April of 1995 the Union filed what has been termed "a class action Grievance" relative to the Sheriff's new policy, which Grievance was ultimately denied by Arbitrator Elaine Frost on March 12, 1996.

The Arbitrator's Opinion and Award was admitted into evidence as Employer's Exhibit 7, over the objection of the Union, but it was understood that what was decided was a Contract interpretation question, and not part of Act 312 bargaining. The above is noted only from the standpoint that the issue is res judicata as to the Contract interpretation question only and is only a historical note with respect to the Collective Bargaining issue.

The parties continued their bargaining for a new Contract until impasse over the two remaining issues noted herein were left, all other issues having been decided as noted above.

There appears to be little or no dispute relative to the history of this issue.

### **THE UNION'S POSITION**

The Union's position, as set forth in their Brief, is that the comparable communities have shift selection by seniority, with the exception of upper ranks, to wit, sergeants, lieutenants and captains.

Further testimony was offered that a majority of the members of the Unit in a survey done by the Union requested that the Department remain on permanent shifts. Its basic concern was aimed at health questions, and it introduced a document indicating that the nurses who rotate shifts increase their risk of heart disease. They expressed concern over some of the evidence introduced by the Employer relative to Exhibits, claiming sick time, being down, brought productivity up, and it rejected those claims.

### **THE EMPLOYER'S POSITION**

The Employer stresses the need of contractual flexibility of the Employer to establish work assignments; the need to develop new skills as laws, writs, procedures and other technologies are changing, that the work performed on the shift is different with respect to each shift, indicating that, unlike production work, there is a different type of response for each shift in law enforcement.

Additionally, there was concern about work-load distribution, erosion of skill, and a response to the health and safety issue.

With respect to comparables, the Employer argued that the majority of the comparables permits the Sheriff to schedule shift assignments.

## APPLICATION OF THE CRITERIA

Thus, the Panel addresses this issue based upon the criteria mandated in Section 9 of Act 312 as follows:

1. The lawful authority of the employer.

The Employer has not only the authority but the responsibility to operate his office by the most efficient and economical methods in fulfillment of its mission. This, however, must be accomplished by keeping in mind that the morale of the employees of the Department has a great deal to do with the achievement of economic efficiency.

2. The stipulations of the parties.

The parties stipulated at the Hearing that all other issues have been settled or waived by the parties.

3. The interest and welfare of the public and financial ability of the unit of government to meet costs.

Although this issue is considered non-economic and therefore costs are not of great import, the interest and welfare of the public lies at the very heart of this issue. While a Sheriff's Department has many duties and obligations which only affect small segments of the public, the vast majority of the public looks to the Sheriff for protection from crime. This Panel may judicially notice that fear of crime is one of the most important issues facing this nation. What the public wants when it pays its taxes is protection. The responsibility to provide that protection rests squarely upon the shoulders of the Sheriff. Thus, it is his responsibility and duty to utilize all of his resources toward the

accomplishment of that purpose. Should he fail, he faces the prospect of public rejection. Accordingly, when a management decision is made with respect to the utilization of human resources, it must be assumed that the motive is in keeping with the mission.

4. 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;

Comparables, among the Standards for Decision set forth in the statute, present a singular area where hard evidence can be obtained with respect to working conditions, wages and benefits of persons doing similar work can be measured. Thus, the adversaries seek the most advantageous comparables to the position taken by their Last Best Offers, and advance highly intellectual arguments for acceptance by the Panel of their comparables to form a foundation for decision. While utilization of comparables makes easy the work of those who rely totally upon them, this Panel reminds the adversaries that the question of comparables is only one of nine Standards which the Panel must review; and, while, as stated above, it is easy to base Awards upon comparables, this Panel does not fundamentally agree that it is always best to rely upon the same for support of the Award, but rather to be guided by

the same in reaching that Decision and Award. The parties hereto are sophisticated in both collective bargaining and evidence, and realize that comparables based upon CBAs alone are hearsay documents offering no opportunity to examine the makers of the agreements and, accordingly, we have no history of the bargain or what the parties may have given up to obtain one certain condition or benefit. We can only look to see what other comparable areas are doing regarding a specific issue, but are at a loss to determine how they arrived at their agreement. In this case it appears that there is a mixed bag of provisions regarding work assignments, none of which to this writer offer a sound basis to draw any conclusion other than the issue has many methods of implementation, none of which seem to dominate.

5. The average consumer prices for goods and services, commonly known as the cost of living;

Not applicable.

6. 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;

Not applicable.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

Not applicable.

8. 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.

Looking to the history of this issue, it appears the former Sheriff permitted a form of shift selection, but at all times reserved the right to revert to a system that had been in place for a long period of time. It is unknown what motivated the former Sheriff to make the change, but it is known that such change did bring about substantial interest in the subject. Almost from the inception of the Shift Bid Policy, controversy developed, and there can be no doubt that there was little unanimity of opinion regarding the pros and cons of the policy. When a survey was done among the employees of approximately 145, who were ask to comment regarding this issue of shift selection, only 60 responded; and, of those, only two-thirds requested that it ". . . go back to the permanent shift. . .". We have no evidence as to how the survey was conducted, or why so few expressed interest in the issue, but as Casey Stengel once noted, "If the people don't want to come out to the ball game, you can't stop them.". Somehow, however, the issue did become the subject of this Arbitration.

Additional testimony was adduced regarding the question of the impact of swing shifts on the health of employees so assigned, but the evidence offered was inconclusive as to that position.

The obvious conclusion in view of the evidence herein

presented is that there is no one scheduling system that will satisfy all of the interested parties affected by this matter. It almost parallels President Lincoln's statement that there is no way you can satisfy all of the people all of the time. Lacking the authority to attempt to compromise the issue and, further, having great doubt of the ability to do so if permitted, then we must chose that Last Best Offer, which meets the application of the statutory Standards which we are mandated to follow. In so doing, this Impartial Chairman has no difficulty in accepting the Employer's Last Best Offer. The Employer has a mission to fulfill, he is responsible to all of the citizens of the County, as well as those there for any reason. To fulfill that mission and responsibility, he must have a well trained and fully ready staff. To meet that requirement, he must have the authority and flexibility to see that each and every member of his staff is fully ready to meet any of the multiple challenges that those who work on the front line of law enforcement are faced with on a daily basis. He has determined a method for achieving that purpose, and there has not been presented sufficient evidence to show that the methodology of the Employer's offer would amount to more than an inconvenience to most of the members of the bargaining unit.

Accordingly, the Employer's Last Best Offer is Accepted.

## ISSUE II

The Capping of the vacation accrual presents a much less difficult issue than shift scheduling. The evidence adduced at the hearing established that, for a long period of time Union members

have been able to accumulate substantial blocks of vacation time, particularly those assigned to the drug enforce area; and, as a result, have been enabled to enhance their retirement status. This has exposed the Employer to what it considers a serious unfunded liability. The problem with that argument is that the Employer and the citizens of the County have had the advantage of having an employee in place at a time when such employee could have been on vacation, thereby creating the necessity of hiring a replacement or leaving the job area vacant. The real problem is that, at the time that the unused vacation is paid for, the value thereof may have been substantially increased. Is there a remedy for this problem? Yes. The remedy simply consists of the Employer applying the same management judgment to this issue as he has to the above shift scheduling issue and schedule vacations for his employees with the same mission consciousness as he disclosed in his shift scheduling arguments. This may require substantial effort but, as indicated above, that is the responsibility of the Employer. He has and has had the authority to solve and resolve this issue, sans this Panel interfering with his flexibility and penalizing those who previously bargained for this ability to accumulate vacation time. Since the Employer's position was only to cap and not to deny those with substantial accumulations, there would be no additional burden to the Employer then that to which it is now exposed, and the Employer has the authority to limit future exposure. It must further be noted that the Employer offered no evidence that it did not have the ability to pay. There is also the conception that

maybe the Employer, in its desire for flexibility, may choose to let an employee accumulate vacation time as opposed to the employee demanding to use it, instead of lose it.

For the stated reasons, and based upon the Section 9 criteria of Act 312, the Last Best Offer of the Union is awarded.

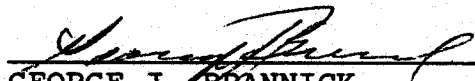
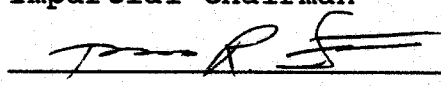
**AWARD**

**ISSUE I**

Based upon the foregoing evidence, the Last Best Offer of the Employer with respect to Issue I is awarded.

**APPROVED:**

**DISSENT:**

  
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GEORGE J. BRANNICK  
Impartial Chairman  
  
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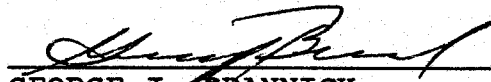
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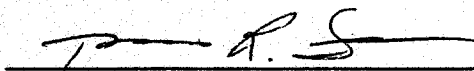
**ISSUE II**

With respect to Issue II, the Last Best Offer of the Union is awarded.

**APPROVED:**

**DISSENT:**

  
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GEORGE J. BRANNICK  
Impartial Chairman  
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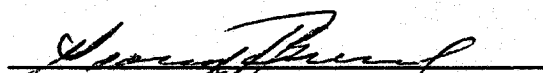
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**AWARD**

**ISSUE I**

Based upon the foregoing evidence, the Last Best Offer of the Employer with respect to Issue I is awarded.

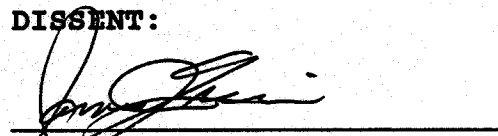
**APPROVED:**

  
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GEORGE J. BRANNICK  
Impartial Chairman

  
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**DISSENT:**

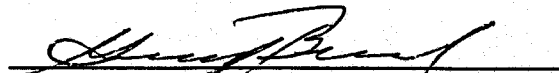
  
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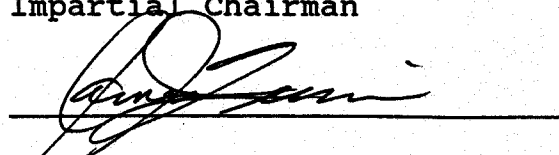
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**ISSUE II**

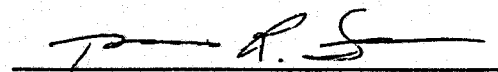
With respect to Issue II, the Last Best Offer of the Union is awarded.

**APPROVED:**

  
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GEORGE J. BRANNICK  
Impartial Chairman

  
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**DISSENT:**

  
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## EPILOGUE

This Chairman would be remiss if he did not compliment all of the parties and, especially Counsel, for the excellent presentation of the evidence in this matter and the excellent preparation of Exhibits. The witnesses gave clear, concise, and knowledgeable testimony which was free from extraneous items which more frequently tend to confuse, rather than enlighten, the Panel. The Exhibits were also clear and concise and, when laboring over Transcripts and Exhibits in late hours of the evening or early hours of the morning, it is a manifold blessing that the same be precise and to the point.

These Arbitrations are exceptionally difficult because the Panels are obligated not so much to decide, but rather to choose with respect to the issues. This has been made substantially easier in this case because of the highly professional and competent work of Counsel representing the parties.