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STATE OF MICHIGAN  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF ARBITRATION:

County of Ottawa and the Sheriff of Ottawa County

- and - MERC Case No. G 85-L-1110

Ottawa County Command Officers Association

APPEARANCES

For the Association

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Richard VanBeek, Sergeant  
Jim Lutz, Sergeant

For the Employers

Ronald A. Bultje, Attorney  
Phillip Alderink, Undersheriff  
Robert Oosterbaan, Personnel Director  
Robert Dykstra, Sheriff

ARBITRATION PANEL

Kenneth Grinstead, Chairperson  
Darryl Cochrane, Association's Delegate  
Louis VanSlooten, Employers' Delegate

October 31, 1986

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BACKGROUND

Procedural Matters

This is a compulsory "interest arbitration" matter pursuant to Act 312 of the Public Acts of the State of Michigan, 1969, as amended, MCLA 423.231 et seq, MSA 17.455(31) et seq; (hereinafter Act 312; better known as the Michigan Policemen and Firemen Compulsory Arbitration Act). As described in Section 1 of the Act, its purpose is to provide a peaceful, expeditious method of reaching a collective bargaining agreement for those public employees who are prohibited from striking. Section 2 of Act 312 provides that persons subject to the Act are employees "engaged as Policemen, or in firefighting or subject to the hazards thereof, emergency medical service personnel employed by a police or fire department, or an emergency telephone operator employed by a police or fire department."

Pursuant to the Provisions of the Public Employees' Relations Act, MCLA 423.201 et seq, 17.455(1) et seq, the sheriff and the county board of commissioners are joint employers of deputy sheriffs, with the sheriff controlling their appointment and tenure in position. The Sheriffs' Act (MCLA 51.70, MSA 5.863) provides that "[e]ach sheriff may appoint 1 or more deputy

sheriffs at the sheriff's pleasure, and may revoke those appointments at any time" while the county commissioners establish the number of deputies to be employed as well as the compensation levels, pursuant to MCLA 51.242, MSA 5.892. Capital City Lodge No. 141, Fraternal Order of Police v. Meridian Township, 90 Mich. App. 533, 539; 282 N.W.2d 383, 386 (1979), citing Local 1518, Council 55, American Federation of State County and Municipal Employees, AFL-CIO v. St. Clair County Sheriff, 77 Mich. App. 145, 149-150, 258 N.W.2d 168 (1977), rev'd on other grounds, 407 Mich. 1, 281 N.W.2d 313 (1979).

The parties to this proceeding are Ottawa County and the Sheriff of Ottawa County, (Employers) -and- the Ottawa County Command Officers' Association. Their most recent contract expired December 31, 1985. The bargaining unit is defined in Article 1, Section 2 of the expired Collective Bargaining Agreement:

The bargaining unit consists of all regular full-time command officers (having the classification of rank of Corporal through Lieutenant) employed by the Employer in the Ottawa County Sheriff's Department; but excluding the Sheriff, the Undersheriff, the Executive Officer, supervisors, reserves, temporary or casual employees, part-time employees, the Captain(s) and all other employees.

At the Hearing, the parties agreed that command officers are also considered to be deputy sheriffs. At the present time there are 0 corporals, 12 sergeants, and 4 lieutenants in the bargaining unit.

Petition for Arbitration, Pre-Hearing Conference and Hearing

Following unsuccessful bargaining by the parties in this dispute, and mediation assistance, the Petition for Arbitration was timely filed with the Michigan Employment Relations Commission on February 18, 1986. The Commission appointed Kenneth Grinstead as impartial chairperson. Darryl Cochrane was appointed Association delegate. Louis VanSlooten was appointed Employer delegate.

A pre-hearing conference was held in Grand Haven, Michigan on June 18, 1986. The Hearing was held in Grand Haven on August 8, 1986. At the Hearing, each party was given full opportunity to present testimonial and documentary evidence in support of the positions taken on bargaining issues claimed to be in existence. A verbatim reportorial transcript of the proceedings was taken. A typed transcript was ordered by the Panel and the written findings, opinion and award on the issues presented have been made with benefit of a transcript.

The parties agreed to submit their "last best offers" on the economic issues postmarked no later than August 22, 1986; and that briefs would be filed with the Chairman no later than thirty (30) days after receipt of the transcript of the Hearing. The briefs were received by the Chairman on October 7, 1986.

This opinion was written by the Chairman of the Panel, but the valuable suggestions of the other members of the Panel is acknowledged. Concurrence by the other members on any of the issues under submission does not necessarily signify that they agree with everything stated in the opinion.

#### Settlements Prior to Demand for Arbitration

During the negotiations that occurred prior to submitting the demand for arbitration, the parties reached tentative agreement on a number of issues.

These include:

1. An increase in the major medical deductible from \$100 to \$200 for family coverage, and from \$50 to \$100 for single coverage.
2. A residency policy.
3. Revision of Article 5, Section 1 of the expired collective bargaining agreement, pursuant to the impact of the 1985 United States Supreme Court decision concerning the coverage of state and local government employees by the Fair Labor Standards Act.

4. A group family-coverage dental plan, excluding orthodontics, with premiums fully paid by the County up to \$25 per employee per month, which plan provides for 50 percent coverage of eligible expenses, up to \$800 per year.
5. A clothing allowance equivalent to any increase negotiated by the Police Officers' Association of Michigan (POAM) on behalf of the deputies in the POAM bargaining unit.
6. A collective bargaining agreement effective from the date of the Act 312 arbitration award until December 31, 1988, with 1986 wage increases retroactive to January 1, 1986.

At the Hearing, the parties confirmed the continuing validity of all tentative agreements reached during negotiations, including an agreement on a three-year collective bargaining agreement. Additionally, the parties submitted a copy of the expired agreement, which parts, not modified by the tentative agreements or this arbitration award, are to continue in effect in the new agreement. A document, supplementary to the expired agreement, showing a revised longevity pay schedule and salary schedule for 1985, was also submitted at the Hearing.

#### Issues in Dispute

1. Wages. The last best offers of the Association and the Employer are shown separately for sergeants and lieutenants.

A. Sergeants. For each of the calendar years 1986, 1987, and 1988, the Association proposes a salary for sergeants equal to 10% over the salary negotiated for road patrol deputies by the Police Officers Association of Michigan (POAM). The road patrol deputies salary (after five years' service) for 1986 is \$28,144 and for 1987 it is to be \$29,270. The Association's proposal for sergeants is \$30,958 for 1986 and \$32,197 for 1987. Salary for 1988 to be determined after the deputies negotiate their agreement for that year.

For each of the calendar years 1986, 1987, and 1988, the Employer proposes a salary for sergeants equal to 7.5% over the salary negotiated for road patrol deputies. The Employers' proposal for sergeants is \$30,255 for 1986 and \$31,465 for 1987. Salary for 1988 to be determined after the deputies negotiate their agreement for that year.

B. Lieutenants. For each of the calendar years 1986, 1987, and 1988, the Association proposes a salary for lieutenants equal to 15% over the salary negotiated for road patrol deputies. The Association's proposal for lieutenants is \$32,366 for 1986 and \$33,661 for 1987.. Salary for 1988 to be determined after the road patrol deputies negotiate their agreement for that year.

For each of the calendar years 1986, 1987, and 1988, the Employer proposes a salary for lieutenants equal to 12% over the salary negotiated for road patrol deputies. The Employers' proposal for lieutenants is \$31,521 for 1986 and \$32,782 for 1987. Salary for 1988 to be determined after the road patrol deputies negotiate their agreement for that year.

The parties agreed that sergeant wages, and lieutenant wages, are separate issues permitting the Panel to award one party its offer concerning sergeant wages and award the other party its offer concerning lieutenant wages. The parties also agreed that the wages for 1986, 1987, and 1988 are all separate issues.

2. Payout of Excess Accumulated Sick Leave. Article 7 of the expired agreement provides that bargaining unit members are eligible for paid leave up to twelve (12) working days per year earned at the rate of one day for each month of service. Unused days accumulate up to, but not exceeding, one hundred twenty (120) days. In its "Petition for Arbitration" the Association stated

its demand that for officers who have accumulated more than one hundred twenty (120) sick days, an employee shall receive payment at the time of his retirement for sick leave days accumulated above the one hundred twenty (120) cumulative maximum. However, the Association clarified its demand as follows:

- A. In 1986, an employee will receive no payment for sick leave accumulated above the one hundred twenty day (120) maximum; and
- B. In 1987, an employee will receive payment for 25% of sick leave accumulated above the one hundred twenty day (120) maximum; and
- C. In 1988, an employee will receive payment for 50% of sick leave accumulated above the one hundred twenty (120) day maximum.

3. County Paid Retiree Hospitalization Insurance Issue. At the present time, the County permits retirees to belong to the County group but the retiree must pay the premium. The Association demands that hospitalization insurance be provided for future retirees. Former employees, now retired, would not be covered by the requested insurance coverage.

4. Just Cause for Non-Reappointments. Under the terms of the expired collective bargaining agreement, an employee may be discharged at the pleasure of the Sheriff. The Association demands that discharge be for just cause only. The County and the Sheriff have objected to the jurisdiction of the Panel on this issue. The County argues that an award of the just cause proposal of the Association would infringe on the Sheriff's statutory authority pursuant to MCLA 51.70, MSA 5.863, which authorizes the Sheriff to appoint deputy sheriffs and to revoke such appointments at his pleasure.

The parties also agreed that all issues, except for the "just cause" issue are economic.



## Standards for Decision

Section 9 of Act 312 provides that a Panel's "majority action and rulings shall constitute the actions and rulings of the arbitration panel." Under Section 8, a Panel "shall make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it," and "the findings, opinion and order shall be just and reasonable and based upon the factors prescribed in Section 9." Section 9 provides:

Where there is no agreement between the parties, or when 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 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 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 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.

An arbitration panel must consider each factor upon which evidence is presented, but it need not give predominant weight to any one. City of Detroit

v. Detroit Police Officers' Association, 408 Mich. 229, 294 N.W.2d 68 (1980).

It has also been expressed that arbitration panel members consider "strike criteria", or what would the parties have obtained if in fact they underwent the economic consequences, both from management and labor, of a strike. This additional "criteria," is a factor, "normally or traditionally taken into consideration" [Section 9, (h)]. It has been suggested because Act 312 has been made available as a substitute for a strike. Act 312 - An Overview, Roumell, George T. Jr., undated mimeographed.

Section 8 of Act 312 requires that "[a]s to each economic issue, the arbitration panel shall adopt the last offer of the settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in section 9."

#### Financial Ability of the County

At the Pre-hearing Conference, the Employer stated that it did not intend to raise the issue of the County's financial ability. Data in Table No. 3 (see Appendix) supports this conclusion. Data in Table 1 show that if state equalized valuation per capita (SEV/PC) is used to compare ability to finance local government, Ottawa County (\$13,240) ranks second among the eleven counties selected for comparison purposes. This ranking is reflected by Ottawa County having the lowest millage levy (4.44 mills). Per capita income for Ottawa County residents in 1983 was \$10,968 and was well ahead of its neighbors in Allegan County (\$9,292) and Muskegon County (\$9,671). Of the personal income per capita data for the eleven Counties shown in Table 1, Ottawa County ranks 5th. These data support the Employers' position that ability to pay is not an issue in this matter. Lacking budgets or audits showing revenues, expenditures, and fund balances, the Panel must conclude that the County has financial ability to pay the economic proposals of the Association.

Comparables.

The parties have submitted financial data and collective bargaining agreements from a broad spectrum of governmental units. The Employers submitted contracts from Allegan, Bay, Berrien, Calhoun, Jackson, Kent, Monroe, Muskegon, and St. Clair Counties. Personnel Director Oosterbaan testified that, except for Allegan and Kent Counties, these were the governmental units previously utilized by the Employers for comparables. These Counties were selected because they are county governments and have populations of similar size to Ottawa County (100,000 to 200,000) and are within Michigan. The Employers included Allegan and Kent Counties because they are adjacent to Ottawa and not because they were considered to be comparable. In presenting summaries, the Employers included data for the adjacent counties of Allegan, Kent and Muskegon separately from the counties of Bay, Berrien, Calhoun, Jackson, Livingston, Monroe, Muskegon and St. Clair.

The Association submitted collective bargaining agreements from the cities of Grandville and Wyoming (in Kent County) and Holland (in Ottawa County) plus the counties of Allegan, Ingham, Kalamazoo, and Kent. In its brief, the Association stated that it was acceptable to utilize data from the contiguous counties of Allegan, Kent, and Muskegon.

The Employers object to the inclusion of Ingham and Kalamazoo counties as well as the cities of Grandville, Holland, and Wyoming.

The Panel has utilized comparable data about as the Employers have proposed, but will depict these data in two categories where appropriate: 1) Allegan, Kent, Muskegon, and Ottawa compared; 2) Allegan, Bay, Berrien, Calhoun, Jackson, Kent, Monroe, Muskegon St. Clair, and Ottawa counties

compared. In some instances, data are not complete for every county as will be seen from analysis of the Tables in the Appendix.

Data for Grandville, Holland, and Wyoming cities has been included in the Appendix in Table 10 but is sufficient only in showing that Grandville and Holland have negotiated 4% increases for 1986 over 1985 for sergeants and Holland has negotiated a 4% increase for 1986 over 1985 for lieutenants. Inclusion of data from these cities is appropriate because Ottawa County is in competition with these governmental unit for police officers. This competitive relationship is borne out to some extent by the fact Ottawa County Sheriff Dykstra was the former Police Chief in Hudsonville, a city in Ottawa County. Moreover, police work in cities is not so dissimilar from that of deputy sheriffs in counties that it must be altogether rejected.

In addition to the use of data from selected counties and cities, it is also appropriate to consider data from internal bargaining units.

#### OPINION

##### Salaries for 1986

Table 6 shows the percentage wage increases for sergeants in selected counties for 1986 over 1985. The average wage increases (including longevity pay) for 1986 over 1985 for sergeants in the seven counties was 4.93%. This compares favorably with the Employers' offer of an increase of 4.09%. The Association's offer of an increase of 6.49% would be 1.55% in excess of the average.

Table 7 shows the percentage wage increases for lieutenants for 1986 over 1985. The average wage increase (including longevity pay) for 1986 over 1985 for lieutenants in the seven counties was 4.87%. This compares favorably

with the Employers' offer in Ottawa County of an increase of 3.82%. The Association's offer of 6.53% exceeds the average by 1.66%.

It must be recognized by the Panel that collective bargaining in the contiguous counties of Allegan, Kent and Muskegon will have a significant impact upon the negotiations in Ottawa County. There are several reason for this conclusion. Muskegon is fairly similar to Ottawa County as well as being contiguous. Each county has a relatively long shore line with Lake Michigan. Each has a city of significant size (Muskegon 39,995; Holland in Ottawa County with 26,883). Total population in Muskegon County is 155,688 and in Ottawa County 164,658. Each is about the same distance from Kent County and the City of Grand Rapids and therefore would be influenced about equally by events in that city and larger county. Employers in these three contiguous counties are in competition with each other for experienced deputy sheriff command officers. These counties are more comparable to Ottawa County than St. Clair, Monroe, Berrien, Jackson, Calhoun, Ingham, Kalamazoo, or Bay counties.

A. Comparison of Sergeant's Wages with Contiguous Counties. During 1985, Ottawa County sergeant's salaries were \$596 below their counterpart officers in Muskegon County. This difference is nearly eliminated by adding longevity pay (See Table 6). With longevity pay in Muskegon County, their sergeants, in 1985, earned \$29,987; and in Ottawa County, \$29,881, for a difference of \$106.

For 1986, Muskegon County sergeants will earn \$31,737 plus \$360 in longevity pay for a total of \$32,097. If the Ottawa County Employers' last best offer for wages is applied, Ottawa County sergeants will earn \$30,255 plus \$850 in longevity pay for a total of \$31,105. The difference that was only \$106 in 1985 will become \$992 in 1986 if the Employers' offer is awarded.

These data show that if the Employers' last best offer is awarded, salaries for Ottawa County sergeants will fall further behind those in Muskegon County.

The Association's offer for wages for sergeants plus longevity would equal \$31,808 for 1986. This figure is \$289 below Muskegon County sergeants' salaries for 1986. Thus, even the Association's offer would cause sergeants in Ottawa to fall a little further behind Muskegon County sergeants.

It is important to compare salaries paid in Ottawa's other close neighbor, Allegan County. A review of the data in Table 2 shows that sergeants in Allegan County were paid \$2,085 less than sergeants in Ottawa County during 1985. If the Employers' offer is awarded this difference favoring sergeants in Ottawa County would decrease to \$1,546.

Salary data for Kent County lieutenants are not available.

B. Comparison of Lieutenants' Wages with Contiguous Counties. During 1985, Ottawa County lieutenants' salaries (including longevity) were \$1,767 below lieutenants in Muskegon County. If the Employers' offer is awarded this difference between Muskegon and Ottawa County lieutenants would increase from \$1,767 to \$2,898 for 1986.

If the Association's wage offer is awarded, Ottawa County lieutenants would receive \$2,053 less than Muskegon County lieutenants.

In 1985, Ottawa County lieutenants received \$2,338 more than lieutenants in Allegan County. The Employers' offer for 1986 would diminish this advantage to \$1,800. The Association's offer would increase the advantage to \$2,645.

Kent County lieutenants received a salary increase of 5% for 1986 over 1985. Their wages, including longevity, for 1986 will be \$36,730 or \$4,359

more than the Employers' offer and \$3,514 more than the Association's offer. During 1985, Kent County lieutenants had an advantage of \$3,819. Thus, the Employers' offer for 1986, would also increase the difference in pay for lieutenants in Ottawa County as compared to Kent County lieutenants.

Data in Table 8 show that the average increase in wages (including longevity) in 1986 over 1985 for sergeants in Allegan and Muskegon counties was 6.58%. Table 9 shows that lieutenants (Allegan, Kent and Muskegon) averaged an increase of 6.07% for the same period.

If the Employers' last best offer of an increase of 4.10% for sergeants and 3.82% for lieutenants for 1986 wages is accepted by the Panel, command officers in Ottawa County will not maintain comparability with employees similarly situated in the contiguous counties.

Consequently, it is the Panel's opinion that the Association's last best offer for 1986 wages is awarded. In making these determinations for salaries, the Chairman gave consideration to the cost of living during 1985 which increased by 3.6%. The Chairman has also give careful attention to the Employers' contribution to command officers' retirement plan and the fact that the officers are not required to make any contribution. However, since the retirement plans in the other comparable counties as well at Ottawa's were in existence in 1985 when 1985 wages were negotiated and no retirement plan changes were indicated for 1986, it is not now appropriate to advocate a smaller increase in 1986 wages for Ottawa County command officers for 1986 based on Ottawa's better retirement plan.

### 1987 and 1988 Salaries

Admittedly, the Panel did not have a large amount of evidence upon which to draw for making a decision on wages for 1987 and 1988. Road patrol officers in Ottawa County have a settled contract providing a 4% increase for 1987 over 1986. The City of Holland has a settled contract providing for a 4% increase for its sergeants and lieutenants for the period July 1, 1986 through June 30, 1987. Sergeants and lieutenants in Muskegon County have negotiated 4% increases effective January 1, 1987 and another 4% increase effective January 1, 1988. In Bay County, lieutenants will receive a 4% increase effective January 1, 1987.

The Panel must make salary awards for 1987 and 1988. In its joint pre-hearing statement, the parties stated that they had agreed upon a "Collective Bargaining Agreement effective from the date of the Act 312 arbitration award until December 31, 1988, with 1986 wage increases retroactive to January 1, 1986."

The Panel awards an increase of 4% effective January 1, 1987 for sergeants and for lieutenants. This is equivalent to 110% for sergeants, and 115% for lieutenants, of the negotiated salaries for road patrol deputies for 1987.

The Panel awards salaries for sergeants equal to 110% of the salaries to be negotiated for road patrol deputies for 1988. The Panel awards salaries for lieutenants equal to 115% of the salaries that will be agreed upon for the road patrol deputies for 1988.

### Payment for Unused Sick Leave Above 120 Day Accumulation Level

Article 7, Section 1 of the parties' expired collective bargaining agreement provides for the accumulation of paid sick leave at the rate of 12 days each year to accumulate to 120 days. Of the 16 command officers in the bargaining unit, seven of them have reached the maximum accumulations. The



contract further provides for the payment of unused and accumulated leave upon an employee's death, retirement or other termination of employment (if such other termination is for reasons other than discharge or resignation in lieu of discharge). Upon termination for reasons other than discharge or resignation in lieu of discharge, and after ten years' service, an employee is entitled to 50% of his accumulated leave, which therefore equates to a maximum payment of sixty days. Upon retirement or death, an employee is entitled to 100% of his accumulated leave, which therefore equates to a maximum payment of 120 days.

The Association's last best offer on this issue is:

After an officer accumulates the maximum number of accrued sick days, he will be paid the following on a yearly basis for the days in excess of the maximum:

1986 Nothing

1987 The officer will be paid 25% of the value of the excess days.

1988 The officer will be paid 50% of the value of the excess days.

The Association argues that the inclusion of its demand would not be a very expensive item and would give officers an economic incentive for reducing absenteeism. At the Hearing, Sergeant Van Beek testified that the purpose of the demand is to motivate employees to not abuse paid leave and to use it only when truly eligible (i.e., when actually sick).

The Employer contends that there is no justification whatsoever for this Association demand.

Of the Counties used for comparable purposes, only one (Monroe) allows for a payoff of excess accumulated leave prior to termination. None of the counties contiguous to Ottawa County permits payment for excess accumulated sick leave. Nor do any of the Employers' other Ottawa County employees receive this benefit.

It is the opinion of the Panel that insufficient evidence exists on the

record that permits any change in Article 7. The Employers' last best offer on this issue is awarded.

#### Retiree Health Insurance

The retirement plan applicable to employees in this bargaining unit is the Municipal Employees Retirement System (MERS). When Ottawa County employees retire, they and their families remain covered by the Employers' group health insurance provided for active employees; but retirees pay their own premiums at the group rates. When the retiree reaches the age of 65, complimentary insurance can be purchased through Medicare.

The Association has proposed that the County pay the health insurance premium for officers who retire after January 1, 1986. (The word "premium" is used here for convenience because the County is self-insured for health insurance). It is estimated that the cost of this item would be about \$720 a year for each person. The Association argues that because retirees will receive retirement compensation at only about 50% of their annual wage, the payment of this insurance expense will be very beneficial. In addition, because health insurance is a major problem for retirees, this demand should be granted. Sergeant Van Beek testified at the Hearing that one purpose of this proposal was to encourage older employees to retire and thus provide additional opportunities for younger employees.

The Employers' last offer of settlement is to maintain the current program with not change. The Employers' argue that data from other counties used for comparison purposes in this matter do not substantiate the granting of the Association's offer on retiree insurance. In addition, the Employer argues that none of its other bargaining unit contracts provides for retiree hospitalization insurance.

The Employer argues that the "overall" retirement benefits of the command officers is superior to those in the comparable counties and more than makeup for any group insurance premiums the retirees pay for health insurance.

Table 12 shows hospitalization insurance paid for retired command officers in nine comparable and contiguous counties. Six of the counties pay 100% of the retiree hospitalization insurance and one pays 50% up to a maximum of \$90 per month. Only two of the nine counties make no contribution for retiree hospitalization insurance whatsoever.

The Employers' argue that annual compensation under its retirement plan plus an escalator in the amount of an annual increase, based on the Consumers Price Index, up to a maximum of 2.5%, more than offsets the necessity for retirees to pay for their own hospitalization insurance premiums.

The Panel agrees with the Employers' argument. For example, in Ottawa County, retirees with 25 years' service, would retire under the provisions of the expired agreement with a pension of \$14,940 (for sergeants) and \$15,590 (for lieutenants). In addition, these amounts could increase by 2.5% annually under the escalator clause. This retirement benefit is substantially more generous than offered to retirees in any of the other comparable counties and does have the effect of offsetting the hospitalization insurance provided for retirees in these same counties.

#### Just Cause for Discharge

The Association demands that language be added to the parties' Contract providing that "no officer may be terminated by the Sheriff or the County unless there is 'just cause' for that officer's discharge." It is the position of the Employer that an Act 312 arbitration panel is without legal authority to order a "just cause for discharge" provision be incorporated into the parties'

collective bargaining agreement. This contention is based upon the theory that an Act 312 Panel cannot require a Sheriff to surrender his statutory powers of appointment and reappointment.

The Association submitted a copy of a grievance arbitration award (AAA Case No. 54 39 0158 81) wherein the Arbitrator upheld the Ottawa County Sheriff's non-reappointment of two command officers on January 1, 1981. One of the officers had commenced service with the Department in 1973 and the other in 1969.

Both of the terminated officers had opposed the election of the incumbent Sheriff in the primary election of August, 1980. Admittedly, both Grievants had disagreed with the operation of the Department. In making his decision, the Arbitrator cited the language in Article 2, Section 1 of the Contract that reserves to the Employer the right "provided by statute or law along with the right to hire. . . discharge (including failure to reappoint)." The Arbitrator held that the Sheriff's Act (MCLA 51.70; MSA 5.863) was incorporated in their Agreement. Because there was no language in the Agreement limiting the Sheriff's discretion, his decision to exercise his rights in the interests of the citizens of Ottawa County and avail himself of his rights under the Sheriff's Act was not in violation of the Contract.

The Michigan Constitution contains no provision specifically having to do with the authority of a sheriff to discharge a deputy sheriff. Those powers a sheriff possesses are derived from legislative enactments pursuant to the Michigan Constitution (Const. 1963, Art. 7, Sec. 4), which provides in pertinent part:

There shall be elected for four-year terms in each organized county a sheriff. . . whose duties and powers shall be provided by law.

The sheriff's authority to appoint and non-reappoint deputies is not within matters placed within the exclusive power of the sheriff by the Constitution. Among the powers legislatively delegated to the sheriff (MCLA 57.71; MSA 5.863) is the authority to appoint or revoke the appointment of deputies:

Each sheriff may appoint 1 or more deputy sheriffs at the sheriff's pleasure, and may revoke those appointments at any time. . .

The Michigan Attorney General has held that a sheriff's statutory authority as to termination of sheriff department employees may be limited by any collective bargaining agreement or obligations properly deriving from the Public Employees Relations Act. (1980-81, p. 1127, OAG No. 5837, Dec. 29, 1980). The Attorney General has stated:

The public employment relations act (PERA), 1947 PA 336, as amended by 1965 PA 369; MCLA 423.201 et seq; MSA 17.455(1) et seq. which was enacted pursuant to Const 1963, art 4, Sec. 48, declares and protects certain rights and privileges of public employees, PERA, supra, Sec. 9, provides:

"It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice."

PERA, supra, Sec. 15 provides:

"A public employer shall bargain collectively with the representatives of its employees as defined in section 11 and is authorized to make and enter into collective bargaining agreements with such representatives. For purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

In National Union of Police Officers Local 502-M, AFL-CIO v. Wayne County Board of Commissioners, 93 Mich App 76, 89; 286 NW2d 242, 248 (1979), the Court of Appeals enumerated three principles in the application of PERA to sheriffs and their employees. First, a sheriff's power to hire, fire, and discipline employees is not absolute and is limited by PERA. Second, all terms and conditions of employment are subject to collective bargaining and to any agreement resulting from such bargaining, unless that bargaining or agreement infringes upon matters which are placed within the exclusive power of a sheriff by the constitution. Third, although a sheriff's power to hire, fire, and discipline may be limited by the Legislature, the matter of which his deputies shall be delegated the powers of law enforcement entrusted to him by the constitution is a matter exclusively within his discretion and inherent in the nature of his office. That matter may neither be infringed upon by the Legislature nor delegated to a third party.

It is clear, then, that a sheriff's statutory powers under MCLA 51.70; MSA 5.863 to discharge at will may be modified or abrogated by a negotiated collective bargaining agreement executed pursuant to the Public Employees Relations Act.

However, a collective bargaining agreement cannot abrogate a sheriff's authority to demote a deputy to a position involving no law enforcement powers. National Union of Police, supra; Fraternal Order of Police, Ionia County Lodge No. 157 v. Bensinger, 122 Mich. App. 437, 333 N.W.2d 73 (1983). Thus it has been held that an arbitrator could not order a sheriff to restore a deputy's law enforcement powers before the sheriff, in his discretion, is prepared to do so. National Union of Police.

In his testimony before the Panel on the "just cause" issue, Sheriff Dykstra voiced his unwillingness to relinquish any of those appointment or non-reappointment powers given to him by law. It is the Sheriff's management style to meet regularly with his command officers for the purpose of making decisions relative to the operation of the Department. As such, command officers are part of the management team, a part of management. Implicit in the Sheriff's testimony is the concept that his management team members form a cohesive unit dedicated to carrying out

Department policy as determined by the team. When a command officer is unable to support Department policy, the Sheriff should have the unbridled authority to terminate that officer's employment.

In is brief, the Employer argues that a just cause for discharge provision was negotiated out of a collective bargaining agreement between the parties six years ago and should not now be reimposed by the Panel.

Finally, the Employer argues that the Panel cannot order that the Sheriff relinquish his authority to hire, fire, and discipline because the Sheriff has specifically refused to voluntarily surrender any of his statutory powers under the Sheriff's Act. The Employer cites a number of Michigan appellate and supreme court decisions in support of its position.

The Employers' position, as does the expired Contract, places command officers in Ottawa County in an "at will" employment relationship which permits the Sheriff to discharge for good reason, bad reason, or no reason at all.

Three of the contracts submitted by the parties (Bay, Monroe, and St. Clair) do not provide for a "just cause" for discharge provision. The contracts in the following counties do include just cause provisions (Allegan, Berrien, Calhoun, Ingham, Kalamazoo, Kent and Muskegon).

Discussion. A "just cause" provision in a collective bargaining agreement has several good purposes. It promotes good order and the welfare of the citizens by preventing removal of capable and experienced command officers at the personal whim of changing office holders. It protects the citizens by retaining in their positions command officers who are qualified and capable and who have demonstrated their fitness. It prevents the dismissal of such officers without good and sufficient reason. It eliminates capricious employment practices and protects command officers from arbitrary and unreasonable dismissal thus ensuring a greater

feeling of security. The give and take during policy issue discussions will be more open and honest if management team members hold a sense of security that is enhanced by a just cause provision. It provides a remedy that protects command officers from discriminatory employment practices. It provides for a hearing before an arbitrator that comports with procedural and substantive due process. It preserves the integrity of the Department.

However, it isn't necessary for the Panel to make a decision on the Association's demand for a just cause for discharge. In its brief, the Association did not present any arguments in favor of inclusion of the discharge provision. The Association has essentially withdrawn its demand by stating:

[T]here is such a substantial question on this issue that it can't be resolved short of going to the Michigan Supreme Court. This - we are sure - the County is willing to do.

Quite frankly, the Association does not have the money to make this kind of a fight, so we are content to wait until the law becomes clear - hopefully in a fashion that will protect us (emphasis added).

Accordingly, the Employer's offer on this issue is adopted.



AWARD OF THE PANEL

The Panel makes the following awards:

1. Salaries. All last best offers of the Association for salaries is awarded:

Salaries for sergeants for 1986, 1987, and 1988 shall be 110% of the salaries for road patrol officers. Salaries for sergeants after five (5) years service is \$30,958 for 1986; for 1987 the salary is \$32,197; for 1988, the salary will be determined after salaries for road patrol officers have been settled.

Salaries for lieutenants for 1986, 1987, and 1988 shall be 115% of the salaries for road patrol officers. Salaries for lieutenants after five (5) years service is \$32,365 for 1986; for 1987 the salary is \$33,660; for 1988, the salary will be determined after salaries for road patrol officers have been settled.


2. Payment for Unused Sick Leave. The last best offer of the Employers' for no payment for unused sick leave prior to termination is awarded. This award continues the expired contract language relative to this issue. The award does not require payment for unused sick leave days after an officer has once accumulated 120 unused sick leave days.


3. Payment of Retiree's Hospitalization Insurance. The last best offer of the Employers' for retiree hospitalization insurance is awarded. This provision is:

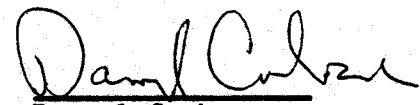
Eligible retirees and their families may remain covered by the County's group health insurance plan for active employees, to the extent allowed by the insurance carrier, at group rates, and at the retirees' own cost.

4. Just Cause for Discharge. The Association's demand for inclusion of a "just cause" provision for discharge is denied and the Employers' demand on this issue is awarded.

October 31, 1986

  
Kenneth Grinstead  
Panel Chairman

  
Louis VanSlooten  
Employers' Delegate

  
Darryl Cochrane  
Association's Delegate

County of Ottawa and the Sheriff of Ottawa County  
-and- (MERC CASE No. G 85-L-1110)  
Ottawa County Command Officers' Association

TABLE 1  
Number of Criminal Offenses Reported in 1983  
for  
Selected Counties

<u>County</u>	<u>Murder Mans.</u>	<u>Rape</u>	<u>Robbery</u>	<u>Agg. Assault</u>	<u>Burglary</u>	<u>Larceny</u>	<u>Motor Vehicle Theft</u>	<u>Total Non-index Crime</u>
Allegan	2	52	27	171	664	1,517	118	5,646
Berrien	3	120	271	900	2,937	7,007	323	16,056
Calhoun	10	60	170	431	2,434	5,444	243	6,844
Kalamazoo	8	93	269	1,053	3,459	9,572	334	13,230
Kent	23	296	723	1,423	6,774	17,205	1,006	30,756
Muskegon	10	56	171	1,049	2,583	6,085	263	11,785
Ottawa	2	32	21	114	851	3,006	140	7,462

Source: 1985 Michigan Statistical Abstract "TABLE VIII. LAW ENFORCEMENT AND THE COURTS IN "Michigan Statistical Abstract, Nineteenth Edition, 1985" Bureau of Business Research, Wayne State University, pp. 253-260.

TABLE 2  
Number of Sheriff Department Employees  
for  
Selected Counties

<u>County</u>	<u>Non-Command Officers</u>	<u>Sergeant</u>	<u>Lieutenant</u>	<u>Total</u>
Allegan	27	9	3	37
Berrien	103	9	9	121
Calhoun	42	6	1	49
Kalamzaoo	NA	NA	NA	NA
Kent	224	17	11	252
Muskegon	57	8	6	71
Ottawa	64	12	4	90

TABLE 3

Financial Data for Selected Governmental Units  
Ability to Pay

<u>County</u>	<u>1986 State Equalized Valuation (SEV) of Property</u>	<u>1984 (estimated) Population</u>	<u>1986 SEV Per Person</u>	<u>1986 Mills Levied</u>	<u>1983 Per Capita Personal Income</u>
Allegan	\$ 976,332,573	84,224	\$ 11,592	5.6239	\$ 9,292
Bay	1,360,257,578	117,178	11,608	5.6625	10,434
Berrien	2,103,415,010	163,029	12,902	5.4250	10,314
Calhoun	1,236,451,823	137,798	8,972	5.6500	11,082
Jackson	1,279,321,647	145,314	8,803	5.9500	10,329
Kent	5,114,770,152	461,718	11,077	4.8000	11,463
Muskegeon	1,351,146,322	155,688	8,678	6.2000	9,671
Ottawa	2,180,117,400	164,658	13,240	4.4400	10,968
St. Clair	2,263,524,251	137,954	16,407	5.8000	10,771

TABLE 4

Comparison of Command Officers' Wages  
for  
Selected Counties  
1986 over 1985

<u>County</u>	<u>Sergeants</u>			<u>Lieutenants</u>		
	<u>1985</u>	<u>1986</u>	<u>Annual % Increase</u>	<u>1985</u>	<u>1986</u>	<u>Annual % Increase</u>
Allegan	\$ 27,446	\$ 29,140	6.17%	\$ 28,424	\$ 30,171	6.15%
Bay	27,686	29,941	8.14%	33,825	35,182	4.00%
Berrien	26,063	27,063	3.84%	25,554	26,554	3.91%
Calhoun	30,772	31,400	2.00%	31,997	32,650	2.00%*
Jackson	26,270	27,206	3.56%	(no lieutenants in unit)		
Kent	29,979	NA		34,640	36,370	5.0%
Monroe	30,139	NA		32,760	NA	
Muskegon	29,627	31,737	7.12%	32,588	34,909	7.12%
St. Clair	32,593	34,223	5.00%	34,568	36,287	5.00%
Ottawa	29,031			30,331		
Employer's Offer for 1986		30,255*	4.22%		31,521*	3.92%
Association's Offer for 1986		30,958**	6.637%		32,366**	6.70%

\* The Employer's last best offer is 7.5% for sergeants and 12% for lieutenants above the 1986 settled wages for road patrol deputies (\$28,144).

\*\* The Association's last best offer is 10% for sergeants and 15% for lieutenants above the 1986 settled wages for road patrol deputies (\$28,144).

TABLE 5  
Comparison of Longevity Pay Formulas  
for  
Selected Counties

<u>County</u>	<u>Longevity Formula</u>	<u>Average Longevity Compensation*</u>
Allegan	\$200 after 7 years, \$400 after 15 years	\$ 400
Bay	For fifteen years of service	750
Berrien	3/4 of 1% for each year of service starting with fifth year	1,983
Calhoun	\$50 for each year completed service to a maximum of \$1,000	850
Kent	\$120 after 6 years, \$240 after 11 years \$360 after 16 years, \$480 after 21 years \$600 after 26 years	360
Muskegeon	\$120 after 5 years; \$240 after 10 years; \$360 after 15 years; \$480 after 20 years; \$600 after 25 years	360
St. Clair	6% of salary for fifteen through nineteen years	2,177
Ottawa	\$250 after 5 years service plus \$50 for each additional year. Cap at \$1,750	850

\* Average longevity compensation computed on assumption of average length of service of Ottawa County command officers of 17 years, 4 months

\*\* Computed on 1986 salary for Lieutenant.

TABLE 6  
Sergeants 1985 and 1986 Wages,  
Longevity Pay, and Total Earned  
in Selected Counties

<u>County</u>	<u>1985</u>			<u>1986</u>			<u>Percent Increase</u>
	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	
Allegan	\$ 27,446	\$ 400	\$ 27,846	\$ 29,141	\$ 400	\$ 29,541	6.08%
Bay	27,686	750	28,436	29,941	750	30,691	7.93%
Berrien	26,063	1,922	27,985	27,063	1,922	28,985	3.58%
Calhoun	30,772	850	31,622	31,400	850	32,250	1.97%
Jackson	26,270	1,088	27,358	27,206	1,088	28,294	3.42%
Kent	29,979	360	30,339	NA	360	NA	
Muskegon	29,627	360	29,987	31,737	360	32,097	7.04%
St. Clair	32,593	2,053	34,646	34,223	2,053	36,276	7.09%
Ottawa	29,031	850	29,881				
AVERAGE (Sergeants' Pay)			29,697*			31,162*	4.93%
Employer's Offer for 1986				30,255	850	31,105	4.09%
Association's Offer for 1986				30,958	850	31,808	6.49%

\*Ottawa and Kent Counties not included in average.

TABLE 7

1985 and 1986 Wages,  
Longevity Pay, and Total Earned  
for Lieutenants in Selected Counties

<u>County</u>	<u>1985</u>			<u>1986</u>			<u>Percent Increase</u>
	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	
Allegan	\$ 28,423	\$ 400	\$ 28,843	\$ 30,171	400	\$ 30,571	5.99%
Bay	33,825	750	33,900	35,182	750	35,932	5.99%
Berrien	27,598	2,044	29,642	28,598	2,044	30,642	3.37%
Calhoun	31,997	850	32,847	32,650	850	33,500	1.99%
Jackson	(no lieutenants in unit)						
Kent	34,640	360	35,000	36,370	360	36,730	4.94%
Muskegon	32,588	360	32,948	34,909	360	35,269	7.07%
St. Clair	34,568	2,177	36,745	36,287	2,177	38,464	4.67%
Ottawa	30,331	850	31,181				
AVERAGE (Ottawa excluded)			32,846			34,444	4.87%
Employer's Offer for 1986				31,521	850	32,371	3.82%
Association's Offer for 1986				32,366	850	33,216	6.53%

TABLE 8  
Comparison of 1985 and 1986 Wages,  
Longevity Pay, and Total Earned  
for Sergeants in Counties Contiguous to Ottawa

<u>County</u>	<u>1985</u>			<u>1986</u>			<u>Percent Increase</u>
	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	
Allegan	\$ 27,446	\$ 400	\$ 27,846	\$ 29,141	\$ 400	\$ 29,541	6.08%
Kent	29,979	360	30,339	NA	360	NA	
Muskegon	29,627	360	29,987	31,737	360	32,097	7.04%
Ottawa	28,031	850	29,881				
AVERAGE (Allegan and Muskegon)	28,916					30,819	6.58%
Employer's Offer for 1986				30,255	850	31,105	4.10%
Association's Offer for 1986				30,958	850	31,808	6.45%



TABLE 9  
1986 Wages,  
Longevity Pay, and Total Earned  
for Lieutenants in Counties Contiguous to Ottawa

<u>County</u>	<u>1985</u>			<u>1986</u>			<u>Percent Increase</u>
	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	<u>Wages</u>	<u>Longevity</u>	<u>Total</u>	
Allegan	\$ 28,423	\$ 400	\$ 28,843	\$ 30,171	400	\$ 30,571	5.99%
Kent	34,640	360	35,000	36,370	360	36,730	4.94%
Muskegon	32,588	360	32,948	34,909	360	35,269	7.07%
Ottawa	30,331	850	31,181				
AVERAGE (excluding Ottawa)			32,263			34,223	6.07%
Employer's Offer for 1986				31,521	850	32,371	3.82%
Association's Offer for 1986				32,366	850	33,216	6.53%

TABLE 10  
Comparison  
of  
Ottawa County Command Officers' Wages  
with  
Wages of Command Officers in Nearby Cities

<u>Government Unit</u>	<u>Sergeants</u>			<u>Lieutenants</u>		
	<u>1985</u>	<u>1986</u>	<u>Percent Increase</u>	<u>1985</u>	<u>1986</u>	<u>Percent Increase</u>
Grandville City	29,453	30,631	4.00%	-	-	-
Holland City	29,515	30,700	4.00%	30,825	30,052	4.00%
Wyoming City	32,193	-	-	33,155	-	-
Ottawa County	29,031			30,331		
Employer's Offer for 1986		30,255*	4.22%		31,521**	3.92%
Association's Offer for 1986		30,958**	6.637%		32,366***	6.70%

\* The Employer's last best offer is 7.5% for sergeants and 12% for lieutenants above the settled 1986 wages for road patrol deputies (\$28,144).

\*\* The Association's last best offer is 10% for sergeants and 12% for lieutenants above the settled 1986 wages for road patrol deputies (\$28,144).

TABLE 11

Sick Days Accumulation Rate,  
Maximum Number of Accumulated Unused Sick Days Permitted,  
and  
Maximum Number of Accumulated Unused Sick Days Paid at Retirement

<u>Government Unit</u>	<u>Accumulation Rate</u>	<u>Maximum Accumulation</u>	<u>Maximum Paid at Retirement</u>
Allegan Cty.	1 day each month	75 days	30 days
Bay Cty.	1 day each month	150 days	60 days
Berrien Cty.	1 day each month	150 days	None
Calhoun Cty.	None	None	None
Jackson Cty.	1 day each month	Unlimited	Unlimited
Kalamazoo Cty.	.8125 days each month	200 days	100 days
Kent Cty.	1 day each month	180 days	Retirement bonus of \$1,000.
Monroe Cty.	1 days each month	Unlimited	1/2 of accumulated
Muskegon Cty.	1 day each month for first ten years and 1 1/2 days there- after	Unlimited	180 days
St. Clair Cty.	1 day each month for first five years, 1 1/2 days next five, 1 3/4 days next five, 2 days thereafter	120 days	90 days
Grandville City	1 day each month	180 days	\$1.00 for each accumulated day multiplied by number of years of service*
Holland City	1.08 days each month	90 days	None at retirement**
Wyoming City	1 day each month	unlimited	1/2 at retirement
Ottawa Cty. Road Patrol	1 day each month	180 days	180 days
Ottawa Cty. Command Officers Expired Contract	1 day each month	120 days	120 days

\* If employee retired with maximum accumulation of 180 days after 25 years service, he would be entitled to \$4,500.

\*\* Annually accumulated unused sick leave in excess of ninety (90) days will be paid at the rate of 50% of the employee's straight time hourly rate up to a maximum not to exceed 6.5 days at the end of each calendar year.

TABLE 12

Retiree Hospitalization Insurance  
Provided by Employers in Comparable Counties

<u>County</u>	<u>Employer Provided Hospitalization Insurance for Retirees</u>
Allegan	100% retiree only
Bay	100% retiree only
Berrien	50% up to maximum of \$90 per month retirees only
Calhoun	none
Jackson	100%
Kent	none
Monroe	100% retiree only
Muskegon	100% retiree only
St. Clair	100%