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STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION PUBLIC ACTS OF 1969

In the matter of the Arbitration
Between:

Sanilac County,
Employer

and

MERC Case No. D83-L-2836

Police Officers Association of
Michigan,
Union

ARBITRATION PANEL

THOMAS V. LoCICERO, Chairman
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FACTS

This proceeding arose by a petition of the Union for the arbitration of a dispute involving wages and retroactivity under a third year reopener of a three year contract for the period January 1, 1984 through December 31, 1984.

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The undersigned was appointed chairman by the Michigan Employment Relations Commission by a letter dated July 16, 1984 under the provisions of Act 312 of the Public Acts of 1969, as amended. A preliminary conference was requested and held on September 18, 1984 at Sandusky, Michigan, and a formal hearing was held on October 22, 1984. Briefs were received from both parties on or about December 26, 1984 so that an award will be made within thirty (30) days thereafter.

The parties have not been able to agree on the following issues:

1. Whether or not the classification of Clerk-Typist and Process Server are to be included in the award. The Employer claims that they are not to be included, based upon rulings of the Commission and the Michigan Supreme Court. The Union claims that this issue can be ruled upon only by the Commission and not the arbitrators.

2. What are the comparable counties to be used in answering the issue of wages? The Employer argues that the counties of Newago, Huron, Branch, Gratiot and Barry are the most comparable, with Tuscola County also being acceptable because of its contiguity with Sanilac County. The Union suggests St. Clair, Lapeer, Tuscola and Huron Counties as being reasonably comparable to Sanilac.

3. Whether the Employer's suggested wage increase proposed in its Last Best Offer, or the Union's Last Best Offer more "nearly complies with the applicable factors prescribed in Section 9 of the Act". The Employer proposes a five percent (5%) wage increase for the classifications of correction officers, deputies and detectives. (See Appendix I)

The Union proposes an increase, effective January 1, 1984, of fifty cents (50¢) per hour to the top rate of Deputy, (equal to 5.9%). The percentage of 5.9% is added to all other steps of the classifications, and

In addition, the Union proposes a second increase, effective July 1, 1984, of fifty cents (50¢) per hour to the top rate of Deputies (equal to 5.6%). The 5.6% is added to all other steps of the classifications. (See Appendix II).

4. Whether or not these increases are to be retroactive?

Since the parties stipulated to make the increases retroactive to January 1, 1984, this question is already answered. (Employers Brief, page 4).

DISCUSSION AND AWARDS

Although both parties agreed that only one issue was before the Panel, it would be detrimental to both to ignore other issues which must be answered in order to be of service to them. The question of who is to be included in the award must be

determined now to be able to properly implement any award. To fully analyze the issue of wages, a determination of comparables is basic under the comparisons required to be made under Act 312. Therefore, the Panel will treat these questions as necessary to fully evaluate the issue of wages.

1. CLASSIFICATIONS TO BE INCLUDED IN THE AWARD

The briefs of both parties treat this issue in depth, and cite rulings of the Bureau of Employment Relations, as well as of the Michigan Supreme Court. The Employer states that it "agrees with the Union's position (page 147-Brief) that the issue raised is for the Bureau of Employment Relations to decide. ..." (Employer's Brief-page 1).

In the Panel's judgment, it would be irresponsible for the Panel to delay these proceedings further by referring the question to the Employment Relations Bureau, especially when we find that the Bureau has already taken a position, as has the Supreme Court. We, therefore, accept the responsibility to rule on the issue in accordance with what we believe to be the guidelines set forth by the Bureau and the Supreme Court. Had there been no guidelines established by the Supreme Court, we would probably have returned the issue to the Commission. To do so now, in our judgment, would violate the principal purpose of Act 312, namely, to obtain a resolution of the dispute as expeditiously as possible. In any event, if the parties are

dissatisfied with the Panel's determination, either may then take that issue to the Commission.

In the Oakland County Sheriff's Department and Metropolitan Council 23, (R77 B-134) (1977), the Commission held that Act 312 is limited to employees engaged as police officers or fire fighters or subject to the hazards thereof, and found that the following police department employees are not within the coverage of Act 312: Cooks, maintenance laborers, clerks, and typists, police communication agents and police paraprofessions.

In that case, the Employer first contended that the issue was not properly before the Commission. However, the Commission ruled that it had the responsibility for implementing Act 312, which necessarily includes the power to determine who is covered by the Act.

"The resolution of questions involving employer and employee status, exclusions under PERA and the LRMA, Community of interest and appropriate bargaining units, is an integral part of the work of the Commission. Clearly, the Commission's expertise in determining such issues is significant in determining the question raised in these proceedings. ..." (page 847)

In that case, the Commission further held that

"... a determination of who is covered by the Act is a condition precedent to the arbitration itself, and is not properly before the arbitrator since it is not an 'issue in dispute', as asserted by the Employer." (page 848)

We agree with the Commission that the Panel has no authority to rule on a condition precedent, but we believe that it can follow the determination already made by that Commission and perhaps obviate the necessity of encumbering the work of the Commission by requiring it to determine the issue all over again.

In its brief, the Union quotes from Metropolitan Council 23, AFSCME, AFL-CIO v Oakland County (Prosecutors Investigators) 89 Mich App 564, 280 NW 2nd 600 (1979), reversed on other grounds, as follows:

"We find that MERC has the necessary implied authority and expertise in labor relations to initially determine the eligibility of public employees for compulsory arbitration (page 2-emphasis ours)

As stated above, the Commission has already ruled that cooks, maintenance laborers, clerks and typists, police communication agents and para professionals are not included under Act 312. Thus, the initial determination has been already made, and it is incumbent upon the arbitrators to follow it.

In Metropolitan Council No. 23 AFSCME v. Oakland County Prosecutor, 409 Mich 299 (1980), the Supreme Court held that the prosecutors investigators were not covered by Act 312, reversing both MERC and the Court of Appeals.

In Ionia County (Sheriff's Department) v. Fraternal Order of Police, R 81 L 373 (1982) MERC held that Clerk Receptionists did not qualify for Act 312 coverage, despite occasional matron duties and contact with prisoners.

The dispute in Tuscola County (Sheriff's Department v. Fraternal Order of Police, State Lodge of Michigan Labor Council R 82 I 247 (1982)) involved license examiners, record clerk, cook and clerk-matrons and/did not come under the protection of Act 312 since they performed clerical or custodial functions.

It appears to this Panel, following the rulings in the foregoing decisions, that the classifications of Clerk-Typist and Process Server are not to be included in these proceedings.

2. COMPARABLE COMMUNITIES

Under the provisions of Act 312, the Panel is required to judge which of the last best offers on each issue "more nearly complies with the applicable factors" prescribed in Section 9 of that Act. The factors enumerated are the following:

"Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private employment."

Accordingly, each issue will be discussed in the light of these factors and the respective offers made thereon, compared to the data established by the record.

The Union submitted the following counties as comparable to Sanilac County, all being contiguous to Sanilac:

St. Clair, Lapeer, Tuscola and Huron counties

The Employer offered the following counties:

Newaygo, Huron, Branch, Gratiot, Barry, Cass
Montcalm and Tuscola

Of course, Sanilac is included by both parties since it is common to the comparables.

We are faced with the issue as to which of the following counties should be included for comparison:

St. Clair, Lapeer, Newaygo, Branch, Gratiot,
Barry, Cass and Montcalm.

Various guidelines are used by arbitrators in attempting to establish a package of comparable communities with which the principal community may be compared. These include geographic location, population, S.E.V., S.E.V. per capita and number of employees in the municipality with which we are concerned.

Attached hereto is a chart, Exhibit "A", containing information (taken from exhibits in the record) using some of the factors listed above. A review of these factors should give us a base upon which to predicate our decision on comparable counties.

St. Clair, Lapeer, Tuscola and Huron counties are all contiguous to Sanilac. That factor alone justifies their use as comparable counties, despite the fact that St. Clair has a population three and one half (3.5) times larger than Sanilac, while the population of the remaining counties vary from a low of 36,363 (Newaygo) to a high of 70,038, with Sanilac's population within that range (39,488).

Further, the S.E.V. per capita of St. Clair County (13996) is the closest to Sanilac's (13291), while that of the other counties (except Huron - 20207) are substantially below Sanilac. St. Clair has 79 employees in its Sheriff's Department while Sanilac has 29. Yet, Sanilac's millage (38.45) is the lowest of all ten (10) counties, except Huron County, and is substantially lower than the average of all the other counties (43.13). On the basis of all factors presented, our conclusion is that all of the proposed comparables (Union's and County's) are proper for comparison.

3. WAGES

a. Present Rates. The rates in effect on December 31, 1983 were as follows:

<u>Class.</u>	<u>Start</u>	<u>6 Mo.</u>	<u>1 yr.</u>	<u>2 yrs.</u>	<u>3 yrs.</u>
Clerk-Typist	4.46	4.63	4.80	4.97	5.14
Turnkey	6.44	6.71	6.95	7.21	---
Process Server	6.25	6.52	6.76	7.02	
Deputy	7.53	7.84	8.13	8.45	
Detective	8.66				

b. Rates with County Increase. The increases proposed by the County equal 5% across the board. With that increase, the above rates would become:

Clerk-Typist	4.68	4.86	5.04	5.22	5.40
Turnkey	6.76	7.05	7.10	7.57	
Process Server	6.56	6.85	7.10	7.37	
Deputy	7.91	8.23	8.54	8.87	
Detective	9.09				

c. Rates with Union Increase - The increases proposed by the Union would result in the present rates being increased to the following: (as of July 1, 1984)

<u>Classification</u>	<u>Start</u>	<u>6 mos.</u>	<u>1 yr.</u>	<u>2 yrs</u>	<u>3 yrs.</u>
Clerk-Typist	4.98	5.17	5.36	5.55	5.74
Turnkey	7.20	7.51	7.77	8.07	
Process Server	6.99	7.30	7.56	7.85	
Deputy	8.42	8.76	9.09	9.45(19,656)	
Detective	9.68				

d. Comparison with Comparable Counties- A comparison made by using the top rate for Deputy, is as follows:

<u>County</u>	<u>Annual Rate</u>	<u>Hourly Rate</u>	<u>Rank</u>	<u>- - without Pension-</u> <u>Annual Rate</u>	<u>Hourly Rate</u>	<u>Rank</u>
St. Clair (contract expired 6/30/84)	--	--	--	--	--	--
Lapeer	21,362	10.27	3	20,294	9.76	4
Tuscola	20,357	9.79	6	19,423	9.34	6
Huron	19,320	9.29	7	18,417	8.85	7
Newaygo	21,236	10.21	1	21,236	10.21	1
Branch	20,496	9.85	5	19,555	9.40	5
Gratiot	18,022	8.66	8	17,205	8.27	8
Barry (Contract expired)						
Cass	21,400	10.29	3	20,330	9.77	3
Montcalm	22,017	10.59	2	20,916	10.06	2
<u>Average</u>	20,526	9.87		19,672	9.46	

Proposed by Last Best Offer:

By Sanilac-1/1/84- 5%:	18,454	8.87
By Union- 1/1/84- 50¢	18,616	8.95
-plus 7/1/84- 50¢	19,656	9.45

It will be noted that the average annual salary, based upon the rates in effect on July 1, 1984, and excluding St. Clair and Barry Counties because their contracts had expired was \$20,526 (\$9.87 per hour). The Union's proposal maintains Sanilac's rank, while the County's proposal places Sanilac's rank at between 6th and 7th of the eight comparable counties.

Using the comparison made by the County (reducing the rates by the pension benefit (5%)), the average was \$19,627, (9.46 per hour), almost identical to the rate proposed by the Union (\$18,656-\$9.45 per hour), again almost equal to Huron's rank of 7th among the eight (8) other counties.

In our judgment, the Panel is bound to find that the Union's last best offer more closely complies with the factors of Section 9 than the County's last best offer. Thus, the Panel adopts the Union's Last Best Offer.

4. RETROACTIVITY

Both parties agreed to make the Panel's Award retroactive to January 1, 1984, for the first increase and July 1, 1984 for the second increase. (Union's Brief - page 7)
(County's Brief - page 4)

CONCLUSION

By reason of our finding that the classifications of Clerk-Typist and Process Server are not covered by Act 312, any reference herein to those classifications must be disregarded. It is our understanding that they include only two or three employees. Accordingly, we suggest that the parties negotiate further as to those classifications.

Further, the Panel will retain jurisdiction of this

case for ninety (90) days so that we will be authorized to act,
if necessary, on any further dispute.

Dated: January 19, 1985


THOMAS V. LOCICERO - Chairman

CONCURRENCES

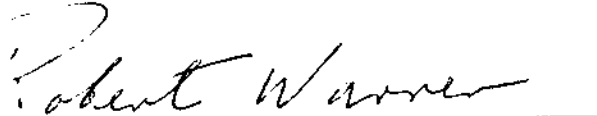
I concur with the Chairman, except as follows:

Dated: January 23, 1985


Gordon Evans, Union Delegate

I concur with the Chairman, except as follows:

Dated: January 23, 1985


Robert Warren, County Delegate

County	July 1, 1983 Population	July 1, 1983 S.E.V.	1983 S.E.V. Per Capita	Sheriff's Employees	1983 Per Capita County All-Tax Rate
St. Clair	138,102	1,932,897,211	13,996	79	45.22
Lapeer	70,038	736,046,418	10,509	54	42.46
Tuscola	55,092	647,060,980	11,745	42	40.53
Huron	35,707	721,541,574	20,207	35	32.97
Newaygo	35,862	386,465,152	10,776	29	43.54
Branch	39,057	396,088,105	10,141	39	48.73
Gratiot	39,909	434,399,025	10,884	28	46.52
Barry	46,569	413,042,626	8,869	38	45.60
Cass	47,102	527,048,950	11,189	45	41.58
Montcalm	49,348	473,332,331	9,592	41	44.15
Average	55,678	666,792,237	11,975		43.13
SANILAC	39,488	524,849,666	13,291	29	38.45
		EXHIBIT "A"			



POLICE OFFICERS
ASSOCIATION OF MICHIGAN

26615 West Eight Mile Road, Suite 103 • Livonia, MI 48152 • (313) 476-3355

October 29, 1984

Thomas V. LoCicero, Esq.
24055 Jefferson
St. Clair Shores, Michigan 48080

Re: Act 312 Arbitration
MERC Case No. D83 L-2836
County of Sanilac
- and -
Police Officers Association
of Michigan

Dear Mr. LoCicero:

Enclosed please find two copies of the Union's Final Offer of Settlement in the above captioned matter.

We shall await exchange of these documents by your office between the parties.

Thank you.

Sincerely,

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

Ann Maurer
Labor Economist

AM/crs
Enclosures

Appendix I

ARTICLE LVIII
WAGES

PRESENT:

58.1: Effective January 1, 1982 through December 31, 1983:

	<u>Start</u>	<u>6 Mo</u>	<u>1 Yr</u>	<u>2 Yrs</u>	<u>3 Yrs</u>
Clerk Typist	4.46	4.63	4.80	4.97	5.14
Turnkey	6.25	6.52	6.76	7.02	
Process Server	6.25	6.52	6.76	7.02	
Deputy	7.53	7.84	8.13	8.45	
Detective	8.66				

58.2: Effective October 1, 1982 through December 31, 1983, the above Turnkey shall be adjusted to the following schedule:

Turnkey	6.44	6.71	6.95	7.21
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FINAL OFFER OF SETTLEMENT:

Add to 58.1:

Effective January 1, 1984:

	<u>Start</u>	<u>6 Mo</u>	<u>1 Yr</u>	<u>2 Yrs</u>	<u>3 Yrs</u>
Clerk Typist	4.72	4.90	5.08	5.26	5.44
Turnkey	6.82	7.02	7.36	7.64	
Process Server	6.62	6.91	7.16	7.44	
Deputy	7.98	8.30	8.61	8.95	
Detective	9.17				

Effective July 1, 1984:

	<u>Start</u>	<u>6 Mo</u>	<u>1 Yr</u>	<u>2 Yrs</u>	<u>3 Yrs</u>
Clerk Typist	4.98	5.17	5.36	5.55	5.74
Turnkey	7.20	7.41	7.77	8.07	
Process Server	6.99	7.29	7.56	7.86	
Deputy	8.43	8.76	9.09	9.45	
Detective	9.68				

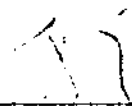
Other sections of Article 58 to remain unchanged.

Wages to be retroactive to January 1, 1984.

Wherefore, the Final Offer of Settlement of the Union is
tendered in good faith and upon careful consideration.

Respectfully Submitted,

POLICE OFFICERS ASSOCIATION
OF MICHIGAN



William Birdseye
Business Agent

Ann Maurer
Labor Economist

DATE: October 29, 1984

SANILAC COUNTY
BOARD OF COMMISSIONERS

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October 25, 1984

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RE: Act 312 Arbitration
MERC Case No. D83 L-2836
County of Sanilac
-and-
Police Officers Association of Michigan

Dear Mr. LoCicero:

Pursuant to your instructions at the conclusion of the Act 312 hearing in the above-entitled matter, two copies of the Employer's last best offer are attached hereto.

Sincerely,



John C. Dean
Sanilac County
Administrator/Negotiator

JCD:cd

Enclosures: (3)

Copy sent to Felling

Appendix II

Add new Section 58.2 (a)

Effective January 1, 1984, the following classifications shall be adjusted to the following schedule:

	<u>Start</u>	<u>6 mos.</u>	<u>1 yr.</u>	<u>2 yrs.</u>
Turnkey 6.76	6.76	7.05	7.10	7.57
Deputy	7.31	8.23	8.54	8.87
Detective	9.09			

Delete Section 58.4

(The above corrections made by
Chairman, after discussion with
County Representative John Dean)