

ARBITRATOR'S AWARD

MERC Case No. G89 C-0175

Schoolcraft County Sheriff's Department

and

Labor Council Michigan Fraternal Order of Police

Panel Chair:

For the County of Schoolcraft:

Edward Rosenbaum

Peter J. Hollenbeck

County Designee

Schoolcraft County Prosecutor.

For the Union:

Nino E. Green

Union Designee

Union Attorney

STATEMENT OF CHAIRMAN

Record of Hearing

The record will reveal that there is a transcript of the hearing on Monday, December 18, 1989. It will be considered as part of the record of this case.

Parties Testifying

Testifying on behalf of the Union were Mr. Albert Jaros, of the Labor Council Michigan Fraternal Order of Police and Deputy Robert Fisk.

Testifying on behalf of the County were Mr. William Johnson,

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CPA, a partner in the accounting firm of Anderson, Tackman & Company; Mr. Albert Vail, Schoolcraft County Treasurer; and Mr. Orville Olsen, Schoolcraft County Commissioner.

#### Exhibits

The Union submitted fourteen Exhibits in this case. They are:

Union Exhibit 1 - being a letter dated December 22, 1988 to  
Albert Jaros from Peter Hollenbeck

(Union Exhibits 2-12 - being the economic provisions of the agreements between various counties and their sheriffs' departments.)

Union Exhibit 2 - Menominee and Teamsters Local 328

Union Exhibit 3 - Marquette and AFSCME

Union Exhibit 4 - Houghton and AFSCME

Union Exhibit 5 - Cheboygan and Fraternal Order of Police  
State Lodge of Michigan

Union Exhibit 6 - Presque Isle and FOP

Union Exhibit 7 - Chippewa and FOP

Union Exhibit 8 - Mackinac and AFSCME

Union Exhibit 9 - Baraga and AFSCME

Union Exhibit 10- Delta and Teamsters Local 328

Union Exhibit 11- Keeweenaw and AFSCME

Union Exhibit 12- Iron and AFSCME

Union Exhibit 13- The contract which expired December 31,  
1988 between the parties to this  
arbitration, Schoolcraft County Sheriff  
and FOP.

The Employer objected to the Arbitrator considering Exhibits 3, 4, 5, 6, 7 and 10 as not being comparable to Schoolcraft County. The Arbitrator accepted these Exhibits as admissible but indicated he would be careful as to the weight he would give them.

By agreement among the parties at the Hearing, Mr. Green would submit to the Chairman the State Tax Commission, 1988 Average Tax Rate Data which would be Union Exhibit 14. This was done. This document shows state equalized values. Union Exhibit 14 is hereby admitted as part of the record.

The Employer submitted six exhibits. Employer Exhibit 1 is a letter to Peter Hollenbeck from Albert Jaros, dated December 5, 1988, regarding "last offer for settlement" for years 1989 and 1990. Employer's Exhibit 2 is a March 3, 1989, letter from Mr. Jaros to Peter Hollenbeck reflecting the Union's last best offer for settlement. Employer's Exhibit 3 is a November 8, 1989, letter to Union Representative Green from Employer's counsel Hollenbeck outlining the latter's view of negotiations at that time and presenting a counter proposal to the Union to settle a two-year contract. Employer's Exhibit 4 consisted of a two-page document outlining wages and benefits related to sheriffs' departments in Ontonagon, Gogebic, Baraga, Iron, and Alger Counties, as well as for Schoolcraft County. Employer's Exhibit 5 consisted of an evaluation of county statistics prepared by Mr. Johnson based on 1988 data. Employer's Exhibit 6 is the audited financial statement of Schoolcraft County for fiscal year ending

December 31, 1988, prepared under the supervision of Mr. Johnson for Anderson, Trackman and Company, certified public accountants. Employer's Exhibits 1-6 will be deemed as part of this record. The parties had no objection to this procedure, although Mr. Green indicated he reserved the right to comment on the weight to be given or the accuracy of the representations made in Employer's Exhibit 4.

#### Issue Agreed To

Both the Union's last best offer, contained in its letter to the Chairman of this Panel, dated January 8, 1990, and the Employer's last best offer contained in its letter to the same party, dated January 10, 1990, had as point "2" for 1989 a \$50.00 increase in the cleaning allowance. Thus, both parties have stipulated that they are willing to increase the annual amount granted as a cleaning allowance by \$50.00 to \$250.00. The Chairman is pleased to accept this stipulated point. The Order shall so provide.

#### Disputed Issues Identified

The parties have identified the issues in dispute as follows:

1. The size of the wage increase for 1989.
2. The size of the wage increase, if any, for 1990.
3. Whether or not there should be a retirement bonus of 10% in 1990.

The parties have agreed that all three issues are economic. The panel therefore has conducted itself in a way to require, again by agreement of the parties, last best offers on all issues.

#### Last Best Offers

The remaining parts in the Union's last best offer outlined in the January 8, 1990, letter to the panel Chairman from Attorney Green are as follows:

1989: 1) 38 cents per hour wage increase.

1990: 1) 25 cents per hour wage increase.

2) Retirement bonus of 10%.

The remaining parts in the Employer's last best offer outlined in a January 10, 1990, letter to the panel Chairman from Attorney Hollenbeck are as follows:

1989: 1) 20 cents per hour wage increase.

1990: 1) No wage increase.

2) Eyeglass replacement for damage during performance of duties.

#### Criteria

Section 9 of Act 312, MSA 17.455 (39); MCL 423.239; sets forth specific "factors" or criteria to be followed by the Act 312 Panel in arriving at its orders. The Panel has carefully considered these criteria as to each issue in dispute.

The statute does not specify the weight to be given each factor but only indicates the factors are to be considered "as

applicable." The Chairman of this Arbitration Panel feels the most weight should be given, as it concerns this case, to:

- (1) "The interests and the welfare of the public and the financial ability of the unit of government to meet those costs."

There can be no doubt that a properly functioning Sheriff's Department in Schoolcraft County is essential to the interests and welfare of the public. That leaves "the financial ability of the unit of government to meet those costs."

- (2) "The average consumer prices for goods and services commonly known as the cost of living."
- (3) "Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wage, 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."

#### Retirement Bonus of 10%

The Union's petition for an Act 312 arbitration dated March 10, 1989, lists the Union proposal for the second year of the contract, in part, as

- "2. Ten percent (%) retirement bonus."

and also under the Employer proposal for the second year (1990), of the Contract as

"2. Ten percent (10%) retirement bonus."

As late as our telephone conference call on October 4, 1989, no objection was raised by the Employer to the characterization that its last offer for 1990 included "2. Ten percent (10%) retirement bonus."

Also, during negotiations on October 19, 1989, no objection was raised by the Employer to that point in the petition for arbitration.

However, at the Hearing Attorney Hollenbeck pointed out that he had erred in not noticing that item before the Hearing, and that it was his understanding that the employer had never agreed to the ten percent retirement bonus. He did add that at one point the Employer had offered it for 1989 as part of an overall package, but the Employer's counter proposal was denied by the Union. Thus, there was, in fact, no meeting of the minds as to whether or not the Employer had a ten percent retirement bonus as part of its 1990 offer, although the Union thought so up to the date of the Hearing.

Under the requirements of Act 312, the Panel must choose one or the other party's last offer on each economic point. Given the above history, the fact that the Employer was willing to grant the ten percent bonus as part of a 1989 package, and the fact that this would be a deferred expense rather than an immediate cash outlay, the Chairman has no problem with granting the Retirement bonus of the ten percent for 1990. The Order shall so provide.

## Wages

In terms of its economic significance, the main issue is whose wage proposals the Panel will accept for 1989 and whether or not a wage increase will be granted in 1990. However, the Chairman is of the opinion that this award - as far as wages are concerned - should be looked upon as a complete two-year package rather than two one-year decisions. In other words, what will the employees have received over the two-year period, and what will their wages be like at the end of the two-year period in comparison to other counties' sheriffs' departments. That's the real test.

There are only four possible choices as indicated in Table I.

Table I

### Possible Combinations of Wage Offers for 1989 and 1990

<u>Accept</u>	<u>1989 Wage Increase</u>	<u>1990 Wage Increase</u>	<u>Total Two-year Wage Increase</u>	<u>Top Salary Two-Year Percentage Increase *</u>
Union 1989 & 1990 last best offers	\$.38/hour	\$.25/hour	\$.63/hour	7.07
Union 1989 last best offer & Employer 1990 last best offer	\$.38/hour	No wage increase	\$.38/hour	4.26
Employer 1989 last best offer & Union 1990 last best offer	\$.20/hour	\$.25/hour	\$.45/hour	5.05
Employer 1989 & 1990 last best offers	\$.20/hour	No wage increase	\$.20/hour	2.24

\* This would be the percentage increases for the three certified Deputies who are receiving \$8.91 per hour. The three uncertified Deputies currently receive \$8.25 per hour. Thus,



their respective percentage increase would be 7.64%, 4.61%, 5.45% and 2.42%. The cook/matron makes \$6.55 per hour. Thus, the relevant percentage increases for her would be 9.62%, 5.8%, 6.87%, and 3.05%.

The weighted average percentage increases of the four possible outcomes are shown in Table II.

Table II

Weighted Average Percentage Increase for  
Schoolcraft County Sheriff's Department  
of Each of the Four Possible Wage  
Solutions for the Two-Year Period

<u>Solutions</u>	<u>Calculations</u>	<u>Weighted Average Two-Year Period Percentage Increase</u>
Union 1989 & 1990 last best offers	$\frac{(3 \times 7.07\%) + (3 \times 7.64\%) + 9.62\%}{7} =$	7.68
Union 1989 last best offer & Employer 1990 last best offer	$\frac{(3 \times 4.26\%) + (3 \times 4.61\%) + 5.8\%}{7} =$	4.63
Employer 1989 last best offer & Union 1990 last best offer	$\frac{(3 \times 5.05\%) + (3 \times 5.45\%) + 6.87\%}{7} =$	5.48
Employer 1989 & 1990 last best offers	$\frac{(3 \times 2.24\%) + (3 \times 2.42\%) + 3.05\%}{7} =$	2.43

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As the above percentage wage increase cost solutions are for a two-year period, the respective arithmetic weighted averages for each of the two years would be half of the above figures or 3.84%, 2.315%, 2.74%, and 1.215 percent respectively.

### The financial ability of the County

A review of the record of the financial condition of Schoolcraft County leaves no doubt that that County is in very difficult circumstances. This was brought out most poignantly, in the opinion of the Chairman of this Panel, by the testimony of Mr. William Johnson, CPA, the County's outside auditor. He, also, indicated that the County should seek a millage increase. However, the voters of this County have been very reluctant to grant millage increases. The allocation board tried to increase the millage recently from 15 mills to 18 mills, and that was defeated three to one. In 1989 the School Board tried to increase the millage four times and was defeated each time. A poor county and a reluctant electorate do not make the financial ability of Schoolcraft County very good.

### Wage increases to accommodate increases in the cost of living

The language of the statute "(e) The average consumer prices for goods and services commonly known as the cost of living." indicates that in reaching its decision the arbitration panel should take into consideration the increases in the consumers' cost of living over the relevant time periods. Thus, among the factors that the Panel should take into consideration is an attempt to maintain the real purchasing power of whatever wages the employees are receiving. This is not easy to do when we are dealing with a financially strapped county. Yet, it is an important consideration.

The consumer price index rose an average of 4.6 percent for the United States as a whole in 1989 and 5.2 percent in Michigan. The

World Bank estimates that the consumer price index will rise 4.5 percent in 1990.\* It is not possible to get accurate figures on the rise in the cost of living for Schoolcraft County as such for 1989; the Chairman does not have ready access to figures for the projected cost of living rise in Michigan for 1990.

In juxtaposition to the sad financial condition of Schoolcraft County is the fact of the economic reality of the labor market place in which competent police personnel must be recruited and retained.

In addition, some thought should be given to the fact that the New York Times indicated that March 1990 employment data showed hourly earnings for the country as a whole are rising at an annual rate of nearly five percent.\*\* However, the average employer is not as bad off financially as is Schoolcraft County.

#### Comparables

In the opinion of the Chairman of this Panel, the third of the three most important criteria are the comparable wages paid to other sheriffs' departments. Ideally, the Chairman would like to get the weighted average of the wages of all of the employees in all of the sheriffs' departments in the labor market area as he was able to do for Schoolcraft County. However, this is not possible as the Chairman does not have available to him the numbers of each category of employee for each county. Therefore, the Chairman will confine his analysis to the top rated employees in each county.

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\* Wall Street Journal, March 30, 1990, page A10

\*\* New York Times, April 7, 1990, page 20

Of all of the counties in the Upper Peninsula and the most Northern County in the Lower Peninsula that the Union considers the comparables to be, the Union presented the Chairman with comparables for twelve counties, including Schoolcraft County. The top rated employees' salaries ranged from \$8.50 per hour in Keweenaw to \$12.17 per hour in Marquette in 1989. The top-rated employee in the Sheriff's Department of Menominee County for 1989 was the Road Patrol Sergeant, who was paid \$9.58 per hour that year. A Road Patrol Officer for that County earned \$9.16 per hour. Using the Road Patrol Sergeant's \$9.58 of Menominee County as the "top-rated Deputy" for that county, the average of the Union's eleven comparables to Schoolcraft County would be \$9.85. Using the Road Patrol Officer's \$9.16 for the "top-rated Deputy" of Menominee County as being more comparable to the certified Deputies of Schoolcraft County, the average 1989 wage rate for the Union's eleven comparables would be \$9.81. Even if Schoolcraft County's Sheriff's Department received a wage increase of 38 cents per hour for 1989, its wages for the top rated employee would be only \$9.29 or 52 to 56 cents below the arithmetic average or mean for the other eleven counties presented by the Union for that year.

Even with a wage increase of 38 cents per hour for 1989, the top-rated certified Deputies in Baraga County, which has a smaller State Equalized Value and smaller total taxes in 1988, would still have earned 19 cents more than the certified Deputies of Schoolcraft County. Baraga County is one of the Counties that the Employer said should be used for comparison purposes.

The Union has pointed out that if the five highest-rated counties and Keweenaw County, the lowest rated county are excluded from the average, the Schoolcraft County Deputies would still be compensated well below the average of the counties surveyed. The five highest for 1989 are:

Marquette with	\$12.17
Houghton with	10.37
Cheboygan with	10.22
Presque Isle with	9.96
Chippewa with	9.90

The lowest was Keweenaw with \$8.50. What is left are:

Mackinac with	\$ 9.64	
Menominee with	9.58	or 9.16
Baraga with	9.48	
Delta with	9.34	
Iron with	9.18	
$\bar{x}$	= \$47.22	$\div 5 = \$9.44$ <u>or</u>
$\bar{x}$	= 46.80	$\div 5 = \$9.36$

Thus, even with a 38 cent wage increase for 1989, the top-rated certified Deputy in Schoolcraft County would still be seven to fifteen cents below the average for the five above-listed counties for that year.

The Employer would accept from the Union's list for comparative purposes the following counties

Menominee with	\$9.58*
Mackinac with	9.64
Baraga with	9.48
Keeweenaw with	8.50
Iron with	9.18

To these, the Employer would also add:

	<u>Top-rated Deputy</u>
Ontonagon	\$ 9.40
Gogebic	9.35
Alger	8.99

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\* This is for a Road Patrol Sergeant. The top wages for a Road Patrol Officer was \$9.16.

Using the Employer's eight comparable counties and the wage rates for a Road Patrol Sergeant for Menominee, the average top-rated deputy would have earned  $\$74.12 \div 8$  equals  $\$9.265$  per hour in 1989, which would be very close to the Union's  $\$9.29$  per hour if a 38 cents wage increase were granted. Using the Road Patrol Officer's  $\$9.16$  per hour rather than the Road Patrol Sergeant's  $\$9.58$  for Menominee, as being more comparable to the regular duties of certified Deputies in Schoolcraft County, the average would be  $\$73.70 \div 8$  equals  $\$9.21$  per hour, just eight cents less than the Union's last offer of  $\$9.29$  for 1989.

In terms of overall compensation, the Employer pointed out that the fringe benefit compensation package of Schoolcraft County Sheriff's Department employees, apparently was better in significant respects than that of Ontonagon, Gogebic, Iron and Alger counties.

The principal purpose of certification was a demonstration of the knowledge of the criminal law. However, this is utilized by the certified Deputies only when they were on road patrol. Each one of the Schoolcraft certified Deputies was only on road patrol for four months per year. Even then, they made very, very few arrests. However, for comparison purposes the Chairman of this Arbitration Panel would have needed to be presented with information on the proportion of time spent by the other certified Deputies in the other counties on road patrol as well as the number of arrests that they had made. Such a presentation was not made by the Employer.

### The decision

Based on all of the foregoing, the Chairman must ultimately pick one of the four possible solutions shown previously. In doing so, he must and did give the greatest weight to the financial ability of the County, the increases in the cost of living, and the comparables.

Schoolcraft County is in a very serious financial situation. There can be no doubt about that. Employees compete in a labor market that encompasses at best all of the counties of the Upper Peninsula. Ideally, one would like to preserve their real earning power by giving them a wage increase or increases equal to the increases in the cost of living. This is the Union's strongest argument. The strongest argument of the Employer is the County's weak financial condition.

The Chairman will utilize that one of the four possible solutions shown in Tables I and II which he feels will do the least injustice to the positions of both sides under all the circumstances involved. Therefore, he picks the second solution outlined in Tables I and II, i.e. a wage increase of 38 cents per hour in 1989 and no wage increase for 1990. This will amount to a weighted average increase, i.e. Employer cost increase, of 2.315 percent per year for each of the two years. It is where the employees are by the end of the two-year-contract period rather than where they are in wages at the end of each year that is most important.

### Orders

The Order shall so provide a 38 cents per hour wage increase for 1989. The Order shall so provide that there be no wage increase for 1990.

### Eyeglasses

The Employer's last best offer for 1990 was

- "1) No wage increase
- 2) Eyeglass replacement for damage during performance of duties."

The Chairman has accepted the "no wage increase" last best offer of the Employer. The eyeglasses must be damaged during performance of duties under the second part of the Employer's last best offer for this to be a fringe benefit. Over the course of time the costs to the Employer of this kind of fringe benefit should be negligible. As the Employer made this as part of its last best offer and there will be no wage increase for 1990, the Chairman feels that the Employees should be granted this new fringe benefit of "Eyeglass replacement for damage during performance of duties." The Order shall so provide.



## Orders

1. It is hereby ordered by a unanimous Panel that there be a fifty dollar increase in the annual clothing allowance commencing in 1989 as their last best offer on this issue was identical.

Edward Rosenbaum, Chairman  
Nino E. Green, Union Delegate  
Peter J. Hollenbeck, County Delegate

Dated: May 16, 1990

2. It is hereby ordered by a unanimous Panel that there be an eyeglass replacement for damage during performance of duties commencing January 1, 1990.

Edward Rosenbaum, Chairman  
Peter J. Hollenbeck, County Delegate  
Nino E. Green, Union Delegate

Dated: May 16, 1990

3. It is hereby ordered, based on the vote of the Chairman and the Union Delegate that the Union's last best offer as to the 1989 wages be increased by thirty-eight cents (38¢) per hour be hereby adopted.

Edward Rosenbaum, Chairman  
Nino E. Green, Union Delegate  
Peter J. Hollenbeck, County Delegate  
(Dissent)

Dated: May 16, 1990

4. It is hereby ordered, based on the vote of the Chairman and the County Delegate that the County's last best offer that there be no wage increase in 1990 be hereby adopted.

Edward Rosenbaum, Chairman  
Peter J. Hollenbeck, County Delegate  
Nino E. Green, Union Delegate  
(Dissent)

Dated: May 16, 1990

5. It is hereby ordered, based on the vote of the Chairman and the Union Delegate that the Union's last best offer that there be a ten percent (10%) retirement bonus effective in 1990 be hereby adopted.

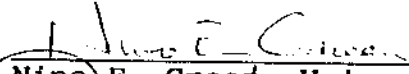
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(Dissent)


Dated: May 16, 1990

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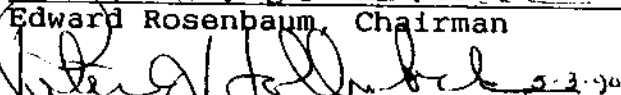
  
Nino E. Green, Union Delegate

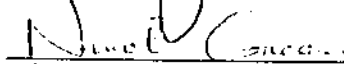
  
Peter J. Hollenbeck, County Delegate

Dated: May 16, 1990

2. It is hereby ordered by a unanimous Panel that there be an eyeglass replacement for damage during performance of duties commencing January 1, 1990.

  
Edward Rosenbaum, Chairman

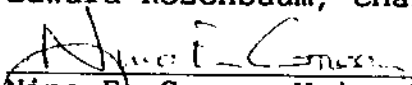
  
Peter J. Hollenbeck, County Delegate


  
Nino E. Green, Union Delegate

Dated: May 16, 1990

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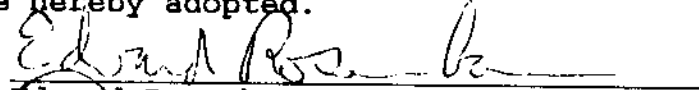
  
Edward Rosenbaum, Chairman

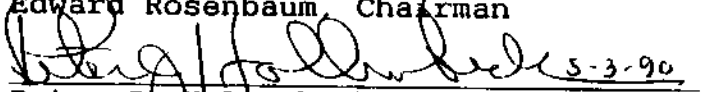
  
Nino E. Green, Union Delegate

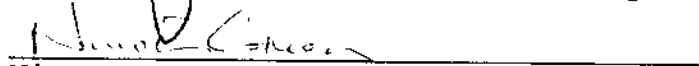
  
Peter J. Hollenbeck, County Delegate  
(Dissent)

Dated: May 16, 1990

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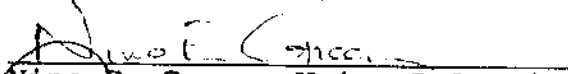
  
Nino E. Green, Union Delegate


(Dissent)

Dated: May 16, 1990

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Edward Rosenbaum, Chairman

  
Nino E. Green, Union Delegate

  
Peter J. Hollenbeck, County Delegate

(Dissent)

Dated: May 16, 1990