Arb. MSU 7/31/89

IN THE MATTER OF
ARBITRATION

Rec'd 1989 Sept 13, MLRC

BETWEEN

SHIAWASSEE COUNTY SHERIFF'S DEPARTMENT,

-and-

TEAMSTERS, STATE, COUNTY AND MUNICIPAL WORKERS,
LOCAL 214

Shiawassee County

Under Act No. 312

MICHIGAN PUBLIC ACTS OF 1969

PETER COHL
Employer Delegate

JOSEPH VALENTI
Union Delegate

GEORGE J. BRANNICK

Arbitrator
and
Impartial Chairman

OPINION AND AWARD

I. PROCEDURAL MATTERS

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

The Parties to this proceeding are Shiawassee County, the Employer, (hereinafter called the Employer) and International Brotherhood of Teamsters, Local 214, the Union, (hereinafter called the Union).

The members of the Arbitration Panel are George J. Brannick, Impartial Chairman; Peter Cohl, Employer Delegate, and Joseph Valenti, Union Delegate.

The Collective Bargaining Agreement, which is the subject of this Arbitration, expired on March 31, 1988. (There seems to be some confusion regarding the expiration date, since the Union's proposals indicate that any awards resulting therefrom should be effective from March 1, 1988, except as otherwise stated, while the Employer indicates that the effective date of any awards should be April 1, 1988. (The Employer notes this discrepancy on Page 18 of its Brief.) Since the Petition for Arbitration was initiated by the Union and indicates the expiration date to be March 31, 1988, that date will be used throughout this Opinion as the expiration date.

This matter was certified to Arbitration by the Michigan Employment Relations Commission on July 6, 1988; but, for reasons

to be addressed later, the Hearing was not opened until December 15, 1988; and, by Stipulation of the parties, April 18, 1989 was the date set for final rebuttal Briefs to be submitted.

At the opening of the Hearing it was determined that the matter was properly before the Arbitration Panel and, with one exception, there were no threshold issues to be addressed.

The one threshold issue was, i.e., the applicability of Act 312 to correction officers employed by the Employer. The parties stipulated to proceed with this Arbitration and leave pending a Unit Clarification Petition before the Michigan Employment Relations Commission agreeing that, based upon their respective positions after the issuance of this Panel's Opinion, they would exercise their respective options as set forth in the Stipulation to either accept the Award as to the correction officers, or proceed on the Petition to a Hearing before MERC. However, in any event, this Opinion and Award thereon would have full applicability to the Employer's deputies and dispatchers, and that this Opinion and Award would have the effect of fact-finding only with respect to the correction officers, should it be ultimately determined that Act 312 is not applicable to such employees.

II. ISSUES

Originally, the Employer indicated the following items at issue:

A. Non Economic:

1. Use of past infractions

2. Maintenance of standards

3. Shift preference

B. Economic:

4. Rate of pay for new work assignments

5. Hospitalization insurance costs contained provisions

6. Rate of pay for holidays worked

7. Use of non-worked holiday pay for purposes of computation of overtime

8. Time periods for calculation of overtime

9. Wages

The Union identified the following issues, to wit,

1. Longevity

2. Funeral leave

3. Pensions

4. Life insurance

5. Wages

In the course of the proceedings subsequent to the filing of the Petition for Arbitration, the parties, in keeping with the statutory scheme, did continue to bargain and achieved settlement of the following issues which are incorporated into his Opinion and Award.

Those issues are:

Use of Past Infractions - The parties agreed to amend the Contract to provide that the sheriff may retroactively review the past discipline of a bargaining unit employee for a period of two years. The current provision limits review to one year.

Wages of Detective - The Quid pro quo for the above was the

promotion of two detectives currently working in the Detective Division, as of December 16, 1989, to the rank of Sergeant with corresponding pay and benefits. An additional provision was appended, however, requiring that all future candidates for the Detective assignment must maintain, as a condition of that assignment, the rank of Sergeant, or above.

Also, the parties, in the submission of their Last Best Offers, both submitted an offer to increase life insurance coverage to $20,000. This, in effect, constitutes a Stipulation, since this Panel will accept both Last Best Offers, or the life insurance issue.

We will leave it to the parties to establish the effective date of the life insurance, since retroactive application would appear moot.

Additionally, the Union withdrew the following issues prior to the commencement of the Hearing.

1. Night shift premiums
2. Optical and dental coverage
3. Sick leave payout
4. Subcontracting

The remaining issues before this Panel then are:

A. Economic
   (1) Wages
   (2) Longevity
   (3) Funeral leave
   (4) Pension benefits

(5) Rates of pay for new assignments

(6) Hospitalization insurance cost containment

(7) Rate of pay for holidays worked

(8) Use of now worked time for overtime computation

B. Non Economic

(9) Maintenance of standards

(10) Shift preference

(11) Layoff and recall

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

III. STANDARDS FOR DECISION

Section 9 of Act 312 provides:

> " . . . the Arbitration Panel shall base its findings, opinions and order upon the following facts, 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 costs of living.

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

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

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

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

We find no difficulty in applying (a) and (b) above, as by both direction and indirection we have already accommodated those Standards.

We also know of no changes in circumstances, thus obviating any reference to (g).

We then direct our attention to the remaining standards,

which we shall address with respect to all Economic issues.

Standard 9 (c) is a very broad Standard which requires not only a finding with respect to the ability of the Employer to pay, but also requires inquiry as to the interest and welfare of the public.

The Employer introduced two witnesses and several Exhibits to support its position that it did not have the ability to pay the Union's Economic demands, notwithstanding its own Last Best Offer of containing a wage increase. The Employer relied upon the testimony of Mark Sandula, an employee of a certified public accounting firm which audits the Employer. Through Mr. Sandula, Exhibit 2 was introduced, which is the Comprehensive Annual Financial Report of the Employer for the year ending December 31, 1987. Based upon his audits and projections, Mr. Sandula indicated that in three or four years the Employer could expect to experience some fund balance problems. He did recognize that the State "may eventually kick in their additional share to make up for [past] Federal revenue sharing", and he concludes that the only alternatives are local charges for services on an increase of the local tax base.

Also testifying on the Employer's ability to pay was the Chair of the County Commissioner, Barbara O. Clatterbaugh. Chair Clatterbaugh was very knowledgeable regarding the financial affairs of the County. She testified that, ". . . her job and the job of the other Commissioners is the question we have to ask in this whole thing, no matter what the circumstances, is ability to

pay . . . I guess that's basically what we do".

She testified that the concept of expanding the Jail to accommodate the prisoners from other jurisdictions was in part to replace funds lost through the lack of Federal contribution to local government, or revenue sharing.

Further she testified that the present millage rate was "15, and we receive 5.555, and as far as I know, that has been the same for the 10 years that I've been involved in County government". She stated that, if a special election were held, they could go as high as 18 mills, but that would need a special vote by the voters. She testified that there was an attempt in 1988 to increase the road taxes by 1/2 mill and the voters turned that down.

From the testimony with respect to ability to pay, we are not convinced that this County has an inability to pay the increases contained in the Last Best Offers of both parties. It is apparent that the County is experiencing some financial difficulties, but those difficulties are experienced by all other local forms of government and are fundamentally based upon the withdrawal of Federal revenue sharing. The Employer here has shown entrepreneurial brilliance in recognizing the shortage of Jail facilities and in developing an income-producing operation with its own Jail facility, which is making a substantial contribution toward the loss of Federal revenue sharing. The fundamental inability to pay comes from a tacit desire to maintain status quo with respect to increasing fees, removing some mandated

governmental services, and a lack of desire to ask the Electorate for additional funds. This type of prudent watchfulness of the tax dollars is to be commended. However, that effort cannot be utilized as a foundation for the inability to pay wages and benefits for needed and mandated services. It is conjectural at best to presume that, because the voters were dissatisfied with an educational system, or did not want to spend money for road improvement, that that same Electorate would not support money for other County services such as law enforcement. Coupled with that is a fact testified to by all parties of the uniqueness of Shiawassee's position as an oasis or island among several other counties with growing populations and higher costs, which ultimately means that property values, and, hence, SEV's, are increased as the crowding population moves to the more remote areas within the geographic areas of their place of employment or business. This is confirmed by the United States statistical data indicating such a desire.

We, therefore, find that it is not an inability to pay that confronts the County, but rather a desire to maintain status quo to the greatest extent possible by not seeking additional funding from the Electorate, or other sources. The County's position may develop into an inability to pay, but the same is not achieved at this time. Likewise, Standard (c), which requires review of the financial ability of the unit government to meet those costs, also deals with the interest and welfare of the public and, again, it is accepted wisdom that the number one public concern is law

enforcement, and that interest has not been tested by a vote of the populace within Shiawassee County for a period within the memory of the Chair of 10 years or more. As to the welfare of the public, it may also be stated that the Deputy work force is part of that public and their welfare is also at stake.

The next major issue is that of comparables, Standard (d). As previously stated above, both parties testified or argued that Shiawassee County was unique due to its geographic position among several other counties which have large metropolitan areas and large populations. The Employer offered the testimony of Mr. William Hardwick in support of its comparable governmental units, which consisted of Van Buren County, St. Joseph's County, Clinton County, Tuscola County and Lapeer County, as comparables, while the Union offered Saginaw, Genessee, Livingston, Ingham, and Clinton Counties as its comparables. The debate centered upon the question of what constitutes a true comparable from the standpoint of population, size of department, SEV's, labor market analysis, taxes levied, motor vehicle registrations, population, median incomes, etc.

The Employer relied heavily upon those factors, while the Union relied upon the geographic proximity factor, basing its position on geographic proximity in the fact that goods and services were fundamentally obtained by residents of Shiawassee County from the neighboring counties. Both parties agreed that Clinton County should be used as a comparable and that Clinton County was both comparable from the standpoint of the criteria of

population, taxation, income, etc., as well as since the same was adjacent to Shiawassee County and, therefore, in close geographic proximity.

Act 312 Arbitrations always bring forth a great deal of testimony and effort on the part of the competing parties to satisfy the Panel of the logic of their choice of comparables, and the instant case is no exception. Comparables, among the Standards for Decision set forth in the Statute, present a singular area where hard evidence can be obtained with respect to wages and benefits of persons doing similar work can be measured. Thus, the adversaries seek the most advantageous comparables to the position taken by their Last Best Offers, and advance highly intellectual arguments for acceptance by the Panel of their comparables to form a foundation for decision. While utilization of comparables makes easy the work of those who rely totally upon them, this Panel reminds the adversaries that the question of comparables is only one of nine Standards which the Panel must review; and while, as stated above, it is easy to base awards upon comparables, this Panel does not fundamentally agree that it is always the best to rely upon the same for support of the Award, but rather to be guided by the same in reaching that Decision and Award.

Looking at the comparables presented by the parties, this Panel is not impressed by utilization of counties in a remote area such as Van Buren and St. Joseph Counties, since, as testified to by the Employer's expert, even the State isolates that particular

geographic area into a separate division because of the influences of its geographic location and other orientations. Likewise, even though they lie in close proximity, the utilization of Genesee, Ingham, and Saginaw Counties by the Union is not impressive from the standpoint that the underlying basis of this entire Arbitration is the value of law enforcement services, and it was testified that the Shiawassee County Sheriff's Department, with approximately 40 some employees, is the largest law enforcement agency within Shiawassee County, whereas in Genesee, Ingham, and Saginaw County this Panel feels that it is safe to presume that the Sheriff's Department is not the largest law enforcement agency and that the utilization of law enforcement personnel is concentrated in very specific geographic areas in those communities, thus limiting the law enforcement operation of those counties to outside areas from the major metropolitan areas such as Flint, Lansing, and Saginaw. We are equally not impressed that Tuscola and Lapeer Counties represent true comparables, since both of those counties are on the outside of the perimeter of population centers, whereas Shiawassee County is in the center of a large population triangle from Saginaw, Flint and Lansing, and it is well accepted that Livingston County is one of the more rapidly growing counties in the State of Michigan.

We, therefore, are impressed with the selection of Clinton County, which for all intents and purposes is a true comparable, since the two Counties are adjacent, thus giving geographic proximity, and are basically constituted from a standpoint of

having one major population center, i.e., Owosso-St. John.

Based upon the 1988 State-equalized valuation of the Tax Commission, the two Counties have an amazingly close SEV with respect to both real an personal property; and, on the basis of the issues pending before this Panel, the two Counties are amazingly close with respect to those items. Although the standards include comparable wages in the private sector of the economy, there was little testimony developed in the course of this Hearing with respect to comparable private sector wages and benefits with respect to the suggested comparables and, likewise, little testimony with respect to Standard (e), dealing with the average consumer prices for goods and services, known as cost of living, recognizing, however, that the Union did testify with respect to obtaining goods and services, adjoining larger counties due to availability of such goods and services. As noted in the Employer's Brief, the

> "Record is void of any evidence submitted by the Union purporting to establish a cost of living level and/or historical increases."

However, equally, the Employer presented little or no evidence with respect to the cost of living standard, fundamentally basing its position on the burden of proof argument as emphasized in its Brief. It is apparent that neither party to this Arbitration considered the cost of living standard to be of great significance with respect to this matter, perhaps due to the stabilization of that issue over the past few years with respect to almost all items utilized by the Department of Labor with the exception of the high

cost of medical services, which are a subject of proposals in this Arbitration.

Of the remaining Standards, i.e., overall compensation changes and the catch-all, "such other factors. . .", little or no evidence was presented with respect to Standard (h). Standard (g) has been heretofore commented upon and the overall compensation was and is very much in evidence with respect to the documents presented.

Since the majority of issues to be determined are economic, the above review of the factors is applicable to each and every item, as is required by the Statute.

The Statute requires acceptance of Last Best Offers with respect to Economic issues, but permits the Panel to alter Non-economic issues.

NON-ECONOMIC ISSUES

A. Maintenance of Standards

As evidence of its position on maintenance of standards, the Employer relied upon one Exhibit, that based upon its comparables with respect to this issue. The Shiawassee County, Contract Article XIX, preserves all conditions of employment, "which are uniformly applied in the Department and not specifically modified by the provisions of the Agreement". Clinton County contains the so-called zipper clause, which in this Panel's opinion does not abrogate a maintenance of standards clause, but limits the scope of bargaining with respect to covered and uncovered areas of the Contract. In either event, the party proposing either a breach of, or enforcement of the Agreement is basically required to

establish the past practice, or the interpretation of the clause which constitutes its position. Accordingly, the standard will always remain as to what, in fact, was the practice, and that, in fact, becomes the contractual obligation. Labor agreements are living agreements, interpreted and effectuated daily by the parties. Changes rarely occur in a drastic fashion, but usually occur over long periods of time to meet the ever-changing relationships between the parties, due to exterior forces working upon the Agreement. No one individual labor contract could possibly contain all of the total relationships between the parties, anymore than the typical marriage obligation to love, honor and obey could be defined, due to the changing circumstances of that relationship. Thus, to accommodate those ever-changing positions occasioned by such exterior forces and sources, it is necessary that changes occur with respect to implementation and enforcement of this type of an Agreement, which adds to the total uniqueness of the Collective Bargaining Process. We are impressed with the maintenance of standards of Shiawassee County which requires, "that there be uniform application" of the benefits or conditions of employment, as opposed to the Lapeer County standard submitted, which begins with "all standards and conditions of employment shall be maintained at not less than the highest minimum standards in effect at the time of this Agreement. . .". Because of the necessity of uniform application required in the Employer's Collective Bargaining Agreement, this Panel sees no reason to change the same; since, if the Employer uniformly applies a

standard or benefit, it should be obvious that it intends to do the same; and, if the same is accepted or relied upon, it is obvious that a novation has occurred with respect to the clause or benefit in question and, on the basis that a past practice constitutes an offer and acceptance of a change or novation, and, since the parties reserve that right in all contractual relationships, there is no reason to change that standard. Thus, this Panel so finds and will deny the Employer's proposal.

B. Shift Preference

The second Non-economic proposal deals with shift preference, Contract Article XXIV. The Employer's proposal to change Contract Article XXIV would be to add a sentence to that Article which does not appear to alter the substance of the Article, but does alter the procedure. It does require the employee to give notice in advance of shift preferences, requiring the employee to give notice in advance for his shift changes during the on-coming year. This fundamentally amounts to a 6-month's advance notice with respect to the second half of the year and does not, in the opinion of this writer, affect a decision for the entire year. On cross-examination, the Sheriff indicated in response to this question, "Is there any problem with you that if your proposal is implemented and something does come up, an emergency, or even something substantial like a spouse wanting to take courses, or a spouse being transferred in his or her job, there would be some flexibility either by mutual agreement or whatever to alter that?" The Sheriff responded, "absolutely", and then went on to indicate

that in such a circumstance an unhappy employee might be a detriment to the Department, and, after his explanation, the question was asked by the Union, "So what you are saying is you intend to be somewhat flexible in the event it becomes necessary", and the answer was "sure, absolutely", and no further questions were asked.

This Panel does not feel that the change of the scheduling process imposes any fundamental or great hardship upon the employees, as opposed to the fundamental hardship it imposes on the Employer. In this day of scheduling and reservation, most individuals are fully aware of vacation plans, weddings, etc., and, even with respect to the questions raised by the Union of enrollment in courses, etc., well into the future. On balance, this Panel feels that the relative hardships to the parties with respect to this scheduling balances well in favor of the Employer, who must create schedules in order to maintain its mission. It appears that any relative hardship would be dealt with great flexibility. Accordingly, the proposal of shift preference of the Employer is granted. However, as the Transcript indicates, there were some implementing problems as to the length of time when the notice was necessary, and I am certain there will be confusion with respect to the initial implementation of this program. Accordingly, the Panel will retain jurisdiction of this particular issue to assure that the purpose and intent of all of the parties are carried out and that the contractual provisions accommodate its underlying purpose.

ECONOMIC PROPOSALS

We now move to the Economic proposals:

A. Wages

Having heretofore discussed the standards applicable, we will utilize that discussion with respect to the wage proposals, noting the alteration of the proposals by the Union from the original request of 6.5 to the current Last Best Offer.

After reviewing the above discussion of the Standards, it would appear that Clinton County would be the best comparable to utilize with respect to the issue of wages, and, by so doing, it would appear that there would be substantial support for adopting the Union's Last Best Offer regarding wages. However, the Standards which are to be applied bring into consideration a number of other factors, including under Standard (f) the total compensation package. The testimony indicated that the Shiawassee County Sheriff's Department had substantial seniority, i.e., the testimony of the Sheriff with respect to the vacation scheduling. And, when looking at the Deputy Sheriff's maximum at 6 years and comparing Shiawassee and Clinton, there is only a small discrepancy with respect to direct compensation, i.e., $34,036.44 - $36,044 vis-a-vis $34,816.27; and there is no evidence to determine what percentage of Clinton County Deputies have achieved that status. With respect to the correction officers-dispatcher, based upon direct compensation at the 6-year level, the Clinton County 6-year correction-officers/dispatcher shows approximately a $1500 differential. However, on the basis of the starting wage, it

appears that the Shiawassee County Correction Officers have started at substantially more than Clinton and, therefore, have had the advantage of higher wages during that initial period of time.

With respect to the Detective Sergeant, the same is applicable. However, at the 6-year level, the detective sergeants are very comparable by approximately 1/2 of 1 percent. Taking those factors into consideration and looking at other factors such as other quasi-professional employees of Clinton County, under Standard (h), and to the voluntary Collective Bargaining of other units within Shiawassee County, I am constrained to state that the Economic proposal of the County is more appropriate and in keeping with the standards required by the Statute.

This conclusion is buttressed by the citation of George Roumell's Decision, in City of Southgate, 54 LA 901, back in 1970, alluding to the past and current collective bargaining history of a governmental unit could be such a factor as is required by Standard 9(h). Also, I am impressed by Professor St. Antoine's Decision in the 1977 Opinion and Award under Act 312 between the City of Lansing and the Fraternal Order of Police, Professor St. Antoine, as quoted in the Employer's Brief, states,

> "Since these Arbitration procedures are, in effect, substitutes for collective bargaining and not an adjunct thereto with respect to compromising distances between that which was collectively bargained for and that which was requested, we accordingly accept the employee's last best offer on wages."

B. Longevity

Addressing the next issue, to wit, longevity, the Union

proposes that the existing flat rate of longevity be altered to a percentile rate. Perhaps this Chairman was influenced by his own age and experience in reviewing the longevity request of the Union and the fundamental arguments and documents of the parties with respect to longevity pay. The comparable County, to wit, Clinton, has a flat rate increase which is lower than Shiawassee County's current flat-rate increases until one passes 25 years of same.

However, based upon those other factors as set forth in 9(h), this Arbitrator is impressed with 2 facets of the longevity. The largest law enforcement agency in Shiawassee County is the Shiawassee County Sheriff's Office. This Arbitrator can think of few fields of endeavor where experience is of greater value to the employer than in law enforcement, particularly in an area where the law enforcement officer is required to know such a wide geographic area as a county-wide jurisdiction. The knowledge of the geographic conditions within the County, by and large, can only be gathered over years of experience, as to hiding places of criminals, dangerous traffic conditions, and a mirage of other circumstances to which only experience can provide answers. Knowing the geographic conditions of an area is important, but the importance of knowing the community, the people, and the social structures thereof are absolutely essential to proper law enforcement, and there is no way that the many facets necessary to proper and efficient law enforcement can be learned except through experience. Today we see with expanding areas, particularly in the South and Southwest, constantly recruiting law enforcement officers

from these types of areas, and it was not too long ago that the nation's Capitol had such a shortage of law enforcement officers that Military Police were given expedited discharges from the armed forces to fulfill those needs. From the standpoint of economic efficiency, this Arbitrator is convinced that the experienced law enforcement officer can accomplish a great deal more in less time than the inexperienced officer, simply by the reservoir of information that is accumulated over the years, thus saving time which equals money.

The second factor to be considered is that the flat-rate adjustment as proposed by the status quo offer of the Employer tends to diminish with each annual increase, representing a less and less reward for the longevity, additional experience, etc., thereby, in fact, amounting to a declining percent of base wage for the more senior officer as opposed to the junior officer in the first step of longevity. Accordingly, this Panel will find that the Union's Last Best Offer is awarded.

C. Funeral Leave

The Union has modified its original demand in this respect. While this Arbitrator can sympathize with the officer whose spouse or spouse's parents have died and the necessity of time in order to preserve marital peace requires time off for attendance of such funerals, there is no compelling reason to increase the same to 5 days, as opposed to the 3 days already permitted. In view of the standards applied with respect to this, this Panel does not deem the additional two days for parents-in-law to be appropriate in

view of all of the standards heretofore discussed and accepts the Employer's Last Best Offer.

D. Pensions

The pension proposal presents a threshold issue from the standpoint that the parties have heretofore agreed that negotiation of pensions was foreclosed by agreement until after January 1, 1990. There was substantial testimony with respect to the intention of the parties with respect to that contractual provision in the present Collective Bargaining Agreement which states, "the parties agree there will be no pension benefits negotiation until after January 1, 1990". This becomes a matter of parole evidence which is a matter of substantive law in the State of Michigan, and in Michigan it has been well established that parole testimony is not admissible to vary or change the terms of a written instrument if the terms are clear and unambiguous. Since the terms of the Agreement are clear and unambiguous and, since the Statute authorizing this Arbitration provides in Section I, ". . . that it is the public policy of this State . . . . to afford an alternate, expeditious, effective and binding provision for the resolution of disputes" that this Panel feels it does not have jurisdiction to alter the binding Agreement of the parties, even from a prospective basis. Whatever purpose the parties may have had, they agreed not to negotiate pension benefits until after January 1, 1990.

There appears no ambiguity with respect to the intent of the parties, and no intent to substitute negotiation for effectuation appears. This is buttressed by the testimony of the Employer with

respect to its intention to file unfair labor practices, should the Union insist on negotiation as opposed to effectuation of pension proposals.

Accordingly, this Panel determines it has no jurisdiction with respect to that issue and leaves that issue to the parties to negotiate post January 1, 1990. We make no commentary with respect to whether or not this position constitutes an automatic re-opener as to that subject matter as of that date. We leave that potential problem to resolution by the parties, being satisfied we are foreclosed from electing either parties' Last Best Offer, notwithstanding that the effect of this Decision technically supports the Employer's Last Best Offer.

E. Hospitalization Insurance

The Employer proposes by Last Best Offer to alter the Contract by increasing the co-pay drug rider, giving the Employer the right to change insurance carriers to require a 50 percent co-pay of increases and to require second surgical opinions, as well as a pre-determination plan.

The Union proposes to maintain the status quo.

Perhaps no issue in collective bargaining negotiations presents a more trying problem for the bargaining parties than that of health insurance, since both parties at the table are subjected to forces over which they can exercise little or no control, and, based upon past experience, both parties can reasonably expect that there will be substantial increases in the cost of health care.

As indicated in the Union's Brief, the Employer's proposal

contains several items, but constitutes one Last Best Offer in toto, and, according to the testimony, is not in conformity with the bargaining agreements with other units of the government within Shiawassee County. It represents a substantial departure from even those comparables proposed by the Employer.

This Panel feels that the entire Last Best Offer of the Employer is too radical a change for this Agreement, particularly in view of the adoption of this Panel of the Employer's Last Best wage offer. Accordingly, the Last Best Offer or status quo of the Union will be accepted. We do comment, however, that it is most unfortunate that this Arbitrator would state that it is most unfortunate that the cost of health insurance has reached the proportion it has today with its attendant impact upon the collective bargaining process, since it is becoming more apparent that the third party setting at the table at all times is the cost of health insurance; and, with the prospect of the additional cost in the future, it appears this will become more and more of a gray ghost sitting in on all collective bargaining. Your Chairman would use this platform to suggest to one and all that perhaps the statement of Ken Brown, former President of the Lithographers Union many years ago, to the extent that, if health insurance were not included in the collective bargaining process, there would perhaps not be substantial cost as exists today, since the overwhelming body Electorate does not feel the costs thereof, due to employee provided insurance. This Chairman agrees with Mr. Brown, particularly in view of the recent vote on Proposal 103 in

California relative to automobile insurance. If the Electorate's pocketbook was affected by the high cost of directly, it is suggested that the greater consciousness would contribute to the total containment of that cost. These commentaries are gratuitous, but I believe them to be important to both parties with respect to future negotiations.

F. New Work Assignments

Next is negotiability of rates of pay for new work assignments, the Employer wishes to delete from Article at XVIII, Section 5, "or adds new work assignment to a present classification from the present contractual findings". Little or no evidence was developed upon this particular issue and scant attention paid to it in the Briefs of the parties. It does, however, present a pandora's box, if literally interpreted, and would appear to destroy the foundation upon which the collective bargaining is based, to wit, Section 15 of the Public Employee Relations Act, which defines collective bargaining as meeting at reasonable times and conferring in good faith with respect to wages, hours, and other terms and conditions of employment. The scope of the proposal is so broad as it would permit unfettered work assignments without the capacity to bargain therewith and would be in conflict with the declared policy of the State as set for in the Declaration of Policy in Section 1 of the Employment Relations Act, being Act 176 of 1939, as amended.

G. Rate of Pay for Holidays Worked

The Employer's Last Best Offer proposes to change the current

rate of pay for services performed on a holiday to one and one-half the straight-time rate, plus the holiday pay. The Employer's entire argument is based upon its conclusion that the amount is inordinately high and its Exhibits indicate that in comparable counties each pays 2.5 percent for holiday work. The Union suggests that there is no compelling need to reduce the pay for holidays from the standpoint that the Sheriff has decreased the costs thereof by the utilization of skeleton force crews to work the holidays. The Employer's Brief stated, at length, the necessity of the burden of proof with respect to the proponents of positions and, applying that standard to this particular issue, finds no reason to alter the contractual language. It is obvious that at one time the parties were in agreement with respect to that for reasons not advanced in this proceeding, and, lacking any knowledge of the reasons for what the Employer describes as an inordinately high amount of pay as to its purpose originally in the Contract, this Panel sees no reason to alter the Contract by application of the standards heretofore discussed and, therefore, accepts the Union's Last Best Offer.

H. Computation of Overtime

The Employer also proposes that Section 4 of Article XXIII be amended to permit the utilization of hours worked, as opposed to hours paid on holidays for computation of overtime purposes. The comparables stressed worked hours. This Panel recognizes that, one of the other factors to be considered is the fact that, the fundamental basis of premium pay for overtime was based upon

limiting the number of hours that employees would be required for work and freeing up more time for social and recreational activities of the employees. If that is the fundamental foundation upon which overtime work is regulated, then the computation of hours paid but not worked is inconsistent with that position, and, while the same may be of minor significance, it is nonetheless important that those costs, in view of all others, be saved where there is a meritorious purpose in so doing. Accordingly, we will accept the Employer's Last proposal with respect to this item.

CONCLUSION

Fundamentally, the above covers all issues pending before this Arbitration Board with the exception of the original application of this Arbitration to correction officers and dispatchers, which was stipulated to in the beginning.

At the opening of the Hearing, Joint Exhibit 1 was submitted which was a Stipulation to Proceed to the Act 312 Arbitration. The Stipulation, which is attached hereto as Exhibit 1 or Appendix 1 and the same is self-explanatory, permitting this Arbitrator to decide all issues and that, upon receipt of the Award, the Employer would have the option of accepting or rejecting the Decision and Award with respect to correction officers. Should it accept, the same would be to this Contract only and without prejudice to the rights of the Employer in the future. Should it reject, the matter would proceed to the appropriate forums, to wit, the Commission and Appellate Courts and, should the Union's position be sustained, then the Award would apply to correction officers retroactively;

should it not be sustained, the parties would forthwith resume bargaining and accept the Panel's Award as fact-finding with respect to such correction officers.

Subject to that Stipulation, we proceeded to this Decision and Award, reserving to the parties their respective rights pursuant to that Stipulation.

One other issue dealt with layoff and recall, which was addressed in the Hearing, and, on the basis of an Opinion of the Attorney General relative to that issue, that issue is not addressed by this Panel; we will leave the parties to resolve that issue and defer it pursuant to our authority back to them, based upon the Attorney General's Opinion, but will, upon request, retain jurisdiction for any resolution created thereby.

AWARD

Based upon the foregoing, the following awards are made by a majority of this Panel. To facilitate the Panel's disposition, I have prepared this Award on an issue-by-issue basis, providing for the Panel to concur or dissent from the Chairman's position with respect to each item. In this fashion the Panel is not put to accepting or rejecting an entire Award, but is required to accept or reject on an item-by-item basis.

It is to be recognized that, as to those items which the parties stipulated agreement or withdrawal, those items are made a part of this Award pursuant the Stipulation of the parties and the same will be effective throughout the term of the Contract, if applicable. Among those items would be:

1. Life Insurance - Life insurance is increased to $20,000, the Panel leaving any retroactive impact thereof to negotiation by the parties in keeping with the comments set forth in the Decision above.

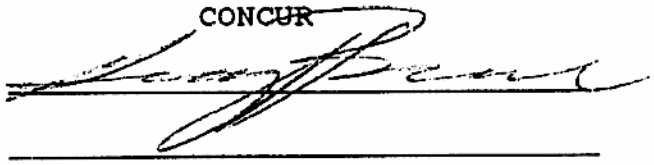
2. Past Infractions - The parties agreed to a 2-year cap in substitution of the previous Contract and that is the unanimous Award of the Panel.

3. Detective's Pay Rate - Again, by Stipulation, an agreement constitutes the unanimous Award of the Panel as stipulated.

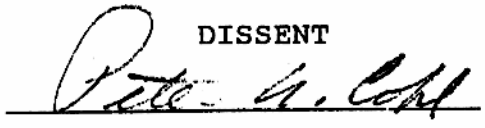
Now addressing the Non-Economic issues, we award as follows:

4. Maintenance of Standards - It is the decision of the majority of this Panel that the Contract clause in question, to wit, Article XIX, Section 6, is denied, and the Article shall remain for the term of the Contract as currently written.

CONCUR



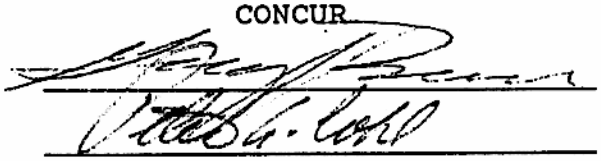
DISSENT



5. Shift Preference - It is the Award of the majority of this Panel that the Employer's requested change in contractual language, to wit, Article XXIV, shall be changed to insert the following language, "Employees must give notice of intent to exercise shift preference by the end of the year", this Panel leaving to the parties the opportunity to adjust the language for

better implementation, but awarding the underlying change to the Employer.

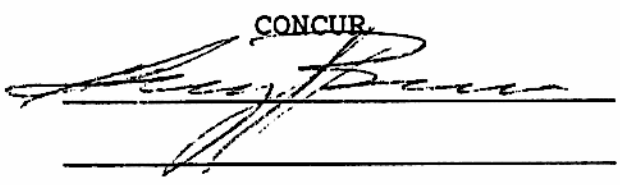
CONCUR



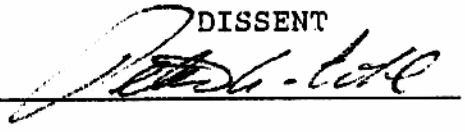
DISSENT

6. Negotiability of Rates of Pay for New Work Assignments The Panel Awards the Union's Last Best Offer with respect thereto, that is to maintain status quo for the period of the Contract.

CONCUR

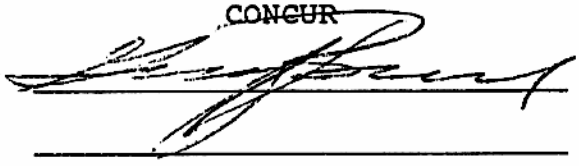


DISSENT

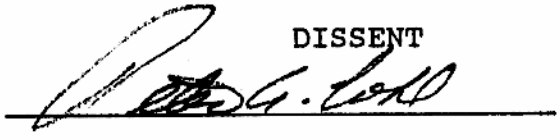


7. Hospitalization Insurance - The Panel Awards the Union's Last Best Offer, that is to retain the status quo.

CONCUR

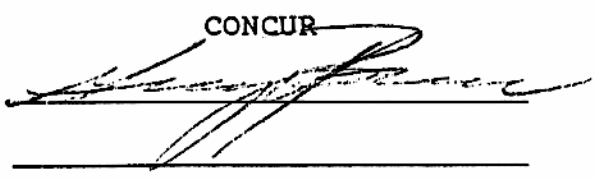


DISSENT

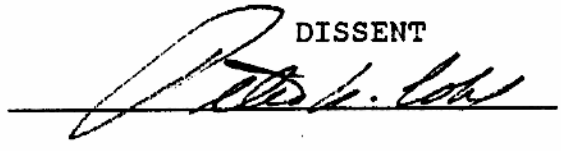


8. Rates of Pay for Holiday Work - The Panel awards the Union's Last Best Offer, to wit, to maintain the status quo.

CONCUR

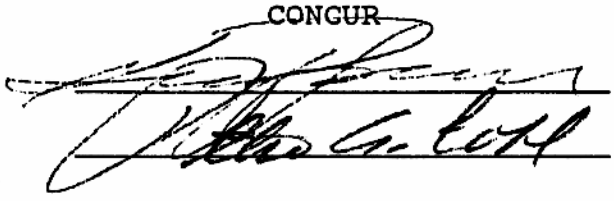


DISSENT



9. Use of Non-worked Holiday Pay for Computation of Overtime - The Panel Awards the Employer's Last Best Offer, i.e., to permit the computation of overtime to include only those holiday hours actually worked.

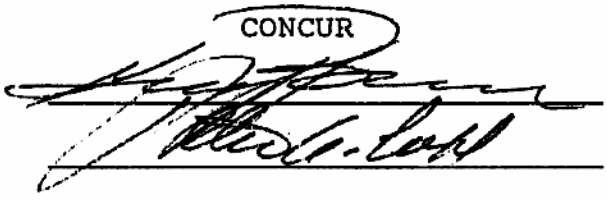
CONCUR



DISSENT

10. Wages - This Panel awards the Employer's Last Best Offer of wages for a 3-year period as follows, effective April 1, 1988 to March 31, 1989, a 3-percent increase effective April 1, 1989 to March 31, 1990, a 3-percent increase effective April 1, 1990 to March 31, 1991, a 3-percent increase.

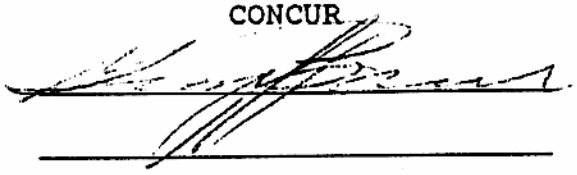
CONCUR



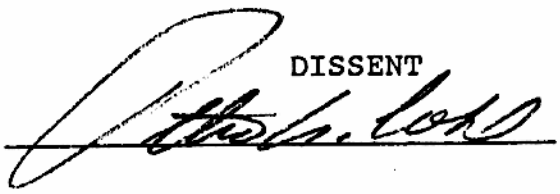
DISSENT

11. Longevity - This Panel Awards the Union's Last Best Offer. This proposal did not have a status quo or retroactive statement with respect to this proposal and, with respect thereto, this Panel, to the extent that it has the authority to so reward, gives retroactive application of this proposal only to April 1, 1989 and forward therefrom.

CONCUR

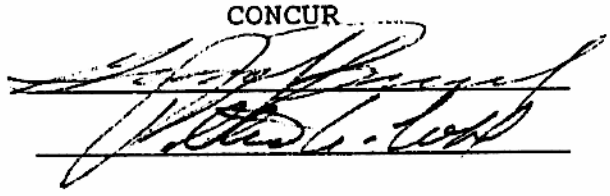


DISSENT



12. Funeral Leave - This Panel Awards the Employer's Last proposal, maintenance of status quo with respect to funeral leave; with respect to pension, this Panel makes no reward of either proposal, based upon its Decision above that it lacks jurisdiction to make such an Award.

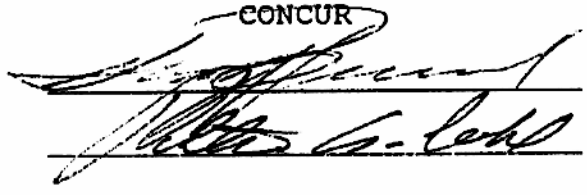
CONCUR



DISSENT

13. Pension - No Award based upon the Panel's lack of jurisdiction.

CONCUR



DISSENT

CONCLUSION

This Chairman would be remiss if he did not compliment all of the parties and, especially Counsel, for the excellent presentation of the evidence in this matter and the excellent preparation of Exhibits. Not only were the parties testifying clear, concise, and knowledgeable, with respect to the testimony they gave, but their

testimony was free from extraneous items which more frequently tend to confuse, rather than enlighten the Panel. The Exhibits were also clear and concise and, when laboring over Transcripts and Exhibits in late hours of the evening or early hours of the morning, it is a manifold blessing that the same be precise and to the point.

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

Respectfully submitted,

GEORGE J. BRANNICK
Impartial Chairman

IN THE MATTER OF
ARBITRATION

BETWEEN

SHIAWASSEE COUNTY SHERIFF'S DEPARTMENT,

-and-

TEAMSTERS, STATE, COUNTY AND MUNICIPAL WORKERS,
LOCAL 214

Under Act No. 312

MICHIGAN PUBLIC ACTS OF 1969

PETER COHL
Employer Delegate

JOSEPH VALENTI
Union Delegate

GEORGE J. BRANNICK

Arbitrator
and
Impartial Chairman

SUPPLEMENTAL OPINION AND AWARD

On, May 10, 1989 the undersigned Impartial Chairman submitted to Panel members, Peter A. Cohl and Joseph Valenti, the proposed Opinion and Award in the above-captioned case. The Panel Members returned the Awards on May 15th and May 27th respectively, with Concurrence and Assents. I was asked by the Employer Delegate, Peter A. Cohl, to reconsider my Award relative to Longevity Pay.

Further, the parties requested an opportunity to negotiate with respect to the item of Longevity Pay and, ultimately, reported that their negotiations did not result in an agreement. I have, again, been asked to reconsider the issue of Longevity Pay, and both parties have submitted Position Statements with respect thereto. I have re-examined the entire Record and have reviewed Position Statements sent by the respective Delegates.

After reviewing the record and the Position Statements, I again conclude that the Last Best Offer of the Union with respect to Longevity Pay should become the majority Panel's Decision.

The Employer argues that the Sheriff's testimony regarding the differences of day and night work should influence the result, since under the bidding system of the Shiawassee Sheriff's Department it appears that the less senior employees are assigned to the more dangerous shift, which he considers to be the night shift. That conclusion may or may not be well supported statistically and as the Sheriff says in his own testimony that, "although it is not always true day or night", that appears to be a problem of training and job bidding, which is prevalent in any

Department or industry for that matter.

The argument was not centered upon the utilization of junior or senior officers with respect to standard police work, but was used with respect to the types of police work indicated by the Sheriff in his testimony. My Opinion and Award was based upon the value of seniority from the standpoint of knowledge of the geographics and demographics of the Community in general with respect to efficient police operation. There is little question that, in police work, knowledge of the geographics and demographics of the jurisdictional area is of critical importance with respect to law enforcement, and this Arbitrator does not believe that that conclusion can strongly be challenged. The Shiawassee Sheriff's Department is the largest law enforcement agency in the County, and just the geographics alone establish the importance of experience.

With respect to the flat rate, the mathematics of the Employer may or may not be true, based upon the hypothetical 3-percent wage rate, but the longevity rate at the end of the 18th year serves another purpose, even assuming his hypothetical to be true, since it acts as a retention factor for the experienced officer.

As to the comparable, this Arbitrator recognizes that Clinton County was established as a comparable Community, however, a comparable is but one of the Section 9 factors which the Panel must take into consideration.

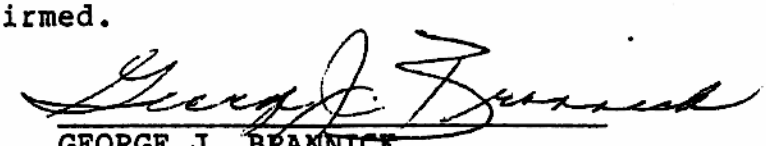
Finally, with respect to the due process of law argument, this Arbitrator suggests that the standard of evidence required by the Act as indicated in the Detroit v. Detroit Police Association, 408

Mich 410, 294 NW2d 68, (1980), the Court said that competent material and substantial evidence must be adduced with respect to each applicable factor and that the failure of the parties to submit evidence on an applicable factor would require a remand for further proofs. However, the Panel need not assign equal weight to each factor, it is merely required to consider those factors that are applicable. The quantity of the evidence submitted is not at issue, but a consideration of all factors.

In its Brief the Employer made its greatest emphasis on the cost of the Longevity Program. It's testimony was bottomed upon the conjecture that the citizens of Shiawassee would not pass a permitted millage increase, if ask. Further, the Employer rested is rebuttals solely to that premise.

The Union, however, suggested basic reasons for the Longevity increase which this Impartial Chairman accepted as more persuasive than the Employer's arguments. For that reason that Award of the Union's Last Best Offer was accepted. I see no additional reason to change from that position.

Accordingly, the Award, as stated in my Opinion and Award dated May 10, 1989, is confirmed.



GEORGE J. BRANNICK
Impartial Chairman

Dated: July 31, 1989