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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Act 312
Arbitration between:

Case No. G91-K-0666

VAN BUREN COUNTY,

Arbitration Panel:

Employer,
and

Jerold Lax, Chairperson
Douglas Cultra, Employer
Delegate
James Quinn, Union
Delegate

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE,

Labor Union.

Appearances:

For the Employer:

For the Labor Union:

Patrick A. Aseltyne
Johnson, Rosati, Galica & Shifman
303 S. Waverly Rd.
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Troy, Michigan 48083

OPINION AND AWARD

I. Introduction

This Act 312 arbitration proceeding involves Van Buren County (hereinafter "Employer") and the Labor Council, Michigan Fraternal Order of Police (hereinafter "Union"), representing full time employees in the Employer's Sheriff's Department occupying the positions of deputy, corrections officer, and radio dispatcher. It was originally contemplated that this case would be consolidated with Case No. G91-K-0667, involving sergeants in Employer's Sheriff's Department, but the sergeants' case was settled by the voluntary agreement of the parties.

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The last contract between the Employer and the Union covered the period January 1, 1989 - December 31, 1991. On February 26, 1992, the Union filed a petition for arbitration under Act 312 of the Public Acts of 1969 (MCLA 423.201 et seq). Jerold Lax was appointed as the impartial chairman of the arbitration panel on April 17, 1992, and subsequently Douglas Cultra was designated as the Employer's delegate to the panel and James Quinn was designated as the Union's delegate.

A telephone conference was held on April 30, 1992 at which a tentative date of July 28, 1992 was set for a prehearing conference. At the request of a party, the date of the prehearing conference was adjourned until August 4, 1992. At the prehearing conference, the dates of December 16 and 18, 1992 were agreed upon for the hearing in the matter, and, at the request of the parties, the hearing was subsequently reset for February 5, 1993.

At the commencement of the hearing, the parties stipulated as to the communities which should be regarded as comparables in resolving disputed issues, these communities being Barry County, Cass County, Clinton County, Lapeer County, Lenawee County, St. Joseph Count, Shiawasee County, and Tuscola County. Evidence was presented at the hearing relating to the following issues:

- (1) Health benefits (economic)
- (2) Discharge and discipline (non-economic)
- (3) Wages (economic)
- (4) Duration of contract (economic)

(5) Pension (economic)

(6) Shift preference (non-economic)

The parties indicated that tentative agreement had been reached on several other issues, and that these agreements should be incorporated into the final award. Subsequent to the hearing, the parties indicated that the pension and shift preference issues had also been settled, and that agreement had been reached as to a 3-year duration for the new contract. Hence, these matters will not require extended discussion in this opinion.

After the submission of the final offers of the parties on or about February 24, 1993 and the exchange of post-hearing briefs on or about March 31, 1993, the panel held an executive conference by telephone on May 11, 1993 to discuss the proposed award, and the following discussion summarizes the conclusions of the panel. All panel members are in agreement that this award shall be regarded as timely under Act 312. In rendering this award, the panel has adhered to the directive of Section 9 of Act 312 that it base its findings, opinion and order upon the following factors, as applicable:

- a. The lawful authority of the employer;
- b. Stipulations of the parties;
- c. The interest 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, fact-finding, arbitration or otherwise between the parties, in the public sector or in private employment.

Further, with regard to economic issues, the panel has adhered to the directive of Section 8 of the statute that it adopt the best offer of settlement which, in the opinion of the panel, more nearly complies with the applicable factors prescribed in Section 9. The panel notes, however, that with regard to any particular issue, each Section 9 factor need not be accorded equal weight. City of Detroit v Detroit Police Officers Association, 408 Mich 410 (1980).

II. Resolution of disputed issues

(1) Health Benefits

The collective bargaining agreement which expired in December, 1991, provided that the Employer would pay the entire premium for health insurance coverage for employees and their dependents, and would also provide such coverage for retirees with a minimum of 25 years of service, and for the spouses of such

retirees. Both parties appear mindful of the increasing costs of such insurance, and the final offer of each party would require employees to bear a portion of this increased cost. Each party, however, offers a different approach to this issue.

The Union's final offer would leave the insurance coverage of the prior contract intact, but would add a provision that any increase in health insurance premiums for the years 1993 and each subsequent year will be paid 50% by the employer and 50% by the employee up to an increase of 15%, with any amount of premium increase over 15% to be paid by the employer. The Union's proposal would leave retiree coverage unchanged. The Employer's final offer provides for employer payment of the entire health insurance premiums for 1992 for employees selecting HMO/BCN/PHP coverage, with the employer's contribution toward premium payments in future years to be negotiated between the parties. For those employees opting to retain traditional Blue Cross/Blue Shield coverage, the Employer's offer requires monthly employee payments in 1992 of \$15.88 for a single subscriber, \$34.55 for two persons, \$36.93 for a family of three or more, and an additional \$7.96 payment for coverage of dependents over the age of nineteen. In subsequent years, the Employer would be permitted to increase employee cost of traditional BC/BS coverage to reflect the same percentage of contribution made by employees in the Employer's courthouse units (circuit court, probate court, district court, prosecutor's office, sheriff's department). Under the Union's proposal, retired employees would contribute to premiums in the

same manner as regular employees, and no retiree health coverage would be provided for employees hired after January 1, 1992.

While the Employer has not suggested during these proceedings that it is presently unable to pay benefits of the sort regulated by the Union, the Employer does contend--and the Union does not dispute--that the cost of health insurance has increased considerably in recent years, and that although there is considerable national discussion of methods of providing reasonable health coverage for employees, the details of a national plan have not been determined. In considering health benefits within comparable communities and within other employee groups in the Employer's work force, a number of factors emerge which are relevant, though not decisive. While it appears that only two of the other comparable counties require employee contributions to health care premiums, the majority of such counties do not provide health care coverage for retirees. Within Van Buren County, not only the supervisory unit within the Sheriff's Department, but the unionized and non-unionized employees in the other courthouse units are all subject to the sort of plan the Employer proposes here--namely, contribution by employees to traditional BC/BS premiums, with an incentive for employees to participate in a managed care system by not requiring such employee contributions during an initial period and by holding open the possibility that in the future, such employee contributions would either not be required or would be at a level below employee premium contributions for traditional BC/BS coverage.

It is the award of the panel that the position of the Employer be adopted with regard to the issue of health benefits. The Employer's proposal includes a range of choices for employees in the unit which would enable them to minimize contributions to health care premiums; further, other benefits awarded as a result of this arbitration would to some extent alleviate increases in premium contributions for those employees wishing to maintain traditional coverage.

(2) Discharge and discipline

The collective bargaining agreement which expired in December, 1991, provided:

If an employee's work record is free of discipline for a period of two (2) years, the Employer will not take into account any prior infractions more than two (2) years old in imposing discipline.

The Union proposes to retain this language, while the Employer desires to replace the quoted provision with the following language:

The Employer will not take into account any prior infractions more than two (2) years old in imposing discipline, except where the infraction resulted in a suspension or demotion, in which case these major infractions shall be kept for up to four (4) years, consistent with the provision of the Bullard-Plawecki Act.

The Employer notes that the command unit in the Sheriff's Department has agreed to the Employer's proposed language. Both parties claim support for their positions from provisions found in agreements in comparable communities: the Union observes that the five comparable communities which impose a time limit on the use of

prior discipline, the time limit does not exceed two years; the Employer correctly observes, however, that in three of those communities older charges can be relied upon if related to the current charge, and that three comparable communities appear to impose no time limit on the use of prior discipline. While the Bullard-Plawecki Act does require that, absent a court or arbitral order, disciplinary action older than four years be deleted from information released to third parties, the Union is correct in arguing that the Act in no way precludes parties to a collective bargaining contract from agreeing to disregard disciplinary actions more recent than four years.

The panel is of the view that neither the practices in comparable communities nor the fact that the Sheriff's Department command unit has agreed to a proposal like the Employer's in this case provide a compelling basis for altering the provision found in the prior collective bargaining agreement with regard to this non-economic issue. It is therefore the award of the panel that the position of the Union on this issue be adopted.

(3) Wages

The parties have stipulated that each of the three years of the proposed collective bargaining agreement should be dealt with separately and that, moreover, each of the classifications involved--deputies, corrections officers, and dispatchers--should be dealt with separately for each of the years in question. Hence, nine separate determinations are required to resolve the

wage issue. The final offers of the parties are as follows concerning this issue:

(a) Union

Effective 1/1/92 - 4% of all classifications
Effective 1/1/93 - 2% of all classifications
Effective 7/1/93 - 1% of all classifications
For period beginning 1/1/94 - wage reopener

(b) Employer

(i) Deputies

Effective 1/1/92 - 4%
Effective 1/1/93 - 2.5%
Effective 1/1/94 - 3%

(ii) Corrections officers

Effective 1/1/92 - 2.5%
Effective 1/1/93 - 2.5%
Effective 1/1/94 - 3%

(iii) Dispatchers

Effective 1/1/92 - 0%
Effective 1/1/93 - 2%
Effective 1/1/94 - 2.5%

The Employer has indicated that its principal goal in formulating its offers is maintaining the rank of the employees in each of the respective classifications in relation to the employees in those classifications in the comparable communities, while the Union argues that its proposals, at least for 1992 and 1993, come closest to the average increases for similar employees in comparable communities. The Union further suggests that its proposal for a wage reopener in 1994 is based largely on its understanding that the Employer, in the course of collective bargaining, desired such a reopener as a condition of agreeing to a 3-year contract; the Employer, however, now proposes a fixed

increase for 1994 as a method of achieving stability in the relationship between the parties.

Both because the Employer has not contended it is unable to pay for increases of the sort proposed by the Union and because the panel's award concerning health benefits allows the Employer certain potential savings and imposes obligations on those employees maintaining traditional BC/BS benefits, the panel is of the view that a comparison of increases in comparable communities is of greater relevance than maintenance in rank among employees in comparable classifications. For 1992, both the Employer and the Union propose a 4% increase for deputies, so no dispute exists. While the increases proposed by the Union for other employees in 1992 and for all employees in 1993 are in certain instances slightly in excess of the average increases for similarly-classified employees in comparable communities, the Union's final proposals for 1992 and 1993 are nonetheless closer to the average than the Employer's proposals. Even if the panel were to focus on maintenance of rank among comparable employees, acceptance of the Union's proposals for 1992 and 1993 would appear to raise the rank in only one instance--that of corrections officers in 1992. The panel acknowledges that the Employer's dispatchers are paid at a level in excess of the pay level of dispatchers in comparable communities, but this fact in and of itself does not justify acceptance of the Employer's proposal that no increase for dispatchers in 1992 be awarded. Hence, it is the award of the

panel that for the years 1992 and 1993, the proposals of the Union be adopted.

Although not all comparable communities have arrived at agreements covering 1994, it is the view of the panel that several factors justify adoption of the Employer's proposals for specific increases in 1994 rather than the proposal of the Union that wage reopeners be recommended for that year. Because the proposals of the Union have been adopted for 1992 and 1993, the Employer's proposals for 1994 appear to provide adequate compensation for employees in the relevant classifications. An award of defined increases, rather than of a wage reopener, would tend to promote stability in the relationship between the parties. Finally, the Union's proposal concerning wage reopeners for 1994 appears to be based less on a prediction that conditions will require renegotiation than on the view that reopeners might have been required as the quid pro quo for a 3-year contract. Hence, it is the award of the panel that the wage proposals of the Employer for 1994 be adopted.

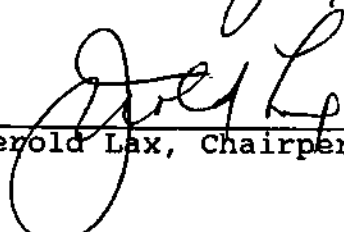
III. Tentative agreements

By agreement of the parties, the tentative agreements summarized in the Appendix to this Opinion and Award are hereby adopted by the panel. Further, the panel adopts the agreements of the parties with regard to the following:

1. The duration of the contract shall be three years.
2. The maximum annual Employer contribution to the Employer's pension plan shall be \$1,600.00 per employee.

3. Pass days and shift preference shall be governed by the letter of agreement attached as an exhibit to this Opinion and Award.

The foregoing Award is issued on July 28, 1993.


Jerold Lax, Chairperson

CONCURRENCES

<u>Issue</u>	<u>Employer</u>	<u>Union</u>
(1) Health benefits	_____	_____
(2) Discharge and discipline	_____	_____
(3) Wages		
1992 Deputies	_____	_____
1992 Corrections	_____	_____
1992 Dispatchers	_____	_____
1993 Deputies	_____	_____
1993 Corrections	_____	_____
1993 Dispatchers	_____	_____
1994 Deputies	_____	_____
1994 Corrections	_____	_____
1994 Dispatchers	_____	_____
(4) Tentative agreements	_____	_____

3. Pass days and shift preference shall be governed by the letter of agreement attached as an exhibit to this Opinion and Award.

The foregoing Award is issued on _____, 1993.

Jerold Lax, Chairperson

CONCURRENCES

<u>Issue</u>	<u>Employer</u>	<u>Union</u>
(1) Health benefits	<u>YES [Signature]</u>	<u> </u>
(2) Discharge and discipline	<u> </u>	<u> </u>
(3) Wages		
1992 Deputies	<u>YES [Signature]</u>	<u> </u>
1992 Corrections	<u> </u>	<u> </u>
1992 Dispatchers	<u> </u>	<u> </u>
1993 Deputies	<u> </u>	<u> </u>
1993 Corrections	<u> </u>	<u> </u>
1993 Dispatchers	<u> </u>	<u> </u>
1994 Deputies	<u>YES [Signature]</u>	<u> </u>
1994 Corrections	<u>YES [Signature]</u>	<u> </u>
1994 Dispatchers	<u>YES [Signature]</u>	<u> </u>
(4) Tentative agreements	<u>YES [Signature]</u>	<u> </u>

3. Pass days and shift preference shall be governed by the letter of agreement attached as an exhibit to this Opinion and Award.

The foregoing Award is issued on _____, 1993.

Jerold Lax, Chairperson

CONCURRENCES

<u>Issue</u>	<u>Employer</u>	<u>Union</u>
(1) Health benefits	_____	_____
(2) Discharge and discipline	_____	_____
(3) Wages		
1992 Deputies	_____	_____
1992 Corrections	_____	_____
1992 Dispatchers	_____	_____
1993 Deputies	_____	_____
1993 Corrections	_____	_____
1993 Dispatchers	_____	_____
1994 Deputies	_____	_____
1994 Corrections	_____	_____
1994 Dispatchers	_____	_____
(4) Tentative agreements	_____	_____

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APPENDIX

T.A.'S REACHED BY THE PARTIES

Section 5.2: Grievance Procedure: Step three time limit to be reduced to fifteen (15) working days.

Section 5.7: Investigation and Settlement under the Grievance and Arbitration Procedures. . . . However, in no event shall a member receive wages or fringe benefits without obtaining the approval of the Sheriff, or his designee, before participating.

Section 7.5: Recall.

* * *

(Add following the last sentence:) The employees recalled from layoff will be notified by mail at their last known address. If they fail to report for work within ten (10) working days of the mailing date of such notice, they will lose all rights to recall. After the required letters are mailed, the employer may telephone employees scheduled for recall in an effort to expedite the employees return to work.

Section 8.1: Sick Leave.

* * *

The following relates to how sick leave is established:

- (A) Sick leave credit shall be accumulated at the rate of four (4.00) hours per bi-weekly pay period.
- (B) For all employees hired after January 1, 1992, sick leave not used on termination or separation shall be paid on a full-time basis at the employee's then current regular rate of pay and shall not exceed thirty (30) days.

(C) * * *

The maximum accumulation shall be one hundred thirty (130) days for employees hired after January 1, 1992.

Section 8.2: Personal Leave of Absence. . . . (Delete the last sentence to comply with current law, in favor of the following) To maintain insurance benefits, the employee shall submit the required premiums in accordance with the Comprehensive Omnibus Budget Reconciliation Act, and the Employer shall provide the Employee with the standard notice of rights and responsibilities under said Act.

Section 9.1: Vacation Definition. A week is five (5) working days, excluding pass days. . . .

Section 9.2: Vacation Benefits.

* * *

(F) Upon proper application, probationary employees may be authorized by the Sheriff to use, in exceptional circumstances, vacation time before the completion of their probationary period. Such use shall not exceed the employee's then accumulating vacation time, based upon the number of months worked over the twelve (12) month probationary period and further such use shall be at the sole discretion of the Sheriff.

(G) Delete this Section.

Section 10.1: Paid Holidays.

(B) Employees shall be entitled to two (2) personal leave days per calendar year not to be deducted from sick leave and one (1) personal leave day to be deducted from sick leave, subject to the approval of the Sheriff.

Section 11.1: Health and Welfare.

* * *

- (D) The Employer shall pay for and provide a prescription drug rider, \$5.00 co-pay.

Section 11.2: Worker's Compensation

- (B) For all employees hired after January 1, 1992, the fifty percent (50%) supplementary wage provision shall not apply.

Section 12.2: Court Time. . . . This provision shall not apply if the Court appearance is contiguous with the employee's beginning and ending of his shift. In this event, the employee shall be compensated at the employee's regular hourly rate, but shall be compensated at one and one-half (1 1/2) times the regular hourly rate for any court time spent in excess of 2.7 hours. The exception to this is schooling and training which is provided in 16.5 (A).

Section 12.3: Overtime . . . (Strike the last sentence in that present Section in favor of the following:) The Employer shall not be liable for overtime if, due to shift rotation, the Employee works back-to-back shifts and thereby works in excess of eight (8) hours per day.

Section 15.1: Longevity

This Section shall be deleted for all Employees beginning employment on or after January 1, 1992.

Letter of Agreement. The parties' 7/30/90 Letter of Agreement regarding Court Bailiffs (officers) shall be incorporated into the bargaining agreement.

LETTER OF AGREEMENT

BETWEEN

COUNTY OF VAN BUREN

THE SHERIFF OF VAN BUREN COUNTY

AND

**LABOR COUNCIL MICHIGAN FRATERNAL ORDER OF POLICE
Deputies/Corrections/Dispatch**

Section 12.4: Pass Day Preference.

- A. The Sheriff will implement pass day/shift preference every six months, based upon department-wide seniority, provided that the employees will be required to make their preferences known at least one(1) month before the beginning of the six month period, pursuant to a seniority list which the Sheriff shall post at least six (6) weeks before the beginning of the six month period.
- B. The Sheriff shall inform the employees of their shift at least one (1) week before the new six month period is to begin.
- C. Employees failing to register pass day/shift preference during the two (2) week window shall forfeit all seniority rights regarding shift assignments for that period.
- D. Employees may trade shifts if they obtain the prior written approval of the Sheriff, or his designee, provided the Sheriff reserves the right to insist that the employees' request be submitted at least two (2) weeks before the requested trade of shifts is to take effect.
- E. The Sheriff retains the right, solely and exclusively, to determine, within his discretion, how many employees shall be on each shift. The Sheriff shall also have the right, solely and exclusively, to assign employees to shifts based upon the need to train new employees or train other employees in the new job skills, provided the less senior employee will always be the one temporarily transferred unless the more senior employee agrees to a temporary transfer.