

STATE OF MICHIGAN  
COMPULSORY ARBITRATION

In the Matter of:

COUNTY OF WASHTENAW,

Public Employer

- and -

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN,

Union

Arising Pursuant  
to Act 312,  
Public Acts of 1969,  
as Amended

Case Number  
D 88 K-2170

ACT 312 PANEL'S OPINION AND AWARD

Appearances:

For the Public Employer:

Robert E. Guenzel, Esq.  
Corporation Counsel  
Washtenaw County  
220 North Main Street  
Ann Arbor MI 48107

For the Union:

William Birdseye  
Business Agent  
Police Officers Association  
of Michigan  
28815 West Eight Mile Road  
Suite 103  
Livonia MI 48152

Panel Members:

Raymond J. Buratto, Impartial Chair  
Michael C. Johnson, Undersheriff - Washtenaw County  
Kenneth E. Grabowski, Business Agent - Police Officers Association of Michigan

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## A. BACKGROUND

This case arises pursuant to the provisions of Act 312, of the Michigan Public Acts of 1969, as amended (MCLA 423.231 et. seq.). This is the first collective bargaining agreement between Washtenaw County and the Police Officers Association of Michigan (POAM), the successor to the Michigan Fraternal Order of Police (FOP), as the bargaining representative for this unit. The previous FOP agreement expired on December 31, 1988. MERC Mediator Jameson conducted two mediation sessions on July 25, 1989 and August 10, 1989.

The POAM filed a Petition for 312, listing seventeen items in dispute, on August 24, 1989. On September 14, 1989, the County filed its Answer, agreeing that the seventeen items were in dispute and adding seven items of its own. The following items were dropped by the Union in its final offer settlement:

4. Pension - 20 and out
5. Pension - defined benefit
6. Pension - offsets
13. Seniority
14. Transfers
15. Union leave
16. Union president-preferred shift

[The numbers coincide with the Petition.]

This arbitrator was appointed by letter dated November 22, 1989. Both parties waived the time limits of the Acts and its regulations and consented to the Panel's jurisdiction. A pre-arbitration conference was held on Ann Arbor on March 20, 1990.

Ten formal hearings were held in Ann Arbor between May 24, 1990, and January 30, 1991. Final offers were to be exchanged through the arbitrator on February 15, which date was extended by mutual consent of the parties. An executive panel session to review final offers was held on March 19, 1991.

The parties agreed to extend the deadline date for post-hearing briefs from May 7 to May 21 and a second executive panel was held on August 23, 1991.

The unit designated in the 312 Petition consists of approximately one hundred non-supervisory detectives, deputies, and communications employees.

### **B. COMPARABLES**

As in any Act 312 arbitration proceeding dealing with economics, this Panel is charged with determining "comparable communities" from among those offered by the parties. Section (d) of the Act, MCLA 423.238 requires this Panel to make a

[c]omparison of wages, hours and conditions of employment of the employees involved in the arbitration 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.

It is the determination of "comparability" which has consistently plagued arbitrators since the inception of the Act. The threshold questions are what standards are to be used to determine comparability and what constitutes "similar services" in the analysis of job functions?

In this case, the POAM would argue for the use of the police forces in the cities of Ann Arbor and Ypsilanti as meeting the statutory requirement of "performing similar services in comparable communities". Its position is based upon a "local labor market" theory for which there is ample support in the economic journals. The testimony of expert witness, Anne Maurer, was that the "local labor market" is one in which employees may sell their labor without having to relocate their places of residence. Maurer stated "the most

comparable community in my opinion for the purpose of this case is the local labor market, and the local labor market is Washtenaw County" (TR I, p. 152).

Ms. Maurer also implied that an unstated, unscientific element of comparability is the perception of employees when they look at the wages of other employees providing similar services in neighboring areas. Thus, the POAM analysis of comparability focuses on Washtenaw County in general and on the cities of Ann Arbor and Ypsilanti, in particular.

Maurer explained the methodology of the POAM has evolved, since the passage of the Act, particularly over the last five years, from the consideration of land area, state equalized valuation, and per capita income (TR I, p. 137) to a local labor market approach (TR I, p. 136). The Union also acknowledged it uses a historical perspective, looking to the bargaining history of the parties, and any past 312 arbitration decisions to guide its formulation of comparables. This arbitrator would agree that the burden upon himself and the parties is significantly lessened where such guidelines exist.

The POAM submits that such guidelines exist, if not in the bargaining history of the parties, then most certainly from past 312 decisions involving the parties. In support of this contention, the bargaining representative referred to Joint Exhibit 2, the November 1, 1990 decision of Arbitrator Henry F. Sefcovic in the Act 312 proceeding between Washtenaw County and the Command Officers Association of Michigan. Sefcovic adopted the Union's local labor market analysis as the basis for determining comparables, relying in part on this passage from Elkouri and Elkouri, How Arbitration Works.

In many cases, strong reasons exist for using the prevailing practice of the same class of employers within the locality or area for the comparison. Employees are sure to compare their lot with that of other employees doing similar work in the area; it is important that no sense of grievance be thereby created.

Sefcovic also relies upon "history" in past 312 cases as a basis of support for his selection of comparables. At page 21 of his decision, Sefcovic notes

...[t]he last 312 arbitrator adopted Ann Arbor and Ypsilanti as the comparable community. That Arbitrator did so because that was the history of the parties at the time...The historical interrelationship of the wages of the three departments, and that...opinion...found Ann Arbor and Ypsilanti as the comparable communities [and] would give considerable guidance to the parties when they negotiate further wage packages.

Admittedly, the 312 arbitrator fashions a remedy upon which the parties will base future negotiations. However, this arbitrator does not concur with Arbitrator Sefcovic's conclusion that Arbitrator Cavanaugh determined that Ann Arbor and Ypsilanti were comparables. On this specific issue, page 1 of the Cavanaugh decision reads:

It was the Teamster's position that a new and separate retirement system should be established principally based upon the fact that the Ann Arbor City and Ypsilanti City Police Departments had separate systems for their police officers and these two local units of government were being used as similar and comparable agencies in the negotiating process with the County of Washtenaw.

Arbitrator Cavanaugh did not specifically accept the Teamsters position as quoted above. He did find

both the cost and the benefits of the Washtenaw County system are substantially different than the systems under which the police of the City of Ypsilanti and the City of Ann Arbor participate...it is therefore ordered that the Teamster's position in relation to this issue shall be and is refuted and the present retirement system shall remain in full force and effect.

Thus, I agree with the County's assessment in its brief that by virtue of the Cavanaugh decision, "there is no history of comparability between Washtenaw County and Ann Arbor and Ypsilanti". While this is the first contract negotiated between Washtenaw County and the POAM so as to preclude a bargaining history of these two parties, no evidence is on the record to conclude any predecessor bargaining agent utilized Ann Arbor and Ypsilanti as comparables, either during bargaining or another 312 arbitration. However, conversely, there is no reason to reject a party's comparables where no such history exists.

Several other portions of Sefcovic's decision rejecting the County's arguments against the Union labor market analysis are relevant and merit discussion herein.

First, Sefcovic rejected the County's argument that the jobs of County Sheriff Command Officers and City Police Department Command Officers were dissimilar. Sefcovic found the jobs are more similar than not. He next noted that the panel was not asked to compare sheriff's deputies to police officers, but rather command to command. Third, he noted that a comparison of chain of command of the sheriff's department, though not perfect, was best made to the Ann Arbor and Ypsilanti Police Departments. Sefcovic then proceeded to reject the County's argument that financing of City and County expenditures differed. The County's "geographic differences" argument was rejected, as was its use of other counties for its salaries in other departments.

This Arbitrator is unable to accept several of these portions of the Sefcovic award, finding them inapplicable to this case. As to the similarity of the jobs of sheriff's deputies and city police departments, this record is replete with testimony supportive of the contention that deputies' jobs are different in many respects from city police departments. While certain core elements of the jobs may justify a conclusion that "law enforcement is law enforcement", sheriff's deputies perform functions which police officers do not. The deputies are involved in marine patrol; out-county (rural) road patrol; "contract" patrol in areas not having their own law enforcement agencies; and a corrections function. None of these functions is evident on the record in either Ann Arbor or Ypsilanti. The fact that the three jurisdictions in question provide mutual back-up is only one element in establishing similarity.

I am concerned as well with accepting Sefcovic's rejection of the County's position relative to the difference in financing the two units of government. It was done in the command case in part because "the record is void of any evidence as to any Employer's budget or their ability to pay". Clearly, this record contains ample testimony from Budget Director Gerald Fisher on the impact of economic increases to this unit. This arbitrator believes "the financial ability of the unit of government to meet those costs" as prescribed in MCLA 423.239(c) requires consideration, not just of the presence or absence of the requisite funds, but also the overall impact created by their dispersal.

A second reason for Sefcovic's rejection of the "ability to pay" defense in the Command 312 was his perception that "a potential increase for approximately thirty command officers...is a minisqual [sic] portion of the County's total budget" (Sefcovic, p. 18). Clearly, that same rationale cannot be applied here, where the unit is substantially larger.

Thus, I find the County has presented an "ability to pay" argument, albeit in another form, that requires consideration as an element of Section 9, and as such permits consideration of the differences in revenue generation.

I also find merit in the "geographic differences" element of the County's argument against the premise that the law enforcement function is the same. This record establishes that Washtenaw County deputies patrol an essentially rural area, the city police forces, by definition, service an urban population. This geographic difference, in and of itself, produces differences in the nature of the law enforcement "mission" and in the services provided. Thus, it is a valid consideration, either as it relates to similarity of job function, or as a Section 9(h) "other factor".

I do not offer this critique of the Sefcovic decision as a prelude to a total rejection of the Union's local labor market analysis. My acceptance of that theory is much more reserved than Sefcovic, or Arbitrator Vernava in the Wexford County 312 opinion cited on page 4 of the Union's Brief in this case.

In its Wexford case, the POAM used its "local labor market" analysis, then focusing on counties. The panel excluded one county as it was not subject to a collective bargaining agreement. Yet another was rejected as not being comparable in "population, size, nor economy" (Vernava, p. 12). The following passage from the Vernava decision is informative:

The Panel finds the other counties designated by POAM to be comparable in geographic proximity, and in such matters as population density and the rural/economic base of these counties. The City of Cadillac is also found to be comparable, being in a local labor market. While County and City



police offices well might perform dissimilar functions, if not in kind at least in degree, and while from a fiscal standpoint, counties have different sources and bases of revenue, the material and substantial evidence heard by this Panel supports a finding that these are comparable communities in the perceptions of the law enforcement officers involved.

As to the inclusion, by the POAM, of the City of Cadillac among the counties it offered as comparables,

Vernava opined:

...in the perception of the Wexford County police officers, the City of Cadillac is a comparable. If these communities are in fact viewed as comparable by the Employees, the Arbitration Panel finds that it should give weight to a reasonable perception...

Although I agree with Vernava and the POAM that employee perceptions of comparability are a legitimate consideration of a 312 Panel, I cannot accept the POAM's position that the police departments of Ann Arbor and Ypsilanti are the only relevant comparables in this case. While I recognize the advocate must present that argument which best represents its client, a local labor market analysis which presents only two communities is terribly short-sighted, particularly when the job functions are not closely comparable to the one in question. I remind the parties that the Union's local labor market analysis in the Wexford deputies' 312 proceeding included six counties, all contiguous to Wexford County. That local labor market analysis also included consideration of population density, the rural/urban make-up, and the overall economic climate of the comparables.

As inferred at the outset of this Opinion, this Arbitrator believes, in the absence of direction from either the Commission or the Courts of this state or the imposition of exacting standards, the selection of comparables is a formidable task. Clearly, the Panel need not labor to discern communities which are identical, but rather those which can be examined for similarities or differences. Since the inception of this Act in 1969, parties and arbitrators have employed a number of criteria in arriving at comparables. Thus, it is an inexact "science" at best, and one in which the decision maker is afforded a wide latitude, so long as the conclusion is supported by "competent, material and substantial evidence on the whole record" (MCLA 423.240).

O. William Rye, the County's expert witness, developed its set of comparable communities through an analysis

of jurisdictions that are similar to the subject jurisdiction in terms of population and overall economic conditions. In Washtenaw I began by looking at all counties in the state that were within 30 percent of Washtenaw County in population...(TR IV, p. 41).

Using this methodology, Rye determined that Ingham, Kalamazoo, and Saginaw Counties were most comparable to Washtenaw County. Recognizing this list was too short to be a viable statistical base, Rye's analysis was expanded to include those counties within 50 percent of the population and SEV of Washtenaw County. Rye used SEV as it

provides a general picture of the overall economic value of the County on the base on which property taxes are applied and...property taxes collected account for over one-half of the total revenues of Washtenaw County (TR IV, p. 42).

The County's so-called "secondary" comparables, the counties of Berrien, Genesee, Ottawa, St. Clair and Monroe, were arrived at by extending to 50% plus or minus the SEV and population figures of Washtenaw County.

In addition to the "primary" and "secondary" comparables, the County's brief urges the Panel to consider all law enforcement agencies within Washtenaw County. At page 11 of its Brief, the County notes

...the very authors that Ms. Maurer relied upon for supporting the use of Ann Arbor and Ypsilanti as determinative labor markets state that Ann Arbor-Ypsilanti SMSA [Standard Metropolitan Statistical Area] is just another name for the entire Washtenaw County area.

The law enforcement agencies within the County include Chelsea, Eastern Michigan University, the Michigan State Police, the Michigan Department of Corrections, Milan, Pittsfield, and Saline. Wage comparables for these law enforcement agencies are submitted as Attachment B to the County's Brief and have been considered.

Lastly, the County argues that if neither of the above positions are adopted, the Arbitrator should look to "what has been historically negotiated for the Washtenaw County Sheriff's Department employees" (County

Brief, p. 11). The County maintains the POAM unit has fared well historically when compared to other county employees.

Like those offered by the POAM, the County's comparables are not perfect. Too often, this rudimentary analysis based on a range above or below the population or state equalized valuation gives an incomplete picture of the unit of government being analyzed or of other units to which it is being compared. As this case demonstrates, the application of the population/SEV analysis often results in a wide geographic spread of counties throughout the state. Of the eight counties suggested as comparables, only Ingham and Monroe are contiguous to Washtenaw County. The possible "cultural" similarities between Washtenaw and Ingham Counties, as the sites of the state's two largest universities, are unmistakable. Moreover, like their Ann Arbor counterparts who are sensitive to the wages driven by Detroit-based auto manufacturers, the workers of the Lansing area may look to the wages paid at surrounding GM plants for comparability.

With the possible exceptions of Genesee, Saginaw, and Kalamazoo, the remaining counties neither contain a substantial urban area, nor evidence any recognizable industrial base to upwardly impact wages. Workers in southeastern Michigan are not likely to look to the state's western counties of Kalamazoo, Berrien, and Ottawa for wage comparisons. While SEV and population data fits them within the County's arbitrary standard for selection, this Arbitrator finds the socio-economic and geographic differences are too great for these counties to be viable comparables. Therefore, they will be excluded from the comparables used.

Likewise, the employee perceptions also militate against their selection. Employees are most apt to look to contiguous or proximate counties, such as Oakland, Livingston, and Lenawee to determine what their counterparts are paid. These salary comparisons would not be limited to county sheriff's departments but would include any other law enforcement agencies within the County. In reality, while an employee may consider non-quantifiable elements of their jobs such as power and prestige, the ultimate test revolves on wages and fringe benefits. Thus, with all else equal, a sheriff's deputy might leave that position for a higher

paying job on a police force. The fact that these two law enforcement personnel must use their wages in the competition for goods and services in the same area makes the comparison of wages between departments unmistakable.

Inasmuch as I find fault with the arbitrariness with which each party has selected their comparables, the following communities will be used:

- City of Ann Arbor
- City of Ypsilanti
- Ingham County
- Saginaw County
- Genesee County
- Monroe County
- St. Clair County
- Chelsea
- Eastern Michigan University
- Milan
- Pittsfield
- Saline

This selection is made with the full knowledge that the parties tend to select those comparables which enhance their positions, to the exclusion of all others. In passing, I will note that I accept the local labor market analysis with the understanding that it not be limited to Ann Arbor and Ypsilanti police officers. Inasmuch as Ann Maurer testified "[t]he most comparable community in my opinion for the purpose of this case is the local labor market, and the local labor market is Washtenaw County" (TR I, p. 152), the law enforcement agencies of other Washtenaw communities must also be considered.

### C. ECONOMIC ISSUES

#### ECONOMIC ISSUE NO. 1 - DURATION

The final offers of the parties provide for a three-year contract effective January 1, 1989, through and including December 31, 1991.

#### AWARD

This contract shall be effective January 1, 1989, through and including December 31, 1991.

#### ECONOMIC ISSUE NO. 2 - WAGES

The County's final offer for salary adjustments (increases) is:

January 1, 1989	--	2.5%
July 1, 1989	--	2.5%
January 1, 1990	--	2.5%
July 1, 1990	--	2.5%
January 1, 1991	--	2.5%
July 1, 1991	--	2.5%

The Union's final offer for salary adjustments may be summarized as 6.6 percent effective January 1, 1989; 7.9 percent effective January 1, 1990; and 3.0 percent effective January 1, 1991. All increases are across-the-board.

Each party's brief offered extensive support for their respective positions. The County would argue that its deputies' salaries are above the average of its comparable counties offered in Employer Exhibit 7. Inasmuch as this Panel has excluded Berrien, Kalamazoo, and Ottawa Counties from this list, the totals have changed. While the 1988 salaries and total cash compensation of a 15 year Washtenaw County deputy remain at

\$28,774 and \$31,285, respectively, the average salary of the primary comparable communities is \$27,665, with a total cash compensation of \$31,961. Thus, while the 15 year Washtenaw deputy's salary is \$1,109 more than the average of the comparables, that deputy loses \$676 in overall compensation. On balance, that deputy remains \$433 ahead of his counterpart in other counties.

In purely rank salary order, Washtenaw County deputies would place fourth, followed only by Saginaw and Ingham Counties. Charts A and B of County Exhibit 6 state the following regarding these three counties:

	<u>Population</u>	<u>SEV*</u>
Washtenaw	266,000	4750
Ingham	277,800	3242
Saginaw	216,400	2381

\* SEV is expressed in millions

The data expressed on charts of this exhibit shows that of the three counties whose deputy salaries were higher than Washtenaw County, only Genesee has a population and SEV greater than Washtenaw.

The County also introduced Exhibit 4 to support its contention that its proposed increases are greater than those received in 1989 and 1990 by other county law enforcement agencies. It is noted that the application of the County's proposed increases for 1989 and 1990 would place it fourth in 1989 minimum salary, third in 1989 maximum salary, and third and fourth in minimum and maximum in 1990. In all categories, it continues to lag behind Ann Arbor and Ypsilanti though it remains above the average of the County law enforcement agencies. The County's Brief, p. 19 also noted that its proposed increases are above those received by other law enforcement agencies in the County.

Employer Exhibit 32 represents the relation of the deputies' salaries to the Consumer Price Index beginning in 1981. Of the five categories of length of service considered, only those deputies with four or nine years of service prior to 1986 have had their salaries intersect with the CPI during their tenure. The actual and

estimated (1989 and 1990) salaries of deputies in the remaining categories have exceeded the effect of the CPI.

Exhibit 30 has been considered. With the deletion of Kalamazoo, Ottawa, and Berrien Counties, the averages of the remaining four comparable counties becomes \$20,345 or \$616 less than that paid to Washtenaw County dispatchers. Extrapolating the 2.5 percent semi-annual increase proposed by the Employer to the data in Exhibit 30, this arbitrator finds the Washtenaw dispatchers will remain ahead of their counterparts in Ingham County and St. Clair. I note that Ingham County applied a 5.0 percent increase from January, 1988 and a 7.15 percent increase from January, 1989 to January, 1990, while St. Clair County had an 8.15 percent increase from January, 1988 to January, 1989. A Washtenaw County Communications Operator I received \$1,877 less than their Monroe County counterparts.

The County presented Exhibit 31 to demonstrate the trend toward reduced percentage increases to various units and non-union personnel from 1986-1992. This Arbitrator finds merit in the use of such "internal comparables", based on the premise that County employees look at what other County employees make, in terms of internal equity. As noted in the County's Brief at p. 20, "the proposed increases for the POAM would grant increases greater than the majority of the increases given to Washtenaw County employees."

Although discussed in passing in the discussion of comparables, it is appropriate to revisit the Employer's "ability to pay" argument, which may better be characterized as a "willingness to pay in the face of perceived budgetary constraints". As supported in its Brief, the County maintains it "cannot afford the Union's recommended final offer" as a COAM-type arbitration award would result in a \$777,000 budgetary shortfall over the three years of this Agreement" (TR X, p. 29 and Employer Exhibit 36).

The Union offer is for 6.6 percent effective January 1, 1989, 7.9 percent effective January 1, 1990, and 3.0 percent effective January 1, 1991. All increases proposed by the Union are to be applied to all employees

across the board. Represented in percentages, the Union offer is 1.54 percent greater in 1989, 2.84 percent in 1990, and 2.06 percent in 1991 than the County's.

Reproduced below is a chart, from page 8 of the Union's Brief, indicating the effect of the parties' offers upon the salary level of a deputy at the top step. As the Union notes, the wage offers differ by \$726 per Employee. The comparison of the parties' offers to the salary levels in the Ann Arbor and Ypsilanti police departments also appears on this chart and supports the Union's contention that the wage adjustments it seeks "will bring bargaining unit members closer to their counterparts in the Ann Arbor and Ypsilanti police departments" (Union Brief, p. 7, emphasis added). Examination of the Ann Arbor and Ypsilanti data clearly indicates that acceptance of the POAM's offer will bring the salaries of this unit closer to its comparables than will that of the County.

<u>Present</u>	<u>1-1-89</u>	<u>7-1-89</u>	<u>1-1-90</u>	<u>7-1-90</u>	<u>1-1-91</u>	<u>7-1-91</u>
\$28,774						
Union	30,673	30,673	33,102	33,102	34,095	34,095
County	29,493	30,231	30,986	31,761	32,555	33,369
Ann Arbor	33,850	34,008	34,008	34,174	34,174	Expires
Ypsilanti	32,150	33,468	33,970	35,536	35,536	37,512
<hr/>						
Avg. AA/Ypsl.	33,000	33,738	33,989	34,855	34,855	N/A
Union	-2,327	-3,065	-887	-1,753	-760	N/A
County	-3,507	-3,507	-3,003	-3,094	-2,300	N/A



The October 17, 1990 testimony of Ann Maurer and Union Exhibit 26, a comparison of the Consumer Price Index to the Washtenaw County deputy's salary at the top step, were offered to illustrate the effects of inflation upon the buying power of the members of this unit. Ms. Maurer's testimony explained the interrelationship of the CPI, the 5 percent deduction for pension contributions, and the 5 percent increase proposed by the Union at the bargaining table. Her conclusion is that so long as members of this unit are required to contribute at least 5 percent and as much as 10 percent toward their pensions, their base rate salary will not keep pace with the effects of inflation. In cross-examination, Maurer acknowledged that only the base rate was considered, without regard to other elements of gross compensation, such as longevity, overtime, or holiday pay (TR VI, p. 48).

In fairness to the parties, this Arbitrator has re-plotted the information on Exhibit 36 to reflect their last offers. I find the Union's offer of 6.6 percent in the first year would produce a base salary of \$30,673, intersecting the CPI curve at approximately March, 1989. This salary level would then dip below and remain below the CPI until the effects of the January 1, 1990 increases are felt. At that point, the CPI would dictate a salary of approximately \$32,500, whereas the Union's proposed 7.9 percent increase would result in a \$33,096 salary base. At this salary level, the top step deputy remains ahead of inflation, based upon Maurer's projections, at least until November, 1990. On January 1, 1991, the Union's proposed 3.0 percent increase would result in a \$34,089 salary, again outdistancing the CPI by several hundreds of dollars.

On January 1, 1989, the County's proposed 2.5 percent increase would produce a salary of \$29,493, or \$1,180 less than the Union's offer. With the second 2.5 percent increase of July 1, 1989, the top step deputy would close out 1989 with a \$30,230 salary, \$443 less than if the Union's final offer is adopted.

The gap is widened to \$2,100 on January 1, 1990, as the County's offer is \$30,986 and the Union's is \$33,096. The Employer's 2.5 percent increase on July 1, 1990, reduces the difference to \$1,335.

January 1, 1991, produces a \$1,534 difference (\$32,555 versus \$34,089), with the parties \$720 apart at the December 31, 1991 expiration date. The net effect of these differences, annualized over the three-year term produces an additional \$3,661 in salary if the Union's offer is accepted. The Employer's offer never places these deputies on a par with the Consumer Price Index.

Given the protracted length of this 312 proceeding, the Arbitrator is especially cognizant of two critical issues; (1) the length of time these Employees have gone without an increase, and (2) the impending expiration date of December 31, 1991, of this contract.

The parties have gone to great lengths in their proofs to persuade me of the merits of their positions relative both to comparables and to wages. In the final analysis, I am not swayed entirely by the Sefcovic decision submitted by the Union, nor by the condition of comparable Washtenaw County police departments. In the final analysis, this decision on wages, while considering comparability, gives great weight to the following elements of MCLA 423.239 (Section 9 of the Act) as developed on the record:

- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (e) The average consumer prices for goods and services, commonly known as the cost of living
- (h) Such other factors, not confined tot he 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.

Employer Exhibit 36 demonstrates the County's "difficulty" in meeting a settlement akin to the COAM 312 award. The record leaves unchallenged the data contained therein, thus I have no reason to doubt the validity of the County's asserted financial shortfall as represented in this Exhibit. Each element of government must attempt to work within a defined budget. I also recognize and accept the County's argument that an economic shortfall may result in a reduction of road patrol and a layoff of personnel. Both the residents of Washtenaw County and the Employees of this department may suffer thereby. There is no

competent substantial or material evidence of this on the record. Nothing in the record establishes a viable alternative for the townships purchasing contract patrol; thus, I am unconvinced the County would necessarily lose this work as the result of a wage increase.

No doubt this portion of the decision may be viewed as inequitable or unfavorable by one of the parties. I understand and expect this reaction, as I understand this decision could not possibly please all interests herein. However, by consenting to have their interests determined by a third party neutral, the parties have implicitly accepted the consequences. Each may be inspired hereby to resolve their differences on the next contract at the bargaining table. Although decision-making is uncomfortable, it is often preferable to take charge of one's own fate, rather than leaving it to an outsider who will, at best, make an informed and objective decision. Perhaps it is this very objectivity which the parties seek in abrogating their decision-making authority.

Taking into account the balance of this decision as it impacts the overall compensation of these employees, "other factors" such as fundamental notions of fairness, as permitted by subsection (h), and on the record as a whole, considering which last best offer more nearly complies with the applicable factors set forth in Section 9 of the Act, I made the following

#### **AWARD**

The competent, material and substantial evidence on the whole record supports the award of the Union's last best offer of settlement as to wages.

### ECONOMIC ISSUE NO. 3 - PENSION

#### (Employee Contribution)

At issue is the reduction from 10 percent of payroll to a lesser percentage. The County proposes the employee contribution be reduced to 7.5 percent of payroll while the POAM argues the amount be reduced to 5 percent beginning July 1, 1991.

In support of its position, the POAM cites an internal comparable, the Command Officers Unit, wherein a recent 312 decision by Arbitrator Henry Sefcovic reduced their contribution rate to 5 percent. The POAM also presented testimony of Actuary Gerald B. Sonnenschein. The Union's best argument seems to be one of equity, that the current 10 percent contribution rate coupled with a Social Security tax of 7.65 percent places too onerous a burden on the Employee.

The County responds by utilizing Sonnenschein's testimony to its advantage. Beginning at page 57 of Volume IX of the transcript, Sonnenschein's testimony is enlightening. He details the interrelationship of plan contributions and future investment yields on the ability of the plan to fund future pensions. While recognizing that the fund is approximately 1.1 percent overfunded, Sonnenschein states

...there is an unfunded value for pensions, something that will not be covered by future member contributions at the five percent rate plus future investment income. That is a lump sum value of slightly in excess of \$800,000...that would require a County contribution rate of 3.64 percent of payroll.

Coupled with the negative 1.1 percent funding, Sonnenschein further noted "[t]he proposal changes the cost not by 3.64 percent but by 4.74 percent of payroll, so a member contribution of five percent is about equivalent for this group to an employer contribution of 4.74 percent" (TR IX, p. 60). The County's Brief states that a 3.64 percent contribution, if required of the employer, would cost in excess of \$100,000 per year (Employer Brief, p. 25).

In passing, the County also maintains that its retirement program for this unit is among the best in the State, as it has a "twenty and out" provision. The record establishes that this retirement plan is the product of negotiations in the prior contract.

The Union's most compelling comparisons for this issue are other members of the same bargaining unit and other employees of the Sheriff's Department (Brief, p. 10). Bargaining unit members hired after a certain date contribute only five percent for a money purchase pension plan. The Union also notes that the Command Officer Unit contribution was reduced from ten percent to five percent by Arbitrator Sefcovic's recent 312 decision.

While I am cognizant of a perceived inequity between the members of this unit based solely on seniority date, I am not persuaded that this alone is sufficient reason to grant the full five percent reduction as the Union requested. Mr. Sonnenschein's testimony relative to the current condition of the pension fund, and the probable impact of the five percent reduction proposed by the Union, convinces the arbitrator that the interests of the members of this bargaining unit are best served by a moderate reduction in their rate of contributions.

Likewise, the Sefcovic decision is not persuasive for several reasons. Foremost, this arbitrator is unaware of the economic data or testimony fully developed on the record in that case. I have read and re-read pages 29-35 of that decision and find that Sefcovic relied heavily upon the comparables of Ann Arbor and Ypsilanti, wherein command officers in these police forces contribute five percent and ten percent respectively, and upon the average of 12.65 percent of the remaining comparables, compared to the 17.65 percent total contribution rate of Washtenaw County Sheriff's Command Officers. I further find that Sefcovic was guided by the testimony of County Finance Director Gerald Fisher, as quoted from the Union's Brief at page 33 of his decision. Fisher's testimony relied upon by the Union in the command case, was essentially that the fund was overfunded, and that the Command Unit members made a five percent

contribution for a benefit improvement which cost 4.17 percent of payroll. In Sefcovic's view, equity dictated the Command Unit pay only for the benefit received and nothing more, particularly where the County's last best offer was to maintain the status quo ten percent contribution.

The record in this case does not support the same result. Admittedly, there is an overfunding, albeit a modest 1.1 percent. Yet the very nature of changing investment return over time, and the expectation of post-employment income, require a conservative approach to changes in the manner of funding.

The Union's position that a five percent reduction in the member contribution will cost the Employer only an additional 3.64 percent is an oversimplification of the problem. The arbitrator views the preservation of pension funds with the utmost seriousness. It is not enough to say that the increased cost to the Employer will only be 3.64 percent. On the issue of pension fund contributions and benefits, it is appropriate that where the parties have bargained for a benefit and contribution level, they bear the burden and enjoy the benefit of the terms negotiated.

#### AWARD

Based upon the record, the Employer's final offer of a reduction to 7.5 percent in the Employee contribution, best effectuates the purpose of the act and is therefore awarded.

It is noted without discussion, that the Union's final offer withdrew its position regarding elimination of the money purchase retirement plan for employees in this unit hired after 1988 in favor of the status quo. This item was identified as Union Issue #5, pensions - defined benefit inclusion.

#### ECONOMIC ISSUE NO. 4 - VACATION ACCUMULATION

The Union seeks an improvement in total vacation days equivalent to that enjoyed by the Command Unit, retroactive to January 1, 1989. This proposal would afford 507 vacation days over a twenty-five year career, based on the following schedule:

<u>Years of Service</u>	<u>Total Vacation Days</u>
1	12
2-5	15
6-10	18
11-15	21
16 and over	25

Exhibits 12-16 were submitted by the Union and have been reviewed.

In contrast, the Employer's final offer would grant this same Employee 465 vacation days over at twenty-five year career, based upon this schedule:

<u>Years of Service</u>	<u>Total Vacation Days</u>
1	12
2-5	15
6-14	18
15 and above	21

The recently expired contract grants 438 vacation days over a twenty-five year career. Thus, the employer's final offer contains an additional twenty-seven days, while the Union's is for sixty-nine days more than currently provided.

Union exhibits 12-16 were introduced through the testimony of Ann Maurer. Exhibit 12 is a comparison of the current and Union proposed language for this unit. Exhibit 13 is a comparison of this unit's 1986-88 vacation accumulation, to that of the 1989-91 Ann Arbor agreement and the 1988-90 agreement in Ypsilanti. Exhibit 14 is an internal comparable to the Command Officer's 1986-88 contract. Exhibits 15 and 16 are comparisons of the averages and total vacations of the external and internal comparables. Review of these

five exhibits establishes that the vacation accrual of this unit is less than both of the Union's external comparables and the Command Officers Unit in Washtenaw County.

County Exhibit 22 entitled "Vacation Accrual for Several Counties Comparable to Washtenaw County", establishes that the vacation accrual for this unit is (1) inferior to the average of the primary comparables at four of the six years of service breaks; (2) superior to the average of the primary and secondary comparables at all six years of service breaks; and (3) significantly below the accrual proposed by the Union. County Exhibit 22 does not contain information regarding the other Washtenaw County law enforcement agencies which the County offered as comparables for the wage issue.

The record is void of any testimony regarding the bargaining history in this unit or the comparable communities relative to vacation accrual and the improvement of this benefit. While the panel knows where this unit is in relation to the comparables, it does not know how any of the units, including this one, arrived at their current level of vacation accrual. We simply do not know whether these benefit levels were arrived at through the dynamics of the bargaining table, or 312 award, and what considerations were exchanged along the way. Answers to these unknowns would greatly assist the decision maker.

As with any final offer on economics, the panel must choose one or the other. The Union maintains this unit should be brought to parity, at least with the Command Unit, a move which requires an additional sixty-nine days or a 15.75 percent increase over the current number of vacation days. Other than a pure comparison to the other "comparable communities", no justification is offered. Inasmuch as the Union seeks retroactivity to January 1, 1989, Maurer testified the increase in vacation days "would mean some additional vacation days would have to be granted to the banks of individuals..." (TR III, p. 7).



The County's proposal offers this unit an additional twenty-seven days, or an improvement of 6.1 percent in total vacation days. Still, the number falls far short of Ann Arbor, and this County's Command Unit, and comes within fifteen days of Ypsilanti. The County would make its offer effective July 1, 1991.

A comparison of the two proposals illustrates the differences in vacation days first occurs in the eleventh through fourteenth year of service when the officer would get three additional days per year under the Union's proposal. In the fifteenth year of service, the officer would get the same number of vacation days under either proposal. Beginning in the sixteenth year of service, the officer would again get three additional vacation days per year pursuant to the Union's proposal. The difference between proposals is forty-two days over a twenty-five year career.

The positions of the parties regarding the effective date is problematic. I am less inclined to grant the Union's proposed increases with nearly three years of retroactive improvements than I would be if the proposal were prospective, or perhaps represented some middle ground. While I recognize this unit has awaited benefit improvements since the December 31, 1988 expiration date of the last contract, it may have to assume some of the danger inherent in the pursuit of a contract through the 312 process.

Likewise, the County's proposed effective date for these benefit increases, six months before the expiration of the agreement, is not indicative of a party seeking voluntary resolution. Given that this Hearing began in May, 1990, it appears that the County couched its final offer on the expectation that the process would conclude with a decision no sooner than July, 1991, which would serve as a convenient effective date for this benefit.

#### **AWARD**

I am persuaded that the Union's offer is excessive given the overall compensation of this unit.

On balance, I find the County's proposal for improvements in vacation accumulation most reasonable and supported by substantial, material, and competent evidence on the record as a whole.

Therefore, I award the County's last best offer on vacation accumulation.

#### ECONOMIC ISSUES NO. 5 - DUTY INJURY/WORKER'S COMPENSATION

##### CURRENT LANGUAGE:

#### ARTICLE XVII - WORKER'S COMPENSATION

Section 1. The Employer agrees to cooperate toward the prompt settlement of Employee on-the-job injury and sickness claims when such claims are due and owing. The Employer shall provide Worker's Compensation protection for all employees. An Employee eligible for Worker's Compensation will receive, in addition to his Worker's Compensation, an amount to be paid by the Employer sufficient to make up the difference between Worker's Compensation and his regular weekly income for a period not to exceed one (1) year.

##### UNION'S FINAL OFFER OF SETTLEMENT:

#### ARTICLE XVII - WORKER'S COMPENSATION

17.1: In the event an Employee is injured in the performance of their duties as an Employee of the Washtenaw County Sheriff's Department, whether during scheduled hours or otherwise, the Employee shall receive the difference between full pay and the employee's Worker's Compensation for the period of the employee's disability, not to exceed one (1) year. Thereafter, the Employee shall receive Worker's Compensation for the length of their injury if eligible under the Worker's Compensation statute or a retiree's benefit. No Employee shall lose sick time as a result of a duty-related injury. In this instance of a duty-related injury of short duration when Worker's Compensation is not paid, the Employer shall provide 100 percent of normal pay to an Employee so affected.

The Union's proposal is to be retroactive to January 1, 1989.

The County proposes maintenance of the existing language.

While the Union's proposal appears to be a sweeping re-write of the existing language to remedy all potential problems with Worker's Compensation and duty injury, the focus of the record testimony is upon

those injuries of short duration for which there is no compensation under the Worker's Compensation statute. This is evidenced in the last sentence of the Union's proposal and was highlighted by Ann Maurer when Exhibit 19 was introduced.

The testimony of Pamela Reese is offered in support of the Union's proposal. At pages 42-45 of Volume III, Officer Reese testified that an officer injured in the line of duty must draw from their sick leave bank for short term absences caused thereby. The witness did not know whether such an affected Employee could choose not to be paid, but stated "usually people want to be paid, and if the time is taken out of your sick time...if you...leave employment, you get paid for half of what sick time you have on the books, so it's a loss in that benefit as well" (TR III, p. 45).

Union Exhibit 20, a comparison of the current Washtenaw County language to that in Ann Arbor and Ypsilanti, was offered through the testimony of Ann Maurer to support the Union's request to change the language.

In its Brief, the Union argues that the current language penalizes those employees who recuperate and return to work quickly and actually encourages malingering to the detriment of the Employee, Employer, and the general public.

County Exhibit 23 was introduced through the December 17, 1990, testimony of O. William Rye to support the County's position. Five of the eight "comparables" offered by the County provide full pay to the officer from the day of injury, with no charge being made to the employee's sick leave bank. Genesee County provides eighty percent of full pay where the Employee does not elect to utilize their sick leave benefit. Of the five which provide full pay, only Monroe County is contiguous or even proximate to Washtenaw County. Clearly, County Exhibit 23 refutes its own contention in its Brief that "comparable counties do not provide 'filler' pay for duty injury during the first seven days the Employee is off..."

Short of Officer Reese's statement "[a] number of times we've had people down in the jail injured", to indicate the extent of the problem. There is no reason to believe it is widespread.

County Exhibit 33 enumerates the fifteen bargaining units within Washtenaw County having Worker's Compensation language "similar" to this Deputy's Unit. Most notably within that group is the Command Officers Association.

#### **AWARD**

The Employer's final offer to maintain the status quo is hereby awarded. The record evidence, including all exhibits, establishes this unit is not unduly burdened by the current language and compares favorably with the command officers unit, an internal comparable. Therefore, the Employer's last offer best most nearly complies with the elements of Section 9 of the Act.

#### **ECONOMIC ISSUE NO. 6 - GUN ALLOWANCE**

The issue of gun allowance was resolved by the parties following the August 23, 1991 meeting of the Panel and is not part of this decision.

#### **ECONOMIC ISSUE NO. 7 - TEMPORARY ASSIGNMENTS PAY**

CURRENT LANGUAGE:

##### **ARTICLE XXI - GENERAL**

**Section 6. - Temporary Assignments** Temporary assignments for the purpose of filling vacancies in positions will be granted to a qualified Employee for such job. Such Employees will receive the rate of pay of the higher classification for all hours worked while filling such vacancy. The Sheriff shall determine when a vacancy exists and it shall not include filling in for a member on routine vacations, sick, or leave days. A qualified Employee shall include all those who are eligible or will be eligible within six (6) months to take the promotional test for the position involved.

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE XXI - GENERAL

21.6. Temporary Assignments In the event an Employee works in a higher classification, the Employee will be paid at that higher classification's pay for all hours worked.

The Union proposes the new language be effective the date of the award while the County proposes no change in the existing language.

This arbitrator notes with significance these qualifying criteria within the section: (1) the Employee filling the position shall receive the appropriate rate of pay for all hours worked while filling the position; (2) the Sheriff has the absolute right to declare the existence of a vacancy; (3) vacancies shall not include vacations, sick days, or leave days; (4) an Employee must be qualified for the position or be eligible for the promotion test for the position within six months after assuming the position. Thus, the agreed-to language is clear and unambiguous as to the criteria under which an Employee is to be paid at the higher rate when working in a vacancy in a higher classification.

The testimony of Pamela Reese is illustrative in this regard. On August 20, 1990, Deputy Reese testified that many of the instances where an Employee did not receive the higher rate of pay were in clerical positions, (TR III, p. 33) not subject to this 312 proceeding. She recalled a personal experience of performing the civil process work of a law enforcement supervisor (TR III, p. 35) without receiving pay for the position. She admitted the civil process function was merely a portion of the position's job description which also included employee supervision.

On cross-examination, Mr. Guenzel elicited testimony from Deputy Reese which established the loss of a grievance over the work in question. The witness agreed that the arbitrator found she was "not performing all of the duties of the civil process server", noting "[t]he key word is, all of the duties; that's correct" (TR III,

p. 40). The same conclusion was reached in another grievance filed on behalf of Jamie Woodward on the business manager position.

The County did establish instances where deputies performing sergeant's work were compensated for the higher classifications (TR III, p. 41).

The Union presents a two-fold argument in its Brief. First, it contends that too much discretion is left in the Sheriff in declaring a vacancy, and "[b]ecause of this asserted deficiency in the language, the Employer may avoid paying the going rate for particular jobs". The second portion of the Union's argument is one of equitable treatment representing that Reese's testimony showed the "inequity occurs most frequently in the classifications populated by females" (Brief, p. 13).

I do not agree with either of the Union's assessments. The testimony relative to prior arbitration decisions focused on whether the grievant performed all the duties of the vacancy, not whether the Sheriff abused his discretion in declaring a vacancy. I do note that Deputy Reese claimed several of these were instances of extended absence where no vacancy was declared; however, there is no testimony that the question of declaring a vacancy was submitted to arbitration.

The "equitable treatment" portion of the Union's argument is also rejected, as Deputy Reese's testimony was that the clerical classification, which is not subject to this 312 proceeding, was mostly female. There is nothing on the record to establish that these females, or any males subject to this proceeding, otherwise fitting the criteria of the contract, have been denied the pay rate of the classification. Nothing indicates that a female employed in a law enforcement or corrections position has been denied the higher rate of pay where the criteria named in Section 6 are otherwise met. While the Union has access to the grievance procedure to contest the Sheriff's refusal to declare a vacancy, no evidence indicates it has done so.

The testimony of Undersheriff Johnson need not, nor does not, refute the testimony of Deputy Reese. Johnson noted that deputies have been appointed as acting sergeants and have been paid accordingly. In response to Mr. Guenzel's question "If you know, what is the reason behind not filling temporary assignments for the shorter term absence?", the Undersheriff replied

...the temporary assignment really amounts to little more than just monetary, a portion of the activities that go on in the higher classification. They don't really assume the total role as they would in the longer duration kind of absence (TR VI, p. 71). (Emphasis Added)

#### **AWARD**

No persuasive evidence exists to grant the Union's request to change the existing language. Therefore, the County's proposal to maintain the status quo, supported by competent, material, and substantial evidence, is awarded.

#### **D. NON-ECONOMIC ISSUES**

##### **NON-ECONOMIC ISSUE NO. 1 - VACATION UTILIZATION**

CURRENT:

##### **ARTICLE III - WAGES**

##### **Section 9 - Vacation Leave**

- (e) The Sheriff shall keep records of vacation leave allowances and shall schedule vacation leaves in accordance with the following:
  - (1) Vacation sign up for the entire year will be at a designated time in December of the preceding year. The selections will be for one- or two-week period(s) by seniority except those Employees with twelve (12) or more years seniority may select a three-week vacation period. The Employer will discuss with the Union the number of Employees to be off on the vacation schedule before the vacation sign-up.

- (2) Employees will be encouraged to take vacations throughout the year.
- (3) Vacation sign-up shall be by assignment. If an Employee is reassigned, a new selection process will be instituted.

UNION'S FINAL OFFER:

Add to the contract:

ARTICLE III - WAGES

3.9 - Vacation Leave

- E. (4) On any given day, the Employer will allow the following number of personnel off on vacation or compensation time:

Road Division	--	4
Jail Division	--	3
Communication Division	--	1
Transport Division	--	1

The Union's proposal would be effective on the date of the award. No final offer of settlement was submitted by the County; thus, its position will be considered the status quo as evidenced by the record.

The testimony of Harry Valentine was helpful in clarifying the Union's proposal, both as to the basis for it and the specifics it requested. On June 19, 1990, Deputy Valentine explained the proposal then submitted as Union Exhibit 9. According to the witness, the proposal was aimed at rectifying the County's discontinuance of a practice of allowing a finite number of people off for vacation at a certain time. No additional testimony was offered to support Valentine's claim of the operation of a "past practice". None was acknowledged by the County.

Valentine also claimed that the County is improperly using up vacation slots with compensatory time off. He stated that in the past a compensatory time-off calendar was bid on in September and a second separate vacation calendar was bid on in December for the following year. At page 36 of Volume II, Deputy Valentine described the problem: "As of this year, they've begun a practice, and there's a grievance on it to try to



incorporate the two." Valentine observed the use of vacation time would best be illustrated by a "bell-shaped" curve, with the summer months outlining the cap of the bell. According to Valentine, the County is:

...trying to level off that time and force people to move into other blocks of time...[t]hey want to kind of move people to like take vacations in February and January and spread it out...so what they did was brought together comp time and vacation time. You have separate bids, but the slots that you're having off are incorporated together (TR II, pgs. 36-37).

According to the testimony, the parties also disagree over the interpretation of the last sentence of Section 9(e)(1) which currently reads, "The Employer will discuss with the Union the number of employees to be off on the vacation schedule before the vacation sign-up." On at least one occasion, the County's response to Deputy Valentine was "[the contract] says we have to discuss it with you; I've discussed it with you, and I've told you what we're going to do, and that's it" (TR II, p. 28). (Emphasis Added) I find this witness highly credible and thus have no reason to doubt this statement. Although it is not expressly stated, Valentine's testimony may be accepted as implying the Union's position is that the quoted provision requires more than the County merely telling the Union what would be done relative to vacations.

On direct-examination, Deputy Valentine described the vacation bid procedure at length. It may be summarized by stating that an employee may select the number of weeks vacation from among a number of pre-ordained available weeks. This initial selection is "guaranteed", i.e., the employee is assured of having this time off. Any additional weeks, such as those carried over from previous years, may be chosen from otherwise open weeks, but are not guaranteed.

The problem arises with the non-guaranteed time, as unused vacation time may only be accrued up to three times the maximum to which an employee is entitled by virtue of seniority but is then lost. The Union admitted as of Valentine's testimony, that no member of this bargaining unit had lost accrued vacation by reason of being denied, although one was close. This is obviously an area of great concern to the bargaining unit members.

The Union admits it is not opposed to combining the weeks selected for vacation and compensable time off, and its proposal so indicates. They seek to have a certain number of employees by classification off, not during a particular shift, but during a twenty-four hour day. In addition, they would request the ability to take unfilled vacation time on a day-to-day basis, agreeing to a minimum 72-hour notice to the employer.

Undersheriff Johnson described the bidding procedure and the County's position on this issue beginning at page 52 of Volume VI. He described the way the language works as:

...it provides that in order to give the deputies some predictability in terms of when they're going to have their vacation during the year, we've agreed to give them that predictability.

Johnson's testimony also alludes to the County's need to maintain flexibility to adjust vacations and compensatory time off in reaction to unexpected employee absences. Thus, it may be necessary to cancel or postpone such time off. He verified the correctness of Guenzel's statement at page 53

[f]or each one-week period so many individuals, so many employees can be off in law enforcement and so many in corrections...

and then continued

...once deputies bid, any open slots then are no longer considered available...

Thus, by way of example, if three deputy slots were available for bid and only two were filled, the third bid slot was then closed and not available later, either to a deputy seeking additional time off, or to another employee outside the deputy classification.

Part of the Union's concern with this procedure was raised in cross-examination of the undersheriff. Mr. Birdseye's questioning elicited the response that the County wanted to reserve unto itself the granting of non-guaranteed vacation time to an employee covered in this unit. Thus, depending upon the department's response, an Employee could lose non-guaranteed vacation time. When Birdseye suggested the County did not "discuss" with the Union "the number of employees to be off on the vacation schedule", Johnson

became evasive and claimed he'd "heard it characterized that way by the Union" and wasn't sure whether the Union had asked that the number of slots be increased.

Johnson's re-direct testimony established the County prevailed in the arbitration on the use of vacation time, to the extent that:

...compensatory time would be taken in blocks of up to one week blocks as designated in the contract; however, the vacation time could be adjusted during the year (TR VI, p. 60).

The County's position is that the arbitration decision did not change the way vacation time is utilized.

I am convinced that this issue has become highly charged with emotion. No evidence on the record establishes that any member of this unit has lost vacation time through the possible abuse of discretion by the Employer.

Neither party has adopted an reasonable position on this issue, i.e., one which reflects a cognizance of and respect for the other party's concerns and offers a common ground for settlement. The County relies upon the arbitration decision as arguably sustaining its position to maintain the status quo. On the other hand, the Union's proposal represents the opposite extreme, possibly in reaction to the arbitration decision and perceived shortcomings in the current language regarding the "discussion" of the number of bids. I cannot accept the Union's position, as it represents an unduly burdensome intrusion into the Sheriff's right to schedule the workforce in a manner which best protects the security of the citizenry of Washtenaw County. Forcing the employer into guaranteeing a pre-determined number of employees, by classification, off on vacation at any given time without due regard to the effect of unexpected absences totally ignores the reality of manpower planning.

Since this is not an economic issue, I am afforded the luxury of fashioning a remedy should I find neither last offer acceptable. This is the course I have chosen.

## AWARD

With due respect to the concerns of the Union relating to the possible loss of an "earned" benefit (i.e., vacation time) of the collective bargaining agreement, and of the Employer's right to efficiently schedule its workforce, Article II, Section 9(e) shall be re-written as follows. Underlining indicates changes from current contract language.

- (e) The Sheriff shall keep records of vacation leave allowance and shall schedule vacation leaves in accordance with the following:
  - (1) Vacation sign-up for the entire year shall be at a designated time in December of the preceding year. The selections shall be for one- or two-week period(s) by seniority except those employees with (12) or more years seniority may select a three-week vacation period. The Employer will discuss with the Union the number of employees to be off on the vacation schedule before the vacation sign-up and shall take into consideration fully any request made for revisions in the vacation schedule.
  - (2) Employees will be encouraged to take vacations throughout the year.
  - (3) Vacation sign-up shall be by assignment. If an Employee is reassigned, a new selection process will be instituted.
  - (4) The parties recognize that the unique character of the law enforcement mission requires as its first object the protection of the public, in part achieved through the proper scheduling and utilization of law enforcement officers. As such, they understand and agree that the accomplishment of this mission is their foremost priority. Therefore, in recognition of this mutual obligation, the parties agree that whenever possible, requests for available vacation time off shall not be denied unreasonably. Reasonable bases for denial of requested leave shall include, but not be limited to, other employee absences caused by illness, injury, or compensatory time off. Where much denial occurs, the reasons for it shall be fully explained to the employee(s) affected thereby.

NON-ECONOMIC ISSUE NO. 2 - SICK LEAVE

CURRENT CONTRACT:

ARTICLE III - WAGES

Section 10. - Sick Leave (d) A physician's certificate of the employee's inability to work, or inability to return to work, may be required:

- (1) If it is necessary to be absent on sick leave
- (2) When an Employee is ready to return to work following a prolonged absence
- (3) For any sick leave requests in excess of three consecutive days, the Sheriff may designate a physician to examine the sick or injured member and submit directly to the Sheriff at no expense to the Employee.

UNION'S FINAL OFFER:

ARTICLE III - WAGES

3.10: Sick Leave

- D. 1. If an Employee has used sick days in excess of a five (5) consecutive day period, not including leave days, the Department may request the Employee to bring in a doctor's slip before returning to full duty. The Employer will not phone employees at home or visit them while they are off on sick leave.
2. In any sick leave requests in excess of three (3) consecutive days in a 90-day period, the Sheriff may designate a physician to examine the sick or injured member and submit directly to the Sheriff at no expense to the Employee.

The Union's proposal would be effective on the date of the award.

The County argues that its proposal merely reflects a desire to bring contract language into conformance with current policy, i.e., requiring a doctor's certificate whenever an Employee has called in sick three times in any ninety-day period.

As evidenced by the June 19, 1990 testimony of Deputy Harry Valentine, the application of the departmental sick leave policy is an emotionally-charged issue. Valentine testified that the bargaining unit members strongly object to those elements of the policy which require the presentation of a doctor's certificate for the third use of sick leave time within a ninety-day period and the requirement that a Command Officer call the absent Employee at home during the shift the Employee would have worked.

Valentine's testimony relates several instances over a period of at least five years, beginning at the inception of the recently expired contract with the predecessor bargaining representative. He recounted a personal incident of after being denied time off to care for his wife, calling in "sick", then receiving a call at home from his supervisor. Valentine also told of a Deputy Kern receiving three separate calls at home during his regular shift (TR II, p. 8), and being disciplined because the calls were received by his answering machine, thus he was determined to be unavailable. Yet another instance of a deputy missing a "verification" call occurred when she left her residence to pick up a "carry out" meal. Another deputy injured in a duty accident received a home visit from a Sheriff Cadet Officer whom he barely knew. These examples are merely representative, but not exhaustive, of the incidents related by Deputy Valentine.

In summary, Valentine stated the Employer's sick leave policy

...represents harassment of the employees because its a given right through your contract and through the accumulation of sick time when you're sick to be able to use that time, and what actually happens is you're being financially punished, and you're suffering a loss of income which even in the contract it says in one of the sections there, it maintains that sick time is for the protection against loss of income (TR II, p. 20).

The Union further justifies its proposal by stating that it will in no way hinder the legitimate need of the Employer to control those employees who make excessive, or illegitimate, use of sick leave.

Several exhibits regarding this issue were introduced by the Union. Exhibit 4 is a comparison of the current language to the Union's proposal. Exhibit 5 is the sick leave provision excerpted from the County's contract with AFSCME Local 2733, which the Union would like to see implemented in the POAM Agreement.

Union Exhibit 6 contains the grievance of Thomas Kern, the notice of disciplinary action taken against him, and pages 105-107 of the Washtenaw County Sheriff's Department Policy and Procedure Manual. These pages represent the department's sick call procedures and establish uniform guidelines for the implementation of the procedure.

The policy requires law enforcement personnel to notify their Command Officer of their expected absence, at least one hour prior to the scheduled shift. The Command Officer of the shift must determine whether the Employee is reporting a third incident of sick leave within ninety (90) days and if so ORDER (emphasis and capitalization in policy) that Employee to obtain, at their own expense, a physician's written statement of the inability to work. Said physician's statement is a pre-condition to the Employee's return to work. The Command Officer is charged with contacting the Employee during their regularly scheduled shift, presumably by phone.

Union Exhibit 8, a group of grievances constituting a "class action", were received into evidence notwithstanding the County's objections based on hearsay. This panel will consider Union Exhibit 8, not for the truth of the matters asserted therein, but only as evidence of the unit's continuing dissatisfaction with the policy. The Exhibit contains eight grievances dated from November, 1989, through April, 1990, all claiming violations of the sick leave policy and alleging loss of income through the requirement of obtaining a doctor's certificate at the Employee's expense. It is unclear from the grievances whether the occurrences complained of constitute less than the third instance of absence within a ninety-day period, thereby obviating the requirement of the doctor's certificate.

Union Exhibit 7 is the opinion and award of Arbitrator George T. Roumell in the disciplinary action taken against Deputy Steve Piatt. Deputy Piatt was absent from work on two separate occasions in the ninety days prior to October 25, 1988. On October 25, he went home ill and when he called in sick the next day, he was advised to obtain a doctor's certificate. He refused on the basis that the Command Officer called him at home outside his normal shift hours, that the department knew he went home sick, and that the order of his Command Officer just didn't make sense.

In sustaining the charge of insubordination yet mitigating the penalty, Arbitrator Roumell made the following observations, which are germane to this decision:

...the arbitrator must point out to Deputy Piatt that it was his pattern of absences that caused this situation. This had been the third instance of absence in ninety days which invokes the rule. Thus Deputy Piatt is responsible for part of the situation. If the absences of October 25-26, 1988, had been his first or second instances in a ninety-day period, then the situation would not have arisen. After all, it is not uncommon for individuals to come down with the flu or similar ailments without seeking the aid of a physician. The policy recognizes this point by requiring a physician's statement after a third instance of sick leave use in a ninety-day period.

The problem here was that by being absent on three occasions in a ninety-day period, Deputy Piatt put himself in a situation where the Department could insist on its absentee control technique. It was not the absence of October 26, 1988, in and of itself, that caused the request. It was the previous two absences that set the stage for the request (Emphasis added) (Roumell's October 3, 1989 Opinion, page 10).

This arbitrator agrees that the evidence and the testimony of the parties shows the sick leave policy was promulgated to curb abuses of the benefit. Like any other rule that is designed to control the abusers, it tangentially places burdens on those employees who are legitimately ill. However, the parties must decide whether those hardships are outweighed by the benefit derived by all in controlling abuses of the system. Likewise, the parties could work in tandem through informal means to limit the abuses.

Where, as here, a physician's statement is required after repeated "illnesses" within a finite time period and in the absence of evidence of widespread Employer abuse, I am not persuaded to alter the acknowledged



application of the contract. A different result might obtain were the County adhering to the letter of the Agreement and requiring a doctor's statement for each and every absence, or if convincing evidence established a less-than-uniform application of the practice. Thus, I do not agree that the Employer be precluded from application of its sick leave policy requiring the employee to obtain, at his/her own expense, a doctor's certificate attesting to the employee's third instance of sickness in a ninety-day period. This is clearly not an unreasonable requirement, particularly as Arbitrator Roumell noted "[i]t was the previous two absences that set the stage for the request". No evidence on the record indicates the doctor's certificate must also explain the first two absences, thus they are virtual "freebies" to the employee. This arbitrator recognizes that some employees will often incur three or more instances of legitimate illness within a ninety-day period, and to the extent that they are required to obtain a physician's statement, possibly at their expense, are victims of a policy designed to control malingerers. While I am sympathetic to their plight, I would note that "sick leave" is to be used for that purpose only and because the Employer agrees to compensate employees for sick leave so as to "maintain" their income, it should have the right to inquire whether the sick leave is being used legitimately. The parties are reminded that the payment of unused sick leave at separation of employment is an incentive to the Employee to come to work.

Resolution of the Union's request to eliminate the practice of calls to the absent Employee's residence requires me to determine whether, on the basis of the record, these calls are a reasonable policy, uniformly applied by the County, or are unjustified harassment of legitimately ill employees who have already notified the Employer of their absence from work. As noted supra, several members of this unit have expressed their views, formally and informally, that such calls are an unwarranted intrusion on their recuperative efforts. Valentine's testimony also included two instances where department representatives personally appeared at employees' homes, one under the guise of selling uniform sweaters. No testimony was presented to lead this arbitrator to believe said home visits were necessary. Clearly, no provision for such visits is expressed in the personnel policy manual. Therefore, they are to cease.

Returning to the issue of phone calls, I am not convinced by the evidence that they are only harassment of the Employee. I would reach that conclusion on evidence of repeated answered calls to an employee or in the instance of an employee being called far outside the parameters of their shift. As I understand the policy and the testimony, the Command Officer is obligated to call the Employee, or a family member, at home during the shift the employee would have worked. If the call is not answered on the first attempt, the Command Officer is to make at least one attempt per hour for three consecutive hours. Thus, a deputy may choose to leave their home for a short period for personal needs, such as picking up "carry-out" food.

On its face, the policy provides protection for those employees who are legitimately sick in allowing family members to accept the call, thereby protecting the employee from interference with his or her rest. I further believe the limitation on calls to the shift the employee would have worked (with the possible exception of midnights) is done to respect the Deputy's, and his/her family's, sleep and family life pattern then in effect. While the midnight shift Deputy may not appreciate receiving a call after midnight on the day he is absent, I believe he would prefer that to a call at 3 p.m. when he is probably in the middle of his sleep cycle for that particular shift.

The County has established a legitimate need for the sick leave policy in question and the Union admits such a policy was needed, as Employees had previously abused the system. Absent evidence to equate the attendance problems of the AFSCME unit covered by Union Exhibit 5 to those in this unit, I find no compelling reason to adopt a leave policy similar to theirs. No evidence exists of disparate treatment between these units of Washtenaw County employees.

Recognizing that no sick leave policy is fool-proof, nor used strictly for personal or family illness, this provision may continue to be misused. However, on the evidence presented, I do not conclude that the policy is entirely unfair or unreasonable, either on its face, or through its application. Having said that, I would caution the County to end the practice of home visits which have no basis in the contract or

personnel policy, and may pose safety hazards, particularly when non-uniformed personnel appear at a person's doorstep in the middle of the night.

#### **AWARD**

I award the Employer's final offer of maintenance of the status quo to the extent that it may continue to contact by telephone employees using sick leave and to require a physician's certificate of those employees utilizing a third instance of sick leave in a ninety-day period. Visits to the employees' homes are unwarranted intrusions into the employee's privacy and are not permissible.

#### **NON-ECONOMIC ISSUE NO. 3 - TEMPORARY, PART-TIME AND SEASONAL EMPLOYEES**

##### **CURRENT LANGUAGE:**

#### **ARTICLE II - RECOGNITION, UNION SECURITY AND DUES**

**Section 1** Pursuant to and in accordance with all applicable provisions of Act 336 of the Public Acts of 1947, as amended, the Employer does hereby recognize F.O.P. State Labor Council, as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment for the term of this Agreement, for the following unit:

All Washtenaw County Sheriff's Department employees set forth in Schedule A.

Temporary, part-time and seasonal employees are not covered under this Agreement.

Temporary employees shall be defined as those persons hired for salary but without fringe benefits to fill a position for a duration of nine (9) months or less.

If a temporary position is reclassified as a permanent position, the incumbent will, upon approval of the Sheriff, be hired as a permanent employee into that position, subject to bid procedures as may be relevant.

In cases where temporaries are hired to fill vacancies resulting from the absence of a permanent employee, the duration of temporary status may be extended beyond the nine (9) month limit and until the termination of such leave. Any unreasonable extensions beyond the nine (9) month limit would be subject to the grievance procedure.

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE II - RECOGNITION, UNION SECURITY AND DUES

2.1 Pursuant to and in accordance with all applicable provisions of Act 336 of the Public Acts of 1947, as amended, the Employer does hereby recognize Police Officers Association of Michigan as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment for the term of this Agreement, for the following unit:

All Washtenaw County Sheriff's Department employees set forth in Schedule A.

Seasonal employees are those defined as employees who work on a full-time basis for a particular seasonal function, such as marine officer, Portage Lake contract, Independence Lake contract, but not for a period to exceed six (6) months.

The Employer shall not utilize temporary, part-time or seasonal employees to perform bargaining unit work.

Only bargaining unit members shall be permitted to wear the non-supervisory uniform of the Washtenaw County Sheriff's Department, defined as the Class "A" uniform according to department policy. Non-bargaining unit members (with the exception of full-time supervisory personnel) shall be prohibited from wearing any uniform which is identical to or similar to the uniform of bargaining unit members. "Similarity" shall be deemed to be resemblance to such a degree that a member of the general public would reasonably conclude that the wearer is a bona fide, full-time employee member of the bargaining unit.

The Union's proposed final offer of settlement would be effective upon the issuance of this award. The County proposes maintenance of the status quo.

The Union's proposal is two-fold. It seeks to eliminate the use of non-unit personnel from doing unit work and to prevent non-bargaining unit personnel from wearing the non-supervisory, Class "A" uniform of the Washtenaw County Sheriff's Department. To the extent that the record shows non-unit personnel wearing the uniform have performed "unit" work, the proposals are interrelated.

On September 17, 1990, Deputies Verardi, Severinson, and Valentine all testified of incidents involving seasonal employees or "special" deputies, none of whom were bargaining unit members. Verardi and Severinson related incidents involving seasonal employees at a park within the County whose actions might

be called less than professional. Verardi answered a call for assistance from a park officer who was unable to properly complete a report following a serious traffic accident. Deputy Severinson recounted being called to assist a park officer having difficulty handling a public drinking situation, also in a park. This park officer had also acted quite indiscreetly in transmitting over the police radio. Valentine's testimony dealt with a couple of instances where non-unit sheriff's department employees performed bargaining unit work in effectuating an arrest.

The County's position is to reject the Union's proposal out-of-hand, stating that it has had the right to utilize such seasonal or temporary employees, even for bargaining unit work, since 1971. In the 1986 F.O.P. contract, the parties agreed to limit their use to the time period specified therein. On October 17, 1990, Deputy Valentine qualified the Union proposal in Exhibit 25 as it relates to non-unit employees performing bargaining unit work

...we don't have a problem with the marine deputies continuing as they have been. The biggest concern is that with the use of other people who wear the uniform of deputy sheriff, who are not members of this bargaining unit, who do not perform the duties of marine deputy, and yet, at the same time, represent themselves as agents of this department.

Deputy Valentine agreed the County's current practices with respect to the marine deputies would not violate the proposal in Union Exhibit 25.

The following exchange excerpted from TR VI, pages 23-24 is informative. The questions are Guenzel's; the answers Valentine's.

- Q. And this would allow besides the marine, such things as seasonal functions such as the Portage Lake contract?
- A. That what was stated here in the language.
- Q. Independence Lake and maybe some of the others?
- A. That was stated in the language there, your parks people; they have traditionally done that for years.

Q. If we created a position of police cadet, for example, and it was in the bargaining unit, any bargaining unit member could wear a uniform if it matched up with the sheriff's specifications.

A. If it was in the bargaining unit and if it was a member of the bargaining unit, then they could wear the uniform, that is correct.

Simply stated, the Union's position is that with the exception of marine patrol, all seasonal, temporary, or part-time employees are prohibited from doing bargaining unit work and only bargaining unit members may wear the Class "A" uniform.

Pursuant to MCLA 51.7, the Sheriff may appoint special deputies as he sees fit (County's Brief, p. 40). Based on this statutory provision, the collective bargaining agreement with predecessor Unions have excluded the temporary and seasonal employees from the bargaining unit.

Moreover, the testimony of the three deputies noted above establishes de minimus examples of non-unit personal doing unit work. No testimony was offered to conclude any member of this unit has endured economic hardship such as a layoff as a result.

While it is indeed unfortunate that a park officer conducted himself in a manner which could bring embarrassment on the department, correcting that behavior is not a concern of this bargaining unit, nor of this Arbitrator. Correcting such behavior, or providing the training necessary to avoid such embarrassment is the responsibility of the Sheriff and no one else. Based on competent, substantial, and material evidence on the record, I am not convinced that the safety and security of either Washtenaw County residents, or members of this unit, have been placed at risk. Clearly, none of the deputies who testified to these incidents deemed them of sufficient concern so as to bring them to the attention of supervision.

#### AWARD

I hereby award the status quo of the issue of temporary, part-time, and seasonal employees.

**NON-ECONOMIC ISSUE NO. 4 - HOLIDAYS**

The County wishes to substitute the day after Thanksgiving for Lincoln's Birthday as a holiday. Exhibit 18 as supplemented by the final offer and its Brief was offered in support of the County's position.

Undersheriff Johnson alluded to "added expense" as being a consideration in the County's request to change the holiday. Because the remaining County departments, especially the courts, are open on Lincoln's Birthday, the County must absorb premium pay for those Sheriff's Department employees working on the holiday.

By shifting the holiday to the day after Thanksgiving, a day on which the rest of the County offices, including the courts, are closed, the County would avoid premium pay for those employees providing transport to the courts, appearing as witnesses, and presumably those deputies providing court security. According to the Undersheriff, the department goes to a reduced staffing level on holidays when the courts are closed (TR VII, p. 32) and that the bid shifts for court transport deputies are configured for these employees to be off work on holidays (TR VII, p. 33). Neither party introduced testimony to determine either the savings to the County, or the cost to the transport employees, in substituting the holidays. However, the Undersheriff did testify that the transport deputies get most of their overtime from "court extension" (TR VII, p. 33) and are assigned to road patrol or jail functions if working on days when the courts are closed.

The County further maintains that in addition to cost efficiencies being achieved, members of this unit would join other County employees who have the day after Thanksgiving as a holiday are able to enjoy a four-day weekend.

No evidence was presented by the Union to refute that claim, nor to establish the transport deputies will suffer any consequential wage loss.

### **AWARD**

I find the County's offer to substitute the Friday following Thanksgiving for Lincoln's Birthday to be a legitimate request which would cause no harm to the bargaining unit. There is additional justification found among other County employees. Thus, based upon competent, material and substantial evidence on the record, the County's last offer of settlement is awarded.

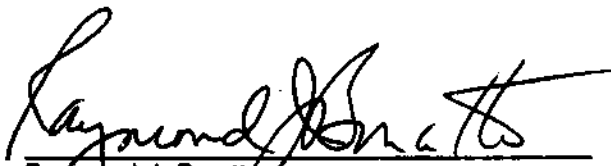
### **NON-ECONOMIC ISSUES NOS. 5, 6, 7 - ROAD PATROL, TRANSFERS AND PROMOTIONS, DRUG TESTING**

The aforementioned three non-economic issues were presented as issues by the County, and dealt with in varying degrees on the record but are unsupported by a final offer from the County.

By direction of the Commission in applying the statute, a 312 arbitrator cannot decide an issue where a final offer is not made by the moving party. Thus, these issues are not part of this decision and remain status quo for the duration of this contract.



This Award, including the Concurrences and Last Best Offers attached hereto, is issued at Rochester Hills, Michigan, this eleventh day of October, 1991.

  
Raymond J. Buratto  
Panel Chairman

**UNION CONCURRENCES**

I concur with the Chairman in the following awards:

**ECONOMIC ISSUES**

1. Duration
2. Wages
3. Pension
4. Vacation Accumulation
5. Duty Injury/Worker's Compensation
6. Gun Allowance
7. Temporary Assignment Pay

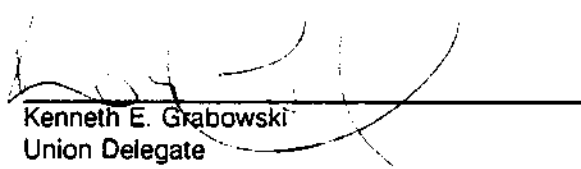


Resolved by the Parties

**NON-ECONOMIC ISSUES**

1. Vacation Utilization
2. Sick Leave
3. Temporary, Part-Time,  
and Seasonal Employees
4. Holidays



  
Kenneth E. Grabowski  
Union Delegate

## EMPLOYER CONCURRENCES

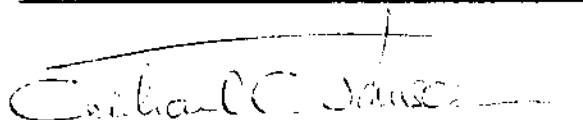
I concur with the Chairman in the following awards:

### ECONOMIC ISSUES

1.	Duration	Concur
2.	Wages	
3.	Pension	Concur
4.	Vacation Accumulation	Concur
5.	Duty Injury/Worker's Compensation	Concur
6.	Gun Allowance	Resolved by the Parties
7.	Temporary Assignment Pay	Concur

### NON-ECONOMIC ISSUES

1.	Vacation Utilization	Concur
2.	Sick Leave	Concur
3.	Temporary, Part-Time, and Seasonal Employees	Concur
4.	Holidays	Concur

  
Michael C. Johnson  
Employer Delegate

IN THE MATTER OF  
ARBITRATION UNDER ACT 312  
PUBLIC ACTS OF 1969  
AS AMENDED

BEFORE: RAYMOND J. BURATTO, IMPARTIAL CHAIRMAN

COUNTY OF WASHTENAW

- and -

MERC Case No. D88 K-2170

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN

UNION'S FINAL OFFER OF SETTLEMENT

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN  
Suite 103  
28815 W. Eight Mile Road  
Livonia, Michigan 48152  
(313) 476-3355

## ARBITRATION ISSUES

### Union Issues

1. Duration
2. Wages
3. Pension - Employee Contribution
4. Vacation - Accumulation
5. Vacation - Utilization
6. Sick Leave
7. Duty Injury/Worker's Compensation
8. Gun Allowance
9. Temporary Assignments
10. Temporary, Part-Time and Seasonal Employees
11. Pension - 20 and Out
12. Pension - Defined Benefit Inclusion
13. Pension - Offsets
14. Seniority
15. Transfers
16. Union Leave
17. Union President - Preferred Shift

### Employer Issues

UNION ISSUE #2

WAGES

PRESENT:

SCHEDULE A

APRIL 1, 1986

Salary Grade	Position	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
55	Comm. Oper. I	Yearly Bi-Weekly	14,933.00 574.35	16,361.00 629.27	17,128.00 658.77	18,083.00 695.50	20,058.00 771.47
56	Comm. Oper. II	Yearly Bi-Weekly	17,033.00 655.12	20,142.00 774.70	22,204.00 854.01	24,021.00 923.88	25,937.00 997.58
57	Deputy Comm. Oper. III	Yearly Bi-Weekly	19,463.00 748.57	22,658.00 871.46	23,808.00 915.69	24,960.00 959.98	27,535.00 1,059.05
58	Detective	Yearly Bi-Weekly	19,924.00 766.30	23,200.00 892.30	24,378.00 937.61	25,558.00 983.00	28,199.00 1,084.58

1987

Salary Grade	Position	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
55	Comm. Oper. I	Yearly Bi-Weekly	15,605.00 600.20	17,097.00 657.59	17,898.00 688.40	18,897.00 726.80	20,961.00 806.18
56	Comm. Oper. II	Yearly Bi-Weekly	17,800.00 684.60	21,049.00 809.56	23,204.00 892.44	25,102.00 965.45	27,917.00 1,073.73
57	Deputy Comm. Oper. III	Yearly Bi-Weekly	20,339.00 782.25	23,678.00 910.68	24,879.00 956.68	26,083.00 1,003.18	28,774.00 1,106.70
58	Detective	Yearly Bi-Weekly	21,153.00 813.58	24,625.00 947.12	25,874.00 995.15	27,126.00 1,043.31	29,925.00 1,150.96

1988

Salary Grade	Position	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
55	Comm. Oper I	Yearly Bi-Weekly	15,605.00 600.19	17,097.00 657.59	17,898.00 688.40	18,897.00 726.80	20,961.00 806.18
56	Ass't Dispatcher/ Shift Leader	Yearly Bi-Weekly	17,800.00 684.60	21,049.00 809.56	23,204.00 892.44	25,102.00 965.45	27,917.00 1,073.73

57	Deputy Dispatcher/Shift Leader	Yearly Bi-Weekly	20,339.00 782.27	23,678.00 910.69	24,879.00 956.88	26,083.00 1,003.19	28,774.00 1,106.69
58	Detective	Yearly Bi-Weekly	21,153.00 813.58	24,625.00 947.12	25,874.00 995.15	27,126.00 1,043.31	29,925.00 1,150.96

UNION'S FINAL OFFER OF SETTLEMENT:

January 1, 1989

Salary Grade	Position	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
55	Comm. Oper I	Yearly Bi-Weekly	16,635.00 639.80	18,226.00 700.99	19,080.00 733.83	20,144.00 774.77	22,344.00 859.39
56	Ass't Dispatcher/ Shift Leader	Yearly Bi-Weekly	18,974.00 729.78	22,438.00 862.99	24,735.00 951.34	26,758.00 1,029.17	29,760.00 1,144.60
57	Deputy Dispatcher/Shift Leader	Yearly Bi-Weekly	21,681.00 833.90	25,241.00 970.80	26,521.00 1,020.03	27,804.00 1,069.40	30,673.00 1,179.73
58	Detective	Yearly Bi-Weekly	22,549.00 867.28	26,250.00 1,009.63	27,582.00 1,060.83	28,916.00 1,112.17	31,900.00 1,226.92

[Represents 6.6% across-the-board increase]

January 1, 1990

Salary Grade	Position	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
55	Comm. Oper I	Yearly Bi-Weekly	17,949.00 690.34	19,666.00 756.37	20,587.00 791.80	21,735.00 835.98	24,109.00 927.28
56	Ass't Dispatcher/ Shift Leader	Yearly Bi-Weekly	20,473.00 787.43	24,210.00 931.17	26,689.00 1,026.50	28,872.00 1,110.47	32,110.00 1,235.02
57	Deputy Dispatcher/Shift Leader	Yearly Bi-Weekly	23,394.00 899.78	27,235.00 1,047.49	28,616.00 1,100.61	30,001.00 1,153.88	33,101.64 1,273.14
58	Detective	Yearly Bi-Weekly	24,330.00 935.79	28,324.00 1,089.39	29,761.00 1,144.64	31,201.00 1,200.03	34,420.00 1,323.85

[Represents 7.9% across-the-board increase]

January 1, 1991

Salary Grade	Position	Pay	Step 1	Step 2	Step 3	Step 4	Step 5
55	Comm. Oper I	Yearly Bi-Weekly	18,487.00 711.05	20,256.00 779.06	21,204.00 815.55	22,388.00 861.06	24,833.00 955.10
56	Ass't Dispatcher/ Shift Leader	Yearly Bi-Weekly	21,087.00 811.05	24,937.00 959.11	27,490.00 1,057.30	29,738.00 1,143.78	33,074.00 1,272.07



57	Deputy Dispatcher/Shift Leader	Yearly Bi-Weekly	24,096.00 926.77	28,052.00 1,078.91	29,474.00 1,133.63	30,901.00 1,188.50	34,095.00 1,311.33
58	Detective	Yearly Bi-Weekly	25,060.00 963.86	29,174.00 1,122.07	30,653.00 1,178.98	32,137.00 1,236.03	35,453.00 1,363.57

[Represents 3% across-the-board increase]

Wages to be retroactive to January 1, 1989.

UNION ISSUE #1

PENSION - EMPLOYEE CONTRIBUTION

PRESENT:

ARTICLE XII - PENSION

3. Employee's contribution to the pension plan will be eight (8%) percent of the first \$4,200 annual compensation plus ten (10%) percent of the portion, if any, of annual compensation in excess of \$4,200.

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE XII  
PENSION

Effective [July 1st of the last year of the contract] employee contribution to the pension plan will five (5%) percent of payroll.

Pension - Employee Contribution to be effective July 1st of the last year of the contract.

UNION ISSUE #4

VACATION - ACCUMULATION

PRESENT:

ARTICLE III - WAGES

Section 9. Vacation Leave:

- (b) Employees who have completed five (5), twelve (12), and fifteen (15) years of continuous service with the County shall be granted fifteen (15), eighteen (18), and twenty-one (21) working days vacation leave per annum based on 1-1/4, 1-1/2, and 1-3/4 days per month accrual respectively.
- (b) The vacation schedule shall be as follows:

<u>Years of Service</u>	<u>Vacation Accumulated Per Month</u>
1 - 4	1.0
5 - 11	1.25
12 - 14	1.5
15 and over	1.75

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE III  
WAGES

3.9: Vacation Leave.

Employees will be granted vacation according to the following schedule:

<u>Years of Service</u>	<u>Vacation Accumulated Per Month</u>
First Year	1.0 (12 days per year)
1 - 5	1.25 (15 days per year)
6 - 10	1.5 (18 days per year)
11 - 15	1.75 (21 days per year)
16 and over	2.0 (24 days per year)

Vacation - Accumulation to be retroactive to January 1, 1989.

UNION ISSUE #5

VACATION - UTILIZATION

PRESENT:

ARTICLE III - WAGES

Section 9. Vacation Leave:

- (e) The Sheriff shall keep records of vacation leave allowances and shall schedule vacation leaves in accordance with the following:
  - (1) Vacation sign up for the entire year will be at a designated time in December of the preceding year. The selections will be for one or two week period(s) by seniority except those employees with twelve (12) or more years seniority may select a three week vacation period. The employer will discuss with the Union the number of employees to be off on the vacation schedule before the vacation sign-up.
  - (2) Employees will be encouraged to take vacations throughout the year.
  - (3) Vacation sign up shall be by assignment. If an employee is reassigned, a new selection process will be instituted.

UNION'S FINAL OFFER OF SETTLEMENT:

Add to the contract:

ARTICLE III  
WAGES

3.9: Vacation Leave.

- E. (4) On any given day the Employer will allow the following number of personnel off on vacation or compensatory time:

Road Division - 4  
Jail Division - 3  
Communication Division - 1  
Transport Division - 1

Vacation - Utilization to be effective date of award.

UNION ISSUE #6

SICK LEAVE

PRESENT:

ARTICLE III - WAGES

Section 10. Sick Leave:

- (d) A physician's certificate of the employees inability to work, or inability to return to work may be required:
- (1) If it is necessary to be absent on sick leave
  - (2) When an employee is ready to return to work following a prolonged absence
  - (3) For any sick leave requests in excess of three consecutive days, the Sheriff may designate a physician to examine the sick or injured member and submit directly to the Sheriff at no expense to the employee.

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE III  
WAGES

3.10: Sick Leave.

- D. 1. If an employee has used sick days in excess of a five (5) consecutive day period, not including leave days, the Department may request the employee to bring in a doctor's slip before returning to full duty. The Employer will not phone employees at home or visit them while they are off on sick leave.
2. In any sick leave requests in excess of three (3) consecutive days in a 90 day period, the Sheriff may designate a physician to examine the sick or injured member and submit directly to the Sheriff at no expense to the employee.

Sick Leave to effective date of award.

UNION ISSUE #7

DUTY INJURY/WORKERS' COMPENSATION

PRESENT:

ARTICLE XVII - WORKER'S COMPENSATION

Section 1. The Employer agrees to cooperate toward the prompt settlement of employee on-the-job injury and sickness claims when such claims are due and owing. The Employer shall provide Worker's Compensation protection for all employees. An employee eligible for Worker's Compensation will receive in addition to his Worker's Compensation, an amount to be paid by the Employer sufficient to make up the difference between Worker's Compensation and his regular weekly income for a period not to exceed one (1) year.

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE XVII  
WORKERS' COMPENSATION

17.1: In the event an employee is injured in the performance of their duties as an employee of the Washtenaw County Sheriff's Department, whether during scheduled hours or otherwise, the employee shall receive the difference between full pay and the employee's Workers' Compensation for the period of the employee's disability, not to exceed one (1) year. Thereafter the employee shall receive Workers' Compensation for the length of their injury if eligible under the Workers' Compensation statute or a retiree's benefit. No employee shall lose sick time as a result of a duty related injury. In the instance of a duty-related injury of short duration when Workers' Compensation is not paid, the Employer shall provide 100% of normal pay to an employee so affected.

Duty Injury/Workers' Compensation to be retroactive to January 1, 1989.

UNION ISSUE #8

GUN ALLOWANCE

**PRESENT:**

No provision or contract language.

**UNION'S FINAL OFFER OF SETTLEMENT:**

Add to the contract:

SCHEDULE C

All employees qualified to carry firearms shall be paid five hundred dollars (\$500.00) on the first pay day of July as proficiency allowance. Employee must qualify at standard test in firearms use to receive payment.

Gun Allowance to be effective date of award.

UNION ISSUE #9

TEMPORARY ASSIGNMENTS

PRESENT:

ARTICLE XXI - GENERAL

Section 6. Temporary Assignments. Temporary assignments for the purpose of filling vacancies in positions will be granted to a qualified Employee for such job. Such Employees will receive the rate of pay of the higher classification for all hours worked while filling such vacancy. The Sheriff shall determine when a vacancy exists and it shall not include filling in for members on routine vacations, sick or leave days. A qualified Employee shall include all those who are eligible or will be eligible within six (6) months to take the promotional test for the position involved.

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE XXI  
GENERAL

21.6: Temporary Assignments. In the event an employee works in a higher classification the employee will be paid at that higher classification's pay for all hours worked.

Temporary Assignments to be effective date of award.



UNION ISSUE #10

TEMPORARY, PART-TIME AND  
SEASONAL EMPLOYEES

PRESENT:

ARTICLE II - RECOGNITION, UNION SECURITY AND DUES

Section 1. Pursuant to and in accordance with all applicable provisions of Act 336 of the Public Acts of 1947, as amended, the Employer does hereby recognize F.O.P. State Labor Council, as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment for the term of this Agreement, for the following unit:

All Washtenaw County Sheriff's Department employees set forth in Schedule A.

Temporary, part-time and seasonal employees are not covered under this Agreement.

Temporary employees shall be defined as those persons hired for salary but without fringe benefits to fill a position for a duration of nine (9) months or less.

If a position filled by a temporary employee(s) continue(s) beyond the nine (9) month limit, it will be considered a violation of this contract subject to the grievance procedure.

If a temporary position is reclassified as a permanent position, the incumbent will, upon approval of the Sheriff, be hired as a permanent employee into that position, subject to bid procedures as may be relevant.

In cases where temporaries are hired to fill vacancies resulting from the absence of a permanent employee, the duration of temporary status may be extended beyond the nine (9) month limit and until the termination of such leave. Any unreasonable extensions beyond the nine (9) month limit would be subject to the grievance procedure.

UNION'S FINAL OFFER OF SETTLEMENT:

ARTICLE II  
RECOGNITION, UNION SECURITY AND DUES

2.1: Pursuant to and in accordance with all applicable provisions of Act 336 of the Public Acts of 1947, as amended, the Employer does hereby recognize Police Officers Association of Michigan as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment for the term of this Agreement, for the following unit:

All Washtenaw County Sheriff's Department employees set forth in Schedule A.

Seasonal employees are those defined as employees who work on a full-time basis for a particular seasonal function, such as marine officer, Portage Lake contract, Independence Lake contract, but not for a period to exceed six (6) months.

The Employer shall not utilize temporary, part-time or seasonal employees to perform bargaining unit work.

Only bargaining unit members shall be permitted to wear the non-supervisory uniform of the Washtenaw County Sheriff's Department, defined as the Class "A" uniform according to department policy. Non-bargaining unit members (with the exception of full-time supervisory personnel) shall be prohibited from wearing any uniform which is identical to or similar to the uniform of bargaining unit members. "Similarity" shall be deemed to be resemblance to such a degree that a member of the general public would reasonably conclude that the wearer is a bona fide, full-time employee member of the bargaining unit.

Temporary, Part-Time and Seasonal Employees to be effective date of award.

UNION ISSUES #11, #12, #13, #14, #15, #16, #17

The Union drops these issues in favor of the status quo, and proposes no change to contract language or practice.

EMPLOYER ISSUES

UNION FINAL OFFER IN RESPONSE TO  
EMPLOYER POSITION:

For all Employer issues, with the exception of "Drug Testing" which follows as a counter-offer by the Union, the Union desires to retain the status quo and proposes no change to contract language or practice.

2. Additionally, some subjects were identified on the record by the Employer as issues but were not subsequently pursued on that record. The Union deems such issues to have been withdrawn by the Employer. In such instances, the language from the prior contract shall prevail as reflected in the draft contract of March 5, 1990.

## EMPLOYER ISSUE

### DRUG TESTING

UNION FINAL OFFER IN RESPONSE TO  
EMPLOYER POSITION:

### DRUG TESTING POLICY

#### I. PURPOSE

The purpose of this order is to provide all sworn Officers with notice of the provisions of the departmental drug testing program.

#### II. POLICY

It is the policy of this department that the critical mission of law enforcement justifies maintenance of a drug-free work environment through the use of a reasonable employee drug testing program.

The law enforcement profession has several uniquely compelling interests that justify the use of employee drug testing. The public has a right to expect that those who are sworn to protect them are at all times both physically and mentally prepared to assume these duties. There is sufficient evidence to conclude that the use of controlled substances and other forms of drug abuse will seriously impair an Officer's physical and mental health and, thus, job performance.

Where law enforcement officers participate in illegal drug use and drug activity, the integrity of the law enforcement profession and public confidence in that integrity are destroyed. This confidence is further eroded by the potential for corruption created by drug use.

Therefore, in order to ensure the integrity of the department and to preserve public trust and confidence in a fit and drug free law enforcement profession, this department will implement a drug testing program to detect prohibited drug use by sworn employees on date of award.

#### III. DEFINITIONS

- A. Sworn Officer -- Those Officers who have been formally vested with full law enforcement powers and authority.
- B. Supervisor -- Those sworn Officers assigned to a position having day-to-day responsibility for supervising subordinates, or who are responsible for commanding a work element.
- C. Drug Test -- The compulsory or voluntary production and submission of urine, in accordance with departmental procedures, by an Officer for chemical analysis to detect prohibited drug usage.

- D. Reasonable Suspicion -- That quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific, objective facts and any rationally derived inferences from those facts about the conduct of an Officer. These facts or inferences would lead the reasonable person to suspect that the Officer is or has been using drugs while on or off duty.
- E. Probable Cause -- That amount of facts and circumstances within the knowledge of a supervisor or the administration which are sufficient to warrant a prudent person to believe it is more probable than not that an Officer is or has been using drugs while on or off duty.
- F. Probationary Officer -- For the purpose of this policy only, a probationary Officer shall be considered to be any person who is conditionally employed with the department as a recently hired law enforcement officer.
- G. MRO - Medical Review Officer -- The medical review officer is a physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. The MRO will be a licensed physician with knowledge of substance abuse disorders. The MRO shall have appropriate medical training to interpret and evaluate an Officer's test results in conjunction with his or her medical history and any other relevant biomedical information.
- H. Last Chance Agreement -- A standard letter of conditions for continued employment that is offered by the Sheriff, or the right to same is invoked by an Officer under certain conditions outlined in this order, after it has been determined that the Officer has violated this order.

#### IV. PROCEDURES/RULES

##### A. General Rules

The following rules shall apply to all Officers, while on and off duty:

- 1. No Officer shall illegally possess any controlled substance.
- 2. No Officer shall ingest any controlled or prescribed substance, except under the direction of a licensed medical practitioner.
  - a. Officers shall notify their MRO when required to use prescription medicine that may influence their job performance. The Officer shall submit one of the following:
    - (1) note from the prescribing doctor
    - (2) copy of the prescription
    - (3) show of the bottle label to his MRO

3. No Officer shall ingest any prescribed or over-the-counter medication in amounts beyond the recommended dosage.
4. Any Officer who unintentionally ingests, or is made to ingest, a controlled substance shall immediately report the incident to his supervisor so that appropriate medical steps may be taken to ensure the Officer's health and safety.
5. Any Officer having a reasonable basis to believe that another Officer is illegally using, or is in possession of, any controlled substance shall immediately report the facts and circumstances to his supervisor.
6. Discipline of sworn Officers for any violation of this drug testing policy shall be in accordance with the due process rights provided in the department's rules and regulations, policies and procedures, and the collective bargaining agreement. (The officer may be immediately relieved of duty pending a departmental investigation at the discretion of the Sheriff or his designee, when one of the following occurs:
  - a. a refusal to participate
  - b. probable cause
  - c. the Medical Review Officer determines that an Officer's drug test was positive.)

**B. Applicant Drug Testing**

1. Applicants for the position of Deputy Sheriff shall be required to take a drug test as a condition of employment during a pre-employment medical examination.
2. Applicants shall be disqualified from further consideration for employment under the following circumstances:
  - a. Refusal to submit to a required drug test, or
  - b. A confirmed positive drug test indicating drug use prohibited by this order.

**C. Probationary Officer Drug Testing**

All probationary recruit Officers shall be required as a condition of employment, to participate in any unannounced drug tests scheduled for the probationary period. The frequency and timing of such tests shall be determined by the Sheriff or his designee. Probationary recruit Officer may be tested prior to completion of the probationary period. A probationary recruit Officer shall not be eligible for coverage under the last chance rehabilitation provision set forth in this order, except at the discretion of the Sheriff.

D. Officer Drug Testing

Sworn Officers will be required to take drug tests as a condition of continued employment in order to ascertain prohibited drug use, as provided below:

1. The Undersheriff may order an Officer to take a drug test upon document probable cause that the Officer is or has been using drugs. A summary of the facts supporting the order shall be made available to the Officer prior to the actual test.
2. Upon reasonable suspicion the Department may request, through an authorized representative of the Officer's labor association, that an Officer submit to a voluntary drug test. Submission to a voluntary drug test hereunder shall be subject to the frequency limitation found in Article IV, section D, subsection 4 herein. Any Officer voluntarily submitting to a drug test who tests positive as a consequence of said test, shall be eligible to invoke the last chance rehabilitation provision set forth in this order. Any Officer who refuses to submit to a request for a voluntary drug test shall not be disciplined as a consequence of such refusal, but shall not be eligible for coverage under the last chance rehabilitation provision set forth in this policy for a period of three (3) years.
3. A drug test will be administered as part of any promotional physical examination required by this department.
4. All sworn Officers shall be uniformly tested during any unannounced, random testing required by the department. Random testing for all sworn Officers will not exceed twice in a 365 day period, except for those Officers assigned to the narcotics unit.
  - a. The Sheriff or his designee shall determine the frequency and timing of such tests.
  - b. The president of the labor association, or his designee, will receive a list of the Officers that have been required to take a drug test after all Officers in that particular group have submitted, or have refused to submit, a urine sample to the laboratory testing personnel.
5. A drug screening test shall be considered as a condition of acceptance to the Narcotic Unit. Furthermore, the members of the Narcotic Unit will be tested randomly at least once every six months and also when an Officer leaves the unit. The Officers of the narcotic unit shall be eligible to invoke the last chance rehabilitation provision set forth in this order.



E. Penalty

Violation of any provision of this drug testing order shall be grounds for disciplinary action. Discipline shall be administered as set forth in the Washtenaw County Sheriffs Department's rules and regulations, and may include discharge from the Sheriffs Department. Any discipline remains subject to review in accordance with the collective bargaining agreement.

F. Drug Testing Procedures

1. The testing procedures and safeguards provided in this order shall be adhered to by any laboratory personnel administering departmental drug tests.
2. Laboratory personnel authorized to administer departmental drug test shall require positive identification from each Officer to be tested before the Officer enters the testing area.
3. In order to prevent a false positive test result, a pre-test interview shall be conducted by testing personnel to ascertain and document the Officer's recent use of any prescription or non-prescription drugs, or any indirect exposure to drugs. Divulgence by the Officer of medical information during the pre-test interview is voluntary, however, if the test results are positive, it will be mandatory that the officer divulge the necessary medical information to the Medical Review Officer so that the MRO may determine whether the test result is a false positive.
4. The testing area shall be private and secure. Authorized testing personnel shall search the testing area before an Officer enters same in order to document that the area is free of any foreign substances.
5. Where the Officer appears unable or unwilling to give a specimen at the time of the test, testing personnel shall document the circumstances on the drug-test report form. The Officer shall be permitted no more than eight hours to give a sample. During that time the Officer shall remain in the testing area, under observation. Reasonable amounts of water may be given to the employee to encourage urination. Failure to submit a sample shall be considered a refusal to submit to a drug test except for good cause as determined by the M.R.O.
6. The urine sample will be split and stored in case of legal disputes. The samples must be provided at the same time, and marked and placed in identical specimen containers by authorized testing personnel. One sample shall be submitted for immediate drug testing. The other sample shall remain at the facility in frozen storage. This sample shall be made available to

the employee or his labor association representative prior to disciplinary action, should the original sample result in a legal dispute. The officer must request same within 72 hours of being notified of a positive and confirmatory test by the Medical Review Officer. All groups of negative samples may be destroyed after seven (7) days.

7. All specimen samples shall be sealed, labeled, initialled by the Officer and laboratory technician, and checked against the identity of the Officer. Samples shall be stored in a secured and refrigerated atmosphere until testing or delivery to the testing lab representative.
8. Whenever there is a reason to believe that the Officer may have altered or substituted the specimen to be provided, a second specimen shall be obtained within a reasonable period of time. The laboratory personnel will take the appropriate necessary steps to assure the integrity of the second specimen.

G. Drug Testing Methodology

1. The testing or processing phase shall consist of:
  - a. initial screening test
  - b. confirmation test -- if the initial screening test is positive
2. The urine sample is first tested using the initial drug screening procedure. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending." Notification of test results to the supervisor or other departmental designee shall be held until the confirmation test results are obtained and verified by the M.R.O.
3. A specimen testing positive will undergo an additional confirmatory test. The confirmation procedure shall be technologically different and more sensitive than the initial screening test.
4. The drug screening tests selected shall be capable of identifying marijuana, cocaine and every major drug of abuse including heroin, amphetamines and barbiturates. Personnel utilized for testing will be qualified to collect urine samples, or adequately trained in collection procedures.
5. Concentrations of a drug at or about the following levels shall be considered a positive test result when using the initial immunoassay drug screening test:

# Initial Test Level

	(ng/ml)
Marijuana metabolite. . . . .	100
Cocaine metabolite. . . . .	300
Opiate metabolite. . . . .	300*
Phencyclidine . . . . .	25
Amphetamines. . . . .	1000
Barbiturates. . . . .	300

\*25ng/ml if immunoassay-specific for free morphine.

Concentrations of a drug at or above the following levels shall be considered a positive test result when performing a confirmatory CG/MS test on a urine specimen that tested positive using a technologically different test than the initial screening method:

# Confirmatory Test Level

Marijuana metabolite. . . . .	15*
Cocaine metabolite. . . . .	150**
Opiates:	
Morphine . . . . .	300+
Codeine. . . . .	300+
Phencyclidine . . . . .	25
Amphetamines	
Amphetamine . . . . .	500
Methamphetamine . . . . .	500
* Delta-9-tetrahydrocannabinol-9-carboxylic acid	
** Benzoyllecgonine	
+ 25ng/ml if immunoassay-specific for free morphine	
Barbiturates. . . . .	300

- The initial and confirmatory test cutoff levels of this order are the same as that of the United States government which were published in the Federal Register, volume 54, number 230, dated December 1, 1989.
- The laboratory selected to conduct the analysis shall be experienced and capable of assuring quality control, documentation, chain-of-custody, technical expertise and demonstrated proficiency in urinalysis.
- Officers having negative drug test results shall receive a memorandum stating that no illegal drugs were found. A copy of the letter will be placed in the Officer's personnel file upon the Officer's request.
- Any Officer who interferes with the testing process or breaches the confidentiality of test results shall be subject to discipline.

H. Chain of Evidence - Storage

1. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of custody.
2. Where a positive result is confirmed, urine specimens shall be maintained in a secured, refrigerated storage area. If a dispute arises the specimens will be stored until all legal disputes are settled.

I. Drug Test Results

1. All records pertaining to departmental-required drug tests shall remain confidential, and shall not be provided to other employers or agencies without the written permission of the person whose records are sought. However, medical, administrative, and immediate supervisory personnel may have access to relevant portions of the records as necessary to insure the acceptable performance of the Officer's job duties.

J. Substance Abuse Rehabilitation Program

Officers may participate in a substance abuse rehabilitation program, however, participation after date of 312 award shall not prohibit drug testing under this policy.

K. Procedures for Implementation of the Last Chance Agreement

1. An Officer whose drug test has been confirmed positive by the Medical Review Officer during random or reasonable suspicion testing shall, (if found guilty during department disciplinary proceedings), be offered a last chance agreement.
2. At the discretion of the Sheriff, the last chance agreement may also be offered to any officer whose drug test has been confirmed positive by the Medical Review Officer.
3. Standard letter of conditions for continued employment (last chance agreement) must be signed by an authorized representative of the department and the officer.
4. An Officer must attend and successfully complete an authorized rehabilitation program.
5. An Officer must sign a form releasing any and all information to management as may be requested.
6. An Officer must pass a medical examination administered by a medical facility designated by

the Sheriff prior to being allowed to return to duty. The examination shall only screen for drug use and the physical impact of the prior drug usage.

7. An Officer may be allowed to use sick time and apply for a medical leave of absence if required, while undergoing rehabilitation.
8. Once authorized to return to duty, the officer must submit to periodic urinalysis on a timetable as may be determined by the Sheriff.
9. The Officer shall be subject to the terms of this program for three (3) years after their return to work.
10. The Officer must agree in writing that the Officer will be automatically terminated forthwith if a violation of any portion of the last change agreement occurs at any time during it's enforcement term.
11. Officer must be advised that the Officer is not obligated to sign the agreement and be advised he has the right to seek the counsel of his legal and/or labor representative.

LAST CHANCE AGREEMENT

Re: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Whereas, the above referenced individual was found guilty of violating the departmental drug order on \_\_\_\_\_, and;

Whereas, the Washtenaw County Sheriffs Department will conditionally reinstate \_\_\_\_\_ to the same rank held at termination, provided the Officer is found by medical examination to be capable of performing all the duties of the classification as have been previously established by Washtenaw County Sheriffs Department and subject to the following terms and conditions being met and maintained;

Now, therefore, it is agreed that:

1. Officer must sign a form releasing any and all information to management as may be requested.
2. Officer must successfully complete a rehabilitation program as prescribed by an authorized rehabilitation source.
3. Officer must pass a medical examination administered by a medical facility designated by the Sheriff prior to being allowed to return to duty. The examination shall only screen for drug use and the physical impact of the prior drug usage.
4. Officer may be allowed to use sick time and may apply for a medical leave of absence if required, while undergoing rehabilitation.
5. Upon clearance by the medical facility designated by the Sheriff, the Officer shall be returned to the Sheriffs Department at the rank of \_\_\_\_\_.
6. Once returned to duty, the Officer will present himself to the department approved substance abuse rehabilitation center for evaluation, and agree to, as well as follow any and all directives given him by the rehabilitation center for a period of not more than three (3) years. Officer \_\_\_\_\_ agrees to sign appropriate forms releasing any and all information to the Sheriffs Department as may be requested. Failure to follow the program directives are grounds for discharge, subject to review pursuant to the collective bargaining agreement of only the discharge for failure to follow program directives.
7. Once authorized to return to duty, Officer \_\_\_\_\_ shall submit to controlled substance testing at the discretion of the Sheriff. If any such test shows a positive result for the presence of a controlled substance, Officer \_\_\_\_\_ will be discharged from employment with the County of Washtenaw, subject to review pursuant to the collective bargaining agreement of only the discharge for a positive test result hereunder.

8. Officer \_\_\_\_\_ will be credited with seniority, for promotional purposes, for time separated from the Sheriffs Department between \_\_\_\_\_ and the date of return to duty. No other wage is due or owing, and Officer \_\_\_\_\_ waives any claim thereto.
9. The Association shall withdraw with prejudice the grievance # \_\_\_\_\_ and shall release and discharge the Employer from any and all claims relating thereto. The Employer shall release and discharge the Union and Officer from any and all claims relating thereto. Officer \_\_\_\_\_ shall release and discharge the Association and the Employer from any and all claims relating to grievance # \_\_\_\_\_, including but not limited to the processing and arbitration of this grievance. Further, Officer \_\_\_\_\_ release the County and the Association from all liability and claims he may have had or now has with respect to his employment with the County of Washtenaw whether such claims or liability arise under Federal or State statute, constitutional provisions, principles of common law, or under the collective bargaining agreement between the County of Washtenaw and the Police Officers Association of Michigan.
10. All parties have had the opportunity to consult legal counsel and have carefully and completely read and understood all the terms of this settlement agreement. This settlement agreement is freely and voluntarily entered into by all parties without any duress or coercion.
11. The parties agree that this agreement is entered into as a full and final settlement of the above referenced matter, and shall not set a precedent. Furthermore, the actions taken by the parties in settling this matter are not meant to establish a practice or right to be utilized in any other grievance, claim, or litigation.
12. In the event the Officer grieves and attempts to process to arbitration any discipline imposed as a condition of this last chance agreement, said grievance shall be barred by release and waiver, and an arbitrator shall have no authority to modify the penalty imposed by the Sheriffs Department.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 199\_\_

\_\_\_\_\_  
OFFICER

\_\_\_\_\_  
UNDERSHERIFF

\_\_\_\_\_  
UNION REPRESENTATIVE

\_\_\_\_\_  
SHERIFF

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

Respectfully submitted,

POLICE OFFICERS ASSOCIATION  
OF MICHIGAN

  
\_\_\_\_\_  
William Birdseye  
Advocate

  
\_\_\_\_\_  
Ann Maurer  
Labor Economist

Dated: March 1, 1991





## OFFICE OF CORPORATION COUNSEL

COUNTY ADMINISTRATION BUILDING  
P.O. BOX 8645

220 NORTH MAIN STREET  
ANN ARBOR, MICHIGAN 48107

(313) 994-2463

CORPORATION COUNSEL  
Robert E. Guenzel

March 1, 1991

Raymond J. Buratto, Esquire  
Attorney at Law  
54 N. Adams Rd., Ste. 140  
Rochester Hills, Michigan 48309

RE: MERC Act 312 Case No. D88-K-2170  
Washtenaw County Sheriff and  
Police Officers Association of Michigan

Dear Mr. Buratto:

Set forth below is Washtenaw County's final offer for all economic matters that are at issue in the above-captioned matter.

1. Duration: 3 year contract, 1989, 1990, and 1991
2. Salary Adjustments:
  - January 1, 1989 - 2.5%
  - July 1, 1989 - 2.5%
  - January 1, 1990 - 2.5%
  - July 1, 1990 - 2.5%
  - January 1, 1991 - 2.5%
  - July 1, 1991 - 2.5%
3. Pension demand concerning inclusion of all employees within the defined benefit plan: The County rejects the Union's proposal and holds to present language which provides for a defined benefit plan and a defined contribution plan.
4. Pension demand concerning lowering the employee contribution: The County proposes that the employee contribution to the defined benefit pension plan be reduced to a straight 7.5% of payroll. This modification would be effective July 1, 1991.

5. Vacation accumulation: the County proposes the following modification to the vacation accumulation schedule:

1st year - 12 days  
2nd through 5th year - 15 days  
6th through 14th year - 18 days  
15 years and beyond - 21 days

The County proposes that this modification be effective July 1, 1991.

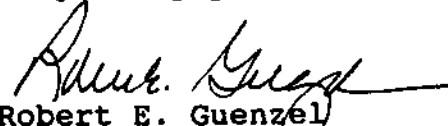
6. Duty injury/workers compensation: The County proposes that the existing language continue.
7. Gun allowance: The County proposes that the existing language continue, which provides for no gun allowance.
8. Temporary assignments: The County proposes that the existing language on temporary assignments continue.
9. Holidays: The County holds to its position as introduced at the arbitration hearing that would substitute the day after Thanksgiving for Lincoln's Birthday.

In addition I am attaching a document prepared by O. William Rye Company which sets forth the longevity for comparable counties together with a one page document which shows longevity for the City of Ann Arbor and Ypsilanti. At the end of the hearing in this matter, we agreed that we would submit longevity information concerning other jurisdictions that were being discussed.

I have enclosed an extra copy of our final offer and the longevity information. It is my understanding that you will submit these to the POAM and once you have their final offer, you will submit that to me. Along with a copy of this letter, I am submitting this information to our delegate, Michael C. Johnson.

Thank you for your consideration. If you need clarification, please do not hesitate to contact me.

Very truly yours,

  
Robert E. Guenzel  
Corporation Counsel

\FEB\REGRJB:jb

cc: Michael C. Johnson

**O. William Rye & Co.  
Personnel Management Consultants  
2182 Commons Parkway  
Okemos, MI 48864  
(517) 347-1195**

**R E C E I V E D**

January 31, 1991

FEB 06 1991

Mr. Robert E. Guenzel  
Corporation Counsel  
Washtenaw County Admin Bldg  
220 North Main  
P.O.Box 8645  
Ann Arbor, MI 48107

**CORPORATE COUNSEL**

Dear Bob:

Enclosed are two exhibits on longevity. One presents the longevity schedules and the other presents the actual payments received by a deputy. You will note that the 15 year column on the latter matches up with the longevity column on Employer's Exhibit 7.

Please let me know if you need any further information, otherwise I will plan on hearing from you after the brief is drafted.

Sincerely,



O. William Rye  
Personnel Management Consultant

**LONGEVITY SCHEDULES  
FOR SEVERAL COUNTIES COMPARABLE  
TO WASHTENAW COUNTY**  
[For contracts including road deputies]

County Exhibit \_\_\_\_\_

PRIMARY COMPARABLES	LONGEVITY PER YEAR AFTER:				
	6 Years	10 Years	12 Years	15 Years	20 Years
Ingham [1]	3%	5%	7%	7%	9%
Kalamazoo	1.25%	2%	2%	4%	6%
Saginaw	400	400	700	700	1000
<b>SECONDARY COMPARABLES</b>					
Berrien	0	0	0	0	0
Genesee	0	4%	4%	6%	10%
Monroe	150	250	300	375	500
Ottawa	300	500	600	750	1000
St. Clair [2]	2%	4%	4%	6%	8%
Washtenaw Current	2%	4%	6%	8%	10%

**NOTES:**

[1] Paid on a maximum salary of \$18,000.

[2] Paid on a maximum salary of \$35,000.

Source: Labor Agreements

**LONGEVITY PAYMENTS  
FOR SEVERAL COUNTIES COMPARABLE  
TO WASHTENAW COUNTY**  
[For contracts including road deputies]

PRIMARY COMPARABLES	LONGEVITY PAYMENTS PER YEAR AFTER:				
	6 Years	10 Years	12 Years	15 Years	20 Years
Ingham	540	900	1260	1260	1620
Kalamazoo	398	637	637	1275	1912
Saginaw	400	400	700	700	1000
Aver of Primary Comps	446	646	866	1078	1511
Median of Primary Comps	400	637	700	1260	1620
SECONDARY COMPARABLES					
Berrien	0	0	0	0	0
Genesee	0	1289	1289	1934	3223
Monroe	150	250	300	375	500
Ottawa	300	500	600	750	1000
St. Clair	660	1319	1319	1979	2638
Average of all	306	662	763	1034	1487
Median of all	349	569	669	1005	1310
Washtenaw Current	575	1151	1726	2302	2877

Source: Labor agreements

Longevity

City of Ann Arbor

After 5 years - \$	300
After 10 years	600
After 15 years	900
After 20 years	1,200
After 25 years	1,500

City of Ypsilanti

No longevity

longevity