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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION  
ACT 312 ARBITRATION PANEL

In the Matter of Arbitration Between:

THE BOARD OF COMMISSIONERS OF  
THE COUNTY OF WAYNE, MICHIGAN  
(SHERIFF'S DEPARTMENT)

-and-

MERC CASE

No. \_\_\_\_\_

SERGEANTS AND LIEUTENANTS  
CHAPTER, AND INSPECTORS CHAPTER,  
LOCAL 1917, COUNCIL 25, AMERICAN  
FEDERATION OF STATE, COUNTY, AND  
MUNICIPAL EMPLOYEES, AFL-CIO

Arbitration Panel:

George E. Gullen, Jr., Chairman  
Dudley Sherman, Employer Delegate  
Jack Woods, Labor Organization Delegate

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OPINION AND AWARD  
\_\_\_\_\_

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BOARD OF COMMISSIONERS OF WAYNE COUNTY; SHERIFF'S DEPARTMENT

This proceeding in arbitration was brought on pursuant to Act 312 of the Public Acts of 1969, as amended (Police-Firefighters Arbitration Act.) On September 17, 1979, the Michigan Employment Relations Commission appointed the undersigned, George E. Gullen, Jr., Chairman of a panel of arbitrators in a dispute involving contract negotiations between the parties. Mr. Dudley Sherman was named by the County of Wayne as its delegate to the panel. Mr. Jack Woods was named by Local 1917, Council 25 of AFSCME as its delegate to the panel.

Hearings were held on November 6, 1979 (prehearing conference), December 21, 1979, January 16, 1980, January 17, 1980, and January 21, 1980 (post-hearing conference). All hearings were held in the offices of the Wayne County Labor Board, Detroit, Michigan. Representing the Employer-County of Wayne were Mr. Robert G. Sheedy for the Wayne County Labor Board and Mr. John K. Godre, Assistant Corporation Counsel, County of Wayne. Representing the Labor Organization - Local 1917, Council 25 of AFSCME was Mr. George M. Maurer of the law firm of Zwerdling and Maurer, Detroit, Michigan.

Prior to the hearings each party submitted written exhibits and statements of position. During the hearings each party presented testimony and exhibits on the issues in dispute. Pursuant to stipulation of the parties, each submitted last best offers on February 6, 1980 and briefs on May 7, 1980. The arbitration panel met to deliberate on May 13, 1980, and May 17, 1980.

ISSUES

I. Rates of Compensation

II. Layoff Provision

I. BACKGROUND

The last collective bargaining agreement in effect between the parties expired on June 30, 1978. Negotiations and mediation sessions were held over several months in 1978 and 1979. By November 5, 1979 the parties had reached agreement on all but two issues: rates of compensation and layoff clause language.

During hearings in these proceedings the parties introduced into evidence Joint Exhibit 1, containing those contractual provisions upon which the parties had reached agreement. Contained therein at Article 42, the parties agreed that the new contract would be effective as of July 1, 1978 through June 30, 1980. It was stipulated by the parties, at hearing, moreover, that duration of the agreement was not an issue before this panel of arbitrators. Subsequently, the County stated to the panel that it was proposing a three-year agreement -- from July 1, 1978 through June 30, 1981. In its last best offer, however, the County proposed a two-year agreement ending June 30, 1980. In its last best offer the Union made an offer on rates of compensation which would apply through June 30, 1981. In response to inquiry of the panel on the inconsistency, the Union stated that its proposal was severable, and that the panel could treat its proposal as either a two-year or a three-year proposal. It is the position of the panel that it is in the best interests of the parties to be both at the bargaining table as early

as practicable and that as the parties had previously communicated agreement on duration, the new contract shall remain as originally proposed and agreed on duration: July 1, 1978 through June 30, 1980. Bargaining should commence immediately upon issuance of this arbitration award.

## II. RATES OF COMPENSATION

### Present Position:

Members are presently being paid (1977 rates) the following base rates supplemented by cost of living adjustments:

	<u>Base Rate</u>	<u>Total Paid</u> (Base plus COLA)
Sergeants	\$24,768.00	\$25,594.80
Lieutenants	\$27,568.00	\$28,394.80
Inspectors	\$29,818.00	\$30,644.80

### Union's Last Best Offer:

The Union proposes increases in the base rates as set forth below, together with actual Cost of Living adjustments and proposed total compensation.

	<u>Base Rate</u> <u>7/1/78</u>	<u>COLA</u>	<u>TOTAL</u>
Sergeants	\$25,855	\$1,482	\$27,337
Lieutenants	\$28,844	\$1,482	\$30,326
Inspectors	\$31,247	\$1,482	\$32,729

	<u>BASE RATE</u> <u>7/1/79</u>	<u>COLA</u>				<u>TOTAL</u>
		<u>March-</u> <u>May</u>	<u>June-</u> <u>August</u>	<u>Sept.-</u> <u>Nov.</u>	<u>Dec.-</u> <u>Feb.</u>	
Sergeants	\$28,789	447.20	83.20	176.80	265.20	\$29,761.40
Lieutenants	\$31,689	447.20	83.20	176.80	265.20	\$32,661.00
Inspectors	\$34,277	447.20	83.20	176.80	265.20	\$35,249.00
		(86¢ COLA factored in)				

	BASE RATE 7/1/80	COLA				TOTAL
		March- May	June- August	Sept.- Nov.	Dec.- Feb.	
Sergeants	\$31,612*		88.40	176.80	265.20	\$32,142
Lieutenants	\$34,743*		88.40	176.80	265.20	\$35,274
Inspectors	\$37,539*		88.40	176.80	265.20	\$38,069

\*Including 86¢ COLA factored in June-July '79  
and 67¢ COLA factored in June-July '80.

County's Last Best Offer:

The County proposes that there be no increase in the base salaries, and maintenance of the present cost of living provisions.

Discussion:

Under Act 312 this panel must base its determinations on wages and conditions of employment on eight factors:

a. Lawful authority of the employer:

This factor is not relevant to this issue except in relation to the question of ability to pay, which is discussed below.

b. Stipulation of the parties:

There were no stipulations of the parties relevant to this issue.

c. The interest of the welfare of the public and the financial ability of the unit of government to meet those costs:

Much documentary and testimonial evidence was submitted by the County in support of the contention that the County is financially unable to pay increased wages.

On September 27, 1979 the Board of Wayne County Auditors, in a report to the Wayne County Board of Commissioners, estimated a deficit for fiscal year 1978-79 of \$18 million. According to the County, this deficit must be financed in the budget for 1979-80. The deficit has accrued over the last four or five years and has resulted in the elimination of several hundred jobs in the County government in the last several years. This deficit is explained in part by the failure of property values in the County to keep pace with increases in the cost of living, as the principal source of revenue is the property tax (based on assessed valuation.)

A great volume of evidence concerning the current financial status of Wayne County is before the panel. A detailed analysis of that evidence in this opinion, if possible, would not serve any great purpose. The question of the employers ability to pay the Union demand in this case is complex and difficult. Without question the County is financially distressed and carrying a huge deficit. Available revenues are difficult to measure, and anticipated revenues are highly speculative. It further appears that the ability of the County to raise additional funds through taxation and borrowing are severely limited.

On the other hand, the Union contends, the difference between the Union's wage and COLA proposal and the County's proposal is \$87,255 for 1978-79 and \$213,306 for 1979-80, or less than one-tenth of one percent of total County revenue each year.

This panel cannot say either that the County can afford to pay the Union demands or that it cannot. We do know that the County's financial resources are severely limited. It is also recognized that while the employer's ability to pay is a significant factor to be considered, it carries no greater weight than the other factors that Act 312 requires the panel to weigh. In this case the employers ability or inability to pay is not a compelling factor requiring one decision or the other

on the issue.

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

At hearing the Union submitted a considerable amount of evidence to support the position that the members of this bargaining unit should have parity with employees of the Detroit Police Department in the same or similar positions. In its last best offer, however, the Union expressly abandoned its demand for parity. The union has provided no other comparable data for the panel to consider and has not argued that their demand is supported by such data.

The only wage figures of comparable employee groups were those provided by the County from six other Michigan county sheriff's departments which include urban areas of significance. Wage figures for those are as follows:

SERGEANTS

<u>COUNTY</u>	<u>WAGE ONLY</u>	<u>COLA</u>	<u>YEAR PAID</u>
Wayne	\$ 24,768	Yes	1977
Oakland	20,550 *	No	1979
Macomb	22,559	Yes	1979
Ingham	21,865	Yes	1979
Genesee	21,293	Yes	1979
Washtenaw	24,200	No	1979
Kent	19,608	No	1980

(\* Oakland County is in arbitration and the unit there has rejected a county wage proposal of \$22,760 for the year starting July 1, 1980.)

LIEUTENANTS

<u>COUNTY</u>	<u>WAGE ONLY</u>	<u>COLA</u>	<u>YEAR PAID</u>
Wayne	\$ 27,568	Yes	1977
Oakland	24,818	No	1979
Macomb	24,702	Yes	1979
Ingham	23,665	Yes	1979
Genesee	22,941	Yes	1979
Washtenaw	26,270	No	1979
Kent	23,325	No	1980

<u>INSPECTORS</u>			
<u>COUNTY</u>	<u>WAGE ONLY</u>	<u>COLA</u>	<u>YEAR PAID</u>
Wayne	\$ 29,818	Yes	1977
Oakland (Captain)	27,350-29,250	No	1979
Macomb	---	---	1979
Ingham (Captain)	25,195	Yes	1979
Genesee	---	---	1979
Washtenaw	---	---	1979
Kent (Captain)	25,475-27,500	No	1980

The County contends that the work performed by command officers in Wayne are the same as in the comparable countys' departments. The comparables cited are purported to be the largest counties in population in the state as well as in terms of manpower in the Sheriff's Departments. Oakland County is the next largest county to Wayne in the state in both population and department manpower, and is contiguous to Wayne. The County contends that, even without adding COLA payments into the wage rate, the Wayne County command officers are the highest paid in the state at 1977 rates as compared to the present rates (1979) paid in the comparables.

The County further submits that its command officers receive much more in fringe benefits than the officers in the other counties. Evidence presented by the County demonstrates that its officers receive such benefits as shift differential, Saturday and Sunday premiums, on call pay, stand by pay, and optical insurance while few or no other comparable counties provide the same. In terms of total fringe benefit package, Wayne Countys' is the best in both the number and benefits in the fringes provided, including substantial fringe increases in this agreement. The County further contends the members of this bargaining unit will continue to have as part of their new contract a cost of living provision that is greater than or equal to any that is or has been



negotiated by any government employee in Michigan. That provision is an uncapped formula of .4 point increase in CPI = 1¢ per hour. COLA payments for 78-79 amounted to \$1597.00 and for 79-80 it is estimated to be \$2447.00.

Even the Detroit Police Department command officers receive fewer fringe benefits (apart from retirement pay) than this unit, and the Detroit COLA is capped.

e. The average consumer's prices for goods and services (Cost of Living):

Little evidence was submitted by either party on changes in the cost of living during the term of the proposed contract and its relationship to the salary proposals. The panel can take notice, nevertheless, of the fact that there has been a significant increase in the cost of living over the period of July, 1978 to the present. For that period of two years the County proposes no increase in salary rate with salary payment increases resulting from the cost of living allowance. Over the two years the increase in total pay due to COLA payment amounts to five percent to six percent. The Union proposal on wages would provide increases over the two years of about 14.5%. The Union contends that its offer almost matches inflationary growth.

f. The overall compensation presently received by employees:

This factor is considered in paragraph d. above. The combination of wage rate, COLA and fringe benefits presently received by the members of this unit is substantially more than like classifications in other counties. The contract provisions already agreed upon by the parties for the new contract include additions of or improvements in medical insurance coverage (master medical), \$15,000 increase in life insurance coverage, dental insurance, uniform allowance increase, personal business leave improvements, and shift differential and weekend premium increases. The County estimates the total costs

of just the improvements agreed upon to be \$100,623 or \$1,258 per man.

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

These are noted above where relevant.

h. Such other factors which are normally or traditionally taken into consideration in determining wages, hours and conditions of employment:

Not previously considered is a comparison of the partys' proposals with contract settlements in other units within Wayne County employ.

The Union contends that no other Wayne County employee of any kind received no increase in base wage rate over the same period as this contract; that no other employee has received an increase in total compensation as low as that proposed here by the County; and that no other County employee has been asked to accept the sacrifice demanded of this bargaining unit.

Another factor to consider is the relationship between the command officers and the sheriff's deputies at the police officer level.

The County's evidence suggests that over the period of 1969 to 1977 the police officers' base salary has increased 89% while the command officers' salaries have increased over 100% over the same period. Over the same period, the County contends, the percentage pay differentials between police officers and the command officers has increased.

The Union argues that under the County's wage proposal the traditional differentials between deputies and the command officers will drop from 27% (sergeants), 41% (lieutenants) and 53% (inspectors) to 12% (sergeants) 24% (lieutenants) and 34% (inspectors); while normal differentials would be maintained under the Union's proposal.

Moreover, the Union contends, under the County's wage proposal the Wayne County command officers will be substantially below the salaries paid to their counterparts in the City of Detroit Police Department. However, no dollar figure for such a comparison was placed in evidence.

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The County's proposal, that there be no base salary increase for the years 1978-79 and 1979-80 is a very difficult one to accept. Annual improvement in salary bases has been the norm for this bargaining unit and in both public and private employment in general for years. The concept is firmly established. A primary rationale for the annual improvement is the continuing increase in the cost of living. With a comparatively generous COLA formula (uncapped), the command officers do have some protection against slipping purchasing power. An existing longevity benefit provision also provides some productivity compensation for qualifying officers.

No increase in base also affects the differentials between the command officers and the police officers, but the County's evidence suggests that those differentials have (for the most part) steadily increased over the past few years. The decrease in differentials that would result from adoption of the County's proposal could not be considered excessive.

Even with no base salary increase, the command officers would remain at the top of the ranking of their counterparts in the only offered comparable counties. Moreover, the members of this unit enjoy substantially greater fringe benefits than is received in any of the comparables submitted. The increased fringes gained by the officers in the contract provision agreed to to date are substantial.

There is grave concern about the present financial condition of Wayne County. It does not appear that payment of the compensation demanded by the Union would bankrupt the County, but neither does it lend any support to the Union's position.

There is little equity in singling this bargaining unit out of all the other units in the County for no wage improvement, if that is in fact the case. Elimination of an annual improvement factor under present economic conditions is also hard. On the other hand the increases sought by the Union are excessive in view of the salaries, COLA and fringe benefits paid in the comparable units submitted. This unit's top rank in salaries will be maintained even if the County's offer is accepted and the advances are made in COLA and fringes are substantial. In light of the wage rates in other counties and the added benefits the command officers are receiving in this contract, the demand of the Union has little evidentiary support.

The Chairman believes that the wage proposal of each of the parties is unreasonable in the light of the criteria imposed upon the panel by Act 312. The Union members should receive some, if minimal improvements in the salary base. However, Act 312 requires that this panel accept one or the other of the last best offers -- compromise is prohibited. The conclusion that an overall review of the case compels is that the last best offer of the County is less unreasonable than the Union's and therefore must, regretfully, be adopted.

II. Layoff Provision

Present Position:

(Article XVI - Layoff and Recall, Section 1, AFSCME-County Contract 7/1/76-6/30/78);

"A layoff shall be defined as the separation of an employee for lack of work. Regular employees who are scheduled to be laid off shall be given a notice not less than two weeks prior to layoff. The Employer shall furnish the Local Union President a list of the employees to be laid off one week prior to the date the notices of layoff are issued to the employees. The Union shall assist management in all matters pertaining to layoff and recall upon request."

Union's Last Best Offer:

The language of the immediately preceding collective bargaining agreement shall be continued and that "A layoff shall be defined as the separation of an employee for lack of work."

County's Last Best Offer:

The layoff provision shall provide as follows:

"A layoff shall be defined as a separation of an employee for lack of work or lack of funds. Regular employees who are scheduled to be laid off shall be given notice no less than two (2) weeks prior to layoff. The Employer shall furnish a copy of the Layoff Notice to the Union." (Emphasis added.)

Discussion:

The County argues that the language change -- allowing the employer to layoff employees due to lack of funds -- is necessary to allow the County to decrease the number of positions in the unit when

and if the County must do so due to fiscal restraints. According to the County, the existing layoff provision in the AFSCME contract appears in no other labor contract in the County government, and because layoff clauses are mandatory subjects of bargaining, with the present language the County could never reduce the number of positions in the bargaining unit. This is so, says the County, because under state law, the Sheriff has continuing duties: It is impossible for there to be a "lack of work."

No evidence was presented by the parties concerning layoff provisions in comparable unit contracts and little other evidence or argument was offered on this issue.

There appears no compelling reason for adopting the County's last best offer on this question. The last collective bargaining agreement made no provision for layoff for lack of funds. The evidence does not give a clue as to whether or not there were any "trade-offs" for adopting that language. There is no evidence to suggest that there is any present problem being experienced by the County due to the present language. The assertion that a layoff is impossible under the present language in light of existing constitutional statutory and case law does not appear to the Chairman to have substantial merit. Finally, because the parties will be engaging in negotiations for a new contract immediately, any change is best left to agreement of the parties.

Summary:

1. While the wage offer of neither the County or of the Union is "acceptable", the panel has no choice but to select one or the other. The Union has provided no evidence to justify its last best offer under any of the criteria set out in Act 312, having withdrawn even its claim of parity with the City of Detroit. The County has submitted evidence on comparable communities consisting of the largest counties in Michigan. On the basis of that evidence the panel has no choice but to accept the County's unreasonable offer.

The result of no base salary increase but substantial COLA payments over the contract period is that the classifications involved remain in a substantially better position than any other sheriff command officer in the state. Those COLA payments will have the effect of a 5% to 6% increase in dollars paid during the period with some rolled into the base as the new contract period begins.

2. The more substantial increases under this agreement will result from significant fringe benefits already agreed to by the parties. The increase in living costs will have been partially offset by such increased benefits. Pay envelope earnings will also be increased as a result of shift premiums and other such premium payment increases for weekend or shift change work schedules. The amount of such increase can only be estimated but it will be an appreciable benefit increase not enjoyed by similar employees in other counties.

3. Improvements in the County's financial condition are anticipated. The contract duration settled herein at two years (1978-80) puts the parties in a position to immediately begin bargaining

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on 1980 wage rates and minimizes any period of sacrifice. Moreover, as the parties must commence bargaining on a new agreement, no contract language change in the layoff provision is awarded by the panel.



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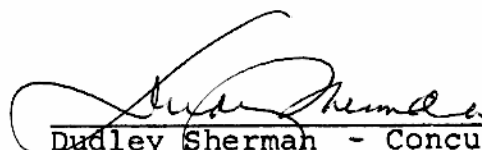
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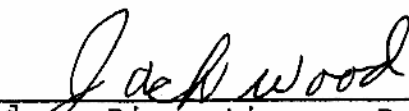
I. On the issue of Rates of Compensation the last best offer of the County is adopted.

II. On the issue of Layoff provision the last best offer of the Union is adopted.

Dated: 5-20-80

  
George E. Gullen, Jr.

  
Dudley Sherman - Concurring in Part I of the award and dissenting on Part II of the award.

  
Jack Wood - Dissenting on Part I of the award and concurring in Part II of the award.