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DECISION AND AWARD

ACT 312 PROCEEDING

WAYNE COUNTY BOARD OF COMMISSIONERS
Sheriff's Department

March 11, 1983

and

Case No. DG80-E-2901

SERGEANTS AND LIEUTENANTS CHAPTER,
AND INSPECTORS CHAPTER, Local 1917,
COUNCIL 25, AFSCME, AFL-CIO
Command Officers

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

Wayne County

Subject: Contract Provisions, July 1, 1980-November 30, 1983
Agreement:

- 1) Article 6 -- Representation
- 2) Article 10 -- Investigation Procedure
- 3) Article 17 -- Promotions
- 4) Article 32 -- Uniforms
- 5) Article 33 -- Safety
- 6) Article 41 -- Rates of Compensation

Hearing Data:

	<u>Date</u>
Petition for Arbitration:	January 23, 1981
Hearings with Chairman Gullen:	May 12, 1981
	June 15, 1981
Hearings with Chairman Kahn:	December 1, 1981
	April 9, 1982
	June 14, 1982
	August 17, 1982
	August 1982
Submission of Offers:	September 1982
Briefs On Behalf of Final Offers:	January 21, 1983
Revised Final Offers:	

Kahn, RactWE.

REPORT

These proceedings have been conducted pursuant to Act 312, Michigan Public Acts of 1969, as amended. The hearings were initiated by petition of the Union on behalf of the Command Officers of the Wayne County Sheriff's Department, on January 23, 1981. MERC soon appointed as Chairman of the Act 312 panel Professor George Gullen. The Employer's representative on the panel is Dudley Sherman. The Union's representative is Dale Orth.

Professor Gullen convened a hearing, which was followed by a return to bargaining and a second hearing. Shortly afterward, illness required his resignation. The Commission then appointed this Chairman. A series of conferences and hearings were held, also interspersed with efforts at negotiations to resolve the disputed issues. After the close of the hearings and in accordance with the Statute, each party submitted a final offer and supporting briefs.

The Chairman, after reviewing the offers, most particularly the wage proposals, convened representatives of the parties to urge further discussions, each with its own constituency, and then to return to bargaining. The Chair advised the parties that she regarded their offers as unacceptable, the Employer's being too low, and the Union's too high. She requested the parties, if negotiations could not produce a settlement, to submit revised offers concerning Article 41, on compensation.

The resumed negotiations did not achieve a settlement on compensation, and the matter is now up for decision by the panel.

Hearings were conducted with the understanding that the term of the Agreement was not in dispute. The new contract was to run from July 1, 1980 through to November 30, 1983. The parties are unable to agree upon provisions in six articles of the contract. The Report will proceed with an examination of the issues involved in each of these articles, in their numerical order.

1) Article 6. The parties are divided on a non-economic issue. In the expired Agreement, Section 1 permitted "Union Representation to consist of the local president, one chapter chairperson for each chapter, one committeeperson, and one shop steward." The Union seeks to add, as an alternative to the local president, the position of vice president, and it would make no other change. The Employer opposes this demand and also seeks to eliminate the committeeperson. The Union

makes the proposal to add the vice-president because currently the local president is retired, and the vice-president is functioning in his place. The Employer presents no persuasive reason to oppose the Union's request, nor is there a showing that retention of the committeeperson is unduly burdensome.

Article 6 Award

The local vice-president shall be added in the alternative to the positions named in Section 1 for purposes of "Union Representation". It is understood that only one of these positions -- president or vice-president -- will be so protected at any one time. The committeeperson will be retained.

2) Article 10 Investigation. The parties are divided on both economic and non-economic issues. The Union proposes three changes in this Article.

The first is economic. The Union seeks a provision which would obligate the Employer to retain on the payroll a member who is suspended when charged with a commission of a felony. It would authorize transfer to other work assignment, presumably removed from active law enforcement. Currently that member is suspended without pay. Insurance payments are continued until the suspension or dismissal is resolved through arbitration or court decision, with provisions for restitution under specified circumstances. The Employer vigorously opposes the Union's offered liberalization, emphasizing that members in this bargaining unit are Command Police Officers.

The Chairman of the panel concurs with the Employer's position that this provision should not be adopted. The contract contains adequate safeguards to protect the rights of the affected member. It has not been demonstrated that the Union's proposal has substantive merit.

The second change proposed by the Union would eliminate a portion of Section 2 of this Article, and it is a non-economic issue. The Union seeks to eliminate the second sentence of that section, which states:

"A member must take a leave of absence to run for County or State Office."

The Employer opposes such a change, stating in its brief that the Union has shown "no cogent reason" for such an amendment, that this was bargained language and was initiated by the Civil Service Commission.

The panel regards this absolute requirement that anyone who seeks a County or State elective office take a leave of absence as an unfair burden on the members. The blanket requirement would seem to impose undue hardship on the person seeking such office without any showing that the member's activity off the job impinges on his on-the-job performance. Each case should be considered on its individual facts. The member who undertakes a political campaign whose campaign obligations are not shown to distract him/her from full attention to the demands of his/her job should not be obligated to lose income during such period.

The third proposal, with respect to Article 10, Section 3, is economic. This section concerns the Employer's role in providing legal representation for a "member against whom a claim or civil suit is brought, for any act...arising in the course....of...employment". At present, the Employer may "elect" to provide such representation. The Union would require such representation and would apply it to retired members as well. It is the Union's testimony that it could recall no time when the Employer has refused such representation to members.

The Employer wishes to retain the right to review a case before making its decision on legal representation and/or indemnification.

The Union's demand would deprive the Employer of its proper right to make a determination on a case by case basis. It would seem that the contract provides for appeal procedures in the event that the Employer makes a decision adverse to a particular member. The deprivation of a right of review to the Employer does not appear meritorious.

Article 10 Award

Section 1-L. The Union's proposal is rejected. Section 2, the Union's proposal is adopted and the second sentence of the section is eliminated.

Section 3. The Union's proposal is rejected.

3) Article 17 Promotions, Demotions, Lay Off and Recall.
The Union proposes a new Section 6 concerning the filling of vacant positions. This is an economic provision. The Union

would require that "all positions of lieutenant and inspector ...be filled by promotion of a member...subject to Section 5 above [recall list of employees laid off or demoted]". The Union would further require that no encumbrance be placed on any vacant position, and that all vacant positions be filled within twenty calendar days of becoming vacant.

The Union contends that this new proposed section incorporates the same language which currently exists in the collective bargaining agreement between Local 502, the Deputies Union, and this Employer. Further, it is stated that when persons go on sick leave, the position is filled after twenty days.

The Employer distinguishes this Chapter's situation from Local 502's, by stating that the parallel language for 502 was adopted to meet safety concerns. There, the Union persuaded the Employer that when jobs were not filled, the undermanning posed a hazard to remaining employees, citing the example of jails. The Employer believes such considerations do not apply to the Command Unit.

The panel has been shown no convincing argument for amending Article 17 to provide for the filling of all vacancies from the recall or demotion list. Furthermore, the panel concludes that the requirement that jobs be filled within twenty calendar days places an undue restriction on the Employer's flexibility with respect to determining which job should be filled and within what time period. Very different considerations may govern the filling of a job vacated by a person going on sick leave from the considerations governing a job vacated under other circumstances, some of which may involve much longer periods of time. Also, the panel is not persuaded that the same safety considerations which pertain to Local 502 apply to this bargaining unit, insofar as the filling of vacant jobs is concerned.

Article 17 Award

The Union's proposals with respect to Article 17 will be rejected.

4) Article 32 Uniforms, Clothing and Equipment Allowances.
This is an economic issue. The first issue concerns Section 2, which lists the standard uniform items and to which the Union

would add a Second Chance Bullet Proof Vest. The second issue concerns Section 7 and the amount of the annual clothing allowance, which has been Six Hundred Dollars. The Employer proposes now to distribute Three Hundred Fifty Dollars of that sum for maintenance and to place the remaining Two Hundred Fifty Dollars as a draw by the member for replacement of the uniform equipment listed in Section 2-A, to be purchased on a voucher from approved vendors. The Employer would add a provision that the money allocated for uniform replacement would be accumulative for the term of this Agreement. The Union would increase the allowance to One Thousand Dollars, to be issued to non-uniformed as well as uniformed employees.

The Union failed to establish the job-related need of this unit for a Second Chance Vest. It appears not to be pressing its demand for a larger allowance, as well. The Union may prefer the present language to the Employer's proposal, but in view of the strictures of the statute, the arbitration panel is not free, in resolving an economic issue, to make an award of something different from what has been presented in the parties' final offers. Accordingly, the panel will award the Employer its offer.

Article 32 Award

The panel approves incorporation of the language proposed by the Employer for a new Section 8 and new Section 9 of Article 32.

5) Article 33 Employee Safety. The Union's proposals to amend this article are both non-economic and economic.

The Union proposes a new provision of Section 1-(A)-1, to establish a safety committee. Such a committee would enable the members to present and exchange with the Employer views and concerns regarding safety issues. This is not an uncommon method of addressing problems of mutual interest to the parties. The Employer's post-hearing brief does not oppose the proposal. It will be adopted.

The next change urged by the Union is economic and refers to the number of Command Officers to be assigned in certain work locations. The Union views this proposal as based upon safety concerns. For example, where a single Command Officer is now assigned on midnights at the jail locations, the Union would

require there be two. The Union also seeks to limit the span of control for a Sergeant, for example, to twelve police officers in the jail.

The panel is not persuaded by the evidence that there are valid and substantial safety reasons for these proposed requirements. There may well be sound reasons related to better job performance, both by the Command Officers and those being supervised. This pertains not only to the placement of one Command Officer on midnights, but also to the numbers of persons that officer is required to supervise. At this point, however, to incorporate such provisions in the Agreement under the rubric of a safety requirement does not appear appropriate. These concerns more properly need to be addressed in terms of work load, and it is to be hoped that the parties could resolve the real concerns through negotiations.

This conclusion is applicable to the demand that officers not work out of their budgeted positions. The Union's testimony was that such assignments undermine the bidding procedures. Clearly this is not safety matter but one that pertains to how much limitation there should be on the Employer's right to make out-of-bid assignments. No clear safety relationship has been evidenced. These proposals cannot be adopted.

Article 33 Award

The Union's proposals for a safety committee is adopted. The remaining Union proposals for changes are rejected.

6) Article 41 Rates of Compensation. This dispute is clearly economic. It concerns the amount of wage payments to be made for the term of the new Agreement. The Employer presents two issues, the effective date of any wage change and term of payments, as well as the amount. The Union's proposal concerns only the amount, and assumes the effective date of compensation to be the same as the term of the Agreement as it was stated at the time of the hearing, namely, July 1, 1980 through November 30, 1983.

For purposes of a simpler presentation, this report will address for the most part the wage data concerning sergeants. It should be understood that the compensation of the other major classifications, namely lieutenants and inspectors, are set in a certain relationship to sergeant pay, and that relationship should be assumed. The same is true for the Police Programmer and Communication Supervisor classifications.

At the expiration of their previous contract, the base annual rate for sergeant was \$24,768. This was the same rate that had been in effect since 1977. In addition, a COLA payment has been made on a quarterly basis. COLA payments for the year commencing July 1980 were \$4177; for the year commencing July 1981 COLA was \$5242. This latter figure is the equivalent of \$2.52 per hour.

The Employer proposes to "roll-in" the \$2.52 to the sergeant's pay wage rate, which would mean the annual base rate would be \$30010. No "new" money payment is involved here because the COLA has already been paid. The Employer would eliminate a COLA provision from the Agreement at the time of the roll-in. This roll-in would take place effective June 1, 1982.

The Employer further proposes to add the COLA which has accumulated since June 1, 1982, and roll it in, effective January 3, 1983. The Employer's Final Offer stated that the additional COLA was \$625.00, but in subsequent findings, it appears to be \$644.00, or \$.31 per hour. Hence, effective January 1983, the base wage for sergeant would be, under the Employer's offer, \$30635 or, if the more recent figure is used, the base figure would be \$30654.

The Employer also proposes to create as of July 1, 1983 a class of Senior Sergeants. Members who have been in the class of sergeant for five continuous years would be made senior sergeant with a pay differential of \$700.00 above sergeant.

The Union's demand with respect to the treatment of COLA differs somewhat from the Employer. The Union also seeks a wage increase above the COLA roll-in.

The Union would have the COLA continue as a separate payment until November 30, 1982, at which time it would be rolled in to the base rate, covering the last year of the contract.

With respect to the non-COLA increase, the Union seeks the following: For the year beginning July 1, 1981, the Union demands a two percent increase. Basing this upon the rate of \$24768, the new wage base would be \$25263, plus COLA. Beginning in July 1982, it seeks a three percent increase, making the new base \$25758, plus COLA. Then, on November 30, 1982, the new base would become \$31644 -- because of the \$2.83 per hour roll-in. The Union then seeks a four percent increase on that base, which would make the wage base \$32910 on July 1, 1983.

The criteria for judging the relative merits of each party's proposal are set forth in the Statute as "applicable factors". This report will discuss the evidence presented in light of the relevant "applicable factors". Factors (a) "lawful authority of the employer" and (b) "stipulation of the parties" need no elaboration at this point.

"(c)" The interest and welfare of the public and the ability of the unit of government to meet those costs." The County insists it is financially unable to pay any increased wages. It maintains its ability to levy taxes is limited by the Constitution and existing laws. It has attempted through a millage election to increase its revenues but was unsuccessful. Further, the County points out that its property tax base is not increasing at a rate enjoyed by other counties, and in fact, its proportionate share of State Equalized Valuation has diminished markedly. It asserts a budget deficit of over seventeen million dollars. The County fears added deficit due to the adverse economy throughout the State, affecting State of Michigan allocations to the County.

Arbitrator Gullen stated it very well in his Opinion and Award for the Act 312 Proceeding covering the last contract. He said,

"A great volume of evidence concerning the current financial status of Wayne County is before the Panel. A detailed analysis in this opinion, if possible, would not serve any great purpose. The question of the Employer's 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."

Gullen's words are as appropriate today as they were in 1980. In fact, the situation appears to have worsened with much higher budgetary deficits than existed at that time, County lay offs, and poor prospects for the immediate improvement.

"(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

"(i) In public employment in comparable communities."

Wayne County is the largest Sheriff's Department in the State and in that sense, true "comparability" is not a valid concept if comparisons are limited to other Michigan county Sheriff's Departments. Accordingly, the evidence submitted to the parties includes some nearby police departments as well. It should be further noted that COLA figures in many cases are not available, and further that COLA formulas vary. It is not possible therefore to state the exact amount of base wages. Also, the figures reflect maximums, and in some instances, the community may require a certain length of time in service before reaching the maximum. With these limitations, the following figures state sergeant wages for the named employers:

<u>Employer Name</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Wayne County	\$24768*	\$24768*	\$24768*	
Allen Park	\$24719*	\$25934*		
Ann Arbor		\$30997	\$33476	\$36155
Dearborn	\$27032	\$27032	\$29214	
Detroit		\$32082	\$32082	
Genesee County	\$24393	\$24881*	\$27256*	
Ingham County	\$25925*	\$27715*		
Kent County	\$21740	\$23861	\$26400	
Livonia	\$26665*	\$29370*		
Macomb County		\$30712	\$32708	\$34017
Oakland County			\$27454	\$29366
Redford Township		\$25490	\$27460	\$29570
Royal Oak	\$26601	\$28197	\$29606	
Southfield	\$29675		\$30862	
Trenton	\$23981	\$25300	\$26692	\$28227
Warren	\$28123*	\$28373*		
Washtenaw County	\$25700	\$27500		
Westland	\$26183	\$28668		

*These counties or communities pay COLA in addition to the stated wage.

The 1980 Act 312 panel awarded no increase to this bargaining unit. Its report stated that neither party's offer was "acceptable". In making its decision, the panel appeared to emphasize that even without a base increase, the Wayne County officers would remain at the top of the rank of their counterparts in the only offered comparable counties. Those counties were Oakland, Macomb, Ingham, Genesee, Washtenaw and Kent.

In this regard, this situation has changed somewhat. Because of the varying COLA formuli, precise figures on wage pay-outs are not available. That was true of that last 312 report as well. What becomes apparent is that Wayne County's relative position has slipped in these past two and one-half years. Genesee, Ingham, and Macomb Counties are now higher than Wayne County. Washtenaw County which does not pay COLA appears to have raised its officers by 13.6 percent; Kent County -- although the figures are not totally clear--appears to have given at least a 9.8 percent increase, and perhaps it was as much as 20 percent. (1980 figure reported by Gullen was \$19608; the parties in this proceeding provided a 1980 figure of \$21740).

Figures were provided in the current proceeding for a number of nearby urban communities. That comparison was not made in the prior Act 312 proceeding. Wayne County sergeants are paid less than Ann Arbor, Detroit, Livonia, Southfield, and Warren.

Factors (e) and (f) deal with consumer prices and with overall compensation including fringe benefits. The COLA payments are deemed to deal with consumer prices. The parties presented no evidence on fringe benefits. Factor (g) addresses "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings". The Union throughout the hearing emphasized the severe cutbacks which have occurred in this bargaining unit, with an adverse impact caused by substantial demotions.

The last factor which the Statute offers is (h) which addresses "other factors, ...which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment...". Patterns of settlement, as

distinguished from comparisons of wage levels, which are covered in (d) (i), are "normally or traditionally taken into consideration" as highly relevant evidence. The Employer agrees with this view, for it cites the circumstance that it has granted no increases to other groups of its employees whereas this group seeks a substantial increase. The Union also agrees that it is proper to compare this bargaining unit with other units bargaining with this Employer. It maintains its relative gain between 1969 and 1981 has been substantially less than the gains made by members of several other bargaining units. It specifies the deputies, practical nurses, general fund employees.

It is relevant in this connection to examine wage settlements achieved by County employees in the past few years. The following is a very brief summary of this history.

Attorneys. Their wages were last increased in 1977, by five percent. In 1983 they received a COLA roll-in, and COLA is to be continued but capped at twenty-five cents per hour, until December 1984. A new salary scale was negotiated at this time, with a lowering of the entry level salary and a corresponding raise in pay for senior attorneys. Details were not available.

Deputies. An Act 312 Panel awarded a five percent increase in their wages in 1977, with another five percent increase in 1978 and another in 1979. They received COLA payments as well. In October 1982, two dollars per hour of the COLA money was rolled in, and they continue to receive uncapped COLA for the duration of their agreement.

General Fund Employees. These employees had a four percent wage increase in October 1978, two percent increase in July 1979, and a three percent increase in December 1979. They also received COLA payments during this time. In July 1980, fifty percent of their COLA was rolled into their wages; they continue to receive COLA, uncapped.

Nurses. They received a twelve cent-per-hour across-the-board wage increase in December 1979. They receive COLA. In December 1979 fifty cents-per-hour of the COLA money was rolled into their wages.

Supervisors. They received a three percent wage increase in December 1978 and a three percent increase a year later. In December 1981, One Dollar Fifty per hour of their COLA money was rolled in; they continue to receive uncapped COLA.

Sergeants and Lieutenants, Inspectors. This bargaining unit had its last wage increase in 1977. Each employee received

a \$2018 increase, which consisted of \$835 COLA money rolled in and a 5.2 percent increase.

As noted earlier, the parties were urged by the Panel Chairman to modify their respective offers with the expressed hope that they achieve a negotiated settlement. That proved not possible. The circumstance that the Union moderated its final offer to a greater degree than did the Employer, however, does not make that final offer fall within the realm of reasonableness. The Employer has evaluated the Union's "final offer" for a two-three-four percent wage increase to cost \$125,410. It has priced the cost of rolling in the COLA at \$61,807, which is the same in either party's offer. Fringe costs are increased by .307 percent of the amount of the increase in the base wage. Hence, the difference which separates the two offers, for the term of this Agreement, is \$125,410 plus the increase which that amount places on fringe costs. The difference is not enormous in terms of overall budgets. However, the economic facts of life in Wayne County make such an expansion at this time simply not conscionable.

This panel cannot, in the face of the enormous economic problems facing this County and this State, at this time, award the wage increase which is demanded by this bargaining unit. The panel cannot ignore the evidence presented by the County in connection with its ratings by a major investing service. The credit report commented:

"Property tax revenue has not kept pace with rising expenditures owing to slow growth in its older industrial base, of which Detroit is a major part, and to the restrictions of a state imposed tax rate limit for operations.the inability to obtain voter approval for additional operating millage has further constrained operations. Other revenues such as state shared income taxes, real property transfer taxes and inter-governmental reimbursements have not met budgetary expectations."

The service went on to comment on the adverse impact of a considerable weakening in manufacturing, a poor rate of growth in assessed valuation, population losses and high rates of unemployment in the population.

I am not unmindful in this connection of Professor Gullen's statement that,

"Annual improvement in salary base has been the norm for this bargaining unit and in both public and private employment in general for years. The concept is firmly established."

The reality is, however, that annual improvements in pay occurred against a back drop of expansion. Public and private employers, favored with increasing growth, economic activity, expanding revenues and a demand for greater services had the requisite ability to pay. That condition does not prevail, at least in Wayne County, and cannot be ignored.

The circumstance that a number of nearby counties and urban communities have caught up and even, in some cases, surpassed the pay levels of Wayne County does not justify this panel's making an award which would propel Wayne County ahead of these communities. The County was able to demonstrate through data that the SEV's -- that all-important tax base -- of many of these areas have made great gains. Wayne County, unfortunately, has gone the other way.

The County's economic situation, it is true, is only one factor, but it is, under the present circumstances, the major and persuasive factor.

This bargaining unit, it has been shown, has received no increase to its base pay since 1977, when there was a \$2018 increase. Part of this was a COLA roll-in. The attorneys for the County appear to have been treated similarly. The other sizable bargaining units received their last increases in 1979. Clearly, in the past three years, there has been something tantamount to a freeze in County wages, accompanied by sizable lay offs. It cannot be said that the County is treating this bargaining unit differently from the others.

It is true that with this panel's action, this bargaining unit will be the only one of the six units compared in this Report to have no continuing COLA. But that is a situation which this panel is not able to remedy because under the Statute the panel is not free to go beyond the final offer of each party. Because neither party sought continuing COLA, the panel may not award it.

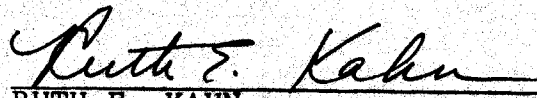
It should be noted that with the roll-in of COLA, there are added fringe benefit costs to the County. The COLA becomes a part of the base for purposes of calculating certain fringe benefits, namely accumulated sick leave and pensions. It also increases the Employer's FICA cost.

The reality of the economic, fiscal and budgetary circumstances in Wayne County mandate that the panel award the Employer's final offer with respect to rates of compensation.

Article 41 Award

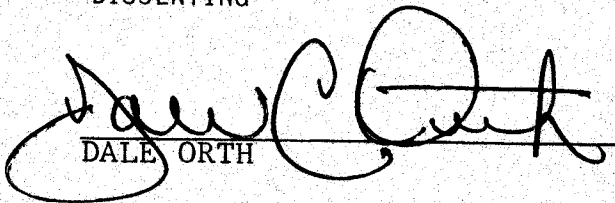
The Employer's final offer with respect to Article 41, Rates of Compensation, is ordered.

The extended term of the Agreement, appended to the Employer's Revised Final Offer, is rejected.

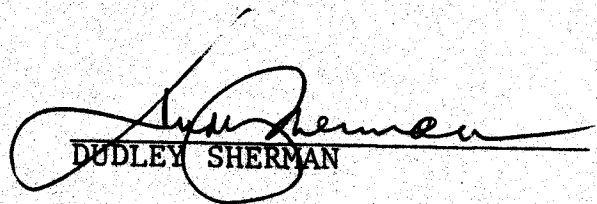

RUTH E. KAHN
Chairman

For the Union:

DISSENTING


DALE ORTH

For the County:


DUDLEY SHERMAN