

Arb. 7/8/99

1204

IN THE MATTER OF THE  
ARBITRATION BETWEEN:

LIVINGSTON COUNTY

and

MERC Case No. L 96 J-1014

POLICE OFFICERS ASSOCIATION OF MICHIGAN  
\_\_\_\_\_ /

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

OPINION & AWARD

Arbitration Panel

William E. Long  
Arbitrator/Chair

John McGlinchey  
County Delegate

William Birdseye  
Union Delegate

Date: July 8, 1999

*Livingston County*

1204

## INTRODUCTION

These proceedings were commenced pursuant to Act 312 of the Public Acts of 1969 as amended. The arbitration panel was comprised of the Chair William E. Long, County Delegate John McGlinchey, and Union Delegate William Birdseye.

A pre-hearing conference was held on November 11, 1997. At the request of the parties, hearing dates originally scheduled were postponed to allow additional time for resolution of some of the issues in dispute. A hearing was held on January 27, 1999 at the Livingston County Administrative Offices in Howell, Michigan. Livingston County was represented by Attorney John McGlinchey. The Union was represented by William Birdseye. The record consists of 183 pages of record testimony in one volume. Exhibits offered by the parties and accepted consisted of joint exhibits numbers 1 through 4, union exhibits 1 through 7 and employer exhibits 1 through 33. For purposes of this opinion and order exhibits will be referred to as J1-4, U1-7 and E1-33 and references to the transcript will appear as (TR-).

Last offers of settlement were submitted by the Union and the County on February 12, 1999. Post hearing briefs were submitted by the parties on June 1, 1999. By written stipulation, which is contained in the case file, the parties waived all time limits applicable to these proceedings, both statutory and administrative. The parties have presented only one issue for the panel to resolve. That issue pertains to wages and is therefore economic. The parties have agreed that the duration of the contract, which is the subject of this proceeding, will be for a four-year period from January 1, 1997 through December 31, 2000.

When considering the economic issues in this proceeding, the panel was guided by Section 8 of Act 312. The section provides that "as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Section 9."

The applicable factors to be considered as set forth in Section 9 are as follows:

- (a) *The lawful authority of the employer.*
- (b) *Stipulations of the parties.*
- (c) *The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
  - (i) *In public employment in comparable communities.*
  - (ii) *In private employment in comparable communities.*
- (e) *The average consumer prices for goods and services, commonly known as the cost of living.*
- (f) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*
- (g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- (h) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

Where not specifically referenced, the above factors were considered but not discussed in the interest of brevity.

## **BACKGROUND**

Livingston County is located in the Southeast portion of the state. It is bordered by the Counties of Jackson, Washtenaw, Oakland, Genesee, Shiawassee and Ingham (U-1). With an estimated 1994 population of 129,083, Livingston County, along with Jackson County, are mid-size counties among these seven counties with Shiawassee County's population being a little more than half that of Livingston and each of the other counties, with the exception of Jackson, having populations more than double that of Livingston County (E-4). Employer Exhibit E-12 is an Act 312 opinion regarding comparable communities issued by an arbitration panel in April 1986 involving the Command Officers Association and Livingston County. Pages 6 and 7 of that exhibit contain reference to the Union and County position in that case. The parties have put forth similar arguments in this case. Pages 6 and 7 of E-12 also contain a thorough description of the County, which this panel recognizes as generally accurate and reflective of the information provided in this proceeding.

## **COMPARABLE COMMUNITIES**

As noted earlier, Section 9(d) of Act 312 directs the panel to consider and compare the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of employees performing similar services in public and private employment and with other employees generally in comparable communities.

In this proceeding the County proposed the Counties of Allegan, Berrien, Calhoun, Jackson and Monroe as comparable communities. The Union proposed the Counties of Genesee, Ingham, Jackson, Oakland, Shiawassee, Washtenaw and the Cities of Brighton and Howell as comparable communities. The County also presented testimony describing the recent agreements with respect to wages for other employee groups employed by the County including non-union employees, court employees, correction officers and ambulance department employees (TR 152-154).

As noted by the County in its post-hearing brief, there was substantial evidence, both in testimony and exhibits, submitted on the issue of comparable communities. The record does reflect there has been a long-standing dispute between the Union and the County relative to what should be considered as comparable communities. The panel can't help but be struck with the feeling, upon reviewing the history and being presented with this issue in this case, that it is "déjà vu all over again."

This panel has thoroughly reviewed the entire discussion on comparables contained in Exhibits U-3, U-4, E-12 and E-13. This panel, similar to the panel's view as described in Exhibit U-3, does generally accept the proposition advanced by the Union that the "local labor market" is a factor that should be taken into consideration when considering the selection of comparable communities. This panel, however, believes the analysis conducted by the panel addressing this issue as described in Exhibit E-12 properly assessed the balance between labor market importance and commonly used comparisons such as populations, SEV, total

personnel, etc. These are the concepts that have been advanced by the County in this and in previous cases.

As the panel has evaluated the evidence put forth in this case and reviewed the exhibits in which previous arbitration panels have addressed this issue, it has tried to balance the labor market concepts with the commonly advanced factors such as comparative populations, SEV, size of bargaining units, etc. Using this approach this panel excludes the counties of Allegan and Berrien proposed by the County. While they may be comparable in population and in other commonly held factors, they are far removed from the labor market area and there has been little evidence to demonstrate similarities in those communities with Livingston County when looking at the labor market analysis criteria. The Counties of Calhoun and Monroe on the other hand, while not bordering Livingston County, are within or close proximity to the labor market area in this proceeding and are comparable in size, population, bargaining unit size and SEV. The County of Jackson has been advanced by both parties as a comparable community and it too meets the same standards as the Counties of Calhoun and Monroe. The panel also notes that both Calhoun and Jackson Counties were accepted as comparables by previous arbitration panels in 1986, 1987, 1988 and 1989. Monroe County was not previously advanced, so it could not have been accepted by previous panels.

The Counties of Genesee, Ingham, Oakland and Washtenaw, as advanced by the Union, are within the labor market area. On the other hand, this panel feels they are inappropriate for consideration as comparables in this case for the same reasons that the panel so found and described in Exhibit E-12. This panel agrees with the analysis contained on pages 8 and 9 of Exhibit E-12 with respect to the Union's

proposed use of the Counties of Oakland, Genesee, Ingham, Washtenaw and Shiawassee. This panel, for the same reasons described in E-12, rejects the Counties of Oakland, Genesee, Ingham and Washtenaw and accepts the Counties of Shiawassee and Jackson as comparable communities in this proceeding. It is also noted that previous panels in 1986, 1987 and 1988 accepted the County of Shiawassee as comparable to Livingston County.

Exhibits E-2 through E-10 in this case are also generally supportive of the selection of these counties as comparables. The panel notes, however, that the exhibits presented in this case, as in several of the previous cases, provide data with population estimates dating back to 1994. It is quite likely that following the next census, updated population figures will reveal that Livingston County's population and other characteristics is growing closer in comparison to Ingham and Washtenaw Counties and its growth may make it less comparable to a county such as Shiawassee. If this issue continues to be an item of dispute, the parties, or if necessary future panels, will undoubtedly have the benefit of review of the extensive analysis of these factors from the previous arbitration awards, but will need to do so in the context of continually changing demographics.

The Union has also proposed the Cities of Brighton and Howell as comparable communities in this proceeding. The panel has thoroughly reviewed the analysis conducted by the panel in U-3 at page 14 on this issue. In that case the panel accepted the Cities of Brighton and Howell as comparables. This panel has also considered testimony presented on this issue with respect to detectives (TR-36-41) and with respect to the duties of deputies (TR-13-22). Notwithstanding the rationale put forth by the panel in U-3, this panel is convinced from the testimony in this case

that there are significant differences in the overall responsibilities attendant to the county law enforcement personnel compared to the city law enforcement personnel. Of particular note, is the testimony at page 41 of the transcript in which the Union witness acknowledges that it is common for county law enforcement personnel to cooperate and work in conjunction with municipalities within their respective counties, both with jurisdictions within the county and with surrounding counties. This panel believes that there is commonality among all counties relative to the relationship between county law enforcement and municipal law enforcement personnel from municipalities within the county, which is accounted for when using other county units as comparable units. Therefore, it is not necessary or appropriate to use the municipal units proposed in this case as comparables, particularly when they are of much smaller size and with differing responsibilities, as Brighton and Howell are in this case. For that reason the panel rejects the Union's proposed comparables of the Cities of Brighton and Howell.

For purposes of this proceeding, for the forgoing reasons, this panel chooses the following units of government as comparable to the County of Livingston: the Counties of Calhoun, Jackson, Shiawassee and Monroe.

### **ISSUE 1**

#### *Wages*

There is only one unresolved issue pending before the panel in this matter. It involves the issue of wages. Within the issue of wages, both parties, in their last offers of settlement, proposed increases of 3% for 1997, 3% for 1998, 3% for 1999 and



3% for 2000. The difference between the parties is the date at which a lump sum payment of \$1,000 would be added to base wages. The Union's last offer of settlement proposes that the lump sum payment of \$1,000 be paid and added to the base wage beginning January 1, 1998. The Employer proposes that the lump sum payment of \$1,000 be paid and added to the base wages beginning January 1, 2000. The resultant base wage for the Deputy at the top step in the year 2000 is not significantly different between the two proposed last offers of settlement (E-24). The difference in the two proposals is in the amount of payment received by the employees over the life of this contract period which is impacted by the implementation date of the \$1,000 lump sum payment. The County, in their post-hearing brief, calculates that difference to be \$2,100 to each Deputy at the top step as well as the Detectives over the life of the contract.

A review of Exhibits U-5, E-24 and E-26, provides a basis for comparing the comparable communities wages for the Deputy positions at the top step with the last offer of settlement proposed by the parties in this case. Using these exhibits the panel can compute an average of the comparable communities' wages for the Deputy at the top step beginning in January 1, 1998, 1999 and 2000 with the last offers of settlement proposed by the two parties. That calculation reveals that the Employer's proposed last offer of settlement relative to base wages for the years 1998, 1999, and 2000 more closely parallels the average of the comparable communities than does the Union's proposed last offer of settlement.

The panel is mindful of the historical wage differences and differences in wage increases for calendar years 1994 through 1996 within the comparable units as displayed in Exhibits U-5, U-6, E-23 and E-25. However, when looking forward

during the life of this contract it appears Livingston County is at least generally keeping pace with the wage increases and actual wages paid for this period by comparable communities. The panel is also aware of the relationship between the historic and prospective wage increases relative to the average consumer prices for goods and services, commonly known as cost of living for this period as reflected in Exhibits U-7, E-15 through E-22. The Union, in its memorandum in support of its final offer of settlement, urges the panel to adopt the Union's last offer in part to recognize a greater degree of "catch up" to comparable communities' wages relative to the CPI over the life of the last contract. The Union acknowledges that both last offer proposals do that. The Union's just does so a little more than the County's. As noted previously, given the comparables selected by the panel in this case, the panel views the County's proposal as adequately providing this "catch up," particularly in light of the more recent trends with the CPI.

The County urges the panel to compare the broader compensation benefits and plans including retirement as specified in Section 9(4) of Act 312 in the comparable communities when considering last offers on wages. A review of Exhibits E-27 and E-33 reveals that Livingston County's overall compensation benefits and retirement plans for this bargaining unit are comparable to, not necessarily more beneficial than, those of employees in comparable communities. The County also points out that its proposed last offer of settlement is more consistent with other internal comparables that were testified to during the course of the proceeding (TR-152-154). This testimony reveals generally the same pattern of 3% increases at least through calendar 1999 and in one instance the \$1,000 bonus at

the beginning of 2000 plus a 3% increase. The panel considers these internal comparables as supportive of favoring the County's last offer of settlement.

The Union, in its memorandum in support of final offer of settlement, addresses the internal comparables by focusing primarily on the distinction in job duties, skill, training and work conditions of correction officers and deputies. The Union urges consideration of these differences to support a different implementation date for the \$1,000 bonus for deputies than for correction officers. The Union acknowledges that there already is a difference in base salary for correction officers of 14% below that of deputy. There is little record evidence, however, to support the panel going further with this distinction based on "such other factors" contemplated in Section 9(h) of Act. 312.

Based on a review of both the internal and external comparables and taking all of the above referenced factors into consideration, the panel finds the County's last offer of settlement on the issue of wages as more nearly complying with the applicable factors described in Section 9. These wages will apply retroactively beginning 1/1/97 to all employees that are employed on the date this order and opinion is issued and who were employed during the applicable time period.

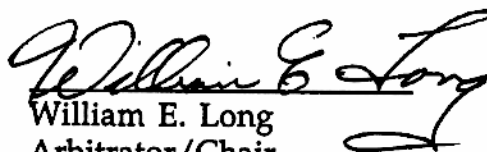
<i>County gen</i>	City:	Agree <u><i>[Signature]</i></u>	Disagree <u>                    </u>
	Union:	Agree <u>                    </u>	Disagree <u><i>[Signature]</i></u>

### SUMMARY

This concludes the award of the panel. The signature of the delegates herein and below indicates that the award as recited in this opinion and award is a true restatement of the award as reached at the hearing. All agreements reached in negotiations as well as all mandatory subjects of bargaining contained in the prior contract will be carried forward into the collective bargaining agreement.

Re: Livingston County  
Police Officers Association of Michigan  
MERC Case No. L96 J-1014

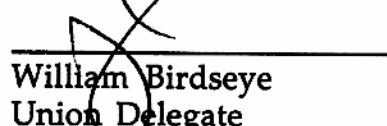
Date: 7/8/99

  
William E. Long  
Arbitrator/Chair

Date: 6-30-99

  
John McGlinchey  
County Delegate

Date: 6/29/99

  
William Birdseye  
Union Delegate