

STATE OF MICHIGAN

STATUTORY LABOR ARBITRATION PANEL

(Pursuant to Act 312, P.A. 1969, as amended)

Michigan Employment Relations Commission Case No. L97 J-7019

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In the Matter of Arbitration Between:

MUSKEGON COUNTY

and

MUSKEGON COUNTY SHERIFF'S  
PROFESSIONAL COMMAND ASSOCIATION

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**OPINION AND AWARD**

Chairman of Arbitration Panel: Edward D. Callaghan

Muskegon County Delegate: James B. Delaney

Professional Command Association Delegate: Lt. Robert Baker

Pre-Arbitration Telephone Conference: November 18, 1998

Hearings Held: February 10, 1999 at the Muskegon County  
Training Center, 133 East Apple, Muskegon, Michigan

Exchange of Final Offers of Settlement: March 1, 1999

Briefs Received: Post-hearings briefs received May 17, 1999

Executive Meeting of Arbitration Panel: July 9, 1999 at the  
Michigan Employment Relations Commission, Lansing,  
Michigan

Opinion and Award Issued: August 6, 1999

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LANSING OFFICE

## **I. INTRODUCTION**

Pursuant to Section 3 of Public Act 312, a petition for arbitration was filed by the above named labor organization dated July 6, 1998. In the petition, the labor organization stated they had engaged in good faith bargaining and mediation and the parties to the contract had not succeeded in resolving five (5) specific issues. Therefore, this matter was scheduled for hearing before a panel of arbitration appointed pursuant to the terms of Act 312 (P.A. 1969, as amended) for the purpose of hearing and deciding these unresolved issues and a new contract between the parties.

Pursuant to the statute, Edward D. Callaghan was appointed by the Michigan Employment Relations Commission to serve as chairman of the arbitration panel. The two other members of the panel selected by the respective parties were Mr. James. B. Delaney, for the employer, and Lt. Robert Baker, for the labor organization.

A pre-arbitration telephone conference was held on November 18, 1998, to allow the parties the opportunity to provide background information to the panel regarding the unresolved issues. On November 18, 1998, the parties stipulated and the panel agreed that the following issues were

economic and, therefore, subject to the last best offer provisions of Section 8 of the Act.

## **II. STATEMENT OF ECONOMIC ISSUES**

- ISSUE 1.** Clothing Allowance [Section 19.3(b)]
- ISSUE 2.** Retirement Plan [Section 19.5]
- ISSUE 3.** Per Diem [New Section]
- ISSUE 4.** Wages – Appendix A, Classification and Wages Rates
- ISSUE 5.** Retiree Insurance

The Arbitration Panel conducted a one-day hearing on February 2, 1999, at the Muskegon Training Center, 133 E. Apple, Muskegon, Michigan. At that time both the County and the Union representatives agreed, on the record, to waive all time limits and assert that the jurisdiction of the arbitrator is proper. As agreed during the telephone conference call, the parties did exchange exhibits and a list of comparables with one another prior to February 2, 1999.

The parties also stipulated to the following external comparables:

1. Berrien County
2. Calhoun County

3. Monroe County
4. Ottawa County
5. Saginaw County

The parties further stipulated that the duration for the successor agreement would be retroactive to January 1, 1997 and expire December 31, 2000. Consequently, the parties were directed to re-submit their last best offers based on this three-year duration. The last best offers were submitted through the Chairman on May 17, 1999. Subsequently, on June 22, 1999, following the receipt of the transcript of the hearing, the parties mailed their briefs to the chairman of the arbitration panel, who in turn forwarded them to opposing counsel.

On July 9, 1999, the parties met in executive session at the offices of the Michigan Employment Relations Commission in Lansing, Michigan, to consider the evidence and arguments in support of the last best offers of the parties on each of the five (5) issues.

The chairperson emphasizes that the panel members representing the County and the Professional Command Association disagree with certain of the findings and awards set forth hereinafter. Each generally supported the last best

offers of the parties by whom they were appointed to the panel. Accordingly, the signature of either of the partisan panel members at the conclusion of this Opinion and Award do not represent a concurrence in each and every element of the final award, but does constitute a recognition that there exists a majority vote in support of each item contained in the final award.

### **III. BACKGROUND**

The County and the Professional Command Association were signatory to a Collective Bargaining Agreement with an expiration date of December 31, 1996. The parties commenced negotiations for a successor agreement in the winter of 1997. After several fruitless bargaining sessions, the parties sought the assistance of State Mediator Lou Emmons. Mr. Emmons met with the labor organization and the county representatives on February 13, 1998 and on April 30, 1998. On July 6, 1998, a demand was made by the labor organization for interest arbitration pursuant to Act 312.

On November 3, 1998, the Michigan Employment Relations Commission appointed Edward D. Callaghan to serve as the neutral chairman of the arbitration panel and,

thereafter, the respective parties appointed partisan members to the panel. As previously noted, the County and the Labor Organization agreed to waive in writing all time limits and assert that the jurisdiction of the arbitrator as proper. The parties further stipulated to include the deposition of Thomas Dawidowicz as part of the record. Mr. Dawidowicz is an employee of Segel Company, which is the actuary for the Municipal Retirement System. This deposition took place on February 10, 1999, and is herein included as part of Exhibit 23. [Joint Exhibit 23; i.e., actuarial analysis]

#### **IV. LAST BEST OFFER**

Subsequent to the evidentiary hearing and the deposition of Thomas Dawidowicz, the parties exchanged their last best offers on each of the outstanding economic issues through the panel's chairman. They also exchanged briefs in similar fashion. For convenience, the issues are set forth in numerical order with the recitation of the provisions, if any, in the old contract, followed by the County's last best offer and the Professional Command Association's final offer of settlement.

**Issue 1. Wages**

- a. Current provisions: Appendix A - July 1, 1996 to  
December 31, 1996

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$42,365	\$44,356	\$46,453	\$48,645	\$50,962	N/A

- b. County's Last Best Offer: Appendix A - January 1, 1997  
to December 31, 1997

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$43,636	\$45,687	\$47,847	\$50,104	\$52,491	3%

County's Last Best Offer: Appendix A - January 1, 1998  
to December 31, 1998

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$44,835	\$46,943	\$49,162	\$51,482	\$53,935	2.75%

County's Last Best Offer: Appendix A - January 1, 1999  
to December 31, 1999

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$45,732	\$47,832	\$50,145	\$52,512	\$55,014	2 to 4% based on change in previous year's consumer price index.

County's Last Best Offer: Appendix A – January 1, 2000  
to December 31, 2000

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$46,647	\$48,789	\$51,148	\$53,562	\$56,114	2.5 to 4% based on change in previous year's consumer price index.

- c. Professional Command Association's Final Offer of  
Settlement:  
Appendix A – January 1, 1997 to December 31, 1997

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$43,636	\$45,687	\$47,847	\$50,104	\$52,491	3%

Note: Same as County's last best offer.

- Professional Command Association's Final Offer of  
Settlement:  
Appendix A – January 1, 1998 to December 31, 1998

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$44,835	\$46,943	\$49,162	\$51,482	\$53,935	2.75%

Note: Same as County's last best offer.



Professional Command Association's Final Offer of Settlement:

Appendix A – January 1, 1999 to December 31, 1999

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$45,956	\$48,117	\$50,391	\$52,769	\$55,283	2.5 to 4% based on change in previous year's consumer price index.

Professional Command Association's Final Offer of Settlement:

Appendix A – January 1, 2000 to December 31, 2000

Classification: Captain

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>	<u>Percent Increase</u>
\$47,105	\$49,320	\$51,650	\$54,088	\$56,665	2.5 to 4% based on change in previous year's consumer price index.

**ISSUE 2. CLOTHING ALLOWANCE**

- a. Current Provision: Article 19, Section B, Clothing Allowance

In each year of the agreement, each employee required to wear a uniform will receive a uniform maintenance allowance of \$350 per year. Employees assigned to plain clothes will receive \$550 per year.

Effective 1994, employees assigned to plain clothes will receive \$600 annual clothing maintenance allowance.

Employees who terminate within the year subsequent to the receipt of the uniform maintenance allowance payment will reimburse the employer for that portion of uniform maintenance allowance payment attributed to the time subsequent to the termination, with such reimbursement being made as a deduction from the employee's final paycheck.

b. County's Last Best Offer

Change first paragraph to read: "In each year of the agreement, each employee required to wear a uniform will receive a uniform maintenance allowance of \$400 per year retroactive to January 1, 1999.

c. Professional Command Officer's Association Final Offer of Settlement:

Change first paragraph to read: "In each year of the agreement, each employee required to wear a uniform will receive a uniform maintenance allowance of \$400 per year retroactive to January 1, 1999.

**Note: Same as County's last best offer.**

### **ISSUE 3. Out of Town Meal Per Diem**

- a. Current Provision: None
- b. County's Last Best Offer: Maintain current County policy.
- c. Professional Command Officer's Association Final Offer of Settlement:

Continue practice utilizing County policy. County policy allows for reimbursement of actual meal receipts based on Internal Revenue Service schedule and travel location.

### **ISSUE 4. Retiree Spouse Insurance**

- a. Current Provision: None
- b. County's Last Best Offer: No change.
- c. Professional Command Officer's Association Final Offer of Settlement:

Proposed change withdrawn by Union.

**ISSUE 5. Retirement Plan, Section 19.5**

a. **Current Provision:**

Upon execution of this contract, the County agrees to provide to permanent employees, except as modified elsewhere in this agreement and at no cost to the employees, the State of Michigan Municipal Employees Retirement System Plan, known as Benefit Program B-2, with benefit program identified as F55(25) as described in the Michigan Municipal Employees Retirement Act.

b. **County's Last Best Offer:**

Revise Section 19.5. Change B-2 retirement program to B-3 retirement program. Maintain benefit option F55(25) provided employees contribute 3.23 percent of wages.

c. **Professional Command Officer's Association Final Offer of Settlement:**

Revise Section 19.5 to include B-4 retirement program, maintaining F55(25) rider, with a 2.68 percent employee contribution of their wages toward funding of the B-4 retirement program.

**V. FINDINGS AND CONCLUSIONS**

The following opinions and orders have taken into consideration each of the factors enumerated in Section 9 of Act 312. Section 9 of Act 312 lists the eight areas upon which the Arbitration Panel shall base its final opinions and orders as follows:

- (a) The lawful authority of the Employer.
- (b) Stipulation 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 proceedings 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.

Relative to the above eight (8) areas listed in Section 9 of Act 312:

- (a) There was no question of the lawful authority of the Employer.
- (b) The parties stipulated there are five (5) issues in dispute.
- (c) The Employer did not assert the "ability to pay" as a defense.

- (d) Comparison of wages, etc., of other employees performing similar services in public employment in comparable communities is the primary area upon which the Arbitration Panel based its final opinion and orders.
- (e) The COLA factor is a consideration that was reviewed as a major part of overall wages.
- (f) The overall compensation received by the employees was reviewed by the Panel.
- (g) No changes occurred during pendency of arbitration proceedings.

Section 10 of Act 312 indicates that the decision of the Arbitration Panel must be "supported by competent, material and substantial evidence on the whole record." The onus is on the parties to introduce supporting evidence, within the evidentiary guidelines as detailed in Section 9 of the statute. The Panel is required to make written findings of fact and to promulgate a written opinion and order based upon the record developed by the parties. In effect, then, any finding, or opinion, or order of the Panel on any issue must emanate from a consideration of the eight listed Section 9 factors as applicable.

The panel has reviewed the record, including Exhibits 1 through 24, and, as subsequently stipulated by the parties, concludes that because of the similarities in population and residential and business configuration, the geographic proximity, the comparable level of County services offered to the community and prior reliance by the parties, the following comparables have been stipulated: Berrien County; Calhoun County, Monroe County, Ottawa County and Saginaw County. These comparison and the elements contained in Section 9 of Act 312 previously described herein have been the basis of the following findings, opinions and orders.

#### **ISSUE 1. WAGES**

Wages for the 1997 and 1998 calendar year have been stipulated by the parties by virtue of their submission of last best offers regarding wages for the first two years of the contract. The County has proposed, for the last two years of this contract, i.e., 1999 and 2000, a proposed range of 2 to 4 percent per year, while the Union has proposed a range of 2.5 percent to 4 percent for the last two years of the agreement.



Accordingly, this panel must decide the minimum wage increase for 1999 and 2000.

Proofs submitted by the parties indicate clearly that the Cost of Living Index has not moved significantly in the last couple of years. The Union believes that its wage demand for a minimum of 2.5 percent for the final two years of the contract is consistent with the wage settlements established for other law enforcement officers within Muskegon County. Despite this assertion and the record indicating that subordinates frequently are paid more because of overtime, bargaining unit members in the Professional Command Association are not required to work revolving shifts, and days off or on various shifts. Any wage increase must also be considered in the context of the last best offers that the parties have submitted regarding the pension issue.

The Panel concludes that the County's last best offer more nearly complies with the factors prescribed in Section 9 of the Act. The County's last best offer adequately meets the pressures of inflation, is comparable with those wages for similar service in comparable communities, and is most reasonable in light of the fact that the Union's demand for internal parity is not supported by comparables outside the

County. In summary, the Record supports the County's last best offer.

**Award:** The County's last best offer on wages is adopted.

James B. Delaney      Concurs:   X        Dissents:     

Robert Baker              Concurs:           Dissents:   X  

## **ISSUE 2. CLOTHING ALLOWANCE**

The parties have stipulated, by virtue of their last best offers, that Section 19.3(b) will be revised to increase the clothing allowance from \$350 to \$400 per year. To eliminate any unnecessary confusion, this Panel adopts the County's last best offer and contract language for clothing allowance.

**Award:**      The County's last best offer on clothing allowance is adopted.

James B. Delaney      Concurs:   X        Dissents:     

Robert Baker              Concurs:   X        Dissents:

### **ISSUE 3**

At the time of its submission of its last best offer, the Union withdrew its request for per diem; thus the County's position to maintain the status quo is adopted by the parties.

**Award:** The County's last best offer on per diem is adopted.

James B. Delaney      Concurs:   X        Dissents:       

Robert Baker              Concurs:   X        Dissents:       

### **ISSUE 4. RETIREE SPOUSE INSURANCE**

Pursuant to the Union's last best offer, the issue of retiree spouse insurance has been withdrawn. The County's position to maintain the status quo is therefore adopted.

**Award:** The County's last best offer on retiree spouse insurance is adopted.

James B. Delaney      Concurs:   X        Dissents:       

Robert Baker              Concurs:   X        Dissents:

## **ISSUE 5. RETIREMENT PLAN**

The difference between the last two best offers of the parties is that the Union wants to change from the B-2 to the B-4 retirement plan and the County wants to change from the B-2 to the B-3 retirement plan. Contributions by the individual bargaining unit member are also in dispute. The Union is proposing a 2.68 percent contribution factor, and the County is proposing a 3.23 percent contribution of wages by each member of the bargaining unit.

Currently the County provides a B-2 retirement plan with a multiplier of 2 percent of the members' final average compensation. The F55(25) rider allows the individual retirement choice options. Under the Municipal Employees Retirement System there are two waivers available. Benefits are available at age 55 for member employees with 25 years of service without reduction. The parties have agreed that this particular benefit (F55) will continue without employee contribution. Adoption of a B-3 retirement plan would increase the multiplier to 2.25 percent of the members' final average compensation multiplied by years and months of credited

service. The retirement benefit would not exceed 80 percent of the members' final average compensation.

Under the B-4 retirement program, benefit would be derived at 2.5 percent of the members' final average compensation, multiplied by years and months of credited service. The Union's last best offer includes an employee contribution of 2.68 percent for the B-4 retirement program. Testimony of Actuary Thomas Dawidowicz and Senior Personnel Analyst Debra Groeneveld indicate that the Union's 2.68 percent contribution, if adopted, is less than one-half of the amount necessary for employees to fund the B-4 retirement upgrade program. The Union's proposed contribution is less than the amount necessary to fund the B-4 program and is also less than what is required to fund the B-3 retirement plan.

The lieutenants' and Sergeants' bargaining unit at Muskegon County is currently covered by the B-4 plan with the F55(25) rider. This plan includes a 2.68 percent contribution by each bargaining unit member. The Deputies' bargaining unit also has the B-4 retirement plan with the same contribution factor. The record also reveals that the Corrections bargaining unit is currently under the B-3 retirement plan and such plan mirrors that of the County's last

best offer for the Professional Command Association. The lieutenants and sergeants who are supervised by members of this bargaining unit improved their pension retirement plan by virtue of an Act 312 award in the 1993-1996 contract when their retirement plan moved from B-2 to B-3. In 1997, by stipulation of the parties, this plan was improved to the B-4 level. Costs to improve the retirement plan from B-2 to B-3 are approximately \$2,479 per bargaining unit member. The cost to move from a B-2 to the B-4 retirement plan is \$4,511 for each bargaining unit member.

The deposition of Thomas Dawidowicz indicates a most recent evaluation of the retirement system was conducted through the period ending December 31, 1996. At that time, the liability for the system was calculated in order for the County to set aside monies for same. The County was obligated to make contributions to fund all the prior underfunding that is attributable to improving pension benefit plans. The increased costs from B-2 to B-3 versus B-3 to B-4 would require an 11 percent increase since the 2 percent multiplier would be replaced by a 2.5 percent multiplier. Both the B-3 and B-4 programs have a maximum cap that is equal

to 80 percent of the final average compensation where the current plan has no cap. Contributions by the employee will proportionately decrease the funds necessary by the County to provide for increased benefits. If the B-4 retirement plan were adopted, the employer's costs would increase by 5.3 percent of payroll. If the Union absorbed the total cost, it would require an increase of 5.89 percent for both normal costs and unfunded accrued liabilities.

The record clearly indicates that adoption of the B-3 plan would net a 3.23 percent increase in cost for the county and 5.89 percent increase in cost if the B-4 retirement plan were adopted. In light of the fact that two (2) of the stipulated comparable counties (Monroe County and Saginaw County) have retirement plans with multipliers of 2.5 percent, and the fact that the members of the bargaining unit supervised by the Professional Command Officers also have a multiplier of 2.5 percent, there is justification to adopt the last best offer of the Union despite the fact that the 2.68 percent contribution by union members would not adequately support the increase in cost for a B-4 program.

In the final analysis, this Arbitration Panel was forced to select the less flawed of the two last best offers of settlement submitted by the parties concerning the retirement plan. However, after closely examining the external comparables as well as the most recent contract settlements with the Muskegon Deputies and Professional Command bargaining units, the Union's last best offer comports more favorably with the factors provided in Section 9 of Act 312. Moreover, the record provides no compelling reason why the Professional Command Officers should be entitled to benefits less than the individuals that they supervise.

Accordingly, Section 19.5 of the contract shall provide the following:

Effective at the first of the calendar month, which is not less than 60 days after the date of this Act 312 arbitration award, the retirement plan shall be changed to Benefit Program B-4, with the benefit program being identified as F55(25), and with a 2.68 percent employee contribution. All such contributions are to be deducted from the employee's wages through payroll deduction with such deduction hereby authorized by this agreement.



**Award:** The Union's last best offer on retirement plan is adopted.

James B. Delaney Concurs: \_\_\_\_ Dissents: **X**

Robert Baker Concurs **X** Dissents: \_\_\_\_

All other provisions of the agreement are as negotiated by the parties or remain the same as the 1995-1996 agreement. By their signatures, the panel members signify their agreement with this award, except as noted above.

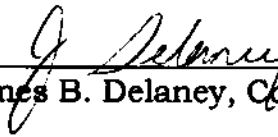
#### **AWARD**

The contract between the County for the period of January 1, 1997 through December 31, 2000, shall contain the County's last best offer on Issues 1, 2, 3, and shall contain the Union's Final Offer of Settlement on Issue 5.

**PANEL OF ARBITRATORS**



Edward D. Callaghan, Chairman

 8-12-99

James B. Delaney, County Delegate

 8-23-99

Robert Baker, Professional Command Association Delegate

Date: August 6, 1999