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In the Matter of Arbitration Between

Police officers Labor Council

And

County of Berrien

MERC Act 312

Case No. L98-G7027

Background

The Agreement between the POLC and the County of Berrien expired on December 31, 1998. The POLC represented the Sheriffs of Berrien County. Negotiation ensued, mediation took place and Act 312 arbitration was petitioned by the Union on August 24, 1998. This Arbitrator was selected and notified by the Michigan Employment Relations Commission on January 11, 1999.

At the request of the parties a Pre-Hearing Conference was held by telephone on February 17, 1999. At that time it was also agreed by the parties that the Hearings would be held on June 28 and 29, 1999 in St. Joseph, Michigan. The delegates chosen were James J. Quinn, Business Agent for the Union and Attorney Thomas R. Fette for the Employer. Mr. Fette would also handle the Employer's case in addition to being their delegate while Attorney Mark P. Douma of John A. Lyons, P.C. represented the Union. In the interim between the time of the Pre-Hearing Conference call and the Hearing several issues were withdrawn and when the Hearing was held on June 28, 1999, it was completed in one day rather than the two days as scheduled.

Upon completion of the Hearing, dates were set for last best offers and Post-Hearing briefs after receipt of the transcript. The parties stipulated approval of waiving the six-month time limit.

The witnesses examined were:

Union

Nancy Ciccone – Labor economist

James J. Quinn – Union delegate and field representative

Employer

Shelley Smith – County labor relations manager

Robert Kimmerly – Sheriff, Berrien County

John M. Henry – County Administrator

The exhibits submitted were:

Joint #1 Agreement

Union #1 Union exhibits on all issues

Employer #1 Employer exhibits on all issues

Joint #2 Actuarial Report to County on Amended Retirement Plan

Employer #2 Compensation Reports

Employer #3 Compensation Reports with vacation payouts

The parties had agreed to the following comparables: Calhoun County, Jackson County, Muskegon county, Ottawa County, Saginaw County and St. Clair County.

The following are the issues brought by the parties, the positions of each side and the decision by the majority or all of the panel.

1. Additional Personal Leave Day

The Union requested an additional personal leave day in addition to the one already contractually maintained. Their argument uses the comparables as justification since most of the comparables grant over three (3) personal leave days. The Employer seeks the status quo and argues that those counties that grant additional personal leave days do not grant as many holidays which added to personal leave days still only amount to the number that Berrien County still provides.

The panel agrees with the Employer's position for several reasons. One is the argument that as it is, most members accumulate unused vacation days for pay-off at retirement, forcing the Sheriff to implement mandatory vacation scheduling to bring this "growth under control." The panel also agrees that one must consider all paid holiday, vacation days when comparing Berrien County to the comparables. Therefore the panel adopts the Employer position on this issue.

2. Improved Dental Plan and Eye Care

The Union requests that the maximum dental reimbursement be increased from \$400 per family to \$750 per family per year and \$100 per family for optical reimbursement. The Employer requests the status quo for dental reimbursement but also offers \$100 for optical reimbursement.

The Union feels that the \$400 dental reimbursement per family is inadequate, especially where the spouse also works for the County and where there are children involved. The County counters with the argument that not all the fund is utilized at the current level and therefore an increase is unnecessary.

The panel agrees with the Union in that just because some employees do not even utilize the \$400 does not mean that all members are as fortunate and some need more than the \$400 benefit. If anything the lack of full use of the fund strengthens the Unions's argument that it need not be a costly item but necessary for those members who need the increase.

3. Change in the Retirement Formula

Currently the contract calls for a 2.2% multiplier in computing the pension benefit (2.2% x final average compensation x years of service). The Union seeks to increase the multiplier to 2.5% while the Employer offers an increase of the multiplier to 2.3%

The Union argues that most comparables provide 2.5% or at least more than 2.2% and that in many comparables the employees contribute less than those in Berrien County. The Union also contends that the investment return on pension funds has been high in recent years while the employee contribution has remained the same.

The County counters that most comparables are not relevant in that they have switched the system to a defined contribution plan from a defined benefit plan. Furthermore the Employer points out the limits two of the other comparables place on the definition of final average compensation by excluding or capping some items in the calculation.

The panel agrees with the Employer's position of increasing the multiplier to 2.3% because it is convinced that the liberalness of what is included in "final average compensation" makes Berrien County more generous in its retirement program. The panel finds fault with the Union's argument that because of the system's investment success of recent years, employee contributions should decrease. It must be remembered that if investment returns go down, the County still has the obligation to maintain the actuarial soundness of the system, not the employees. Furthermore a sound and healthy pension system is a benefit to both the Employee and the membership.

4. Uniform Allowance

The Union has accepted the Employer's offer on uniform allowance.

5. Wages

The parties agreed at the outset that the question of wages should be considered on an annual basis rather than as a three-year package offered by each side with one package to be chosen by the panel. This gives the panel a bit more flexibility.

The Union has requested a package of 4% for 1999, 3.5% for 2000 and 3.5% for 2001. The Employer's last best offer was a 3% raise for each of the years in question.

Comparing wages to those in the comparables is difficult. For one thing the Dispatchers under the Union proposal would be paid higher than the comparables but the Union points out that Dispatchers are a small part of the bargaining unit. The rate of inflation is expected to be lower than either offer, but then again it is hard to predict two years in advance.

Considering all the factors and the County's fairly good financial position, a fair and equitable package would be a total of 10% over the three-year period. The panel recommends 4% for 1999, 3% for 2000, and 3% for 2001. The higher rate for the first year should be of benefit to employees who have patiently awaited this Award as well as to those who retire in the very near future and with retroactivity each employee should receive a substantial lump sum payment.

This package still will not place Berrien Counties Sheriff's Deputies out of line with most of the comparables and would be a fair settlement.

6. Disciplinary Powers of Sheriff

The Employer has placed a non-economic demand before the panel. They request that in a disciplinary arbitration procedure where the arbitrator upholds the Sheriff, the arbitrator would not be permitted to rule on or modify the penalty inflicted by the Sheriff. There must have taken place some frustrations on the part of the Sheriff in some past cases but none of these were presented to the panel.

This procedure already exists in discharge cases where if the arbitrator modifies the penalty of discharge, the must support it with a finding of fact. The County would like to extend this requirement to all disciplinary arbitrations.

The panel opposes the Employer's request for several reasons. One is that the question of disciplinary penalty is part and parcel of the total disciplinary arbitration and arbitrators do give reasons for modifications. While the Employer's proposal might be legal, it does compromise the powers of the arbitrator and places the burden of proof on the employee rather than on the party inflicting the discipline. The Employer's arguments that an arbitrator is an outsider, unelected, and not necessarily knowledgeable about law enforcement may all be true, but these arguments were considered when P.A. 312 was passed and yet it was considered wiser to enable an arbitrator to look into all aspects of a disciplinary grievance, both the justification for disciplinary action and the severity of the discipline itself.

7. Direct Deposit of Wages

The Employer has requested that all wages be paid only by direct deposit to an account designated by the employee. Their argument is based on improved administrative efficiency. The Union is opposed to this demand with the argument that some of the employees do not have and do not want savings or checking accounts and so this places an added burden on them. The Employer also gives reasons of safety, convenience etc. to justify this demand.

While the panel is sympathetic to the Employers desire for greater efficiency, it does not believe this should be foisted on the employees who do not wish it. Inasmuch as this is a non-economic demand, the Panel suggests that direct deposit be made available to those employees who choose it while direct payment to the individual be continued for those who prefer it. This arbitrator predicts that over a period of time most if not all employees would switch to direct deposit without the coercion of this demand.

8. Accumulated Vacation Time

The Employer seeks to reign in much of the accumulated vacation time of employees. Currently the Agreement allows employees to accrue vacations without limit. Upon retirement the employee is paid for accrued and unused vacation time at his then existing straight time rate. This is then factored into his final average compensation for pension purposes.

To alleviate this situation the Sheriff has ordered the employees by executive order not to accumulate more than 300 hours if the employee has not already done so. The Employer seeks to limit all new employees (those hired after December 31, 1998) to not accumulate more than 300 hours of vacation time.

The Union opposes the change for several reasons. First they believe that the Sheriff by executive order has already brought about the result sought and secondly adoption of the Employer's position would create two different classes of employees depending on date of hire.

The panel agrees with the Employer's offer in that it clarifies the authority the Sheriff now uses reluctantly and in so doing has already created different classes of employees as far as their current amount of accumulated vacation time is concerned.

Vacations were meant to be used as such, and not a means to enhance pension benefits at rates far in excess of the pay rates prevalent at the time the vacation time was earned.

9. Retiree Insurance Co-Payment

Currently retired employees are required to pay 50% of the cost of health insurance up to a maximum of \$150 per month. Those hired after January 1, 1993 are required to pay 100% of the actual cost of dependent health insurance coverage.

The Employer seeks to increase the cap to \$175 after January 1, 2000 and to \$200 per month effective January 1, 2001. They point to the increased costs of such insurance.

The Union is opposed to this increase, especially as it applies to current retirees but equally as it applies to all retirees.

The panel accepts the Union position on this issue since in this award, choosing the lower figure (2.3) for computation of retirement benefits, is allowing the Sheriff to limit accumulation of vacation time and has chosen overall a modest wage increase to help limit costs to the Employer. While recognizing the increased costs of health insurance to the Employer, the adoption of their proposal would place an added burden on retirees, especially current ones. Other means of reducing health care costs should be attempted in future negotiations of future Agreements.

10. Retroactivity

This Award covers the period of January 1, 1999 until December 31, 2001. The Employer seeks to limit the economic benefits of this Award to only those currently employed and not to those who may have retired or resigned since the termination of the last Agreement. Their reasoning is that those employees are only entitled to benefits prevalent when they ceased to be employed by the Employer. This in effect would penalize them for the delay in processing this Arbitration, a delay caused by other circumstances not under their control. It is therefore the Panel's view that the economic benefits contained in this Award are retroactive to January 1, 1999 for all employees who are currently members of the current bargaining unit or any employee who terminated employment between January 1, 1999 and the date of this Award.

Award

1. Personal Leave Day

Status Quo (Article 12, Section 2)

2. Dental and Optical Care

Article 15, Section 5 be amended as follows:

Effective January 1, 1999, members of the bargaining unit and their eligible dependents should be reimbursed up to a maximum of seven hundred fifty (\$750.00) dollars per calendar year per family for incurred dental costs and up to a maximum of one hundred (\$100.00) dollars per calendar year per family for incurred optical costs. These costs shall be paid by the County Personnel Department on a quarterly basis pursuant to paid receipts submitted by the employee. This reimbursement program shall not be construed as an insurance program or plan and it is available to reimburse only those costs not otherwise covered by another plan or program. Bills for the fourth quarter of each calendar year must be submitted to the Berrien County Personnel Department no later than the second Monday in January of the following calendar year in order for the reimbursable amount to be credited toward the previous calendar year's maximum reimbursement limit.

3. Change in the Retirement formula

Increase annuity factor from 2.2% x years of service to 2.3% x years of service.

4. Uniform Allowance

Article 17, Sections 1a and 1b, is amended to increase allowance for uniformed deputies from \$400 per year to \$450 per year and for plainclothes deputies from \$450 per year to \$500 per year.

5. Wages

January 1, 1999 4%

January 1, 2000 3%

January 1, 2001 3%

6. Disciplinary Powers of Sheriff

Status Quo (Article 5, Section 6b and 6c)

7. Direct Deposit of Wages

Status Quo (Article 14, section 4 as is)

Only those employees who volunteer to have wages directly deposited shall have such.

8. Accumulated Vacation Time

Add to Article 13, Section 6 the following:

Employees hired after December 31, 1998, shall not accumulate more than thirty (30) days two hundred forty (240) hours of vacation time only after the employee's accumulated vacation time falls below thirty (30) days.

9. Health Insurance for Retirees

Status Quo (Article 15, Section 4)

10. Retroactivity

This Award covers the period of January 1, 1999 through December 31, 2001. The benefits shall be retroactive for all members of the current bargaining unit or any employee who terminated employment prior to January 1, 1999, and date of this award.

This Award also includes all items agreed to by the parties outside of this Arbitration. It is assumed that each of the two Partisan Delegates agree to that part of the Award favorable to his Party and dissented from those items with which he disagreed.

It is hoped that this Award will provide a fair and equitable period of peaceful labor relations between the parties.

Respectfully submitted,



Bernard Klein
Chair



Thomas R. Fette
Employer Delegate



James J. Quinn
Union Delegate

Dated: October 30, 1999
Dearborn, Michigan