

9/4/2001

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Statutory Labor Arbitration between:

CALHOUN COUNTY [SHERIFF'S DEPARTMENT],

Employer

-and-

POLICE OFFICERS LABOR COUNCIL,

Labor Organization

Case No. L-00 H-4007

Appearances:

For the Employer: David Fernstrum
Mika, Meyers, Beckett & Jones, PLC

For the Union: Mark Douma
Law Offices of John A. Lyons, P.C.

FINDINGS, OPINION AND ORDERS OF THE

ARBITRATION PANEL

BENJAMIN A. KERNER, CHAIR

David Fernstrum, Employer Delegate

Fred LaMaire, Union Delegate.

Also present for all or part of the proceedings were: Robert D. Damon, Jr. [President, P.O.L.C., Calhoun County Sheriffs]; Paula Gwin [Union bookkeeper and designated liaison]; Steve Lewis [Officer, Road Patrol Division]; Bill Lindsay [Officer, Transport Division]; Michael J. McCarthy [Human Resources Director]; Thomas Pope [Undersheriff]; Greg Purcell [County Administrator]. Nancy Ciccone [P.O.L.C. Labor Specialist] participated by phone, without objection.

I. INTRODUCTION.

This case was initiated by the filing of a petition by the Police Officers Labor Council on February 5, 2001. The petition cited the following issues as then dividing the parties from reaching a successor to their 1998--2000 collective bargaining agreement:

1. Wages for 2001
2. Wages for 2002
3. Wages for 2003
4. Shift Differential.
5. Retiree Health Insurance.
6. FTO/CTO pay [training supplemental pay]
7. Dental insurance issues.

The case was duly set for hearing before a panel consisting of David Fernstrum [Employer representative], Fred LaMaire [Union representative], and Benjamin A. Kerner [Neutral Chair] on July 30, 2001. The dental health insurance issue was withdrawn prior to the conclusion of the hearing. The parties thereafter presented their last best offers on those issues that remained in dispute. All such issues had previously been designated by the Panel at the pre-hearing conference as "economic issues" in accordance with the Panel's responsibility under Section 8 of 1969 P.A. 312, MCL 423.238. Pursuant to Section 8, the Panel is constrained to

pick one or the other of the parties' last best offers, and may not pick a middle position which suits it better.

The Panel has reviewed all the evidence in this case including the Exhibits contained in two large notebooks offered by the parties, without objection as to the authenticity of any given Exhibit, and as shown in the Appendices to this Opinion. The panel has also reviewed the transcript of hearing, which was made available on August 13, 2001. On August 15, 2001, the parties, through their attorneys waived the filing of briefs. Thus, the Panel, having studied the evidence before it is prepared to rule.

ISSUE No. 1: WAGE INCREASE FOR F.Y. 2001:

The Last Best Offer of the Employer is to, "Increase 2000 rates in the wage schedule 3.0 percent across-the-board effective February 23, 2001, with retroactive pay to that date for all eligible employees in the bargaining unit as of the date of the Arbitrator's award. No rate increase or retroactive payment prior to February 23, 2001."

The Last Best Offer of the Union is: "3% across-the-board effective January 1, 2001 retroactive to such date."

The wage increase to be granted for calendar year 2001 is thus very close in the estimates of the parties, in fact differs by 8 weeks of pay increments at the level of 3.0%.

The Employer's rationale for its retroactivity position is that it can only afford an annualized increase of approximately 2.5 % of the wage bill for this bargaining unit [including the remainder of the non-312-eligible group of corrections officers, dog catchers, clerical and other personnel in the Sheriff's Department.] It can do so only by shaving 8 weeks off the full retroactive wage increase it would otherwise be willing to grant to this entire bargaining unit. In other words, the Employer relies on the factor of its ability to pay, MCL 423.239(c) ["The interests and welfare of the public and the financial ability of the unity of government to meet those costs."] in support of its position on retroactivity.

The Union's position is that its offer of a 3.0 increase across-the-board, with full retroactivity is a reasonable position and is supported by the evidence of increases recently granted in comparable communities [MCL 423.239(d)(i)] For instance, 3.0% and 4.0% wage increases have been approved for Sheriff's Deputies in Berrien, Eaton, and Jackson Counties. [Union Exh. 6(d)]. The same levels of increases have been granted for Detectives in those

counties. [Union Exh. 6(f)]. The average level of the wage increase in 2001 for Deputies in the 8-county agreed group of comparable communities was 3.4%. Thus, argues the Union, a demand for 3.0% increase is intrinsically reasonable and supported by the evidence in this case.

The Panel has decided to accept the Employer's Last Best Offer. The factor of the ability of the Employer to meet the costs of this contract is a significant one in this County. The testimony of County Administrator Greg Purcell established that Calhoun County currently experiences an employee benefits deficit of approximately \$764,000. [Tr. 47]. The original plan was to pay off this indebtedness over 3 years ending December 31, 2001. However, the plan has not been realized, and in fact the deficit has grown. Certain factors extrinsic to the labor contract have resulted in revenue short-falls intended to cover employee benefits deficits. Most significant, according to Administrator Purcell, is the fact that the County has not been able to generate as much revenue as it has anticipated from leasing jail cells to other jurisdictions. Under current budgeting projections, the County expects to have a million dollar short-fall in revenue from jail operations. [Tr. 50] There is also a projected 0.7% decrease in State funding, as compared to the earlier expectation of a 5.4% increase in

State revenue sharing monies. If these short-falls continue, the County may be required to implement "direct cuts in programs and activities," according to County Administrator Purcell. [Tr. 55]

Given these predictions, given the current budget realities, and given the clear impact that sizable wage increases would have on the overall fiscal posture of the County, and given further the fact that the County has offered a 3.0% wage increase [albeit for 44, not 52 weeks of the current year], the County position is deemed more in keeping with the factors expressed in Section 9 of 1969 Act 312, in particular MCL 423.239(c). The Neutral Arbitrator notes that by providing the full increase with slightly limited retroactivity, the Panel is not only responsive to the Employer's need, but benefits the employees by establishing a higher base for increases in the second and third years of the contract.

ORDER 1

The Panel endorses the Last Best Offer of the Employer on the issue of first year wage increase. The Panel orders that for calendar year 2001, the 2000 wage schedule shall be increased 3.0 percent across-the-board effective February 23, 2001, with retroactive pay to that date for all eligible

employees in the bargaining unit as of the date of the Arbitration Panel's award. [No rate increase or retroactive payment prior to February 23, 2001.]

ISSUE No. 2: WAGE INCREASE FOR F.Y. 2002:

The Last Best Offer of the Employer is to "increase 2001 rates in the wage schedule 3.0 percent across-the-board effective at the beginning of the first full pay period beginning on or after January 1, 2002."

The Last Best Offer of the Union is: "3% across-the-board with full retroactivity if the award is not issued prior to January 1, 2002".

Although the wage increases for F.Y. 2002 were not stipulated, they were nearly identical in the last best offers of the parties [diverging only on the expression of when the year begins]. The evidence also shows that Employer's formulation is in keeping with the contract adopted by the parties for the 1998-2000 term of contract ["payroll periods" shown in App. A]. The Panel adopts the Employer's position expressed above, while noting that it is also in substantial part the Union's position for wage increase for FY 2002.

ORDER 2

For calendar year 2002, the Panel endorses an increase of the 2001 wage rates by 3.0% across-the-board, effective at the beginning of the first full pay period beginning on or after January 1, 2002.

ISSUE No. 3: WAGE INCREASE FOR F.Y. 2003:

The Last Best Offer of the Employer is to "increase 2002 rates in the wage schedule 3.0 percent across-the-board effective at the beginning of the first full pay period beginning on or after January 1, 2003.

The Last Best Offer of the Union is: "3% across-the-board".

Although the wage increases for F.Y. 2003 were not stipulated, they were nearly identical [diverging only on the expression of when the year begins]. The evidence also shows that the Employer's formulation is in keeping with the contract adopted by the parties for the 1998-200 term of contract ["payroll periods" shown in App. A]. Thus, the Panel adopts the position expressed above [in slightly different language, but with common intent] by both parties on the issue of Wage Increase for F.Y. 2003.

ORDER 3

For calendar year 2003, the Panel endorses an increase of the 2002 wage rates by 3.0% across-the-board, effective at the beginning of the first full pay period beginning on or after January 1, 2003.

ISSUE No. 4: SHIFT DIFFERENTIAL.

The parties agree that the amount of the shift differential to be paid during the term of the 2001-2003 contract will be \$0.25/cents per hour.

The parties disagree as to how the differential shall be paid, specifically as to officers who start after the beginning of 1st shift but well before the start of 2nd shift or before the start of 3rd shift.

The last best offers of the parties are as follows:

EMPLOYER'S LAST BEST OFFER:

Employees regularly assigned to the second or third shift shall receive, in addition to their regular pay, twenty-five cents (\$0.25) per hour for all hours worked (including work performed before or after their regular shifts). Employees whose regular work schedule commences within two hours before the start of the second shift shall be deemed second shift employees for purposes of this Section.

UNION'S LAST BEST OFFER:

Effective January 1, 2001, employees who work on the second or third shift shall receive, in addition to their regular pay, twenty-five cents per hour.

The evidence on this subject was limited to Union Exh. #4 and what was determined to be traditional practices in private industries. The Panel invokes MCL 423.239(d)(ii), "wages or working conditions in similar occupations in the private sector," to find that in private sector employment it is common to pay workers who start at odd times a shift differential when they are required to report to work two hours or closer to the start of the 2nd or 3rd shift. Thus, if the regular start of 2nd shift is 3:30 p.m., then an employee who is assigned to start work and who does start work at 1:30 or 2:00 or 2:30 p.m. or at any such time, would be entitled to shift differential pay beginning at his show-up time [or his designated show-up time, whichever is later] and continuing for the entire duration of his work on that day.

On the other hand, an officer who is assigned to start work at 1:00 p.m. under this Order, when the regular start of 2nd shift is 3:30 p.m. would not be entitled to shift differential pay for any part of the time he worked on that day. His assigned start time is more than 2 hours from the start of 2nd shift.

By way of further illustration, suppose the Employer changes the start of the 2nd shift to 3:00 p.m. for all employees who regularly work 2nd shift. Suppose further that a particular officer is assigned to start at 1:00 p.m. Then, he would be paid the shift differential for the entire shift. His start time is 2 hours or closer to the designated start of shift.

ORDER 4

The Panel adopts the Last Best Offer of the Employer on the subject of Shift Differential, as shown above.

ISSUE NO. 5: RETIREE HEALTH INSURANCE.

On the issue of Retiree Health Insurance, the parties stipulate as follows.

LETTER OF UNDERSTANDING

The parties agree that, as consideration for the 2001-2003 Agreement, the Calhoun County Board of Commissioners Policy No. 361 on retiree health insurance (adopted April 7, 1992, and amended August 5, 1993 and June 4, 1998) as it applies to "former employees" shall not be terminated during the term of this Agreement. "Former employees" includes those employees currently receiving benefits under Board of Commissioner Policy No. 361; employees who have received such benefits during the term of this Agreement; or employees who on their last day of service with the County had achieved 55 years of age and 25 years of service, provided such employee's last day of service occurs during the term of this Agreement (any contrary provision in Policy No. 361 notwithstanding). The parties further understand and agree that the obligation to continue Board of

Commissioners Policy No. 361 shall not survive this Agreement.

The Panel adopts the stipulation of the parties on this issue, as shown above, in accordance with MCL 423.239(b).

ORDER 5

The Panel adopts the above-stated language as the Order of the Panel on the subject of Retiree Health Insurance.

ISSUE No. 6: FTO/ CTO PAY.

The parties stipulated as follows.

Those employees who serve as FTO or CTO training officers shall be provided an additional \$0.50/hour for hours worked in that capacity. The monies earned for FTO/CTO pay shall be paid not less frequently than every other pay period.

The Panel hereby adopts the stipulation of the parties on this issue, in accordance with MCL 423.239(b).

ORDER 6

The Panel adopts the above-stated language as the Order of the Panel on the subject of FTO/CTO Pay.

SUBSCRIPTION PAGE:

We, the undersigned, hereby adopt Orders 1-6, as shown above, as the Orders of the Panel in this matter.

Benjamin A. Kerner

Benjamin A. Kerner, Neutral Arbitrator

David R. Fernstrum

David R. Fernstrum, Employer Delegate [Concurs as to Orders 1, 2, 3, 4, 5, and 6]

Fred LaMaire

Fred LaMaire, Union Delegate [Concurs as to Orders 2, 3, 5, and 6; Dissents as to Orders 1, 4]

Dated: September 4, 2001