Arb. 4/5/2002

1832

IN THE MATTER OF THE
ARBITRATION BETWEEN:

COUNTY OF ALLEGAN

AND

MERC Case No. L00 K-7003

POLICE OFFICERS LABOR COUNCIL

_____/

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

Allegan County

Arbitration Panel

William E. Long
Arbitrator/Chair

Peter Peterson
County Delegate

Homer LaFrinere
Union Delegate

Date: April 5, 2002

INTRODUCTION

These proceedings were initiated by petition for arbitration dated December 26, 2000 pursuant to Act 312 of the Public Acts of 1979, as amended. The arbitration panel is comprised of independent arbitrator William E. Long, County Delegate Peter Peterson and Union Delegate Homer LaFrinere.

A pre-hearing was held May 17 and May 23, 2001 at the offices of Peter Peterson in Grand Rapids. It was agreed by the parties to separate the decision on comparability prior to beginning the hearing on other issues, to assist parties in further determining if other issues might be resolved prior to the full hearing. The parties submitted briefs and evidence in support of their respective proposed comparables by July 13, 2001. A partial opinion on comparability was issued by the independent arbitrator July 26, 2001. Communities found to be comparable to the County of Allegan in this proceeding are: the Counties of Barry, Eaton, Van Buren, Grand Traverse, Lapeer, Lenewee, Midland, Kalamazoo and Ottawa.

Hearings on the issues in dispute were held November 8 and 9, 2001 at the City of Allegan Commission meeting room. The County of Allegan was represented by Attorney Peter Peterson. The Union was represented by Attorney Mark Douma. The record consists of 182 pages of record testimony in two volumes and two County and two Union exhibits and three joint exhibits. References to record testimony will be identified as TR-volume number, page number.

Last offers of settlement were submitted by the parties on December 13 and 14, 2001. Post-hearing briefs were submitted by the parties on February 15, 2002.

By written stipulation, which is contained in the case file, the parties waived all time limits applicable to this proceeding, both statutory and administrative. The parties also acknowledged on the record that they had reached tentative agreement on several

issues and that all tentative agreements will be considered to be a part of this award (TR-1-3).

A listing of issues, which the parties reached tentative agreement on, is contained in U-1, tab 4 and E-1, tab 3.

Additionally, a number of issues that were identified as issues in this dispute at the May 17 and 23, 2001 pre-hearing conference, as reflected in the independent arbitrator's May 31, 2001 letter summarizing the pre-hearing conference, have been withdrawn or agreed to by the parties in their last offer of settlement or post-hearing briefs. Those are as follows:

Union issues:

- E-2 (Section 14.1)—withdrawn in post-hearing brief.
- RS-50 (Section 14.1)—withdrawn in post-hearing brief.
- Window period (Section 14.1)—withdrawn in post-hearing brief.
- Hearing coverage—withdrawn in post-hearing brief.

Employer issues:

- Short term disability: maximum weekly benefit—both parties last best offer agreed to maintain the status quo.
- Reduction in worker's compensation supplement—both parties last best offer agreed to maintain the status quo.
- Overtime threshold—both parties last best offer agreed to maintain the status quo.
- Compensatory time: cap on accrued compensatory time off: Union accepted employer proposal in post-hearing brief.
- Health care cost containment—both parties last best offer agreed to maintain the status quo.
- Longevity—both parties last best offer agreed to maintain the status quo.

- Pension: increase employee contribution—both parties last best offer agreed to maintain the status quo.
- Pension: defined contribution plan—both parties last best offer agreed to maintain the status quo.
- Termination of seniority— both parties last best offer agreed to maintain the status quo.
- Leaves of absence—both parties last best offer agreed to maintain the status quo.

The above agreements and withdrawals of issues result in the following issues to be addressed by this panel, all economic:

Union:

1. FAC-5 to FAC-3 (Section 14.1)
2. Overtime (Section 9.3)

Employer:

3. Overtime, exempt Lieutenants (Section 9.3)

Joint issues:

4. Retiree health care (Section 12.6)
5. Active employee health care [Section 12.1(a)]
6. Retroactivity

Issues not before the panel for determination that are in the current collective bargaining agreement will be advanced into the new agreement the same as under the old agreement.

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.

COMPARABLE COMMUNITIES

As noted above, a partial opinion on comparability was issued by the independent arbitrator July 26, 2001. The findings and support for that opinion and partial order are incorporated by reference into this opinion and award. Therefore, the panel chooses the following communities are comparable to the County of Allegan: the Counties of Barry, Eaton, Van Buren, Grand Traverse, Lapeer, Lenewee, Midland, Kalamazoo and Ottawa.

County: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ECONOMIC ISSUES

The parties have either withdrawn or reached agreement on previously identified non-economic issues, therefore the panel finds all outstanding remaining issues in this proceeding are economic issues. The panel will address each of these issues separately.

ISSUE 1

Pension: change from FAC-5 to FAC-3 benefit (Section 14.1)

Section 14.1 of the current contract specifies that "effective February 23, 1999 the following changes shall be made for lieutenants and road patrol sergeants only: 1) the F-50/25 rider shall be implemented and 2) each employee shall contribute 6.67% of his gross earning toward the pension plan" (U-1, tab 6). Under the current contract FAC is based on the average earnings of the highest paid consecutive five-year period of the employee's credited service.

The Union's last offer of settlement proposes to add a sentence to the end of this paragraph stating, "effective the date of this award the MERS FAC-3 option shall be implemented." The Union thereby proposes to make FAC equal to the average earnings of the highest paid consecutive three year period of the employee's credited service with the employer responsible for the cost of this change. Record evidence established that making this change would result in an approximate cost increase of 1.63% of payroll (E-1, tab 37, table 3).

The County's last offer of settlement proposes the same change as the Union with respect to implementing the FAC-3 rider upon the issuance of this order, but differs from the Union by requiring the employee and employer to each share half the increased cost of this provision, thereby requiring a change in the contract language so the employee contributes 7.485% of his or her gross earnings toward the pension plan.

The Union argues in support of its position that the employees in this unit are already contributing to their pension plan at a higher percentage level than the majority of the comparable communities and higher than the Allegan County non-command deputies unit. Employer exhibit 1, tab 16 reveals the non-command deputies currently contribute 4.91% for a plan similar to the FAC-5 plan currently applicable to the command officers.

The County points to E-1, tabs 15 and 16 in support of its position arguing that the employer's position to change from a FAC-5 to a FAC-3 computation is already generous and expecting the employer to bear 100% of the cost of this change cannot be justified on the record.

A review of E-1, tab 15 reveals that four comparable communities provide the FAC-3 plan for lieutenants and/or both lieutenants and sergeants. The average employee contribution for those four plans is 7.2%, all four have a defined benefit plan,

as does Allegan County, and when comparing how the defined benefit is calculated the average multiplier for the four having a FAC-3 is 2.8%, compared to the multiplier for this bargaining unit of 2.5% times years of service.

The exhibit reveals that the County's last offer of settlement is approximately 0.245% closer to the average employee contribution to FAC-3 plans of the comparables than is the Union's. It also reveals, however, that the average multiplier for the FAC-3 calculation is 0.3% higher for the comparable communities than for this unit. A review of the internal comparables reveals employees in this unit are paying higher percentage contributions than any other employee group in Allegan County. Even if one were to add the employee contribution proposed by the County to the non-command contribution currently paid it would still be 0.95% below the employee contribution currently paid by this bargaining unit.

Taking all of these factors into consideration the panel finds the Union's last offer of settlement on the change in this element of the pension plan to more nearly comply with the applicable factors in Section 9. Therefore, Section 14.1 of the contract will be modified to reflect the language contained in the Union's last offer of settlement on this issue to be effective on the date this arbitration award is issued.

County: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ISSUE 2

Overtime (Section 9.3)

Section 9.3 of the current contract specifies that employees receive pay at time and one-half regular straight time pay for all hours **worked** in excess of 80 or 84 hours in a pay period, depending upon the shift the employee is on.

The Union's last offer of settlement proposes adding a sentence to Section 9.3 stating, "time paid shall be considered time worked for the purposes of calculating overtime."

The County proposes no change in the contract.

Record testimony reveals that the employer had established a long standing practice of paying employees in the bargaining unit overtime when they were scheduled to work in excess of 80 or 84 hours in a 14-day period and for purposes of calculating total hours the employer included hours that the employee may have been on vacation or other approved time off. Testimony also revealed that in 2000 the employer discontinued this practice and currently does not consider vacation days or other approved time off as counting toward hours worked within a pay period when calculating whether an employee exceeds the 80 or 84 hours.

Union witness Hull testified that the County's current application of this discourages employees from coming into work when not scheduled in those instances when, within a pay period, they may have taken a personal leave day, compensatory day or been sick a day because they would not be paid time and a half. This reduces the number of employees available for overtime (TR-34).

The County, in its post-hearing brief, acknowledges that payment for overtime as the Union is proposing had been a past practice until 2000 when, because of financial concerns, the County used the expressly stated contract language of "hours worked" as a basis for counting only actual hours worked in applying this section. The County relies on E-1, tab 21 in support of its position pointing out that the majority of the contracts for comparable communities do not contain language similar to that proposed by the Union and while there was testimony that it was not clear how the comparable communities actually applied this provision in there contracts (TR-1-38) the Union had

the responsibility to put forth evidence of the actual practice of comparable county employers and did not.

The County also points to E-1, tab 4 to provide an estimate of overtime paid to command officers. However, there is no clear evidence in the record to identify overtime paid or that might have been paid to employees specifically in relation to this proposal, if it had been applicable then. The County put forth no witnesses to testify on this issue. The County acknowledges, in its post-hearing brief, that only certain situations are effected by this issue and argues that Sections 3.1 and 6.6 of the contract give the Sheriff authority to mandate an employee to work. The County also points to the internal comparables (E-1, tab 22) and says none of the other county employee groups have contract or policy language requiring the employer to count any paid time off as hours worked.

The employer makes strong arguments in its post-hearing brief. However, when one considers the practical application of this contract provision in the absence of language proposed by the Union it appears to place the County, through the Sheriff, in a position to, for economic reasons, choose to order a command officer to work if needed to fill in for someone when that officer has already taken time off in the pay period instead of choosing an officer who is scheduled to work each day in the pay period. An incentive to call in employees who have scheduled personal leave days or vacation days or who have been sick in an earlier part of the pay period, instead of employees who are working each day of the scheduled pay period, does not seem to foster good management or employee/employer relations.

The County argues the Union did not put forth sufficient evidence to support its position, but neither did the County other than to point to general overtime payments and state what other internal and external contract language stated. The County did not

put forth specific evidence on the cost or management implications if this proposal were to be accepted.

The independent arbitrator notes that Section 10.2 of the current contract for this bargaining unit applicable to holiday pay does consider an employees' absence for vacation, compensatory time off, paid personal days, funeral leave or worker's compensation supplement when applying holiday pay. Given the relatively small number of employees in this bargaining unit, it would appear the County's application of this provision beginning in 2000 based on the language in the current contract, can result in manipulation and poor employer/employee relations. That would appear to be the case in light of it being raised in this proceeding. On the other hand, there has been no evidence to clearly identify major cost implications if the proposal is adopted and it is clear that management of overtime and, therefore, the costs is in the County's control.

The record reflects that this issue has been the subject of a grievance. The Union, in its post-hearing brief, requests that any overtime earned as a result of this issue be awarded retroactively to the beginning of the collective bargaining agreement. The independent arbitrator finds no basis in this record for applying this contract revision retroactively. As noted, the independent arbitrator does find that adopting the Union's proposed language can enhance employer/employee relations, management and fairness of applicability of overtime paid to employees when called in to work for non-scheduled hours and is not inconsistent with other provisions in this contract.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue the more acceptable position. Therefore, Section 9.3 of the contract will be modified to reflect the language contained in the Union's last offer of settlement to be effective on the date this arbitration award is issued.

County: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ISSUE 3

Overtime, exempt lieutenants (Section 9.3)

Section 9.3 of the current contract makes no distinction between lieutenants and sergeants in this bargaining unit relative to the policy for payment of overtime specified in this section.

The County's last offer of settlement proposes to add a sentence to Section 9.3 stating, "lieutenants are exempt employees under the Fair Labor Standards Act and are not eligible for overtime or compensatory time off."

The Union's last offer of settlement proposes no change in the contract on this issue.

The County argues that the FLSA exempts certain types of employees from payment of overtime and that lieutenants in this unit, by the nature of their work, meet the definition of "executive" and "administrative" employees under the FLSA. The County also notes that at least two of the nine external comparable communities provide for this exemption for lieutenants (E-1, tab 31) and that the two other bargaining units for other employees of Allegan County with supervisory or professional positions exempt these positions from overtime under the FLSA.

The Union points to E-1, tab 31 and contracts from the external communities (J-1) to support its position that the majority of comparable communities do not treat lieutenants as exempt from overtime under the FLSA. The Union also notes that adopting this provision may result in otherwise qualified sergeant candidates for position of lieutenant being less likely to seek promotion because as lieutenant they will not be eligible for overtime pay.

The County provided excerpts from the FLSA regulations with its post-hearing brief. Section 541.1 describes executive employees and Section 541.2 describes administrative employees as defined by the Act, which the County argues encompasses lieutenants in this bargaining unit. Section 541.1 (e) specifies that executive employees devote no more than 20% of their work hours in a work week to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of that section. The work described in those subparagraphs consist primarily of management and customarily directing the work of and supervising the work of two or more employees. Section 541.2 speaks to administrative functions related to management and general business operations and also requires the 20% limitation devoted to work on other than management, administrative or supervisory activities.

A review of E-1, tab 4 reveals there are three lieutenants and eight sergeants in this bargaining unit. If the three sergeants were off work at any one time that would leave three lieutenants and five sergeants to carry out the work of this unit. It is highly likely lieutenants would have to devote more than 20% of their time to duties other than management, administration or supervision of sergeants. The County provided no evidence demonstrating that the lieutenants were not called upon to fill in for sergeants

on occasions when sergeants have to make court appearances or engage in training or otherwise are absent from their positions.

Record evidence does not support the County's position on this issue. It has not been clearly shown that lieutenant's current duties meet the definition in the FLSA for this exemption and evidence from comparable communities does not provide sufficient support for this change.

Taking all of these factors into consideration, the panel finds the Union's last offer of settlement on this issue the more reasonable position. Therefore on the issue of exempting lieutenants from overtime there will be no change from the current contract.

County: Agree_____ Disagree_____

Union: Agree_____ Disagree_____

ISSUE 4

Retiree health care (Section 12.6)

Section 12.6 of the current contract specifies that the County contribute $200 per month for a retiree's health insurance up until the retiree is eligible for Medicare coverage.

The Union's last offer of settlement proposes new language for Section 12.6 that would require the County to pay 75% of the cost of coverage for the retiree and spouse through the lowest cost option available to the bargaining unit under the County's medical plan. The Union proposal also puts several restrictions on the applicability of the coverage and requires the retiree to be under the health care program provided to active employees in order to be eligible for the employer 75% contribution.

The County's last offer of settlement also proposes new language for this section and, similar to the Union, would provide coverage for a spouse, require the retiree to

take health care coverage through the County's group plan for retiree and spouse and, along with other restrictions similar to the Union's proposal, would continue the County payment until the retiree is eligible for Medicare.

The principle difference between the two proposals is the Union proposes the County pay 75% of the premium and the County proposes crediting the employee with $10 per month for each year of service with the County up to a maximum of $250 per month to be applied to the cost of the premium for the retiree and spouse.

The parties offered U-1, tab 9, page 3 and E-1, tab 17 to describe how comparable communities address this issue. In three of the comparable communities the employer pays a 100% and in one community 50% of the retiree health care premium until Medicare eligible. Three communities provide a capped amount less than that proposed by the County and two provide no retiree health paid benefit.

The Union argues in light of the comparables demonstrating that three employers pay 100% and one employer pays 50% of the premium the Union's proposal that the employer pay 75% is reasonable.

The County argues that its proposal is more reasonable because, 1) it proposes the same retiree health benefit provided to the non-command deputies in Allegan County, except it increases the monthly contribution to $250 and eliminates the 10 year limit on the benefit, 2) when considering external comparables, the majority either do not offer a benefit or provide a monthly amount less than that being offered by the County rather than a percentage of the premium as proposed by the Union, 3) comparing the employer's contribution to costs of this benefit to employers in comparable communities reveals that the average monthly cost to employers in comparable communities is $244, which is closer to the County's proposal than the

Union's cost estimated to be $363 per month with uncertain increases in costs in future years.

The record evidence supports the County's last offer of settlement as the more reasonable on this issue. The County's arguments, as outlined above, are valid based on the record evidence and support the County's proposal over the Union's proposal.

Taking all of these factors into consideration, the panel finds the County's last offer of settlement on the employer's contribution to retiree health care to more nearly comply with the applicable factors in Section 9. Therefore, Section 12.6 of the contract will be modified to reflect the language contained in the County's last offer of settlement on this issue to be effective on the date this arbitration award is issued.

County: Agree  Disagree_____

Union: Agree_____ Disagree 

ISSUE 5

Active employee health insurance [Section 12.1 (a)]

Section 12.1 (a) of the current contract specifies that the County shall pay 90% and the employee 10% of the premium required for the County's medical plan for active employees, with the benefit program that was accepted by the County Board of Commissioners on July 10, 1997.

The Union's last offer of settlement proposes to replace Section 12.1 (a) with language that would eliminate the requirement that the employee pay 10% of the premium and, effective 30 days after this award, specify a set dollar amount the employee would pay per month for family, two-person and single coverage and continue the coverage as it existed on May 25, 2000 including the $6 prescription drug co-pay on option 1.

The County's last offer of settlement proposes to retain the current language requiring the 90/10 co-pay for the premium and add language that would increase the deductible to $100 per member and $200 per family for option 1 (managed traditional); the County pay for master medical will be 10% for general services; and the co-pay for prescription drug coverage will increase to $5 generic/$10 brand name.

The Union points out its proposal seeks the same health care coverage as the non-command unit in Allegan County currently has. The Union refers to U-1, tab 15, page 2 as evidence that the employer pays the full premium in four of the nine comparable communities and the employee shares in the costs of four others if certain health plans are chosen and one community requires an employee contribution of 4.5% of the premium. The Union says evaluation of comparable communities demonstrates the employees in this bargaining unit are currently contributing more for health care benefits than the majority of other employees performing similar work in other communities. The County acknowledges that the current contract requiring employees to pay 10% of the premium does result in employees paying more than the majority of comparable communities, but says that with the exception of the non-command deputies unit, all other employees within the County have a 10% employee contribution to health care benefits for the same basic coverage as that proposed by the County. The County acknowledges that the County has been aggressive in attempting to control health care costs for active employees and believes that a provision requiring employees to share a percentage of the premium cost and pay some co-pay gives employees a stronger interest in containing health care costs.

The County points to E-1, tab 16, which identifies the cost increases for the monthly premium for family coverage under the most comprehensive plan option. This exhibit shows costs increasing 94% from 1990 to 2001.

A review of U-1, tab 10, page 3 identifies the total monthly premiums for health insurance for this bargaining group for 2001 under several plan options and the amount paid by the employer and employee under the current contract. Under the least costly option, the employee currently pays $56.48 per month for family, $48.41 for two persons and $23.05 for single coverage. The Union's last offer of settlement would reduce and cap that amount at $35.00, $27.00 and $18.00 per month respectively.

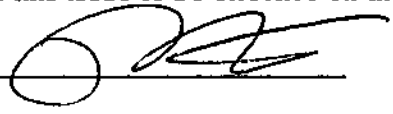
The Union has record evidence support for its position if one considers only the similarly situated employees in the comparable communities and the non-command deputies unit in Allegan County. The County has record evidence in support of its position if one considers the internal comparables and the historical pattern of increasing costs for this benefit in the context of the overall cost and benefit package.

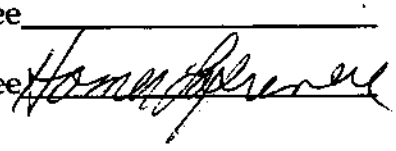
The record demonstrates health care costs and coverage continues to grow in importance in the context of employer-employee relations. The evidence also reveals that the pattern for the majority of contracts between Allegan County and its employee groups provide for a percentage contribution from employees. It is also noteworthy that for two internal contracts, the court hourly and salaried employees, the employee contribution increased from 5% to 10% for employees hired after January 1, 1993. With the exception of the non-command deputies unit, there is no evidence that this employer, or even employers in the external comparables are assuming more of the share of the cost paid by employees for health insurance resulting from negotiated or arbitrated contracts.

The independent arbitrator finds the employer-employee pattern with other employees within the County on this issue as somewhat more important than the fact that a majority of the comparable external employers are not currently requiring employees to contribute a percentage of the health insurance premium costs.

Additionally, U-1, tab 15, page 2 reveals that majority of external employers require employees to contribute something toward the cost of health care, depending upon the plan chosen and it is noted that Van Buren County's plan, which is similar to that proposed by the Union, requires a greater employee contribution than the Union's proposal.

Taking all of these factors into consideration, the panel finds the County's last offer of settlement on active employee health insurance to be the more acceptable position. Therefore, Section 12.1 (a) of the contract will be modified to reflect the language contained in the County's last offer of settlement on this issue to be effective on the date this arbitration award is issued.

County: Agree  Disagree_____

Union: Agree_____ Disagree 

ISSUE 6

Retroactivity

The Union's last offer of settlement on retroactivity proposed that any increase in overtime awarded as a result of Union issue 6 be awarded retroactively to the beginning of the collective bargaining agreement.

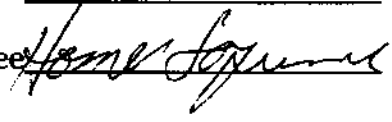
The County's last offer of settlement proposes adding Section 16.10 to the contract proposing that changes resulting from this Act 312 arbitration award be effective the date the award is issued and not be retroactive.

The independent arbitrator has addressed the issue of retroactivity on an issue-by-issue basis. Further, from a review of the tentative agreements reached by the parties, it does not appear retroactivity is an issue in any of those revisions. The independent arbitrator questions the necessity of including the language the County

has proposed in its last offer of settlement, but on the other hand, sees no harm in doing so.

On the issue of retroactivity the panel finds the County's last offer of settlement reasonable. Therefore, Section 16 of the contract will be modified to reflect the language contained in the County's last offer of settlement to be effective on the date this arbitration award is issued.

County: Agree  Disagree_____

Union: Agree_____ Disagree 

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 reached by the panel.

Re: County of Allegan
Police Officers Labor Council
MERC Case No. L00 K-7003

Date: 4-5-02

William E. Long
Arbitrator/Chair

Date: 3-28-02

Peter Peterson
County Delegate

Date: 3-15-02

Homer LaFrinere
Union Delegate

IN THE MATTER OF THE
ARBITRATION BETWEEN:

COUNTY OF ALLEGAN

AND MERC Case No. L00 K-7003

POLICE OFFICERS LABOR COUNCIL
_____/

COMPULSORY ARBITRATION

Pursuant to Act 312,

Michigan Public Act of 1969, as amended

Partial opinion on comparability

Arbitration Panel

William E. Long
Arbitrator/Chair

Peter Peterson
County Delegate

Homer LaFinere
Union Delegate

Date: July 26, 2001

INTRODUCTION

These proceedings were initiated by petition of arbitration dated December 26, 2000 pursuant of Act 312 of the Public Act of 1979, as amended. The arbitration panel is comprised of William E. Long, County Delegate Peter Peterson and Union Delegate Homer LaFinere.

A pre-hearing was held May 17 and May 23, 2001 at the offices of Peter Peterson in Grand Rapids. It was agreed by the parties to separate the decision on comparability prior to beginning the hearing on other issues to assist parties in further determining if other issues might be resolved prior to the full hearing. The parties agreed that on or before July 9, 2001 they would submit briefs and evidence in support of their respective proposed comparables. The July 9, 2001 date was later extended to July 13, 2001 by mutual agreement.

COMPARABLES

Section 9(b) of Act 312 requires the panel to adopt the last offer of settlement, which more nearly complies with 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 employees generally in public and private employment in comparable communities. Act 312 and the rules governing the Act do not prescribe specific factors the panel must consider when determining comparability. Generally factors to be considered include size of the community, form of government, SEV and taxing authority or limitations of the public employer, tax effort and other economic factors. Evidence and factors commonly considered may include crime statistics for law enforcement authorities, scope of

duties and legal authority, the size of the geographic area to be served, the location of the comparable communities as they relate to the local labor market and population demographics. In short, it is the responsibilities of the parties advancing proposed comparable communities or employers within the communities to make the case for comparability.

In this case, both parties agreed to the following comparables: the counties of Barry, Eaton and Van Buren. In addition the Union proposed the counties of Kalamazoo, Kent and Ottawa. The County proposed the additional counties of Grand Traverse, Lapeer, Lenewee and Midland.

The Union, in support of its position, urges the panel to consider two major factors: 1) the past bargaining history of Act 312 proceedings between these parties and 2) the geographic location of the comparables as they relate to the local labor market. The Union points out that the comparables it has proposed are the same as those previously used in command division arbitration proceedings and the Act 312 cases involving the deputy's unit. They note that in a 1996 Act 312 case their proposed comparables were accepted and more recently in a 1998 Act 312 arbitration proceeding, Case No. L97 H-6004, a copy of which was submitted with their brief.

The Union argues that all of its proposed comparables with the exception of Eaton County are contiguous to Allegan County. The Union says that using these comparables best reflects the local labor market, and using the local labor market is important because it has common characteristics such as social political values within the population and because what occurs in one segment of the labor market may affect others in that same labor market. The Union acknowledges that proposed comparables advanced by the County contain

factors such as population levels and state equalized valuation that are comparable to Allegan County, but argues these factors would not have an affect on the employment decisions within Allegan County because the counties selected are not in close proximity to Allegan County. The Union also says that by selecting the same comparables as used in previous Act 312 proceedings the parties are better able to fashion economic proposals with certainty, which is beneficial to the negotiating process in the future.

The County, in advancing its proposed comparables, relies heavily on three factors relevant to comparability: 1) population, 2) state equalized valuation, 3) population density. The County also acknowledges that geographic proximity is a relevant factor in evaluating comparability and that counties in close proximity to one another are affected by the same regional socioeconomic trends and may constitute a labor market with regard to particular job positions.

The County points out however, that geographic proximity should not be the predominate or only factor to be considered. The County states that its proposed comparables include all Michigan counties within 30% of Allegan County with respect to critical factors of population and SEV and within 50% of Allegan County with respect to population density. The County provided exhibits 1 through 3, which set forth data for all the counties advanced by the parties as proposed comparables relating to population, SEV and population density based on 2000 census information and 2000 SEV information. Based on this information the County urges the panel to accept its proposed comparables and reject the Union's proposed comparables arguing that the counties of Kalamazoo, Kent and Ottawa are so different from Allegan County that they should not be considered as comparable communities. The County further

argues that the Union's selection of counties within the labor market was arbitrary and did not take into consideration other less populous counties in the same geographic proximity.

As the County has pointed out in its brief, this independent arbitrator has found in previous cases that the local labor market is a factor that should be taken into consideration when considering the selection of comparable communities and that it is also appropriate to assess and balance between labor market importance and commonly used comparisons, such as populations, SEV, total personnel, etc. There is no precise way in achieving that balance and in this proceeding both parties have been somewhat selective in the data they have provided in support of their positions. For example, neither party has advanced information on the number of employees of comparable employers within the comparable communities, reciprocal law enforcement agreements between jurisdictions or geographic areas within the proposed comparable counties that may be under the jurisdiction of other law enforcement units. However, based on the information provided in the briefs and exhibits, the panel is able to determine comparability consistent with Act 312, which will hopefully assist in advancing resolution of other issues.

In reviewing the exhibits provided by the County in its brief, the independent arbitrator prepared a chart summarizing that information attached to this partial opinion. A review of that data reveals that Kalamazoo and Ottawa Counties have a population of approximately 126% above that of Allegan County. The County argues that that is too extreme a difference and Kalamazoo and Ottawa County should be rejected because of that difference. However, it is noted that Allegan County has a population approximately 86% above that of

Barry County, which is one the counties mutually agreed to by the parties. Similarly, Ottawa County has a SEV approximately 123% larger than Allegan and Kalamazoo's SEV is an approximately 89% greater than that of Allegan. However, Allegan's SEV is approximately 120% larger than that of Barry County, which again was mutually agreed to by the parties. Population density is more difficult to compare in that a county may contain a large city, which increases the county's population density but may or may not be indicative of the population density in the comparative balance of the county. In this case, Kalamazoo and Ottawa County's population density is more than 100% above that of Allegan County and Allegan County's population is approximately 25% above that of Barry, a county selected by the parties. What does stand out in reviewing this information is that the population and SEV of Kent County is nearly 500% above that of Allegan County and the density nearly 300% above that of Allegan County. Even though Kent County is contiguous to Allegan these differences appear to be extreme.

The communities advanced by the County are, of course, all within close range of the population, SEV and density factors of Allegan County. Even though they are not within close proximity of Allegan County their demographics are comparable to that of Allegan County and are likely to require a labor force and working conditions comparable to those of the law enforcement officers for Allegan County. While the population, SEV and density factors of Kalamazoo and Ottawa County exceed those of Allegan by over 100% in some instances, they do not differ that greatly from the differences between Allegan and Barry County, which has been selected by the parties as a comparable community. Given the geographic proximity of Kalamazoo and Ottawa Counties

to Allegan County these differences are not so extreme that they render these counties inappropriate to be used as comparables in this case. The same cannot be said for Kent County, even though it is contiguous to Allegan County. Kent County's demographics involving population and SEV and population density are far different than those of Allegan. Including Kalamazoo and Ottawa provides the panel the benefit of considering the labor market affect in this proceeding. Including the additional comparable communities advanced by the County also provides the panel with reasonable community comparisons. These counties, while not in close proximity to Allegan County, are likely to have comparable law enforcement entities, with comparable working conditions. Michigan communities of similar sizes and rural-urban populations tend to be similar in other ways regardless of geographic proximity.

Considering the comparable factors contained in the exhibits and the arguments offered in these briefs as a whole, the panel concludes that the factors applicable to each community offered by the parties, with the exception of Kent County, fall within a reasonable range of comparability. Therefore, the panel chooses the following communities as comparable to the County of Allegan: the counties of Barry, Eaton, Van Buren, Grand Traverse, Lapeer, Lenewee, Midland, Kalamazoo and Ottawa. These counties will be used in further proceedings in this case.

Date July 26, 2001

William E. Long
Arbitrator/Chair