

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration between:

ALPENA COUNTY and ALPENA COUNTY SHERIFF,

Employer

-and-

Case No. L92 B0399

POLICE OFFICERS ASSOCIATION OF MICHIGAN,

Association

ARBITRATION PANEL:

Donald F. Sugerman, Impartial Arbitrator and Chairman
John H. Gretzinger, Esq. Employer Delegate
Patrick J. Spidell, Field Representative and Union Delegate

APPEARANCES:

For the Employer: John H. Gretzinger, Esq. of Clary, Nantz, Wood, Hoffius,
Rankin & Cooper, Grand Rapids, Michigan

For the POAM: William Birdseye, Advocate, Livonia, Michigan

CHRONOLOGY:

The parties' last collective bargaining agreement expired December 31, 1991; collective bargaining negotiations and a mediation session on May 28, 1992 resulted in a new contract for calendar year 1992; all terms and conditions of employment were settled with the exception of wages; an agreement was entered into whereby wage rates effective for the first full pay period after January 1, 1992 would be submitted to arbitration in accordance with provisions of Act 312; the Employer's petition was received by MERC on June 19, 1992; the Union's answer to the petition was received by MERC on June 29, 1992; the Chair was appointed by MERC on August 17, 1992; a pre-hearing conference (via telephone) was held on September 1, 1992; a hearing was held in MERC's Lansing office on October 12, 1992; the panel conferred (via telephone) on October 20 and 21, 1992; this opinion and award is issued on November 17, 1992.

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LANSING OFFICE

OPINION

BACKGROUND

The County of Alpena is in the northeast tip of the lower peninsula. According to the 1990 census, it had a population of 30,600. Of that number, over a third live in the City of Alpena. The county seat is in the city and it is also the locus of the Sheriff's Department, the subject of this proceeding.

The following classifications in the Sheriff's Department are impacted by this proceeding (with the number of employees in each set forth in parenthesis).

- Detectives (1)
- Sworn Deputies (14)
- Corrections Officers/Dispatchers (9)
- Cooks/Helpers (4 or 5)

Deputies perform a variety of functions; routine patrol, handling court matters, transporting prisoners, working on truancy and juvenile offender problems; DARE (Drug Abuse Resistance Education), and; HUNT (a multi-unit undercover drug team).¹

Corrections Officers/Dispatchers oversee the 68 bed jail operated by the department. In addition to arrests made in the county, the department contracts with other municipal corporations to house their prisoners. These officers also staff the reception desk at which permits and licenses are issued, bonds received, and breathalyzer tests administered. In their dispatch function, officers receive calls for assistance and direct these to deputies for follow-up. Cooks prepare meals that are served in the jail.

¹The detective apparently operates as a part of the HUNT team.

Since about 1989, the Police Officers Association of Michigan (POAM) has been the recognized collective bargaining representative in a unit composed of detectives, deputies, corrections officers/dispatchers and cooks. The POAM and the Employer have negotiated two successive collective bargaining contracts (a three year agreement for 1989 - 1991 and the current one for 1992). For many years prior thereto, unit employees were represented by another labor organization that admits to membership sworn law enforcement officers.

Act 312 proceedings are not unknown to this Employer and its employees. The current proceeding is the third (or possibly even fourth) in the process. Thus, a contract for 1983 and 1984 was resolved in Act 312 arbitration as was the agreement for 1986 through 1988.² To the parties' credit, they were able to successfully conclude negotiations leading to a contract for the prior three years and on every issue other than wages for the current year. We now explore the issue in this case, the appropriate wage rate for 1992.

STATUTORY AUTHORITY

The Statute (Section 9) requires the Panel to "base its findings, opinions and order upon the following factors, as applicable:

- (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.

²Both arbitrations were handled by the POAM's predecessor.

- (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 process.
- (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.

The lawful authority referred to in subparagraph (a) is not an issue in this case. In determining the terms and conditions for a replacement contract, the Panel does not have free reign to dispense equity or to impose what a majority of its members consider to be industrial justice. Its decisions must be based on the applicable standards delineated in Section 9.

Indeed, the often quoted statement of Justice Williams in City of Detroit v. Detroit Police Officers Association, 408 Mich 410 (1980) succinctly describes the methodology for such decision making:

[T]he Panel's decisional authority has been significantly channeled by eight specific factors or standards listed in Section 9 . . . That section trenchantly circumscribes the arbitral tribunal's inquiry to only those disputes involving "wage rates or other conditions" of employment embraced by a newly proposed or amended labor agreement, and commands the panel to "base its findings, opinions and order" relative to those narrow disputes on the eight listed "factors, as applicable." (at p. 453).

Heeding the directive of the Statute and the Court, the Panel has considered the criteria of subparagraphs (b), (c) [first part], (d), (e) and (h) in reaching its decision in this matter.

Comparable Communities

As noted above, the standard relating to comparable communities plays a significant part in resolving Act 312 disputes. However, identifying and selecting such comparable communities has, more often than not, perplexed the parties and panels alike.

For example, in the first Act 312 proceeding involving Alpena and its law enforcement officers (covering the years 1983 and 1984) the panel considered three groups of employees: police officers of the City of Alpena, sheriff's deputies of Alpena County, and other employees of Alpena County whose salaries were set through collective bargaining.

For the second Act 312 case (covering 1986 - 1988) the union proposed as comparable communities the four counties having a common boarder with Alpena. These are, Alcona, Montmorency, Oscoda and Presque Isle. It also nominated four nearby communities: The counties of Charlevoix, Emmet, Antrim, and Otsego. The Employer did not object to the four counties touching Alpena, but it added three others counties: Iosco (one tier removed) and Mackinaw and Chippewa (in the upper peninsula).

It is difficult to determine with any precision exactly which comparable communities were utilized by the panel in the second Act 312 case. The two upper peninsula counties were rejected as not being comparable. Second tier counties, such as Charlevoix, Emmet and Antrim, were not found to be "as totally comparable with Alpena" as the four adjacent ones, but they were nevertheless appear to have been considered in reaching a decision, at least on some of the issues.

Furthermore, it appears that the 2nd panel also considered the City of Alpena, Alpena Township, Alpena General Hospital, other county employees whose salaries were

subject to bargaining, and finally a number of major private employers within the County: National Gypsum, Abbitibi, Besser Company and Baker Enterprises.

Given this rather scattergun approach, the entities nominated by the respective parties in the immediate case is not altogether surprising. The Employer selected the four touching counties (Alcona, Montmorency, Oscoda and Presque Isle) and identified as three possible additions the counties of Cheboygan, Crawford and Otsego (one tier removed).

The POAM initially proposed the City of Alpena as its sole nominee. But it did not seriously contest the use of the four adjoining counties for they fall into the "local labor market designation" a concept championed by POAM in other Act 312 cases.

The parties have each cited prior Act 312 awards to support their respective positions on the issue of whether a city can be considered as being comparable to a county. Answering "Yes" POAM cites: Livingston County (Sheriff) and POAM, 87 H-2068 (Dobry, 1989); Washtenaw County (Sheriff) and COAM, D89 A-122 (Sefenvic); Wexford County (Sheriff) and POAM, G85 L1079 (Vernava, 1988); Isabella County (Sheriff) and POAM, L86 J-906 (Karlstrom). Answering "No" the Employer cites: Livingston County (Sheriff) and COAM, L85 D377 (Frankland); City of Port Huron and POAM, D 85 G-1873 (Beitner, 1985).

The statute does not define the term comparable communities. This lack of definition has led to the differing results of the type mentioned above. Some arbitrators specifically state that a city may be compared to a county. Others have held such comparisons to be inappropriate. And some have simply finessed the issue. Those in this latter

group seem to have used or rejected such a comparable without specifically ruling on the matter.

There are, to be sure, some similarities in the work of all enforcement officers. Thus the deputy might be compared to the police officer. But the units, as a whole must be compared. In this instance they are not similar. The city does not have corrections officers as it does not operate a jail. For the same reason, it does not employ cooks. The two forces are not really alike.

The POAM suggests that the City of Alpena is a comparable community because it is within the county that is the subject of this arbitration process. That is not a sufficient basis for a finding of a comparable community.

The most common factors used to compare one community with another are population, geographical area, state equalized value of resources (residential, commercial, industrial, agricultural and personal properties), and size and structure of the work force. Various other esoteric criteria have been used; owner occupied housing; median income; educational level, and; persons below the poverty level to mention a few.

The governmental structure of counties and cities and their funding sources are so different that comparisons are not readily apparent. The geographical size of the two units are generally dissimilar as are the services that each provides to those within its boundaries. This does not mean to say that a city may never be compared to a county, but it will certainly be the unusual case that will permit such a direct comparison.

In the immediate case I am satisfied that the City of Alpena should be used only as a guide and not as a principal comparison. The same is true of the second tier counties and

private businesses. The main units of comparison in this case should be the four abutting counties and the other organized employees in Alpena County. The other entities are used to show patterns and to otherwise cross check the reliability of the model selected.

Final Offers of Settlement

Pursuant to agreement of the parties, final offers of settlement were transmitted to the Chair on October 14, 1992. The POAM proposed an across the board increase of 3.75 percent. The Employer proposed an increase of 2.50 percent.³

Discussion

For 1991, the rankings among the comparable communities, including Alpena, for a deputy at the top of scale was:

1.	Alcona	\$22,918
2.	Alpena	\$22,818
3.	Presque Isle	\$21,736
4.	Montmorency	\$21,008
5.	Oscoda	\$20,530

For 1992, the deputy at top of scale is paid:

1.	Alcona	\$23,671
2.	Presque Isle	\$22,360
3.	Montmorency	\$21,944
4.	Oscoda	\$21,466

In real dollars, this represents increases of 690, 624, 936, and 936, respectively.⁴

³The Employer's offer with regard to the cook is \$.20 or 2.89%.

⁴In the second tier communities, the wages were: Cheboygan increased by \$624, Crawford by \$693 and \$485 (representing an initial increase and a second one 6 months later) and) for Otsego. A new rate had not yet been established in the City of Alpena.

If the POAM proposal were accepted, it would amount to an increase of new money totaling \$856. It would also elevate Alpena into a virtual dead heat with Alcona as number one among the comparable communities (\$23,671 vs. \$23,670).

The Employer's offer of 2.50% represents an increase of \$570. This is below the range of dollar increases granted in the other comparable communities. It is, however, closer to the dollar and percentage increases in Alcona and Presque Isle. The identical increases in Montmorency and Oscoda appear to be somewhat of an aberration and an attempt to correct prior inequities. Nevertheless, the Employer's proposal would cause employees to lose ground in their relative standing among counterparts from the previous year.

One other important factor that has not yet been mentioned deals with what, in the argot of Act 312 proceedings, is called the "internal comparables." This refers to the amounts paid by the subject employer to its other employees including both those in bargaining units and in non-represented positions. Obviously what the employer pays to one group of employees has some bearing on the amount paid to all others. This process is nowhere more apparent than in cases involving police and fire fighters. Most often, these two groups consider themselves *pari passu*. Thus, it is difficult for an employer to give an increase to one of these groups without doing so for the other. Here, the Employer and its other organized employees settled on contract increases totaling 2.5% for 1992. Unrepresented employees received similar increases.

The relevant factors in this case, namely, the county's financial condition,⁵ a cost of living increase in 1992 at a rate of just under 3 percent, the amount negotiated by the Employer with its other organized employees, the amount paid to unrepresented employees, the increases paid to employees in the directly comparable communities, and the trend as exemplified in the second tier of communities led me to conclude that the Employer's offer was closer to the mark than that of the POAM. This does not mean to say that it was totally on target. It was not! The Chair felt it had shortcomings, particularly with regard to employees losing ground in their relative standing; in 1991 Alpena trailed Alcona by \$168. But in 1992 the spread would increase to \$283.

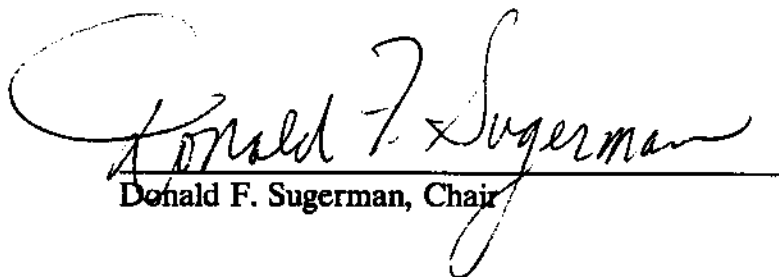
In a panel conference on October 20, the Chair stated that of the two offers, the Employer's more closely approached that dictated by the criteria of Section 9. It would have been adopted, but for the request of the Chair that the Employer with the acquiescence of the POAM, consider modifying its offer. It, of course, was under no obligation to do so! The proposal was that the increase be bifurcated; two (2) percent on January 1 and one (1) percent on July 1, 1992. This amounts to 2 percent for the full year and 1 percent for half a year or one-half of a percent annualized. The total is thus two and a half (2.5) percent.

This restructuring results in an increase of new money; from \$570 to \$720. This increase enables unit employees to maintain their relative standing among their counterparts in the comparable communities. For example, for 1992 a deputy at maximum is \$164 behind his counterpart in Alcona, exactly the same place as the year before.

⁵For 1992 the SEV was frozen over the prior year. Little property has been added to the rolls. For the fiscal year ending December 31, 1992, the County expects a shortfall of revenue of from \$350,000 to \$400,000. It has reduced its equity position from about \$225,000 to \$85,000. Finally, to meet its budget, the County recently placed a freeze on all expenditures.

The Employer acceded to the Chair's request. A revised last final offer was submitted on October 21, 1992 and it is adopted as that of the panel majority. The rates are as follows:

<u>Position</u>	<u>Current</u>	<u>Effective 1-1-92</u>	<u>Effective 7-1-92</u>
Detective	\$23,872 (\$11.48)	\$24,469 (\$11.76)	\$24,469 (\$11.76)
Deputy	\$22,817 (10.97)	\$23,275 (\$11.19)	\$23,504 (\$11.30)
Dispatcher/ Corr Off	\$17,388 (\$ 8.36)	\$17,742 (\$ 8.53)	\$17,929 (\$ 8.62) ⁶
Cook	\$ 6.91	\$ 7.11	\$ 7.11 ⁷



Donald F. Sugerman, Chair

⁶The increase for the dispatcher/correction officer on July 1, 1992 actually amounts to 1.1 percent.

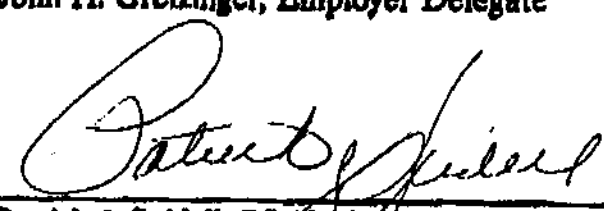
⁷The proposal for the cook and detective remain as in the original offer; \$.20 actually amounts to an increase of 2.89%.

AWARD

For the reasons set forth above, the Employer's revised offer of October 21, 1992 is adopted as the wage rate for unit employees for the year 1992.


Donald F. Sugerman, Chair


John H. Gretzinger, Employer Delegate

 - 11-17-92
Patrick J. Spidell, POAM Delegate Dissenting

November 11, 1992