

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

In the Matter of Statutory Arbitration between:

COUNTY OF ST. JOSEPH
(SHERIFF)
Employer

-and-

COMMAND OFFICERS ASSOCIATION OF
MICHIGAN,
Union.

MERC Case No. L01 B-7002

Appearances:

For the Employer; John R. McGlinchey
 Cohl, Stoker, Toskey & McGlinchey P.C.

For the Union: James DeVries
 Service Representative

PANEL'S FINDINGS, CONCLUSIONS, AND AWARD

I. BEFORE AN ACT 312 PANEL CONSISTING OF:

Benjamin A. Kerner, Chair
John R. McGlinchey
James DeVries

Dated: June 30, 2003.

II. LEGAL AUTHORITY.

Pursuant to 1969 Public Act 312, as amended by 1972 Public Act 127, MLCL.A. 423.231 et. seq., the arbitration panel convened and conducted a hearing at the offices of the Employment Relations Commission in the City of Lansing on May 1, 2003. Each party was represented by persons of its choosing. Adequate opportunity was afforded at the hearing for the presentation of all exhibit information and testimony. Each party had an opportunity to cross-examine the witnesses for the other side. Briefs were filed in this matter on June 11, 2003. The case is now ready for decision.

III. ISSUES IN DISPUTE.

- A. Wages to be paid effective January 1, 2003.
- B. "Applicability of award" limited to employees on date of award.

IV. PRE-HEARING ACTIVITIES.

The parties met for a pre-hearing conference in Lansing, Michigan, on March 13, 2002, at which time a survey of the issues was made and the following determinations were made:

- Both parties to exchange exhibits 45 days preceding the date of the first hearing in this matter.
- Both parties to file their last best offers with the neutral arbitrator 1 week after the close of the hearing in the matter.
- Both parties to file briefs within 30 days after the transcript becomes available.

It was further agreed that a preliminary hearing would be needed on the subject of what employers should be considered comparable. On September 9, 2002, the parties met with the panel for a preliminary hearing. As a result of that hearing, the following communities were stipulated as comparable communities:

Cass County

Calhoun County

Ionia County

Barry County

Branch County

Van Buren County

(Tr. of 9/9/02, p.3).

Extensive correspondence, phone calling and conference calls were required to establish hearing dates. First, February 4, 2003 was established as a hearing date but was adjourned by the Employer due to its counsel's being required to appear in an emergency Court of Appeals matter (adjourned with concurrence of the Union). Then, April 7, 2003, was established as a hearing date, but was canceled on the morning of the hearing by the Union (with the concurrence of the Employer) due to icy road conditions. Finally, on May 1st, 2003, the parties had a hearing in Lansing, Michigan.

Present in addition to the panel were Judy-Wing, County Administrator; Dennis Allen, Undersheriff; Bill Rye, Management Consultant, and Charles Clever, Employer's Human Resources Department. For the Union, Mr. Marvin Dudzinski, POAM Research Department, was present and James A. Hart, Local President.

V. POSITIONS OF THE PARTIES.

- A. Wages to be paid effective January 1, 2003. The Union demanded a 5.0% increase, effective across the board for all sergeants and detective sergeants. The Employer offered a 3.0% increase, with a 3-year step increase of an additional 2.0%.
- B. Applicability of Award—The Employer proposes that the award be applicable only to employees employed on date of the award.¹

VI. DISPOSITION OF ECONOMIC ISSUE: [Wages to be paid effective Jan. 1, 2003]. The Arbitration Panel awards the last best offer of the Employer: 3.0% across-the-board plus a 3-year step increase of an additional 2.0% as defined below.

¹ The Employer did not note this issue in any answer. The Employer did not propose the issue at the preliminary conference to set the issues for hearing, nor did the Employer introduce any evidence on the subject of "applicability of award" at the hearing on May 1, 2003. Rather, this "issue" appears for the first time at the filing of the parties' last best offers, after the close of the hearing. There is no reciprocal Last Best Offer on the part of the Union, since the Union had not been advised that the "Applicability of Award" was an issue in controversy. Under the circumstances, the Panel adopts the position that the issue has not been properly joined for decision, and that the issue of "Applicability" shall remain in whatever posture it was at the filing of the petition in this matter. In other words, issues not handled by agreement of the parties in bargaining or by proper submission herein to Act 312 Arbitration are regarded as settled or withdrawn, or "The balance of the Collective Bargaining Agreement shall remain as it existed in the predecessor Agreement, subject only to appropriate date changes, typographical errors and changes that may be required by the final Act 312 Award." [E'er's Last Best Offer].

VII. POSITIONS OF THE PARTIES.

The position of the Union is that there is no issue as to either the demand of the Union or the offer of the Employer's creating a hardship, or taxing the ability of the governmental unit to pay the increase. [MCL 423.239(c)]. This position is based on the fact that the differences in cost between the Employer's proposal and the Union's proposal are "extremely negligible when consideration is given that three of the bargaining unit members receive a very small overall increase...." [Br. p. 11].

As to comparable communities, [MCL 423.239(d)] the Union maintains that the 8% effective difference between the top-ranked deputies and the Union proposal for sergeants is a traditional factor, one that was considered in setting wages under previous contracts and that has been a feature of the bargaining relationship between the parties, and that should be preserved. Further in this regard, the Union explains that the 8% differential is similar to the differential found among comparable communities. In regard to comparable communities, the Union argues that 4 of the comparables--Barry County, Branch County, Calhoun County and Cass County--maintain an even higher differential between the top-ranked deputies' pay and the sergeants' pay. [U. Exh. 23] The overall average differential among the 6 comparable communities is 11.2% of pay. Thus, in essence, the Union is saying that the requested 8% differential between a top-ranked deputies' pay and the sergeants' pay for 2003 is modest. Summarizing this argument, the Union says, "The Union's offer would maintain the current eight (8) percent differential and put the sergeants in St. Joseph

County tied for fifth out of seven (tied with Van Buren) of the comparables communities." [Br., p. 10].

The Employer argues that the relevant factors are (1) the comparables, as measured by what agreed comparables pay their sergeants and provide in overall compensation; and, (2) the overall compensation received by the sergeants including direct wage compensation, vacation pay, holiday pay, insurance benefits, and retirement benefits. The Employer also points to (3) an internal comparable, what was awarded recently in Act 312 proceedings to the deputies.

The Employer points out that the Union's proposed last best offer requires the Employer to pay 5% across the board to all sergeants in 2003, regardless of their years of service. Regarding external comparables, the Employer says that a review of only wages reflects that sergeants' wages exceed the median for the comparable by more than five hundred dollars. (Note: only 4 comparables were available for comparison by the time the briefs were filed in this matter. E'er. Exh.1). But, argues the Employer, wage differences just begin to tell the picture. Citing the factor of overall compensation, the Employer details from its hearing exhibits how this Employer pays 9 more days in vacation allowance than the average of the comparables [E'er. Exh.10]. In regard to retirement benefits, says the Employer, it provides a Rolls Royce plan, called the MERS B-4 plan with E-2 rider [annuity escalation], which is a better retirement plan than available at most if not all of the comparables. In addition, the Employer pays the lion's share of the retirement contributions. Specifically, St. Joseph County employees pay only

4% of their salary for the MERS B-4 plan. By contrast, Calhoun County employees contribute 16% of their salaries to their retirement plans. Cass and Van Buren Counties require 5% contributions, whereas Barry County and Ionia County require less than the 4%

In terms of the nature of the benefit conferred by the St. Joseph retirement plan, the exhibit relied upon by the Employer [E'er. Exh. 18] indicates that all comparable communities calculate retirement benefits based on 5 years of final average compensation. St. Joseph computes its employee's retirement benefit based on 3 years of final average compensation. This is, of course, a distinctly more beneficial plan.

In sum, looking at the features of the retirement plan as compared to comparable communities, looking at cost to the employee, looking at retirement plan composition (elements of the plan), the overall picture is one of relative well-being for members of the St. Joseph retirement plan. This is one of several areas in which the Employer's benefits must be considered generous, argues the Employer. On the factor of overall compensation, says the Employer, the Union has not justified any increases beyond what the Employer offers.

Finally, the Employer wants the Arbitration Panel to consider the factor of internal comparables. Specifically, the Employer wants the Panel to review the fact that as of the current contract year the Kovinsky Arbitration Panel [U. Exh. 24] instated a new top step for deputies of 2% above the third-year wage rate, applicable to any deputy who had "8 years or more of service." [U. Exh. 24, p. 25] Thus, in essence, while doing away with the step approach to longevity pay, the

County and the Police Officers Association of Michigan (the representative of the deputies), through their arbitration panel, have reinstituted a step increase in the deputies' contract. The Employer says that the step it seeks to apply to the sergeants' wage structure is parallel, and justified by the Kovinsky Panel's award. The Employer proposes, in essence, that a longevity step become available to sergeants after 3 years in the job. "The Employer is proposing to add a new top step that is 2% above the previous top step for sergeants. However, instead of proposing to make the new top step available after eight (8) years of service, as is the case for deputies, the Employer proposes to make the new top step available after only three (3) years in the sergeant's classification." [Br. p. 8]

VIII. DISCUSSION AND RATIONALE.

There is no doubt that the factor of "interests and welfare of the public and the financial ability of the unit of government to meet those costs," is simply not an operative factor in this proceeding. There is nothing in this record to show that the offer of the Union is so onerous as to make its acceptance financially ruinous to the unit of government. Contrariwise, the Employer does not claim that it does not have the ability to pay the Union's demand.

The Employer argues essentially fairness and equity, as embodied in the Act 312 concept of "overall compensation." Here, the Employer has made a convincing claim that both wage elements which can be quantified (such as number of sick days and vacation days) and some benefits which cannot be completely reduced to numbers (such as the relatively excellent options available under the MERS B-4 plan with E-2 rider) should be considered. Overall, the sergeants have an excellent set of benefits. The overall compensation of the members of the bargaining unit is a factor weighing heavily for the Employer's proposal.

Furthermore, there does not appear to be any strong reason on the external comparables as to why the Union proposal should be adopted. Rather, the external comparables convince the Panel majority that either wage demand is in the range of "acceptable" and, if anything, reviewing Employer Exhibit 9 [total cash compensation, including the figures for cash compensation after retirement contributions], these figures indicate that the more conservative wage demand should be awarded.

In the prior bargaining between the County of St. Joseph and the Police Officers Association of Michigan, the representative of the deputies, those parties have apparently agreed to do away with step increases representing extra pay for extra length of service. However, those parties have let the step increase in by the back door, through their presentation of this element of wages "in lieu of the longevity payments" as an item for decision in the Kovinsky Panel's Award. The concept that the Kovinsky Panel adopted, namely, "A step increase in the sum of two percent..." is a benefit that has become established for the deputies' unit. It is an internal comparable—one that this Panel is bound to examine.

The Panel majority finds that the factor of the internal comparable, i.e., the step increase for length of service already granted to the deputies' unit, is one of the most significant factors of the factors presented in this case. The Panel thus relies upon the traditional relationship of the wage structure for deputies as compared to the wage structure for sergeants as a factor for decision. Act 312 allows the Panel to take into consideration:

Such other factors, not confined to the forgoing, 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 public or in private employment. MCL 423.239(h).

The history shows that a 2% step increase is now an established element of wages for deputies. Given the relationship that exists between these units, it would be appropriate and, in view of the Panel majority, necessary, to award the step increase proposed by the Employer here as an element of sergeants' pay.

For the foregoing reasons, the panel awards the Employer's last best offer on the issue of the 3rd Year Wage Increase.

AWARD

ISSUE: Wage increase effective on and after January 1, 2003. The Employer's proposal is accepted.

The Employer proposes a 3% increase effective January 1, 2003. Effective January 1, 2003, the Employer also proposes a 3 year step, effective for members of the unit upon completion of three years in the classification of Sergeant/Detective Sergeant, at the rate of \$21.48/hour.

Benjamin A. Kerner

Benjamin A. Kerner, Panel Chair

The following agrees:

John R. McGlinchey

John R. McGlinchey, Employer Delegate

The following dissents:

James DeVries, Union Delegate