

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

IN THE MATTER OF THE ACT 312
ARBITRATION BETWEEN:

LAPEER COUNTY (Employer) (County)

-and-

POLICE OFFICERS LABOR COUNCIL (Union)

MERC Case #D99 G-1139

FINDINGS, OPINION AND ORDER

APPEARANCES:

ARBITRATION PANEL:	Mario Chiesa, Chairman
EMPLOYER DELEGATE:	John Biscoe, County Adm.
UNION DELEGATE:	Lloyd Whetstone, POLC Staff Representative
FOR THE UNION:	John A. Lyons, P.C. By: Peter P. Sudnick 675 E. Big Beaver, Suite 105 Troy, MI 48083
FOR THE EMPLOYER:	Howard L. Shifman, P.C. By: Howard L. Shifman 370 E. Maple Road Suite 200 Birmingham, MI 48009

INTRODUCTION

This Act 312 interest arbitration involves Lapeer County and the Police Officers Labor Council which represents the Supervisory/Sergeants and Lieutenants unit. The Petition for Arbitration is dated January 16, 2001. It indicates that the prior

Collective Bargaining Agreement had terminated on December 31, 1999 and the bargaining unit consists of 12 employees. It also listed several issues, but the parties resolved all, with the exception of retiree health care, which is the sole issue brought to this arbitration proceeding. The parties stipulated that all other issues were settled and the only outstanding issue related to retiree health care.

The Chairman was appointed pursuant to a correspondence dated June 29, 2001. A pre-arbitration conference was conducted via a conference call on August 17, 2001. A summary of the conference is dated September 18, 2001. It was authored by the Chairman and disseminated to the parties. The hearing took place on June 13, 2002. Last Offers of Settlement were received and exchanged on July 16, 2002. The parties' briefs were received and exchanged on March 28, 2003. The executive session took place on May 1, 2003 and these Findings, Opinion and Order followed as soon as possible thereafter consistent with a thorough and careful analysis of the record.

ISSUE

As indicated above, there is one issue to be arbitrated. It involves the economic issue of retiree health care. The language existing in the prior Collective Bargaining Agreement is located in Article XX - Retirement, Section 4, and reads as follows:

ARTICLE XX - RETIREMENT

"SECTION 4.

"Employees retiring under the effective MERS Retirement Program (beginning January 1, 1997) shall be eligible to participate in the County Retiree Health Insurance Program consistent with the procedures established in County Policy. Retirees participating in the County Retiree Health Insurance Program shall receive a \$100.00 per month retiree health insurance premium supplement while enrolled in the Program. Retirees must pay the difference between the \$100.00 County supplement and the premium charged by the County's insurance provider to remain active in the Retiree Health Insurance Program. Under no conditions shall payment be made by the County to an individual retiree or to other health insurance providers. Retirees must pay their monthly premium within the guidelines established in the County policy to retain health insurance under this County sponsored plan.

a. Retirees who retired prior to January 1, 1997, currently receiving the \$750.00 stipend, will continue to receive the same benefit. Those retirees must elect to apply the \$750/\$400 stipend toward the Program described above. Those electing this option will be required to sign an agreement accepting the terms and conditions of the Retiree Health Insurance Program as established."

The Union's Last Offer of Settlement appears as follows:

"ARTICLE XX RETIREMENT

"The Union requests that Article XX, Retirement, Section 4, first paragraph, be modified to provide:

Section 4.

Employees retiring under the effective MERS Retirement Program (beginning January 1, 1997) shall be eligible to participate in the County Retiree Health Insurance Program consistent with the procedures established in County Policy. The Employer shall pay one hundred percent (100%) of the health insurance premium for the retiree only, i.e., single life coverage. The retiree shall have the right to elect family or multiple coverage under the County Retiree Health Insurance Program; provided, however, that the retiree pay the difference

between the family and/or multiple coverage premium and the single coverage premium. Under no circumstances shall payment be made by the County to an individual retiree or to other health insurance providers. Retirees who elect family and/or multiple coverage must pay the difference between the multiple premium and the single premium within the guidelines established in the County policy to retain family and/or multiple health insurance coverage under the County sponsored plan.

"As indicated at the hearing, the Union has withdrawn its demand to eliminate the language restricting retirees to the County Retiree Health Insurance Program."

The Employer's Last Offer of Settlement reads as follows:

"LAPEER COUNTY in accordance with Section 8 of Act No. 312 respectfully submits to the Panel this Last Offer of Settlement on the issue in the above matter as follows:

1. Health Care for Retirees

Amend Article XX, Section 4 of the contract to read:

Employees retiring under the effective MERS Retirement Program (beginning 01/01/01) shall be eligible to participate in the County Retiree Health Insurance Program consistent with the procedures established in County Policy. Retiree's (sic) hired prior to 1991 shall receive \$150.00 per month retiree health insurance premium supplement while enrolled in the Program. Retirees must pay the difference between the \$150.00 County supplement and premium charged by the County's insurance provider to remain active in the Retiree Health Insurance Program. Under no conditions shall payment be made by the County to an individual retiree or to other health insurance providers. Retirees must pay their monthly premiums within the guidelines established in the County Policy to retain Health Insurance under this County sponsored plan.

Add (b) to Section 4:

For those employees hired after January 1, 1991 who have completed 36 months of full time service on or after 01/01/2001, a VEBA Account shall be established and the County will deposit \$20.00 per month to the employees VEBA Account."

APPLICABLE FACTORS

The factors the arbitration panel must consider in resolving this dispute are contained in Section 9 of Act 312, 1969 as amended, i.e., MCL 423.239. The provision reads as follows:

"423.239 Findings and orders; factors considered.

"Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall 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 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."

COMPARABLES

One of the Section 9 factors that parties often have relied upon is subsection (d) which involves the comparison of wages, hours and conditions of employment of the employees involved in the arbitration with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in comparable communities and in private employment in comparable communities.

Often the parties spend a substantial amount of time presenting evidence and arguments regarding the question of which communities should be considered comparable to the community involved in the arbitration. In many cases a substantial portion of the record is comprised of this type of evidence and argument.

However, in the current case the parties have been able to stipulate to a list of communities which the panel should consider

comparable for the purposes of this arbitration. The communities agreed to by the parties are: Allegan, Bay, Clinton, Eaton, Grand Traverse, Lenawee, Marquette, Shiawassee, St. Joseph and Van Buren.

Given the above, there is no necessity for delving into those elements which arbitration panels consider relevant in determining whether communities are comparable for the purposes of an Act 312 arbitration.

ABILITY TO PAY

Subsection (c) of Section 9 of the Act specifically references as a factor, which the panel must consider, the interest and welfare of the public and the financial ability of the unit of government to meet those costs. This element has often been characterized as the Employer's ability to pay.

The Employer has not taken the position that it lacks the short-term ability to afford the proposal sought by the Union. However, it has argued that in the long term there is a real question of its ability to pay.

The background information establishes that in 1997 the total complement in the Sheriff's Department was 55. This increased to 82 in the year 2000 and has continued at that level through the year 2002. The 2002 tax rate is 3.99% which, if not the lowest, is certainly near the lowest of the comparable communities.

The record also shows that for the period 1997 to 2002, with a budgeted figure for 2002, health fund expenditures have increased from \$1,190,935.75 to a budgeted level of \$2,526,450.00.

In 1997 interest on investments was \$515,299.00. This peaked in the year 2000 to \$934,695.00, but fell to the budgeted figure of \$500,000.00 in 2002.

In 1997 revenue sharing was \$1,305,170.00. It peaked in the year 2001 with \$1,774,671.00 and has fallen to the budgeted figure of \$1,765,356.00 for the year 2002. Additionally, the expenditures for law enforcement have risen from a total of \$2,674,343.00 in 1997 to \$5,493,509.00 in 2002.

There is other data regarding the Employer's ability to pay and all was carefully analyzed by the panel.

RESOLUTION

At the outset it must be noted that in addition to developing a record with several hundred pages of documentation, as well as testimony, the parties also submitted comprehensive post-hearing briefs. The entire record was carefully and painstakingly analyzed.

One of the Section 9 factors heavily relied upon by the Union is a comparison of the current retiree health insurance, along with the Union's and the Employer's Last Offers of Settlement, with the retiree health insurance provisions existing in the comparable communities.

To recall, the prior Collective Bargaining Agreement contains what is referred to as the "current provision" which indicates in Article XX that employees in this bargaining unit can retire at age 50 with 25 years of service. Upon retirement they receive \$100.00

per month for retiree health insurance premium supplement when enrolled in the County retiree health insurance program. There is also a provision regarding retirees who retire prior to January 1, 1997. The panel interprets both parties' Last Offers of Settlement as not affecting the language in current paragraph (a) of Section 4 of Article XX.

The Union's Last Offer of Settlement provides that individuals who retire "beginning January 1, 1997," would have their health insurance premium for the retiree paid entirely by the Employer. The retiree can elect family or multiple coverage, but is required to pay the difference between what has been selected and the single coverage premium.

The Employer's Last Offer of Settlement would increase the \$100.00 per month retiree health insurance premium supplement to \$150.00 per month for those hired prior to 1991. The remainder of the provision regarding supplemental payment of retiree health insurance premium is essentially unchanged. However, the Employer's offer goes on to add new language which provides that employees hired after January 1, 1991, who completed 36 months of full-time service, will have access to a VEBA Account which the Employer would develop and \$20.00 per month per employee. The supplemental payment referenced above applies to retirees hired prior to 1991.

Before analyzing the data regarding the comparable communities, it is significant to note that the retirement provisions affecting members of this bargaining unit provide, inter

alia, that they may retire at age 50 with 25 years of service. While certainly each employee's decision to retire will be based upon his/her own particular circumstances, it is noted there is a significant amount of time between age 50 and what is generally considered the most common retirement age of 65 through 67 which exists in the private sector. This time is available for retirees to engage in alternative careers if they so choose. Of course, some may not, but the point is that the possibility certainly exists.

The data regarding Allegan County indicates, inter ali, that at age 50 with 25 years of service coverage is available through Allegan County's group plan for retiree and spouse. The Employer contributes \$10.00 per month for each year of service up to a \$250.00 per month maximum. The coverage terminates when an employee becomes eligible for Medicare.

In Bay County a retiree health insurance coverage is provided at age 55 with eight years of service or with 25 years of service coverage for a retiree. There is a payroll deduction of \$10.24 for non-Medicare retirees and \$5.12 for Medicare retirees. Spousal coverage is provided at 50%, the difference between the premium required to purchase employee/one dependent coverage and the premium for employee only coverage.

In Clinton County at age 55 with 20 years of service a retiree will have his/her coverage fully paid by the Employer until Medicare and then supplemental coverage is available. The Employer

provides \$30.00 per month for spousal coverage until Medicare, then \$30.00 per month towards the supplemental coverage.

In Eaton County retirees receive the same coverage as active employees, the premiums being fully paid by the Employer for a retiree with 25 years of service at age 55 at retirement. Spousal coverage is available with the Employer paying 50% of the premium at retirement, 60% after 12 months, 70% after the next 12 months, 80% after the 12 months, 90% after the next 12 months, and 100% employer-paid thereafter.

In Grand Traverse the Employer pays 50% of premiums for coverage and 100% for complimentary coverage for retirees at age 50 with 25 years of service.

In Lenawee County coverage is available through the group insurance plan, but the retiree must pay 100% of premiums.

In Marquette County at age 30 with 25 years of service or age 55 with 15 years of service, the Employer provides fully paid coverage for retiree and spouse.

In Shiawassee County at age 50 to 55 the Employer will pay single subscriber rate for retirees.

In St. Joseph County there is no retiree coverage.

Van Buren provides the same group hospitalization medical coverage to all of its retirees who have a minimum of 25 years of service subject to the same premium increase provisions and HMO alternative and premium co-payments for active employees. The coverage is also available to spouses.

After analyzing the data it would be fair to state that in general that which is provided by most of the comparable communities compares very favorably, and in many cases surpasses the current character of the benefit in this bargaining unit. It is noted that there are a few counties which provide a lesser benefit than is currently available to retirees in this bargaining unit. Furthermore, it is noted that some of the counties require 55 years of service before any retiree is eligible for health insurance premium coverage to whatever extent it is available.

It must be recognized that the Employer's Last Offer of Settlement contains what is in essence a two-tier system. It is noted that all the current members of this bargaining unit, save one individual who has recently been promoted from the Deputy unit, would receive the \$150.00 per month retiree health insurance supplement. However, those hired after January 1, 1991 would have access to the VEBA Account which, at least when analyzed by current calculations, would provide a much lesser benefit. So there is also that aspect of the Employer's Last Offer which must be considered.

If this issue would turn only on the evidence regarding the comparable communities, it would be appropriate to conclude that the Union's Last Offer of Settlement was more acceptable. However, there is much more to consider.

It is true, as suggested by the Union, that in other areas of compensation employees in this bargaining unit historically have been behind the levels existing in many comparable communities and

certainly the averages. However, the reality is that the Employer has made very significant strides to increase the wages and benefits available to members of not only this bargaining unit, but others in the Sheriff's Department. In this regard it is noted that all other issues have been settled and it is only the retiree health insurance issue which is preventing the parties from executing a Collective Bargaining Agreement.

There are also additional considerations. As indicated, the Employer has made some substantial efforts to increase the wage and benefit status of employees in this bargaining unit in relation to employees in comparable communities. The evidence establishes that those additions have exceeded the CPI data, Consumer Price Index, Detroit/Ann Arbor all Urban Consumers, for the periods involved.

Additionally, while there is no specific claim of inability to pay, the reality is that the new GASB rules require, or at least strongly suggest, that benefits, such as retiree health insurance, be pre-funded. This is not currently being done. Also, the evidence does suggest that the revenues available to the Employer have been decreasing as a result of the overall economic environment, loss of revenue sharing and interest income.

Nonetheless, one of the most convincing aspects of the record involves what the Employer has characterized as internal comparables. In other words, it is important to consider and recognize what retiree insurance benefit is available to other bargaining units. In that regard it is not unreasonable to conclude that given the nature of the benefit involved, the fact

that its general form has been accepted by other bargaining units is important evidence.

For instance, it is noted that every other bargaining unit has adopted the VEBA provision. Those units include two court contracts with the Teamsters union, agreements with AFSCME, and POAM. As indicated, with the exception of this collective bargaining unit, all have adopted VEBA and the Employer jump-started the fund to the approximate amount of \$300,000.00.

It is noted that in the Deputy unit in the Sheriff's Department there is a similar provision as contained in the Employer's offer supplementing premium payment for a retiree's health insurance. It was \$100.00 per month prior to the last round of bargaining, but was raised to \$125.00 per month as a result of bargaining. Thus, the offer submitted to this unit exceeds what was adopted by the Deputy's unit.

It must also be recognized that there are several high seniority employees in the Deputy unit, so it is impossible to draw a distinction between the units based solely upon the seniority of employees in the two units.

Another consideration is that the provision in question is always subject to collective bargaining. Further the parties may re-address the issue shortly since it appears that the Collective Bargaining Agreement, which is created as a result of this arbitration, has by its own terms already terminated.

As a result, a careful and reasoned application of the standards in Section 9 of the Act convinces the panel that the

Employer's Last Offer of Settlement is more appropriate. Thus, the panel adopts the Employer's Last Offer of Settlement.

AWARD

The Employer's Last Offer of Settlement is adopted.

Mario Chiesa 9-8-03
Mario Chiesa, Chairman

ISI 9-4-03
Employer Delegate

Floyd A. Whitestone Dissent
Union Delegate 9-2-03

Employer's Last Offer of Settlement is more appropriate. Thus, the panel adopts the Employer's Last Offer of Settlement.

AWARD

The Employer's Last Offer of Settlement is adopted.

Mario Chiesa

9-8-03

Mario Chiesa, Chairman

W. B. Pine *9-4-03*

Employer Delegate

(5) Dussan *9-2-03*

Union Delegate