

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSIONS**

ARBITRATION UNDER ACT 312 PUBLIC ACTS 1969 AS AMENDED

Parties:

Livingston County Board of Commissioners
Livingston County Sheriff, Employers
Police Officers Association of Michigan, Union

MERC Case No. L01D-8003

Neutral Arbitrator:

Eugene Lumberg
7001 Orchard Lake Road, Suite 430
West Bloomfield, Michigan 48322
(248) 626-8383

Livingston County Arbitrator:

John R. McGlinchey, Esq.
**COHL, STOKER, TOSKEY
& McGLINCHEY, P.C.**
601 North Capitol
Lansing, Michigan 48933
(517) 372-9000

Police Officers Association Arbitrator:

Mr. William Birdseye
**POLICE OFFICERS ASSOCIATION
OF MICHIGAN**
27056 Joy Road
Redford, Michigan 48239
(313) 937-9000

ARBITRATOR'S OPINION

Background:

The County of Livingston lies in southeast Michigan. It is bordered by Oakland County, Washtenaw County, Jackson, Ingham, Shiawassee and Genesee counties. It is one of the fastest

growing counties in the State of Michigan. The Livingston County Sheriff's Department has approximately 55 deputies (40 deputies, 4 sergeants and 1 lieutenant).

Other than the County Sheriff's Department, there are two significant police departments in the County of Howell. One is the City of Howell Police Department. The other is the City of Brighton Police Department. Both departments are full time, traditional police departments providing seven-day, 24-hour a day service to the citizens of those cities.

Introduction

This matter arises pursuant to a Petition filed with the Michigan Employment Relations Commission pursuant to 1969 PA 312, as amended, being MCL 423.231, et seq; MSA 17.455(31), et seq. The Petitioning Union herein is the Police Officers Association of Michigan (hereinafter referred to as the "POAM" or "Union"), which represents certain non-supervisory personnel with the Livingston County Sheriff's Department. The Employer in the instant case include the County of Livingston, a political subdivision of the State of Michigan created by the Michigan Constitution (Const 1963, art 7, sec 1), and the Livingston County Sheriff, Donald Homan, a Michigan Constitutional officer (Const 1963, art 7, sec 4) (hereinafter collectively referred to as the "Employer" or "County"). Under Michigan law, the County Sheriff and the County Board of Commissioners, the legislative body of the County, serve as co-employers for the employees within the Sheriff's Department, including those represented by the POAM herein. Cleland v AFSCME, 425 Mich 204; 388 NW2d 231 (1986); Capital City Lodge #141, FOP v Meridian Twp., 90 Mich App 533 (1979), lv den 406 Mich 961 (1979).

Upon petitioning for binding arbitration under the above legislation, this impartial arbitrator was selected as the chairperson of the arbitration panel. The only issues for consideration by the Panel are wages and health insurance. Specifically, the Union has proposed

three annual wage increases of 4%, while the Employer has proposed three annual wage increases of 3%, plus an additional 1% payment, not added to base wage, in the first year. The Employer has proposed a change in the health care coverage from the BC/BS Traditional Plan to a PPO Plan, fully paid by the Employer. The Employer has proposed to change from the \$2.00 prescription drug co-pay by employees to \$5/\$10 for generic/brand drugs. The Union has rejected the Employer's proposed health care changes in favor of the status quo.

The factors for the Panel's consideration in reaching its decision as to this issue are set forth in Section 9 of the Act (MCL 423.239), which reads as follows:

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 wages, hours and conditions of employment of the employees involved in the arbitration proceedings 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 or in private employment.

The Employer's proposed comparables are:

- 1. Muskegon County;
- 2. Saginaw County;
- 3. St. Clair County;
- 4. Alleghen County;
- 5. Jackson County;
- 6. Monroe County;
- 7. Berrien County.

(See **Exhibit U-4**)

The Union's proposed comparables are:

- 1. City of Brighton;
- 2. County of Genesee;
- 3. City of Hall;
- 4. Ingham County;
- 5. Jackson County;
- 6. Oakland County;

7. Shiawassee County;
8. Washtenaw County.

(See **Exhibit U-3**)

The first witness called by the employer was O. William Rye, self-employed at O. William Rye & Company, LLC. His CV is Employer's **Exhibit E-1**. He testified that he has participated in Act 312 arbitrations for the County of Livingston in the past. He participated in four arbitrations prior to this one. In 1986, the comparables that Arbitrator Franklin arrived at were six in number of the eight that were proposed by the County. They were:

1. Bay County;
2. Calhoun County;
3. Eaton County;
4. Jackson County;
5. Lapeer County;
6. Lenawee County;
7. Midland County;
8. Shiawassee County.

In 1988, Arbitrator Swaynson adopted as comparables, Calhoun, Eaton, Jackson, Lapeer, Lenawee and Shiawassee. In 1991, during the Shaw Arbitration, the witness was not sure and cannot find what comparables were used. In the 1999 Arbitration, Arbitrator Long used Calhoun, Jackson, Monroe and Shiawassee counties as the comparables. No cities were used as comparables in any of the prior arbitrations within the County of Livingston that the witness recalls.

Exhibit E-2 is a chart of the year 2000 population of counties in Michigan that are within 50% higher or lower than Livingston County. Note: Livingston County has a population as of 2000 of 156,951. Chart A of **Exhibit E-2** lists the counties population of slightly less than 83,000 to just over 210,000.

Exhibit E-3 being a chart of the SEV of Michigan counties with populations within 50% of the population of Livingston County indicates that Livingston County, has a SEV of 6,814,972,425.

Employer **Exhibit E-4** are the comparables that the County wishes to use. They cite Berrien, Monroe and St. Clair as within 30% of both population and SEV of Livingston. Saginaw County within 40% of both population and SEV of Livingston. Jackson and Muskegon within 50% of both population and SEV. Alleghan within 50% of both property and SEV. Bay, Calhoun, Eaton, Lapeer, Lenawee and Midland being deleted based on SEV.

The arbitrator will use the comparables of:

1. Berrien County;
2. Monroe County;
3. St. Clair County;
4. Saginaw County;
5. Shiawassee County;
6. Jackson County;
7. Muskegon County;
8. Alleghan County.

ISSUE NO. 1 - LENGTH OF CONTRACT:

The parties have stipulated to a three-year contract with a starting date of January 1, 2001 to an expiration date of December 31, 2003. Within that first issue is the question of retroactivity. This Panel finds that any award be retroactive back to January 1, 2001. Furthermore, this Arbitration Panel rules as follows on wages. That each of the three years of wages can be taken independently and an award can be made for each independent year.

The Arbitrators, based upon argument and exhibits, have made the following ruling:

1. The length of contract is stipulated to, being a three (3) year contract.


EUGENE LUMBERG

Dated: 11/19/03
☒ Concur ☐ Dissent


JOHN R. McGLINCHEY

Dated: 11-24-03
☒ Concur ☐ Dissent


WILLIAM BIRDSEYE

Dated: _____
☒ Concur ☐ Dissent

2. That each of the three years can be taken independently of one another.


EUGENE LUMBERG

Dated: 11/19/03
☒ Concur ☐ Dissent


JOHN R. McGLINCHEY

Dated: 11-24-03
☐ Concur ☒ Dissent


WILLIAM BIRDSEYE

Dated: _____
☐ Concur ☐ Dissent

3. That the Award as to wages is retroactive back to January 1, 2001.


EUGENE LUMBERG

Dated: 11/19/03
☒ Concur ☐ Dissent


JOHN R. McGLINCHEY

Dated: 11-24-03
☐ Concur ☒ Dissent


WILLIAM BIRDSEYE

Dated: _____
☐ Concur ☐ Dissent

ISSUE NO. 2 – WAGES:

The Union has proposed 4% each year for the three years. The Union states that the present contract calls for a salary of \$41,119.00. A 4% raise for each of the three years of the contract would equate to a salary on 01/01/01 of \$43,075.00, on 01/01/02 of \$44,799.00, and on 01/01/03 of \$46,591.00. The County, on the other hand, proposes a 3% wage increase for each of the three years. In addition, they propose that in the first year, the employees receive a one-time only 1% bonus that would have no effect on the base rate in that year or future years. Using the County's numbers, starting with a base of \$41,419.00, in the first year, 01/01/01, 3% would equate to \$42,662.00, in the second year, 01/01/02, the number would be \$43,941.00, and in the third year, 01/01/03, it would be \$45,260.00. In addition, they would receive approximately \$415.00 as a bonus. The County, in Exhibit 10, indicates that the average of the communities that they seek to use as comparables is \$42,123.00, that the median is \$41,414.00, and that Livingston County is \$41,419.00 at present. Using that Exhibit and carrying it out to the third year of the contract, it would indicate that the average of the communities would be \$47,491.00, the median \$46,799.00. The Union's request would be \$46,591.00 and the County's offer would be \$45,260.00. Hence, using the County comparables, the Livingston County Sheriff's Department would be below the average and the median of the comparables in Employer's Exhibit 10. The Arbitration Panel rules as follows on wages:

The first year – 3%;

Second year – 4%;

Third year –4%.

This would equate as follows. Starting now with the \$41,419.00 figure, the first year would go to \$42,662.00, the second year would go to \$44,368.00, the third year would be

\$46,143.00. The Union would still be below the average and the median of the comparable counties.

The Arbitrators are most persuaded by the argument of the Union and by a 2 to 1 decision, rule in favor of the Union receiving pay raises amounting to 3% the first year, 4% the second year and 4% the third year.


EUGENE LUMBERG

Dated: 11/19/03

☒ Concur ☐ Dissent


JOHN R. MCGLINCHAY

Dated: 11-24-03

☐ Concur ☒ Dissent


WILLIAM BIRDSEYE

Dated: _____

☒ Concur ☐ Dissent

ISSUE NO. 3 – MEDICAL INSURANCE:

There is no question that one of the most pressing issues in today's society in America is the cost of medical insurance. The County proposes switching the coverage from a conventional Blue Cross Blue Shield to a PPO. The Employer wishes to implement a Blue Cross Blue Shield PPO Option 1 Health Plan, entirely paid by the County. Along with that change comes a change in the prescription drug co-pay, which used to be a \$2.00 prescription co-pay, and would now be

a \$5.00/\$10.00 plan. The County points out that it pays approximately \$11,000.00 for health insurance for each employee, (See Exhibit E-22), and that costs are increasing each year. In addition, the County pays health insurance for retirees as well. (See transcript, Page 165, 182 and Exhibit E-30.) The County stresses the position that its internal unions have gone to the same Blue Cross Blue Shield PPO Option 1 Health Plan that they are offering the deputies.

For the above reasons, this Panel make the following Award. That the County shall change its medical coverage from a traditional Blue Cross Blue Shield to a Blue Cross Blue Shield PPO Option 1 Health Plan, and a change in riders.

The Arbitrators are most persuaded by the County's position and make the final Award that the County's offer of fully paid PPO Option One Health Plan with riders as stated shall be adopted by a 2 to 1 decision.


EUGENE LUMBERG

Dated: 11/19/03

☒ Concur ☐ Dissent


JOHN R. MCGINCHEY

Dated: 11-24-03

☒ Concur ☐ Dissent


WILLIAM BIRDSEYE

Dated: _____

☐ Concur ☒ Dissent

The Union has submitted six exhibits which are incorporated herein. They are as follows:

UNION EXHIBITS:

- U-1:** How Arbitration Works, Fifth Edition
- U-2:** How Arbitration Works, Fifth Edition, 1999 Supplement
- U-3:** A map of Southeast Michigan listing the Union comparables of the City of Brighton, Genesee County, City of Howell, Ingham County, Jackson County, Oakland County, Shiawassee County and Washtenaw County
- U-4:** A map of the State of Michigan that the Union has submitted to show employer comparables, Allegan County, Berrien County, Jackson County, Monroe County, Muskegon County, Saginaw County, St. Clair County
- U-5:** A chart indicating the wage comparison, union comparables.
- U-6:** A chart which is entitled "Livingston County Deputy Longevity Comparison", employer comparables.

The Employer has submitted its evidence which is hereby adopted into this decision, 33 exhibits, as follows:

EMPLOYER'S EXHIBITS:

- E-1:** CV of Oleam Rye, Witness
- E-2:** A chart of Michigan counties with population within 50% of the population of Livingston County.
- E-3:** A chart-SEV of Michigan counties with population within 50% of the population of Livingston County.
- E-4:** Michigan Counties that are potential comparables for Livingston County.
- E-5:** Chart – population of communities suggested by the Union as comparables for Livingston County.
- E-6:** Chart – SEV of communities suggested by the Union as comparables for Livingston County.
- E-7:** Chart – Population of agreed upon counties and others suggested as comparables for Livingston County.
- E-8:** SEV of agreed upon counties and others suggested as comparables for Livingston County.
- E-9:** Livingston County - Non-Supervisory Unit Act 312, Increases and Base Pay Rates for Deputy Sheriffs in comparable counties.
- E-10:** Livingston County – Non-Supervisory Unit Act 312 Maximum Base Pay Rate for a Deputy Sheriff in the comparable counties.
- E-11:** Livingston County – Livingston County Union Supervisory Unit Act 312 Longevity Schedules of comparable counties.
- E-12:** Livingston County – Non-Supervisory Unit Act 312 Longevity Payments to Deputy Sheriffs in Comparable Counties Based Upon 2000 Salary
- E-13:** Livingston County – Non-Supervisor Unit Act 312 – Uniform Cleaning
- E-14:** Livingston County – Non-Supervisor Unit Act 312 – Clothing Allowance
- E-15:** Livingston County – Non-Supervisory Unit Act 312 – Vacation Accrual

- E-16:** Livingston County – Non-Supervisory Unit Act 312 – Sick Leave Programs
- E-17:** Livingston County – Non-Supervisory Unit Act 312 – Holidays
- E-18:** Livingston County – Non-Supervisory Unit Act 312 – Personal Leave
- E-19:** Livingston County – Non-Supervisory Unit Act 312 – Retirement Information
- E-20:** Percentage Wage Increases for Livingston County Internal Unions, 2000-2003
- E-21:** Chart – comparison of maximum compensation levels for deputy sheriffs, 2001
- E-22:** Chart – comparison of maximum compensation levels for deputy sheriffs, 2002
- E-23:** Chart – comparison of maximum compensation levels for deputy sheriffs, 2003
- E-24:** Chart – comparison of maximum compensation levels for detectives, 2001
- E-25:** Chart – comparison of maximum compensation levels for detectives, 2002
- E-26:** Chart – comparison of maximum compensation levels for detectives, 2003
- E-27:** Chart of Community Blue PPO Benefits at a Glance, Plan 1
- E-28:** Livingston County Non-Supervisory Unit Act 312 – Health Insurance Information
- E-29:** Livingston County Non-Supervisory Unit Act 312 – Dental Insurance
- E-30:** Livingston County Non-Supervisory Unit Act 312 – Retiree Health Provisions
- E-31A:** Health Insurance Benefits for Livingston County Internal Unions, 2000-2003
- E-31B:** AFSCME – Ambulance Service Chart, 2000-2003
- E-31C:** MAP – Lieutenant
- E-31D:** POAM – Sheriff
- E-32:** Contributions to Funds Systematically for Retiree Health Care Benefits, Fiscal Beginning January 1, 2002, Percent of Employee Payroll
- E-33:** Determination of unfunded accrued liability as of December 31, 2001