

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

EATON COUNTY BOARD OF
COMMISSIONERS AND EATON
COUNTY SHERIFF

-and-

Case No. L02 F-4003

CAPITOL CITY LODGE NO. 141
FRATERNAL ORDER OF POLICE AND
EATON COUNTY SHERIFF DEPARTMENT
SUPERVISORY DIVISION

AWARD

I. INTRODUCTION

The collective bargaining agreement between these parties expired on September 30, 2002. The Lodge filed a Petition for Act 312 Arbitration, dated December 27, 2002, with the Employment Relations Commission. The Chairperson's appointment letter is dated March 7, 2003.

During pre-hearing conferences, conducted on May 1 and May 23, 2003, the parties asked for a hearing and decision to determine the comparable communities to be utilized in the proceedings concerning contract issues. The County named James Stewart as its Delegate for the Panel; the Lodge named Thomas Krug as its Delegate. Advocates are Gary P. King, Attorney for the County, and R. David Wilson, Attorney for the Lodge.

The bargaining unit is composed of Command Officers, identified in Appendix A of the 2000 - 2002 Agreement by the following classifications: Chief Deputy, Captain, Lieutenant, Corrections Lieutenant, Sergeant, Corrections Sergeant.

The hearing on comparables was held on July 30, 2003. The parties agreed upon four counties as comparables: Calhoun, Allegan, Lapeer and Lenawee. The Panel, by an Award issued in

November 2003, selected Bay County and Van Buren County as the two added comparable counties.

The parties continued to negotiate about the terms of the new contract and reached agreement on all but two. A hearing on the two unresolved issues, both economic, was held on January 27, 2004. With exchange of the parties' final offers and post-hearing Briefs, the record was closed on April 20, 2004.

The Agreement is effective October 1, 2002 and expires September 30, 2004. The issues submitted to this Panel concern: (1) Wage parity between Corrections Lieutenants and Lieutenants (Road Patrol/Law Enforcement) and between Corrections Sergeants and Sergeants (Road Patrol/Law Enforcement); (2) County payment for health insurance of the spouses of retired employees. Each will be discussed.

I. Wage Parity

In the expired Agreement the salaries of Corrections Lieutenants and Corrections Sergeants are pegged at 96 percent of the salaries of the respective Road Patrol classifications. The salary of the Corrections Captain and the salary of the Road Patrol Captain are at parity; hence, the Corrections Captain's compensation is not at issue in this proceeding.

The Offers. The final offer of settlement submitted by the Lodge proposes for the Corrections Lieutenant and Corrections Sergeant that each classification moves toward parity over the contract term, as follows: Effective October 1, 2002, each classification will receive 97 percent of the corresponding law enforcement/road patrol classification; effective April 1, 2003, the percentage increases to 98 percent; effective October 1, 2003, the percentage is 99 percent; effective April 1, 2004, the classifications are at parity, or 100 percent.

The County's final offer proposes to set the salaries of the Corrections Lieutenant and Corrections Sergeant at 97 percent of the respective law enforcement/road patrol Lieutenant and Sergeant. The rate would be effective as of October 1, 2002 and would be constant for the two-year term of the Agreement.

Discussion. The County calculates the comparative costs of the parity offers for the two-year contract term as follow:

Lodge's last offer: \$18,550.63

County's last offer: \$7,364.68

The Lodge calculates the comparative costs with somewhat different, albeit minor, results:

Lodge's last offer: \$18,613.

County's last offer: \$6,979.

The County urges, as to the cost of salary parity, that if the Lodge's position is adopted, corrections officers will seek parity with deputy sheriffs in their next contract negotiations. It asserts this has been the historical pattern. Accordingly, the County asks the Panel, in examining the cost attributable to the competing Offers, to take into account the impact upon the County's overall labor costs, in particular the anticipated demand from the corrections officers for parity with deputy sheriffs.

The County emphasizes that corrections personnel are not sworn officers whereas the road patrol/law enforcement officers are. The former are required to attend police academy in order to work that assignment.

The Lodge contends the command officers in Corrections have job responsibilities comparable to law enforcement. It cites their supervisory roles: the Corrections Lieutenant supervises six sergeants and twenty-eight officers. The Corrections Sergeant supervises 6 - 11 officers. Both the Lieutenant and the Sergeant in Corrections have supervisory authority over the inmate population (estimates range from 150 - 250). The Lieutenant for the County road patrol supervises five sergeants and twenty deputies; the Lieutenant for Delta Township road patrol supervises five sergeants and an estimated twenty-five deputies. The Sergeant on road patrol supervises three or four deputies on days, four or five deputies on nights. The command officers all administer some discipline and have scheduling duties. The Corrections Lieutenant has day-to-day responsibilities for jail operations.

The Lodge urges the Panel to give weight to the testimony of the former and current Sheriffs, each supporting parity. Former Sheriff Hutting favored parity, saying the responsibilities and "the element of danger" are fairly similar. He added that "As the chief executive...if everyone was making comparable pay it would be easier for me to move people around to various assignments..." (Tr. 73-4) Sheriff Jones similarly testified that the two classifications (Corrections and Law Enforcement/Road Patrol) have similar responsibilities, namely supervising subordinate employees, administering discipline, scheduling, and risk exposure to danger. When asked for his opinion of the Lodge's proposal for parity, he replied, "If the County has the money, I believe there should be parity in pay." (Tr. 83).

The Lodge further asserts that while the road patrol supervisors are subject to risks in connection with critical incidents, the jail staff faces hazards in the form of inmate assaults and disease.

As to an educational requirement the Lodge notes that both Lieutenant classifications demand a bachelor's degree. It also states the corrections sergeants and sworn sergeants attend the same seminars as part of their continuing training.

The evidence concerning parity in the comparable communities shows the following information. The Lieutenants. Bay County does not have the lieutenant classification. Of the remaining five, one county (Allegan) does not have a corrections lieutenant. According to the Employer, in three of the comparable communities shown to have parity for lieutenants, the corrections lieutenants in those counties (Lapeer, Lenawee, Van Buren) serve as Jail Administrator. (Lapeer and Van Buren do not have a captain classification.) Calhoun appears to be the single community with corrections/road patrol lieutenant parity where the corrections lieutenant can be deemed comparable to Eaton County. An additional distinction among the communities is that according to the Lodge (Exhibit 12), the Lieutenants in Calhoun, Lapeer and Lenawee are certified police officers. Eaton County Corrections Lieutenants are not.

The Sergeants. Here the matter of comparability is less clouded by the differences in assignments. Three communities (Calhoun, Lenawee and Van Buren) have parity between the two classifications of Sergeants; three (Allegan, Bay, Lapeer) do not.

The County calls attention to the salaries of this bargaining unit asserting they are very favorable compared to those paid in the comparable counties. However, because this issue concerns only the relative pay of the corrections supervisors vis-a-vis road patrol supervisors, a comparison of the absolute pay levels with other counties has minimal relevance.

II. Retiree Spousal Health Insurance

Provision for this benefit is in Article 16, §2 of the 2000 - 2002 Agreement. The portions relevant to this discussion state:

(c) Alternate coverage. An eligible retiree, past or present whose spouse has group health insurance coverage from another source which is available at no cost and is equal to or better than the coverage provided by the Employer must secure coverage for the spouse from that group. The spouse may be covered by the Employer's group health coverage upon becoming ineligible to be covered by the other source, or if the alternate coverage does not continue to be available at no cost or be equal to or better than the coverage provided by the Employer.

(d) Spouse Coverage. An eligible employee may include health insurance coverage for his spouse under the following conditions:

(1) From the date of the employee's eligibility ... the Employer will pay 50% of the premium difference required to include the spouse ...

(2) For the next twelve month period, the Employer will pay for 60%

...
(3) For the next twelve month period the Employee [sic] will ... pay 70% ...

(4) For the next twelve month period the Employer will be responsible for paying 80% of the premium ...

(5) For the next twelve month period the Employer will pay 90% of the premium

(6) The Employer will be responsible for the entire premium payments made thereafter. ...

The County final offer makes these changes to Article 16. (Strike-outs are the portions proposed to be removed from the provision; bold-face words are additions. Changes in paragraph numbering are noted only for the provisions below.)¹

(c) Alternate coverage. An eligible retiree, past or present whose spouse has group health insurance coverage from another source ~~which is available at no cost and is equal to or better than the coverage provided by the Employer~~ must secure coverage for the spouse from that group. The spouse may be covered by the Employer's group health coverage upon becoming ineligible to be covered by the other source. ~~, or if the alternate coverage does not continue to be available at no cost or be equal to or better than the coverage provided by the Employer~~

(d) 6 (vi) The Employer will be responsible for the entire premium payments made thereafter. An employee whose spouse is not immediately covered from the date of the employee's ~~retirement~~ eligibility for paid health insurance because of alternate coverage as specified in (c) above, and who subsequently becomes eligible shall enter the Employer's payment schedule based on the date of the employee's ~~retirement~~ eligibility for paid health insurance.

(2) For all employees hired after October 1, 2000, spouses may continue to be covered by the Employer's health insurance plan, at the employees expense.

(3) In the event of the employee's death, the spouse ... may continue coverage as described in this Section at the Employer's expense. (For all employees hired after October 1, 2000, the coverage shall be provided at the spouse's expense).

Effective date: Date of the Award.

The Lodge's final offer of settlement states:

That the benefit remains as currently recited in the labor agreement.

The County asserts in support of its proposal, "[N]o current member of the bargaining unit (or any of the spouses) would be affected by the adoption of the County's proposal, since every member of the bargaining unit was hired BEFORE October 1, 2000." (Brief, p. 5) Notwithstanding that the change does not affect present bargaining unit employees, the County contemplates savings when the elimination of contributions toward spousal health benefits impacts future bargaining unit employees. The County notes too that when the future obligation is pre-funded, adoption of its proposal will mean contemporaneous savings in its contributions.

¹ The County's proffered language corrects the typo in §2(d)(3), changing Employee to Employer.

Further, the County emphasizes that "every other County employee is currently working under language identical (or substantially similar) to the language proposed [for this Supervisory unit]." (Brief, p. 6) It insists great weight must be given to "internal comparables". Concerning the external comparables, the County believes these communities' plans support its final offer.

The Lodge opposes the elimination of contributions for spousal health insurance. It contends the County saves nothing, under its proposal, as to the current bargaining unit members, and as to future employees, the alleged savings are merely anticipatory.

Concerning the "internal comparables", the Lodge comments that the record contains no evidence of the bargaining history about these spousal health care provisions. To explain the absence of employer contributions, the Lodge speculates, the affected bargaining units may have won considerable concessions in other areas. It suggests, too, that because all but one of the internal units have no access to Act 312 procedures, the County may have imposed the language unilaterally after fact-finding. The Lodge further asserts that County employees in the various bargaining units have pension provisions different from theirs with a possible different impact on the cost of their retirees spousal health insurance.

As to the comparable communities, the Lodge notes that three - Calhoun, Bay and Allegan counties - have "some form of spousal retiree health care benefit". (Brief, p. 18) The other three - Van Buren, Lapeer and Lenawee - have no provision for employer contributions toward spousal retiree health benefits.

III. DISCUSSION AND FINDINGS

Parity. The Corrections command officers' salary has been a certain percentage lower than the [Road Patrol/Law Enforcement] command officers' since 1988. (Lodge Exhibit 6, County Exhibit 13). The data represents five or six different contracts: from 1988 until October 2002. The differential has narrowed over the years, from approximately 90% in 1988, to 93% in 1990, 95% in 1992, and 96% from 1993 to the present. The differential is the same for both the lieutenant and sergeant classifications. The Captain classification is at parity.

Hutting's reason for favoring elimination of parity -- that it would enable the top command to move people around in various assignments -- is questionable for it is unlikely a corrections supervisor could be placed in a law enforcement supervisory

assignment, given the requirement that the latter be sworn officers, although the reverse is possible.²

The parties provided no negotiating history to explain the origins and continuation of the differential. The primary and significant distinction seems to be that law enforcement officers are trained at a police academy, are sworn officers with the authority of that status, e.g., to make arrests, and carry weapons. The corrections and road patrol supervisors have similar administrative supervisory-type responsibilities, namely, scheduling, monitoring the performance of the subordinate officers, and administering some discipline. According to figures taken from the County's Exhibit No. 13, corrections sergeants in October 2000 were paid a differential of 18 percent over the corrections officers.³ The supervisors' salary compensates them for their increased authority and higher level of responsibilities.

Both classifications (corrections, law enforcement) are exposed to hazards. In the case of the corrections supervisors, their work with inmates exposes them to the risk of assaults and requires techniques of control. The law enforcement officers work on the road; they will encounter situations requiring peace-keeping, protecting citizens, vehicle chases, other kinds of "critical incidents" that may involve lethal weapons. Such weapons are less likely to be found in the prison, although not altogether impossible. In either situation -- the jail or the road -- disease is a job hazard, although the more confined area of the jail provides a greater chance for contamination. .

The evidence from the comparable communities does not offer clear support for either party's offer. The lack of true comparability in the lieutenant assignments undercuts the usefulness of that information; the comparable communities are split three and three on sergeant parity.

Conclusion. The parties have negotiated at least five successive contracts in which they agreed upon and perpetuated a differential between the corrections and road patrol supervisors. The difference has narrowed from 90 percent to the current 96 percent. This history reflects that the parties have implicitly recognized the higher training requirements for the law enforcement officers than for corrections.

² Sheriff Jones served in law enforcement and rose to Lieutenant and then went to the corrections side as a Lieutenant/acting Captain. (Tr. 77)

³ The October 2000 figure is used because it is not clear whether later dates include the proposed one percent parity improvement. The exhibit has no data for the lieutenant classification.

The record contains no evidence of a change in the corrections supervisors' responsibilities, duty hazards, and/or training requirements that would justify a departure from this historical pattern. Accordingly, the County's last offer of settlement, that the corrections supervisors be paid at rate that is 97 percent of the road patrol/law enforcement supervisors is adopted.

Employer Contribution for Retiree Spousal Health Insurance.

The County's demand is to discontinue its payment for this benefit for all employees hired after October 1, 2000. The Lodge wants the benefit to continue unchanged.

The savings to the County are, obviously, projections. Some savings are certain, given the history of increasing costs of health care and insurance premiums. To the extent that the County pre-funds or amortizes these costs, if the spousal benefit is confined to the current bargaining unit only, the County has at least some means to estimate its future obligations.

The loss to the bargaining unit is that future members will have different -- i.e., none -- retiree spousal health insurance. A two-tier structure for this benefit will be in effect. No current member of the bargaining unit upon retirement will lose the County's contribution for a spouse's health insurance as it was provided for in the predecessor agreement.

Comparison of health insurance programs among communities is inherently difficult because the programs are different with respect to levels of benefits, payment arrangements, eligibility and the like. The Lodge states that three of the comparable counties -- Allegan, Bay and Calhoun -- "have some form of spousal retiree health care benefit." To illustrate the difficulty in using these comparisons, Allegan County caps its payment at \$250 per month (\$10 per year of service) for retiree and spouse until Medicare eligible. Bay pays 50% of the premium for the spouse; the retiree may also contribute toward his/her own coverage. Calhoun County, Lapeer, Lenawee do not pay for the spousal coverage. Van Buren contributes for spousal coverage only for employees hired before January 1992.

The evidence is that all other bargaining units in Eaton County are covered by language with respect to retiree spousal health insurance that is consistent with or substantially like the language the County proposes for this bargaining unit. However, no bargaining history accompanied this evidence to explain whether/when or under what circumstances the particular units had had the same spousal benefit, and if so, what were the conditions under which it was relinquished.

Given (1) the history that the bargaining unit has had this valued benefit for some time and (2) the many uncertainties in the area of health care for retirees, and (3) even conceding there

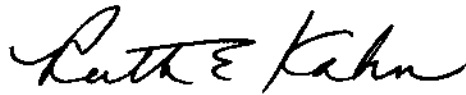
would be no current hardship or deprivation to the bargaining unit by the imposition of the new language in Article XVI, I believe Article XVI should stand unchanged.

Conclusion. The County's proposed language changes for Article XVI are denied.

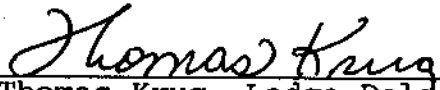
III. AWARD

Parity. The Employer's last offer of settlement is adopted.

County contribution toward Health Insurance for Retirees' Spouses. The Lodge's last offer of settlement is adopted.

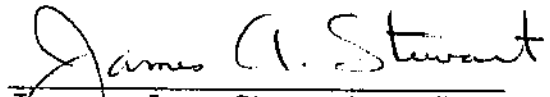


Ruth E. Kahn, Panel Chairperson



Thomas Krug, Lodge Delegate

Dissent on Issue I.
Wage Parity.



James A. Stewart, County Delegate

Dissent on Issue II.
Retiree Spousal Health Insurance.

Date issued: May 20, 2004