STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

OTTAWA COUNTY SHERIFF DEPARTMENT

-and-

MERC CASE NOS. L02 E-8005 and L02 E-8007

POLICE OFFICERS ASSOCIATION OF MICHIGAN AND COMMAND OFFICERS ASSOCIATION OF MICHIGAN

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

UNION: JOHN H. GRETZINGER, ATTORNEY

EMPLOYER: JAMES DeVRIES, BUSINESS AGENT

PETITION DATA:

PETITIONS FILED:	MAY 6, 2003
CASES HEARD:	MARCH 25, 2004
RECOMMENDATION DATE:	JULY 21, 2004

FACT FINDER RECOMMENDATION:

POAM

WAGES – EMPLOYER PROPOSAL RECOMMENDED.

HEALTH INSURANCE – A LUMP SUM PAYMENT TO OFFSET EMPLOYEE COSTS IS RECOMMENDED.

RETIREE HEALTH INSURANCE – EMPLOYER PAID RETIREE HEALTH INSURANCE IS NOT RECOMMENDED AT THIS TIME.

OVERTIME PAY – HOURS COMPENSATED SHOULD BE UTILIZED FOR ORDERED OVERTIME.

CALL-IN PAY – A TWO (2) HOUR MINIMUM IS RECOMMENDED FOR ALL CALL-IN.

RETIREMENT PLAN – EMPLOYER PAID UPGRADE TO B-2 IS RECOMMENDED.

GRIEVANCE PROCEDURE – THE UNION PROPOSAL IS RECOMMENDED.

WAGE RETROACTIVITY – WAGE INCREASE RETROACTIVITY IS RECOMMENDED.

COAM

WAGES – THE UNION PROPOSAL IS RECOMMENDED, SUBJECT TO THE CAVEAT THAT THE RESULTING PAY STRUCTURE BASICALLY REFLECTS THE EARLIER REFERENCED 80% CORRECTION TO ROAD PATROL FORMULA.

HEALTH CARE – A SIMILAR OUTCOME TO THE POAM IS RECOMMENDED.

RETIREE HEALTH INSURANCE – NO CHANGE IS RECOMMENDED.

RETIREMENT PLAN – A 10% MATCH UP TO $750.00 IS RECOMMENDED.

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INTRODUCTION

A Hearing in regard to the issues in dispute on the above matter was held on March 25, 2004. At the conclusion of the Hearing, the respective Advocates elected to submit written argument which has been received and considered.

ISSUES

Comparables

The Parties have differences on the matter of comparables. The Union contends that for a longstanding period of time the following counties have been utilized as comparables:

Allegan, Kent and Muskegon

The Employer says a more appropriate list of comparables should include the 13 counties located in the lower western part of the state. It is also stressed that Kent County is not a proper comparable because it pays its correction officers at the same rate as road patrol deputies.

The argument of both Parties have some merit. Obviously, the comparison will be

skewed upward with Kent County, especially if only three comparables are utilized. On the other hand, it is appropriate to consider those comparables which have been utilized for a long period. In the present case, the issue is not critical since the Employer is primarily relying on internal comparables. Insofar as the Union comparisons are concerned, it is proper to give consideration to differences – i.e., level of compensation to correction officers and road patrol – when considering the data.

POAM - NON-SUPERVISORY UNIT

Wages

The Employer proposes the following increases:

Year	% Increase	Correction Officer	Transportation Officer
2003	3.2%	37,400	41,232
2004	2.0%	38,148	42,057
2005	2.3%	39,026	43,024

The Union points out that when this Unit was separated from the Act 312 eligible Unit in the mid-1980's, the Parties had an understanding that the pay differential would be 80% – the non-312 Unit would be paid at 80% of the 312 employees. It notes that for December 31, 2002, a Deputy earned $46,337 and a Correction Officer earned $36,241 – the latter earns 72.2% instead of 80% of the Deputies. The County does not disagree with the 80% formula, but it maintains the Transportation Officer and Correction Officer rates should be "blended together."

It is the understanding of your Fact Finder that the "80%" formula was to be applicable to the Correction Officer *vis-a-vis* the Deputies. The Undersigned is not informed as to the current Deputy rate, but the Employer proposal would result in a Deputy earning $49,750 for 2005. The proposal here would result in a Correction Officer being paid $39,026 or 78.4% of the Deputy.

The Undersigned concludes the wage offer by the Employer should be adopted subject to the recommendation relative to Health Insurance.

Health Insurance

The County characterizes this as "the issue" in negotiations. The County has enumerated the following sub-issues:

A. Insurance Out-of-Pocket Annual Maximum.

The County proposes that "effective January 1, 2004, the annual out-of-pocket maximum for out-of-network claims shall be $1,650 single and $1,800 family." The current amounts are – $1,100 single and $1,200 family. It is noted that "an employee who utilizes an out-of-network provider is required to pay 20% of the cost for that service." Given the above, it is argued "the impact of this proposal on any particular employee is slight."

B. Employee Health Insurance Waiting Period.

Here, it is noted "employees currently become eligible for insurance coverage under the health care plan on their first day of employment." The Employer proposes that "employees hired after 1/1/2004 shall become eligible for insurance coverage the first month following their first 60 calendar days of employment with the County." It is urged that no hardship results because employees leaving other employment "can continue their former coverage under COBRA."

C. Employee Contribution to Health Insurance Plan.

The County proposal is "to limit the amount of additional funds that it will place into the cafeteria plan to 80% of the increased costs for the health, Rx, dental and vision

plan effective for calendar years beginning 1/1/2003."

The benefit dollars available in 2002 were – $2,644 (single), $5,710 (two person), and $7,066 (family).

The actuarial costs for 2003 are –

$3,211 single –employee pays $114;

$6,927 two person – employee pays $244, and

$9,674 family – employee pays $342.

The County says the actuarial costs for 2004 are as follows:

$3,792 single, $8,182 two person and $11,342 family.

The County apparently proposes a cap of a 25% yearly increase.

D. Wellness Payments.

The annual per person wellness/prevention amount shall be $300 – a $50 increase.

E. Employee Prescription Co-Pay.

The County proposes to change the current payment amount – 10% co-pay with a minimum of $5.00 and a maximum of $20.00. The proposed change is as follows: $10 (generic), $20 (brand name formulary) and $40 (brand name non-formulary).

The Union health insurance proposal is "that the coverage be equal to those provided to the 312 eligible employees. "There is no logical reason that this benefit should be any different for the affected employees working in the same department of the County."

It is obvious that the Employer proposals in this area will result in a further cost outlay to unit employees. To the extent that the employees bear a greater cost burden, the greater the impact on the above "80%" wage relationship between Correction Officers and Deputies. If the

Employer expects the employees herein to bear a greater cost burden for health insurance, it should offset the cost by way of a remuneration increase such as an annual lump sum payment. The latter approach would not impact fringe benefits and future wage increases which occur when payments are rolled into wages. In the alternative, the Employer has the option of providing this unit the same benefit as the 312 eligible employees on the basis of the work relationship between the two units. While these employees are not Act 312 eligible, it can be argued they have a closer affinity than the other County employee groups.

Your Fact Finder recommends a remuneration premium or an acknowledgment that the employees herein are somewhat differently situated than others in order to resolve the health insurance problem.

Retiree Health Insurance

The County emphasizes it "does not provide County paid retiree health care insurance to any of its employee groups other than Act 312 eligible employees in the Sheriff's Department."

The Union seeks "parity with its counterpart 312 eligible employees." In that regard, it is noted the formula is $8.00 for each year of service with the Employer up to a maximum of $200."

The Employer stresses that it has not provided retiree health insurance for non-312 employees and, further – "This retiree health insurance benefit is simply too expensive to be added at this time ..."

Your Fact Finder is not persuaded that a fundamental change amounting to a significant expansion of retiree health insurance is warranted under present circumstances. Unlike the Health Insurance issues, the employees herein have never been provided with Retiree Health

Insurance. It, therefore, cannot be said that a benefit reduction has occurred *vis-a-vis* the Act 312 eligible employees.

Overtime Pay

The issue here relates to whether overtime pay is to be based on hours worked or hours compensated.

The Employer explains:

> " ... employees currently are paid overtime in accordance with FLSA, which does not require an employer to count time paid but not worked."

The Union says it "is simply seeking to have all hours compensated used for the purpose of calculating overtime."

The Employer contends "if an employee has some paid but unworked time in a week, any extra work that they accept is with the understanding that they will be paid straight time for that work, if that is not acceptable, they are free to turn down the work."

The Union expresses a concern:

> "The employer could simply order, from those employees who have taken accrued time off, to work the additional hours to avoid any payment of overtime."

The Undersigned discerns a valid point by the Union and recommends that in those cases where overtime is ordered, overtime is to be based on compensated hours.

Call-In Pay

This issue relates to call-in pay in the situation where the call-in is subsequently rescinded.

The Employer complains:

"The change proposed by the POAM would guarantee that employees receive two hours of time and one half if they are called in to work even if that work is called off prior to reporting for the assignment."

It is the Union's view that:

"As the Employer controls when, where and who is called in, it is their responsibility to exercise their judgment if there is a need to call an employee in off duty and, if they elect to do so they can make sure that an employee would perform two hours of work in exchange for the two hours of compensation."

The Union demand has greater merit. If one is called in to work, preparations are required. If one is later called off, it does not alter the fact that an interruption in one's routine occurred. Moreover, it seems reasonable to assume the scenario giving rise to the occurrence is rather infrequent. The Union position is recommended.

Retirement Plan Issues

The Employer notes:

" ... all of the non-Act 312 employees in the POAM unit are enrolled in MERS Plan C2 (B-1) base with the F55(25) rider. These employees make no contribution to the retirement plan."

The Employer further states:

"The position of the POAM during bargaining was that the pension plan should be increased to Plan B-2 (2% multiplier) from the current C-2 (B-1 Base) at the Employer's cost and that it should also be permitted the option to further improve the retirement plan from B-2 to B-3 (2.25% multiplier) by paying the increased cost for this added upgrade. As part of its package proposal, the County was willing to agree as follows:

13) Retirement – Non-312 Group: Status Quo/Per Current Agreement. Union may add B-2 upgrade effective 12/31/2002 at employees' actuarial determined cost. Add MERS B-3 benefit (if union decides to implement) with

employees to pay the full actuarial cost of the upgrade. The specific effective date of implementation is to be anytime prior to 1/01/2006 and shall be discussed and agreed upon between the parties."

The County says it does not want to incur additional debt in connection with increased employee pensions, but it favors a plan that:

> " ... will allow employee groups to increase their retirement plans to not higher than B-4, provided that the actuarially determined cost to add this increased benefit is paid through employee contributions. This policy has been followed in all cases except for Act 312 decisions, and should be applicable to this unit. That ability to increase the pension multiplier is however conditioned upon reaching a settlement of all the outstanding issues."

The Union does not view the current pension plan as adequate:

> "The Union is seeking a pension multiplier improvement to the current MERS defined pension plan. The current plan for the non-312 non-supervisory unit is the C-2 (2%) multiplier with the B-1 base (reduced to 1.7%) when an employee is eligible for full unreduced social security. Age and service requirement is 55/25.
>
> Not only is the level of pension provided to these employees far inferior to those of the comparable communities advanced by the union, but inferior to employees in general to those in Ottawa County.
>
> Michigan Public Employee Retirement Systems 2002 Survey, compiled by Gabriel, Roeder, Smith and Company provides insight to the level of pension these employees currently enjoy. Of the fifteen 'groups' within Ottawa County only the Board of Commissioner have the same level of pension, and Friend of the Court, Juvenile Court and District Court (C-1 old), have a lesser pension plan. Within the industry the standard for pension for employees performing this work, Ottawa County falls far short.
>
> The 'survey' also provides the amount of contribution that the employer is required to contribute to provide the pension plans. Only in one group of the fifteen is the counties contribution less

than it is for this unit. and that is the general employee group. The contribution as a percentage of payroll, is 3.6%, for the general employee group, the contribution is 3.43%. For the remaining 13 groups the contributions range from a high of 24.99% for the county Administrator. to a low of 5.23% for District Court. With the average contribution of all fifteen groups at 9.75%.

Although no cost was provide at the hearing the increased multiplier that the Union is seeking would not raise the level of contribution by the employer any where near the level currently provide to other employee groups."

Your Fact Finder concludes that an upgrade to B-2 at the employer cost is warranted. This benefit is in line with the three traditional external comparables. It is also less than that available to the Act 312 eligible employees. To the extent that the upgrade to B-2 exceeds the benefit available to other non-312 employees, it again is noted that the unit herein has a greater affinity with the Act 312 units so that some differentiation is deemed warranted. Any benefit above the B-2 should be available only at the employee's cost.

Grievance Procedure

The Union explains:

"The Union is seeking the same right that the 312 eligible employees are currently seeking the arbitration panel. The right to have the grievance procedure continue past the expiration of the collective bargaining agreement for a period not to exceed one year.

The history of bargaining with this Employer is that settlements are never reached until after the expiration of the collective bargaining agreement. This Employer has exercised its right not to allow grievances to continue to arbitration, forcing the Union to file suit in Circuit Court for those grievances that they have an obligation to defend. The cost and time is prohibitive to both the Employer and Union."

The above demand makes sense. It does not appear that the interest of either party is

served by a process in which grievances are litigated in a judicial forum. The Union position is recommended.

Retroactivity of Wage Increases

The County justifies its offer as to retroactivity:

> " ... the County made a wage offer for 2003 that was significantly larger than other counties were giving in recognition that it was requesting employees to make certain concessions in the area of health care costs. In order to fund that level of wage increase, it was necessary to have the health care changes implemented in a timely manner. The 75% figure was calculated by determining the total health care contribution that was anticipated but not received by the County in 2003. When this figure was determined it was compared against the total retroactive pay liability if the 3.2% increase was implemented as of January 1, 2003 and came out to 25% of the retroactive pay amount. Accordingly, reducing the retroactive pay by 25% would insure that the health care changes were also implemented in a retroactive fashion. The County has proposed to implement the 2004 wage increase in full, but if this proposal is not accepted by April 15, 2004, that retroactivity proposal will also have to be reduced to 75% to reflect the continuing loss of health care contribution."

In view of the fact that a health insurance contribution impacted the wage level for the bargaining unit differently – *i.e.*, it affected the 80% formula – the Employer rationale as to retroactivity lacks merit. That is to say, it cannot be said the Union was "stalling" since it did have a valid concern in regard to maintaining its wage relationship with the Act 312 employees. Your Fact Finder recommends that retroactivity be implemented in regard to wage increases.

COAM

Wages

The Parties have a two-tier wage system – pre-January 1, 2001 entry date and post-January 1, 2001 entry date. The County notes the two separate wage rates were negotiated in

2001. With reference to the post-January 1, 2001 rate for Jail Sergeants and Jail Lieutenants, the County says:

> "This reduced rate was considered appropriate by the COAM in 2000-2002 bargaining and should not be reconsidered in this proceeding."

The Union disagrees:

> "For the employees hired after January 1, 2001, the Union is seeking parity with their fellow sergeants and lieutenants for performing the same work and duties."

The Employer wage offer would maintain a 3.3% difference between the pre-January 1, 2001 and post-January 1, 2001 Sergeants and Lieutenants for 2003, 2004 and 2005. The Union proposal to eliminate the difference seems reasonable, subject to the below stated caveat. The Undersigned adds one caveat and that is the "80%" guide would seem apropos as it relates to Correction Sergeant and Lieutenant and their Act 312 eligible counterparts. The County proposal of an increase for 2003 of 3.2%, 2% for 2004 and 2.3% for 2005 is recommended.

Health Care Issues

The discussion in regard to the POAM is also relevant as to the COAM.

Retiree Health Insurance

Those promoted to the COAM after January 1, 2001 are excluded from receiving County-paid retiree health insurance.

The Employer complains:

> "The proposal by COAM to add this coverage now would directly negate the bargain that was made in 2001. ..."

The Union simply states:

"Recognizing that rising health care coverage costs impacts a retiree's ability to survive on the fixed level of pension annuity during those years from retirement until the availability of medicare/medicaid makes the Union's proposal the most reasonable."

The Undersigned is again not persuaded that a fundamental change amounting to a significant expansion of retiree insurance is warranted under present circumstances.

Retirement Plan – Defined Contribution

The Union explains:

"The Union is simply attempting to obtain the same level of defined contribution as provide to the management. The level of pension provided to the non-312 supervisory unit is inferior to that provided to the 312 eligible. 312 eligible have a 2.5% multiplier, the non-312 have a 2.25% multiplier, (employees promoted into the unit after 1-1-2001 have a 2% multiplier). This component of the defined benefit plan is the one that determines the amount of annuity a retiree would receive assuming that an employee would work 25 years. By adopting the matching defined contribution plan in addition to the defined benefit plan, the command officers would be able to recoup some of the that lost annuity. The cost to the employer would be fixed unlike the defined benefit plan whose cost may change from year to year based on the solvency of the plan."

The Employer notes:

"The COAM has proposed to continue the two-tier retirement plan, but to add a defined contribution component for the four Sergeants who were promoted after January 1, 2001."

One problem which the Employer perceives is as follows:

" ... There should also be uniformity in the plans, and it would appear that the best course would be to require all employees except the three already in Plan B-4 to be upgraded to Plan B-3 with the F55 (25) rider, and that all additional costs be passed directly to employees by the actuarial costs associated with that change. This would avoid a situation where the POAM group

might have a higher plan than the COAM group, which would adversely impact advancement opportunities. In addition, the parties should also agree to waive bargaining over retirement for a period of ten years, so that this issue does not keep surfacing in each round of bargaining."

According to the Employer, it was agreeable to the following:

> "2. Deferred Compensation. Add new Article 24, Deferred Compensation and renumber the remaining articles; For employees hired into the unit after January 1, 2001 the Employer will provide a ten percent (10%) match on employer contributions into one of the County's deferred compensation plans up to a five hundred dollar ($500) maximum annual Employer contribution."

It further states:

> "The COAM did not accept this proposal, contending that they should have same 25% match up to a maximum of $1,000 that is made available to employees in the Juvenile Court."

Insofar as the matter herein is concerned. it would seem that a compromise is warranted. Your Fact Finder recommends a 10% match up to $750.00.

CONCLUSION

The case has involved numerous issues and a voluminous record. The Recommendations are based on a careful review of the evidence and argument presented by the Parties.

JOSEPH P. GIROLAMO

July 21, 2004