

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION**

OTTAWA COUNTY,

Arising pursuant to Act 312, Public Acts
of 1969, as amended

Employer,

- and -

Case No. L02 E-8005

COMMAND OFFICERS ASSOCIATION
OF MICHIGAN,

Union.

FINDINGS OF FACT, OPINION, AND AWARD

Arbitration Panel

Thomas J. Barnes, Impartial Chairperson
John H. Gretzinger, Employer Delegate
James DeVries, Union Delegate

CHRONOLOGY

Petition Filed: 9/22/03
Prehearing: 5/19/03
Hearing: 1/19/05

For the Employer:

John Gretzinger
Richard Schurkamp

For the Union:

James DeVries
Marvin Dudzinski

April 21, 2005

OPINION

After a hearing on January 19, 2005, the parties had two unresolved economic issues, i.e., wages for each of three separate years (2003, 2004, and 2005) and a uniform allowance for the sergeants and lieutenants.

By virtue of its final offer, the Union has agreed to the Employer's position with regard to the uniform allowance and therefore that issue is resolved on the basis of the Employer's last offer which is as follows:

Cleaning Allowance. Ottawa County will increase the current \$300 per year cleaning allowance to a yearly maximum of \$500 effective 1/1/2005 with reimbursement in January and July based upon actual receipts.

With regard to issue two – wages, the parties have agreed that each year of a three year agreement is to be considered separately. The County and Association last best offers (across the board for all steps) are as follows for the sergeant and lieutenant classifications:

Ottawa County	COAM
2003 – 3.2%	2003 – 4%
2004 – 2%	2004 – 3%
2005 – 2.3%	2005 – 3%

Background And Benchmarks

The parties have been using as comparables three adjoining Counties: Muskegon, Allegan, and Kent. As the Employer points out, they are not perfect parallels. There are significant differences between and among those Counties as the Employer's brief observes. Kent County is considerably larger in population, tax base, and other pertinent demographic characteristics. On the other end of the scale, Allegan County is more rural with the smallest population, tax base, state equalized valuation, etc. Muskegon County is closer in those demographic characteristics to Allegan County but even between those Counties there are significant differences. Ottawa County is clearly more prosperous by those benchmarks than either Muskegon or Allegan. In comparison to Kent County, however, Ottawa County has lower

benchmarks in all respects. In any event, those three comparables have been used for guidance over the years and were used exclusively in the Chiesa award.

No particular data or arguments were advanced with respect to crime statistics. While the Panel Chairman might speculate that the location of Grand Rapids within Kent County poses greater law enforcement issues and concerns and problems than the smaller Ottawa County, nevertheless Ottawa County has its own crime issues (at least according to newspaper reports, with respect to gangs and a large transient population in the summer months). Those factors need not detain us here since they have not been raised by the parties.

It is worth noting the increases that have been negotiated in the 3 comparable counties and they are as follows:

		<u>Kent County</u>	<u>Muskegon County</u>	<u>Allegan County</u>
2003	Sergeants	7%	3%	3%
2004	Sergeants	3.5%	3%	2%
2005	Sergeants	3%	n/a	2%
2003	Lieutenant	3%	3.25%	3%
2004	Lieutenant	3%	3%	2%
2005	Lieutenant	n/a	n/a	2%

It is also worth noting that the differential between the top deputy pay in Ottawa County and the sergeant pay at the beginning of this agreement was 13% (road patrol \$46,336 vs sergeant \$52,345). The differential for lieutenant was 27.3% (road patrol \$46,336 vs \$58,983 for lieutenant).

Another benchmark consideration is the U.S. Department of Labor Consumer Price Index. Of course there are many indexes that can be used and the arguments can be endless as to which is the most appropriate. The index is calculated for 27 different cities across the country. An "all cities" index which reflects the average increase across the country is also calculated and

it is the most generally recognized acceptable index used in labor contracts and among practitioners and for that reason will be used here. The CPI all cities index has been remarkably stable and relatively low for many years. Since 1992, the CPI has never exceeded 3.5% and that only occurred in the year 2000; otherwise the high was 2.9% in that timeframe. Since 1983, over 22 years, the only time the CPI hit 5% was 1990 (5.2%). It is instructive to also look at the recent trend of the all cities CPI. For all of 2003, the year to year percentage increase was 2.2%; for 2004 2.6%. Looking at the last several months, month by month, however does show an up-trend. Going back for each of the last six months the increase from year to year was as follows:

February 2005	3.0% (since 2/2004)
December 2004	3.4% (since 12/2003)
November 2004	3.7% (since 11/2003)
October 2004	3.2% (since 10/2003)
September 2004	2.4% (since 9/2003)
August 2004	2.6% (since 8/2003)

If one said that the cost of living at the present time, on average, across the country, all things considered, is running at approximately 3% that would be a fair statement. It might also be fair to conclude that it is trending up in the last six months and, with the Federal Reserve Board scheduled to bump rates at least two more times this year, having done so seven times in a row, there is a concern about rising prices.

Another criteria to consider is average labor contract settlements across the country, and while only a rough gauge, those are as follows:

The latest BNA compilation of contract settlements (as of March 28, 2005) across the country reveals the following:

All contract wage settlements (first year)	3.3%
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- Median to date 2005 3.0%
- State and local governments average and median – 2005 to date 3.0%
- Including lump sum – 2005 to date 4.0%
(median 3.0%)
(weighted average 2.6%)
- State and local government 3.0%
(median 3.0%)

BNA, Collective Bargaining and Negotiating Contracts
¶ 19:4421

Looking at the prior two years, the following picture emerges:

All contract settlements 2004 3.5%

- State and local government average 2.8%
(median 3%)

All contract settlements 2003 3.4%

- State and local government average 2.9%
(median 3%)

BNA, CNBC ¶ 19:3841

Again, a fair reading is that labor contract settlements including local government settlements are in a range of 2.8% to 4.0% over the years 2003, 2004, and so far in 2005. State and local government settlements were remarkably stable at 3% over these years. While it can be noted these settlements are strikingly close to the Chiesa award, these averages do not reflect non-organized employee gains, which historically are typically lower (but nevertheless a 312 statutory criteria).

Also to be considered are the following increases that the County has accorded all of its non-organized employees, elected and administrative employees, as well as the employees represented by this Association who are also sergeants and lieutenants, albeit in the jail.

2003	3.2%
2004	2%
2005	2.3%

The only Ottawa County employees who received larger increases than the employees covered by these voluntary labor agreements were the Act 312 road patrol deputies and detectives, wherein Arbitrator Chiesa awarded raises of 4%, 3%, and 3% for the years 2003, 2004, 2005.

A fact finding report issued by Joseph Girolomo dated July 21, 2004, was also considered since it involved the same parties but not Act 312 positions in the Department (i.e., corrections officers, transportation officers, animal control officers, sergeants, and lieutenants in the jail). While that report is clearly entitled to some weight, it does not carry the statutory imprimatur that the 312 Arbitrator Chiesa's binding opinion does. Moreover, since the parties did not pursue in this case any alleged disparities between the sergeants and lieutenants in the jail and the sergeants and lieutenants covered in this proceeding, it is assumed for these purposes that the wage relationship between those positions is not in issue.

I have further considered the Employer's contention that the Ottawa County pension plan is richer than the 3 comparables. However, no overall comparison of compensation is advanced.

Analysis and Conclusions

Given the foregoing, the panel is fortunate to have a large body of data with which to decide this matter. The only missing elements, which are not terribly significant, would be the

increase for Muskegon County for 2005 and the lieutenant increase for Kent County for 2005.

Three preliminary observations are first offered.

First, I note in passing that the sergeant's pay adjustment for Kent County of 7% (albeit making up for a lump sum payment in 2002 and no increase made to the wage schedule) in 2003 and 3.5% in 2004 is on a par with what Arbitrator Chiesa awarded in Ottawa County. Moreover, the passage of time has shown that the 2% increases in Allegan County for 2004 and 2005 are too low relative to at least the cost of living.

Second, another comparability benchmark would be to compare the differentials in pay before (2002) and after (2005) adoption of the Association last best offer. The numbers from the Employer's brief follow:

2002				
County	Sgt. Salary	Ottawa % Differential	Lt. Salary	Ottawa % Differential
Ottawa	52,345	--	58,983	--
Kent	56,284	-7.5%	67,219	-14%
Muskegon	51,938	+0.8%	57,096	+3.3%
Allegan	49,234	+6.3%	55,141	+7.0%

2005				
County	Sgt. Salary	Ottawa % Differential	Lt. Salary	Ottawa % Differential
Ottawa	57,759	--	65,077	--
Kent	64,251	-11.2%	73,991	-13.7%
Muskegon	56,711	+1.8%	62,386	+4.3%
Allegan	52,759	+9.5%	59,089	+10.1%

As can be seen even with the Association last best offer, Ottawa winds up in a remarkably similar relative position (assuming 3% increases in Muskegon for 2005 and 3% on the Kent

County Lieutenant rate) as it was in 2002. The Ottawa's Sergeant rate differential to Kent County falls from 7.5% under to 11.2% under; the Muskegon differential is pretty much the same (.08% vs 1.8% over); and Allegan rises from 6.3% over to 9.5% over. Taken together, Ottawa is treated fairly under the Association last best offer in maintaining the 2002 differentials. For the lieutenant, the picture is much the same. The difference to start (2002) between Ottawa and Kent is a 14% differential that dips slightly to 13.7% in 2005. Ottawa rises from a 3.3% larger lieutenant salary than Muskegon to 4.3%, not a noteworthy difference. In comparison to Allegan County, the differential rises from 7.0% to 10.1% and, while noteworthy, is not significant enough to raise any alarms given all of the above comparisons.

Third, taking the pension offset argument as a given (a rather large presumption given all the nuances of different pension plans) it would not be justified in my mind to adjust wage levels to reflect that difference when there are a myriad of other fringes and other work environment factors that would need to be weighted to arrive at a valid relative comparison. While pension is a significant factor, there just are too many other factors (economic and work environment) to consider to do a fair "net wage."

For better or for worse, the panel's decision is largely circumscribed by the Chiesa decision involving the deputies and detectives. While there is no overriding legal requirement that Arbitrator Chiesa's opinion is conclusive, it has been a well recognized principle in at least contract labor arbitration cases that arbitrators accord great deference to prior arbitral decisions that are relevant or directly on point. In this case, Chiesa's opinion is directly on point for the reasons that the statutory criteria that he evaluated are not different in their application in this case for the sergeants and lieutenants. To say it another way, unless the record discloses either a major error in his decision or the data compels a different result for these different classifications

of police officers, labor relations continuity and stability would be significantly undermined if I were to dishonor, disregard, or ignore his opinion. Moreover, I have no reason to do so since his reasoning in his opinion appeared eminently sound to me, a conclusion I arrive at without weighing his considerable stature in the arbitral and employment community. It would also obviously be a little disingenuous to award lower increases to senior, or supervisory, officers compared to the award to the deputies.

While I might have reached a different decision with respect to Arbitrator Chiesa's first year wage award of 4% (the Union last best offer being 4% and the Employer being 3.2%), I cannot conclude that it is outside the bounds of reasonableness and fairness given all of the criteria to be assessed. Even so, the difference in the first year of the last best offers for the sergeants between the Union and the Employer positions is not remarkably great (i.e. \$419 annually or \$8 per week), the same is true with regard to the lieutenant where the difference is \$472 or slightly over \$9 per week.

Yet another way of viewing this is that the Chairman here is not faced with a choice of competing last best offers but is faced with a choice of picking the Employer's position or the Union's position which also happens to be Arbitrator Chiesa's award. While I arrive at my decision based on the statutory criteria as well as Arbitrator Chiesa's award, it should also be noted that the Association here chose to advance as its last best offer the Chiesa award percentages and that deference or acknowledgement is a sign of advancing labor relations. To say it another way, had the Union submitted a last best offer higher than Arbitrator Chiesa's award, while giving deference to the Arbitrator's award, the panel could certainly not adopt that award since it was not part of any party's last best offer.

Finally, the presumption would be that the differential between deputy and supervisory positions should be maintained unless there is significant evidence to the contrary that it is not an appropriate spread. The deputy differential is referenced at page 3. It should also be noted that the differential between the detective and the sergeant at the beginning of the contract was 6.4% (\$49,177 for detective vs \$52,345 sergeant). Similarly the spread for the detective to the lieutenant is 19.9% (\$49,177 for detective vs \$58,983 for lieutenant). To not follow Chiesa's award would change these differentials without sufficient evidence warranting the same. While there may not be a historical relationship, this is just another way of saying that it's quite difficult to justify lesser increases for supervisors than rank and file deputies.

For the foregoing reasons, the Association's last offer of settlement with respect to the first year of the contract beginning 1/1/03 is adopted.

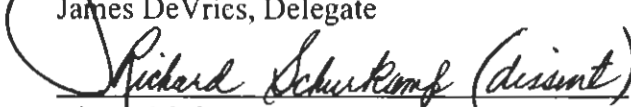
Date: 4/29/05

Date: 5/12/05

Date: 5/5/05



Thomas J. Barnes, Chairman


James DeVries, Delegate



Richard Schurkamp, Delegate

For year two (2004), the rationale used with respect to the first year does not differ in the second year and in fact the Association's case is more compelling since the cost of living was running at 2.6% (while the Employer's offer was 2%) and Arbitrator Chiesa's opinion awarding 3% is in line with the other comparable Counties. Further, state and local government contract settlements averaged 2.8% (median 3.0%). For the foregoing reasons, the Association's last offer of settlement for the second year (2004) shall be adopted.

Date: 4-29-05


Thomas J. Barnes, Chairman

Date: 5/3/05

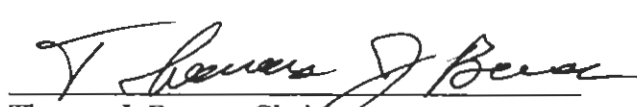

James DeVries, Delegate

Date: 5/5/05


Richard Schurkamp, Delegate

For wages in the third year (2005), the rationale and analysis is nearly identical to the second year and since the cost of living is currently running at approximately 3%, state and local government settlements are 3.0%, and the other comparables are in that area, it is within reason to follow Arbitrator Chiesa's award of 3% in the third year and the Association's last offer of settlement in that regard is adopted.


Date: 4-29-05


Thomas J. Barnes, Chairman

Date: 5/3/05


James DeVries, Delegate

Date: 5/5/05


Richard Schurkamp, Delegate

There was no issue with respect to retroactivity since there was an agreement that the increases would be fully retroactive (see Employer's Brief in Support of Final Offer footnote 3, page 2).