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STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
EMPLOYMENT RELATIONS COMMISSION  
COMPULSORY ARBITRATION UNDER ACT 312  
(PUBLIC ACTS OF 1969 AS AMENDED)

*In the Matter of:*

LAPEER COUNTY SHERIFF  
LAPEER COUNTY BOARD OF  
COMMISSIONERS

-and-

MERC Case No. D03 1-2756

POLICE OFFICERS LABOR COUNCIL

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**OPINION AND AWARDS OF ARBITRATION PANEL**

**ARBITRATION PANEL**

*George T. Roumell, Jr., Chairman*  
*John Biscoe, County Delegate*  
*Lloyd Whetstone, Union Delegate*

**APPEARANCES:**

FOR LAPEER COUNTY:

FOR POLICE OFFICERS LABOR COUNCIL:

Howard L. Shifman, Attorney

Thomas Zulch, Attorney

**INTRODUCTION**

The Police Officers Labor Council is the recognized collective bargaining representative in what the parties have referred to as Unit B of the Lapeer County Sheriff's Department, namely, "all full-time Deputies." The parties have had successive contracts with the current contract expiring on December 31, 2003. The parties commenced bargaining for a successor Agreement, including being involved in a mediation session held on June 23, 2004. Following the mediation

session, the POLC petitioned for arbitration pursuant to Act 312 of Public Acts of 1969, as amended. The Union issues at the time of the petition dated July 20, 2004 were listed as:

1. Duration
2. Wages
3. Shift Preference
4. Workers Compensation
5. Retiree Healthcare

The Employer filed an answer to the petition setting forth its issues as:

1. Duration
2. Wages
3. Health Insurance
4. Retiree Health
5. Vacations

A 312 hearing was held on February 2, 2005, at which time certain issues were resolved.

At the arbitration hearing, the parties agreed that the contract resulting in this arbitration would be a three year contract commencing January 1, 2004 and expiring December 31, 2006. The POLC withdrew the issues of shift preference and workers compensation. The County withdrew its vacation issue.

Thus, the issues now before the Arbitration Panel for decision are wages, health care for active employees and health care for retirees. These are the issues to be decided by the Panel.

The parties agreed at the hearing that the issues in dispute are economic and, as such, are subject to last best offers. *See*, MCL 423.238.

### **THE CRITERIA**

The criteria that must be followed by the Act 312 Panel in resolving the issues in dispute is set forth in Section 9 of Act 312 of Public Acts of 1969, MCLA 423.239, which reads:

- (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 ages, hours and conditions of employment of the employees involved in the arbitration proceeding 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 service or in private employment.

Section 9(c) addresses the financial ability of the unit of government. Section 9(d) addresses comparables. These two criteria are most influential in arriving at an Act 312 award, for financial ability and comparables represent the basic economic driving force in any collective bargaining. The comparables would include both external and internal comparables where

applicable.

Act 312, Section 9(h) acknowledges that there are other factors that are considered by fact finders in resolving both economic and non-economic issues and, therefore, can be similarly considered by Act 312 panels. Among these criteria are the bargaining history and the "art of the possible."

The bargaining history criteria would consider the parties' negotiations in recent years plus the current bargaining history. The bargaining history, both historically and currently, can provide a gauge toward resolving the bargaining impasse that resulted in an Act 312 arbitration panel. The "art of the possible" criteria stands for the proposition that in any bargaining, parties have respective positions; that each party's table position or doctrinaire position, if there is to be an agreement, will not be the basis for an agreement. Instead, the parties, to reach an agreement, must move toward the middle. And this is the origin of the "art of the possible" concept, namely, applying compromise to reach agreement.

Although all of the Section 9 factors are to be considered by an arbitration panel, in any particular situation certain criteria become key in resolving the dispute because of the nature of the circumstances.

### **THE COMPARABLES AND THE BARGAINING HISTORY**

This is the second time that the parties have utilized a 312 arbitration panel in resolving their contractual disputes. On June 18, 1997, a panel chaired by Arbitrator Elaine Frost, issued an award in Case No. D94 G-1618 (Unit B). Subsequently, in MERC Case No. D99 G-1139, a panel chaired by Arbitrator Mario Chiesa issued an award dated September 8, 2003. These awards focused on certain external comparables which the parties in this matter have agreed are

applicable, namely:

Allegan County  
Bay County  
Clinton County  
Eaton County  
Grand Traverse County  
Lenawee County  
Marquette County  
Shiawassee County  
St. Joseph County  
Van Buren County

An analysis of these comparables produced two exhibits that analyzed the bargaining pattern as to wages in Lapeer as compared to certain of the comparables:

**LAPEER COUNTY NON-SUPERVISORY UNIT-ACT 312  
HISTORICAL LOOK AT DEPUTY RANGE MAXIMUMS**

<u>Comparable</u>	<u>1994 Dep Max</u>	<u>2003 Max</u>	<u>Percentage Increase</u>	<u>Differential of Pay Increase of Comparable as Compared to Lapeer</u>
Clinton	33686	42710	26.79%	-31.70%
Eaton	32448	41939	29.25%	-25.42%
Lenawee	30342	41885	38.04%	- 3.00%
Marquette	29184	37223	27.55%	-29.77%
St. Joseph	29869	41371	38.51%	- 1.82%
Van Buren	31353	40893	30.43%	-22.42%
Lapeer	28954	40310	39.22%	

What this chart reveals is that, of the comparables listed, in 1994, Lapeer was the lowest paid Department at least at the maximum level. By 2003, it was no longer the least paid Department with a 39.22% increase over the years, the highest of the comparables. Lapeer had improved its position in comparison with the other comparables and had actually gone above Marquette.

There is a problem with the comparison with Marquette because that county is in a different geographical area in Michigan, as compared to Lapeer. Marquette is in the Upper

Peninsula and might be influenced with the economic factors involved in that area of Michigan. But a second exhibit makes some comparisons with all of the proposed comparables. What particularly interested the Chairman was Shiawassee County, a nearby county, as compared to Lapeer, with the comparables being:

**LAPEER COUNTY-NON-SUPERVISOR UNIT-ACT 312  
MAXIMUM BASE PAY RATE FOR A DEPUTY  
SHERIFF IN THE COMPARABLE COUNTIES**

<u>Comparable County</u>	<u>Jan 03</u>	<u>Jul 03</u>	<u>Jan 04</u>	<u>Jul 04</u>
Shiawassee	40138	41342	41342	
Lapeer	40310	40310		

This comparable suggests that, though with the last increase Shiawassee had moved ahead of Lapeer, the two counties are relatively equal at maximum base rate. Furthermore, this comparable is made without considering any wage increases in Lapeer County that would be in effect in 2004 and thereafter which, of course, is the subject of the dispute here.

When dealing with comparables, one also considers the internal comparables. In this regard, the County has been negotiating collective bargaining agreements with its various unions that expired at about the same time as Unit B's contract. As a result, the County has reached certain tentative agreements, including a tentative agreement with the Police Officers Association of Michigan, Supervisors Unit (COAM), and the Dispatchers Unit represented by the Police Officers Association of Michigan. These contracts provide for a 1.65% increase in 2004, and 2% increases in 2005 and 2006. However, in 2004, the wage increase is not retroactive, but only becomes effective "the first payroll period following the date of ratification." The Chairman notes that these tentative agreements are units within the Sheriff's Department. The Chairman

further notes that Unit B and Unit A (Supervisors), at least for 2003, followed the same wage pattern.

In addition, the County has reached a tentative agreement with AFSCME Local 1421-04 for 2004 with a 1.65% increase “effective first payroll period following the date of ratification.”

Presumably, these agreements were reached considering the County’s financial situation, which is stable, but is a product of the economic conditions in the State of Michigan.

In terms of comparison, once gauging that Lapeer is improving its wage level, as the Chairman has pointed out above, in relation to the comparisons, including Shiawassee, what becomes more influential in this situation is the internal comparisons, particularly when two units within the Sheriff’s Department have reached certain settlements as set forth above. For this reason, it is the internal comparables that are controlling.

As noted, the parties have agreed that the contract should have a three year duration beginning January 1, 2004 and ending December 31, 2006.

The last best offers of both parties as to wages for 2005, effective January 1, 2005, are 2% and effective January 1, 2006 are 2%.

The dispute between the parties is for 2004 wherein the County has made a last best offer of 1.65% without any retroactivity and no retroactivity in 2005 as well. The POLC’s last best offer is 2% for 2004, effective January 1, 2004.

The argument of the County is that it has agreed with COAM and the POAM to a 1.65% wage increase for 2004 without retroactivity; that this pattern should be followed with the POLC Unit B.

The Chairman agrees with the County that the 1.65% wage increase for 2004 should be

adopted. It is the wage increase that was adopted with COAM and POAM. For this reason, based on internal comparisons, there is no reason to adopt 2% for 2004.

Reaching this conclusion, the Chairman then turns to the issue of retroactivity. Act 312 of Public Acts of 1969, as amended, in Section 13, MCLA 423.243, provides that there not be changes in employment conditions during the pendency of arbitration proceedings. Though this section is not exactly on point, the fact is the contract remains in place unless the parties otherwise agree, pending the Act 312 proceedings. Unfortunately, it takes time to implement an Act 312 arbitration proceeding, causing some concern about retroactivity when the opinion and award is finally issued.

And this comment brings forth the art of the possible criteria.

If the parties were left to their own devices, they might well have reached agreement by December 31, 2003, so that retroactivity would not be an issue. But because of the pendency of the Act 312 petition and its availability, the parties had difficulty reaching agreement as this agreement was negotiated in a period of economic distress in Michigan. Moreover, the Union was diligent in moving to Act 312 arbitration. No delays occurred in moving forward by the Union.

Considering these factors, the art of the possible requires that the 1.65% increase be retroactive to January 1, 2004. Otherwise, the Deputies would be deprived of any pay raise for one year.

In summary, both Delegates join with the Chairman in awarding a 2% increase across-the-board, effective January 1, 2005 and a 2% increase across-the-board, effective January 1, 2006. The County Delegate dissents as to retroactivity for 2005. The County Delegate will join



with the Chairman in concurring for a 1.65% increase across-the-board for 2004, but will dissent as to the retroactivity of same to January 1, 2004.

The Union Delegate dissents as to the 1.65% for 2004, but concurs with the Chairman that wages be retroactive to January 1, 2004.

### **Health Care Insurance For Active Employees and Retirees**

The two issues that remain involve health care insurance for active employees and health care insurance for retirees. The POLC's last proposal as to active employees is to remain the *status quo*, namely, to carry over the health care insurance for active employees as set forth in the just expired contract. The County proposed the following changes:

- a. For the year 2004, or as soon as reasonably possible after issuance of the Award, establish Blue Care Network as the base insurance to be paid 100% by the Employer.
- b. For the year 2004, or as soon as reasonably possible after issuance of the Award, change drug card to \$10 generic/\$20 brand prescription drug card.
- c. Effective January 1, 2005, or as soon as reasonably practicable after issuance of the Award, employees enrolled in the base HMO health plan will pay 25% of any increase in premium cost of the HMO base in comparison to 2004.

2005 Rates:     \$ 6.42 for single  
                         \$13.73 for double  
                         \$14.85 for family

- d. 2006)  
  
Employees enrolled in the base HMO health plan will pay 25% of any 2006 annual increase in the premium cost of the HMO base with a cap of \$25.00 per month.
- e. Employee expense can be applied pretax through the 125 Plan.
- f. Employees may choose CMM/PPO or traditional insurance, by paying the difference in premium expense from the base rate.

As the Chairman views the external comparables, there is a range of health care provisions. But, just like wages, it is the internal comparables that control. The tentative agreements with COAM, POAM and AFSCME contain similar provisions for active employees as proposed by the County here. For this reason, the Chairman will join with the County Delegate and adopt the Employer's last best offer. The Union Delegate hereby dissents.

### **Retiree Health Insurance**

The parties have presented last best offers as to retiree health insurance. The POLC has proposed the following modifications to the retiree health care insurance:

The Union is requesting Article XX, Section 4 and 5 be modified to increase the monthly employer contribution for retiree health insurance for those hired prior to 1991 to \$225.00

The Union is also requesting language be added to Article XX, Section 5 to increase the employer's contribution to the VEBA Account to \$100.00 per month.

The County has proposed the following modifications:

The County is requesting the ability to change the VEBA Program to the MERS Retirement Health Care Savings Program.

- a. Establish MERS Retirement Health Care Savings Program as provider.
- b. Adjust eligibility (vesting) from three to ten years (consistent with retirement vesting provisions).
- c. Provide a service credit adjustment at 120 months of service (10 years) of \$3,600 into individual account (less previous deposits).
- d. Deposit \$30 per month into vested individual accounts.
- e. Place all unit members in the Post Employment Health Care Savings Program.
  1. Provide a supplemental service credit adjustment reflecting months of total full-time service as determined by the Employer.

Addressing the POLC's issue, the Panel unanimously will agree to the increase for those hired prior to 1991 will be, by stipulation, increased from \$150.00 to \$200.00. Otherwise, the Union's offer to amend Section 5 as to the VEBA Account contribution is rejected by a majority of the Panel, with the Union Delegate dissenting.


As to the County proposal, the parties have agreed by stipulation to the County's proposal to have the ability to change the VEBA Program to the MERS Retirement Health Care Savings Program. As to the other requests in the County's last best offer as to retiree health insurance, the parties have also stipulated same and these changes will be retroactive to January 1, 2004.

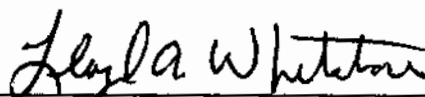
Thus, the Panel unanimously will adopt the prior to 1991 amount of payment to \$200.00 and will adopt the County's proposed modifications to retiree health insurance. However, as to the VEBA Account contribution amendment to Article XX, Section 5, the Union's last best offer will be rejected by a majority of the Panel with the Union Delegate dissenting.

### A W A R D S

1. Wages. The wages shall be as follows:
  - A. Effective January 1, 2004, wages shall be increased 1.65% across-the-board retroactive to January 1, 2004.
  - B. Effective January 1, 2005, the wages shall be increased 2% across-the-board retroactive to January 1, 2005.
  - C. Effective January 1, 2006, the wages shall be increased 2% across-the-board.

  
GEORGE T. ROUMELL, JR., Chairman

  
JOHN BISCOE, County Delegate, concurring  
except as to the retroactivity for the years 2004 and  
2005, as to which he dissents.

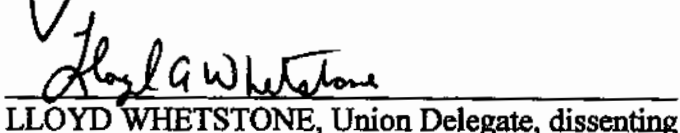


LLOYD WHETSTONE, Union Delegate,  
concurring except that he believes the retroactive  
wage increase for 2004 should be 2% across-the-  
board.

2. Health Care As To Active Employees. The County's last best offer, as set forth in the Opinion, is hereby adopted by a majority of the Panel.

  
GEORGE T. ROUMELL, JR., Chairman

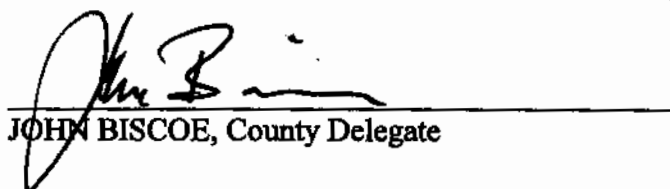
  
JOHN BISCOE, County Delegate

  
LLOYD WHETSTONE, Union Delegate, dissenting

3. Health Care As To Retirees.

- A. Article XX, Sections 4 and 5 be modified to increase the monthly employer contribution for retiree health insurance for those hired prior to 1991 to \$200.00.
- B. The Union's request to amend Article XX, Section 5 "to increase the employee's contribution to VEBA Account to \$100.00 per month" is rejected.
- C. The County's proposed modifications as set forth in the above Opinion are hereby unanimously adopted by the Panel.

  
GEORGE T. ROUMELL, JR., Chairman

  
JOHN BISCOE, County Delegate

*Lloyd A Whetstone*

LLOYD WHETSTONE, Union Delegate concurring,  
except dissenting as to the rejection of the POLC  
proposal to add to Article XX, Section 5, to increase  
the employee's contribution to VEBA Account to  
\$100.00 per month.

July 8, 2005