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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION

OPINION AND AWARD
PL 312, CASE NO. LO4 B-5005

In the Matter of:

County of Menominee, Michigan
Employer

-and-

Menominee County Deputy Sheriffs
Association
-Union-

James A. Mackraz,
Arbitrator-Panel Chairman
Francis J. McCarthy,
Association Delegate
Brian Neumeier, County Delegate
Thomas E. Bahr, Association
Advocate
David Stoker, County Advocate

Arbitrator appointment	July 29, 2005
Pre-hearing conference (phone)	September 7, 2005
Hearing	October 20, 2005
Last Offers submitted	December 28, 2005
Panel executive conferences	December 13, 2005 (phone) January 11, 2006 (phone) January 31, 2006 (In St. Ignace, MI)
Date of Award	February 6, 2006

I. Background

The labor organization here, the Menominee County Deputy Sheriffs Association ("Assn."), is affiliated with the Wisconsin Professional Police Association ("WPPA").

On March 24, 2005, pursuant to Public Act 312, it filed a petition for arbitration with the

Michigan Employment Relations Commission . The Assn. asserted in its Petition that it had engaged in good faith bargaining with Menominee County ("County"), including state mediation, on behalf of its bargaining unit of ten employees. Despite these efforts, impasse prevailed. On April 4 the County likewise filed a Petition for arbitration. In their respective Petitions, each party specified the same five unresolved issues to be arbitrated: Wages, Health Insurance, Pensions, Work Schedule and Staffing. On July 29 MERC appointed James A. Mackraz as Arbitrator and Panel Chairman.

I In the pre-hearing conference, held by telephone September 7, procedures were established for the Hearing that was scheduled for October 20. The parties confirmed the existence of the remaining five issues still in dispute, stipulating that each was economic. They also agreed that the expiring contract, with the changes therein tentatively agreed upon, along with the Arbitration Panel's decision on the five open issues, would constitute the new binding contract. By letter of September 28, they further stipulated that the following six Michigan counties would be appropriate for purpose of comparison as to wages and benefits, as contemplated in Section 9(d) of the Act: Delta, Dickinson, Gogebic, Houghton, Iron, and Marquette. And, later, they waived any rights arising out of the time limits imposed by the statute. Exchanges of Last Best Offers was concluded December 28, with a correction to the County's Offer submitted on January 6.

The hearing was scheduled to begin at 9:00 a.m. October 20 in the Menominee City Library. Immediately prior thereto, in colloquy with the Arbitrator, both Advocates proposed that the parties engage in further direct bargaining, involving the Arbitrator-as-mediator, with the aim of reducing, if not resolving, all open issues. Under this

procedure, resolution was reached on all but two of the issues: health insurance and wages. Whereupon, the arbitration hearing got underway at 3:00 p.m.

In the course of the hearing, agreement evolved, bilaterally, on wage increases in a four-year contract, running from October 1, 2003, to September 30, 2007:

<u>Effective Date</u>	<u>General Increase</u>
October 1, 2003	2.0%
October 1, 2004	2.5%
October 1, 2005	3.0%
October 1, 2006	3.0%

Thus, Health Insurance remained as the sole unresolved issue.

II. Health Insurance

County Proposals. The County proposes changing from Blue Cross-Blue Shield's PPO-2 Plan to its PPO-3. Principal differences are shown in Table I.

<u>Table I. PPO-2 and PPO-3 Comparisons</u>		
	PPO-2	PPO-3
Co-insurance	90%/10%	80%/20%
Deductible (network)	\$100/\$200	\$250/\$500
Rx drugs, co-pay	\$10	\$10/\$40*
Out of pocket max**	\$500/\$1000	\$1000/\$2000
Employee premium contribution, monthly	0	\$25 single \$55 couple \$60 family

*Generic/Brand Name **Single/Family coverage

Assn. proposals:

1. Continue the existing PPO-2 plan, with its 90%/10% co-insurance.
2. Establish employee monthly premium contributions, retroactive to January 1, 2005, of \$25, \$55, and \$60 for single, two-person, and family coverage, respectively, such payments to be made through pre-tax payroll deduction. Back premium payments will be deducted from retroactive wage increase payments.
3. (a). Where six or more employees waive any insurance coverage, each shall receive an additional \$100 monthly payment, for a total of \$200.¹
(b) Where an employee who is eligible for family coverage elects single employee coverage, he/she will also receive \$100 monthly.
4. The County to reimburse employees for PPO-2 in-network deductibles.

III. Statutory Provisions

In rendering its award on this issue, the Panel must adhere to the directive of Section 9 of Act 312, requiring that it decide each economic issue separately, on the basis of 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 the wages, 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.

¹ The existing contract provides that where the employee has health insurance coverage from another source, and waives coverage in the instant plan, he/she shall receive \$100 per month in lieu of the latter coverage.

- (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.

Further, the Panel must adhere to the Section 8 directive, requiring it to adopt the last offer of settlement which, in its opinion, more nearly complies with the applicable factors prescribed in Section 9. (The Panel notes, however, that each Section 9 factor need not be accorded equal weight. *City of Detroit v Detroit Police Officers Association*, 408 Mich 410 [1980].)

IV. County Position

The County has a total of about 90 employees. Of these, some 55 are covered by five collective bargaining contracts:

Deputy sheriffs (Assn.)-- 10	Central Dispatch -- 9
Correction Officers -- 15	Supervisory -- 2
Courthouse -- 20	

As is the case with the 10-member Assn., the bargaining agents for the Courthouse unit and the Corrections Officers unit are affiliated with the WPPA. Central Dispatch is represented by AFSCME, the state, county, and municipal employee

organization. The 2-person supervisory unit is in the Teamster union (now in negotiations for a new contract). The other two WPPA units, as well as the AFSCME group, have concluded negotiations for new contracts, which became effective in March 2005. All three have agreed to the insurance change from PPO-2 to PPO-3, as proposed here by the County. Similarly, all three have agreed to the same wage increases as the parties here have agreed upon.

Employees in these three sister bargaining units have been paying their negotiated share of insurance premiums since March 15, 2005. They have also been subject to the increased employee co-insurance payments, from 10% to 20%, for the period starting January 1, 2005. Thus, for nearly a year, at the County's expense, the instant employees have continued to benefit from the more generous provisions of the PPO-2 plan. Accordingly, deductions here should be made from the employees' retroactive wage payments (and from future earnings, if necessary,) in amounts that will equal the co-insurance and premium payments made by those employees in the sister bargaining units.

On the matter of comparison with the six other comparable communities, this unit will continue to rank among the leaders. In wages for the years 2005 and 2006, Menominee leads the pack. Although employees in Gogebic and Marquette make no contribution on insurance premium shares, when both insurance and wages are considered together, as a package, Menominee would continue to be at the top, or at least very close thereto.

V. The Association Position

Comparison with the comparable counties, particularly with the larger Gogebic and Marquette, is the most relevant factor to be considered. At these two most closely comparable ones, employers pay 100% of premium costs, along with providing other more generous insurance benefits. Considering the impact of the County's proposed changes in insurance on the employees' take-home pay, this unit's ranking among the sister counties will significantly deteriorate—to say nothing of the negative effect it will have on employee morale.

The Assn. proposal better serves the interests of the citizenry, which is the direct beneficiary of the role played by the Assn.'s members. It recognizes the need to maintain both the health and morale of its members, thus to retain the best and most qualified officers. Working, as they do, side by side on a daily basis with officers of other counties, and comparing their lot with that of deputies who do the same or similar work, it is important that a sense of grievance not be created.

VI. Discussion

With all other issues having been bilaterally resolved, the task of the Panel is to decide which of the two proposals on health insurance more closely conforms to the standards of PL 312's Section 9. Accordingly, in reaching its decision, the Panel notes that:

- (a). The lawful authority of the employer is clear and apparent.
- (b). The award will include the stipulations as above specified.
- (c) 1. The public interest is well served by a contract that assures the continued good service provided by the parties to the community.

2. The employer's financial ability to meet the costs involved in this proceeding is reasonably assumed, in light of its having entered into three similar contracts in the past year. (*supra*, p. 6).

(d). Although the employers in Gogebic and Marquette counties pay 100% of the premium, this benefit vis-à-vis that of the instant employees has been considered in light of the differences in wages among those counties. Similar note has been taken of the wage-benefit comparisons regarding all six comparable counties.

(e). The so-called cost-of-living factor has no direct application to the health insurance issue.

(f). The Panel has considered overall compensation, particularly the wage rate, as compared to that of the comparable communities.

(g). The Panel has no knowledge of any changes in the foregoing circumstances during the pendency of these arbitration proceedings.

(h). Factors other than the foregoing include the three contracts reached earlier in the year 2005 between the County and three of its other four bargaining units. Commonly identified as "internal comparables" (or "intra-plant inequities"), the Panel considers this factor to be the major one, if not the decisive one, in reaching its decision.

Wage Comparison. As shown in Table II, below, Menominee County, along with Gogebic and Marquette, have long been the leaders among the comparables. For the top step for Road Patrol Officer wage rate in 2005 and 2006, Menominee leads the other two.²

Table II. Wage Comparables³

Menominee		Gogebic		Marquette		Six-county Average	
'05	'06	'05	'06	'05	'06	'05	'06
\$18.25	\$18.80	\$17.51	\$17.95	\$18.17	\$18.72*	\$17.21	\$17.95

*Reflecting a 3% increase.

² County Exhibit 3

³ As the majority of the instant unit occupies the Road Patrol Officer classification, that group is being used as shorthand for the entire unit, as well as for those of the comparable counties.

Health Insurance Comparison. With the old Menominee contract, few if any differences in insurance are to be found among the three major comparables. The County's proposal establishes employee contribution to the monthly premium and it increases co-pays, along with reducing some of the other benefits. Thus, on health insurance alone, Menominee now falls behind Marquette, but pretty well maintains essential parity with Gogebic. (Table III). In general, the other comparables trail the field, in one respect or another.

<u>Table III. Health Insurance Comparables</u>			
	<u>Menominee (prop.)</u>	<u>Gogebic</u>	<u>Marquette</u>
Plan	PPO-3	PPO-2	PPO-3
<u>Network Deductible</u>	\$250/\$500	\$100/\$200	\$250/\$500
<u>Co-insurance</u>	80%/20%	90%/10%	80%/20%
<u>Office Visit</u>	\$10	\$20	\$10
<u>Routine/Preventive</u>	\$500	\$500	\$500
<u>Emergency Room Co-pay</u>	\$25	\$50	\$50
<u>Rx Drugs (generic/brand)</u>	\$10/\$40	\$10/\$40	\$15/\$30
<u>Out-of-pocket max (single/family coverage)</u>	\$1000/\$2000	\$500/\$1000	0
<u>Deductible Reimbursement</u>	Yes	No	Yes
<u>Employee Premium Share (family coverage)</u>	\$60	0	0

Wages and Health Insurance. A firmly grounded and well-established practice in collective bargaining is to regard all monetarily measurable benefits as being part of the economic package, i.e., as cost to the employer and of benefit to the employee. Wages and health insurance are two of the major benefits. Accordingly, higher wages could offset less beneficial insurance benefits, and vice versa. As shown in Table IV, employee insurance costs will amount to \$.34- \$.41 an hour over the period of the contract. In this same period, wages will have increased by \$1.85.

<u>Table IV. Menominee Top-step Wage Rate and Health Insurance Premium Contribution (Family Coverage)</u>						
	<u>Wage Rate Road Patrol Officer</u>			<u>Employee Insurance Premium Share</u>		
	Hourly	Monthly*	Increase	Hourly	Monthly*	Increase
Jan. '03	\$16.95	\$2937				
Oct. '03	\$17.29	\$2996	\$.34/\$59			
Oct. '04	\$17.72	\$3071	\$.43/\$75			
Jan. 05	\$17.72	\$3071		\$.34	\$60	
Oct. '05	\$18.25	\$3163	\$.53/\$92			
Jan. '06	\$18.25	\$3163		\$.37	\$64.76	\$.03/\$4.76
Oct. '06	\$18.80	\$3258	\$.55/\$95			
Jan. 07				\$.41	\$71.24	\$.04/\$6.48

*On basis of a 173.3-hour month.

Conclusion

Whatever may be said about the merits of the parties' positions on health insurance when compared to that of other counties, the case has not been made that such comparable relationships call for the adoption of the Assn. Offer, particularly when the wage-health insurance packages are compared. The decisive factor here is the inequity

that would be created within the establishment, should the Assn.'s offer be adopted. Less than a year earlier, three of the four other bargaining units in the County agreed to new contracts. These agreements embody wage and other improvements that have here been agreed upon, including the change to the PPO-3 health insurance Plan. That same plan now constitutes the County's Last Best Offer. No matter how satisfied the other unit employees may now be with their settlement, for them to find that a more beneficial health insurance plan has been obtained for this unit could have a decidedly negative effect upon the County's overall employer-employee relationship.

The standard treatise in the arbitration field comments on this question of external/internal comparables:⁴

....Generally, arbitrators give greater weight to externals in wage disputes unless it can be shown that a clear pattern has been established for the internal units.

Benefits issues, such as health insurance benefits, are often resolved through a review of internal comparables. Applying the internal-comparison standard to determine the appropriate health insurance package, one arbitrator explained [in a Minnesota municipal worker case]:

[B]ecause of risk pooling, economies of scale and the lack of quality data about the coverage, contribution levels and the costs of health insurance benefits to external communities, most Arbitrators give heavy weight to evidence about the instant Employers internal structure of health insurance coverage/contributions as opposed to what external practices are in these areas. Clearly, one cannot expect the Employer to offer a different health insurance package to each of its different work groups. By pooling risks and by "spreading" costs, the individual Employer can buy insurance protection at a far more reasonable price. Here, in the health area, the comparison focus shifts from "external" to the "internal"... (City of Farmington, Minn, 85 LA 933, 936. Dichter, 1999)

⁴ Elkouri & Elkouri, How Arbitration Works, Sixth Edition, p. 1413 (BNA, 2003).

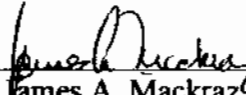
(Parenthetically, we take note of the undisputed fact that among many employers throughout the nation—large and small, in both the public and private sectors, organized and non-union—employees are being strongly pressed to shoulder increased portions of the sharply rising costs of health insurance—as well as of other hard-won benefits.)

We conclude that the purposes of PL 312 will be better served by the selection of the County's Last Best Offer.

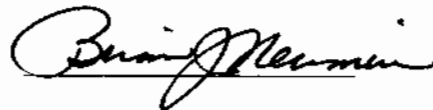
Award

The Panel selects the County's Last Best Offer, dated December 23, 2005, as corrected by letter dated January 6, 2006. Accordingly, the new contract shall consist of the following:

1. The expired contract, amended to include all tentative agreements reached in the current negotiations, including those reached October 20, in the hours immediately preceding the start of the formal Hearing (Staffing, Work Schedule, and Pensions).
2. The County's Last Best Offer, as pertains to (a) health insurance and (b) deductions from retroactive pay for employee premium costs and co-pays.


James A. Mackraz, Chairman

The following agrees:



The following dissents:

