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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

BARRY COUNTY SHERIFF

Employer,

-and-

MERC Case No. L05 C-7010

COMMAND OFFICERS ASSOCIATION
Of MICHIGAN

Union
_____ /

ACT 312 ARBITRATION AWARD

WILLIAM P. BORUSHKO, ARBITRATOR

For the Employer:

Peter A. Cohl
Cohl, Stoker, Toskey &
McGlinchey, P.C.
601 N. Capitol
Lansing, MI 48933

Employer Delegate:

Peter A. Cohl
Attorney

For the Association::

James DeVries
Business Agent
27056 Joy Road
Redford, MI 48239

COAM Delegate:

James DeVries
Business Agent

INTRODUCTION

The Petition for Act 312 Arbitration in this case was filed on May 2, 2006 by Marvin Dudzinski, Research Analyst for the Command Officers Association of Michigan. The agreement covers the Sergeant and Sergeant Detective positions in the Barry County Sheriff's Department. It was assigned to this arbitrator on September 13, 2006 by MERC. By letter dated September 19, 2006 the COAM waived any time limit argument. The parties have agreed to submit their respective cases by direct submission to the Arbitrator, foregoing a formal hearing. I have received Last Best Offers from both parties, as well as arguments in support thereof. In addition, I have been provided the relevant information from the comparable communities, as agreed to by the parties, and set forth below.

This case, as all other similar proceedings, is governed by Act 312, Public Acts of 1969, MCL 423.231. The statute provides that any decision of the Panel involved in the proceeding must be based upon the following factors:

- 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 condition of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar service and with other employees generally:
 - (i) in public employment in comparable communities;
 - (ii) in private employment in comparable communities.
- e. the average consumer price 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 proceeding;
- 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.

As indicated further herein, these factors were carefully considered prior to the rendering of this award.

COMPARABLE COMMUNITIES

As set forth above, one of the factors that must be considered in the rendering of this award is the comparison of employees covered by this case to that of other similar groups of employees in comparable communities. To that end, the parties hereto have agreed to the following list of comparable counties:

Branch County
Cass County
Clinton County
Hillsdale County
Ionia County
Isabella County
Montcalm County
St. Joseph County

THE ISSUES

There are two remaining issues in this case. They both revolve around the MERS Retirement Plan currently in effect in Barry County. The current agreement provides:

ARTICLE XXII

PENSION

Section 1. Employees covered by this Agreement will be subject to the State of Michigan Municipal Employees Retirement System (MERS) (Plan B-4 with Benefit Program F50) (with 25 years of service). Effective April 1, 2001 employees shall be responsible for paying 2.5% of gross salary for the cost of the Plan B-4. The Employer is authorized to deduct from employees' payroll checks the 2.5% of gross salary as the employee contribution for the Plan B-4.

Section 2. The Employer will permanently adopt Benefit Program E (Section 68) so that current retirees will their retirement benefits re-computed by the following percent:

100% plus 2% for each full year in the period from the date of the most recent Benefit Program E increase (or date of retirement, if later) to the January first as of which redetermination is being made. The new benefit amount will be payable thereafter.

The two issues concern the multiplier for the plan, which is currently 2.5%, and the amount of Employer contribution to the plan, which is currently 18.23%

ISSUE 1

COAM Proposal: Increase the multiplier from 2.5% to 3.0% per year of credited service, to be paid for by employee contributions.

County Proposal: Status Quo. Keep the multiplier at 2.5% per year of service.

ISSUE 2

County Proposal: Cap the Employer's pension at 18.23%. Any future increase in cost to be borne by an increase in employee contributions.

COAM Proposal Status Quo. No limit on the Employer contribution.

At the outset of discussion, the question of the employees' willingness to pay the cost of the improvement must be addressed. I have seen proposals such as this on a number of occasions. There is some merit to adopting the proposal, since the cost to the Employer is supposedly zero. However, anyone engaged in collective bargaining realizes that the costs of today rise significantly tomorrow. With that will come the inevitable request to have the Employer cover all or part of the cost of the improvement. And that may have merit also. But the first consideration here must be the improvement itself. Is it warranted based upon the criteria that the Panel is obligated to consider? If the answer is affirmative, that would significantly increase the odds of accepting the proposal as part of the award.

With respect to the first issue, the current plan provides retirement benefits at age 50 after 25 years of service, to a maximum of 80% of FAC, or final average compensation. Since there is no specific proposal evident in either party's submissions, I assume the cap would remain the same if the multiplier was raised to 3.0% per year. As part of the record in this case, the Employer submitted an affidavit by Michael C. Brown, who is the Barry County Administrator. In the affidavit, Mr. Brown stated that two other units in the Sheriff's Department, the Deputies and Corrections Officers, also have agreements that contain a 2.5% multiplier. In addition, Mr. Brown also indicated that the Courthouse employees, and Non-union employees, including elected officials, all have the 2.5% multiplier. Internally, then, there appears to be consistency with all units, both represented and non-represented. That is, of course, significant to this proceeding, but not controlling. The statute, as referred to above, requires the Panel to consider external comparable communities as well.

As I indicated earlier, the parties have agreed to the list of comparable communities, which is very much appreciated by this arbitrator. Those comparables show the following:

Branch County	2.5% multiplier
Cass County	2.25% multiplier
Clinton County	2.5% multiplier
Hillsdale County	2.00% multiplier
Ionia County	2.5% multiplier
Isabella County	2.5% multiplier
Montcalm County	2.25% multiplier
St. Joseph County	2.5% multiplier

As we look at the comparable list, it is obvious that no one has the 3.0% multiplier. In addition, when I look at the Barry agreement, I also see the E provision, which provides a 2% annual adjustment in pension. Three of the comparables have a similar provision, but five do not. Taking into account the overall benefit level of Barry County Sheriff's Department employees in this unit, I would have to conclude that they enjoy a pension program benefit level that is certainly above the average external comparables. Since I cannot find sufficient support to adopt the Union's proposal on its merits, the offer of increased employee contributions must be rejected also. I am unable to find any support for the COAM proposal to increase the multiplier.

It is the award of the panel that the Employer's proposal is accepted on this issue.

Now we must turn to Issue 2, the Employer's proposal to limit the amount of pension contribution to the current amount, or 18.23%. It is their position that any current future increase in the contribution required by MERS, for any reason, should be accounted for by an increase in the employee contribution level, currently 2.5%.

Once again, let us look at the affidavit submitted by Mr. Brown, the County Administrator. It is silent on the issue of the proposed cap. I assume that it would be safe

to conclude that no such cap exists in the agreements that cover the other bargaining units, or the policy that covers non-represented employees.

Once again, however, the Panel must consider external comparables, in order to completely satisfy the requirements of the Act. I note that the Employer pension contributions for the comparables are as follows:

Branch County	Employer limited to 10%
Cass County	11.75%
Clinton County	15.24%
Hillsdale County	8.0%
Ionia County	12.27%
Isabella County	26.14%
Montcalm County	9.07%
St. Joseph County	11.0%

I note that Barry currently has the second highest amount of Employer contribution, and that alone might be sufficient reason to consider a change in this agreement. But, the preponderance of evidence on the record does not support this conclusion. A limitation on the level of Employer pension contributions simply does not exist in a vast majority of the comparables.

It is the award of the Panel that the COA proposal is accepted on this issue.

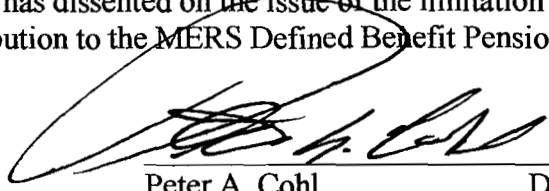
AWARD

The multiplier shall remain at 2.5%

There shall be no contractual limit on the Employer contribution to the current plan.

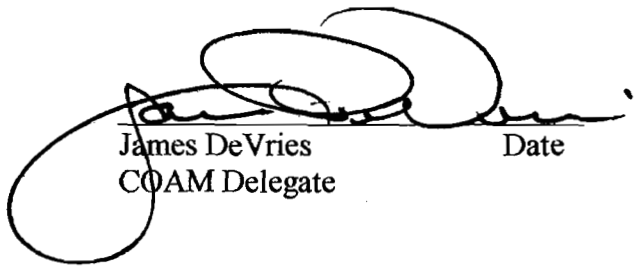
→ Agree with Arbitrator Borushko to deny same

The Employer Delegate on the panel has voted in the affirmative on the issue of the increased pension multiplier, and has dissented on the issue of the limitation on the amount of the Employer's contribution to the MERS Defined Benefit Pension Plan.

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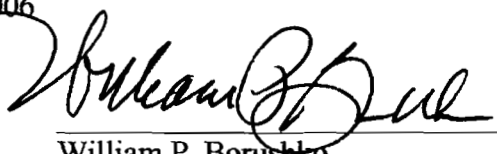
Peter A. Cohl Date
Employer Delegate

The COAM Delegate on the panel has voted in the affirmative on the issue of the limitation on the amount of the Employer's contribution to the MERS Defined Benefit Pension Plan, and has dissented on the issue of the increased pension multiplier.

 11/30/06

James DeVries Date
COAM Delegate

Dated this 30th day of November, 2006



William P. Borushko
Arbitrator