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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

SANILAC COUNTY BOARD OF
COMMISSIONERS and the SANILAC
COUNTY SHERIFF

and

MERC Case No. D04 I-1220

POLICE OFFICERS ASSOCIATION
OF MICHIGAN
______________________________/

FINDINGS, OPINION AND FINAL AWARD

Act 312 Panel

James Tignanelli, Union Delegate

John R. Males, Employer Delegate

Thomas L. Gravelle, Chairperson

APPEARANCES

For the Employer:

Bonnie G. Toskey

For the Association:

William Birdseye

Dated: August , 2007

INTRODUCTION

This case has arisen under Act 312 PA 1969.

The Sanilac County Board of Commissioners and the Sanilac County Sheriff are the Employer.

The Police Officers Association of Michigan (the "Union") represents the County's Sheriff's Deputies and Dispatchers.

On September 30, 2006, the undersigned chairperson issued an interim opinion and order on comparability, which identified the external comparable communities to be used in this case: Barry, Cass, Hillsdale, Huron and Tuscola Counties.

On January 30, 2007, the first day of hearing of this matter occurred in Sandusky, Michigan.

Prior to going on the record, the parties engaged in negotiations to attempt to resolve disputed issues.

At the hearing on January 30, the parties stipulated that the panel would issue an interim final award on all outstanding disputed issues except retiree health benefits.

In April 2007, the panel issued its interim final Act 312 award.

The retiree health care issue was heard on May 2, 2007 in Sandusky, Michigan. County Administrator John R. Males testified in behalf of the Employer. Steven Lautner and James Tignanelli testified in behalf of the Union.

The retiree health care issue is economic. Under the law, the Panel is required to accept the last offer of settlement made by one or the other party for this economic issue. In deciding which offer to accept, the Panel has considered the applicable factors set forth in Section 9 of Act 312 PA 1969. Section 9 reads:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order on the following factors, as applicable:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interest 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.

(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 in 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.

FINDINGS

The Employer has provided retiree health benefits since 1992. In negotiations between the parties in 2000, the Employer agreed to liberalize the retiree health care benefits by agreeing (a) to pay 100% of the insurance premium (instead of the previous 80%), and (b) to extend coverage to include the retiring employee's spouse and dependents (instead of the retiree only). The parties' 2000 agreement states:

> ARTICLE XLVI
> HOSPITALIZATION MEDICAL COVERAGE
>
> 46.1: The Employer will pay full premium to provide Blue Cross-Blue Shield Community Blue Option 1, Optical/Dental-3, with a $10 prescription rider to all full-time employees, spouses, retirees, retiree spouses, and dependents. The Employer will reimburse all prescription co-pays down to $5.00.
>
> Employees and retirees eligible to participate in this plan who elect not to participate shall be entitled to a buy-out equal to fifty percent (50%) of the annual premium cost for that employee or retiree. Payment of said buy-out shall be paid to employee(s) that select this option on a bi-weekly basis as part of regular payroll. Payment of said buy-out shall be paid to retirees that select this option on a monthly basis as part of their regular pension benefit.
>
> 46.2: All regular full-time employees will receive a separate check in the amount of $400.00 as a dental/optical allowance with their first paycheck each December. Effective January 1, 2000, this allowance shall be eliminated.
>
> 46.3: Effective January 1, 2000, the Employer will pay 100% of the premium for Blue Cross/Blue Shield PPO medical coverage (equal to that provided to active employees) for full-time members of this bargaining unit and the spouse and dependents of the retiring employee separating after January 1, 2000, with a normal age and service retirement or duty disability retirement. Such retiree must make application for Medicare upon earliest eligibility. After such time, the Employer liability shall be limited to providing the Medicare filler for the retiree and spouse only. For any period that a retiree is eligible for health insurance coverage through his/her spouse's employment or retirement, the County of Sanilac shall not be obligated to provide Blue Cross/Blue Shield PPO medical coverage.

In the April 2007 interim final Act 312 Award, the panel made some modifications in the above health insurance terms in renumbered sections 46.1 through 46.6.

The parties filed their last best offers on retiree health benefits after the May 2, 2007 hearing on this issue.

The parties' last best offers are incorporated by reference.

The Employer's last best offer includes the following:

– A sliding scale of capped premium payments based on years of service and age of the retiree;

– no spouse or dependent coverage unless the retiree pays for it in its entirety;

– no cash payments in lieu of any coverage; and

– no retiree coverage for employees hired after January 1, 2005 (who may contribute to a Health Savings Account under a plan to be established by the Employer).

The Employer's proposed sliding scale of capped retiree premium payments is as follows:

Minimum Age	*Minimum Years of Service*	*% of Payment*	*Cap*
60	10	25%	$125/month
55	15	40%	$200/month
55	20	55%	$255/month
55	25	70%	$350/month
55	30	85%	$425/month
55	34	100%	$500/month

In its last best offer, the Union proposes the status quo (subject to the changes contained in renumbered sections 46.1 through 46.6 in the interim final Act 312 award) except for employees hired after the date of this award. The Union proposes that future employees receive upon retirement health care premiums for themselves only according to the following formula:

0-14 years of service – 50% of premium for the retiree
15-19 years of service – 75% of premium for the retiree
At least 20 years of service – 100% of premium for the retiree

Act 312 Section 9 factors are reviewed below.

1. Ability To Pay

A key Section 9 issue in this case is the County's "financial ability" to meet its costs.

In recent years, the County – like many local units of government in Michigan – has experienced financial difficulties. The parties' offers on retiree health care benefits must be considered with this fact in mind.

The City's financial condition includes the following:

– As of December 31, 2005, the County's General Fund balance was $963,637. E. Ex. 27. This fund balance represented about 8.8% of the County's General Fund expenditures for the year ending December 31, 2005. (Tr. p. 33). The County's auditor has recommended to the County a minimum General Fund balance of between 8% and 12% of annual General Fund expenditures. (Tr. pp. 33-34).

– Standing alone, the County's General Fund balance was minimally acceptable for 2005. However, County Administrator John R. Males testified that revenues have not been keeping pace with expenditures:

A . . . Our financial ability to offer services and perform the mandated and non-mandated functions and fund the fringe benefits is becoming increasingly difficult because revenues are not increasing and expenditures are increasing 8 percent a year.

Q When you say "expenditures are increasing 8 percent a year," are those any particular types of expenditures, or are you totaling overall expenditures?

A No. Those are overall expenditures.

(Tr. p. 34).

– Mr. Males offered the following reasons for the County's revenue problems:

A . . . I'm sure everyone's aware . . . that revenue sharing has been lost and has been substituted with a temporary property tax shift. A number of other reimbursements such as court reimbursements have been reduced as the State's financial situation has worsened. Last week we were made aware of the likelihood, although its not official yet, that our liquor tax reimbursement of $112,000 likely will not come. And of that, $60,000 or approximately half of the $112,000 goes to the health department. So basically it's been a miserable situation the last several years with revenues being static and reduced and expenditures increasing.

(Tr. p. 35).

– On this point, the Independent Auditor's Report for the year ending December 31, 2005 (E. Ex. 27, p. xii) explains:

SANILAC COUNTY GOVERNMENT ECONOMIC OUTLOOK

- State revenue sharing has been discontinued and may face additional cuts due to state budget problems.
- Other state and federal revenues and/or grants are being reduced.
- Property tax revenue is not rising as rapidly as in past years.
- Investment earnings are at historically low levels.
- Health and dental insurance premiums are rising much faster than the rate of inflation.

- Retirement costs are increasing due to poor stock market performance over the last several years.
- Utility costs are rising faster than the rate of inflation.

– County expert Fred D. Todd has prepared a study: "Calculation of Estimated Unfunded Liability And Employer Contributions For Post Retirement Health Benefits As Of December 9, 2002." E. Ex. 52. In his study, Mr. Todd wrote:

> It is anticipated that the County, as of December 31, 2002, will have 6 retirees that the County funds all or a portion of the cost of the retiree health premium and 151 active employees, <u>93 that are currently eligible</u> to participate in the post retirement health plan. The demographics of these employees and retirees were used to calculate the unfunded retiree health liability and required annual employer contribution rate. Given the County employee demographics, and in particular the current average age, it is projected that the actual number of retirees will increase significantly over the next decade. <u>Of primary concern is how the County will fund the retiree health benefits for the 39 employees that are eligible to retire within the next ten years.</u>

– In a follow-up report dated February 3, 2003 (E. Ex. 53), Mr. Todd predicted under his "key assumptions and methodology" that if the current retiree health insurance benefits were to remain unchanged, the County would encounter a severe financial burden in the future:

> In the final analysis, what this report and the original report attempt to communicate is that the County has <u>a substantial unfunded post retirement health insurance liability amounting to millions of dollars</u>. Secondly, the Board of Commissioners over the next several years will be required to substantially increase the annual General Fund contributions to this plan, which may have a detrimental impact on funding the ongoing operations of the County.

– Ten to twelve Sanilac County retirees (not including the County health and mental health departments) are now receiving retiree health benefits. (Tr. p. 28).

Employer Exhibit 55 shows the following actual payments made by the County for the years 2003-2006 for retiree health premiums:

Year	*Total*	*Annual % Increase*
2003	$ 64,349	
2004	$118,610	84.32%
2005	$143,810	21.25%
2006	$178,439	24.08%

For 2007, the County has budgeted $260,000 for retiree health benefits (Tr. p. 36), an increase of 45% over 2006. Retiree health benefit payments are made from the County's General Fund. (Tr. p. 31).

– Two years ago, the Employer created a reserve account to fund future retiree health premiums: It appears to have a balance of only $125,000. (Tr. p. 39).

– Because of its budget problems, wages were frozen in 2004 and 2005 for the County's elected and appointed officials and for the employees in the non-police unions. E. Exs. 25 & 26.

– The County is legally required to perform various services, and to maintain a balanced budget. Because employment-related compensation is a major part of the County's budget, caution is necessary in making financial commitments to the County's employees and retirees.

B. Comparability

Among the five external comparable communities for road patrol deputies, Employer Exhibit 33 shows that Cass and Tuscola Counties do not pay for retiree health insurance, Barry County pays on a sliding scale of capped payments with the maximum payment being $200 per month for a retired deputy with at least 25 years of service; Hillsdale County pays 50% of the premium for a deputy and spouse where the deputy is a MERS retiree who is at least 55 years old; and Huron County covers retiree spouses only for deputies hired before January 2, 1993; and for deputies hired before April 7, 1997 Huron County is currently committed to pay on a sliding scale based on age and years of service of the retiree. Employer Exhibit 34 shows similar or identical figures for dispatchers in the five external comparable communities.

None of the external comparable Counties provide an optional pay-out of 50% of the annual premium cost if the retiree decides that health insurance is not needed.

Among Sanilac County's internal employee units, non-police bargaining unit employees receive no retiree health benefits. E. Exs. 35 & 36. Elected and appointed officials are currently eligible to receive retirement health benefits under current County policy. At the hearing, County Administrator Males testified that the County intends to amend the policy consistent with the outcome of the present case.

C. Overall Compensation

The Sanilac County deputies' annual base salary is low among the comparable Counties; its dispatchers' annual base salary is significantly lower than Hillsdale County's but similar to the other comparable Counties.

Primarily because of very high pension contributions, Sanilac County deputies and dispatchers have the highest overall direct compensation and the highest overall average hour rate: At the top rate, Sanilac deputies' overall compensation works out to $39.13 per hour, whereas the average for the comparable Counties' deputies is $36.96 per hour. E. Ex. 23. Sanilac dispatchers' overall compensation is also the highest, *e.g.*, $36.24 per hour for Sanilac County and an average of $33.42 per hour among the comparable Counties. E. Ex. 24.

D. Other Section 9 Factors

The "lawful authority of the employer" and the "interest and welfare of the public" recognize that the County is required to provide various services and at the same time to maintain a balanced budget.

In recent years, increases in the consumer price index ("CPI") have been low; and for the years 1989 through 2004, the increases in the maximum base wage of Sanilac County deputies and dispatchers have exceeded increases in the CPI. E. Exs. 7-14.

OPINION

Article 51.2 of the parties' 2000 collective bargaining agreement provides for "<u>normal</u> retirement at age fifty (50) with at least twenty-five (25) years of service." Article 46.3 of the parties' 2000 agreement refers to "the retiring employee separating after January 1, 2000, with a <u>normal</u> age and service retirement or duty disability retirement." (See also introductory "A" of Employer's last best offer.)

Under the Employer's last best offer an employee retiring before age 55 would be ineligible for retiree health benefits. Under the Union's last best offer, a current employee (and his spouse and dependents) who retires at age 50 with 25 years of service would be eligible for Employer fully funded retiree health benefits, and a future employee (but not his spouse or dependents) would be eligible for Employer fully funded retiree health benefits after only 20 years of service. (The Union's "future employee" proposal could be modified under future contracts between the parties because it would not take effect for many years.)

The Employer's last best offer is reasonable in comparison with the comparable external Counties: Cass and Tuscola Counties pay nothing for retiree health insurance; Barry County caps its payments at $200 per month; Hillsdale County pays 50% at age 55 for the retiree (and spouse). Only Huron County provides a greater benefit (for employees hired before January 2, 1993).

The Union's last best offer (which includes a 50% "buyout" for existing employees (including spouse and dependents) who elect not to be insured, exceeds the comparable Counties.

As mentioned above, County employees in non-police unions receive no retiree health premiums.

Having said this, the predominant issue is the County's "financial ability" to pay retiree health premiums under the current formula. State and local units of government are not required to set aside money to meet future promises other than for retiree pensions. Many pay retiree health premiums out of their current budgets. This creates large unfunded liabilities. Sanilac County is no exception.

County expert Todd reported in 2003 that "the County has a substantial unfunded post retirement health insurance liability amounting to millions of dollars." In apparent response, the County has created a separate account to fund retirement health benefits. However, because of budgetary constraints, as of the present the County has contributed only $125,000 to this account.

Absent a reduction of the County's liability for retiree health benefits, the record shows that the financial effect on the County could be catastrophic.

For all the above reasons, the City's final offer is adopted.

Dated: August 23, 2007

Thomas L. Gravelle, Chairman

Dated: ~~August~~ Sept. 12, 2007

John Males, Employer Delegate
Concurs

Dated: August , 2007

James Tignanelli, Union Delegate
Dissents

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James Tignanelli, Union Delegate
Dissents