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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
ACT 312, PUBLIC ACTS OF 1969 AS AMENDED

In the Matter of:

COUNTY OF LAPEER

-and-

MERC Case No.D10 A-0110

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

ARBITRATION PANEL OPINION AND AWARD

George T. Roumell, Jr., Chairman
Howard L. Shifman, County (Employer) Delegate
John T. Barr, Union Delegate

APPEARANCES:

FOR COUNTY OF LAPEER:

Howard W. Shifman, Attorney
Robert Rapson, Undersheriff
John Biscoe, County Administrator

FOR POLICE OFFICERS ASSOCIATION
OF MICHIGAN:

Gary L. Pusheé, Business Agent
John T. Barr, Research Analyst
Mike Tappen, President

Background

The Sheriff's Department of Lapeer County has 81 employees, including 32 sworn Deputies who serve as Road Patrol Officers. The Deputies Unit "B" are represented by the Police Officers Association of Michigan. The Police Officers Association of Michigan filed a Petition pursuant to Act 312 of Public Acts of 1969, seeking to arbitrate a dispute concerning the formulation of a Collective Bargaining Agreement between the County and POAM representing the Deputies for an agreement commencing January 1, 2010.

George T. Roumell, Jr. was appointed Chairman of an Arbitration Panel consisting of John T. Barr as the Union Delegate and Howard L. Shifman as the County (Employer) Delegate to resolve the dispute.

The parties resolved all issues in dispute except the question of the order of layoff and recall in regard to the Reserve Unit or Reserve Deputies.

As a result, the parties agreed to conduct a hearing on Monday, June 4, 2012 to address the Reserve issue that the parties were not able to mutually resolve. A hearing was held. The parties agreed to permit the Chairman to record the hearing in lieu of a formal transcription of the hearing.¹

In addition to the Deputies' "B" Unit, the Sheriff's Department has a separate bargaining unit consisting of Correction Officers. There is a third bargaining unit consisting of the Command Officers, namely, Sergeants and Lieutenants, in both the Corrections and Road Patrol. There are approximately 28 Reserve Deputies. The Reserve Officers serve both in Corrections and in Road Patrol.

According to Undersheriff Robert Rapson, Reserve Deputies spend 90% of their time on Road Patrol. The remaining 10% of their time Reserves spent their time in Corrections or in security at the Courthouse. Reserves also assist in the IRIS Program and at times with crowd control.

The IRIS Program is a program where the Department has a portable machine that allows the taking of an image of the eye used for identification purposes that the Chairman is led to

¹ As will be noted in the expired Collective Bargaining Agreement, the reference to Reserves is to "Reserve Unit" or "Reserve Deputies". As used in this Panel Opinion and Award, the reference to Reserves is intended to encompass "Reserve Unit" or "Reserve Deputies".

believe is more accurate than fingerprinting. The Department uses the portable machine to obtain images of individuals to assist in building a bank of IRIS images. Reserves assist Deputies and Corrections Officers in this program.

In security, the Reserves assist in the scanning of individuals coming into the Courthouse. In Corrections, Reserves work in the jail and also in assisting in moving prisoners to and from courtrooms.

In Patrol, Reserves ride with Deputies and assist Deputies while on patrol. Reserves do not ride alone, but are always, when on duty, with a Deputy with the Deputy in control. Sometimes there are two Reserves in the patrol car.

The evidence reveals that usually there is one Deputy per car but at times, because of gas allocation, there may be two Deputies assigned to a car, but this is a function of budget allocation for gas. Local POAM President Mike Tappen testified that the assignment of two Deputies per car, over the past year, has happened primarily because of gas allocation but that, for instance, in the last month he has ridden in a one Deputy car because there was no gas shortage.

Deputies do not always have a Reserve with them. In some cases, Deputies decline to have a Reserve because of personality conflicts or the belief that the Reserve may not be qualified. Other Deputies utilize Reserves with frequency.

President Tappen explained that frequently he rejects Reserves because he questions their ability. He is free to do so, although he is usually required to put in writing the reason for his refusal.

The Reserves are required to work six hours a month, including training. Reserves are required to attend training programs. They wear the same uniforms as Deputies and are armed.

The previous Collective Bargaining Agreement between the County and the Deputies –

Unit "B" under Article X, Seniority, Section 6, "Layoff and Recall," provided:

In the event the layoff of employees is determined to be necessary by the Employer, temporary, casual, seasonal, part-time and probationary employees shall be laid off first. For purposes of this collective bargaining agreement, those employees known as the "reserve unit or reserve deputies" shall be considered part-time employees.

If additional layoffs are scheduled, seniority employees shall be laid off in reverse order for their job classification seniority.
(Emphasis supplied by Chairman.)

Pursuant to the above language, if there was a layoff, before full-time Road Patrol Deputies would be laid off, Reserves would be laid off as they would be considered as part-time employees for layoff purposes.

The County and the Department have now proposed the following language:

Section 6 – Layoff and Recall

In the event the layoff of employees is determined to be necessary by the Employer, temporary, casual, seasonal, part-time and probationary employees shall be laid off first. for purposes of this collective bargaining agreement, those employees known as the "reserve unit or reserve deputies" shall not be covered by this provision.
(Emphasis supplied by Chairman.)

In other words, the Department proposes to eliminate the provision that provides that Reserves would be laid off before full-time Deputies.

Up until the present, there have been layoffs in the Sheriff's Department in that in 2000 there were 86 employees in the Department. There are now 81. However, no Road Patrol Deputy has been laid off. There was a Weightmaster laid off, but the Chairman is led to believe that the Weightmaster, for the purposes of the arguments being presented, was not considered a part of the Road Patrol.

The County has faced financial difficulties. The County is currently operating at an approximately a \$500,000 deficit each year and currently has a \$2 million deficit as a result,

having to draw on reserves. Despite this, Undersheriff Rapson explained that through readjustments in the Department and cost saving measures the Department has not laid off any Road Patrol Deputies.

Nevertheless, given the County's deficit financing, there are concerns that have caused the County to make the proposal as to Reserves.

Seventeen of the 32 Road Patrol Deputies are not fully funded by County general funds. Instead, for a number of years, fifteen have been partially funded as a result of contracts that the County has entered into with Townships within the County to provide Road Patrol services within those Townships by furnishing Deputies to patrol in the given Townships. The Townships have agreed to pay 75% of the cost of the Deputies with the County paying 25%. The agreements provide that the Deputies' primary function would be to patrol within the given Township, but that the Sheriff would have the right on occasion to pull the Deputy from the Township when necessary. The Townships involved and the number of Deputies assigned are as follows:

Arcadia	1
Elba	1 ½
Marathon	1
Mayfield	4
Attica	2
Clifford	½
Deerfield	2
Oregon	3

These contracts represented 15 Deputies. As explained by Undersheriff Rapson, any of these Townships could cancel their contract or modify the number of Deputies that could cause layoffs. In fact, Mayfield at one time had five Deputies and did reduce the number to four. This did not result in a layoff because the Department was able to arrange for other Townships to pick

up the one Deputy to avoid a layoff.

The Department receives what the parties refer to as Act 416 Funds. This is a fund generated from a surcharge of \$10.00 per traffic ticket on all traffic tickets written throughout the State and the fund is then distributed to entities, including the Lapeer County Sheriff's Department, by the State. This fund is to provide for patrol on secondary roads other than State roads. Originally, the fund was to provide full funding for two Deputies. But in recent years, the State has been cutting back in the fund allocation.

On May 24, 2012, the County received a letter from the State, signed by Michael L. Prince, Director, Office of Highway Planning, Department of State Police, directed to Sheriff Ronald Kalanquin, Lapeer County Sheriff's Office, advising that the amount allocated would be further reduced by 7% so that the Act 415 funds that the County is now receiving is about 50% of the cost of furnishing two Deputies. Thus, instead of receiving 100% of 416 Funds to fund two Deputies, the County is now receiving 50% to fund two Deputies. Based upon current history, this amount is continuing to be reduced.

Thus far, the County is continuing the two 416 County Deputies. Nevertheless, with the continuing deficit financing at the County, the reducing 416 Funds and the possibility that the Townships might reduce their commitment for the number of Deputies, the County is concerned that it may lose the ability to fund a full contingency of 32 Deputies in the future, making Deputy layoffs a possibility, thereby highlighting the Reserve issue.

According to Undersheriff Rapson, who at one time was a Reserve himself, the Reserve is a safety issue. By allowing a Reserve to ride with a Deputy, the Deputy has a second person with him/her to aid as a backup. Undersheriff Rapson maintained that this is a safety factor to assist in the event there is a fight or to observe what was going on during a stop or a call.

As already noted, Local President Tappen questioned whether Reserves would be helpful because, in many cases, he rejected Reserves because he felt they were not competent. But he acknowledged that other Deputies accepted Reserves. The argument was being made that while the Deputies were laid off Reserves could work and then proceed to their other jobs.

Layoffs have occurred in the past, if the Chairman heard Undersheriff Rapson correctly. But it was not clear what happened at that time as to Reserves. In more recent times, layoffs have not been a fact of life among the Road Patrol at Lapeer. Layoffs could happen. There is the safety factor. However, two Deputy manned cars are not the norm in Lapeer. There is no showing that if Reserves are eliminated this would change the mode of operation at Lapeer; that somehow this would decrease two-man cars. But, if the POAM proposal is adopted, namely, continuing the current language, it would impact on another bargaining unit because Reserves are used in Corrections.

As permitted by statute, the Panel is instructed to determine which issues are economic and which issues are non-economic. *See*, Section 8. The Panel, at the direction of the Chairman, has determined that the issue of Reserves is non-economic and for this reason can fashion an Award.

Section 9 of the Act, as amended, sets forth the criteria that the Panel is to follow. As originally adopted in 1969, Section (h) of the Act provided:

(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.

Act 54 of Public Acts of 2011 amended Act 312 of Public Acts of 1969 and in particular Section 9 continued Section (h), but as Subsection (i) and read as follows:

(i) Other factors that 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.

It is also true that the amended Section 9 instructed Panels to give most significance to the financial ability of the governmental unit. The point the Chairman makes, however, is that the previous Subsection (h) and the current Subsection (i) recognizes a variety of the criteria that are employed by fact finders and criteria that are taken into consideration in arriving at collective bargaining agreements. This includes the art of the possible or compromises that are reached in negotiating collective bargaining agreements or through mediation.

The Chairman has recognized the point made by the Department in his above discussion. Nevertheless, it seems that when one considers the art of the possible, POAM does make a point that if Deputies are laid off, though Reserves are a safety net, it seems that in terms of equity and an attempt to arrive at a contract the art of the possible would suggest there should be some curtailment in such circumstances of Reserves. This follows because if the County Commissioners, in allocating County resources, decide to curtail law enforcement, the Commissioners should not expect to substitute such services with Reserves at the expense of less Road Patrol Deputies.

Based on such an analysis, where is the art of the possible? It seems to the Chairman that based on the likelihood of the problem that may come to pass is the elimination of the Act 416 monies that may cause the potential layoff of up to two Deputies and the loss of one or more Deputies because of the reduction in Township contracts. It would seem that the core concern would be to protect the 18 Road Patrol Officers funded solely from County general funds. This is where the art of the possible comes in.

The Department is seeking to have the Reserves not be subject to layoff in the event Deputies are laid off, when previously Reserves would be laid off before Deputies. The Deputies are resisting this change. The more likely scenario of Deputies being laid off are Deputies who are funded by 416 funds or who are being funded by Township contracts. Deputies who are being funded entirely by general funds are less likely to be laid off.

The readers of this Opinion should understand that all issues were settled between the parties except the Reserve issue. The parties are at impasse as to the Reserve issue. A compromise is needed in order to break the impasse. The art of the possible requires a compromise. The compromise, which will become the Award of this Panel, with both Delegates reluctantly signing the Award authored by the Chairman, is that if Deputies funded by Act 416 funds or Township contracts are laid off, Reserves are not subject to layoff before Deputies. But, if Deputies funded solely by general funds are laid off, then Reserves will be laid off before said Deputies.

The rationale of this compromise is that the County and the Department may not be able to control the funding of the 17 Deputies that are funded by the Act 416 funds or the Township contracts. In losing these funds, the County may elect to lay off and still desire to keep the safety net of the Reserves for the remaining 18 Deputies fully funded by the County general fund. If the financial situation gets to the point where there are Deputies solely funded by the County general funds and the layoffs continue, then it is unreasonable to expect POAM members to finance police service by accepting layoffs and agreeing to have Reserves replaced what were County fully funded Road Patrol Deputies. This is the rationale for the compromise. This compromise addresses the core problem and resolves an impasse that has resulted in a 312 proceeding.

The Award thus will read:

Section 6. Layoff and Recall

In the event the layoff of employees is determined to be necessary by the Employer, temporary, casual, seasonal, part-time and probationary employees shall be laid off first for the purposes of this Collective Bargaining Agreement. Those employees known as the "Reserve Unit" or "Reserve Deputies" shall not be covered by this Section or be laid off if the Bargaining Unit members who are laid off was caused in whole or in part by the elimination of a position which was funded either partially or totally from State based reimbursement for Secondary Road Patrol, Township payments or another governmental source. In such cases, "Reserve Unit" or "Reserved Deputies" shall not be considered part-time employees for the purposes of this Section and shall not be laid off.

A W A R D

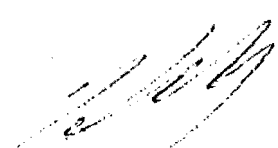
1. The Agreement attached hereto as Attachment 1 is part of this Award as a matter of course.

2. Section 6, "Layoff and Recall", of the parties' Agreement covering the period January 1, 2010 to December 31, 2012 shall read as follows:

Section 6. Layoff and Recall

In the event the layoff of employees is determined to be necessary by the Employer, temporary, casual, seasonal, part-time and probationary employees shall be laid off first for the purposes of this Collective Bargaining Agreement. Those employees known as the "Reserve Unit" or "Reserve Deputies" shall not be covered by this Section or be laid off if the Bargaining Unit members who are laid off was caused in whole or in part by the elimination of a position which was funded either partially or totally from State based reimbursement for Secondary Road Patrol, Township payments or another governmental source. In such cases, "Reserve Unit" or "Reserved Deputies" shall not be considered part-time employees for the purposes of this Section and shall not be laid off.


GEORGE T. ROUMELL, JR., Chairman



HOWARD L. SHIFMAN, Lapeer County
(Employer) Delegate concurring



JOHN T. BARR, POAM (Union) Delegate,
concurring

Dated: August 9, 2012