STATE OF MICHIGAN

Michigan Employment Relations Commission

In the Matter of the Arbitration (Pursuant To Act 312, Public Acts of 1969, As Amended) Between:

ANTRIM COUNTY

-and-

MERC CASE NO. G84 J-1167

TEAMSTERS, LOCAL #129

OPINION AND AWARD OF PANEL

Chairman of Arbitration Panel: Barry C. Brown

County's Delegate: Thomas Drenth

Union's Delegate: Jerry Caster

Representing the County: Thomas Drenth

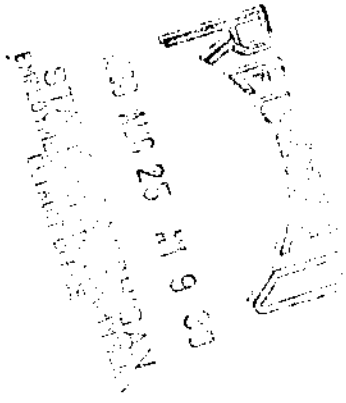
Representing the Union: Jerry Caster

Executive Sessions Held: February 3, 1986, February 26, 1986

Hearings Held: (No hearing - facts submitted by stipulation and brief)

Briefs Received: July 25, 1986 (Delay due to resignation of union delegate)

Opinion and Award: July 30, 1986



I. STATEMENT OF THE CASE

Pursuant to Act 312 (Public Acts of 1969, as amended), this matter was set before a panel of arbitrators for the purpose of hearing and deciding unresolved issues in a contract dispute between Antrim County and Teamsters Local 129. Barry C. Brown was appointed by the Michigan Employment Relations Commission to chair the arbitration panel. The county designated Mr. Thomas Drenth as its delegate on the panel and Mr. Larry Gregory was selected by the Teamsters as their delegate. Both men were also the advocates in this matter. Later the union substituted Mr. Jerry Caster as its advocate and delegate.

At the beginning of the hearings, the parties stipulated and the panel agreed that the time limits set forth under Act 312 were waived.

At the prehearing conferences the parties resumed negotiations and all but one of the eight unresolved issues set forth in the August 5, 1985 petition were settled. Also, at this prehearing step the parties stipulated that the sole issue submitted by the parties was economic and they agreed that such matter would be argued entirely by briefs. Consequently, this issue is subject to the last best offer provisions for economic issues as set forth in Section 8 of Act 312. Therefore, the panel's award may not vary from the terms of the last offer of settlement made to it by either or both parties.

Subsequent to the prehearing conference, the parties mailed their briefs and last best offers to the chairman, who in turn forwarded these materials to opposing counsel. It should be noted that the panel members representing the county and the union disagreed with certain of the findings and awards set forth in this opinion; each generally supported the position taken of the party whose interest he represented. Consequently, the signature of each of the panel members on this opinion and award does not represent agreement with each and every element of the final award, but constitutes a recognition that there exists a majority vote regarding the result reached in the final award.

II. BACKGROUND

The employer, Antrim County, is a unit of government located in Northern Michigan. The sheriff of that county employs twenty law enforcement officers and support staff and these employees are in a bargaining unit represented by the union, Teamsters Local 129. The parties had entered into a collective bargaining agreement which terminated in 1985. They reached an impasse in collective bargaining for a new contract and on May 23, 1985 and August 5, 1985 the state mediator assisted the parties in an effort to resolve their dispute. The mediation efforts were not successful and on August 6, 1985 the union's Business Representative petitioned the Michigan Employment Relations Commission to establish a Statutory Arbitration Panel under the terms of Act 312, Public Acts of 1969, as amended.

The parties have agreed upon all matters that were in dispute. The one issue that is unresolved is the union's claim that the employer must pay certain unit members for past drycleaning bills in the amount of $560.00. The union claims that when the current clause providing for drycleaning was adopted in 1983 it was to have a retroactive application. The employer denied this claim and eventually an unfair labor practice charge was filed. This issue continued to be an important one in the 1985 negotiations.

III. CONTRACT LANGUAGE APPLICABLE

"Section 14.4 Uniforms and equipment. Uniforms and uniform allowances shall be supplied to the employees as is currently the practice being done by the employer at the time of execution of this Agreement. The employer further agrees to furnish all other reasonable necessary equipment to the deputies which are necessary for the performance of their duties in their respective job classification. Subject to the Sheriff's rules, the employer will provide the dry cleaning of those items of the uniforms which require dry cleaning."

IV. THE UNION'S POSITION

It is the unions position that the Uniform Cleaning Provision is an economic item and should have been retro-active to January 1, 1983. Subsequent to the agreement of the parties the Employer through Sheriff E. Willie Wilcoc, and the union through its' Steward, Guy Molby, mutually agreed the economic value of this benefit for the period of January 1, 1983 through November 21, 1983 to be Five Hundred Sixty Dollars, ($560.00) per uniformed employee. At that time there were fourteen employees entitled to the full allowance as follows: Duputys Gaddis, Lacy, Myers, Alward, Roggenbeck, Koloski, Molby, Smith, Persons, Patton and Hill. There were two Deputys entitled to a lesser amount due to promotion, as follows: Deputy Asit, Three Hundred Ninty Two Dollars ($392.00) and Deputy Snyder, Two Hundred Eighty Dollars ($280.00)

Chief Steward Molby received verbal confirmation for the above amounts to be paid from County Commissioners Curtis Patrick and Herb Notstine. The Sheriff then caused the appropriate Pay Vouchers to be filled out indicating the amounts and Commissioners approval. The Vouchers were then submitted to the County Clerk for payment. Said payment has not been made to the employees involved.

It is important to note the sentence covering Uniform Cleaning in Section 14.4 of the Agreement reads as follows: Subject to the Sheriff's Rules, the Employer will provide for the Dry Cleaning of those items of the uniforms which require drycleaning. (emphasis add). It is the union's position

the Sheriff in fact authorizes the cash payment and the appropriate County Commissioners concured.

Therefore said payment should be made to the employees involved.

V. THE COUNTY'S POSITION

It is the position of the Employer that the language of the Section itself implies prospective application. The phrase, "subject to the Sheriff's rules", is designed to allow the Sheriff to establish rules as to what items may be drycleaned and when and how often uniform items may be drycleaned. Furthermore, the Section deals with the subject of the Employer providing for the drycleaning of uniforms and not a cash payment for drycleaning of uniforms by the Employer. It is an impossibility to provide for drycleaning which was already occurred.

The Employer further submits that it was the intent of the parties to apply this Section prospectively only. No offer was ever made by the Employer or the Union to reimburse employees for cleaning costs already incurred. Had this been the case, the Agreement would have spoken to that issue by providing a cash payment for such incurred costs either in terms of a flat dollar amount or reimbursement for costs actually incurred based on the employees submitting receipts. Neither cash payment option was proposed nor incorporated into the Agreement.

The fact is that the Employer never proposed nor intended to apply this provision retroactively. The Sheriff never issued any pay vouchers to reimburse employees for such cleaning nor did he have any legal authority to do so. The employees used the Sheriff's stamp to validate the vouchers

without his permission or knowledge and submitted the vouchers to the County Clerk. Neither the County Commission nor any committee of the Commission approved such payment.

Therefore, the Employer submits that the language as it is written clearly implies a prospective application of the drycleaning benefit. Furthermore, the Employer submits it was not the intent of the parties to give retroactive application to this Section nor was any proposal made by either side to apply this provision retroactively.

VI. THE PANEL'S AUTHORITY

This panel is an extension of the collective bargaining process created by authority of Act 312 of the Public Acts of 1969. This statute charges the panel to adopt a last offer of settlement or to make an award which more nearly complys with certain named factors (See MCLA 423.239; MSA 17.455 [39]). The ten factors set forth therein have been considered by the panel here. The panel based its decision especially on the interests and welfare of the public, the bargaining history, the overall collective bargaining agreement rights and benefits enjoyed by the members of Local 129 and the changes in the circumstances under which this contract is bargained.

VII. AWARD

When a party in collective bargaining agrees that ..."all economic items will be retroactive", that normally means that wages and certain fringe benefits will be calculated and paid as if the starting date for the greater level of compensation were at some time prior to the date of agreement. Under usual practices in such cases certain insurance premiums need not be paid retroactively by the employer because most insurance coverage can only be prospective. In this context, the ..."providing for the drycleaning..." of uniforms is not necessarily an "economic" item. Further, there are many obvious questions about the disputed provision. What uniform items are to be included? How and when is the Sheriff to provide for such cleaning? Without the promulgation of the rules by the Sheriff there could be no determination of accumulated liability. The wording of this provision is clearly prospective and an agreement to pay economic items retroactively would not change the contract language so as to allow retroactive application.

There was no evidence that there was ever specific agreement by the employer to reimburse employees for cleaning costs already incurrred at the time the new contract language was adopted. If the parties to the contract negotiations had intended this result there were many details to be settled before retroactive costs could be determined. While the

Sheriff had the clear authority under the contract language to establish rules for the providing of drycleaning for uniforms, there was no showing that he had the authority to bargain for the employer so as to make a prospective benefit into a retroactive benefit.

Finally, the "receiving of confirmation" of two county commissioners is not the same as payment approved by the county commission or formal approval by a committee of the commission appointed for such purpose. The county clerk is not obligated to make payment of any voucher until there is proper commission approval prior to submission. The Sheriff, like all county officials and departement heads, must adhere to contracts bargained by the employer and he must secure payments for vouchers through proper channels. In this case it appears that the uniform drycleaning vouchers were not submitted to the clerk with proper authority.

Therefore, the panel determines that the language of Section 14.4 of the collective bargaining agreement clearly implies a prospective application of the drycleaning benefit. Furthermore, it is concluded that it was not the intent of the parties to give retroactive application to this section nor was any proposal made by either side or adopted by the parties that Section 14.4 should be applied retroactively.

The employers last best offer is adopted by the panel: "This provision (Section 14.4) not be retroactive prior to the execution date of the collective bargaining agreement."

Dated: 7/30/86

Barry C Brown
BARRY C. BROWN, CHAIRMAN

Dated: 8/15/86

Thomas L. Drenth
THOMAS L. DRENTH, COUNTY DELEGATE

Dated: 8-18-86

JERRY D. CASTER, UNION DELEGATE
Dissenting