

372
COUNTY OF INGHAM AND ALLAN K. DAVIS, INGHAM COUNTY SHERIFF,
EMPLOYERS AND

CAPITAL CITY LODGE NO. 141 of the FRATERNAL ORDER OF POLICE,
INGHAM COUNTY SUPERVISORY DIVISION UNION

ACT 312 PROCEEDING, CASE NO. L85 I-797

IMPARTIAL ARBITRATOR: Donald R. Burkholder

The issues which this panel is called upon to decide are limited to three as noted below. Any and all other disputes relating to the collective bargaining agreement have been resolved between the parties. The three determinations at issue for the panel to rule on are as follows:

- A. Whether the arbitration panel has jurisdiction to consider the issued weapons dispute which is the sole substantive issue remaining dispute between the parties in their contact negotiations.
- B. Whether the issued weapons dispute herein should be construed as an economic or non-economic issue pursuant to the provisions in Public Act 312 of 1969, as amended.
- C. Which of the parties positions with regard to Article 24, "Issued Weapons" should be incorporated within the successor collective bargaining agreement pursuant to the Panel's arbitration order.

The collective bargaining unit represented by the Union consists of all sergeants and lieutenants within the Ingham County Sheriffs Department. A stipulation by the two parties, designed to clarify the issue for the Impartial Arbitrator, is as follows:

Management proposes that employees not required to use a weapon as a part of their regular duty, being Command Correction Officers, will not be issued a weapon unless they request it.

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Ingham County (Pub.)

A. The panel has jurisdiction to consider the issued weapons dispute under Section 9 of Public Act 312, 1969. This portion of the Act states as follows:

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 upon the following factors...

Background and Rationale

The matter in dispute concerns one of the "... conditions of employment under the proposed new or amended agreement...", a matter on which there is no agreement. The specific factors listed in Section 9 of Public Act 312, 1969 which are relevant to the present arbitration are (a) The lawful authority of the employer; (b) Stipulations of the parties; (c) The interests and welfare of the public ... and (d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of ... conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties.

The clear direction of the first paragraph of Section 9, along with relevance of Section 9 factors set forth above, support the decision that this panel has jurisdiction. These factors along with formal direction from the Michigan Employment Commissions Director of Bureau of Employment Relations, support the conclusion that this panel possesses authority to arbitrate the contract language in dispute. Any substantive change in the conditions of employment

would therefore be subject to Public Act 312 Arbitration proceedings. The employer's proposed contract language provides that members of the Supervisory Division assigned to Corrections who are certified as law enforcement officers shall be issued a weapon and ammunition upon the member's request. This clearly constitutes a proposed change in the conditions of employment.

The Union petitioned for Public Act 312 Arbitration, and the Michigan Employment Relations Commission proceeded to appoint a Chairman. Despite Employer's request to MERC to halt arbitration proceedings while the question of arbitrability law was brought before a MERC administrative judge, the parties were directed to proceed with the arbitration proceedings by letter of October 16, 1986 from the Director of MERC's Bureau of Employment Relations. The Employer's counsel, at the outset of the hearing raised the issue of the 312 Arbitration panel's "... jurisdiction to decide the issue relating to issued weapons inasmuch as that is a permissive subject for bargaining only and it is in fact within the exclusive law enforcement authority of the Sheriff." The Employer's objection during the arbitration hearing was noted for the record and the hearing proceeded.

B. The issue of issued weapons as presented in this dispute and in the proposed contract language is a non-economic issue.

Background: Employer's counsel argued that the issue of issued weapons is non-economic while Union counsel took the position that the issue is economic. The panel agreed that the issue should be briefed and decided as part of the panel's final award. Both Employer and Union had otherwise agreed on all issues other than the

contract language on the issue of issued weapons and the jurisdiction noted in "A" above. Both sides presented their last best offer language at the hearing and as part of their briefs. Taking these factors into consideration, the impartial arbitrator and both delegates agreed that a decision regarding whether the issue at hand is economic or non-economic should be deferred until the matter was briefed by counsel for both parties. After reviewing the transcript of the hearing and the briefs from counsel for both parties, it has been determined that the issue is substantially non-economic, in that there was no convincing evidence of economic disadvantages to Command Corrections Officers choosing to decline the issuance of a weapon.

C. The Employer's position with regard to Article 24, "Issued Weapons," should be incorporated within the successor collective bargaining agreement (for the period May 3, 1985 - May 2, 1987).

Background and Rationale

The collective bargaining unit represented by the Union consists of all sergeants and lieutenants within the Ingham County Sheriffs Department. A stipulation by the two parties, designed to clarify the issue for the Impartial Arbitrator, is as follows:

Management proposes that employees not required to use a weapon as a part of their regular duty, being Command Corrections Officers, will not be issued a weapon unless they request it.

Counsel for the Employer based his position primarily on a history of strong management rights derived primarily from the Michigan Constitution, particularly on the issue of a Sheriff's control over his law enforcement personnel, especially in regard to the issuance of weapons. Arguments by Counsel for the Union include the following:

A. There has been no change in circumstances that would justify changing the status quo.

- B. The right of an employee to elect whether he or she will be armed will allow an employee not electing to have a firearm to limit his or her job assignments.
- C. The safety of other members of the bargaining unit may be affected if an employee is allowed to make the decision as to whether he or she is armed.
- D. The Employer desires to facilitate the request of one member of the bargaining unit not to be armed; such a purpose is contrary to the Public Employee Relations Act.

Arguments by Counsel for the Employer include the following:

- A. Legal authority, derived from the State Constitution and subsequent cases, of the Sheriff regarding the assignment of personnel.
- B. Weapons are not used by Command Corrections officers as a routine part of their job duties.
- C. Weapons are not required by Command Corrections officers for non-routine assignments such as the transport of prisoners or the guarding of prisoners in hospitals.
- D. The Sheriff's Constitutional right to decide if and when weapons will be issued.
- E. The potential inhibiting of the promotional process among non-Command Correctional officers if they are required to qualify with weapons.
- F. The escalating rate of increase in the number of Corrections officers as compared with Law Enforcement Officers in Ingham County.
- G. A separate certification for Corrections officers to be required in 1990.

a & b) Lawful Authority and Stipulations

The lawful authority of the Sheriff is based upon the Constitutional mandate of the Sheriff as chief county law enforcement officer. A review of the pertinent cases leads to a weighting in favor of the Employer's position. See APPENDIX A. Note should also be taken of a strong management rights clause, identified as Article 2 in the Master agreement. The Union has made a strong countervailing argument that an employer may not bargain on behalf of individuals, or make exceptions by providing special circumstances for individuals within a bargaining unit. It is alleged by the Union that this would constitute a violation of the Public Employee Relations Act.

While acknowledging a weighting, based on prior cases noted above, favoring the Sheriff's legitimate power to direct and determine the actions and responsibilities of his deputies, it must be emphasized that the Contract language dealing with Issuance of Weapons has in fact been a subject of collective bargaining, is now the only unresolved contract issue, and for that reason became the primary matter in this P.A. 312 Arbitration proceeding.

The panel has jurisdiction to consider the issued weapons dispute under Section 9 of Public Act 312, 1969. This portion of the Act states as follows:

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 upon the following factors...

Eaton County Sheriff's Association vs. Eaton County Sheriff [37 Mich App. 427 (1971)] essentially finds that even a court of law should not substitute its judgment for that of the Sheriff as to the issuance and use of weapons. Even though collective bargaining was not an issue in this case, the case strengthens the Sheriff's law enforcement powers. A number of other cases were presented by counsel for each side often with both using the same cases to support their respective positions. The essence of the matter is that the Impartial Arbitrator recognizes the requirement of Public Act 312 that unresolved contract language disputes, even disputes resulting from non-mandatory issues of bargaining must be determined in a compulsory arbitration hearing. On balance, findings in the cases noted by Counsel for both Employer and Union did not persuade the Impartial Arbitrator that the collective bargaining concerns outweigh the Sheriff's constitutional mandate as chief county law enforcement officer.

c) Interests and Welfare of the Public

The Interests and the welfare of the public require a law enforcement unit to possess the characteristics of unified command, competency, and ideally, high morale. Evidence of a rapidly increasing rate of growth in the Corrections and specialized training and certification in the Corrections field leads to the conclusion that the interests and welfare of the public are best protected by non-interference in this set of circumstances with the Sheriff's judgment about the uses of personnel and/or weapons.

d) Other Factors

No substantial evidence was presented concerning the issuance of firearms to employees under a Sheriff's control working as Correctional

officers in other jurisdictions. There is evidence of growth, a separate certification process, and professionalization in the Corrections field. The fact that the duties of a Sheriff's deputy assigned to Corrections differs from the duties of an employee assigned to law enforcement favors a decision recognizing the employer's position.

It is also noted that both employer and employee panel members urge speedy closure of the only outstanding issue in order that they can get on with the business of delivering professional services to the residents of Ingham County and look toward a firm agreement as the basis for their ongoing relationships.

The Impartial Arbitrator expresses his appreciation for the professional and courteous manner in which his fellow panelists and their respective counsel conducted themselves. Their forthcoming demeanor helped immeasurably to move the process to speedy closure.

CONCLUSION:

The Employer's Last Best Offer, Article 24, ISSUED WEAPONS listed as Attachment "B" in the ABRITRATION BRIEF ON BEHALF OF EMPLOYERS, and as "Appendix B" to this arbitration order, prevails, and becomes the language included in the Agreement to be dated May 3, 1985 to May 2, 1987. It is so ordered this 19th day of March, 1987.

Donald R. Burkholder
Donald R. Burkholder
Impartial Arbitrator

3/19/87
Date

Agree Disagree

Charles F. Young
Charles F. Young, for the
Employer

3/24/87
Date

X
Agree Disagree

Jerry Lawson
Jerry Lawson, for the
Union

3/30/87
Date

 X
Agree Disagree

APPENDIX A

Michigan Law Interpreting the Powers of the Sheriff

Although power of the Sheriff to hire, fire, and discipline may be limited by legislative and subject to Public Employers Relations Act, matter of which of his deputies shall be delegated powers of law enforcement entrusted to him under constitution is exclusively within his discretion and inherent in nature of his office and may not be infringed upon by legislators nor delegated to any third party.

National Union of Police Officers Local 502-M
AFL-CIO vs. Wayne County Board of Commissioners,
93 Mich App. 76.

Inasmuch as Sheriff is chief police officer having to do with law enforcement in a county, he should not be hampered in his administration of the office by an agency or board as to the actual assignment of duties to be performed by a Sheriff's deputy.

Labor Mediation Board vs. Tuscola County Sheriff,
25 Mich App. 159.

The office of a Sheriff is a constitutional office.

Labor Mediation Board vs. Tuscola County Sheriff,
25 Mich App. 159.

The office of a Sheriff is a constitutional office with duties and powers provided by law.

Brownstown TP vs. Wayne County,
68 Mich App. 244.

The office of county Sheriff is a constitutional office with duties and powers provided by law.

Fraternal Order of Police, Ionia County Lodge
No. 157 vs. Bensinger, 122 Mich App. 438.

From Michigan Statutes Annotated, Vol. 1A.

Revised Volume, Callaghan and Company: Wilmette,
Ill., 1983.

EMPLOYERS' LAST BEST OFFER

ARTICLE 24

ISSUED WEAPONS

Section 1. It is recognized by all parties of this Agreement that the Department Firearms Rules and Regulations are hereby acknowledged and accepted by the Division.

Section 2. Except as provided in Section 5, all members of this Division shall be issued a Departmental on-duty weapon. Uniform personnel shall be issued a 6-shot, 4-inch, .38 Special, or .357 caliber revolver and Detectives shall be issued a 6-shot, 2 or 2 1/2 inch, .38 Special or .357 caliber revolver, unless otherwise specified by the Department. The make and model of the issued weapon shall be determined, with consideration for safety, by the Department.

Section 3. Except as provided in Section 5, all members of this Division shall be issued one box (50 rounds) of the specified Departmental ammunition, to be replaced upon proof of appropriate use and exchange of expended brass, or at least once every five years and exchange of old rounds.

Section 4. Except as provided in Section 5, all members of this Division shall receive a monthly allowance 50 rounds of target ammunition, in addition to the ammunition required for annual qualifications. The County will provide the initial 50 rounds of brass which is to be exchanged for replacement rounds, however, if the employee loses the brass, he/she must either replace or pay for the lost brass.

Section 5. All members of this Division assigned to Corrections that are certified as law enforcement officers shall, upon the member's request, be issued a weapon and ammunition as provided for in this Article for the other Division members, subject to the normal procedures and policies of the Sheriff's Department.