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In Arbitration
(under Act 312, P.A. 1969)

In the Matter of:

County of Ingham (Sheriff Department)

and

Capital City Lodge, No. 141, F.O.P.

APPEARANCES:

For the County of Ingham: (Sheriff Department)

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Background

The undersigned was appointed chairman of an arbitration panel under Act 312, P. A. 1969 on February 8, 1977 by the Michigan Employment Relations Commission. By agreement of both parties, a pre-hearing conference was held on June 10, 1977 at Lansing, and a hearing on a basic legal issue was then held on June 21, 1977. This hearing was limited to a determination of whether or not employees of the Sheriff's Department, who make up a Collective bargaining unit, can be covered by a retirement program

Lobicero, Thomas V.

under the Municipal Employees Retirement System different than the program which covers all other employees of that Department, and as a matter of record all county employees.

Co-panelists were designated by each party as follows:

- For the County: Peter A. Cohl

- For the Lodge: Gary Hannon

both of whom were present at the hearings.

The Bargaining Unit here involved includes the detectives, patrolmen and correction officers employeed by the Ingham County Sheriff's Department, consisting of some 90 members. Of these, 13 are employed under the Comprehensive Employment and Training Act of 1973, as amended (Title II, (CETA) Funds), and 15 are employed pursuant to a paramedic grant which the County received from the Department of State Police, Office of Highway Safety Planning.

The Sheriff's Department also employs some 63 others who are members of other collective bargaining units or are subject to the Ingham County Managerial Compensation Plan, as follows:

1. Ingham County Compensatia Plan (5 employees: Undersheriff, Chief Deputy, Captains and Corrections Administrator)

2. Fraternal Order of Police (Supervisory Unit - 19 employees: Lieutenants and Sergeants).

3. Ingham County Employees Association - (TOPS - 34 employees: Clerk-stenos, Typists, Switchboard Operators, Cooks, Gate Guards, etc.)

4. Ingham County Employees Association - (Professional - 5 employees: Jail nurse, Intake Referral Coordinator, Drug Technician, Alcohol Therapists and Educator).

Of the 153 Sheriff's employees, 114 are deputized and are either members of F.O.P., F.O.P. Supervisory Unit or are subject to the County Managerial Compensation Plan.

Since 1940, when Ingham County elected to come under the Municipal Employees Retirement System, all County employees have been and are now covered by the retirement benefit provisions of that Act, known as the C-1 Benefit Program.

The F.O.P. is now requesting an improvement in retirement benefits for the Sheriff's Bargaining Unit herein involved, known as the B-1 Benefit Program, with a 47f- Waiver as provided in the Retirement Act. The details of the new program and Waiver are not now material to this decision.

Employer's Contentions:

The County takes the position that the F.O.P. "does not constitute an appropriate group which is eligible for a different retirement plan" and even if agreed upon, or awarded, cannot be implemented. The basis of this contention is as follows:

The Retirement Act provides that a municipality may elect to participate in the retirement system by either a 3/5ths majority rate of its governing body (the County of Ingham, through its Board of Commissioners) or by a majority vote of the qualified electors of the County. (Section 6-MCLA. - 38.606). It also provides that:

> "All employees of the participating municipality who are in the same general class or classification, as determined by the board, shall be covered by the same benefit program and member contribution program - - - " (Sec. 6b-M.C.L.A. 38.606B).

The County, therefore, concludes that to grant the Bargaining Unit here involved a better retirement benefit plan would necessitate compliance with the above-quoted provisions of the Municipal Employees Retirement Act, namely:

1. Approval by the County Board of Commissioners by a 3/5ths majority vote, or

2. Approval by a majority of the qualified voters;

and, if so approved, would require the County to extend the better retirement plan to all other employees in the same classification of the Sheriff's Department, even those who are included in other bargaining units. It contends, therefore, that such an improvement cannot be lawfully implemented.

The county further contends that the Public Employment Relations Act 312 and the Municipal Employees Retirement Act are inconsistent with one another and that, therefore, the most specific act, (Municipal Employees Retirement Act), must prevail.

In connection with the foregoing contentions, the County points out that the Retirement Board has, by resolution, established several employee classifications, to-wit:

(1) Policemen (Sheriffs)
(2) Firemen
(3) Hospital employees
(4) Medical care employees
and (5) General employee groups

It also points out that the Finance Director of the Retirement Board has rendered his opinion that "all the Sheriff's department employees must have the same benefit plan coverage, but each recognized bargaining unit within the Sheriff's department may have a different contribution rate." (Exhibit U-23),

and, therefore, contends that the classification of "Police (Sheriffs)" would have to include all deputized police officers in the Sheriff's Department, meaning not only the members of this Bargaining unit, but also 24 other Sheriff Department employees who are deputized police officers but are members of other bargaining units; either the F.O.P. - Supervisory Unit or those under the Ingham County Managerial Compensation plan.

The Lodge's Contentions:

The Lodge contends that the improvement of retirement benefits is a major negotiable term and condition of employment, and that under Act 312, P.A. 1969 the County is required to bargain on this proposal. It argues that the improved benefit plan can be granted to the Sheriff Department employees with full police powers, including the supervisory employees of the Sheriff's Department and the deputies under them. It recognizes the dilemma arising from the fact that the Sheriff Department Supervisory employees are in another bargaining unit and admits this is a "tough question to answer."

It contends that Act 312, P.A. 1969 directs that the parties are required to negotiate wages, terms and conditions of employment, including improvements in retirement benefits, and that the Detroit Police and Pontiac Police cases decided by the Michigan Supreme Court (1) support such requirement, and suggests that this panel may make an award which would limit its benefits to members of the bargaining unit.

(1) See Police Officers Assn. v. Detroit - 391 Mich. 44 and Pontiac Police Assn. v. Pontiac - 397 Mich. 674

The Issue

By stipulation of the parties, the Panel's function at this stage is to answer the following issue:

> If the parties negotiate an improvement in the retirement benefits for the bargaining unit, can such improvements be legally implemented?

The County says: No.

The Lodge says: Yes.

Argument and Decision

To rule for the County's position as set forth above means that the issue of retirement benefits for the employees of the Sheriff's Department (and probably for many other employees) would no longer be negotiable, unless all parties (including other bargaining units, etc.) would agree at the same time to a change in the plan, and still be subject to the approval of a 3/5ths majority vote of the qualified electors. Such agreement would certainly be a practical impossibility.

On the other hand, to hold that a better retirement plan must be implemented into bargaining units not involved in the negotiations only because the resolution of the Retirement Board classified the various employee positions into the broad classifications of "Police (Sheriff)" without regard to the rights of bargaining units to negotiate their own benefits without spilling over into other bargaining units to whom such benefits would be an unexpected gift is equally rediculous.

There must be a common sense resolution of this dilemma, so that all statutes may be satisfied in their requirements while at the same time increased benefits to employee groups be also reasonably afforded through collective bargaining.

All legislations dealing with public employees and their employers has required the parties to bargain collectively with respect to wages, hours and other terms and conditions of employment. (Act 379 P.A. 1965; MCLA 423.215) (Act 312, P.A. 1969; MCLA)

The Michigan Supreme Court has defined such provisions recently in great detail.

In Police Officers Assn. of Detroit, 391 Mich. 44 (1974), the Court considered the issue stated as follows:

"2. Does the City have a duty under PERA to bargain in good faith with the DPOA on the subject of police retirement plan changes where retirement provisions are a part of the City Charter and amendable only by a popular vote of the electorate?", and held:

> "The duty to bargain in good faith under a section of the public employees relations act and a section of the National Labor Relations Act extends to those subjects found within the scope of the phrase "wages, hours and other terms and conditions of employment"; the subjects included within that phrase are referred to as "mandatory subjects" of bargaining and once a specific subject has been classified as a mandatory subject of bargaining, the parties are required to bargain concerning the subject if it has been proposed by either party, and neither party may take unilateral action on the subject absent an impasse in the negotiations; the remaining matters not classified as mandatory subjects of bargaining are referred to as either "permissive" or "illegal" subjects of bargaining (29 USC 158; MCLA 423.215).

and then held that changes in the police retirement plan are mandatory subjects of bargaining.

The Court, then, went on to consider whether or not this duty to bargain was obviated by the provisions of the City Charter which required electorate approval of such changes and

held that the Home Rule Cities Act does not require that the substantive terms of pension plans be voter approved, and, that that Act and PERA can easily be harmonized by reading the Home Rule Cities Act to empower a City to set up the procedures for its pension plan in the charter and to leave the substantive terms of the plan to collective negotiations. Thus, the Michigan Supreme Court construed the two Acts of the Legislature to be independent and consistent with each other.

In Pontiac Police Assn. v. Pontiac, 397 Mich. 674 (1976) the same Court said: (page 679)

> "Mandatory subjects of collective bargaining are those within the scope of "wages, hours, and other terms and conditions of employment." If either party proposes a mandatory subject, both parties are obligated to bargain about it in good faith."

At page 682, the Court further said:

> "In Rockwell v. Crestwood School District Board of Education, 393 Mich. 616, 629, 630; 227 NW2nd 736, (1975) we said that this Court had "consistently construed PERA as the dominant law regulating public employee relations" and that the "supremacy of the provisions of the PERA is predicated on the Constitution (Const 1963, Art. 4, Section 48) and the apparent legislative intent that PERA be the governing law for public employee relations."
>
> "DPOA v. Detroit, supra, pp. 66-68, is determinative of the city's argument that inclusion in a city's charter of "other terms and conditions of employment" abrogates the city's duty to bargain concerning such terms and conditions." (p. 682)

Justices Coleman and Williams concurred: Justice Williams concluding:

> "I concur in the narrow issue presented for our determination that a public employer's collective bargaining obligation, based on PERA, supersedes the home-rule powers of cities relative to the terms and conditions of public employment."

Similar conflicts between statutes have arisen in a number of cases in recent judicial history, as well as before the State Labor Mediation Board (now the Employment Relations Commission).

In City of Warren v. Local 1383, Firefighters AFL-CIO 68 LRRM (1968) Macomb Circuit Judge Noe considered a conflict between PERA and the Civil Service Act (Sections 13 and 14, of Act 370, P.A. 1941) and determined that PERA was special legislation, and that when special legislation conflicted with general legislation, the special legislation must prevail.

In a case before the State Labor Mediation Board, Oakland County Sheriff's Department v. Metropolitan Council 23, AFSCME (1968) Labor Opinions 1, the Labor Board considered whether binding arbitration was a mandatory subject for bargaining. The Sheriff took the point of view that such a provision would be contrary to the Sheriff's Act (M.S.A. Sec. 5, 861 et seq) wherein the Sheriff is given absolute authority to hire and fire his employees. The question of reconciliation of the statutes was raised and that of the prevalence of specific legislation over general legislation. The Board stated that:

> "The succinct answer is that the Public Employment Relations Act is not general legislation. It is the most specific. It requires that the public employer engage in good faith collective bargaining."

and determined that PERA prevailed over the contrary provisions of the Sheriff's Act.

We are aware of the seemingly contrary decision in St. Joseph County Board of Commissioners and Mason C. Meyer, Sheriff of the County of St. Joseph v. International Brotherhood of

Teamsters, et al, Local 214, wherein the Circuit Judge held that that portion of the Sheriff's Act which empowers the Sheriff to appoint deputies (MCLA 51.70) was not repealed or superseded by PERA. However, we point to that Court's statement, in referring to cases holding that PERA repealed and superseded other statutes (Wayne County Civil Service Commission v. Board of Supervisors, 384 Mich. 363; Detroit Police Officer Assn. v. Detroit, 319 Mich. 44; Rockwell v. Crestwood School District, 393 Mich. 616, and Loche v. Macomb County, 31 Mich. App. 22; affirmed in 387 Mich. 634), as follows:

> "However, this Court finds that such holdings are not applicable where county - such as here is not under civil service or where there is no labor contract signed by the Sheriff."

In the case before us, various groups of employees have been declared to be appropriate bargaining units which have, in turn, elected to be represented by Unions as their exclusive bargaining agents. As such, the agents have heretofore, and, in our case, one is now renegotiating certain employee benefits, including retirement benefits, all pursuant to the provisions of PERA, (as amended by Act 312, P.A. 1969. No one has questioned the right of the parties to bargain collectively. Presumably, the contracts which have resulted from such bargaining have been ratified not only by the union membership, but also by the County Board of Commissioners.

Each collective bargaining agreement governs the rights and responsibilities only of the members of that bargaining unit which agreed to it, and cannot govern or affect the rights

and responsibilities of any other bargaining unit, even when both units are represented by the same union. No benefit granted to one bargaining unit can possibly be claimed by the members of any other bargaining unit, nor can such benefit be imposed upon any other unit. Such other unit would have to negotiate that benefit on its own, and under its own contract. In other words, each contract is an entity unto itself and cannot be infringed upon by any other contract.

Yet, a strict application of the provisions of the Municipal Employees Retirement Act would violate the individual character and exclusiveness of each contract, by requiring that a benefit negotiated by the bargaining unit of the Sheriff's deputies (Detectives, patrolmen and Corrections Officers) also be included in the contract of another bargaining unit (Supervisory employees) whose contract is not now open for negotiation and whose members are in no way involved in the negotiations of our bargaining unit.

Such imposition (even of a benefit, not even sought) would, in our opinion, be a serious interference of the rights of others not here involved; and could even be deemed a violation of the jurisdictional integrity of the other bargaining unit or units. Even though an additional benefit would be thus afforded, I feel certain that to obtain such increased benefit without even asking for it or negotiating for it would never be countenanced by other bargaining representatives.

Thus, we come to the crux of the issue. Our Courts have clearly determined that retirement benefits are mandatory subjects of bargaining and required by PERA. The parties have

faithfully followed the provisions of PERA and of Act 312 and now wish to consider additional retirement benefits. Yet, the Retirement Act requires approval, by a 3/5ths majority vote of the Board of Commissioners, or by a majority vote of the electorate, while the Retirement Boards resolution requires the extension of additional retirement benefits to all members of the police (sheriff) classification even outside the bargaining unit here involved.

It is necessary for us to ascertain, as best we can, the intent of the Legislature. In doing so, we must give to each statute the maximum reasonably effect possible, but, in an event, in such manner as will result in a common sense application of the provisions of each Act.

The Supreme Court, in Wayne County Civil Service Commission v. Board of Supervisors, 384 Mich. 363, 367 (1971) referred to as "that most difficult of all appellate problems; the ascertainment of legislative intent where there is no evidentiary or other reasonably authoritative guide to pertinent meaning or purpose of the legislators."

Based upon the rulings of the Supreme Court and the State Employment Relations Commission outlined above, as well as an analysis of results obtained by applying the provisions of PERA and of the Retirement Act to the situation at hand, we must conclude that the legislature must have intended primarily to promote and extend the right of public employees to negotiate their own terms and conditions of employment including retirement benefits, in accordance with the provisions of PERA and also to provide a uniform retirement benefits program, as set

forth in the Retirement Act, but limited to each bargaining unit. We cannot believe that the legislature intended to make impossible that which it clearly expressed in PERA, and enforced by Act 312, that while it granted the rights to public employees under PERA, it also intended to make the implementation of those rights by requiring (in the Retirement Act) approval requirements other than that required by collective bargaining, nor to extend the retirement benefits negotiated by collective bargaining beyond the scope of the bargaining unit. Such a result would be irrational and not in keeping with the clearly expressed and established legislative and judicial acts.

In our judgment, the Municipal Employees Retirement Act is a general act, enabling municipalities throughout the State to adopt a retirement program for their employees. The Act was adopted before the days of collective bargaining in public jurisdictions (1945) and, therefore, no consideration was given by the Legislature to the evaluing programs under collective bargaining. Yet, the same Legislature has since enforced and protected collective bargaining in the public sector through PERA and Act 312, and, therefore, we are of the opinion that the Retirement Act does not accurately reflect the current legislative intent.

Though recent amendments have been made to the Retirement Act (Act 124, June 23, 1966; and Act 314 P.A. 1969, August 14, 1969) required changes in the Act to conform it to current rights of employees, we believe the Legislature simply overlooked or was not aware of the existing dilemma.

CONCLUSION

Accordingly, we hereby find:

1. That this Panel, under the provisions of PERA, as supplemented by Act 312, P.A. 1969, does have authority to determine and to make an award on the issue submitted to it.

2. That the improvement or change in retirement benefits is a mandatory subject of bargaining.

3. That changes and improvements in terms and conditions of employment extend only to the bargaining unit which negotiates such changes and improvements.

4. That PERA takes precedence over the provisions of the Retirement Act with respect to:

   a. Any requirement for approval other than incident to the ratification of the negotiated changes and improvements.

   b. Any classifications outside the classes included in the bargaining unit.

5. That any changes and/or improvements in the retirement benefits must otherwise conform to those permitted or provided by the Retirement Act, in order to maintain uniformity in plans.

6. That a B-1 Benefit Plan can be implemented under the Retirement Act, but only to the members of the bargaining unit which negotiates such Plan, and without any approval required other than a ratification of the negotiated Plan by the County governing body, by a majority vote.

AWARD

The undersigned Arbitration Panel does hereby make an award as set forth in the Conclusions above.

The Panel does hereby retain jurisdiction of the Arbitration Proceedings pending the completion of all arbitral matters.

September 9, 1977

Thomas V. LoCicero, Chairman

Peter A. Cohl, County Delegate

Gary Hannon, Lodge Delegate

STATE OF MICHIGAN

IN ARBITRATION

(Under Act 312, Public Acts of 1969)

In The Matter of:

COUNTY OF INGHAM,
(Sheriff's Department)

and

CAPITAL CITY LODGE, No. 141, F.O.P.

Ingham County

DECISION AND AWARD

ARBITRATION PANEL

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Dissenting opinion to Follow:

I dissent from the opinion written by Chairman LoCicero for the majority, for the reasons stated below. I concur in Chairman LoCicero's statement of the issue presented to the arbitration panel, that is, "If the parties negotiate an improvement in the retirement benefits for the bargaining unit, can such improvement be legally implemented?" Furthermore, the undersigned concurs in the statement of facts presented by Chairman LoCicero under the heading "Background."

The majority takes the position that the Public Employment Relations Act, MCLA 423.201 et seq; MSA 17.455(1) et seq (hereinafter referred to as PERA) takes precedence over any inconsistent provision of the Municipal Employees Retirement Act, MCLA 38.601 et seq; MSA 5.4001 et seq, (hereinafter referred to as the Retirement Act). Specifically, the majority concludes that collective bargaining in the public sector, authorized pursuant to 1965 PA 379, §1, being MCLA 423.209; MSA 17.455(9), takes precedence over 1969 PA 314, §1, being MCLA 38.606b; MSA 5.4006(2)[1] with respect to:

> a. Any requirement for approval other than incident to ratification of the negotiated pension plan changes and improvements by majority vote of the county governing body; and

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[1]Section 6b was added to the Municipal Employees Retirement Act pursuant to 1966 PA 124, Section 1, effective June 23, 1966. In 1969, pursuant to 1969 PA 314, Section 1, the language of Section 6b under consideration herein was adopted.

b. Any classification outside the class of employees included in the collective bargaining unit.

As a general rule, an arbitration panel acting pursuant to 1969 PA 312; MCLA 423.231 et seq; MSA 17.455(31) et seq, (hereinafter referred to as Act 312 Arbitration Panel), has jurisdiction over disputes concerning any mandatory subject of collective bargaining. A mandatory subject of collective bargaining is one which falls within the definition of "wages, hours and other terms and conditions of employment," as this term is used in MCLA 423.215; MSA 17.455(15). Both parties to this dispute concede that pursuant to the Michigan Supreme Court case of Pontiac Police Association v City of Pontiac, 397 Mich 674; 246 NW2d 831 (1976), retirement benefits are generally considered to be a mandatory subject of collective bargaining, therefore a proper subject for compulsory arbitration under Act 312.

The Supreme Court declared in Pontiac Police Officers Association v City of Pontiac, supra, that:

> ". . . under the PERA, as under the National Labor Relations Act (NLRA), there are three categories or subjects of collective bargaining: mandatory, permissive and illegal.
>
> Mandatory subjects of collective bargaining are those within the scope of 'wages, hours, and other terms and conditions of employment.' If either party proposes a mandatory subject, both parties are obligated to bargain about it in good faith.

> Permissive subjects of collective bargaining are those which fall outside the scope of 'wages, hours and other terms and conditions of employment, and may be negotiated only if both parties agree.'
>
> Illegal subjects are those which even if negotiated will not be enforced because adoption would be violative of the law or of the policy of the NLRA." [p 679].

Where, as in the present situation, a request is made for a retirement plan which cannot lawfully be implemented, it is tantamount to an illegal subject of bargaining. Therefore, it is not appropriate for consideration by an Act 312 Arbitration Panel.

Pursuant to MCLA 38.606b; MSA 5.4006(2), the Municipal Employees Retirement Board has the statutory authority to determine general classes or classifications of employees which may be covered by different retirement benefit programs. Section 6b of the Retirement Act states in pertinent part:

> "A participating municipality, either by a 3/5 majority vote of its governing body or by a majority vote of its qualified electors, may elect to change the benefit program or programs and member contribution program or programs which cover its employees, and elect an effective date for the change in coverage. In electing an effective date for the change in coverage, a participating municipality shall be restricted to the first day of a calendar month which is not more than 30 days following the first day of its next fiscal year. No such change shall diminish the value of benefits financed by the municipality. <u>All employees of the participating municipality who are in the same general class or classification, as determined by the board, shall be covered by the same benefit program and member contribution program</u>. . . ." (emphasis added).

The Retirement Board has exercised its authority by establishing five major classifications which include:[2]

(1) Policemen (Sheriffs)

(2) Firemen

(3) Hospital employees

(4) Medical care employees, and

(5) General employee groups

Testimony at the hearing disclosed that it was the Retirement Board's position that all "policemen" employed within a given municipality must be covered by the same Municipal Employees Retirement Benefit Program. Apparently, the reason for this is that the Retirement Board believes that an undue burden and unworkable situation would occur if the numerous collective bargaining units in the municipalities throughout Michigan were permitted to have different retirement plans. In Ingham County alone, there are 9 units representing various County employees.

While I recognize that this arbitration panel is not per se bound by the Retirement Board's interpretation of §6b of the Retirement Act, nevertheless, as the Michigan Supreme Court indicated in the case of Magreta v Ambassador Steel Co., 380 Mich 513; 158 NW2d 473 (1968), "the construction given to a statute by those charged with the duty of executing it is always

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[2] See Retirement Board Resolution 19-C-01 adopted 4-22-71 and 19-C-02 adopted 7-24-75. Resolution 19-C-03 adopted 6-25-76 split policemen and firemen into separate coverage groups.

entitled to the most respectful consideration and ought not to be overruled without cogent reason."[3] In view of the fact that the Retirement Board's interpretation of §6b and its determination of appropriate classifications of employees has never been challenged in a court of law, the Board's determination should be followed.

The majority has taken the position that PERA is a specific statute, the Retirement Act being a general statute, therefore, pursuant to established principles of law, the more specific statement must prevail. I disagree with this interpretation of the statutes in question. The rule of statutory construction is generally set forth in 82 CJS, Statutes, §369, pp 839-844, which provides in pertinent part:

> "For purposes of interpretation, legislative enactments have long been classed as either general or special, and given different effect on other enactment dependent as they are found to fall into one class or the other. Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible with a view to giving effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them the special statute or the one dealing with the common subject matter in a minute way, will prevail

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[3]See also Lane v Michigan Department of Corrections, Parole Board, 383 Mich 50; 173 NW2d 209 (1970); and United States v Jackson, 280 US 183; 50 S Ct 143; 74 L Ed 361 (1930).

> over the general statute, according to the authorities on the questions. . . ." [Also see 21 Michigan Law & Practice, Statutes, §99, pp 117-117].

Pursuant to the foregoing rules of statutory construction, the majority has erred in its analysis with regard to the nature of the Retirement Act. The Retirement Act speaks specifically to, and only to, the subject of retirement benefits for public employees. Said Act provides for Board determination with respect to which classifications of public employees are eligible for different retirement benefits and further provides the method by which retirement plans may be established and/or changed. On the other hand, PERA and Act 312 has been construed to include a myriad of mandatory subjects for collective bargaining, including retirement benefits. The limited scope of the Retirement Act and the degree of detail provided in this statute clearly makes it, not PERA, the more specific act when compared to PERA, as to pertinent benefits for public employees.

A second rule of statutory construction is that between two inconsistent statutes, the one most recently enacted should prevail. [21 Michigan Law & Practice, Statutes, §99, p 114].

In 1965, pursuant to 1965 PA 379, §1, public employees were afforded the right to engage in collective bargaining. In 1969, police department employees were granted the right of interest arbitration for any subject proper under PERA. 1969 PA 312. The majority has all but overlooked the fact that §6b

was not added to the Retirement Act until 1966, pursuant to 1966 PA 124, §1, and more importantly, the language under consideration herein was not adopted until 1969, four years after collective bargaining in the public sector was authorized pursuant to 1969 PA 314, §1.

The majority views the Retirement Act as a general act, enabling municipalities throughout the state to adopt a retirement program for their employees. The majority notes that the Act was adopted before the days of collective bargaining in public jurisdictions and, therefore, no consideration was given by the legislature to collective bargaining in the public sector. Given the fact that Section 6b of the Retirement Act was enacted after PERA, I cannot agree with the conclusion that the legislature did not consider collective bargaining in the public sector when it enacted 1969 PA 314, §1. The legislature when enacting statutes is presumed to be aware of pre-existing acts which may be inconsistent with the new Act. See 21 Michigan Law & Practice, Statutes, §98, p 111.

From the foregoing, the majority reaches the conclusion that the legislature by the passage of PERA and Act 312 must have primarily intended to promote and extend the right of public employees to negotiate their own terms and conditions of employment, including retirement benefits. The majority has not given any consideration to the basic tenet that there are a multitude of statutory provisions which modify, but do not entirely eliminate, the scope of collective bargaining pursuant to PERA.

The Retirement Act is merely one of several limitations to collective bargaining and Act 312.

There are three statutes which authorize counties to provide retirement benefits to deputy sheriffs. The first is the Municipal Employees Retirement Act discussed above. The second is MCLA 46.12a; MSA 5.333(1), which grants county boards of commissioners the power to provide pension plans for county employees. Section 12a provides in pertinent part:

> ". . .
>
> Second, . . . A plan adopted for the payment of retirement benefits or pensions shall grant benefits to all employees eligible therefor according to a uniform scale for all persons in the same general class or classification and an employee shall not be denied benefits by termination of employment after he has become eligible therefor under the provisions of a plan and this section. . . ."

The third statutory provision is 1937 PA 345; MCLA 38.551 et seq; MSA 5.3375(1) et seq, which allows for the establishment, maintenance and administration of a system of pensions for fire and police department personnel employed by municipalities. Pursuant to Section 12 of said Act, membership in a retirement system established by a municipality, in accordance with 1937 PA 345, supra, "shall include all policemen and firemen employed by a city, village or municipality."

The legislature in all three of the aforementioned retirement

acts has required similarly situated public employees to be covered by the same retirement plan. If one were looking to legislative intent, it is these statutory provisions which clearly express the legislature's position.

As the Michigan Supreme Court stated in the case of Wayne County Board of Road Commissioners v Wayne County Clerk, 293 Mich 229; 291 NW 879 (1940):

> "And effect must be given, if possible, to every word, clause, and sentence of the statute, Attorney General, ex rel. Zacharias v Board of Education of City of Detroit, 154 Mich 584, where the meaning is plain, practical construction will not be permitted to modify or destroy that meaning. People ex rel. Attorney General v Haggerty, 167 Mich 682. In construing a statute, we are to construe it in the light of the circumstances existing at the date of its enactment, not in the light of subsequent developments. As stated in 25 RCL p 959, §215:
>
> > 'There is always a tendency, it has been said, to construe statutes in the light in which they appear when the construction is given. It is easy to be wise after one sees the results of experience. The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and the state of the law existent at the time of their enactment. The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.'" [pp 235, 236] [emphasis added]

I agree with the analysis of the Supreme Court set forth above and find it to be applicable to the present matter.

Accordingly, current law is such that the Union's request, if awarded, cannot be implemented. I do not believe that it is within this Arbitration Panel's jurisdiction to violate a clear and unambiguous mandate of the legislature. The Retirement Act is clear on its face and must be adhered to. If this Arbitration Panel were to award any improvement in retirement benefits for the bargaining unit in question, said award would be beyond the scope of our jurisdiction and therefore void, pursuant to Frazier v Ford Motor Company, 364 Mich 648; 112 NW2d 80 (1961).

I would conclude that Section 6b of the Retirement Act is the more specific statute, passed after PERA, and limits under the facts in this case, an otherwise proper subject for collective bargaining.[4]

DATED:
September 9, 1977

PETER A. COHL (Dissenting)

[4]This position is supported by the Michigan Employment Retirement Commission case of Sanilac County Road Commission v Teamsters Local No. 339, 4 MERC LO 461, 471 (1969) where it was held that PA 185 of 1965 (MSA 9.115) which grants County Boards of Road Commissioners the power to adopt pension plans for their employees, was a more specific statute, and where inconsistent with PERA, the Retirement Act prevailed.