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Manistee County of

In the Matter of Arbitration Between:

THE COUNTY OF MANISTEE

and

MANISTEE COUNTY DEPUTY SHERIFF'S ASSOCIATION

1/12/73

Hearing Held

MANISTEE COUNTY COURTHOUSE

Manistee, Michigan

January 5, 1973

Before

BOARD OF ARBITRATION

Samuel S. Shaw, Chairman

Philip J. Dembinski, For the Association

Charles L. Hitesman, For the County

OPINION OF THE CHAIRMAN

Appearances

For the County

C. L. Hitesman, Attorney

Clifford Cawthorne, Witness

For the Association

P. J. Dembinski, President

Ford Waterman, Witness

R. C. Howes, Witness

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AUG 2 1976

Pursuant to the Police-Firefighters Arbitration Act (Act No. 312, Public Acts of 1969, as amended), the under signed was appointed by the Employment Relations Commission, Department of Labor, State of Michigan, to serve as chairman of a Board of Arbitration to hear a dispute involving the County of Manistee (hereinafter referred to as the "County"), represented by the Manistee County Board of Commissioners, (hereinafter referred to as the "Board"), and the Manistee County Deputy Sheriff's Association, (hereinafter referred to as the "Association").

Facts and Background

In late 1971, the County, through its Board, recognized the Association as the sole and exclusive bargaining agent for all full-time and regular part-time employees of the Sheriff's Department of Manistee County. Subsequently, a one-year agreement was negotiated between the Parties with effective dates of January 1, 1972 through December 31, 1972. This Department consists of approximately sixteen employees, including one regular part-time Matron, and three Marine Deputies who are part-time, to the extent they are only employed during the appropriate summer months.

In late 1972, the Court and Grounds Committee of the Board of Commissioners, was designated to represent the County in negotiating the 1973 agreement with the Association. Several exploratory meetings were held between the Parties, which resulted in agreement on the majority of issues. However, four issues could

not be resolved, and these were referred to the Employment Relations Commission for mediation. Mediation failed to resolve the issues, and the matter was referred to arbitration in accordance with Act No. 312, Public Acts of 1969, as amended.

An arbitration hearing was held on January 5, 1973, in the County Courthouse, Manistee, Michigan before an Arbitration Board; Samuel S. Shaw, Chairman; Philip J. Dembinski, Member, representing the Association; and Charles L. Hitesman, Member, representing the County.

At the Hearing both Parties were fully represented and given full and ample opportunity to present both oral and written evidence, witnesses, and arguments in support of their respective positions. A Court Reporter was supplied by the Employment Relations Commission who recorded the proceedings. In addition, a tape recording was taken.

At the opening of the Hearing, the Parties stipulated there were four issues to be considered by the Board of Arbitration as follows:

1. Should the Under Sheriff be properly a member of the Bargaining Unit?
2. Should arbitration be included in the Agreement as the final Step of the Grievance Procedure?
3. Should the new Agreement be for one year, as proposed by the Association, or for two or three years as proposed by the County?
4. Should the Bargaining Unit member's dependents be covered by Blue Cross- Blue Shield, to be fully paid for by the County?

Upon conclusion of their presentation and the Parties agreement there was nothing further to bring before this Board of Arbitration, the Hearing was declared closed as of January 5, 1973.

On January 10, 1973, a meeting was held between the members of the Board of Arbitration in Muskegon, Michigan, to review the evidence and explore the opinions of the Members. This meeting resulted in an agreement with the pertinent facts, and a general acceptance, if not total agreement, with the expressed reasoning and general conclusions.

It was agreed that no further meetings would be necessary, therefore, the Chairman should write his Opinion and forward it to the other Members of the Board of Arbitration for their consideration and acknowledgement.

Discussion

The four issues presented to this Board of Arbitration are reviewed separately, and in the order heretofore noted.

Should the Under Sheriff be a member of the Bargaining Unit?

The primary position of the Association was that the Under Sheriff had been a member of the Unit in the 1972 Agreement, and no problems had been created by his being included. Further, the Association argued, that as an appointed Officer, the Under Sheriff would have no job security outside the Unit. Further, that in the

day-to-day operation, with the exception of the Sheriff, the Under Sheriff had not more supervisory authority or responsibility than any other member of the Department.

Sheriff Watorman did not completely agree with this contention. In his testimony the Sheriff stated that he did rely on the recommendations of the Under Sheriff, and that these recommendations did carry considerable weight, particularly with respect to the performance of subordinates, and in the periodic evaluation of Department personnel.

The County argued that one of the prime considerations that should be given to this issue, is the fact that under State law the Under Sheriff is the statutory replacement for the Sheriff. Should the Under Sheriff have to assume the responsibilities of Sheriff, the County claimed his membership in the Unit could be a source of problem.

In the private sector, the criteria normally applied to determine whether a position is properly in, or out, of the bargaining unit, is whether that position carries supervisory responsibility, or if the holder can effectively influence the change in status of members of the bargaining unit.

From the evidence presented, the Chairman is not persuaded the Under Sheriff in the Manistee County Sheriff's Department does not directly have an influence on the status of Department personnel. Of even more importance is the possibility, that at relatively frequent intervals, the Under Sheriff may be called upon to takeover

the responsibilities of the Sheriff. The Sheriff is not on duty at all times, plus the possibility of illness or being called out of the County on business. At these times the Under Sheriff should be in a position to assume the full supervisory responsibility, and to expect him to function with complete objectivity while a member of the Association would not only be unreasonable, but could result in a situation that might prove extremely difficult. To require him to take a temporary absence from the Association for the length of these periods would be completely impractical.

For these reasons, it is the opinion of this Chairman that the Under Sheriff should not be a member of the Association.

The Association's fear that the Under Sheriff, by being excluded from the Bargaining Unit, would be denied adequate job security is without foundation. Section 4.5 of the 1972 Agreement, a provision extended in the 1973 Agreement, provides that an employee transferred to an excluded classification shall accumulate seniority in the Unit while in that excluded classification if he was a member of the Association at the time of the original transfer. Should the Under Sheriff be removed from his position for any reasons other than "just cause" disciplinary action, he can return to the Unit and exercise all his accumulated seniority.

However, although it might not be necessary, the Chairman is of the opinion this provision could be strengthened by adding to Section 4.5 of the 1973 Agreement the provision that the Under Sheriff may, at anytime at his sole option, elect to return to the Unit with

no loss of benefits or status in accordance with his accumulated seniority. The only condition of this provision being that the Under Sheriff was, at the time of his transfer, a member in good standing of the Association.

Should arbitration be included as the final Step of the
Grievance Procedure in the 1973 Agreement?

The County's sole argument against this proposal was the potential cost. The Association contended that a grievance procedure without arbitration could result in a grievance being filed with no possibility of resolution, except that dictated by the Board.

The Chairman is in complete accord with the position of the Association. As the Grievance Procedure now stands, the final Step is mediation; if mediation fails to produce agreement, the case is settled on the basis of the Board's last decision. In the opinion of this Chairman, this procedure offers little protection to the members of the bargaining unit, as by law they are denied the right to strike, and the Board of Commissioners or the Sheriff could stand pat on their decision, with no recourse available to the Unit.

It is the opinion of the Chairman, that in public sector agreements, where the employees are denied the right to strike by statute, arbitration is the only means currently available where the parties can find an equitable solution to a dispute.

Therefore, it is the opinion of the Chairman that the final Step

of the Grievance Procedure in the 1973 Agreement between the Parties should provide for arbitration.

Should the new Agreement be effective for one year, as requested by the Association; or for two or three years as proposed by the County?

During the original negotiations the County requested a three year agreement. Later, however, this request was reduced to two years. This offer provided for a cost-of-living increase not to exceed 3% at the end of the first year. At the Hearing this was increased to 5%.

The Association proposed a one year agreement, a position they maintained throughout the negotiations.

The Association's basic argument in support of this position was that the Parties had not had sufficient experience in the application of the Agreement to enter into a long term arrangement. The Association contended that further experience could dictate contractual changes that a two year agreement would only delay, to the disadvantage of the Association.

The County's argument was that any potential contractual changes would be so minimal during a single year they could not justify the time and expense of a negotiation.

The pattern, in both the private and public sectors, over the past few years has been toward multi-year agreements. The exceptions have generally been because of unusual, or abnormal, situations.

It has been the experience that a multi-year agreement can be negotiated without resulting as a disadvantage to either party. Further, when considering the cost, the time, and of equal importance, the potential of emotional stress that often attends contract negotiations, the advantage of extending the life of a contract for at least two or three years has proven practical. Therefore, after considering the situation in Manistee County, the Chairman does not feel it is such as to warrant an exception to the prevailing pattern, even when considering the Board's and Association's lack of collective bargaining experience.

The Chairman studied the 1972 Agreement, practically all of which the Parties have agreed to extend. It has been in effect for a full year during which the Parties have had the opportunity to test its interpretation and application. According to the testimony, no major problems were encountered. The Agreement is comprehensive and the language follows the standard for this type of agreement. In the opinion of the Chairman, there is nothing in the Agreement that should present a significant problem in the succeeding two years, or that should create an interpretation or application problem sufficient to necessitate a change in provisions and/or language. Further, additional experience over a two year period, rather than one, might well prove advantageous to both Parties.

Therefore, it is the opinion of the Chairman that the Agreement in question extend from January 1, 1973 to December 31, 1974.

However, it is the opinion of the Chairman that this Agreement provides for a wage re-opening at the end of 1973, with any wage adjustment effective on January 1, 1974.

Although the County offered a cost-of-living adjustment not to exceed 5%, effective January 1, 1974, under the present situation this might, or might not, prove to be equitable. Many contracts, in both the private and public sectors, will be negotiated in 1973. Undoubtedly a pattern will emerge, but in view of the very recent lifting of wage controls by the Administration, it is impossible at this time to anticipate what this pattern may be. To tie either Party to a predetermined amount with a fixed ceiling for a two year period might very well prove totally inequitable.

Therefore, it is the opinion of the Chairman that the present situation justifies a provision in a two year agreement that will permit the Parties to review wages at the end of the first year.

Should the Association's members dependents be covered by Blue Cross-Blue Shield, to be fully paid for by the County?

At present, each member of the Association is covered by Blue Cross- Blue Shield with the option to include dependents at a charge of \$29 per month paid by the Member.

The County stated that the above insurance benefits were provided all County employees. At present, the County, through its Board of Commissioners, was reviewing the fringe benefits of all employees with the objective of providing equal benefits throughout the County.

The County maintained, that although dependent coverage in the Sheriff's Department would not present an insurmountable burden, if their objective was to be realized and dependents of all County employees were covered, the total cost would be more than the County could handle at this time. Therefore, the County contended they could not maintain the equity of their fringe benefit program by granting the Association's request.

The Association contended the County, in its thinking, should not lump the Sheriff's Department with other employees of the County. Deputies, the Association argued, have entirely different responsibilities and duties than any other employees of the County, and should be considered separately. Therefore, covering the dependents of the employees of the Sheriff's Department would not necessitate dependent coverage of the employees of other County departments.

The Chairman agrees with the Association's argument that Deputies have entirely different responsibilities and duties, and in this respect cannot be compared with other employees of the County. However, differences in job content are generally reflected in base wages rather than fringe benefits. In most organizations, both public and private, all employees receive the same fringe benefits regardless of their particular job; the same holidays, the same insurance, the same sick day allowance, the same jury duty or bereavement allowance, and the same vacation provision subject to length of service. Therefore, the Chairman does not feel the members of the Sheriff's Department can be singled out as a separate entity when considering the distribution of fringe benefits.

For this reason the Chairman finds the County's argument to be

particularly persuasive when the overall costs are taken into consideration. Using a mean of 450 County employees, with a monthly cost of \$29 for dependent coverage, the total yearly amount would be \$ 156,600.

The Parties have already agreed to a reasonable monetary increase for the coming Agreement; therefore, although evidence was submitted that several adjoining or neighboring city police and county sheriff's departments do include family coverage in their insurance benefits, it is the opinion of the Chairman of this Board of Arbitration, that in view of the entire situation in Manistee County as outlined above, fully paid dependent coverage for the members of the Sheriff's Department should not be included in the 1972-73 Agreement.

In summary, it is the opinion of the Chairman that:

1. Although the Under Sheriff's supervisory responsibilities in the Manistee County Sheriff's Department are minimal, the fact that statutorily he is the successor to the Sheriff if a vacancy in that office should occur, it is deemed advisable to exclude the Under Sheriff from the Bargaining Unit.
2. The final Step of the Grievance Procedure should provide for arbitration as the only equitable way of resolving grievances when the Association is prevented by statute from engaging in a strike.
3. The duration of the Agreement should be for two years, but should include a wage reopening provision at the end of the first year.

4. In view of the prevailing pattern with respect to dependent coverage for employees of Manistee County, plus the potential total cost to the County, the present Blue Cross-Blue Shield coverage of the employees of the Sheriff's Department should not be extended to include dependents at this time.

Samuel S. Shaw

Samuel S. Shaw, Chairman, Board of Arbitration
Grand Rapids, Michigan
January 12, 1973

Philip J. Dembinski
Philip J. Dembinski, Member

Charles L. Hitesman
Charles L. Hitesman, Member

Approved Disapproved

Approved Disapproved