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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

ARBITRATION UNDER ACT 312, PUBLIC ACTS OF 1969, AS AMENDED

THE COUNTY OF MONROE,
Employer,

and

MERC CASE NO. D88 D-1212

LABOR COUNCIL, MICHIGAN
FRATERNAL ORDER OF POLICE,
Union

OPINION AND AWARD

Appearances

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Chairman of Arbitration Panel: Kenneth P. Frankland

County's Delegate: Thomas Derderian

Union's Delegate: Richard Ziegler

Monroe County

I. Introduction

This matter is before a panel of arbitrators appointed pursuant to the terms of Act 312, Public Acts of 1969 as amended for the purposes of hearing and deciding unresolved issues in the new contract dispute between the parties.

The Petition for Arbitration was initiated on or about December 24, 1988 by the Union. Pursuant to the Statute, Kenneth P. Frankland was appointed by Michigan Employment Relations Commission to serve as Chairman of the Arbitration Panel.

A prehearing conference was held on August 6, 1989 at which time hearing was scheduled for March 26, 1990 and an agreement for an additional day if necessary. The parties did hold a hearing on March 26, 1990, and the second day of hearing on Thursday, April 5, 1990. Last Best Offers were submitted on April 12, 1990 and post hearing briefs were submitted on or about May 23, 1990.

The parties stipulated to the jurisdiction of the Panel to hear four disputes, namely wages, pension multiplier, pension eligibility and sick pay benefits. The parties additionally have reach agreement and have submitted to the Panel to be included as part of its opinion and award the following 12 items:

1. Section 4.2, Step 2.
2. Section 5.5
3. Section 5.8
4. Section 5.11
5. Section 5.13
6. Section 6.7
7. Section 7.7
8. Article 12
9. Section 7.7(1)
10. Section 10.5

11. Section 10.5(1)
12. Section 13.5

Additionally, the parties have waived the timeliness and this stipulation is recorded at Volume 2, page 183.

Comparability

Section 9 of Act 312 (MCL 423.239) establishes criteria that this Panel must follow in resolving the disputed questions. As required by statute, the Panel has carefully considered each of the factors in its deliberations. It was apparent to the Panel that certain criteria were less important. For example, (c) the interest and welfare of the public and the financial-ability of the unit of government to meet those costs was not seriously interposed. The County did not offer inability to pay and thus, it is not a significant factor. Likewise, (e) Cost of Living, was not raised by the Union as a significant basis for this award and as a result of the stabilization of inflation, this factor has not be of significance for almost a decade. (a), the lawful authority of the employer, is not a significant matter and (b), Stipulation of the Parties, was not material to the 4 issues in dispute. That essentially leaves (d) Comparability, and (f) overall compensation presently received by the employees as the more significant criteria to be applied.

As to comparability, there is a difference of opinion as to external communities that should be considered. The parties have agreed upon two, namely Saginaw and St. Clair Counties. The Union additionally proposed Ingham and Washtenaw Counties and the City

of Monroe. The Employer proposed Bay, Berrien, Calhoun, Jackson, Ottawa Counties. They also recommend the internal units of the Correction Officers Association, the Communications Center Association, and the AFSCME Union.

This Panel believes that the criteria usually employed in selecting comparables includes geographic proximity, population, size of the unit, SEV, criminal incidents, among others. There is no magic formula to ascertaining which has more significance and its easy to get mesmerized by a plethora of statistics. This is not just an exercise in computer analysis, but rather applying reason and common sense and any particular unique facts that come to the attention of the Panel Arbitrator St. Antoine, quoted by one of the parties in this case and often cited by others, has made the relatively element but brilliant statement:

Enlightenment should not be rejected merely
because it emanates from an unexpected source.

First looking at internal comparables, the Union proposed none and the County 3. The history of the bargaining unit was recreated by the testimony of Mr. Charron and by Mr. Miles, among others, and has a significant bearing on this case. The record reflects that two units have spun off of this bargaining unit, namely Corrections Officers and the Communications Center Association. In fact, bargaining and mediation was conducted with all members. According to the contracts submitted as part of the evidence, the Corrections Officers are represented by the same labor counsel and executed a contract on December 12, 1989. The Communications Center is

likewise represented by the labor counsel, Michigan Fraternal Order of Police adjust recently entered into their agreement. An examination of the contracts entered as Exhibits show there is a commonality of language. Of equal or more greater importance is the fact that they have the same employer and are ultimately responsible to the Sheriff. They work in the same building, they are in the same retirement system, and but for whatever internal disputes, they would still be part of this bargaining unit. Of striking significance is the fact that deputy Sheriffs are hired out of the Corrections Officers Unit and can be bumped out in the event of layoffs. With this close working relationship, it would seem that the parameters of (d) would be pertinent. Accordingly, those two units are comparable and their contracts should be part of the consideration by this Panel.

As to the third suggested internal comparable, AFSCME, it is the Panel's considered opinion that it should not be accepted for the following reasons. First and foremost, that unit represented a different kind of employee. Although they have the same employer, they are not sworn officers and do not have law enforcement functions. They obviously are public employees, but (d) discusses wages, hours and conditions of employment of other employees performing similar services and with other employees generally. At is a considered judgment of this Panel that those services performed are not similar and that law enforcement or quasi law enforcement employees should be compared with those

performing similar services of law enforcement and not with sanitation, social services or similar type employees.

As it relates to external comparabilities, the parties have agreed on St. Clair and Saginaw. The following Exhibit shows some characteristic of Monroe, St. Clair and Saginaw.

	<u>'89 SEV</u>	<u>87-89</u>	<u>Population</u>	<u>Miles</u>	<u>Density</u>	<u>Income</u>
Monroe	2.858	9.5	134,659	577	237	10,482
St. Clair	2.87	8.6	138,802	734	191.4	10,007
Saginaw	2.380	5.2	228,059	815	265	10,168

There is a wide population difference between Monroe at the bottom and Saginaw at the top. Monroe is obviously much smaller and Saginaw substantially larger and the density of population puts Monroe in the middle between St. Clair and Saginaw. As far as SEV is concerned, Monroe is greater than Saginaw and slightly more than St. Clair. What do these comparisons tell us with respect to these two counties that are stipulated as comparable with Monroe and how do we apply some of these criteria to the other proposed comparables.

First, addressing the City of Monroe, it is the only city proposed by either side. It is this Panel's considered judgment that the City of Monroe should be excluded. Foremost is the significance of the governmental structures. Counties should be compared with similar governmental structures. The Boards of Commissioners have slightly different statutory authority than do City Officials. The taxing authorities are different, the ability to levy up to 20 mills is considerable for cities, whereas the

County constitutional limit is much smaller. Cities tend to be small geographic areas with higher population densities. Counties have conversely larger areas and generally are less dense. This means that deputies are actually out on the roads and do more traveling than might City Officers. Further, the rurality versus urbanity is of significance and as a result of urban versus rural the socio-economic structures are generally dissimilar. For all of the foregoing reasons, this panel opts not to include the City of Monroe.

Next, looking at the Counties proposed, the Employer offers Bay, Berrien, Calhoun, Jackson and Ottawa, the Union offers Ingham and Washtenaw. This Panel has not reviewed the 1984 award believing that these parties should have a fresh analysis and not be bound by or influenced by prior determinations. Hopefully, the results are similar. It has been pointed out that Wayne and Lenawee were offered in prior years, but not offered this time. Both of course are proximate to Monroe, but the Panel will not even try to guess why they might not have been offered this time.

If we can look at SEV, population, mileage, density, and the like, the Panel concludes that Bay, Calhoun, Jackson, Ingham, Ottawa and Berrien should be included, and Washtenaw should be excluded.

First, looking at the Union's proposal using particularly the 100 mile labor market analysis, the Panel concurs with the employer's suggestion that this is a novel approach that does not

seem to have been used before. Mrs. Ciccone testified she never used it before. The labor markets in Bay and Saginaw, as adjacent counties, should be quite similar and yet Bay was excluded simply because it didn't fit the 100 miles. Surprisingly, however, Saginaw supposedly is 123 miles from Monroe and yet it was included as within the similar labor market. Washtenaw is within the 100 miles as was Ingham, which was 96 miles. Ninety-six just happens to also be the distance from Monroe to St. Clair, an agreed upon comparable. This labor market analysis supposedly defined by wages and benefits could be arbitrary and selected at any number, so as to include or exclude those contracts which either maximized or minimized proposals to be offered. It doesn't take into consideration the more traditional criteria such as SEV, population, density, proximity and the like. This Panel would prefer to use the traditional and therefore rejects the use of the labor market analysis as a basis of comparability.

Having discussed the Union's labor market rationale, the Panel essentially adopts all of the other county proposed comparables and accepts the Union's proposal in Ingham and excludes Washtenaw. First, Washtenaw is easily excluded because its population is almost double that of Monroe County's, per capita income according to even the Union's exhibit is greater than Monroe. Its total SEV per Exhibit T-3 is \$4.7 as opposed to \$2.8 billion and it contains two principal municipalities, Ypsilanti and Ann Arbor, which clearly distinguish it from Monroe which has no comparable cities

and institutions of higher learning. Thus, on size alone, it is much larger and its departmental composition is dramatically different than Monroe.

What really confuses the Panel is that the two agreed upon comparables have such a wide-spread in all of the components that it is easy to accept all of the County's proposals including Ottawa and Berrien, even though those are on the Southwest side of the State. Why not include Ingham which is just north of Jackson, centrally located in the State, and would reflect statistical comparisons of a County that is neither on the far West nor the far East side of the State? More importantly, Ingham's population is less than Saginaw but obviously greater than St. Clair and Monroe. If you accept Saginaw on population, why not Ingham. According to Exhibit T-2, Monroe's per capita income is \$8,995 and Ingham's is \$9,381. The difference in per capita is not that great. Ingham's State Equalized Value is \$3.241 billion and Monroe County's is \$2.858 billion. Again, a slight difference. Although Ingham has more sworn officers, its offenses per officer is substantially less than that of Monroe.

Trying to sort out all these numbers and statistics is mind boggling and it just seems to be the impression of the Panel that Ingham can just as easily be included as excluded, and adding one more external comparable will not make any significant difference as to the total to be used by the Panel.

Discussion of Issues

I. WAGES

The Union's Offer Is:

	1989		1990		1991	
	Annual	Hourly	Annual	Hourly	Annual	Hourly
0-6 mos.	22,713.60	10.92				
6-12 mos.	24,612.00	11.83	24,612.00	11.83	24,612.00	11.83
12-18 mos.	27,156.00	13.06				
18-24 mos.	27,524.00	13.23	27,560.00	13.25	28,184.00	13.55
24-30 mos.	28,080.00	13.50	28,080.00	13.50		
30-36 mos.	28,250.00	13.58	28,704.00	13.80	30,160.00	14.50
36-42 mos.	28,392.00	13.65	29,120.00	14.00		
42-48 mos.	29,328.00	14.10	29,640.00	14.25		
4 years	29,952.00	14.40	30,160.00	14.50	30,680.00	14.75
5 years	30,160.00	14.50	30,680.00	14.75	31,720.00	15.00
6 years	30,680.00	14.75	31,200.00	15.00	32,032.00	15.40
7 years	31,200.00	15.00	31,720.00	15.25	32,448.00	15.60
8 years	31,720.00	15.25	32,240.00	15.50	32,864.00	15.80
9 years	32,240.00	15.50	32,760.00	15.75	33,280.00	16.00
10 years	32,760.00	15.75	32,968.00	15.85	33,692.00	16.20
11 years	32,960.00	15.85	33,280.00	16.00	34,112.00	16.40
12 years	33,176.00	15.95	33,692.00	16.20	34,528.00	16.60
13 years	33,384.00	16.05	34,112.00	16.40	34,944.00	16.80
14 years	33,592.00	16.15	34,528.00	16.60	35,360.00	17.00
15 years	33,800.00	16.25	34,944.00	16.80	35,776.00	17.20

The County's Offer is:

Five percent for 1989, 5 percent for 1990 and 4 percent for 1991.

The Panel has examined Employer Exhibit E and Union Exhibit 7 and believes after all deliberation that the County's proposal should be adopted. The County's proposal clearly would make the deputies competitive as the maximum on January 1, 1989, would be

\$31,253.04. This would be higher than all comparables except St. Clair. That salary would also be \$3,171.04 greater than Saginaw, the comparable offered by both parties. Its even \$2,600.00 more than an Ingham County deputy, as proposed by the Union.

The evidence shows that the Union's proposal would constitute a 13.6 percent wage increase in 1989, obviously top heavy. Mr. Myers explained the Union's rationale at great length. The proposal has 19 different salary steps which is twice as many as St. Clair and over 3 times as many as the average for all the Union comparables. Examining Exhibit E-2, in 1981, 31 out of 70 deputies would be at the maximum wage scale under the Union's offer. The explanation offered was that those persons who had significant time have assume heavy emotional and psychological burden and that with the potential instability rising from the fact that the sheriff is an elected official, salary increases should predominately go to those persons who have accepted those burdens over the years. Although the Panel assumes that the Union's position is well intentioned and Mr. Myers' views reflect the bargaining unit, the objective evaluation of all of the statistics presented by both parties suggests that such an increase simply is not warranted, it is not possible when the criteria of Section 9 (d) are applied to this record.

The Union has presented an interesting argument in support of its proposal, but even the County's offer would be generous in the first year as compared to the agreed upon comparables and thus the

Union's proposal would be so divergent that it cannot be accepted. Even though the Union's offer for 1990 and 1991 would percentage-wise be less than the County's, the County's proposal 5%, 5% and 4% would still leave the deputies in a very competitive position with all the other comparables. For the foregoing reasons, the offer of the County is accepted.

Ziegler:	Concurs _____	Dissents <u> X </u>
Derderian:	Concurs <u> X </u>	Dissents _____

II. PENSION

Union Offer:

Increase the final average compensation multiplier from 2.0 percent to 2.5 percent effective 1991.

County Offer:

No change in the current multiplier factor of 2 percent.

The Union essentially argues that its Exhibit V-2 indicates that many comparables have a formula higher than 2 percent and that the pension system is currently 109.6 percent funded. There was much discussion regarding cost of the present improvements and whether the County would actually contribute additional monies to fund the improvement.

Conversely, Employer Exhibit F demonstrates that the internal comparables are 2 percent and all the employer external comparables are 2 percent with Berrien being 1.7. Even Ingham County, adopted by the Panel, as a comparable, has a 2 percent factor. Only Washtenaw, a rejected comparable, has 2.5 and Monroe City, a

rejected comparable, has 2.5. Of particular persuasion to this Panel is the fact that the internal comparables are at 2 percent including corrections officers and the communications center both, of course, were formally members of this unit. Employers Exhibit S suggests that the cost would be in excess of \$123,700 for the first year. Although that number in and of itself is not tremendous given the County's total budget, it is obviously an additional expense that is not anticipated and more importantly if the multiplier was granted to this unit it would be used as a bargaining tool for all the other groups. It would be greatly unfair to adopt the 2.5 percent for this group and have communications and corrections employees, formally a part of this Union, not have that same benefit.

The arguments of both sides are persuasive and certainly well-presented. However, the Panel, pursuant to the Act, must adopt the proposal which is more compatible with the comparables that were selected. That determination is very easy. As no other comparables have such a multiplier, the Panel accepts the County's position.

Ziegler: Concurs _____

Dissents X

Derderian: Concurs X

Dissents _____

III. PENSION ELIGIBILITY

The Union's Position:

Modify eligibility requirements for normal retirement to 25 years of service - no age or age 50 with zero years of service, effective 1991.

The County's Position:

No change in the current contract language, which is normal retirement after 60 years of age and 8 or more years of service. Employees of the bargaining unit may retire early if they are 50 years of age and have at least 25 years of service.

The Union has adopted by reference pp. 9-10 of its brief as those pages may shed light on this issue. However, those pages discuss the multiplier and the apparent cost of the multiplier and there is little in that argument upon which this Panel can discern what evidence the Union presented for its proposal.

The Union simply says that there is no shred of comparable evidence to justify the County's position. Obviously the burden is on the movant to come forward with information if it wants to change the contract.

In fact, there is substantial evidence in the record regarding eligibility requirements. The current Monroe County program of normal retirement at age 60 with 8 years of service or 50 years of age with 25 years of service was accepted by the communications and by the corrections units. Additionally, if we look at the two comparables accepted by both sides, Saginaw allows retirement with

25 years of service at age 50, St. Clair allows an employee to retire after 20 years, but only if they are at least age 55. Neither provides support for the Union proposal of 25 years, no age or age 50 with no years of service.

The Panel also believes that the record reflects that a minimum of 8 years is needed to vest so that the Union's offer must imply the minimum of 8 years of vesting rather than the literal phraseology of zero years of service. In fact, the Chair's notes reflect that Exhibit V-1 was changed from zero years of service to 8.

Even in Ingham County, the Union comparable accepted by the Panel requires age 50 and 25 years of service, which is identical with Saginaw.

Reading between the lines, the Panel assumes that the proposal was made in part because of the relatively large number of unit members who have either extensive years of service or who are approaching age 50 with at least 8 years of service. As a result of this "experience" factor, its easy to understand why the members of the unit would espouse the position taken, obviously in good faith. However, the record reflects that notwithstanding the good intentions of the members of the unit, there does not appear to be adequate support in the comparables externally for their position. Of more compelling merit is the fact that the former members of the unit do not have this benefit and have the language which is in the present contract. Accordingly, for the foregoing reasons, the

Panel adopts the County's Offer for no change in the current contract language.

Ziegler: Concurs _____

Dissents X

Derderian: Concurs X

Dissents _____

IV. SICK PAY BENEFITS

The Union's Offer:

Increase the number of sick days received annually by the employee from 6 to 8 days.

The Employer's Offer:

The Employer does not propose any change in the employees current benefit levels and wishes to incorporate the outdated language in Article 9 in Exhibit A-2 of the contract so that all employees' sick leave provisions are stated in one section of the contract.

The Union presented no verbal testimony and offered Exhibit W-2. The County offered the testimony of Mr. Charron and exhibits. The Union's brief presents an argument regarding what W-2 supposedly reflects. It does not, however, discuss the factual distinction between Monroe and all the other comparables except Saginaw. That is, in 1984, Monroe switched from a sick day plan where the employees accumulated 1 day per month to a maximum of 130 days to a short and long term disability policy. Under the insured plan, each employee receives 6 sick days which do not accumulate. Short and long term disability commences upon the 7th day of illness or injury and the employer does receive 1/2 of all unused

days at the end of a year. All days accumulated prior to the changeover are accumulated and will be paid at 50 percent of unused days upon retirement.

The analysis of Exhibit W-2 shows that Saginaw is the only comparable which has the same kind of a long and short term disability as does Monroe. Saginaw provides 5 days per year, the long term benefit provides 50 percent of employees weekly wage for a period of up to 2 years. Monroe provides 6 sick days per year and provides 67 percent of an employees weekly wage up to 65 years of age for long term disability. Other comparable communities with insured programs are Calhoun and Ottawa. Neither of these, however, have annual sick days whatsoever and Calhoun pays benefits at the same level as Monroes. That is, 67 percent, for only 26 weeks. Accordingly, if one examines the insured programs, Monroe is as good as or better than Saginaw, Calhoun and Ottawa. Applying the standards of the Act, the Panel must be led to the conclusion that the County offer is more appropriate and more closely fits the Act. Accordingly, for the foregoing reasons, the County offer is adopted.

Ziegler: Concurs _____

Dissents X

Derderian: Concurs X

Dissents _____

Respectfully submitted,

DATED: July 13, 1990

By:

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