

ACT 312 ARBITRATION TRIBUNAL

11/94
Sub. MSU

In the matter of arbitration between

County of Muskegon, Michigan

- and -

Deputies Unit

International Brotherhood of Teamsters
Local 214
MERC Case No. G92 J-0680

Hearing Dates: October 1, 22 & 29 1993

Arbitration Panel: Richard H. Potter, Chairperson
James Delaney, Employer Delegate
Dale Majerczyk, Union Delegate

APPEARANCES

For the Union

Frederick W. Bennett - International Representatives
August Panici - Deputy/Union Secretary

For the Employer

Theodore N. Williams - Council for the Employer
Robert Carter - Sheriff
Scott Curtis - Risk Manager
Frank Bednarek - County Administrator
Deborah Groeneveld - Personnel Analyst
John Niemiec - Budget Director
Alan Sonnastine - Actuary, Gabriel, Roder, et. al.

INTRODUCTION

This dispute involves unresolved issues pertaining to a collective bargaining agreement between the County of Muskegon and the International Brotherhood of Teamsters representing the Deputies Unit of the Muskegon County Sheriff's Department.

At the prehearing conference on August 15, 1993, it was agreed that the duration of the contract would be four years, commencing on 1/1/93 and ending on 12/30/96. The new

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contract will consist of the issues decided herein, all agreements previously reached by the parties and, in all other respects, the provisions of the 1989-1992 Agreement. Further, it was agreed that the following issues would be, and hereby are, resolved by the panel:

1. Drug Testing*
2. Retirees Health Insurance -- graduated schedule
3. Retirement Benefit Level
4. Early Retirement Waiver
5. Dental Insurance
6. Wages

*Non-economic

At the commencement of the hearing, the parties agreed upon the following six comparable jurisdictions:

1. Berrien County
2. Calhoun County
3. Jackson County
4. Monroe County
5. Ottawa County
6. Saginaw County

1. Drug Testing Policy (non-economic)

Employer Position: The employer proposed the following addition to the contract as a new section entitled Drug Policy, to read as follows:

A. The county may require an employee to submit to an alcohol and/or drug test if there is reasonable cause to believe that the employee's performance is impaired by alcohol, illegal drugs, controlled substances or hallucinogens.

B. Such testing may require the employee to provide a blood and/or urine sample. If the test discloses the presence of illegal drugs, controlled substances or hallucinogens, or if the test indicates that the employee is impaired or intoxicated by alcohol, the employee is subject

to discipline up to and including immediate discard. Refusal to submit to the test is grounds for immediate discipline, up to and including immediate discharge.

C. An employee is required to consult with his supervisor if he/she is using prescription or over-the-counter medication which the employee believes may affect his/her performance.

Union Position: The union's position was that such a policy was not necessary and that bargaining unit members using controlled substances could be disciplined using existing provisions in the contract. If a drug policy was to be implemented, the union proposed a detailed, multi-page policy which explicitly laid out exact procedures, the process to be used in testing and the sanctions and assistance to be utilized.

Discussion: The employer's position was vague, and insufficiently detailed given the experience of arbitration of drug matters. Whatever policy is developed, it needs to fully examine the procedures to be used and how and when sanctions will be imposed. It is believed that this is a matter that can be resolved by the parties arriving at a mutually acceptable policy. Since this is a non-economic issue, the panel is not required to accept the last best offer of one of the parties. In this instance, neither party's proposal is accepted and the issue is remanded back to the parties.

Award: A drug testing provision will not be included in the contract. *James Delaney, employer delegate, dissenting.*

2. Retiree Health Insurance -- graduated schedule

Employer Position: The current contract provides that each retired employee receive fully paid health issuance, regardless of the years of service with the employer prior to retirement. The employer proposes to modify Section 18.3 to initiate graduated employer contributions depending on the length of service of the retiree, based upon the following schedule:

<u>No. of Years Continuous Service at Retirement</u>	<u>Percent of Individual Premium Contribution by County</u>
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10	40
11	44
12	48
13	52
14	56
15	64
17	68
18	72
19	76
20	80
21	84
22	88
23	92
24	96
25	100

Union Position: The union proposes that the graduated schedule be implemented, but only for deputies hired after January 1, 1994.

Discussion: The desire of the employer to implement such a provision is understandable, since it encourages employees to stay with the department longer and provides a greater benefit to long-term employees. Three of the six counties currently have a graduated schedule (Calhoun, Ottawa and Saginaw) and three do not (although it should be noted that Berrien pays only 50% of the premium, up to \$150 per month for all retirees).

However, no evidence was presented as to the impact of this provision. There was mention of the fact that at age 62 the coverage is modified to integrate with Medicare, but the number of retirees who would be effected, the cost of retirees' insurance, estimates of retirees who would be retiring with fewer than 25 years, etc., was not provided. With no clear direction shown by the comparables nor real sense of the cost of the employer's proposal to the unit, the panel cannot accept it.

Award: The union's final offer. -- A graduated schedule for those hired on or after 1/1/1994. *James Delaney, employer delegate, dissenting.*

3. Retirement Benefit Level

Union Position: The union proposes that the multiplier, or proportion of the member's final average compensation, which is multiplied by the years and months of service to determine the retirement pay, be increased from 2.25% to 2.5%. The current benefit multiplier is referred to as the B-3 benefit program; the 2.5% multiplier is referred to as the B-4 program. Under both programs, the retirement benefit may not exceed 80% of the final average compensation.

Employer Position: The employer proposes the current plan.

Discussion: The union proposal represents a cost of 1.1% of payroll. In recent years, the employer, as with many jurisdictions, has not been required to pay into the retirement plan since it has been overfunded. The overfunding had come about through a combination of high earnings in the Municipal Employees Retirement System (MERS) and high turnover in the unit which have the effect of reducing future liabilities to the system. In recent years, however, as interest rates have declined and as turnover has decreased because of a worsening job market, the level of overfunding has decreased from 148% in 1986 to 131% in 1990. In the years 1991 and 1992, the county made voluntary contributions to the fund (voluntary in the sense that because they were still overfunded, the fund did not require contributions), but the overfunded level still declined to 121%.

What this means is that what in the past has been a cost only on paper in that the retirement fund would pay for increases in benefit levels, has now become a "voluntary" real cost and will, if the trend continues, become an "involuntary" real cost, within a very few years.

The employer argues that under the B-4 plan, members of the unit will reach the maximum retirement benefit four years earlier and because the educational bonus and overtime are included in computing the average compensation, an employee retiring at 65 with 25 years of service will actually receive a retirement income greater than his or her base pay. This is generally considered to be unnecessary. However, this is true only for employees retiring at

65 and who combine the pension with the Social Security benefit. The union countered that law enforcement officers traditionally retire at earlier ages because of the demands of the career and the higher multiplier would encourage this trend. However, no information was provided on retirement patterns of this unit and a seniority list indicates a number of members stay on beyond the time when they receive the maximum retirement benefits.

Finally, when the comparable jurisdictions are examined, there is no jurisdiction where members receive the B-4 program. Indeed, there is only one jurisdiction, Saginaw, where the members receive the B-3 program.

Award: The employer's final offer; the current B-3 program will remain. The factors for the calculation of pensions will remain at 2.25%. *Dale Majerczyk, union delegate, dissenting.*

4. Early Retirement Waiver

Union Offer: Currently, a member of this unit draws a full retirement benefit when retiring if he or she has attained the age of 55 and has at least 25 years of service. If either of these conditions are not met, the member draws a reduced benefit. The union proposes that these conditions be changed to be 50 years of age and 25 years of service. The former plan is referred to as F55/25 and the latter as F50/25.

Employer Offer: The employer proposes no change in the current language.

Discussion: The cost of this proposal is a matter of some dispute, with estimates ranging from 1% to 2% of payroll. The estimate assumed by the chair is 1.5% which is derived from exhibits E-22 and 24. The cost increase is due to the fact a large proportion of the group will be able to retire at full benefit five years earlier and will, therefore, draw retirement pay for a longer period. The same comments made concerning funding the improvement that were made with regard to the retirement multipliers, above, are true with the F50/25 improvement, as well.

There was conflicting evidence given about comparable jurisdictions since several are covered by county retirement programs that are not explained in the labor agreement. In those

instances, testimony was given of conversations with representatives of those counties as to the retirement programs. It appears, however, that three of the six comparables provide a F50/25 program and that two provide full retirement at 25 years of service, regardless of age. Calhoun County provides a defined contribution plan, and it would appear that the plan provides a significantly lower benefit than the others.

When one examines each jurisdiction, however, the benefits of the programs vary significantly.

For example, Berrien County provides for full benefit at 25 years of service, but employees contribute 6% of salary for retirement and the multiplier is lower (2.2% v. 2.25%). Moreover, the multiplier is reduced to 1.7% when the retiree receives Social Security. The Muskegon deputies unit does not contribute to the retirement program and their multiplier remains constant at 2.25%. Likewise, in Jackson County an employee may retire at full benefits at 25 years of service, regardless of age. However, here too, employees contribute 1.22% of salary to the retirement program, have a smaller multiplier (2.0% v. 2.25%) and receive a smaller maximum benefit (75% of average final compensation v. 80%).

Among those counties which provide the F50/25 waiver, other provisions reduce the comparable benefit. Monroe County requires a 3% contribution by employees, has a 2.00% multiplier and caps benefits at 75% of average compensation. Ottawa has a non-contribution plan, but only a 2.00% multiplier which is reduced to 1.7% when the retiree receives Social Security. Only one comparable, Saginaw County, has the B-3 program with the F50/25 waiver and their new employees will be required to make a contribution when the MERS defined contribution program becomes available.

In addition to the direct retirement benefits, it should also be remembered that three of the counties (Berrien, Calhoun and Ottawa) provide a substantially reduced health care benefit to retirees and Saginaw has a graduated schedule which reduces the benefit if the employee retires prior to 20 years of service.

All in all, this unit has a much better retirement program than all but Saginaw, with which it is comparable.

Award: The employer's final offer; the F55/25 waiver. *Dale Majerczyk, union delegate, dissenting.*

5. Dental Insurance

Both the union and employer made final offers with regard to the maximum contribution that the employer would pay for each unit member for dental insurance in each year of the contract. Those proposals are shown below. Neither party proposed changing the program in any other manner, either in coverage of dependents or benefits provided.

<u>Year</u>	<u>Monthly Contribution by Employer</u>	
	<u>Employer Final Offer</u>	<u>Union Final Offer</u>
1993	\$29.00	\$29.00
1994	\$31.00	\$31.00
1995	\$33.00	\$35.00
1996	\$35.00	\$40.00

Discussion: The actual cost per employee was not presented, but Deputy Panici testified that currently members of the unit are paying \$0.49 per month, so the assumption is that the premiums are \$29.49 per person for 1993. Neither party indicated whether or not the \$31.00 proposed for 1994 would cover this premium, but it is assumed that it will. The only difference in the proposals is for '95 and '96 where the union is proposing a 12.9% and 12.5% increase, respectively, and the employer is proposing a 6.5% and 6.1% increase in payments, respectively.

The union made mention of the fact in the past the agreement was to pay the entire premium, but according to the testimony of Deputy Panici that isn't the case. He testified that sometimes employees have paid over \$1.00 per month, but that had been reduced to \$.49 as the contract amount increased.

A number of comparable jurisdictions pay the full premium for a defined program. But that is not what the union is asking for. Rather in this bargaining relationship, the employer and union negotiate over caps on what the employer will pay toward the premium. The panel is asked to make a choice between the two sets of figures.

The employer spent a lot of time comparing the various packages of the comparables, but except for a comparison of the employer contribution, that seems irrelevant, since neither party is discussing the benefits, per se.

Over the last contract, the parties bargained for increases that ranged from 3.4% to 3.8%. In addition, in the contracts of comparable jurisdictions where a maximum contribution is negotiated, the limits are substantially less than this unit for the same years.

Award: The employer's final offer. *Dale Majerczyk, union delegate, dissenting.*

6. Wages

At the prehearing conference, it was determined that the wages for each year would be treated as a separate issue. The employer and union offers for wages are as follows:

<u>Year</u>	<u>Union Final Offer</u>	<u>Employer Final Offer</u>
1993	3.0% increase	3% lump sum payment
1994	3.5% increase	3% lump sum payment
1995	3.0% increase	2% increase 1/1/95 1% increase 7/1/95
1996	3.5% increase	2% increase 1/1/96 1% increase 7/1/96

Discussion: Of all the evidence provided for each of the issues, that concerning wages was most vague. Only one contract was provided for each jurisdiction and those covered different years. From those, it appears that Muskegon County had the third highest wage rate of the comparables. In addition to the one contract for Berrien County, a recent 312 decision was provided covering 1993 and 1994. The Saginaw County contract covered a period through 1993. These were the only two counties for which 1993 and 1994 information was available, and they reflected base wage increases of 3% and 0%, respectively for '93 and 3%

and 4% for '94. Most of the contracts reflected increases of 2% to 6.5% in recent years. Although Saginaw County had a 0% increase in '93, it had 6.5% in '92 and 4% in '94.

Muskegon County, in its final wage proposal, improved its offer from 0% to a 3% lump sum payment in 1993, and changed its offer from a 3% increase in 1994 to a 3% lump sum payment. When combined, the revised offer will result in the employees receiving more money in the first two years of the contract, but less over the life of the contract. Moreover, since the lump sum payments are not added to the base wage, the lump sum increase years will result in lower wages beyond the life of the contract.

The county provided some information on its finances, without claiming lack of ability to pay. It stressed the property tax freeze and the prospect of lower delinquent tax collection in the future because of the switch away from the property tax for financing schools. The county also emphasized that its general fund budget was fourth of the seven comparables and its state equalized evaluation was fifth of seven counties. There was no information provided about the size of the sheriff's departments in other jurisdictions, crime rates or any other total cost information about the operation of the sheriff's office with the other counties.

In the final analysis, it appears that the lump sum offers of the county will not allow the deputies in Muskegon to maintain their position with respect to deputies in comparable counties.

Award: 1993 wages The union's last offer - 3% across the board increase. *James Delaney, employer delegate, dissenting.*

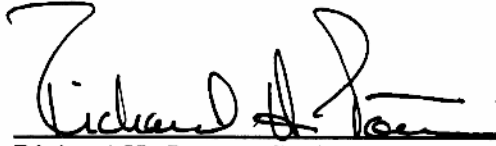
1994 wages The union's last offer - 3.5% across the board increase. *James Delaney, employer delegate, dissenting.*

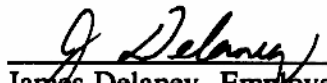
1995 wages The employer's last offer - 2% effective the first full pay period following 1/1/95 and 1% effective the first full pay period following 7/1/95. *Dale Majerczyk, union delegate, dissenting.*

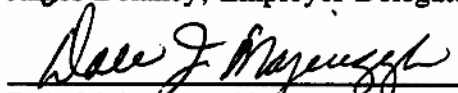
1996 wages The employer's last offer, 2% effective the first full pay period following 1/1/96 and 1% effective the first full pay period following 7/1/96. *Dale Majerczyk, union delegate, dissenting.*

All other provisions of the agreement are as negotiated by the parties or remain the same as the 1989-1992 Agreement.

By their signatures, the panel members signify their agreement with this award, except as noted above.


Richard H. Potter, Chairperson

 1-17-94
James Delaney, Employer Delegate

 1-21-94
Dale Majerczyk, Union Delegate