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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

STATUTORY ARBITRATION TRIBUNAL

IN THE MATTER OF THE ARBITRATION BETWEEN:

COUNTY OF ALLEGAN and
ALLEGAN COUNTY SHERIFF

-and-

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

Arising pursuant to Act 312
Public Acts of 1969, as amended
Case No. L96 F-7003

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ACT 312 ARBITRATION PANEL'S OPINION AND AWARD

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THE COMPULSORY ARBITRATION PANEL
Edward Rosenbaum, Chairman
Peter H. Peterson, Employer Delegate
James DeVries, Union Delegate

FOR THE EMPLOYER:
Peter H. Peterson

FOR THE UNION:
William Birdseye

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INTRODUCTION

This matter arises pursuant to a Petition filed with the Michigan Employment Relations Commission pursuant to 1969 PA 312, as amended, being MCL 423.231, *et seg*; MSA 17.455(31), *et seg*. The Petitioner is the Police Officers Association of Michigan (hereinafter referred to as the "POAM" or "Union"), which represents certain non-supervisory personnel within the Allegan County Sheriff's Department. The joint Employers[1] are the County of Allegan and the Allegan County Sheriff (hereinafter collectively referred to as the "Employers" or "County").

This arbitrator was selected to chair the arbitration panel. The Union and Employer delegates are Messrs. James DeVries and Peter H. Peterson, respectively.

A prehearing telephone conference was held on September 30, 1997. At that prehearing conference it was decided that there probably would be only two hearing sessions. The first hearing session was to be devoted to the comparables. Subsequent to the September 30th conference it was agreed that rather than hold the first hearing day devoted to comparables, both the Employer and the Union would submit briefs to the Impartial Chairman and he would render his decision on the comparables based on the briefs submitted.

The arbitrator rendered his "Interim Award on Comparability" on April 17, 1998. In that Award, the counties selected to be the comparable communities are the counties of Barry,

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[1]Under Michigan law the County Sheriff and the County Board of Commissioners, being the legislative body of the County, serve as coemployers for the employees within the Sheriff's Department, including those represented by the POAM herein. Cleland v AFSCME, 425 Mich 204, 388 NW2d 231 (1986); Capital City Lodge #141, FOP v Meridian Twp., 90 Mich App 533 (1979), lv den, 406 Mich 961 (1979).

Van Buren, Kalamazoo, Kent, Ottawa, and Eaton.

A hearing was held in Allegan on May 11, 1998, on the outstanding substantive economic issues. The parties submitted their Last Best Offers on May 26, 1998. The arbitrator immediately distributed them to the opposite parties. In September, 1998, in a like manner each party submitted a brief in support of its Last Offer.

The witnesses before the panel were

Mr. David B. Van de Roovart
Finance Director
County of Allegan

Ms. Christine Jurkas
Benefits Specialist
County of Allegan

Mr. Jim DeVries
Business Agent
Police Officers Association of Michigan

The factors for the Panel's consideration in reaching its decision as to the issues before them are set forth in Section 9 of the Act (MCLA 423.239), which reads as follows

> "Sec 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
> (a) The lawful authority of the employer.
> (b) Stipulations of the parties.
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
> (i) In public employment in comparable communities.
> (ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

WAGES

During the prehearing conference it was agreed between the parties that the wages for the length of the new contract (January 1, 1997 through December 31, 1999) would be treated as one complete package, *i.e.* the arbitration panel must accept either the Employer's Last Best Offer or the Union's Last Best Offer for the entire three years. Thus, it must be one side's offer for all three years rather than treating each year separately.

A. Last Offers

Deputies in Allegan County are paid on a seven-step basis (A - G).

The Union is proposing the pay raise effective January 1, 1997, be four percent across-the-board, resulting in

Steps

A	B	C	D	E	F	G
11.38	11.73	15.33	16.22	17.48	17.96	18.40
23,666	24,402	31,886	33,746	36,363	37,358	38,268

Effective 1/1/98
[4% across-the-board]

11.83	12.20	15.94	16.87	18.18	18.68	19.13
24,613	25,378	33,162	35,096	37,818	38,853	39,799

Effective 1/1/99
[3% across-the-board]

12.18	12.57	16.42	17.38	18.73	19.24	19.70
25,335	26,146	34,154	36,150	38,958	40,019	40,976

Wages to be retroactive to January 1, 1997 for all hours compensated.

The Employer's Last Best Offer of settlement on the wage issue is to modify Appendix A to reflect the following wage increase for all steps of the wage table:

Effective January 1, 1997	3.0%
Effective January 1, 1998	3.0%
Effective January 1, 1999	3.0%

B. Discussion

As both sides' position for the third year of the contract, *i.e.* 1999, is a wage increase of three percent, that is "off the table" and the only issue on wages is whether the raises for calendar years 1997 and 1998 should both be four or three percent.

In the nature of the discussions between the parties, the emphasis is continuously on the top step of the deputies' scale, *i.e.* Step G. Thus, both sides refer to the deputies' wages at

Step G.

The Union focuses its attention on arithmetic mean wage increases. Thus, it shows in Union Exhibit 2 that the arithmetic mean for the deputies in the comparable counties rose from $34,592 on January 1, 1994, to $37,067 on October 1, 1996, while for Allegan County it rose from $34,674 on January 1, 1994 to $36,796, or 6.12 percent. The six other counties have settled their wage rates for January 1, 1997. The arithmetic mean of the settled contracts show a mean wage of $38,082 as of that date. The wages of the deputies in Allegan County at the top Step (G) as of October 1, 1996, was $36,796, which was 10.09 percent less than the arithmetic mean of the comparable counties. Therefore, the Union argues that its "offer of 4% on the first day of the new contract is as close as you get to 'right on the money'."[2]

There are several problems with this analysis.

Whereas, Section 9 (d) calls for a comparison of the "wages" etc of employees doing comparable work in the comparable communities, it does not tell us how to go about making the comparisons. It does not tell us whether the best method of comparison should be the mean or the median. Nor does it tell us what time period is appropriate to use for the comparison.

The Union has chosen to use the arithmetic means as a basis for comparison. That is a legitimate basis for comparison. But is it the best basis?

Some definitions of the two measures would be in order at this point. The arithmetic mean takes all the figures, adds them up, and divides the total figure by the number of figures used. The result of this division is the arithmetic mean. One of the shortcomings of using the

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[2] *UNION'S MEMORANDUM IN SUPPORT OF FINAL OFFER OF SETTLEMENT,* page 4

mean is that particular "outliers", extremely high or extremely low numbers, may give you a figure for the mean which is not representative of the numbers used. This could especially be the case when you are dealing with a relatively small number of figures to begin with.

The median, on the other hand, is the middle figure of a series of numbers or if an even number of figures are used the midpoint of the two middle figures.

That there are "outliers" is shown by the fact that as of October, 1996, Barry County's wages were 6.7 percent below the next lowest wages and Kalamazoo County's wages were 7.7 percent above the next highest wages at the same date, using Union Exhibit #2.

While one should look at both the arithmetic mean and the median, your Impartial Chairman feels the median is a more reliable measure for comparison purposes in cases like this than is the arithmetic mean.

The median figure for October 1, 1996, for the comparable counties is $\frac{\$38,767 + \$33,421}{2}$ or \$36,094. At \$36,796, Allegan's deputies were earning \$36,796 minus \$36,094 or \$702 more than the median deputy in the comparable counties. That \$702 amounts to 1.94 percent above the median.

The Union argues that the new agreement should bring its deputies to the relative position in connection with their comparable deputies that they were in as of the beginning of the 1994 contract year. As indicated above, using the median, they are as of the end of 1996 above their comparables by 1.94 percent. In addition, one should consider the fact that the 1994, 1995, and 1996 wage rates were voluntarily agreed to by the parties to this agreement. These rates were part of the total contract package and represent carefully balanced compromises between the parties on the package of items in the contract. In a sense, they are

history. What is more relevant is how Allegan's deputies will compare with the deputies in the other counties so that by the end of 1998 what will be their relative position.

On October 1, 1998, the two middle counties were Ottawa and Eaton. Using the Union Exhibit #2 and the 1998 deputies salaries in those counties, the median comparable fiqure would be $\frac{\$35,457 + \$40,968}{2}$ or $38,212.50. Increasing this figure by 1.94 percent results in a "target" 1998 wage for the Employer's deputies of $38,954.

The Employer's LBO of 3% in each of 1997 and 1998 would result in a 1998 wage of $39,037. This is extremely close to the "target" wage, exceeding it by $83. In contrast, the Union's LBO would result in a 1998 wage of $39,799. This figure exceeds the "target" wage by $845 or 2.17 percent. It would also be 4.15 percent above the median of the comparable counties.

In addition to comparable wages of deputies in the other counties, we should also look at the Employer's other groups of employees, *i.e.* the "internal comparables." While what took place prior to 1997 may be of historical interest, what is most relevant are the wage increases for 1997 and 1998, which is shown in Employer Exhibit 10, Tab 7. Of those contracts that have been settled for 1997, the annual wage increases ranged from 2.5 percent to 3.0 percent, only one was as high as 3.0 percent, with the bulk at 2.8 percent. For 1998, there were two settlements at 3 percent and one at 2.8 percent. The two unsettled contracts for 1997 and 1998 will depend on the outcome of this arbitration.

The Union's LBO would exceed by one percent or more the other employee groups wage settlements during 1997 and 1998. On the other hand, the Employer's LBO would match but not exceed, the highest percentage raise given to any other employee group. Thus, on the

basis of the internal comparables for the critical years of 1997 and 1998, the Employer's LBO would seem the more reasonable.

The Act requires us to give relevant consideration to the cost of living. However, the Act gives us no guidance as to the time frame over which the cost of living is relevant and as to which index to use to determine the cost of living.

In Union Exhibit 4, the Union used the Detroit SMSA, CPI-W for Urban Wage Earners and Clerical Workers. That's fine for southeast Michigan which is predominantly an urban area. However, Allegan County is a rural area at the western end of the state. The Employer uses the Consumer Price Index data published by the U.S. Bureau of Labor Statistics for the country as a whole. Again, that's not southwestern Michigan. The cost of living and its increase in southwestern Michigan probably lies somewhere between the two types of indices. Your Impartial Chairman personally feels the one for the country as a whole is probably closer to measuring the cost of living for Allegan County.

Using the index for the Detroit metropolitan area and applying its figures for the time frame January, 1994, throught December, 1996, the Union finds that the deputies of Allegan County suffered lost purchasing power of $1,825.78 for the period January, 1994 through December, 1996. The Union's brief says "It would take a salary increase of $1,310 on January 1, 1997, or a 3.6% increase to make them whole,"[3]

While the Impartial Chairman has a great deal of sympathy for trying to make workers whole for their lost purchasing power, there are several shortcomings in this approach.

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[3] *UNION'S MEMORANDUM IN SUPPORT OF FINAL OFFER OF SETTLEMENT,* page 5.

Your Impartial Chairman suspects that if either an index for Allegan County were used, to the extent one ever existed, or even the Bureau of Labor Statistics index for the country as a whole were used for those three years, the result would be closer to three percent than to 3.6 percent.

Again, the issue comes up as to what time period to use. As indicated earlier, the Act is silent on this subject. Whatever the Union negotiated for this time period is history. In this connection, Mr. William Birdseye, the Union's advocate, stated at the hearing

> "Each of these three [wage] figures, 1/1/94, 1/1/95, 1/1/96 represents history. These are the figures that the parties agreed to for the duration of the expired collective bargaining agreement."[4]

The Union voluntarily negotiated that contract. It was not forced into it by an Act 312 arbitration. It could have negotiated a cost of living clause in exchange for something else. It did not. Thus, a lot can be said for the argument that the Union should live with the consequences of its own negotiations.

What is more relevant is an appropriate look at what happened to the cost of living from January 1, 1997 to as far as we can go.

The Employer has done that as far as February, 1998, in the Form of Employer Exhibit 10, Tab 4. The percent increase from January 1, 1997, through February, 1998, was only 1.4 percent. If we went to March, 1998, it would have been 1.5 percent. We are living in disinflationary times. The year-over-year increase in the cost of living went from 3.0 percent steadily down for the months of January and February, 1997, to 1.1 percent for February 1998.

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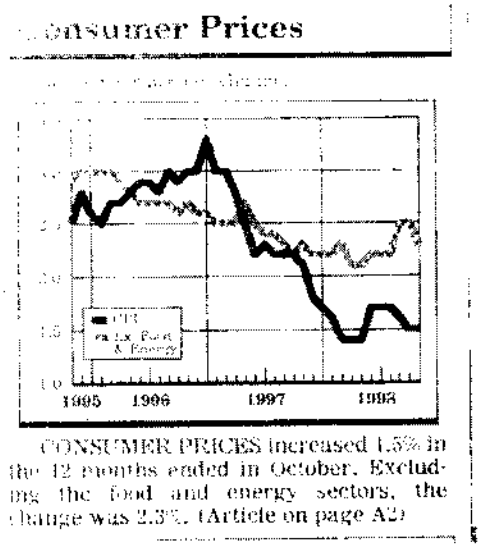
[4]*Transcript*, page 10.

These figures do not justify four percent wage increases for 1997 and 1998.

A large ingredient in what happens to the cost of living is the price of oil. Lately, it has dropped to and been languishing around twelve dollars a barrel. That is not the ammunition of what future inflationary periods are made.

We can bring the story of the cost of living up through October, 1998, by the following chart, which appeared on page 1 of the *Wall Street Journal* of November 18, 1998.



Whether you look at the CPI itself or the CPI Ex. Food & Energy, there is no justification in the cost of living for a four percent wage increase for 1997 and 1998. Looking at the cost of living only, three percent is plenty for a wage increase for those two years.

In fact, given the cost of living figures and wage increases at three percent per year for each of 1996, 1997, and 1998, real wages should go up over the three-year period. Maybe not by much, but real wages should nevertheless go up. In fact, your Impartial Chairman suspects that by December 31, 1999, at least the bulk of the lost purchasing power that the Union was worried about for the years 1994 through 1996 should have been more than made up and then

some.

C. Decision

For all of the above, the Impartial Chairman accepts the Employer's LBO of three percent for each of the years 1997, 1998 and 1999.

PENSION MULTIPLIER AND CONTRIBUTION

Under Section 15.7 of the Agreement, the Employer's deputies are covered by a defined benefit pension plan administered by the state Municipal Employees Retirement System ("MERS"). Specifically, they are covered by the MERS B-2 plan (2.0 % multiplier) with a final average compensation ("FAC") of five years, an age/service requirement for normal retirement of 60-10 or 55-15, Benefit E-1 (a cost-of-living adjustment), and no employee contribution. Under this system an employee of 55 or older with a final average compensation of $40,000 and 25 years of service would receive a yearly pension benefit of approximately $40,000 x 0.02 x 25=$20,000 (plus any E-1 adjustment).

The Employer brief traces the background of the changes in pension benefits and a requirement for an employee contribution as follows.

> Before 1995 the Employer had not had an employee contribution toward the pension plan since the 1970s. This was not a problem during the 1980s since the Employer's pension plan was substantially overfunded (as high as 160% in 1987) and the Employer was not required to make any contributions to the plan. However, during the late 1980s and early 1990s several things happened that led to a drastic change in circumstances. First, the economy soured and rates of return on invested funds began to fall. Second, the Employer improved the pension plan for its employees by moving from the MERS C-1 plan (1.5% multiplier) to the B-2 plan (2.0% multiplier), adopting a six-year vesting period and implementing the E-1 benefit. Third, and most significant, the MERS changed its actuary and the formula behind its actuarial valuations. These events combined to produce a precipitous drop in the Employer's pension funding levels; between 1992 and 1993 the Employer went from 116% funded to only 84% funded.

> As a result of this drop, the MERS informed the Employer that it would have to begin contributing 9.55% of payroll in order to meet its funding requirements. That figure translated into approximately a million dollars a year and more than 5% of the Employer's general (non-earmarked) fund budget. The MERS told the Employer that it had five years to phase in the new contribution rate by adding 20% of the new rate each year through 1999.
>
> Because the Employer was forced to go from no pension contribution to a 9.55% contribution over only five years, the County Board determined that immediate action was necessary. In order to accommodate such an unexpected and substantial expenditure within the County's general fund budget the Employer would have to cut services, cut personnel, freeze or reduce wages and/or fringe benefits levels, or adopt an employee pension contribution. Of these choices the County Board decided that an employee pension contribution was the fairest and least detrimental to the employees and the public. As a result, in 1995 the County Board adopted a phased-in employee pension contribution of 2.0% in 1996, 3.0% in 1997 and 4.0% in 1998. This employee pension contribution was effective immediately for non-union employees and designated a priority item in negotiations with all unions. At the time the employee pension contribution was adopted all of the Employer's employees had the MERS B-2 plan.[5]

As of the termination of the expired contract, the deputies in Allegan County didn't contribute anything to their pension benefits, *i.e.* it had been a non-contributory plan.

A. Last Offers

Both the Employer and the Union agree that the eligible deputies will be covered by the MERS B-4 pension plan including the F 55/15 rider. The Employer wants the employee contribution to be five percent of gross wages. The Union wants the employee contribution to be 3.2 percent. Under the Employer offer the pension improvement and employee contribution would go into effect at the time of the Arbitration Panel's award. Under the Union's LBO the changes would be effective January 1, 1999.

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[5] *EMPLOYER'S POST HEARING BRIEF*, pages 9-11

B. Discussion

According to Employer Exhibit 10, Tab 8 there are four other counties with defined benefit plans. They are Eaton, Barry, Kent and Ottawa. The following is an abbreviated form of Exhibit 10, Tab 8 containing the relevant information.

County	Type of Plan	How Defined Benefit Calculated	Employee Contribution
Eaton	MERS 3.2 Multiplier Benefit	3.2 % FAC x years + Benefit E-2	13.7%
Barry	MERS B-4	2.5% FAC x years + Benefit E adopted each year of CBA	2.4%
Kent	Non-MERS defined benefit plan	2.25% FAC x years	4.5%
Ottawa	MERS B-3	2.25% FAC x years + Benefit E-2	1.0%

The Employer notes that the average employee contribution is 5.4 percent. Its brief then makes a calculation that the comparable counties pay 2.12 percent for each 1.0 multiplier. It then says "Using this formula the 'expected' contribution of the Employer's deputies for the new 2.5% multiplier is 5.3%. The Employer's LBO is much closer to this figure than that of the Union."[6]

Your Impartial Chairman has much more difficulty "compartmentalizing" than does the Employer. He recalls, that when its brief was discussing wages, the brief did not like to use the arithmetic mean because of "outliers." Surely the spread between 13.7 percent and the next highest number of 4.5 percent, namely 9.2 percent makes the 13.7 percent an "outlier". Likewise the spread of 1.4 percent between the 2.4 percent and the 1.0 percent makes the 1.0

[6] *EMPLOYER'S POST HEARING BRIEF*, page 9

percent an "outlier", but substantially less so.

As the Employer's brief was so gung ho for using the median rather than the mean, let's see what figure we would get by using the median for the pension contribution as well as for wages. $\frac{2.4 + 4.5}{2} = 3.45$ percent. That certainly is a lot closer to the Union's 3.2 percent than the Employer's 5.0 percent.

However, as we are talking about moving from a MERS B-2 with a 2.0 percent FAC to a MERS B-4 with a 2.5 percent FAC, why not look at the county that already has a MERS B-4 and see what the employees are contributing in that county. That County is Barry. The employees contribute 2.4 percent of their gross wages in Barry County. By that measure of comparison the Union's offer of an employee contribution of 3.2 percent is very generous to Allegan County.

By coming up with a 5.0 percent figure for the deputies contribution, the Employer is trying to make the deputies pay the same percentage into the same MERS B-4 plan that their supervisors are paying.

This desire on the Employer's part has several shortcomings. First, the Employer admits that the actual cost of bringing the deputies up to the B-4 plan would only cost 3.2 percent.[7] Second, the command officers as a group are both older and have more seniority. Thus, as a group, they are likely to retire sooner and have more years of service at the time of their retirement. Related thereto is the fact that the actuarial cost of the command officers is higher than is the 3.2 percent actuarial cost of the deputies. Third, if the Union was able to get a situation where its members contributed nothing into their pension plan, the reasonable

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[7] *EMPLOYER'S POST HEARING BRIEF,* page 11.

assumption is that that was a *quid pro quo* for some other benefit, *e.g.* wage increase(s), that the deputies gave up in the past. If the Employer is not willing to give the deputies back what they gave up in the past, the deputies should not pay more than the actuarial cost of putting them on the MERS B-4 from the MERS B-2.

There are two other considerations. First, Section One of the Act states that one of the purposes of the Act is to insure the high morale of these employees and for the efficient operation of this department. The employees have been accustomed to contributing nothing towards their pension plan. Now to suddenly take five percent of their gross wages (considering all the other deductions that come out of their gross wages) for a plan that has an actuarial cost of only 3.2 percent, which fact they know, is bound to have a serious adverse affect on the morale of the deputies.

The final consideration is the fact that the Union's proposal is to have the 3.2 percent contribution and the MERS B-4 benefits start only on the first day of the third year of the contract, *i.e.* 1999. Thus, we are only talking about the employees contributing 3.2 percent for one year rather than 5.0 percent for one year. If the employer considers it very important to get the deputies to pay 5.0 percent rather than 3.2 percent, the employer can trade away something else for that 5.0 percent in the bargaining on the new contract which will take affect on January, 1, 2000.

C. Decision

The Last Best Offer of the Union dealing with the pension multiplier and Employee contributions thereto is accepted.

HEALTH CARE INSURANCE PREMIUM CONTRIBUTION

Both public and private employers have been faced with generally increasing health care costs. As a means of coping with this situation, many employers have sought various techniques to deal with this problem. Some employers have forced their employees into Health Maintenance Organizations. Others have endeavoured to get their employees to kick into the kitty by paying part of the premium costs. The latter technique has two advantages from the point of view of the employer. One is that part of the increased costs are shared by the employees thus reducing the costs to the employer from what they would have been absent some sort of premium-sharing arrangement. The second advantage is that the employees would have an incentive to decrease the employer's costs by accepting less medical services and, at least in theory, reducing the absolute amount of the share of the premiums that the individual employee pays. Allegan County has been, to use its brief's language " 'ahead of the curve' "[8] by instituting a contribution from its deputies amounting to ten percent of the insurance premium costs.

A. Last Offers

The Union's LBO is to add language to the contract to read

> "Effective thirty (30) days after award, the amount of employee contribution to premiums shall not exceed the monthly maximum of
>
> "$25.00 for family coverage
> "$17.00 for two person coverage
> "$ 8.00 for single coverage.
>
> "Health Insurance - Premium to be effective thirty (30) days

[8] *EMPLOYER'S POST-HEARING BRIEF*, page 14

after award."[9]

The Employer's LBO is to maintain the current cost-sharing formula.

B. Discussion

Allegan County is the exception on this issue. Eaton County and Kalamazoo County have no employee contribution but have moved to managed-care plans. Barry County has a contribution plan only for new employees. In Barry County the new deputies must pay 75 percent of the premium for the first six months of their employment. After that, they pay nothing. Kent County deputies pay seven dollars per pay period. Ottawa County deputies pay 20 percent of the premiums. However, this 20 percent "can be reduced or eliminated through participation in a County-sponsored eight-week exercise/education program."[10]

On the basis of strictly comparable employees doing the same kind of work, Allegan County is way out of line even if "ahead of the curve." I would assume the bulk of the deputies would be willing to engage in an eight-week exercise/education program in order to eliminate a twenty percent contribution or even a ten percent contribution.

However, external comparables are not the whole story. A good look must be taken at the internal comparables. The Employer Exhibit 10, Tab 19 shows the internal comparisons. The Teamsters I, II, and III, the Assistant Prosecutors, and the non-Union Employees all pay ten percent of the premiums. The Probate/Juvenile Court both supervisory and non-supervisory employees hired before April 22, 1993, pay five percent and the Probate/Juvenile Court employees hired after April 22, 1993, pay ten percent of the premiums. The Circuit and

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[9]*UNION'S FINAL OFFER OF SETTLEMENT*, page 7

[10]*EMPLOYER EXHIBIT 10, Tab 10.*

District Court employees hired before January 1, 1993, pay five percent of the premiums and those hired after that date pay ten percent of the premiums. Thus, on the basis of the internal comparisons only, at first appearance, the deputies probably should not change the ten percent premium contribution.

The argument has been made that if employees pay a fixed percentage of the medical insurance, they have an incentive to keep medical costs down. Thus, the Employer's Brief notes that "in 1996 premiums levelled off and actually decreased slightly in 1997."[11] The inference is that having a ten percent contribution rate gave employees a strong incentive to cut medical costs and that's why the medical premiums came down. However, that neglects the fact that the Employer had introduced a rigorous medical cost cutting program in the 1988-1989 period, and the present contract memorialized part of this cost cutting program in Section 13.1, part of which reads

> A. Mandatory Cost Containment:
>
> 1. Pre-admission certification.
> 2. Out-patient testing.
> 3. Second opinion for elective surgery.
> 4. Reasonable penalties for failure to follow cost containment program.
>
> B. Lab and X-rays charged to major medical. The deductible ($50 - one person; $100 for two persons or more) and co-pay of 90/100 percent shall remain unchanged from the 12/31/89 policy.
>
> C. No-fault auto coordination (no fault insurance carrier for automobile related injuries, Group Plan is secondary).
>
> D. The drug co-pay shall be increased to $4.00.

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[11] *EMPLOYER'S BRIEF*, page 14

In the opinion of your Impartial Chairman, it's the total effective cost reductions efforts as indicated by "A"- "D" above that contributed the most to the reduction in medical insurance premium costs by the Employer, rather than any incentive on the part of the individual employee.

Although your Impartial Chairman is very much in favor of all kinds of incentives, he does not buy the argument that the individual employee who is kicking in to ten percent of the medical insurance premiums really has much incentive to forgo a medical service, procedure, or product because this will affect how much he or she will pay when the total medical insurance premiums are again recalculated. The individual employee will feel that the balancing of obtaining the medical service, procedure or product versus forgoing the medical service, procedure or product in order to pay in less money on his/her ten percent of the total medical insurance premiums, will lead to only one possible conclusion. That is, take the medical service, procedure or product.

If the Union's LBO is accepted, the individual deputy will feel some psychological relief in being assured that his/ her medical insurance premiums are a flat amount rather than a known percentage of an unknown amount.

On the basis of the external comparables only, there is no question that the Union's LBO should be accepted rather than that of the Employer. The internal comparables would tend to favor accepting the Employer's LBO. However, a deeper look at the internal comparables would be revealing.

As indicated earlier, in the Probate/Juvenile Court both supervisory and non-supervisory employees hired before April 22, 1993, and the Circuit and District Court employees hired

before January 1, 1993, pay five percent of the premiums. That five percent is a rough current approximation of the dollar figures the Union is asking in its LBO. The majority of deputies would have been hired before 1993. Therefore, by going to the flat dollar amounts the Union is asking in its LBO on this issue, the deputies would be put on a par with these other employees hired by the same Employer.

There is a further consideration. If the Union's LBO is accepted, once it has been put into effect, any additional reduction in future years of total medical insurance costs will benefit the Employer by reducing its share of the total premiums because a fixed amount of money will have been contributed by the deputies. Thus, the Employer will have incentives to further decrease its medical insurance premiums.

As a group, the deputies probably are healthier as a group of people than all the other employees taken as a group. Thus, their medical premiums as a group probably should be lower than those of the other employees taken as a group. That they are probably healthier than the others taken as a group is partially mitigated by the fact that they are under more strain.

C. Decision

While this issue is really, a very close call, for all the above, the Union's LBO is accepted. Effective thirty (30) days after the Award, the amount of employee contribution to premiums shall not exceed the monthly maximum of:

$25.00 for family coverage
$17.00 for two person coverage
$ 8.00 for single coverage.

HEALTH INSURANCE PREMIUM DURING WORKER'S COMPENSATION LEAVE

A. Last Offers

This is the Union's last issue. It deals with the employee's contributions to medical insurance premiums while the employee is on Worker's Compensation. It reads

> "Add language to contract:
>
> "Effective thirty (30) days after award, the amount of employee contribution to premiums shall not exceed the monthly maximum of
>
> "$25.00 for family coverage
> $17.00 for two person coverage
> $ 8.00 for single coverage
>
> Health Insurance - Workers Compensation to be effective thirty (30) days after award."

Although the Employer does not specifically show an LBO to the Union's fourth issue in the "EMPLOYERS LAST BEST OFFERS OF SETTLEMENT", one can safely assume based on its LBO to the Union's third issue, *i.e.* "Health Insurance - Employee Premium Contribution" and the Employer's first issue entitled "Workers Compensation Supplement" is that the current contract language remain unchanged at least as far as the first year the employee is on Worker's Compensation.

B. Discussion

This issue is a companion issue to the preceding one. Logic would say that whatever decision was appropriate for the previous issue is appropriate for this issue. If the Impartial Chairman had sided with the Employer on the preceding issue, then he should accept the Employer's LBO on this issue. If the Impartial Chairman accepts the Union's LBO on the last issue, he should accept the Union's LBO on this issue.

As the Impartial Chairman accepted the Union's previous LBO, he should accept the Union's LBO on this issue as a matter of simple consistency

To the extent a deputy is paying a flat fee for his/her health insurance premium while working, he should not be hit with a larger sum of health insurance premiums because s/he is no longer working as a result of a work-connected injury or illness, and ten percent of the premiums would very likely result in a larger sum of money than the flat fees.

In addition, requiring the deputy on Worker's Compensation to pay ten percent of the total premiums when s/he previously paid a flat fee would involve some small amount of additional administrative work.

The dominant reason for granting the Union's LBO on this issue is logical consistency.

C. Decision

The Union's LBO is accepted. Add language to the contract to read:

> "Effective (30) days after the Award, the amount of employee contribution to premiums shall not exceed the monthly maximum of:
> $25.00 for family coverage
> $17.00 for two-person coverage
> $ 8.00 for single coverage."

WORKER'S COMPENSATION SUPPLEMENT

A. Last Offers

"The Employer's last best offer of settlement on this issue is to delete the last sentence of Section 9.5 and replace it with the following sentence

> "The Employer agrees to continue its 90% contribution toward medical insurance premiums during the period of the wage supplement described above, provided that the employee contributes the remaining 10% toward the insurance premiums."

The Union's LBO on this issue is "The Union desires to maintain the status quo and

proposes no change to contract language or practice."

B. Discussion

This Employer issue is very complicated because it is really made up of two subparts. The last sentence of Section 9.5 reads as follows,

> "The Employer agrees to continue its 90% contribution toward medical insurance premiums for an employee receiving worker's compensation for a period not to exceed six (6) months following cessation of the worker's compensation supplement provided that the employee contributes the remaining 10% toward the insurance premiums."

The effect of deleting the sentence the Employer's LBO requires is to limit the employees on Worker's Compensation from obtaining any kind of employer contribution towards his or her medical insurance premiums after one year on Workemen's Compensation. That was the clear intent of this LBO as made abundantly clear in the Employer's brief. That's one part of the issue.

However, replacing the deleted sentence with the required sentence would only be satisfactory if the employer won on the Union's fourth issue. That's the second subpart of this issue. What if the Employer lost on the Union's fourth issue?

The external comparables in Employer Exhibit 10, Tab 12 show that the Allegan deputies are at the top of the heap as far as deputies in the comparable counties are concerned. That Tab shows that Allegan is very generous, indeed, in this respect.

The internal comparisons (Employer Exhibit 10, Tab 13) presents a more mixed picture. Only the POLC and Teamsters II units have the same Worker's Compensation supplement language as the deputies. However, the jail command officers get only three additional months of health insurance payments.

The probate/juvenile court non-supervisory employees, the circuit and district court employees, the assistant prosecutors and the non-union employees must use accumulated paid time off to maintain their full wage and stay on the payroll while on Worker's Compensation leave. The Teamsters I and II units and the probate/juvenile court supervisory employees have no ability at all to maintain their full wage and stay on the payroll while on Worker's Compensation leave.

The Employer is proposing only that the deputies' extra six months of health insurance payments be eliminated. This would leave the Employer's deputies at the top of the scale among the external comparables and still much better off than the majority of their fellow employees.

Based on the external and internal comparables, the Impartial Chairman is willing to grant the intent of the Employer's first issue, *i.e.* eliminating the additional six months of health insurance premiums that the Employer is required to pay according to Section 9.5 of the existing contract.

Technical language will have to be used in drafting the new contract clause to accommodate the fact that there is a definite conflict between the Union winning its fourth issue and the Employer winning on this issue. Perhaps the problem can be solved by simply eliminating the last sentence of existing Section 9.5 and putting in its place the flat sums of the fourth issue as the Union's LBO was accepted by the Impartial Chairman.

C. Decision

The Employer's LBO is accepted by the Impartial Chairman on this, the Employer's first issue.

DISABILITY LEAVE OF ABSENCE

A. Last Offers

The disability leave of absence is the Employer's second issue. The Employer's LBO of settlement on this issue is to 1) modify Section 7.4 (D) to read as follows:

> "When he has been laid off or remains on medical leave of absence for a period of 52 or more consecutive weeks."

and 2) modify Section 8.2 by changing "24 months" to "52 weeks."

The Union's LBO on this issue is the status quo.

B. Discussion

The Union's brief on this issue states "The record lacks any evidence supporting the Employer's proposal."[12] That's not true.

The Employer's Exhibits 10, Tab 14 on the external comparisons and Employer Exhibit 10, Tab 15 on the internal comparables support the Employer's position. My understanding is that Employer Exhibits are part of the record.

Four of the six comparable counties have no guarantee at all as to the length of a disability leave of absence, putting the length of a disability leave within the complete discretion of the employer. Of the other two, Barry County guarantees a disability leave only for a "reasonable" period. Only Ottawa County has a specific guaranteed disability leave period - one year for unpaid non-duty-related disability and two years for unpaid duty-related disability (with the qualifier that "in the event an employee's combined paid and unpaid leave...is greater than the aforestated, then...the employment relationship shall cease as stated in this paragraph

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[12] *UNION'S MEMORANDUM IN SUPPORT OF FINAL OFFER OF SETTLEMENT*, page 15

or upon expiration of a leave of absence (paid or unpaid) of three years, whichever is the lesser"). Overall the comparable counties favor the Employer on the issue in question.

The internal comparables also tend to favor the Employer's position. Employer Exhibit 10, Tab 15 shows that only part of the POLC unit has the same two-year guarantee as the Union (the jail command officers have a two-year guarantee for work-related disability leaves only). All other County employees have disability leaves guaranteed for one year or less, or no guaranteed disability leave at all (circuit and district court unit).

One should bear in mind that the members of the POLC unit are these deputies' immediate supervisors. A majority of them have the same contract provisions on this issue.

Yes, if we went strictly on the external comparables and the bulk of the internal comparables one could say that the Employer's LBO on the issue should be accepted. However, to reach a decision solely on the basis of counting the noses of the comparables may not be the appropriate way to operate on this issue.

The statute speaks in terms of "the high morale of such employees and the efficient operation of such departments." Among the County's employees, the deputies are the ones who are most at risk. They may be in a position to continually ask themselves, "Should I take on the risk of receiving a bullet?" If the Employer's position on this issue is accepted, at the end of one year of disability - even if work connected - the employee's seniority and position as an employee is terminated. That situation is not calculated to enhance employee morale. To the extent that deputies might worry about what would happen to them if they were injured on the job as a result of taking risks - including being terminated at the end of a year - they will become more risk averse. To the extent deputies become more risk averse, that has to decrease

the efficiency of the department.

The bulk of the people who are disabled for two years probably will never return to work. Thus, what are the costs to the County of not cutting the employment status after one year? The employer might have to hire a temporary employee who gets bumped by a deputy who comes back after twelve months of disability but before twenty-four months of disability. Yes, there would be some training costs involved that could be considered "wasted." However, if the disabled employee came back within the first twelve months, those training costs would also have been "wasted."

Thus, in the balancing of the disabled employee's ability to return to work - especially as a result of a work-connected disability - versus the small incremental costs of training an employee who is bumped between the first twelve months and the second twelve months - the scales come down in favor of retaining the second twelve months of employment. Bear in mind that the County would still have had to incur the costs of the first twelve months of training. The training costs during the first twelve months would have been far more than the training in the second twelve months.

The deputies already have two-year clauses on disability in their existing contract. For all of the above, this Impartial Chairman is not prepared at this time to sanction cutting the two-year period down to one year.

C. Decision

The Union's LBO on this issue is accepted. The contract language will not change on this issue.

SHORT-TERM DISABILITY BENEFIT

A. Last Offers

The Employer's LBO of settlement on this issue is to delete the last sentence of Section 9.3 and replace it with the following paragraphs:

> "When an employee receives benefits under this section, the Employer shall continue its 90% contribution toward health, dental and vision insurance premiums for up to six (6) months, provided the employee contributes the remaining 10%.
>
> "After six (6) months, the employee may elect to be on the payroll by using his or her accumulated leave time to equal his or her regular net salary. If the employee is on the payroll, the Employer shall continue its 90% contribution toward health, dental and vision insurance premiums, provided the employee contributes the remaining 10%. If the employee is not on the payroll, he or she will be required to pay 100% of health, dental and vision insurance premiums."

The Union's LBO on this issue is the status quo.

B. Discussion

Under Section 9.3 of the Agreement, deputies are covered by a disability income insurance policy (for non-duty related disability only) which pays 66% of wages for up to 52 weeks after a specified waiting period. Currently the provision states that an employee "can extend the coverage up to an additional fifty-two (52) weeks if the employee pays the premium for said additional coverage." Also, Section 13.2 of the Agreement states that all Employer-paid insurance premiums shall cease at the end of the month in which an employee is placed on an unpaid leave of absence.

The Employer's LBO is to 1) eliminate the right to extend coverage by an additional year, and 2) add language stating that the Employer will continue its 90% payment of health insurance premiums for the first six months that an employee is receiving short term disability

("STD") benefits from the insurance company, after which time the employee may use accumulated paid time off to supplement benefits and remain on the Employer's payroll; if the employee remains on the payroll the Employer would continue its 90% health insurance payments for the remainder of the 52 weeks of benefits. The Union's LBO is to maintain the current contract language.

Employer Exhibit 10, Tab 16 summarizes the STD benefits offered by the external comparable counties. Three of the comparable counties do not provide STD insurance at all. Of the remaining counties, Eaton County provides only 26 weeks of STD benefits, during which the employer continues health insurance payments. Barry County provides 52 weeks of STD benefits but continues health insurance payments only for the month of disability plus four months. Ottawa County provides only six months of STD benefits and does not continue health insurance payments for employees in the deputy classification. None of the comparable counties provide employees with a right to extend the stated STD coverage at their own cost. The Agreement's STD provision as modified by the Employer's LBO is more in line with the comparable counties than the Union's position that the Employer should continue its health insurance payments for a full year for an employee receiving STD benefits and continue to provide a right to buy coverage for an additional year.

Before analyzing the internal comparables it is necessary to discuss the background of the STD issue and the testimony presented at the hearing.

First, regarding the right of a deputy to buy coverage for an additional year, it is undisputed that, as the Employer's benefits specialist Christine Jurkas testified, no insurance company will allow the additional year to be added, no matter who pays for it. In addition, no

County employee has ever requested to purchase the extra year of coverage.

Second, and most important, the modification of the STD language sought by the Employer is intended to expand the current benefit, not reduce it. Jurkas testified, again without contradiction, that for at least the past two years the Employer has continued health insurance payments for employees receiving STD benefits only if the employee remains on the payroll by supplementing STD benefits with accumulated paid time off. This is consistent with Section 13.2 of the Agreement, which states that "All Employer-paid insurance premiums shall cease...at the end of the month in which an employee is placed on...a non-paid leave of absence." An employee who does not remain on the payroll by supplementing STD benefits with accumulated paid time off is obviously on a non-paid leave of absence and thus is not contractually entitled to continued health insurance payments by the Employer past the end of the month the leave begins. The Employer's LBO actually improves on the Agreement by guaranteeing continuation of Employer health insurance payments for the first six months regardless of supplementation and only requiring supplement of STD benefits for continuation of Employer health insurance payments during the second six months.

As shown by Employer Exhibit 10, Tab 17, the Employer's proposed improvement to the STD language puts the Employer's deputies in a better position than any of their fellow employees. Five employee groups are not even covered by an STD policy. Each of the other groups is subject to language identical or similar to Section 13.2 of the Agreement and has no language guaranteeing continuation of Employer health insurance payments in the absence of supplementation of STD benefits with accumulated paid time off. In fact, the jail command officers' contract has been clarified to explicitly state that supplementation is required for

continuation of Employer health insurance payments. In addition, only the POLC's road command officers have language permitting the employee to purchase an additional year of coverage.

The external comparables favor the Employer's position. The internal comparables taken as a group favor the Employer's position.

In many respects it is a little silly having a clause in a contract allowing employees to buy medical insurance under conditions where no insurance company will sell them the medical insurance. The contract ought to be cleaned up at this time by deleting a useless and unenforceable clause.

C. Decision

The Employer's LBO is accepted. The exact language other than the deletion of the relevant sentence will have to be cleaned up on the basis that the Union won its third issue requiring a movement to flat rate contributions

CONCLUSION

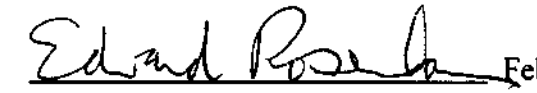
All previously stipulated changes in the expired contract, which appear under Employer Tab 10 (2), are hereby incorporated by reference and made part of this Award. All material in the expired contract that have not been changed by stipulation or by this Award shall remain the same in the new contract to run from January 1, 1997, through December 31, 1999.

Except for wages, all other items will take affect thirty days after the Award.

In those areas where the parties had a 10% contribution and now it is capped at a flat dollar amount, the parties will have to and they will draft the language to take care of that issue.

The arbitration process is more of an art than a science. I do not expect either the

Employer or the Union to be satisfied with the Award. An arbitration on the terms of a new contract is never as satisfactory as a completely freely negotiated contract by the parties themselves. Yet, your Impartial Chairman hopes this Award together with the stipulated changes in the old contract will have provided and will provide a livable environment for the period January 1, 1997 through December 31, 1999.



February 2, 1999
Edward Rosenbaum
Impartial Chairman

Orders

1. It is hereby ordered, based on the vote of the Chairman and the County Delegate, that the County's last best offer that the wage increases for 1997, 1998, and 1999 be three percent for each year be hereby adopted.

Edward Rosenbaum, Chairman

Peter Peterson, County Delegate

James DeVries, Union Delegate
(Dissent)

Dated: February 2, 1999

2. It is hereby ordered, based on the vote of the Chairman and the Union Delegate, that the Union's last best offer that language be added to the contract effective March 1, 1999, the MERS B-4 (2.5% Multiplier) benefit shall be provided to all future retirees from the bargaining unit. Effective March 1, 1999, members of the bargaining unit shall contribute 3.2% towards the pension be herby adopted.

Edward Rosenbaum, Chairman

James DeVries, Union Delegate

Peter Peterson, County Delegate
(Dissent)

Dated: February 2, 1999

3. It is hereby ordered, based on the vote of the Chairman and the Union Delegate, that the Union's last best offer that the amount of employee contribution to the health care insurance premium shall not exceed the monthly maximum of

$25.00 for family coverage
$17.00 for two person coverage
$8.00 for single coverage

to be effective thirty (30) days after the Award be hereby adopted.

Edward Rosenbaum, Chairman

James DeVries, Union Delegate

Peter Peterson, County Delegate
(Dissent)

Dated: February 2, 1999

4. It is hereby ordered, based on the vote of the Chairman and the Union Delegate, that language be added to the contract that the amount of employee contribution to the health care insurance premium while the employee is on Worker's Compensation shall not exceed the monthly maximum of

$25.00 for family coverage
$17.00 for two person coverage
$8.00 for single coverage

to be effective thirty (30) days after the Award be herby adopted.

Edward Rosenbaum, Chairman

James DeVries, Union Delegate

Peter Peterson, County Delegate
(Dissent)

Dated: February 2, 1999

5. It is hereby ordered, based on the vote of the Chairman and the County Delegate, that the Employer's last best offer of settlement on the Worker's Compensation Supplement be that the last sentence of Section 9.5 be deleted and replaced with the following sentence "The Employer agrees to continue its 90% contribution toward medical insurance premiums during the period of the wage supplement described above, provided that the employee contributes the remaining 10% toward the insurance premiums." be hereby adopted.

Edward Rosenbaum, Chairman

Peter Peterson, County Delegate

James DeVries, Union Delegate
(Dissent)

Dated: February 2, 1999

6. It is hereby ordered, based on the vote of the Chairman and the Union Delegate, that the Employer's last best offer to 1) modify Section 7.4 D to read as follows
"When he has been laid off or remains on medical leave of absence for a period of 52 or more consecutive weeks" and 2) modify Section 8.2 by changing "24 months" to "52 weeks" be rejected.

Edward Rosenbaum, Chairman

James DeVries, Union Delegate

Peter Peterson, County Delegate
(Dissent)

Dated: February 2, 1999

7. It is hereby ordered, based on the vote of the Chairman and the County Delegate, that the Employer's last best offer dealing with the short-term disability benefit, namely to delete the last sentence of Section 9.3 and replace it with the following two paragraphs

> "When an employee receives benefits under this section, the Employer shall continue its 90% contribution toward health, dental and vision insurance premiums for up to six (6) months, provided the employee contributes the remaining 10%.
>
> "After six (6) months, the employee may elect to be on the payroll by using his or her accumulated leave time to equal his or her regular net salary. If the employee is on the payroll, the Employer shall continue its 90% contribution toward health, dental and vision insurance premiums provided the employee contributes the remaining 10%. If the employee is not on the payroll, he or she will be required to pay 100% of health, dental and vision insurance premiums."

be hereby adopted.

Edward Rosenbaum, Chairman

Peter Peterson, County Delegate

James DeVries, Union Delegate
(Dissent)

Dated: February 2, 1999