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In re arbitration between	Compulsory Arbitration Under Act 312, Public Acts of the State of Michigan, 1969, as amended by Act 127, Public Acts of 1972, [MCLA 423.238; MSA 17.455 (30)].
County of Benzie, Michigan	
and	
Police Officers Association of Michigan	MERC Case NO. G83-D-762. OPINION AND ORDER OF ARBITRATION PANEL.

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Before the arbitration panel in these proceedings are all of the issues upon which the parties reached impasse in their negotiations for a renewal of their expired collective bargaining agreement. All other issues arising out of or discussed between the parties in their negotiations are acknowledged by them to have been settled in those negotiations or in the course of these arbitration proceedings.

All of the parties' evidentiary exhibits and their post-hearing briefs are attached to the copy of this opinion and order which is filed with the Michigan Employment Relations Commission. There are two joint exhibits, one of which is the parties' collective bargaining agreement which expired on December 31, 1982, twenty County exhibits and thirty-one Union exhibits.

A discussion of comparable communities under Act 312, a determination of the parties' contending views on comparability and the panel's disposition and orders concerning the impasse issues comprise the balance of the text of this document.

COMPARABILITY

The parties have not agreed on the identification of any Michigan county as one comparable to Benzie County for purposes of comparison in these proceedings. Their post-hearing briefs state the parties' views and arguments on the question of comparability of Benzie County with other counties under the statute, and those briefs of the County and the Union are attached to this opinion and order as Exhibits AA and BB, respectively.

The County argues that "internal" comparison of the relevant wages and working conditions of the bargaining unit employees of its Sheriff's Department with those of others of its bargaining unit employees must not be overlooked by the panel in assessing the parties last offers. The panel agrees with that argument.

Most of the issues subject to these proceedings are economic ones. Only the issues the parties call "Duration" and "Statements" are non-economic issues. The money to pay for any settlement must come out of the County's revenues, and not out of the revenues of other employers in either the public or private sectors, whether or not those other employers are Michigan counties. In that state of affairs the County's ability to pay for a settlement is of signal importance if it has been made an issue. And obviously the County's ability to pay may more relevantly be judged by the settlements it has made with its own employees in bargaining units other than the one here involved than it may be judged by the settlements of other employers in negotiations where, for all the evidence here shows to the contrary, ability to pay may not even have been at issue.

COMPARABILITY, (cont'd.)

In this case ability to pay is an issue. The County made it so, and the Union challenged it. It is the feeling of the panel that while comparisons of Benzie County with other counties are relevant and important, internal comparison is at least slightly more relevant and important. Yet none of this says that internal comparison is always relevant and controlling in an Act 312 case, or that external comparisons should not be made in cases where internal comparisons are weightier. External comparability should be employed, as the statute commands. But, for the reasons already assigned, in an ability to pay case internal comparability ought to be closely consulted.

Where external comparability is concerned it seems to the panel that the counties selected for such comparisons by the County of Benzie are more appropriate for this case than the ones selected by the Union.

The counties selected by the Union are all contiguous to the County of Benzie. And such is the disparity of population of those counties when compared with the population of Benzie, with the exception of Leelanau, that contiguity alone seems to have been the basis for the Union's selection. Contiguity, standing alone, is probably the least significant element in a comparison of one county with other counties. Under the statute the process of comparison is to be applied among "comparable" counties or other communities. "Comparable" cannot possibly be employed in the statute in the sense of one of its ordinary meanings: capable of being compared. That would appear to be an iron-clad conclusion. Anything is capable of being compared with anything else; a moose with a mushroom, for example. But statutes are to be given interpretations which are not at variance the common sense meanings of their words. "Comparable" communities are those which are similar to the community which is the subject of Act 312 proceedings.

COMPARABILITY, (cont'd.)

The similarity of one community to other communities must be determined on the basis of matter relevant to the issues which appear in a particular Act 312 case. Those issues are the matter to be settled in the proceedings; comparison and comparability are not ends in themselves. Obviously all counties are counties and all cities are cities. And just as obviously such conclusions, however true, are neither helpful nor relevant here.

As will appear, below, some of the issues in this case will be settled by the panel without reference to other counties. But, where external comparability is employed, the panel will not cite or use the counties offered by the Union except occasionally to illustrate that had those counties been used they would not have supported the Union's case. In part this is an ability to pay case and contiguity as such has nothing to do with the availability of county revenues.

It is the function of this panel to weigh the parties' cases against the statutory factors they have employed to support their respective cases. Community comparisons are a part of the process and these parties have demonstrated their awareness of that fact. But comparisons must be made with similar communities, counties, and the counties advanced by the Union are not relevantly similar.

Benzie is a rural county with strongly seasonal tourist-resort characteristics. It has a population of around eleven thousand persons. It has no heavy industry. Union Exhibit 8 compares the state equalized valuation of Benzie's property with that of the county-comparables selected by the Union: Leelanau, Manistee, Wexford and Grand Traverse. The Exhibit shows that Benzie ranks second with a per capita state equalized valuation of $15,791. But it also shows the vastly more relevant total equalized valuation.

COMPARABILITY, (cont'd.)

Union Exhibit 8 shows that Benzie County is far and away the least populous of the Union's comparable counties. And it also shows that the state equalized value of property in Benzie County in no way whatever begins to compare with the state equalized valuation in the other counties cited by the Union. That is beyond cavil. The resultant conclusion is, and must be, that Benzie County is in no way relevantly similar to the counties chosen by the Union as comparable with it in point of the value of property available for tax revenue. The Union observes in its post-hearing brief that somehow Benzie County is advantaged from its low population and low state equalized valuation. That appears to be non sequitur. The availability of property for the production of tax revenue has no necessary connection with a county's population. State equalized evaluation of property results in a figure which is a state tax tribunal produced fact based, under the Tax Tribunal Act, upon the fact of the existence of property. Per capita rendition of it is artificial and meaningless.

The panel has no intention of adding to the expense of this opinion and order the inclusion in it of all of the parties evidentiary exhibits. Those exhibits will be filed with the Michigan Employment Security Commission. But it feels strongly enough about the business of comparability to illustrate here its conclusions about the counties the Union has selected. The populations of Benzie, Leelanau, Manistee, Wexford, and Grand Traverse Counties are, respectively, From Union Exhibit 8, 11,205; 14,007; 23,019; 25,102 and 54,899. In the same order, the state equalized valuations of those counties are: $176,936,715; $369,844,013; $299,634,686; $257,060,922 and $818,524,954. There is simply no relevant comparability among the Union's selections.

COMPARABILITY, (cont'd.)

The seven counties chosen by Benzie County as its comparables are, on the other hand, similar to Benzie County as is shown by County Exhibit 6; similar in population and in total state equalized valuation. Further, they are rural counties without heavy industrial bases. County Exhibit 6 shows that there is a spread of about five thousand in the populations of the seven counties chosen by the County as its comparables. Union Exhibit 8 shows a spread of some forty-three thousand among the populations of the Union's comparables. County Exhibit 6 shows a spread of about $20,000,000 among the County comparables' state equalized valuations. Among the Union's comparables Union Exhibit 8 shows a spread of some $600,000,000! Without a scintilla of doubt the County's comparables are far more appropriate than the Union's comparables, and the panel adopts the comparables advanced by the County. The significance of that adoption for some of the economic issues in this case will become apparent, below, in the disposition of those issues.

ORDERS

The orders of the panel are set out, below, in sections which identify the issues. Certain of the issues on which the parties are at impasse are disposed of on bases other than the County's ability to pay and comparability arguments and the Union's comparability arguments. Those issues will be disposed of first.

In the case of the issues which the parties have denominated Statements, Duration, Call-in Coverage, Work Schedule, Call-in Overtime and Sick Leave, the County has raised issues on which it seeks "clarification" of language in the text of the expired labor agreement, or about which it seeks to conform the language to its concept of governing law, or about which it feels it can

ORDERS, (cont'd.)

have relief from the panel regarding restrictions on its use of manpower arising from the language of the expired labor agreement. The Union's position on all of these issues is that the status quo ante expiration of the agreement should continue and that the language should remain unchanged.

The panel grants the Union's position and denies the County's position on these issues. The County has made no case on grounds of comparability, and its case on ability to pay has no merit in view of the panel's disposition of the issue of wages and the other economic issues. For all this panel knows to the contrary on the record of this case all of the collective bargaining language here put at issue by the County was negotiated into being by the County in the first place and, presumably, there were bargained quid pro quos attendant to it which are no longer present in this set of negotiations. The panel sees no reason to disturb the language.

SHIFT PREMIUM.

The Union's demand is denied. The Union relies upon the fact that one-half of the courties it cites as comparables grant some form of shift premium to public safety employees. But, by the same token, the conclusion is inescapable, and the panel notes, that one-half of the Union's comparables do not grant some form of shift premium. That hardly makes a case for granting the Union's demand. What the Union seeks here is a novelty in the parties' relationship. It seeks to create a premier shift in a relationship and in a set of long-standing working conditions. The Union's case is insufficient to warrant that result.

ORDERS, (cont'd.)

HOLIDAYS.

Union Exhibit 21 shows that even among the counties the Union chose as comparables only one of them grants its employees more paid time off than Benzie County grants the employees involved in these proceedings. And the evidence in the record and the County's post hearing brief show that all of the County's employees, bargaining unit and non-bargaining unit, including the employees here involved, receive twelve paid days off. In that state of evidence and argument there is no basis upon which to grant the Union's demand for fourteen paid days off by increasing the holiday portion of the total allotment of paid time off from eight to ten days. There is no basis for a contrary result in either the Union's failed evidence of comparability or in internal comparability. The County's position is granted.

LONGEVITY.

The last offer of the County on this issue is that the current situation of the employees involved in this case be maintained by the panel; in short, that there be no longevity payments to those employees. But the obligation of the panel is to apply the statutory standards which have governed its disposition of other issues in these proceedings. True it is that the Union's comparables do not preponderate in the direction of a grant of this demand because only one-half of those rejected comparables support the Union's demand. Yet, because the panel has resorted to internal comparability to support its order regarding holidays, it will employ that same standard here while noting that the County has argued against an award to the Union only on grounds of cost, without resort to its own, accepted, comparables. The Union's demand is granted. This does not minimize the County's argument on the subject of costs, but it does recognize that the panel's disposition of the issues of wages and pensions ought to make the County's cost argument well-nigh irrelevant here. At the same time the

ORDERS, (cont'd.)

panel recognizes that its task is to assess the last offers of the parties under the statute. Surely the Union's demand more closely parallels the settlement the County made with AFSCME on April 20, 1983, County Exhibit 9, for the period 1/1/83 - 12/31/85 than does the County's refusal of longevity payments. Here the panel's earlier remarks about internal comparability squarely apply; particularly because the County's denial is based on costs relative to this issue.

SICKNESS & ACCIDENT PLAN.

The only evidence adduced by the Union relative to this demand is that regarding one employee who is unable to perform the movement aspects of her job as a result of illness, and whose return to work was refused by the County on those grounds. The Union cites no evidence, not even of its own comparables, in support of the details of this demand for $120 per week for a period of up to five years of illness. The County's refusal of the demand is sustained by the panel.

WAGES.

No party has made an issue of wages for any part of 1983, and that fact is acknowledged at page 5 of the Union's post-hearing brief. The County has offered a 5% across the board for the deputy sheriffs and dispatch employees whose case is here at issue, effective January 1, 1984, and another such increase effective January 1, 1985, on the rates of pay then obtaining. This is, therefore , not a case where the County's ability to pay stance is a justification for a wage freeze for the periods put at issue by both parties: 1984 and 1985. By the same token the parties have agreed upon an effective date for their renewed collective bargaining agreement: January 1, 1984. There is no reason for the panel to interfere with the effective date selected by both parties.

Nor will the panel follow the Union's or the County's references to the year 1982 in the parties' discussions of wages. The evidence unambiguously shows that 1982, in its entirety, was a part of the term of the expired collective bargaining agreement. As such 1982 has no part in these proceedings.

County Exhibit 2 clearly shows the County's General Fund deficit situation from 1979 through January 31, 1984. That, together with the testimonial evidence of Commissioner Gray and Treasurer Mead, the auditor's report in evidence, the evidence of a wage freeze for all County employees during 1983, and the settlement by other County bargaining unit employees, not represented by POAM, for less than 5% increases for the period here at issue, makes the County's case on ability to pay preponderant. County Exhibit 6 also preponderates in the direction of support for the County's wage offer, as does the text of page 7 of the County's post hearing brief. Nowhere does acceptable evidence based on the comparable communuties adopted by the panel support the Union's demand for 14% and 20% wage increases for 1984 and 1985, respectively. As to the Union's feeling that there ought to be a pay differentiation between members of this bargaining unit and other employees, based on job content, the panel has to observe that the evidence shows that bargaining unit employees of the County who are not represented by this Union did in fact settle their wage demands for 1984 and 1985 for less than 5%. See page 4, County post-hearing brief. Whether the differentiation is sufficient or satisfactory is a "philosophical" question with which the panel cannot deal. In the Chairman's opinion most public safety employees are underpaid, everywhere. But the panel must judge Act 312 cases on their evidence. At any rate, internal comparison, here invoked by the Union, shows a distinction in the wage settlements of POAM and non-POAM bargaining unit employees.

ORDERS, (cont'd.)
WAGES, (cont'd.)

The Union's attempts to compare its wage demands with the increases granted to County management employees may be inapt on grounds alone that such employees are not represented by a Union. But the evidence the Union elicited from Treasurer Mead shows that the Treasurer was subjected to a wage freeze in and during 1983, and that the increase he was granted for 1984 is $1000. That, on a salary of $22,000.00, a year would appear to be about 5%.

The panel grants the County's wage proposal, and orders it to be paid effective January 1, 1984.

PENSIONS.

The Union's demands regarding reduction of normal retirement age, final average compensation and pension multiplier are all denied. The Union's urgent arguments relative to these demands are at variance with its willingness to postpone implementation of them until December 31, 1985, as is stated at pages 13 and 14 of its post-hearing brief. Particularly in view of the Duration clause of the expired agreement, paragraph 28.2 of that agreement, and the granting of the Union's position on that language by this panel, it would be a meddlesome interference with future negotiations in which this panel will not be involved for the panel to do otherwise.

At the same time, the County is cautioned by the panel that these issues will undoubtedly grow in importance as its deputy-dispatch employees age, and that this set of issues apparently looms large in future negotiations.

As to the Union's demand for increased duty-disability to be effective with a new agreement, the Union's arguments are not supported by evidence of comparability or cost. The demand is denied.

ORDERS, (contd.)

EFFECTIVE DATE OF AGREEMENT.

The effective date of the parties' collective bargaining agreement here at issue shall be January 1, 1984, unless the parties otherwise agree. The proviso regarding party agreement is stated only to cover the contingency that the parties may agree to have a new agreement appear to be tne direct chronological successor of the agreement which expired on December 31, 1982. If the parties do not prefer that result the gap in time between the expiration of the former agreement and January 1, 1984, will be bridged by the Duration clause of the expired agreement, paragraph 28.2 of that agreement.

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William Birdseye Police Delegate	John W. Scott Chairman.	Charles L. Hitesman County Delegate
	August 27, 1984 (date)	
9/6/84 (date)		September 4, 1984 (date)