

9/19/77  
ARB

STATE OF MICHIGAN  
BEFORE THE DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

IN RE:

OGEMAW COUNTY (SHERIFF'S DEPARTMENT)

-AND-

UNITED STEELWORKERS OF AMERICA,  
DISTRICT 29

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Ogemaw County

PERA CASE NUMBER D76 L3657

The arbitrator, B. J. George, Jr., was appointed by letter from Robert Pisarski, Director, Michigan Employment Relations Commission, dated February 11, 1977, to serve as chairperson of a panel of arbitrators in the above-captioned matter, pursuant to the Police-Firefighters Arbitration Act [1969 P.A. 312, as amended]. By that time, both collective bargaining and mediation efforts, required under the act, had been exhausted without success.

The parties to the dispute, as indicated in the caption, are Ogemaw County (Sheriff's Department) [hereinafter, "County"] and District 29 of the United Steelworkers of America [hereinafter, "Union"]. The County designated as its arbitration panel member

George, B.J. Jr.

Ernest Thompson, and the Union as its member John D.

Prior. A preliminary meeting of the panel and counsel for the parties, to identify issues, was held in Bay City April 21, 1977, and a formal meeting convened in the matter on July 1, 1977, at the Ogemaw County Building, West Branch. By agreement of the parties, last and best offers and briefs in support of each party's position were mailed to the arbitrator August 26, 1977, and received by him August 30, 1977. A full stenographic transcript of the July 1st proceedings and all exhibits submitted by the parties are in the possession of the arbitrator.

The parties agreed at the formal hearing that the period of the contract to which this arbitration relates is for calendar year 1977 [Transcript p. 17]. The only two issues submitted for arbitration are (1) the hourly wage rates under article XV of the contract [Union exhibit number 4] and (2) the question of retroactivity of the rates established under (1). Both are submitted as economic issues under section 8 of the act [M. C. L. A. § 423.238] concerning which last and best offers are to be tendered [Transcript pp. 3-4]; the panel finds that both issues are indeed economic within the terms and meaning of the statute.

Under the 1976 agreement [article XV], the hourly wage rates governing the Union are:

Captain	\$ 4.89
Sergeant	4.84
Deputies	4.80
Matron	2.75

The rates are computed on 2,080 hours a work-year, and the full hourly rate is earned upon three years of service with the department. Overtime compensation is provided for all hours worked over eight hours a day and forty hours in any work week, or for all hours worked after an employee works eight consecutive hours [Contract article XIII(B)]. Members of the unit whose base salary, for example, was \$9,984.80 earned between \$10,515 and \$11,314 because of overtime; one deputy with less than three years' seniority had a base salary of \$9,585 but with overtime was paid \$11,457 [Union exhibit number 6].

The County has offered as data the Michigan Employment Security Commission's 1976 Ogemaw County area labor market review [County exhibit number 1]. The review indicates that of six northeast Michigan counties viewed as relatively comparable, Ogemaw County stands third in population but by 1985 is projected to have become fourth, with a much lower total net growth than the three counties which will grow substantially (Gladwin, Iosco and Roscommon Counties). It has a relatively small manufacturing base; government employed one-quarter of the labor force in 1975. In contrast to the statewide trend toward a younger popula-

tion, the median age of Ogemaw County residents is increasing, particularly in the rural portions of the county.

The County [exhibits numbers 2, 6-7] offered data from private manufacturing corporations in the West Branch area showing wage rates for unskilled and semiskilled employees ranging from \$3.32 per hour to \$5.60 an hour; skilled (particularly trade) workers received up to \$11.75 hourly. The average rate for all employees in 1976 was \$6.05 or, excluding those in the building trades, \$5.32. The Union's position [Brief, page 5] is that private sector employment is not germane to a determination of salaries of law enforcement officers.

Both parties offered in evidence information on salaries in sheriff's departments in other counties; Gladwin and Roscommon Counties were the only two offered by both the County and the Union. In addition, the County used Arenac and Iosco for a total of five comparable counties (including Ogemaw); its choice was based on the fact that all lie along I-75 and three are within the same judicial circuit [Transcript page 12]. The union offered, in addition to Gladwin and Roscommon Counties, Clare, Crawford, Kalkaska, Osceola and Otsego Counties for a total (with Ogemaw County) of eight counties, all in northern Michigan and of arguably similar demography and economy [Union's brief page 4; see also Transcript pages 13-16]. The County's statistics, based on wages actually paid to full-time deputies, showed a range of from

\$10,074 (Roscommon County) to \$11,886 (Gladwin County); the Ogemaw County average of \$10,976 placed it in third position. On the base of hourly rates, the range was between \$4.84 in Roscommon County and \$5.52 (Gladwin County), with the Ogemaw County average hourly rate of \$5.28 again placing it third on the list. The County [Brief page 3] also submitted data showing the current average salary of \$10,976 to be above the West Branch City Police Department average of \$10,690, and the actual hourly average rate of \$5.28 to be well above the average rate for all other courthouse employees of \$4.05.

The Union's figures for the counties it selected [Union brief, Exhibit A] reveal a top salary for deputies ranging from \$9,700 (Crawford County) to \$11,100 (Otsego County), with the submitted Ogemaw County figure of \$9,900 placing it second from the bottom; actual salaries based on receipt of overtime were not tendered. An alternative array of counties, including certain Upper Peninsula counties, placed Ogemaw County at the bottom of the scale.

The County's last and best offer [Brief page 6] is for an hourly increase of thirty cents (\$0.30) over the hourly rates under the 1976 agreement. The Union's corresponding offer is an hourly increase of forty cents (\$0.40) [Brief page 6].

A majority of the panel concludes that the County's last and best offer is relatively the more consonant with the factors set forth in section 9 of the act [M. C. L. A. § 423.239], particularly

those in subsection (c) ("the interests and welfare of the public and the financial ability of the unit of government to meet those costs") and subsection (d) (comparative salaries in the public and private sectors). The County has not contended that it is financially unable to pay the difference between its and the Union's last and best offer (ten cents an hour), but the panel may properly consider the current state of the local economy; Ogemaw County does not prosper currently in relation to other counties offered as otherwise comparable, and the Union's contention that its tax base is growing rapidly [Union brief page 5] is not documented so as to refute the implication to be drawn from the MESAC review [County exhibit number 1]. An increase of thirty cents will place the sheriff's department deputies at approximately the midrange of the counties offered as comparable (a ranking not appreciably affected were the Union's last and best offer to have been accepted by the panel); while the arbitrator has not been able to compute a ranking on the basis of the County's mode of tendering comparative data, there is no reason to believe that a much different relative ranking would be achieved. A thirty-cents-per-hour increase will leave employees of the bargaining unit appreciably better paid than most other county employees and the West Branch Police Department staff, as well as most employees of area private manufacturers.

The second economic issue is that of retroactivity. The position of the County is that the award of wage rates should be prospective from the date of this opinion, September 19, 1977

[Transcript pages 6-8] (or perhaps either July 1 or August 1, 1977, depending on how one construes the statement that "[w]e would be willing to start prospectively from the date of the panel's decision, if it was July 1st or August 1st, and pay anything from that date on" [Transcript page 8, statement of Charles W. Jennings, counsel for the County]). The basis asserted by the County, apparently, is that retroactivity was not specified as one of the points to be determined through collective bargaining [Transcript page 7, statement of Charles W. Jennings]; the matter was not further elaborated upon in the County's brief of August 26, 1977.

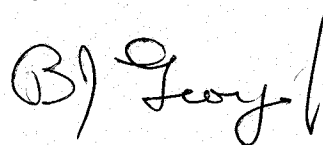
The Union has established that its initial request, which triggered the sequence of procedures called for by Act 312, was submitted to the Michigan Employment Relations Commission on November 30, 1976 [Union exhibit number 2 (letter to the parties from MERC Director Pisarski), and see Union exhibit number 1 (preliminary notice of mediation by MERC member Milmet)], well before the expiry of the 1976 agreement. Thereafter, all steps required under the statute were complied with within a time framework apparently acceptable to both parties, since no protests were submitted by either party concerning any action undertaken under the statute.

A majority of the panel accepts the Union's position that the award should be retroactive to January 1, 1977. Although it is regrettable that relatively simple issues could not have been resolved early in 1977, the parties acquiesced in a somewhat

relaxed schedule. Therefore, either no blame can be assessed for the delay in reaching a decision, or both parties are equally at fault in the matter. Section 10 of the statute [M.C.L.A. § 423.240] clearly allows an award to be made retroactive to the beginning of a fiscal year (in this instance, calendar year 1977). Because the contract is for one year only, a majority of the panel feels it unfair to the members of the bargaining unit not to make the award effective on and from January 1, 1977 for all purposes, including computation of overtime pay and any other employee benefits based on hourly rates of pay.

The foregoing opinion disposes of all issues submitted by the parties under Act 312, and reflects the view of a majority of the panel on each issue. The arbitrator expresses appreciation for the helpful preparation by counsel of data important to the panel's decision.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "B. J. Geary".

Arbitrator and Chairperson

September 19, 1977