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STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BUREAU OF EMPLOYEE RELATIONS
EMPLOYMENT RELATIONS COMMISSION
ACT 312 ARBITRATION

In the Matter of the Act 312
Arbitration Between

COUNTY OF OTTAWA,
SHERIFF'S DEPARTMENT,

and

MERC Case No: L96 H-6011
Act 312 Arbitration

POLICE OFFICERS ASSOCIATION
OF MICHIGAN

ARBITRATION PANEL'S OPINION AND AWARD

APPEARANCES:

FOR OTTAWA COUNTY:

Norman E. Jabin, Esq., Attorney
Rich Schurkamp, Pers. & Lab. Rel. Manager
Rosemary Zink, Finance Director
Bob Adkins, Personnel Specialist
Gary Rosema, Sheriff

FOR POLICE OFFICERS ASSOCIATION
OF MICHIGAN:

Joel Otting, President
Mark R. Bennett, Treasurer
Thomas Clement, Ex. Board Member
Patrick Spidell, POAM Bus. Agent

PANEL MEMBERS:

George T. Roumell, Jr., Chairman
Richard Schurkamp, Employer Delegate
Patrick Spidell, Union Delegate

Background

The Police Officers Association of Michigan for Detectives and Road Patrol Deputies has been the certified agent for all full-time and regular part-time sheriff's deputies, detectives, dog wardens, clerk-typists/matrons, stenographer/matrons, cooks and maintenance turnkeys

Ottawa County

employed by the Ottawa County Sheriff's Department for some period of time, having been certified on November 20, 1989. The parties, since certification, have had several collective bargaining agreements, with the current contract expiring on December 31, 1996. There are approximately 90 employees in the bargaining unit with approximately 75 covered by the provisions of Act 312, Public Acts of 1969, as amended. Though the parties did engage in bargaining for a successor contract and had two mediation meetings, on March 24, 1997 and April 7, 1997, agreement was not reached. As a result, on September 2, 1997, the POAM filed a Petition to invoke proceedings under Act 312. The issues that were in dispute, as expressed in said Petition, were:

1. Duration
2. Wages - Road Patrol
3. Wages - Detectives
4. Special Unit Pay
5. Retiree Health Insurance - Premium
6. Compensatory Time
7. Clothing Allowance - Plain Clothes
8. Joint Health/Safety Committee
9. MIOSHA Standards
10. Part-Time Employees

The Chairman was appointed by letter dated October 15, 1997. After consulting with the parties, the Chairman conducted a pretrial hearing on December 23, 1997. At that time, the Chairman was advised that on at least two recent occasions, the parties had utilized Act 312

proceedings to reach agreement, one being a contested hearing and the second being a stipulated award. This fact alerted the Chairman to what he perceived was the need for the parties to continue bargaining. For this reason, at the pre-trial hearing, the Chairman remanded the matter back to the parties, pursuant to the Act, for further negotiations.

In doing so, the Chairman went through all of the outstanding issues between the parties and made suggestions as to possible settlement. The parties returned to bargaining but were not able to resolve all issues. For this reason, the Chairman set a hearing date for Tuesday, July 7, 1998 at 9:00 AM. In the meantime, the Chairman requested the parties to advise him of the outstanding issues and settlements.

By letter dated June 23, 1998, from Patrick J. Spidell, Business Agent, POAM, to the attorney for the County, Norman E. Jabin, the POAM set forth the issues between the parties as follows:

As requested by George Roumell, Jr., this is the position of the Union in this matter. I have enclosed exhibits pertaining to Health Care and Pension.

The Union believes the following issues are resolved:

1. Duration: January 1, 1997 through December 31, 1999.
2. Wages: Effective January 1, 1997 - 2.8% across all steps
Effective January 1, 1998 - 2.8% across all steps
Effective January 1, 1999 - 2.8% across all steps
3. Detective rate: 106% of top deputy rate.
4. Retiree Health Contribution: Raise to \$5.00 per month effective date of award.
5. Clothing Allowance: Plainclothes effective January 1, 1997
- increase from \$250.00 to \$300.00 every six months.

6. Part-Time Employees: In the event of layoffs or reductions in force, part-time deputies to be laid off prior to any full-time deputies.
7. Compensatory Time: Status quo.

UNRESOLVED ISSUES

1. Special Unit Pay: Current pay \$150.00 every six months.

The Union proposes to add critical response team and dive team to old language in section 14.2 of deputies contract. These two specialties put in as much extra training and prep time as any of the other special units and frequently meet during off-duty hours.

2. Health Insurance: Union proposes to maintain language from 1996 deputies contract. The sergeants contract has the same language as the deputies.
3. Pension: The Union proposes that the deputies be allowed to buy, by payroll deduction, the MERS pension improvement from B-3 (2.25% multiplier) to B-4 (2.5% multiplier), actuarial assumption by MERS to determine cost.

Additionally, Ottawa County just bought the County Administrator a 2.5% MERS multiplier (B-4).

In response to this letter, Attorney Jabin, under date of June 25, 1998, stated:

I have received your letter of June 23, 1998, with attachments. Insofar as the issues that are resolved, I agree with your summary except for one error in your statement regarding wages. In the third year of the agreement, wages will be based on COLA as determined in the usual fashion under the Headlee amendment formula. For the third year of the agreement, I am told this has been determined to be 2.7%. I am sure the Arbitrator's notes on this point will confirm this item as stated here.

Pursuant to the Arbitrator's direction, I am submitting the enclosed proposed exhibits.

With respect to the open items, the Employer's position is as follows:

1. Special Unit Pay. There is nothing in the County's studies that justifies special pay for critical response team or dive team members. In addition, the pay as presently provided on an annual basis is fair.
2. Health Insurance. Cafeteria and Flexible spending account plans per county's offer of 12/9/96.
3. Pension. Neither external nor internal comparable justify any support for the proposed increase.

Please let me know if you have any questions.

By the time the parties met with the Chairman and the Panel on July 7, 1998, they had agreed on the issues set forth, Items 1 through 7 in Mr. Spidell's letter, with Mr. Spidell acknowledging on the record that the wage increase for January 1, 1999 would be 2.7% rather than the reported 2.8%. There was some concern over the payment of the clothing allowance and, in particular, the effective dates. After discussion between the parties, the parties agreed to the following provision as to clothing allowance:

Plain clothes personnel will be paid a clothing allowance for the remainder of this agreement as follows:

August 1, 1998	\$450
February 1, 1999	\$300
August 1, 1999	\$300

No retroactive payment will be paid on this item in the award.

This left the issues of special unit pay, health insurance, and pensions. As to special unit pay, the POAM was seeking additional pay plus adding the critical response team and dive team.

Based upon the offer of POAM set forth in Mr. Spidell's June 3, 1998 letter, the County was agreeable to the proposal, namely, that the stipend remain as in the current contract, \$150 every six months, but added the critical response team and dive team to those employees receiving special unit pay. The language of Section 14.2 would remain, with the addition of these two groups of employees.

As to health insurance, the Union proposed to continue the language in the current 1996 deputy contract based on the proposition that the command contract, which had been settled for the period involved, has the same language as the previous deputy contract. The County agreed to this change.

As a result, the Panel will enter a stipulated award on Items 1 through 7 listed in Mr. Spidell's letter, as amended, to recognize that the January 1, 1999 increase is 2.7% across the board and the change as to the clothing allowance, as well as the above-stated agreement as to special unit pay and health insurance. This means that the only issue remaining between the parties is the issue of pensions.

Thus, the remand had served its purpose in that the parties were able to resolve all outstanding issues except one, which meant that the hearing could be conducted in one day and that the Opinion and Award would be issued expeditiously. The Chairman complements the parties for their effort and hopes that this spirit might, in the future, encourage the parties to reach agreement without the aid of Act 312 proceedings.

Criteria

Act 312, in Section 9 (MCLA 423.239) sets forth the criteria that is to be followed by an arbitration panel in reaching an award. There are eight criteria set forth in the statute. As to the

pension issue between the parties, there are four factors that are particular applicable, namely:

* * *

(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.

* * *

(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.

* * *

(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.

Pensions, obviously, involve costs and costs are always a consideration. Here, as the Union is prepared to assume the increased cost, the issue becomes more focused on applying the comparison criteria. The question of the benefit sought must be compared not only with similarly situated employees working for other public bodies, but also internally within Ottawa

County. Finally, after reviewing the cost issue and the comparables, the Panel should consider other factors, such as the history of bargaining and the art of the possible in a given situation.

In addition, a very distinguished arbitrator, Theodore St. Antoine of the University of Michigan Law School, in two recent Act 312 arbitration proceedings, pointed out that as to an Act 312 panel, to best preserve healthy, voluntary collective bargaining, "the soundest approach for an outsider in resolving union-employer disputes is to try to replicate the settlement the parties themselves would have reached, had their negotiations been successful." *See, e.g., County of Saginaw and Fraternal Order of Police*, MERC Case No. L90 B 0797 (1992); *Macomb County Professional Deputies Association and County of Macomb*, MERC Case No. E91 I-1674 (1992). This is, indeed, an appropriate consideration and falls within the concept of Section 9(h).

The Pension Issue

As to Pensions, the collective bargaining agreement, expiring December 31, 1996, provided in Article XV, Retirement, in 15.1(iii):

For employees in the classifications of Detective and Road Patrol Deputy: The Employer shall pay all costs, including the employee's portion, of the current retirement plan in accordance with provisions of the law. The retirement plan is the Municipal Employees Retirement System (MERS) C-2 Plan with B-1 base. In addition, a F-50 waiver (after 5 years of service) and the E-2 benefit is included in the retirement plan. Effective 12/21/94: The Employer shall assume the full costs for improving the (MERS) retirement system to benefit level B-3 for all years of service.

The reference to B-3 provides for a 2.25% multiplier.

The County, throughout these proceedings and in its last best offer, sought to maintain

the status quo. The POAM, as set forth in Mr. Spidell's letter of June 23, 1998, seeks to have the MERS pension plan changed from a B-3 to a B-4, meaning that the multiplier would be increased to 2.5%. The POAM also proposed that its members would pay any increased cost for this change. It is noted that under the contract as it exists, detectives and road patrol "shall pay 1% of the annual MERS reportable wages toward the cost of the retirement plan."

The Chairman made inquiries of the parties as to whether or not, as of the date of the hearing, Tuesday, July 7, 1998, there was a current actuarial evaluation to determine what the increase might be. The only actuarial report shared with the Panel was the report that was about a year and a half old at the time of the hearing. The fact is, the parties did not know with any certainty what the increased cost might be, going from a B-3 to a B-4. This factor caused the Association to modify its position as reflected in its last best offer, to be discussed below.

The parties are not in dispute over the external comparables, namely the surrounding county sheriff's departments, Allegan, Kent, Muskegon and Ottawa. Three of these counties' sheriff's departments have MERS pension plans, namely Allegan, Muskegon and Ottawa. Kent County has a plan pursuant to Act 156. Allegan County's plan is a B-2 plan, Muskegon, a B-4 and Ottawa, a B-3. As a result, the current pension multiplier of these external comparables are:

Pension Multiplier:

Allegan	2%
Kent	2.25%
Muskegon	2.5%
Ottawa	2.25%

The pension costs of the current plans are as follows:

	<u>Employee Cost</u>	<u>Employer Cost (2)</u>
Allegan	0	9.55%
Kent	4.5% (1)	1996 - 11.07%
Muskegon	2.18%	13.35%
Ottawa	1%	14.01%

1 % of gross salary

2 % of payroll

Except for Allegan, which only has a B-2 plan, i.e., a 2% multiplier, the Ottawa detectives and road patrol deputies pay the least amount toward their pension costs than the comparables, i.e. 1%. In addition, the employer in Ottawa pays the highest amount toward pensions, 14.01%. There are cost of living adjustments in each plan except Muskegon, which are as follows:

<u>(COLA)</u>	<u>Pension: Cost of Living Adjustment</u>
Allegan*	E-1
Kent**	1% (max.) per year as related to CPI
Muskegon	None
Ottawa	E-2

* Not a proposal for adjustment at 312 hearing.

** Union has proposed 2%.

The E-2 plan in Ottawa provides for up to 2 ½ % increase based on the Consumer Price Index. This means that Ottawa has the highest cost of living adjustment among the comparables, which was awarded, apparently, in the previous Act 312 arbitration. As to early retirement, the

comparables reveal:

	<u>Pension: Early Retirement</u>
Allegan	F55/15
Kent	25 years of service regardless of age 15 years of service at age 55 years (\$s reduced according to age 5 years of service at age 60 years (with no reduction for age)
Muskegon	F55/25
Ottawa	F50/25

The comparables would suggest that Ottawa provides for the earliest retirement, namely, age 50 and 25 years of service.

In summary, there can be no dispute that in comparison to the external comparables, the Ottawa detectives and road patrol deputies have the most favorable pension plan, namely, an earlier retirement; less employee contribution; and a more favorable cost of living provision. However, Muskegon does have the B-4, 2.5% multiplier, but with no provisions for cost of living, a F55/25, and a 2.18% employee contribution.

Within the County itself the comparables reveal:

	Multiplier	Contribution	COLA	Age	Employees	Term
Teamsters	2% (B-2)	0	No	55/25	274	97-99
MNA	2 1/4% (B-3)	4.1%	No	55/25	40	97-99
Unclassified	2 1/4% (B-3)	2%	E-2	55/25	149	N/A
Dist. Court	C-1	0	No	55/25	41	97-99
FOC	C-1	0	No	55/25	25	*

Juv. Court	C-1	0	No	55/25	47	97-99
POAM (non eligible)	C-2, B-1 Base	0	No	F55/25	45	97-99
Command Officers	B-3	1%	E-2	50/25	19	97-99
POAM Eligible	B-3	1%	E-2	50/25	74	-

The internal comparisons reveal that three groups within the County have a C-1 plan, which is a 1.5% multiplier, namely, the District Court, the Friend of the Court and Juvenile Court, but pay no contribution toward the plan, nor do they have cost of living. The District Court settled for 1997-99, as has the Juvenile Court. The Friend of the Court is in fact-finding, seeking to improve their plan. However, based upon the internal comparisons, a fact-finder would be well advised to recommend an employee contribution to the cost, because this is the pattern in Ottawa County.

The Teamsters, in the current contract, 1997-99, received an improvement to a B-2, i.e., 2%. But in obtaining this improvement, the Teamsters took a wage freeze and therefore paid for the improvement. The MNA apparently received an improvement to a B-3, but have a contribution of 4.1%. Both the Teamsters and the MNA do not have an E-2. The unclassified group, who have an E-2 but a 55/25 retirement, and have a 2.25% multiplier or B-3, are paying 2%, which is higher than the Sheriff's Deputies. The non-eligible POAM have a B-1 base and pay no contribution, nor do they have a cost of living provision.

The Command Officers settled the contract for 1997-99 and continued the same pension

plan as in the previous agreement, which is consistent with the County's last best offer to the Deputies.

In summary, any improvements in the pension plan negotiated by the County currently have resulted in the employees either making a contribution higher than the Deputies or, as in the case of the Teamsters, agreeing to a wage freeze.

Building upon the proposition that, based on both the external and internal comparables, the deputies and detectives have a favorable pension plan, the County's counsel made an eloquent closing statement in support of the County's last best offer of no change in the pension plan. He argued that there was no justification for any change in the pension plan; that the County must be concerned about costs; that pension costs are not stable but depend upon actuarial assumptions which are periodically made; that even under the present plan, the County is paying a higher cost as compared to the externals; that based upon the Deputies' favorable plan, there is "no justification" for change in the status quo; that the Deputies' position puts the County in an untenable position of having the supervisors of the deputies and detectives receiving a pension with a 2.25% multiplier while the deputies and detectives receive a 2.5% multiplier; that this will put undue pressure on the County in future negotiations with the command, as well as other bargaining units; that in effect, rewarding the deputies and detectives would discourage the command from settling without the aid of Act 312.

As to the latter point, this Chairman cannot emphasize the potency of this argument because this bargaining unit has perhaps been overutilizing Act 312. Hopefully, as a result of this 312 award, the underlying issues between the parties have been resolved so that the successor contract, beginning on January 1, 2000, can be consummated without the use of Act

312.

The problem the County has is the external comparables. The fact that the deputies and detectives have a favorable early retirement plan, 50 and 25 years, is historical, as is the E-2, which apparently came about, as noted, as the result of Act 312.

Note what is happening among the surrounding counties, Allegan and Kent. There is a push, in the case of Allegan to B-4 and, in the case of Kent, to a 2.5% multiplier. A footnote to one of the admitted exhibits sets forth the current bargaining status in Allegan and Kent counties, as follows:

(as to Allegan)

312 Arbitration hearing held May 12, 1998: County and Union both proposed B-4 benefit; Union offered to pay 3.2% for the upgrade from B-2 which was actuarial determined cost; County proposed 5% which reflected a total of actuarial cost plus a recognition that County had also negotiated with other bargaining groups to begin contributing 2-4% for their B-2 plan. Also, County had successfully negotiated a 5% contribution with Command Officers for the B-4.

(as to Kent)

They are winding down their bargaining efforts; have one more session scheduled for 6/22, but understand a 312 petition has already been filed. The only issue separating the sides is the pension. The County has offered a 2.5% multiplier (same as was offered other bargaining units), but wants the employee contribution increase to 6.5%. (The Union wants the enhancement, but not willing to increase their contribution). The County has also offered a FAC of 3 years versus current 5. Additionally, the Union wants a COLA of up to 2% yearly and the County is opposed.

There is no question that Allegan will reach the B-4 benefit and 2.5% multiplier as both County and Union have proposed same. Apparently, however, there will be an employee contribution in

Allegan. The amount of that contribution is not clear at this point, and will have to wait for the 312 award. It is noted, however, that the command in Allegan county has agreed to a 5% contribution.

Whether Kent County will provide the 2.5% multiplier is yet to be determined, because of a dispute over the employee contribution, with the county seeking an increase in contribution from 4.5% to 6.5%. In any event, the Allegan deputies, with B-4 and 2.5% multiplier, will be paying a contribution, higher than the current contribution in Ottawa. This will also be the case whether it remains at 4.5% in Kent, or goes to 6.5%.

The point is, there is a trend in the geographical area wherein Ottawa is situated whereby deputies and detectives are reaching the 2.5% multiplier, but the trend also establishes that a 1% employee contribution is below the average.

Despite the arguments of the County's attorney, the trend as noted cannot be overlooked. At a minimum, a second county in the four-county area will be at 2.5% multiplier. There is the distinct possibility that Kent County will be at a 2.5% multiplier, so that Ottawa will be the only county not at 2.5%. Recognizing that police work has inherent dangers, it is understandable why this trend has developed in this western Michigan region.

Applying the comparable criteria as well as the Section 9H criteria, arbitrators and fact-finders do recognize trends. For this reason, the B-4 plan should be adopted in Ottawa County for sheriff deputies and detectives.

Having reached this point, however, the other trend cannot be ignored, namely, that the deputies and detectives must pay for the increase. Ottawa County, at a 14.1% cost, cannot afford, when compared to the comparables, to contribute any more costs to the pension plan.

The deputies and detectives recognize this with their initial offer, as set forth in Mr. Spidell's letter of June 23, 1998.

But there is the problem that, as of the hearing date, July 7, 1998, there was no current actuarial analysis as to the cost for the B-4 plan. It was this factor that caused the POAM to modify what became its last best offer over the statement made in the June 23, 1998 letter.

As presented to the Panel and even then, the Chairman encouraged an expansion on the date, the last best offer was that the Union shall receive, at its option, a B-4 plan at its members' cost. The option is that the Union will seek an actuarial study from MERS as to the cost of the B-4 plan within 30 days of this award, which is issued on August 5, 1998. Upon receipt of the actuarial analysis, the Union shall have 45 days from receipt of the actuary study to notify the County, through the County Administrator, Robert Oosterbann, as to the Union's decision to elect to receive the B-4 plan at the cost set forth in the actuarial study, or to decline to do so.

The view of the Chairman is that this offer is consistent with the trends; it is an offer that, if there were no Act 312, the parties would have reached after perhaps difficult negotiations because of the trends. Furthermore, in a previous award, the deputies did agree to the 1% contribution.

The statements contained in this Opinion are those of the Chairman. The Union delegate, Patrick Spidell, has joined in the award, awarding the POAM's last best offer. County delegate Richard Schurkamp dissents, adopting the eloquent arguments of the County's attorney as set forth in the record and as summarized by the Chairman.

The panel members, on behalf of their respective parties, have agreed to waive their

signatures and agree that the signature of the Chairman only is necessary for a valid award, with the recognition that the County delegate dissents from the award.

The award will be in two parts. There will be a stipulated award which is unanimous, repeating the settlement reached on all of the outstanding issues as of the date of the hearing, except pensions. There will be a separate award as to pensions.

AWARDS

Stipulated Award: The stipulated award of the parties unanimously adopted by the Panel are as follows:


1. Duration: January 1, 1997 through December 31, 1999.
2. Wages: Effective January 1, 1997 - 2.8% across all steps
Effective January 1, 1998 - 2.8% across all steps
Effective January 1, 1999 - 2.7% across all steps
3. Detective rate: 106% of top deputy rate.
4. Retiree Health Contribution: Raise to \$5.00 per month effective date of award.
5. Plain clothes personnel will be paid a clothing allowance for the remainder of this agreement as follows:

August 1, 1998	\$450
February 1, 1999	\$300
August 1, 1999	\$300

No retroactive payment will be paid on this item in the award.

6. Part-Time Employees: In the event of layoffs or reductions in force, part-time deputies to be laid off prior to any full-time deputies.

7. Compensatory Time: Status quo.
8. Special Units Pay: Current pay \$150.00 every six months for special units, to include critical response team and dive team.


GEORGE T. ROUMELL, JR.
Chairman

August 5, 1998

Award as to Pensions: The last best offer of POAM as to pensions is adopted by a majority of the panel, the Chairman and the Union delegate, with the County delegate dissenting, namely, that within thirty days of the date of this award, August 5, 1998, the POAM will order, at its cost, an actuarial study from MERS to determine the cost of the B-4 plan for the deputies and detectives. Within 45 days of receipt of that study, POAM shall notify the County, through its Administrator, Robert Oosterbaan, as to whether or not the Union membership will elect to adopt the B-4 plan, effective the date of election, with the additional cost for the B-4 plan to be borne by the Deputies and Detectives as set forth in the actuarial study. If the POAM does not notify the County within said 45 days, or notifies the County within said 45 days that the Deputies and Detectives do not wish the B-4 plan, then the B-4 plan shall not be adopted. But if there is a notification within said 45 days that the plan is desired by the Deputies and Detectives, it will be adopted effective the date of notification, but the increased cost as set forth in said study for the B-4 plan shall be borne by the Deputies and Detectives.


GEORGE T. ROUMELL, JR.
Chairman

August 5, 1998