

3/17/92
Arb.

In the Matter of 312 Arbitration
Between:

MERC Case No. L90 B-0796

SAGINAW COUNTRY

-and-

LABOR COUNCIL, MICHIGAN FRATERNAL
ORDER OF POLICE, SAGINAW COUNTY
COMMAND OFFICERS UNIT II

FINDINGS AND OPINIONS

Arbitration Panel

 Chairman

Peter C. Jensen, Employer Designee

James J. Quinn, Union Designee

Hearing Held

State Bar Building, Lansing, Michigan

November 7, 1991

Appearances

For the County

Peter C. Jensen, Attorney

Jon Mersman

For the Council

Kenneth W. Zatkoff, Attorney

Nancy Ciccone

Witnesses

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

Saginaw County

Preface

This interest arbitration of a dispute between the County of Saginaw, Michigan (hereinafter referred to as the Employer) and the Labor Council, Michigan Fraternal Order of Police, Saginaw County Command Officers Unit II (hereinafter referred to as the Union) was held in accordance with the provisions of the State of Michigan's Compulsory Arbitration Act (Act 312, Public Acts of 1969, as Amended).

As required by the Act, the arbitration was preceded by collective bargaining and mediation. However, as the Parties were unable to settle all the issues, the Matter was referred to the Michigan Employment Relations Commission to be resolved through arbitration.

The Arbitration Panel members were: Samuel S. Shaw, appointed by the Commission as the neutral member and Chairman; Peter C. Jensen, selected by the County and James J. Quinn, selected by the Union.

The arbitration required a prehearing meeting in Saginaw, Michigan on September 24, 1991, a day of hearing on November 7, 1991 and following the submission of last best offers and final briefs, a post-hearing meeting of the Panel

members at the MERC office in Lansing, Michigan on January 28, 1992.

The single day of hearing of November 7th was held in the State Bar Building in Lansing, Michigan. The County was represented by Attorney Peter C. Jensen and the Union by Attorney Kenneth W. Zatkoff, both of whom were provided with full and ample opportunity to present all pertinent oral and documentary evidence, and arguments in support of their respective positions. As required by the Act, all witnesses were duly sworn and the proceedings recorded by MERC Court Reporter Maria E. Greenough

Inasmuch as those directly involved were present at the Hearing and have available copies of the exhibits and the transcript should any vital questions arise, a detailed account of the proceedings will not be included in this discussion as it would only lengthen it by simply providing information already available without serving any useful purpose.

However, as both the State and its Counties are experiencing a general depressed economic condition, it might not be inappropriate to briefly review the positions taken by the Parties on this issue, and which became the basic thrust

underlying many of their arguments.

In essence, it was the County's basic position that as alternative means of financing "millages and bonding" are not available, any increase over the County's last best offer could only be effected by reduced services through layoffs. The County claimed "that it is at the end of its economic rope."

The County also asserted that moreover, its last best offers were "equal to the economic packages presented to both police and non-police employees." Thus, the County is attempting to treat the bargaining unit members with the same economic advantage which are enjoyed by other county employees."

Briefly, the Union contended the County was overstating its negative financial position. The Union claimed "[T]he testimony clearly established the County is in excellent financial condition." The Union argued that according to the County's own exhibits, its December 31, 1991 fund balance was 1.2 million dollars, and there "currently exists a contingency reserve fund of \$250,000.00 and an Audit Committee's Discretionary Fund of \$351,212.00." Therefore, the County's ability to pay should not be an issue in these proceedings.

The Union also claimed its demands were not only reasonable, but in keeping with that of other "comparable" communities, and as the County "is in excellent financial condition", equity indicated its members deserve and are entitled to more than the County offered.

At the close of the Hearing that Parties agreed to mail their last best offer to the Panel members, postmarked no later than November 18, 1991, and their final briefs no later than thirty days following receipt of the transcript.

The final Briefs were received by January 11, 1992, and the post-hearing conference of the Panel members to review the last best offers held on January 28, 1992 in Lansing, Michigan. Therefore, the Hearing was declared closed as of that date.

Background

Saginaw County is located in the mid-east section of Michigan. It covers 815 square miles, and according to the 1990 census, has a population of approximately 212,000. Its county seat is in the City of Saginaw, an industrial city, primarily automotive manufacturing that is largely General Motors.

The County Sheriff's Department consists of 83 officers, and for purposes of collective bargaining is divided into three groups; Units I, II, and III. This arbitration involves Unit II which is made up of all full time Sergeants and Corporals and a Medical Supervisor, a total of eight persons, all of whom are represented by the Michigan Fraternal Order of Police (FOP).

The Parties' prior Labor Agreement was for three years, expiring on December 31, 1990. However, as an impasse was reached in early 1991, pursuant to a petition by the Union, the Michigan Employment Relations Commission invoked binding arbitration under Act 312 and appointed an impartial chairman for an arbitration panel.

Apparently the Parties were able to resolve the majority

of their outstanding issues through negotiations as only four were presented for consideration and settlement by arbitration; three by the Union and one by the County. As it was mutually agreed they were all unquestionably "economic" they were as follows:

| <u>Union</u> | <u>County</u> |
|---------------|-----------------------------|
| 1. Pensions | 1. Retiree Medical Benefits |
| 2. Sick Leave | |
| 3. Wages | |

Discussion and Conclusions

The factors which must be considered in reaching a conclusion on each issue are clearly set forth in Section 9 of Act 312. Therefore, as it is presumed they are familiar to each of the principals in this matter, repeating them here should be unnecessary. However, with respect to their application, the only guide provided in the Act is the admonition "as applicable."

Normally, no one factor receives any greater consideration than any other, primarily because ability to pay is generally not included as an issue. However, in

this case "ability to pay" was raised by the County in support of its offers, and the economic downturn cannot be ignored, particularly when the area involved is strongly dependant upon the automotive industry. Therefore, although in reaching a decision in each issue all factors were given full and careful consideration, factor (c) of Section 9 was given greater attention than in prior years when ability to pay was not an issue.

The "comparables" mutually agreed upon were the twelve Michigan Counties of: Bay, Berrien, Calhoun, Ingham, Jackson, Kalamazoo, Livingston, Midland, Monroe, Muskegon, Ottawa, and St.Clair. The statistics of these Counties were considered when and as applicable.

Union Issue No. 1 - Pensions

The Union's last best offer requested the current MERS B-2/F50/25 - FAC-5 pension be improved from B-2 to B-3. The County agreed in part, but with the following condition: "MERS B-3 F55/20 and FAC-5 for all new members to the bargaining unit and all non-312 eligible members."

The County argued that the County had approximately 900 employees, and other than the Sheriff's Department, all

have F55/20 FAC 5 B-2. Therefore, "the County believes, with regard to employee benefits, that this benefit should in the future, be in line to reflect what other county employees receive."

The Union argued that currently there was only one non-312 eligible employee in the Unit; therefore, as this employee has continually received the same benefits as the eligible employees, it would be unreasonable and unfair to now deny this employee the same pension as the others.

In addition, the Union claimed that "effective December, 1990, both Unit I and Unit II received the F50/25 plan."

The County's rationale for desiring the same pension plan for all County employees is understandable. However, it could be argued, with justification, that it would not be entirely reasonable. Retirement age is generally considered in terms of job demands such as stress, hazards, physical requirements, reaction time, etc., all common to the work of law enforcement. To decide these retirement demands were comparable with those arising in clerical occupations would be rather unreasonable.

An additional factor pointed out by the Union was that if the County's proposal was upheld, inasmuch as the other Units had received the F50/25 plan, anyone promoted to Unit II would have to take a five-year age loss in his or her retirement eligibility.

For the very young this might not be a deterrent, but likely it might discourage the experienced and older officers who might be eligible for promotion.

Furthermore, for this retirement restriction to apply only to Unit II of the Sheriff's Department, it could well have a dampening influence on the general morale of the Unit. Under the prevailing conditions, such an atmosphere would hardly be desirable.

Therefore, for the reasons discussed, the last best offer as submitted by the Union is awarded.


James J. Quinn


Peter C. Jensen

DISSENT


Samuel S. Shaw

March 17, 1992

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Union Issue No. 2 - Sick Leave

The Union requested that in Article XV, Section 7, the pay-off of accumulated unused sick days, currently provided at 120 days, should be increased to a maximum of 180 days. Payment would continue at 50% of the maximum, but instead of the prior limit of 60 paid days, would now be increased to 90.

The Union contended that eight of the twelve comparable counties "enjoy a sick leave payout provision greater than that received by the Saginaw County Unit II Command Officers." Therefore, it should be "obvious that the Union's demand is well within the bounds of reasonableness."

The County claimed that all other County employees only accumulated sick days at 50% not to exceed 120 days, and "there was no evidence that other law enforcement employees received a greater amount than 50% of 120 days."

The County also contended there was no economic reason to pay more than the 60 days currently paid. An employee who accumulated sick leave early in his career, and then quits or retires, can receive 50% of that sick pay at the then current value which may be far greater than the value at the time earned. The County argued this was an unwarranted windfall that should not be increased.

According to the records submitted by the Union, of the twelve comparable counties, approximately eight had sick leave payoff benefits higher than those currently provided the Saginaw County Command Officers Unit II, and the Union argued this discrepancy was a sufficient reason to justify the Union's request.

There is no question that, as required in Section 9(d) of the 312 Act, an important factor in any consideration is a comparison of the subject benefits with those of other public employees performing similar services in comparable communities. However, as persuasive as this might be, in view of the current economic situation it cannot be considered conclusive, particularly as Factor 9(c) must also be given full consideration.

In addition to the problem of reduced finances, the County claimed all County employees received a sick leave pay out at 50% of a maximum of 120 days. And most important, according to the County's Brief, this limit also applied to "other law enforcement employees", or all officer groups of the Sheriff's Departments.

In other words, based upon the information available at this time, awarding the Union's request could be setting a

precedent among the various law enforcement groups of the Department.

Although the Union's argument cannot be dismissed high-handedly, after considering all involved factors, but particularly Factor 9(c), it is concluded the sick leave provision in Article XV, Section 7 should remain as it appears in the current Agreement. Therefore, the Union's request that the maximum hours in this provision be raised from the current 60 to 90 is denied.

James J. Quinn - Dissent *Peter C. Jensen*
James J. Quinn Peter C. Jensen

Samuel S. Shaw
Samuel S. Shaw
March 17, 1992

County Issue No. 1 - Retiree Medical Benefits

The County requested that effective for all employees retiring after December 31, 1993, their health care premium costs would be changed from full payment by the County to a co-pay sliding scale based upon years of service. The County claimed this request was necessary because of the rising cost of medical insurance, and consequently it was necessary to negotiate such a provision into all its collective bargaining agreements.

The County pointed out that in Unit II all but three employees would have had twenty years of service by December 31, 1993, and if they elect to retire at that time their full health care premiums would be paid by the County. However, if they elect to stay, they would then be subject to the sliding scale provision when they did retire.

The Union had rejected the County's request on the basis none of the comparables have a sliding scale retiree pay provision in their agreements, and in nine of the twelve cases, the employers pay 100% of the retiree's health care coverage cost.

Furthermore, this proposed modification would be a

significant reduction in a retiree's benefits, and because of the probability of living on a fixed income, could possibly create a hardship.

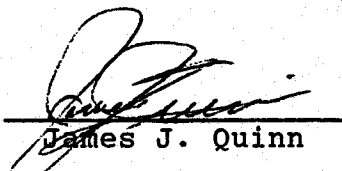
There is no question that health care costs, already astronomic, are continuing to rise and it therefore follows the burden carried by employers for employee health care is also increasing. Therefore, it is understandable why the County believes its financial future requires that at least a portion of this burden for its retired employees should be assumed by the retirees themselves.

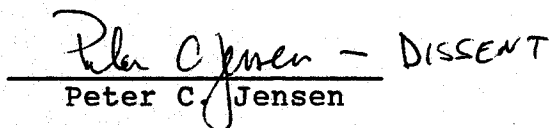
However, if all major County bargaining units' contracts included a retiree health care co-pay provision, there would be no question as to the justification for its inclusion in the contract of Command Officers Unit II. However, no evidence was introduced to indicate this provision was included in any other County contracts. Therefore, considering that Unit II consists of a total of only eight persons with none eligible for retirement until December 31, 1993, the County's suggestion that this provision would provide immediate cost relief loses much of its credibility.


It is recognized that if a provision such as that in question is to be introduced as a general request it would

require considerable planning to have it become effective simultaneously in all County collective bargaining contracts. Nevertheless, it is difficult to reconcile a reason of equity with a proposal that simply singles out only the retirees from a small unit such as Unit II.

The County's financial picture is not lightly dismissed; however, there is no reason to presume the retirees' situation is, or will be, any better. Therefore, after considering all applicable Factors it is concluded that at this time, the County's proposal should be denied, and the current health care provision is to remain as it is.


James J. Quinn

 - DISSENT
Peter C. Jensen


Samuel S. Shaw
March 17, 1992

Union Issue No. 3 - Wages

It was the Union's best offer that all classification receive an increase of 5% on January 1st, of 1991, 1992, and 1993. The County did not disagree with these effective dates, but its last best offer was for a 3% increase.

The Union submitted two primary arguments. First, that the County's Corporals and Sergeants were significantly below the average paid their counterparts in comparable communities; and second, despite claims to the contrary, Saginaw County was fully able financially to meet the Union's demand.

It its counter argument, the County claimed its financial outlook for 1992, and the foreseeable years was most uncertain, and offered extensive graphs, statistics, and reports to support this assertion.

It was acknowledged that each of the preceding issues required consideration of the general economic conditions and forecasts; however, this issue of wages emphasizes this factor as under the circumstances Factor 9(c) must be given major weight in the evaluation of the evidence and determination of the issue.

Although, as the Union pointed out, the Saginaw County Controller's General Fund Budget Report indicated an estimated Fund Balance of 1.2 million dollars, the County's Deputy Controller testified it was not as much as should be expected or desired.

The "fund balance" is a fund to cover the County's operating expenses and, according to the evidence, although as of December 31, 1991 it amounted to 1.2 million dollars , this was only 4.3% of the budget, or two and one-quarter week's expenses. Therefore, it is difficult to dispute the County's claim that, considering the ever present possibility of emergencies, this was a very limited reserve.

Although the Union contended two additional funds were further evidence of the County's financial well-being, in an effort to reduce expenses, the substantial number of services the County either eliminated or curtailed, belies this contention.

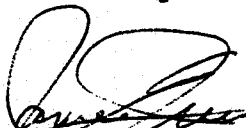
Turning to income, according to the unrefuted evidence, over the last ten years the property values in the County have declined. Furthermore, it has reached the maximum number of mills allowed by law. In addition, State revenue sharing at this time is uncertain, and for all practical

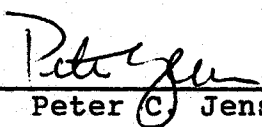
Federal revenue sharing is nil.


It has to be recognized the wage structure of the Saginaw Sheriff Department's Command Officers Unit II is among the lower of the comparable counties. Nevertheless, taking into consideration the hard facts presented, the choice appears to be either to keep salary increases to a minimum or indefinitely lay off a proportionate number of officers.

Neither choice is desirable, but the lessor of the two is to apply the lower salary requested increase so as to avoid any layoffs for as long as possible.

Therefore, for the reasons briefly discussed, the County's last best offer of three percent (3%) yearly salary increases is accepted.

 - DISSENT
James J. Quinn


Peter C. Jensen


Samuel S. Shaw
~~February 24, 1992~~
March 17, 1992