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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration between)
COUNTY OF SAGINAW,)
Employer)
-and-)
LABOR COUNCIL, MICHIGAN FRATERNAL)
ORDER OF POLICE, SAGINAW COUNTY)
COMMAND OFFICERS UNIT III)

Public Act 312 of 1969
MERC Case No. L90 B-0797

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Saginaw County

OPINION AND AWARD

APPEARANCES:

For the Employer -- Peter C. Jensen, Esq., Jensen, Smith & Gilbert,
721 South Michigan Avenue, Saginaw MI 48602

For the Union -- Kenneth W. Zatkoff, Esq., Law Offices of John A.
Lyons, 675 East Big Beaver, Suite 105, Troy MI 48083

BEFORE ARBITRATION PANEL:

Peter C. Jensen, Employer Delegate; James J. Quinn, Union Delegate,
1207 Academic Way, Haslett MI 48840; and ~~Thomas J. S. Marino~~, Chair-
person, University of Michigan Law School, Ann Arbor MI 48109-1215

INTRODUCTION

This interest arbitration under Public Act 312 of 1969, as amended,
was initiated by a petition (J-1) filed on January 19, 1991, by the Union,
Labor Council, Michigan Fraternal Order of Police, Saginaw County Command
Officers Unit III, concerning a dispute with the Employer, County of
Saginaw. The statutory prerequisites of collective bargaining and mediation

were duly met.

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

Theodore J. St. Antoine was appointed impartial arbitrator and chairperson of the arbitration panel by a letter from Commission Member Anne T. Patton on June 24, 1991. The delegates selected by the parties were Peter C. Jensen, for the Employer, and James J. Quinn, for the Union.

A prehearing conference was held in Saginaw, Michigan, on September 27, 1991, with the parties waiving time limits. The arbitration hearing took place on November 27, 1991, in Ann Arbor, Michigan. All parties were present, examined and cross-examined witnesses, and submitted other evidence. A verbatim transcript of the proceedings was prepared. After the filing of last best offers and posthearing briefs by both parties, an executive session of the Panel was conducted via a telephone conference call on March 17, 1992.

DISCUSSION

Section 9 of Act 312 (Mich. Comp. Laws §423.231 et seq.) sets forth eight factors on which an arbitration panel is to base its award, and these have all been duly considered in the present case. The criteria include such items as the public interest and the governmental unit's ability to pay; the cost of living and the overall compensation currently received by employees; and a comparison of the wages and other terms of employment of the employees involved with those of employees performing similar services in comparable communities. The chairperson's view is that an interest arbitration award should approximate as closely as possible the agreement the parties themselves would have reached had their negotiations been successful. The best measure of that hypothetical settlement is almost surely the actual contracts that have been concluded in comparable communities or in comparable units of the same community.

The bargaining unit in this instance is small, consisting of only one captain and three lieutenants in the Sheriff's Department. The Union argues that the County is in "excellent financial condition," pointing to a General Fund Balance of \$1.2 million as of December 31, 1991, a Contingency Reserve of \$250,000, and an Audit Committee's Discretionary Fund of \$351,212 (U. Br., p. 6, citing C-1, pp. 3,6). The Union also notes the obvious, that granting its demands for a four-person unit will cost the County little in absolute terms. The County responds that "it is at the end of its economic rope," with "declining tax dollars and increased expenses" (C. Br., pp. 4, 6, citing C-1, pp. 20, 23, 25, 26; Tr. 54-65). The County strenuously resists the notion that just because the unit involved in this arbitration is small, the employees in it should receive a windfall that cannot be afforded others. The chairperson of the Panel recognizes considerable merit in both those positions, and thus finds all the more reason to place primary emphasis on a comparative examination of the wages and other benefits of similarly situated employees.

The parties agreed that the following twelve Michigan counties were to be treated as comparable to Saginaw County: Bay, Berrien, Calhoun, Ingham, Jackson, Kalamazoo, Livingston, Midland, Monroe, Muskegan, Ottawa, and St. Clair. Statistics from those counties were taken into account when appropriate.

We move now to an issue-by-issue discussion of the matters in dispute between the parties.

A. Personal Days (Article XV, Section 2)

The Union requests that regular full-time employees receive seven (7) personal days each year instead of the present five (5) days. The County calls for the retention of the current contract language of Article XV, Section

2, with its provision for five personal days annually.

According to the Union, eleven of the twelve agreed-upon comparable communities have an average accumulation of 12.96 days per year of sick leave, and from one to seven personal leave days in addition, while Unit III gets only five days total (U. Br., pp. 7-8, citing U-1, p. 4). The County argues that personal leave days can only be considered fairly in the context of the total package of paid leave days of comparable counties. On that basis, only one county (Bay, with 63 days) gives more paid leave days than Saginaw County (with 59.5 days)(C. Br., p. 12, citing U-1, p. 4).

The Panel majority sees much force in the County's argument that the proper comparison is the total of all paid leave days, and on that score Saginaw County stands near the top of the list. Moreover, the Union's own exhibit does not seem to jibe with its position in the brief that the combined totals of sick leave and personal days range from 10 days to 22 days in eleven comparable communities, while Saginaw's total is only 5 days (U. Br., pp. 7-8). Omitted without explanation is Saginaw's listed sick leave of 12 days (U-1, p. 4), which would bring the present combined total to 17 days, actually better than what the chairperson calculates to be the 15.6 days average in the eleven comparable counties.

The award will be to leave the current contract language unchanged.

B. Sick Leave (Article XV, Section 1(b))

The Union asks that the current maximum payout of accumulated sick leave upon retirement, death, quit, or layoff be increased from 60 to 90 days.

The County urges that current contract language remain unchanged.

The Union insists that eight of the twelve comparable counties enjoy a more generous sick-leave payout provision than Saginaw County's Unit III

(U. Br., p. 9, citing U-1, p. 2). For its part the County contends there is no discernible trend among other counties (C. Br., pp. 14-15). Bay and Jackson Counties both have a 60-day maximum, like Saginaw County. Ingham has an 80-day maximum and Livingston a 75 day maximum that is paid over seven years. Calhoun has no accumulation because of a sickness and accident program. Ottawa and St. Clair Counties have maxima of 15 days and 22.5 days, respectively (U-1, pp. 2-3). The County also observes that all other Saginaw County employees accumulate a maximum of 60 days sick-leave payout, and that since Unit III personnel come from the sergeants' unit, the result under the Union's proposal could be a payout at a much higher rate of pay than the rate at the time of the accumulation (C. Br., pp. 14-15).

Strictly analyzed, Berrien County has no sick-leave payout provision, but it does allow a six-months "rollover" into FAC. Only Kalamazoo, Midland, Monroe, and Muskegon would definitely support the sort of request made by the Union. The conclusion of the Panel majority is that Saginaw County rests comfortably near the middle of the sick-leave payout range, and there is no clear trend that would justify a change.

The award will be to let the current contract language remain as it is.

C. Pension (Article XXII)

The Union proposes that the current Michigan Employees Retirement System Plan of F50/25, B-2, FAC5, be modified to F50/25, B-3, FAC 3. The County proposes that the current Plan be modified to F55/20, B-3, FAC5.

Since both parties agree on the modification of the Plan to B-3, that will be accepted. The Panel is also unanimously of the opinion that the age-and-service eligibility requirement and the final average compensation factor should be treated as separate issues for the purposes of this arbitration.

The Union argues that the eligibility requirement for the entire Sheriff's Department is currently F50/25, and that seven of the twelve comparable counties have equal or more favorable provisions (U. Br., p. 10, citing U-2, p. 4). The County counters that Unit III consists of long-term law enforcement officers and declares: "A retirement program which allows an employee to retire shortly after achieving the position creates a detrimental problem for the employer" (C. Br., p. 13).

There is merit in the County's position. One can see that the County is likely to lose valuable officers, shortly after they have been promoted to command positions, at the relatively early age of 50. Furthermore, it can be argued that captains and lieutenants are less likely to be subject to the stresses and strains of daily service that make early retirement appropriate for lower-ranking personnel. On the other hand, the burden should be on the County as the party proposing the change to demonstrate the need for it. The Union is correct that a majority of comparable counties set age 50 -- or have no set age -- as the eligibility requirement (in addition to the specified years of service). The County has not shown that command personnel are singled out anywhere for special treatment, i.e., a later retirement age. Finally, the Panel notes that as recently as December 1, 1990, a former F55/25 Plan was replaced with the current F50/25 Plan (J-2, p. 33). We are loath to interfere so soon with a newly installed system.

The Union further contends that improving the final average compensation from the five highest years to the three highest years will impose no burden on a pension system that has a fund balance of between \$5 million and \$7 million (U. Br., p. 11, citing Tr. 86-87). But the partial exhibit submitted by the Union concerning final average compensation indicates that FAC5 is

still the norm among comparable counties (U-2, p. 5). The Union has not shown a convincing reason for change.

The award will be for a MERS Plan of F50/25, B-3, FAC5.

D. Longevity (Article XVI, Section 1)

The current longevity schedule set forth in Article XVI, Section 1, of the parties' collective bargaining agreement calls for \$50 per year for each full year of service, beginning upon completion of five years of service (J-2, p. 24). The Union requests a modification in the schedule as follows:

After 6 years of service	\$ 400.00
After 12 years of service	\$ 700.00
After 18 years of service	\$1000.00
After 19 years of service	\$70.00 per year

In support of its position, the Union points to the following longevity schedules for Units I and II of Saginaw County:

Unit I

After 6 years	\$ 400.00
After 12 years	\$ 700.00
After 18 years	\$1000.00

Unit II

After 6 years	\$ 400.00
After 12 years	\$ 700.00
After 18 years	\$1000.00
After 20 years	\$70.00 per year

The Union maintains there is no justification for giving Unit III command officers \$100.00 less than their counterparts at each step of the longevity schedule (U. Br., p. 12). The County responds: "[O]ut of 12 comparable counties 6 counties pay nearly the same amount for longevity and 6 counties pay a significant amount over the formula used by Saginaw County" (C. Br., p. 13, citing U-3, pp. 2-3). The County contends that in light of this "near equal split," the status quo should be maintained.

If the only comparative figures before us were those of the comparable communities, we would be inclined to agree with the County. The County has made no effort at all, however, to deal with the Union's argument based on the longevity pay in Units I and II of Saginaw County itself. It does indeed seem anomalous that the Sheriff's Department's top officers should remain on a longevity scale that generally puts them \$100 a year behind the lower-ranking personnel in Units I and II (U-3, pp. 3-5). In light of this, the Union's proposal appears reasonable and should be adopted.

The award will provide for the longevity pay schedule requested by the Union.

E. Wages (Article XXIV)

The Union seeks the following across-the-board salary increases for all classifications:

Lieutenants and captains be brought up to the current level for county pay grades M-9 and M-10 respectively as follows --

Effective 1/1/91

Lieutenant	\$41,010
Captain	\$43,847

Effective 1/1/92

County aligned 3% increase

Lieutenant	\$42,240
Captain	\$45,162

Effective 1/1/93

County aligned increase yet to be determined.
Maintain pay grade M-9 for Lieutenant and
M-10 for Captain.

The County's counterproposal is as follows:

Effective 1/1/91:	3% increase
Effective 1/1/92:	3% increase
Effective 1/1/93:	Wage reopener

The Union calculates the differences between its and the County's pay proposals as follows (U. Br., pp. 14-15):

Lieutenants

	County Proposal	Union Proposal	Increases' Annual Difference
1/1/91	\$39,624	\$41,010	\$1,385
1/1/92	\$40,813 (+3%)	\$42,240 (+3%)	\$41

Captain

1/1/91	\$42,364	\$43,847	\$1,483
1/1/92	\$43,635 (+3%)	\$45,162 (+3%)	\$44

The Union has two basic reasons for its claims. First, it thought it had negotiated in 1989 a return of the lieutenant and the captain pay rates to the levels of the M-9 and M-10 County pay grades, respectively, formerly occupied by them, effective as of 1990. Instead, the County Board of Commissioners approved only the granting of the 1989 M-9 and M-10 pay rates, effective as of 1990. Thus, the lieutenants and captain were supposedly left "one year behind on the county grade level" (Tr. 14, 15-16). The Union's current wage proposal would make up the "lost" year. Second, the Union contends that its proposals come closer than the County's to placing Unit III personnel near the average salary of eleven comparable counties' lieutenants and nine comparable counties' captains (U. Br., p. 17, citing U-4, pp. 5, 7):

1991

		Differences; Rank
Avg. Lieutenant	\$41,024	
Union Proposal	\$41,010	(-\$14; 6th of 10)
County Proposal	\$39,624	(-\$1400; 8th of 10)
 Avg. Captain	 \$43,457	
Union Proposal	\$43,847	(+\$390; 6th of 9)
County Proposal	\$42,364	(-\$1093; 6th of 9)

1992

		Differences; Rank
Avg. Lieutenant	..... \$42,880	
Union Proposal	..... \$42,240	(-\$640; 7th of 9)
County Proposal	..... \$40,813	(-\$2,067; 8th of 9)
Avg. Captain	..... \$45,557	
Union Proposal	..... \$45,162	(-\$395; 6th of 8)
County Proposal	..... \$43,635	(-\$1,922; 6th of 8)

In response, the County provides an extensive and impressive analysis of its weak and worsening financial situation, epitomized by the assertion that the County "is at the end of its economic rope" (C. Br., pp. 5-12). Summing up, the County points to (1) a millage structure that leaves neither internal nor external sources for more money for law enforcement; (2) a great decline in property values over the past decade, with a concomitant reduction in the County's ability to raise taxes; (3) a lesser growth in the state equalized value for property rates in Saginaw County than in other comparable counties; and (4) the lack of any possible areas for the reduction of County expenditures, so that "any decision by an arbitrator which will cause an increase in the budgeted funds in excess of \$30,000 will result in the permanent lay-off of employees within the bargaining units [sic; unit?] and other law enforcement bargaining units" (*id.*, pp. 11-12; see also C-1, pp. 20, 24, 25, 26). In contrast to the Union's proposal for a 6.6% wage increase in 1991, followed by a 3% increase in 1992 (on the higher 1991 base rate), the County calls for what it describes as the "more reasonable approach" of a 3% increase in both 1991 and 1992 (C. Br., p. 12). For 1993, the County would offer a wage reopener and the Union a "County aligned increase yet to be determined."

In further support of its position, the County submitted figures indicating that as of 1991, the per capita SEV for Saginaw County was \$12,474, ranking ninth of the twelve comparable counties, while its top captain's salary as of 1990 was \$41,130, ranking eighth of eleven comparable counties, somewhat below average, and its top lieutenant's salary as of 1990 was \$38,470, ranking seventh of eleven comparable counties, just below average (C-1, pp. 28, 29; Tr. 65-66). (Using the County's figures, the Panel chairperson calculates the averages of the 1990 salaries of the other ten counties as \$42,319 for captains and \$39,056 for lieutenants, or \$1189 and \$586 more than the Saginaw rates, respectively.) The County noted that if the Saginaw captain and lieutenants had obtained M-10 and M-9 rates in 1990, they would have received \$42,570 and \$39,816, respectively, ranking sixth and fifth of the eleven comparable counties, respectively (C-1, pp. 31, 31; Tr. 66-67). (Again using the County's figures, the chairperson calculates that 1990 M-10 and M-9 rates would have given Saginaw's captain and lieutenants \$251 and \$760 more than the average rates of the other ten comparable counties, respectively.)

The Panel recognizes that the County is in a deteriorating financial condition, and that any move to impose additional burdens on the budget must be viewed with great caution. Furthermore, according to the County's figures, placing Saginaw's captain and lieutenants on the M-10 and M-9 scales in 1990 would have given both classifications several hundred dollars more than the average rates of the other ten comparable counties, despite the 1991 Saginaw per capita SEV ranking of only ninth of all twelve comparable counties.

On the other hand, the salary picture changes significantly if we turn

to 1991 and 1992 and the comparisons provided by the Union. For 1991 the Union's proposal would place Saginaw's captain and lieutenants just about even with or somewhat better than their counterparts in other comparable counties. But by 1992 the Saginaw captain would get \$395 less than the average, ranking sixth out of eight comparable counties, and the lieutenants would get \$640 less, ranking seventh out of nine comparable counties. In each instance the County's proposal would place the command personnel approximately \$2000 below the average level of their counterparts in comparable counties. In addition, weight must be given to the essentially uncontradicted testimony of Union field representative James Quinn that Saginaw captains and lieutenants had historically tracked the M-10 and M-9 pay scales; had fallen off the track; and had been the subject of a tentative table agreement in 1989 for a return to the track, which did not go through because it was contrary to the Board of Commissioners' then-existing policy or guidelines (Tr. 13-19). Quinn believed he had an agreement "in principle" with County personnel director Donald Johnston "to correct the error in the next contract" (Tr. 20). Johnston testified: "[A]lthough I made no promises for the next contract, I said we'd take it up then" (Tr. 33-34). Finally, while the principle of ability to pay cannot be ignored regardless of a bargaining unit's small size, we must recognize the reality that an annual increase of less than \$1500, if confined to only four men, is not likely to break the bank.

On balance, taking all the foregoing factors into account, the Panel majority concludes that the Union's offer comes closer than the County's to meeting the standard set by the pay scales in the various comparable counties, as well as the other applicable statutory criteria. The award will be for the

wages sought by the Union.

F. Medical Benefits for Retirees (Article XVIII, Section 2)

Currently, retired command officers receive health insurance paid 100% by the County (J-2, 24). The County proposes the retention of fully paid medical benefits for all present bargaining unit members who retire before December 31, 1992, but with the modification that the following scale would go into effect on January 1, 1994:

<u>Years of Service*</u>	<u>Employer Pays</u>	<u>Employee Pays</u>
6	25%	75%
7	30%	70%
8	35%	65%
9	40%	60%
10	45%	55%
11	50%	50%
12	55%	45%
13	60%	40%
14	65%	35%
15	70%	30%
16	75%	25%
17	80%	20%
18	85%	15%
19	90%	10%
20 or more	95%	5%

*The number of full years of service credit used to compute the employee's MERS benefit.

The Union requests that the status quo be maintained. It points out that not one of the twelve other comparable counties has a sliding co-pay system like that proposed by the County, and that nine of them pay 100% of retiree health insurance (U. Br., p. 20, citing U-5, pp. 2-3).

For its part, the County draws attention to certain developments since

the arbitration hearing in this case on November 27, 1991 (C. Br., pp. 15-16). The County reports, first, that the two largest employee units in the Sheriff's Department, the road patrol deputies and correction officer units, accepted the County's proposal concerning retirees' medical benefits in January 1992. Second, the corporals and sergeants unit is said to have agreed to a stipulated Act 312 arbitration award including this provision (id., p. 15). The County concludes: "If the arbitration panel does not adopt the County's proposal, it would result in 3 employees out of the entire Department would receive better benefits than all other employees in the Department" (id., p. 16).

Section 9(g) of Act 312 expressly provides that an arbitration panel shall consider, among other factors, "[c]hanges in any of the foregoing circumstances presented during the pendency of the arbitration proceedings." On that basis, the position of the County makes much sense. There is substantial value in terms of equity and ease of administration in having a uniform health insurance system for retirees. The Union is apparently satisfied with the County's modified plan for the great mass of Department employees, and has not presented any reason for treating Unit III personnel differently. Unfortunately for the County, however, the copy of the arbitration award to be issued in MERC Case No. L90 B-0796, involving Saginaw Unit II (corporals and sergeants), which has been transmitted to this Panel, does not provide for the modification requested by the County, but leaves the current retiree health care provision as it is.

The chairperson here confesses puzzlement over what is occurring in Unit II. If he were deciding the issue of retiree health insurance for Unit III alone, he would adopt the County's proposal in light of the agreements already reached by the parties concerning the great majority of the Department's employees. But Unit III is more closely aligned to Unit II in terms of rank and

as a source of promotions, and the chairperson sees no justification for depriving Unit III personnel of a benefit that may continue to be enjoyed by the members of Unit II.

The Panel will adopt the County's proposal for sliding scale co-pay retiree medical benefits if, but only if, the same or a substantially equivalent plan has been adopted for Unit II by the time this award is issued.

AWARD

1. Personal days (Article XV, Section 2): The current contract language shall remain unchanged.

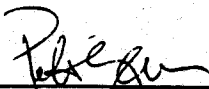
2. Sick leave (Article XV, Section 1(b)): The current contract language shall remain unchanged.

3. Pension (Article XXII): There shall be a MERS Plan of F50/25, B-3, FAC5.

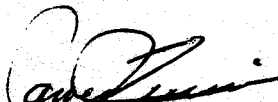
4. Longevity (Article XVI, Section 1): The longevity pay schedule requested by the Union shall be granted, as set forth herein, supra, page 7.

5. Wages (Article XXIV): The wages requested by the Union shall be granted, as set forth herein, supra, page 8.

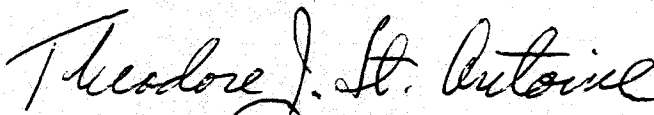
6. Medical benefits for retirees (Article XVIII, Section 2): The sliding scale co-pay retiree medical benefits requested by the County shall be granted, as set forth herein, supra, page 13, if, but only if, the same or a substantially equivalent plan has been adopted for Unit II by the time this award is issued. Otherwise, the current contract language shall remain unchanged.



PETER C. JENSEN*
Employer Delegate
*Concurring insofar as the
award conforms to the Employer's
last best offer



JAMES QUINN*
Union Delegate
*Concurring insofar as the
award conforms to the Union's
last best offer



THEODORE J. ST. ANTOINE
Chairperson

Ann Arbor, Michigan

April 6, 1992