

135

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION UNDER ACT 312
(PUBLIC ACTS OF 1969 AS AMENDED)

In the Matter of:

ST. CLAIR COUNTY (St. Clair)
Employer

Act No. 312
MERC Case No. Do C-0294

- and -

POLICE OFFICERS ASSOCIATION
OF MICHIGAN (POAM)
Labor Organization

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS
COMMISSION
JAN 2 1973

RECEIVED
JAN 2 1973

OPINION AND AWARD OF ARBITRATION PANEL

ARBITRATION PANEL

Paul Jacobs, Chairman
Douglas Alexander, Employer Delegate
James De Vries, Labor Organization Delegate

APPEARANCES

County:

Association:

Gary A. Fletcher, Attorney

William Birdseye, Treasurer,
POAM

INTRODUCTION

The Police Officers Association of Michigan(Union) is the bargaining representative before the Employees of the same County Sheriffs Department. The agreement between the St. Clair County Board of Commissioners and the same county's Sheriffs Department and Police Officers Association of Michigan expired on June 30, 1993. There were several days of meetings with a State appointed Mediator. Following the failure of the parties to reach a collective bargaining agreement the Union filed a Petition for Arbitration with the Michigan Department of Labor. The petition recites at Paragraph 4 as follows:

The Petitioner has engaged in good faith bargaining and mediation, and the parties have not succeeded in resolving the disputed matters. The following is a statement of any unresolved issues in dispute and the facts relating thereto:

1. Duration
2. Wages - Deputies
3. Wages - Detectives
4. Wages - Communications Officer
5. Shift Premium
6. Pension - Final Average Compensation
7. Pension - Escalator

All terms and conditions of employment to carry forward in full force and effect.

All contract language and appendices from prior contract to continue in full force and effect.

All T/A's between the parties to be stipulated to for inclusion in new contract.

In response to the statement of Union issues, the County of St. Clair compiled its answer, which states as follows:

1. Answering paragraphs 1 through 3, it admits the same.
2. Answering paragraph 4, it admits the same with the exception that it requests inclusion in this arbitration of the following additional unresolved issues in dispute as to certified law enforcement and corrections officer unit members only:
 - a. Career Change and Advancement - the number of candidates from which the Sheriff is entitled to appoint and the criteria for evaluation.
 - b. Injury Leave and Workers Compensation - the basis for salary continuation and period of time.
 - c. Health and Dental Care and Life Insurance - increasing drug co-pay and master medical option deductibles.
 - d. Service Recognition - exclusion of those hired after ratification.
 - e. Sick Pay and Disability Insurance - replace with disability plan.

Further answering paragraph 2, its position regarding the Petitioner's issues in dispute are as follows:

- (1) Duration - three years from expiration of the contract
- (2) Wages - Deputies - 3% increase each year.
- (3) Wages - Detectives - 3% increase each year.
- (4) Wages - Communications officer - 3% increase each year.
- (5) Shift Premium - no change except elimination for prospective employees.
- (6) Pension - Final Average Compensation - best five of last ten years.
- (7) Pension - Escalator - no escalator.

3. Answering paragraph 5, it admits the same.

Paul Jacobs was appointed the impartial Chairman in this Act 312 proceeding. Each party, in writing, stated substantially as

follows: "We waive the time limits as contained in Section 6 of Act 312 and assert the jurisdiction of the arbitrator to be proper." A pre-arbitration conference was held as well as a hearing and subsequent meeting of the executive committee. Prior to the meeting of the executive committee each of the parties submitted their last best offers.

THE ACT

The following portion of the Act 312 sets forth the standards/criteria that the Arbitration Panel must apply:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (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.

- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (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.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (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.

ECONOMIC ISSUES:

Duration

The Union proposes a three year agreement on July 1, 1993 to June 30, 1996. It would appear that there was no strenuous objection from the County, particularly in light of the fact that this award is being issued sometime after the beginning of will be the third year of the contract, therefore this contract will be a three year contract.

Shift Premium

The Union withdrew its issue concerning shift premium, therefore the status quo shall prevail.

Pension/Final Average Compensation

With reference Article XXVI, Retirement, the parties at the executive conference agreed that there would be only two minor language changes, and those changes would occur in Paragraph 26.7, which would now read as follows:

26.7 An employee who suffers a non-duty related permanent total disability shall be entitled to a pension provided the employee has at least ten (10) years of service. An employee whose death is due to a non-duty related disability shall be entitled to a pension if vested in the plan. Employees who were hired on or before March 25, 1992 shall be eligible for health care, the cost of which shall be borne by the plan. Employees hired after the date of ratification shall be ineligible for health care except as may be provided by applicable law such as C.O.B.R.A.

26.8 An employee in the classification of Corrections Officer, Communications Officer, Deputy, Detective or Youth Service Detective shall be eligible for early retirement with twenty-five (25) or more years of continuous full time employment in the Sheriff Department.

Pension - Final Average Compensation and Escalator

Union Issue #6 and #7

The Union's final offer of settlement states as follows:

"Effective July 1, 1993, final average compensation shall be based on the highest 3 consecutive years out of the last 10.

Pension - Final Average Compensation to be effective July 1, 1993."

"Effective July 1, 1993, retirees shall receive an annual escalator adjustment pursuant to the following:

The first adjustment date for this benefit shall be one year subsequent to the effective date of retirement. Subsequent adjustment dates shall occur at 12 month intervals.

The retirement allowance shall be adjusted annually in the amount of 2.5% of the original benefit. On each annual adjustment date, the retiree's benefit shall be recomputed to reflect a cumulative increased benefit in the amount of 2.5%."

The Union's position is that the normal cost of the current retirement plan would be 8.06%, but because currently the plan is over-funded there is a credit of 2.81%, therefore the Employer is paying only 5.25%. Testifying on behalf of the Union, Ann H. Maurer stated that in 1985 the Employer paid as much as 9.50% of payroll, now they are paying considerably less. She also indicated that the employees pay 5%, so now it's really about an equal share that both the Employer and the employee pay in the Pension Plan. Mrs. Maurer also indicated that the Pension Plan in Livingston County provides for COLA up to 2.5% per year, thus in a year that the consumer price index does not reach 2.5% the Pension Escalator could be less for that particular year. She also indicated that in Monroe County the final average compensation as computed on the highest three years of the last ten. She defines this as an enhanced definition of final average compensation.

Mrs. Maurer, on cross-examination, testified that of the eleven comparables that the Union presented at the Hearing, two had pension

escalators — one was the city of Marysville, and the other Livingston County.

There was testimony from Mr. Douglas Alexander, the Employer's witness, that of the sixteen different employee groups within St. Clair County final average compensation for all of them is determined on the basis of the best five of the last ten years, and that no employee group within St. Clair County has a pension escalator. He also testified that unlike other communities, employees who retire after twenty years of service receive full health benefits.

Mr. Alexander also testified that he had asked the actuary for supplemental actuarial evaluation to determine the cost of the benefits should there be an increase in the benefits, namely the final average compensation being reduced from a five year period to a three year period, and the escalator 2.5% of the original amount. He stated that it would be necessary to contribute an extra 1.58% of payroll to cover the increased benefit, changing the final average compensation and implement the 2.5% pension escalator, that would be a cost of 6.92% of payroll.

It appears not only that the St. Clair County pension is one of the highest and best without even factoring in a pension escalator or changing the years of final average compensation. It would be irresponsible upon the part of the Panel to adopt a plan for which there is no certain cost. Therefore it does not appear that there is any reason to change the current pension arrangement.

The County's proposal to maintain the status quo is adopted as to Union issues 6 and 7.

Career Change and Advancement

In this proposal the County has added Paragraph 17.4 D, which reads as follows:

"The Sheriff shall have discretion to appoint a candidate from among the top three (3) total scores."

In addition Paragraph 17.9 is changed to three (3) years of service from five (5) in the second sentence, and the last sentence has been changed to include the following underlined words: "Minimally qualified shall mean that prior to the career change or promotion test that Corrections Officer or Communications Officer shall have at least five (5) years of departmental seniority and have ~~has~~ passed the two (2) part MLEOTC pre-academy entry test and possesses the required certification card (green card) from the Michigan Law Enforcement Officers Training Council."

Paragraph 17.11 is changed by noting the words that have been lined through and the additional words that have been underlined: "Promotion list (points for exam results, oral interview and seniority) shall be maintained for one (1) year from the date of promotion. In the event of any vacancy in the classification, the Sheriff shall appoint the candidate ~~with the highest point total~~ from among the top three (3) scores."

Paragraph 17.12 is changed in part as indicated by the underlined word: "A part time employee who becomes full time shall be entitled to all seniority from the date of full time hire."

The Union vigorously opposes any changes in Article XVII of the Collective Bargaining Agreement and refers to the changes proposed

as the "Rule of Three." Citing politics, the Union states that it will not be the best person necessarily who gets the job promotion, but the person with the best politics. For example, a competent and substantially more capable Deputy may not receive the promotion if by chance the elected Sheriff should notice that this Deputy had placed an opponent's sign in his/her front yard. The Union further makes reference to Paragraph 17.10 which provides for a full nine (9) month orientation period for a full time employee, and an eighteen (18) month orientation period for a part time employee.

This, it seems, is protection enough to guarantee the appointment of the most qualified person for the particular promotion.

The Union's position shall prevail.

Injury Leave with Pay

The County seeks to revise Paragraphs 21.1 and 21.4. In Paragraph 21.1 there is a basic change in that the County seeks to substitute ninety (90) calendar days for ninety (90) working days. In Paragraph 21.4 the County seeks to insert the word "psychologist" in the last sentence as follows: "This provision or psychologist shall not subject the employee to discipline provided the employee is not determined medically or psychologically fit to return to work by the physician." There does not appear much to discuss or much really at issue in this proposal presented by the Employer, other than there may be a modest savings based upon ninety calendar days versus ninety working days. There did not appear to be any testimony to indicate any cost benefit to the County by changing Paragraph

21.1. With reference to Paragraph 21.4, I find it difficult to determine the meaning of the last sentence wherein the word psychologist has been added at the beginning of the sentence.

The Panel recommends that the County proposal regarding Article XXI not be adopted.

Health and Dental Care and Life Insurance

In this proposal, the only change that the County seeks to request is in the Co-Pay and in the Master Medical option. The County seeks to change the Co-Pay from \$3.00 to \$5.00, and to change Master Medical Option 3 to Master Medical Option 1, which involves the sum of \$100 and \$200. The Union proposes the status quo, the two requested changes are comparable to what one finds in most public employee contracts and are not unreasonable.

The Panel adopts the County's proposal.

Service Recognition

This is a County proposal to change portions of Article XXXIII.

The County's proposal is as follows:

33.1: The Employer shall recognize years of continuous full time service hired prior to November 1, 1995 by providing the following percentage of annual salary upon anniversary. Maximum annual salary allowable as of January 1, 1988 shall be no greater than \$40,000.

<u>Years of Service</u>	<u>Percentage of Annual Salary</u>
5 - 9	2%
10 - 14	4%
15 - 19	6%
20 - 24	8%
25+	10%

33.2: Employees hired by the Sheriff Department on or after November 1, 1995 shall receive the following service

recognition based upon years of continuous full time service:

<u>Years of Service</u>	<u>Service Recognition Payment</u>
5 - 9	\$ 350
10 - 14	\$ 700
15 - 19	\$1050
20+	\$1400

33.3: Employees who satisfy the requirements of the above schedules shall be paid a single lump sum payment the first full pay period following their date of full time hire.

~~33.3 Credit shall be given retroactively for continuous employment years of service by employees existent as of June 13, 1967.~~

33.4: Continuous employment, for the purposes of this policy shall not be considered as interrupted when absences arise as vacations, sick leave, or leave of absence authorized by the Sheriff for reasons permitted in this Agreement. An employee on leave, when payment is due, shall be paid the next pay day upon return, if possible, but not later than the second following pay day from return.

33.5: Payment shall be considered as regular compensation for such things as withholding tax, F.I.C.A., retirement, etc.

The Union rejects the County's proposal.

The County's proposal regarding Service Recognition would apply to new hires -- that is, persons hired subsequent to November 1, 1995. Terry Pettee was called as a witness by the County. Mr. Pettee is the Personnel Director. He explained the longevity plan as proposed by the County. The lump sum payment plan for new hires seems reasonable given the fact that the benefit has been entirely eliminated for most new hires who work for the County outside the

bargaining unit. Further, the existing longevity plan is superior to most of the Employer and Union comparables.

The Panel adopts the County's proposal.

Sick Pay and Disability Insurance

Mr. Pettee explained the disability pay and longevity plan as proposed by the County. It was quite evident that the plan proffered by the County is superior to the current plan in a number of ways. The current plan requires an employee to work for seven years and six months in order to reach the maximum. Under the plan proposed by the County the employee with perfect attendance can now reach the maximum within two years and six months. The maximum period of salary continuation under the current plan is five months, two weeks and two days. Under the County's proposed plan it is five years and six months. Mr. Pettee explained that the plan offered by the County is cheaper for the County because it is an insured plan as opposed to a plan where the employees must accrue sick days in a bank reserved for their use, therefore, the proffered plan is cheaper in terms of the liability of holding days provided by the Employer. In addition, Mr. Pettee explained that those benefits that have already been earned under the currently negotiated plan would be paid off at 50% of accrued time.

It appears that the plan proposed by the County is superior to the current plan and does provide some benefit for those benefits already accrued. Accordingly, the County proposal is adopted.

The County proposal is adopted.

Wages

Inevitably and inescapably the Panel must tackle the issue of wages. The issue must be considered in the light of Section IX of the Act. Comparability was discussed at the Hearing and Mrs. Maurer discussed the Detroit, Michigan labor market known as the Consolidated Metropolitan Statistic Area (CMSA). She went on to state that the State of Michigan has designated a labor market based on an integration of economic and social factors, that is, persons residing within the area seeking employment and obtaining employment within those areas. She continued, stating that the Federal government takes into account commuting patterns when making up the definition of the labor market area. Further, she pointed out that St. Clair County is located in the Detroit, Michigan primary metropolitan statistical area. Continuing her testimony she stated that the cities of Port Huron and Marysville were traditionally asserted by the Union as part of the comparable bargaining area based upon meeting the test of comparable work. In addition, Mrs. Maurer listed the Counties of Lapeer, Livingston, Macomb, Monroe, Oakland, Washtenaw and Wayne as being comparable whereas the County listed the Counties of Bay, Berrien, Calhoun, Jackson, Lenawee, Muskegon, Ottawa and Saginaw as being comparable. The only four instances in which the parties agreed were in the case of Lapeer County, Livingston County, Monroe County and the City of Port Huron.

Mrs. Maurer admitted on cross-examination that no two counties in the entire state of Michigan are absolutely comparable and went

on to state that differences within the same locality can cause trouble for both employers and union members. She also indicated that the perception of the bargaining unit was most important in determining comparability.

Mr. Douglas Alexander testified on behalf of the County as to the issue of comparability and stated that only one county paid higher wages to its Sheriff's Department than St. Clair County, and that was Oakland County. He testified that he was not happy that St. Clair County was considered part of the Consolidated Metropolitan Statistical Area (CMSA) as offered by the Union, but that he was able to verify this after speaking to persons both at the Detroit Public Library and at the Federal Register in Washington, D.C.

It is interesting to note that St. Clair County did not offer Sanilac County, a county directly to its north, as a comparable county for purposes of establishing a wage pattern for the St. Clair County Sheriff's Department. St. Clair County recognizes that Sanilac County is a rural area where the wage scale for the residents is considerably lower than that of those living in the Detroit Metropolitan statistical area. It is thus patently clear that a county to be comparable does not necessarily have to be adjacent to the county under consideration.

St. Clair County is, according to the records, a prosperous county, allegedly due to the presence of a large power company facility. This statement was not substantiated however, and it is doubted whether this is the sole reason why St. Clair County is in a position to pay better wages than certain other counties. It is

interesting to note in the comparability analysis offered by the Employer that St. Clair County has a median house value and per capita income that is slightly higher than the County asserted comparables but lower than other counties in the Union asserted CMSA designation. The fact that the St. Clair County deputies are among the highest paid in the State does not mean that they should not continue to be among the highest paid in the State. What it does mean is that other counties whose wage scale is far below those of St. Clair, Wayne and Oakland County may need to give some consideration to raising their pay scales. The Union has asked for a 4% wage increase in the first year of the contract based upon the fact that the Command Officers received that same percentage wage increase in the first year of their last and current contract. In the interest of labor harmony and also based upon fact that there has been no presentation of any evidence that the County is unable to pay a 4% wage increase in the first year of the contract it does not seem that the Union's last best offer is unreasonable.

It is important to note that the Union's last best offer contained a proposal bringing the highest pay scale at the fifth year as contrasted to the sixth year which had previously been discussed by the parties. It is unfortunate that the Union gave no evidence at the Hearing that their last best offer would contain a proposal that the highest wage level be reached at the end of five years rather than six years. This apparently left the County unprepared to counter such a proposal in its last best offer as a result of this change, however, as the Panel Chairman, I am prepared to select the Union's last best offer for all three years of the contract.

The reasoning is as follows: The bargaining units supervisors received the same 4% raise in the first year that is being sought by the Union. In addition there appears to be the ability on the part of the County to continue to pay. Furthermore, the cost of living index is at or about 3%, thus it would seem unreasonable and unjust to award a wage increase for years two and three of less than 3%.

The Panel adopts the Union's last best offer on wages.



Paul Jacobs, Panel Chairman

Dated: December 19, 1995

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
COMPULSORY ARBITRATION UNDER ACT 312
(PUBLIC ACTS OF 1969 AS AMENDED)

In the Matter of:

ST. CLAIR COUNTY (St. Clair)
Employer

Act No. 312
MERC Case No. D93 C-0294

- and -

POLICE OFFICERS ASSOCIATION
OF MICHIGAN (POAM)
Labor Organization
_____ /

AWARD

The Arbitration Panel adopts the Award set forth below and also notes that the Panel Members have indicated those issues on which they concur, and those issues on which they do not concur.

The term of this contract shall be for a period of three years beginning July 1, 1993 and ending June 30, 1996.

This Opinion and Award has addressed the economic issues raised during the course of these proceedings. This Award determines the issues that were raised, as to all other issues that were not raised by the parties it is the opinion of the Panel that the language in the current contract will be carried forward.


ARBITRATION ISSUES

Union

- | | |
|---|--------------------|
| 1. Duration | Union and Employer |
| 2. Wages - Deputies | Union |
| 3. Wages - Detectives | Union |
| 4. Wages - Communications Officers | Union |
| 5. Shift Premium | Withdrawn |
| 6. Pension - Final Average Compensation | Employer |
| 7. Pension - Escalator | Employer |

Employer

- | | |
|---|-----------------------|
| 1. Career Change and Advancement | "Rule of Three" Union |
| 2. Injury Leave and Workers' Compensation | Union |
| 3. Health Care and Dental Care | Employer |
| 4. Service Recognition | Employer |
| 5. Sick Pay and Disability Insurance | Employer |


PAUL JACOBS
CHAIRMAN
December 19, 1995

JAMES DE VRIES
UNION DELEGATE
Concurs on Union
Issues #1, #2, #3,
#4.
Union Issue #5
withdrawn.
Dissents on Union
Issues #6 and #7.
Concurs on
Employer Issue #1
and #2.
Dissents on Em-
ployer Issues #3,
#4, #5.

DOUGLAS ALEXANDER
EMPLOYER DELEGATE
Concurs on Employer
Issues #3, #4, #5.
Dissents on Employer
Issues #2.
Concurs on Union
Issues #6 and #7.
Dissents on Union
Issues #1, #2, #3,
#4.
Union Issue #5 with-
drawn.