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6/19/96

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

In the Matter of the
Arbitration Between:

CITY OF SANDUSKY,
MICHIGAN

MERC Case No. D95 J-1368
Act 312

-and-

POLICE OFFICERS LABOR
COUNCIL

Sandusky, City of

OPINION AND AWARD

ARBITRATION PANEL

George T. Roumell, Jr., Chairman
Roswell B. Timmerman, City Delegate
Jerry Caster, Labor Council Delegate

APPEARANCES:

FOR THE CITY OF SANDUSKY:

FOR THE POLICE OFFICERS
LABOR COUNCIL:

Roswell B. Timmerman, City Manager
Thomas Ritz, Councilmember

Jerry Caster, Business Agent
Michael Kasprzyk, Bargaining Team
David Rock, Bargaining Team

INTRODUCTION

The Police Officers Labor Council and the City of Sandusky, Michigan have had
a collective bargaining relationship for a number of years in a unit consisting of the
police officers employed by the City.

The most recent Agreement was effective March 1, 1993 to February 28, 1996.

The parties engaged in collective bargaining in an attempt to reach a successor agreement to the 1993-1996 Agreement. The parties were unable to reach agreement and, after mediation, reached impasse.

The Police Officers Labor Council thereupon filed a petition with the Michigan Employment Relations Commission, seeking the appointment of an Act 312 Panel Chairman. The undersigned was so appointed by letter dated May 15, 1996, signed by C. Barry Ott, Commission Member. The petition that was filed by the Labor Council listed the issues in dispute as follows:

1. Residency
2. Vacations
3. Optical Insurance
4. Retirement
5. Wages
6. Shift Premium
7. Education Bonus
8. All prior tentative agreements

At the time the Chairman arrived for a hearing, the parties acknowledged that the above issues still existed. They also recognized that the last item, "tentative agreements," was a statement that there had been tentative agreements reached between the parties on certain issues which are incorporated into the Award that follows by reference and have not been the subject of deliberation by the Chairman.

STIPULATIONS

The parties have stipulated that all time lines provided for in Act 312 have been met by virtue of the fact that the parties have extended the appropriate time lines. This

Opinion and Award is being issued in accordance with the applicable time lines as extended by mutual agreement of the parties.

The parties have stipulated that the Chairman of the Panel will write and sign the Opinion and Award; that the parties have waived participation in the process of their respective Delegates, taking the position that the Awards that follow as to each proposal or issue would have been supported by a majority of the Panel if the Delegate had participated; that the signature of the Chairman to this Opinion and Awards will represent the majority opinion as to each Award; that the parties have waived the presenting of last best offers on the economic issues, having been satisfied that, through discussions with the Chairman and presenting the necessary evidence, the Chairman was fully aware of their respective positions on each issue. The parties have also stipulated to be bound by the Award, pursuant to Act 312.

THE CRITERIA

The Chairman, in preparing this Opinion and Awards, applied the applicable statutory criteria, particularly as it applied to the economic issues.

Section 9 of Act 312 (MCL 423.239) provides for the criteria that an Arbitration Panel is to apply in reaching an award. Section 9 reads in its entirety:

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.

Sections 9(c) and (d) represent the basic economic driving force in any collective bargaining for a contract, whether it be in the public or private sector. Section 9(c) addresses financial ability. Section 9(d) addresses comparables. In negotiations, an employer (in this case the City of Sandusky), in providing wages and other economic benefits to employees, is driven by its financial ability to do so. A union, here the Labor Council, is driven by its desire to receive wages and other economic benefits comparable with other similarly-situated employees employed by other employers, particularly among public employees in the geographical area involved.

The Section 9(e) criteria, the consumer cost of living, also drives negotiations, with the employer assessing whether its revenues, and therefore its financial ability, are rising consistent with the cost of living, and the employees assessing whether they are being offered wages and economic benefits consistent with the cost of living.

Section 9(f), overall compensation, is always a factor, coupled with a point very carefully noted in that section, "the continuity and stability of employment." In the City of Sandusky, the Chairman must recognize that there has been stability of employment in the Police Department.

Section 9(h) is a "catch-all" criteria. It recognizes that in reaching collective bargaining agreements, parties have developed certain guides or criteria in mutually arriving at collective bargaining agreements, grounded in the application of the common sense approach. One of such criteria is the bargaining history of the parties. Collective

bargaining is not done in a vacuum, but against a historical background. Such history can guide the parties toward a current agreement.

The bargaining history would also include considering over the years, either through collective bargaining or through Act 312, the relationship that has emerged between wages and economic benefits provided the City of Sandusky Police Officers as compared to certain comparables in the geographical area involved. This gives some indication of where bargaining history, if applied, would lead the parties in resolving the contract now under dispute.

Negotiators in collective bargaining apply common sense in arriving at collective bargaining agreements. This concept of "common sense" includes the "art of the possible" criteria. What is possible under the given circumstances of the negotiation situation? The aim is to reach a collective bargaining agreement. The "art of the possible" is a criteria encompassed in Section 9(h).

Encompassed in Section 9(h) is the strike criteria. Strikes in the geographical area which have been settled may offer some clue of what a settlement might be in a given situation, if one recognizes that interest arbitration is a substitute for a strike. Thus, settlements following strikes in the area can give some guidance. The strike criteria can be utilized in assessing whether the parties, if a strike was an option, would permit an issue to cause a strike, particularly if all other issues were settled. Such an assessment can be a guide to resolving the dispute.

Section 9(h) as well as Section 9(c), "the interests and welfare of the public," encompass the concept that bargainers consider the nature of the work of the

employees involved in arriving at collective bargaining agreements. This concept is a factor here because of the nature of police/fire work and the public's expectations as to police/fire performance.

The Chairman has applied the above criteria, after consulting with the parties, in reaching the Awards here. There is a limitation on Sandusky's finances. There is likewise a historical relationship between the Sandusky Police Officers' wages and wages for similarly situated employees in surrounding communities. There also have been some concerns about optical-dental insurance and pensions. All these have been factored into the Awards, as well as the history of bargaining concerning the issues that have been listed above that were pending at the time the Chairman met with the parties.

THE OPINION

Background

The City of Sandusky is the County seat of Sandusky County, located in the thumb area of Michigan. The police force consists of five officers and a Police Chief, performing police services seven days a week on a 24-hour basis. Sandusky is a small city with limited resources. Yet, the City does not claim inability to pay. Nevertheless, its resources must be recognized as limited, due to the size and the limited industrial base.

Beginning with the "ability to pay," the Chairman has reviewed the comparables. The Police Officers Labor Council suggested a series of comparables, including

communities as far away as St. Louis, Michigan and Ithaca, Michigan, in Gratiot County. The Chairman believes that comparing wage patterns and other economic patterns with communities outside of the economic influence of the thumb area of Michigan is not appropriate; that the appropriate comparison would be within the economic sphere of the thumb area. The thumb area is an area of small communities. Those that have police departments usually consist of a size in single digits. Therefore, in the view of the Panel Chairman, the appropriate comparables with communities having paid police departments of similar size to Sandusky in the thumb area are as set forth in the following chart, which includes the size of the department and, in some cases, the date of the respective collective bargaining agreement, and the wages, longevity and shift premium:

<u>Dept. Size</u>	<u>City</u>	<u>Start</u>	<u>3 Year</u>	<u>Max</u>	<u>Longevity</u>	<u>Shift</u>
6	Sandusky	9.82	12.04	12.04	4-600; 7-700 11-900	A-15 M-20
4.5	Almont	14.52		14.82	No	A-20
8	Bad Axe	12.25		14.92	2-200; 5-300 10-450; 15-550	No
4.3	Cass City	13.13	14.63	16.63		
5.2	Croswell	9.46	12.76	13.46		
	July 1996					
	Harbor Beach	11.78	14.69	14.69		
	July 1996	Open				
8	Imlay City	12.33		15.17		
6	Vassar	13.59	14.45	14.85	3-1%; 6-2%; 11-2½%	

In addition, the Chairman was advised that in Imlay City the contract has just been settled for three years and provides a 3% wage increase each of the three years,

therefore bringing the maximum rate during the next three years in Imlay City to approximately \$16.53.

Several observations can be made from the above chart. Only three of the compared communities have longevity, including Sandusky, which is a factor constituting the overall compensation. Likewise, only two have shift differential, namely, Almont and Sandusky, with Sandusky having an afternoon shift differential of \$0.15 and a midnight differential of \$0.20 an hour. This again is part of the overall compensation.

Nevertheless, on the maximum base rate, currently Sandusky, without any pay increases, is at \$12.04, reached at the end of three years. As compared to the other comparable communities, Sandusky is the lowest paid community in the compared cities. It must be recognized that most of the communities have contracts that will be reopened in June 1996 or later. Thus, during the three year period that is involved here, namely, from March 1, 1996 through February 28, 1999, these other communities presumably would be receiving pay raises which would widen the wage gap.

What seems to be obvious is that, though Imlay City at the maximum, as well as Cass City, may be higher than the other comparable communities, most of the communities, if not all, except perhaps Croswell, are paying officers at the maximum, based upon a 2,080 work week, an annual salary of around \$30,000. These pay rates, with the exception of Croswell, are substantially lower than Sandusky with a maximum of \$12.04. Likewise, with the exception of Croswell, the starting salary at Sandusky, \$9.82, is substantially lower than the starting salaries in the other compared communities. Even if one adds longevity, it is noted that two officers in the force do not

receive longevity because they have only been on the force since 1995. One officer receives the four-year \$600 rate, one the seven-year \$700 rate, and only one receives the \$900 rate. Though longevity is there, it does not compensate for the low wages.

The Chairman appreciates that the cost of living does not support a 6% increase. But the cost of living is not the only criteria in a situation where the comparables reveal that the wages are substantially below the comparables, particularly recognizing that in the next three years the comparables no doubt will receive wage increases at least consistent with the cost of living.

What this situation reveals is that there is a need for what is referred to in labor parlance as a "catch-up" wage increase so that the Sandusky Police Department can be paid at a comparable rate with other comparable departments. Therefore, the emphasis in the contract period should be on wages.

There were other economic issues that separated the parties, as outlined above, namely, an increase in shift differential, an increase in the current pension plan, and the payment of an educational bonus. The proposal on the educational bonus from the Labor Council was to provide for a 5% stipend for officers having an Associate's Degree. It should be noted, with the exception of one officer who has an Associate's Degree, all the remaining officers have a Bachelor's Degree, which apparently is the requirement in Sandusky for employment. Since only two of the comparable communities have a shift differential, and none are reported to have an educational premium bonus, in the view of the Chairman it would seem that there should be no change in the shift differential or a provision for an educational bonus, for to do so

would tap into the City's financial resources in areas that do not need to be addressed in this contract, while disregarding the need to address base wages.

The same comments can be made as to proposed increases in pension. None of the current officers are near retirement. Considering this factor, and again conserving the City's financial resources for wage increases, there is no reason to change or modify the pension plan.

In some respects, the claim as to vacation increases requires a similar analysis. Currently, after ten years of employment, employees receive 20 days vacation. After five years of employment, employees receive 15 days. Admittedly, only three officers, including the Chief, are beneficiaries of the 15 days and 20 days vacation benefit. The proposal to reduce the time to receive the benefit is designed to accommodate more officers. Yet, with a small force, the adding of vacation time could indeed be a financial drain on the City. There is no basis that has been presented to the Chairman that would suggest such a change in vacations.

The point is that, as to vacations, retirement, shift premiums, the Chairman will award a position of *status quo*, namely, the provisions of the 1993-1996 contract on these items shall be carried over into the awarded 1996-1999 contract.

The name of the game is money -- money in base wages -- and that is what this Award is about. As the Chairman met with the parties, there was an offer on the table from the Labor Council of a 7% pay raise in the first year of the contract, a 6% pay raise in the second year, and a 6% pay raise in the third year. The City has responded with a 6% pay raise the first year, and a 4% pay raise in each of the next two years. There

was no dispute between the parties that the contract should be for three years, a point as to which the Chairman agrees.

The request of the Labor Council, at least in the first year, though made in the spirit of a "catch-up," does challenge the concept of considering the cost of living because the Union's proposed increased wages would be substantially above the cost of living. On the other hand, the offer of the City, at least in the second and third year, will not address the need for a "catch-up" when one considers the comparables, as outlined above. For this reason, the Chairman concludes that there should be a three year contract commencing March 1, 1996, and expiring February 28, 1999. During this period the Chairman will award a 6% wage increase across-the-board, retroactive to March 1, 1996, a 6% wage increase in wages across-the-board, effective March 1, 1997, and a 6% wage increase in wages across-the-board, effective March 1, 1998.

Such an award is consistent with the City's offer in the first year of the contract. In the second and third year it represents what, in the view of the Chairman as he noted the comparables, the amount needed to have an adequate "catch-up."

Based upon these percentages, this means that the maximum salary by the end of the third year should begin to approach at least the middle range of the pay rates of the other comparable communities, when considered along with the longevity. It comes near to the \$30,000 mark.

This award as to wages, considering the fact that requests for changes in vacation, retirement, shift differential and educational bonus, have been rejected by the Chairman, is within the art of the possible. And if the law had permitted a strike, it is

suggested that a strike could not be settled without such a wage increase.

There are two other items. Under the 1993-1996 contract, officers were required to reside within the city limits of Sandusky. This became an issue between the parties, with the Labor Council seeking to eliminate the residency requirement. On June 6, 1996, the City was proposing a "...5 mile radius as per City Ordinance. Police officers would be required to live within a 5 mile radius to the City limits of Sandusky."

Though it was not clear at the time the Chairman arrived that the Labor Council was prepared to accept this offer, this Chairman believes that it is a reasonable approach, and therefore will make the City's offer a part of the award.

The final issue between the parties was the issue of optical and dental insurance. Article XXVIII, "Insurance Plans," Section 4, of the 1993-1996 contract provided:

Section 4. The Employer shall provide Optical and Dental expenses incurred by employees and family upon presentation of a receipt for a bill evidencing same, in the amount of \$275.00 during each contract year.

There was discussion between the parties over increasing this amount, but no agreement was reached. The Chairman recognizes that the cost of dental services and optical services has increased. Therefore, the Chairman will award, considering the parties' bargaining history and the cost factors, a modification to the above Section 4 so that effective March 1, 1996, the amount for the first contract year will be \$325.00. Effective March 1, 1997, the amount for the 1997-98 contract year shall be \$350.00. Effective March 1, 1998, the amount for the 1998-99 contract year shall be \$375.00.

The parties also reached certain tentative agreements which have not been addressed by this Chairman, as the parties have agreed to incorporate the tentative agreements into their contract.

The Awards that follows are based upon the above analysis. Except as set forth in the Awards, and as set forth in the parties' tentative agreements, all other provisions existing in the just expired Agreement will be carried forward.

A W A R D S

1. **Residency.** Article XI, "Residency," shall read: The Employer requires all bargaining unit employees to reside within a five (5) mile radius to the City limits of Sandusky."

2. **Optical-Dental Insurance.** Article XXVIII, Section 4, shall be amended to read as follows:

Effective March 1, 1996, the Employer shall provide optical and dental expenses incurred by the employees and family, upon presentation of a receipt for a bill evidencing same, in the amount of \$325.00 during the March 1, 1996-February 28, 1997 contract year; that effective March 1, 1997, the amount shall be \$350.00 for the contract year commencing March 1, 1997 and ending February 28, 1998; that effective March 1, 1998, the amount shall be \$375.00 for the contract year commencing March 1, 1998 and ending February 28, 1999.

3. **Wages.** Effective March 1, 1996, the wages of members of the bargaining unit shall increase across-the-board 6%. Effective March 1, 1997, the wages of

members of the bargaining unit shall increase across-the-board 6%. Effective March 1, 1998, the wages of members of the bargaining unit shall increase across-the-board 6%.

4. The tentative agreements of the parties are hereby incorporated by reference.

5. The provisions as to vacations, retirement, and shift differentials, as set forth in the 1993-1996 contract, shall be carried over into the 1996-1999 contract unchanged.

6. The request for an educational bonus is hereby rejected.

7. Duration. The Collective Bargaining Agreement shall be effective March 1, 1996 through February 28, 1999.

8. Except as set forth in the Awards and in the incorporated tentative agreements, all other provisions existing in the just expired Agreement will be carried over, as set forth, into the 1996-1999 Agreement, unless the parties agree otherwise.


GEORGE T. ROUMELL, JR.
Chairman

June 19, 1996