2221

Act 312 Arbitration

Between

Berrien County

And

The Police Officers Labor Council

(MERC Case No. LO6 I-7006)

Chairperson: Dr. Benjamin Wolkinson

County Representative
Thomas Fette, Attorney

Union Representative
Thomas Zulch, Attorney

Background

This is a statutory compulsory arbitration conducted pursuant to Act 312, Public Act of 1969 as amended. The Union filed a petition for Act 312 arbitration with MERC on December 13, 2006. The Chairperson was appointed via correspondence from the Employment Relations Commission.

The Chairperson and the parties held a pre-Act 312 conference by telephone on July 9, 2007 at which time the following Employer and Union issues in dispute were identified: wages over a three year period (2007-2009), health insurance, and pensions. A hearing was held in Berrien County on November 6, 2006. Prior to the hearing, the parties accepted the following communities as comparable: Saginaw, Ottawa, Calhoun, Muskegon, and Jackson.

The parties submitted final offers on or by December 1, 2007 and briefs in support of their respective final offers on or by January 23, 2008. On March 5, 2007, the Panel Delegates and the Chairperson reviewed the award.

Statutory Criteria

Section 9 (MCL 423.239) outlines the list of factors upon which the Panel should base its findings, opinions, and award. These include:

(a) The lawful authority of the Employer.

(b) Stipulation of the parties.

(c) The interest and welfare of the public and the financial ability of the unit of government to meet these 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 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 medical hospitalization benefits, the continuity and stability of employment and all other benefits received.

(g) Changes in any other foregoing circumstances during pendency of the arbitration proceeding.

(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.

Wages

The Union has requested a three year contract with the following across the board wage increases with full retroactivity:

Effective 1-1-07: 3.75%
Effective 1-1-08: 3.75%
Effective 1-1-09: 3.75%

The Employer has offered a three year agreement with the following wage increases.

Effective 1-1-07: 2.5%
Effective 1-1-08: 2.0%

Effective 1-1-09: 2.0%

Parties' Contentions on Wages

The Union contends that a review of the comparables reveal that Berrien County deputies and sergeants are well below the average in base wages. Additionally, the time required to reach maximum compensation for deputies and sergeants in the comparables is five and six years respectively; yet in Berrien County it takes a minimum of ten years to reach that compensation. Even when maximum compensation is received, the deputies and sergeants have received wages which rank them at the bottom of the comparables. Furthermore, even including the Union's offer, the officers' positions improve only slightly, remaining substantially behind the average wage of the comparables. The position of officers in Berrien County is further diminished when we consider that Berrien County officers do not receive cash benefits such as longevity and shift premiums that are provided officers in many of the comparables communities.

The Union also rejects the contention that the County's wage offer is justified by wage agreements reached with other County bargaining units. The command officers did accept a two percent wage increase. However, they also reach received a deferred retirement option plan (DROP), a substantial benefit that was not offered to the deputies and sergeants. Moreover, the County has failed to introduce any information on the wages of the internal comparables. Employees in other units may not have been so dramatically underpaid as the deputies and sergeants. Moreover, some of these other County units are highly paid when compared to external communities.

The Union also contends that the County has failed to present any evidence of an inability to pay a higher wage. The basis of the County's inability to pay argument is generally speculation, worry, and concern over the uncertainty of future economic conditions. However a review of the County's budget does not appear to indicate any inability to pay. In its proposed 2008 budget, the County expects to have a surplus in its general fund. The County also estimates general fund reserves will increase by $250,000 based on a new casino that has recently opened. The net assets of the County have also increased by $8 million in the past year. Berrien County has an AA bond rating based on its financial reserves, putting in the top 20 counties in the state.

The Employer notes that Berrien County, unlike most others, provides its correction officers, who constitute a majority of the unit, with the same pay as road deputies. As a result, of the six counties in question, Berrien County's pay is second only to that of Jackson County. Moreover, Berrien County starting wages are more competitive with others. Under the Employer's proposal, Berrien County starting salaries would rank third out of six. Finally, if the yearly pay increases are compared on a percentage basis, except for the year 2006, the Employer's proposal would rank Berrien County in the middle of the pack. When Berrien County's generous pension and benefit packages are considered, it is clear that the Sherriff's Department employees are not under-compensated when compared to their cohort group.

The Employer further argues that considerations of internal comparability support its proposal. Non-union employees, including the sheriff and under-sheriff, received a two percent (2%) wage increase in 2007 and 2008. Unionized units received 2 1/2 percent wage increases in 2007 and 2% percent increases for 2008 and 2009. This includes employees who are represented by the FOP Labor Council as well as emergency dispatchers and command officers represented by the POLC.

The Employer maintains that it would be anomalous if non- command deputies were to receive a pay increase of 1.25 percent higher than those who command them. If the Union were to succeed in its wage demand, it could discourage voluntary settlements not only in this bargaining unit but in the command units as well. The lesson would be that there is a benefit to reaching impasse and seeking arbitration than in mutual agreement.

Finally, the Employer maintains that its position is supported by considerations of financial ability. County administrator William Wolf testified that the County is in a precarious financial situation. Although the legislature has promised to re-establish revenue-sharing for counties whose reserve funds have been depleted, the return of revenue-sharing is uncertain. Because of the discrepancy between the anticipated expenses and anticipated revenues, the County has been forced to make cuts in essential services. Twenty-seven County wide positions were eliminated, which number represents 3.6 percent of the entire workforce. Within the Sheriff's Department there are two funded but unfilled jail positions. Additionally, one drug education officer and one narcotics detective were laid off. The County's unemployment rate is chronically higher than the unemployment rate of the state because of losses in the manufacturing sector. There also areas within the County that have uniquely historic and intractable problems of poverty. The Employer maintains that any wage and benefit package should not have to be funded through cutbacks in vital police services.

Discussion

Both parties have proposed a three-year contract retroactive to January 1, 2007. The Union has proposed a 3.75 percent for each year of the contract, while the Employer has proposed a 2.5 percent increase in 2007 and a two percent increase for 2008 and 2009. The parties have agreed that each year of the contract is to be considered a separate issue.

The Employer has raised ability to pay as a factor supporting its position. The Chair recognizes that throughout Michigan state governments face economic challenges, because of the general downturn in the economy and the uncertainty concerning the nature and amount of revenue that the State will provide municipalities. These negative factors have had some impact on County employment. Taking into consideration these challenges, the County has decided not to fill non-essential vacancies. Mr. Wolf, the County's administrator, indicated that 18 vacant positions have remained unfilled and are now unfunded. These include the elimination of two unfilled jail deputy positions and one narcotics detective and one drug education officer position.

At the same time, the County does have financial resources available to it. It has a healthy general fund balance. As a percentage of the general fund in 2007, the general fund balance was 22.5 percent in 2007 and is projected to be 21.5 percent in 2008. General Fund balances for 2007 and 2008 should exceed $10,500,000. (Employer Ex 2, General Fund Budget Overview, pp.10-11). Its AA bond places is among the top 20 counties in the State. Future economic projections for this County are also favorable, despite pockets of poverty in certain areas such as Benton Harbor. Between 2006 and 2007, taxable valuation increased by 7.04 percent and the County's 2008 budget anticipates an increase of 4.5 percent in property taxes that will generate $ 2,030,342 in additional revenue. (Ibid, pp. 4,8) Mr. Wolf also testified that the County has projected an additional $200,000 in revenue from court fees and conservatively an additional $ 250, 000 in revenue from the operation of a new casino. Given these considerations, the Chair finds that while the County must exercise prudence in managing its resources, ability to pay is not a compelling factor in assessing the legitimacy of the parties' respective positions.

Rather the Chair must weigh the relative merits of the parties' positions based on the comparability data they have presented. The evidence on external comparability supports the Union's general position on wages. A wage increase of 3.75 % would result in deputies at the six year level receiving $46,122 in 2007 and $47,851 in 2008. This would result in Berrien County deputies receiving a lower salary than deputies in the five comparable counties in 2007. With the exception of Calhoun County, this standing would prevail in 2008. However, when we factor in longevity increases and/or shift premiums available in some of the other comparable communities (Calhoun, Jackson, Saginaw), even with the Union' wage proposal, Berrien County deputies would essentially be tied for the bottom ranking among all comparable communities in 2008. Significantly, even with the Union's wage proposal, Berrien County deputies would receive $4126 less than the average salary earned by deputies in the comparable communities in 2007 and $3608 less than the average wage received by deputies in the comparable communities in 2008. This disparity would be further widened were the Employer's proposal accepted.

This general pattern holds true for sergeants. A wage increase of 3.75 % would result in sergeants at the five year level receiving $50,547 in 2007 and $52,442 in 2008 .

Implementation of the Union's proposal would result in Berrien County sergeants at the five year level being ranked last when compared to salaries received by sergeants in the five comparable counties in 2007 and last as well in 2008. Even with the Union's wage proposal, Berrien County sergeants at the fifth year level would receive $6120 less than the average salary earned by sergeants in the comparable communities in 2007 and $6850 less than the average wage received by deputies in the comparable communities in 2008.[1] This disparity would be further widened were the Employer's proposal accepted.

In opposition to this evidence the Employer has maintained that we must consider that Berrien County, unlike most other counties, pays its corrections officers the same pay level as road deputies and that as a result Berrien County's pay is second only to that of Jackson County. Additionally, under the Employer's proposal, Berrien's County starting salary would rank third out of six.

A review of the contracts in the comparable communities reveals that, with the exception of Ottawa County, the other Counties pay corrections officers at a lower level than deputies. At the same time, this consideration does not address the significantly lower salaries that Berrien County deputies and sergeants earn as compared with deputies and sergeants in the other comparable communities. Additionally, these disparities are exacerbated by the receipt by deputies and sergeants in the comparable communities, but not in Berrien County, of other cash benefits such as longevity pay and shift premiums.

There is another factor which persuades the Chair that the wages of corrections officers in this unit as compared with the comparables does not merit significant weight. In identifying wages as an issue in Berrien County, both parties did not attempt to distinguish between the pay of deputies on road patrol and that received by corrections

[1] The 2008 calculation is base only on data available from three of the five comparables.

officers. Thus evidence on the issue of wages that was considered at the hearing focused only upon the classifications of deputies and sergeants. Similarly, the parties' final offers concern only the classifications of deputies and sergeants. Had the Employer felt that corrections officers' pay merited distinctive consideration, it should have identified this factor up front and tailored its negotiating proposals and final offers on this basis. To do so currently is misplaced, since this Panel has no jurisdiction to screen out corrections employees and attempt to identify an appropriate wage for them that is separate from the wages to be received by deputies.

The Panel also does not find persuasive the Employer's reliance on starting salaries as a means of comparing Berrien County salaries with salaries in the comparable counties. A stating salary does not give an accurate picture of one's economic well being if one can quickly move up in pay level. This is the case with all the comparable communities, but Berrien County. While it takes an average of only six years for deputies to achieve the highest-pay level in the comparable communities, it takes 10 years to do so in Berrien County. Similarly, while it takes only five years on the average for sergeants in the comparable communities to reach the highest-paid level, it takes 10 years for sergeants in Berrien County to do so. When we consider that Berrien County Sergeants and Deputies are ranked last in salaries in 2007 and 2007 at six years, it becomes apparent that whatever short term advantage Berrien County officers may have from a higher starting salary is dissipated over time.

The Employer also has contended that a review of the rate of increases in Berrien County and in the comparables counties demonstrates that the Employer's proposal is competitive, placing Berrien County in the middle of the cohort group. The record does not support this assertion. For 2007, for deputies at six years we have data on four of the comparables. The Employer's offer would rank below that offered in three of the four known comparable counties. In terms of percentage increases, Berrien County would only rank higher than Saginaw which provided no increase to deputies in 2007, an outcome not surprising considering that deputies in Saginaw received a 6 % increase in 2006, an amount double the rate received in other counties.

For sergeants the Employer's percentage increases are somewhat more competitive. The 2.5 percent increase for sergeants at six years would rank above two of the comparables (Calhoun 1.5 % and Jackson 2%) but below three others. Yet despite this apparent advantage, were the Employer's proposal accepted, Berrien County sergeants in 2007would earn on the average $3198 less than their counterparts in Jackson and Calhoun counties. [2]

On balance, the significantly higher salaries in all the comparable communities at the deputy and sergeants level combined with the availability of other cash benefits such as longevity and shift premium strongly supports the Union's wage proposal for 2007 and 2008. The Panel will now turn to evidence based on internal comparability data.

The Employer's wage offer does find support in the wage agreements it has executed with its remaining units. Other bargaining units such as AFSCME, FOPLC-civilian unit, the POLC command unit, the POLC dispatchers and POLC dispatcher supervisors have received 2.5% in 2007 and 2% in 2008.

The Panel recognizes that internal comparability is an important factor in weighing the merits of a wage demand. For a particular unit to deviate from a commonly

[2] An analysis of percentage wage increases is difficult to pursue for 2008 and 2009 since contracts in many of the comparables have yet to be negotiated.

established internal pattern can create some instability in the unit, as other units may try to play catch up in future negotiations. A commonly established pattern may better reflect the resources available to the Employer. Finally, if the parties have a long history of standardizing wage increases throughout units, that bargaining history merits acceptance absent compelling evidence warranting a deviation.

Here there is no evidence that the acceptance of parallel percentage increases in all bargaining units is an established bargaining practice in Berrien County. Additionally, there is some evidence that the County has allowed particular bargaining units to negotiate wage and/or benefit packages that are distinctive in nature. For example, in 2004, Berrien County and the POLC negotiated a modest 1.25 percent wage increase in return for an increase in the pension multiplier from 2.50% to 2.8%. Here too a higher wage increase for the sergeants and deputies than that received by the POLC command unit can be understood in the context of additional pension benefits granted the command officers but not to sergeants and deputies. Thus in 2007 command officers negotiated changes in final average compensation from the current highest five consecutive years of earnings to the highest three consecutive years. Additionally, they negotiated the capacity to draw their monthly retirement while currently working. (DROP Program) Finally, County administrator Wolf acknowledged that the dispatchers and the dispatch supervisors, who are represented in other POLC units, are well paid as compared to their counterparts in the comparable communities, whereas sergeants and deputies in Berrien County receive significantly lower salaries than sergeants and deputies elsewhere. Given these considerations, the Panel finds warranted some deviation in the internal wage pattern in order to provide competitive wages to sergeants and deputies in Berrien County.

It is difficult to assess the relative position of Berrien County sergeants and deputies in 2009, as four of the remaining comparables have no signed contracts. Given the significant increases granted employees in 2007 and 2008 and affording deference to internal wage comparisons, the Panel finds more reasonable the Employer's last offer on wages for 2009.

Award

The Panel, with the Employer Delegate dissenting, adopts the Union's wage offer for 2007 and 2008. The Panel, with the Union Delegate dissenting, awards the Employer's last offer on wages for 2009.

Insurance Contributions

The Employer has proposed that employee contribution toward the cost of health insurance premiums be increased from 10 to 12 percent. The Union's proposal is that employee contributions remain at 10 percent.

Parties' Contentions on Insurance

The Employer maintains that these increases are modest. The 2 percent increase would cost single, double, and family subscribers $9.50 per month, $18.72 per month, and $21.64 per month respectively. Additionally, it contends that it is requesting only that members of this bargaining unit participate in the cost of health insurance in the same way as most other County employees. Furthermore, as individuals bear increased burdens of health insurance costs, they tend to become more savvy as to when and how to use medical care. There will be fewer unnecessary visits to the emergency department, increased use of generic as opposed to brand-name drugs, and other strategies that will help slow the current alarming growth in health insurance costs.

The Union maintains that external comparable supports its position. It maintains that many of the comparable health-care programs provide better coverage for better prescription co-pays. Nearly all the comparable communities provide some form of health-care coverage with an option to contribute 10 percent or less. In addition, an earlier review of compensation indicated that Berrien County officers were substantially underpaid. Increasing the cost of their health-care only exaggerates this disparity.

Discussion

External comparability supports the Union's proposal, as in most other comparable counties the employees' share of insurance is 10 percent. At the same time, internal comparability data supports the Employer's proposal. Human resources manager Shelley Smith testified that every bargaining unit that negotiated contracts in 2007 agreed to an increase in insurance contributions from 10 to 12 percent. These include AFSCME, FLPOC, the largest unit in the County, as well as the command bargaining unit represented by POLC.

The Panel finds that internal comparability considerations should guide its determination of this issue. Berrien County funds its health insurance through its payment of premiums and payments received from employees. As all employees contribute to the financial integrity of the health insurance program and receive the same level benefits, it is appropriate that each employee bear an equal share of the costs. This objective is achieved through standardizing the level of employee contributions in the County. Moreover, as employees incur greater cost, it can be expected that they will have an economic incentive to be wiser consumers of health-care benefits. Finally, as all sergeants and deputies have received significant wage increases in 2007 and 2008, they are in a position to pick up the extra health-care costs imposed on them.

Award

The Panel, with the Union Delegate dissenting, adopts the Employer's last offer on this issue and renders the increase in costs retroactive to January 1, 2007.

Pensions

The Union is proposing a new Section 3 to be added:

> An employee may elect to purchase up to five years generic service time at no cost to the Employer. Cost of the generic service time purchased is to be actuarially determined. Such purchase is limited if an employee has also purchased military service credit. Under no circumstances can employee purchase more than five years of service credit total whether it is military, generic or a combination above.

The Employer opposes this new provision.

Parties' Contentions on Pensions

The Union maintains that the option to purchase generic service time is of no cost to management and will result in substantial benefits. The program can reduce Employer costs, since more health issues occur in the latter part of an officer's career. Allowing an officer to buy service time and retire sooner will help with these costs. An officer who purchases time and retires at the top end of total compensation will likely be replaced with someone making less, again saving the County in costs and total compensation. In addition, the external comparables indicate universal support for the purchase of generic service time.

The Employer objects to this proposal on several grounds. It maintains that this proposal is untimely, since at no time during negotiations and even through the arbitration hearing did the Union make any concrete and complete proposal regarding the purchase of generic service. It made vague and generic references to generic service credit purchase. Moreover, the Union's last best offer is still incomplete. It states that the purchase price will be determined actuarially, but does not address who will bear the cost following completion of the actuarial study. Moreover the additional burden to the pension plan is unknown. The Union has put forward this proposal without any actuarial evaluation of the increase in the normal cost of the unfunded liability that would result from such a program. Moreover, it has not submitted evidence as to how County employees would be eligible to make such a purchase. Finally, allowing such a purpose may be illegal and beyond the authority of the Panel. A retirement system must provide a supplementary actuarial valuation before adopting any benefit pension changes. Given the absences of any such actuarial report, the Panel is not authorized to effect such a change.

Discussion

It would appear that in most other comparable counties employees are able to purchase five years of generic service time. At the same time, the Panel agrees that this issue should be deferred to the parties for further discussions when the parties next negotiate. Pension changes may result in significantly higher costs which must be funded by Employer and/or employee contributions. While the Union has suggested that health costs may be reduced if employees retire sooner as well as wage costs if long term employees are replaced by new hires, the Union has failed to consider that other costs may rise. For example, health insurance costs may rise sharply as the number of retirees increases, since the contributions of retirees for health insurance remains constant at $150 while premium costs typically increase annually. Additionally, the replacement of higher paid employees with new hires being paid at the starting level means that less revenue is available to fund a greater number of retirements. These concerns can not be ignored, since in more recent years member contributions going into the plan no longer fully fund what is withdrawn in the form of retiree payouts.

The problem with the Union's proposal is that it has been presented in a vacuum. While previously both parties have jointly funded actuarial studies to determine the effects of changes in the pension plan, no such request was requested or initiated with regard to the Union's proposal. Consequently, as the Panel can not fairly assess the economic effects of the Union's proposal, it would be unreasonable for it to endorse it.

Award

The Panel, with the Union Delegate dissenting, awards the Employer's final offer on pensions.

March 5, 2007

Benjamin Wolkinson
Act 312 Chairperson

Thomas Fette
Employer Delegate

Thomas Zulch
Union Delegate

March 5, 2007

Benjamin Wolkinson
Act 312 Chairperson

Thomas Fette
Employer Delegate

Thomas Zulch
Union Delegate